

AMENDED IN ASSEMBLY MARCH 21, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2058**

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**Introduced by Assembly Member Cohn**

February 15, 2006

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An act to amend Section 288 of the Penal Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 2058, as amended, Cohn. Sex offenses: lewd and lascivious acts.

Under existing law, any person who commits a lewd or lascivious act upon a child who is under 14 years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony.

This bill would make it a misdemeanor or felony for any employee or volunteer of a school to commit the above-described act on a minor who is 14, 15, 16, or 17 years of age who attends the school where the person works or volunteers. Because the bill would create a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 288 of the Penal Code is amended to  
2 read:

3 288. (a) ~~(1)~~ Any person who willfully and lewdly commits  
4 any lewd or lascivious act, including any of the acts constituting  
5 other crimes provided for in Part 1, upon or with the body, or any  
6 part or member thereof, of a child who is under the age of 14  
7 years, with the intent of arousing, appealing to, or gratifying the  
8 lust, passions, or sexual desires of that person or the child, is  
9 guilty of a felony and shall be punished by imprisonment in the  
10 state prison for three, six, or eight years.

11 ~~(2) Any employee or volunteer of a public or private school~~  
12 ~~who commits an act described in paragraph (1) upon a minor~~  
13 ~~who is 14, 15, 16, or 17 years of age who attends the same school~~  
14 ~~at which the person is employed or volunteers, with the intent~~  
15 ~~described in paragraph (1), is guilty of a public offense and shall~~  
16 ~~be punished by imprisonment in the county jail or in the state~~  
17 ~~prison for one, two, or three years.~~

18 (b) (1) Any person who commits an act described in  
19 subdivision (a) by use of force, violence, duress, menace, or fear  
20 of immediate and unlawful bodily injury on the victim or another  
21 person, is guilty of a felony and shall be punished by  
22 imprisonment in the state prison for three, six, or eight years.

23 (2) Any person who is a caretaker and commits an act  
24 described in subdivision (a) upon a dependent person by use of  
25 force, violence, duress, menace, or fear of immediate and  
26 unlawful bodily injury on the victim or another person, with the  
27 intent described in subdivision (a), is guilty of a felony and shall  
28 be punished by imprisonment in the state prison for three, six, or  
29 eight years.

30 (c) (1) Any person who commits an act described in  
31 subdivision (a) with the intent described in that subdivision, and  
32 the victim is a child of 14 or 15 years, and that person is at least  
33 10 years older than the child, is guilty of a public offense and  
34 shall be punished by imprisonment in the state prison for one,  
35 two, or three years, or by imprisonment in a county jail for not  
36 more than one year. In determining whether the person is at least  
37 10 years older than the child, the difference in age shall be

1 measured from the birth date of the person to the birth date of the  
2 child.

3 (2) Any person who is a caretaker and commits an act  
4 described in subdivision (a) upon a dependent person, with the  
5 intent described in subdivision (a), is guilty of a public offense  
6 and shall be punished by imprisonment in the state prison for  
7 one, two, or three years, or by imprisonment in a county jail for  
8 not more than one year.

9 (3) *Any employee or volunteer of a public or private school*  
10 *who commits an act described in subdivision (a) upon a minor*  
11 *who is 14, 15, 16, or 17 years of age who attends the same school*  
12 *at which the person is employed or volunteers, with the intent*  
13 *described in subdivision (a), shall be guilty of a public offense*  
14 *and shall be punished by imprisonment in a county jail for not*  
15 *more than one year or by imprisonment in the state prison for*  
16 *one, two, or three years.*

17 (d) In any arrest or prosecution under this section or Section  
18 288.5, the peace officer, district attorney, and the court shall  
19 consider the needs of the child victim or dependent person and  
20 shall do whatever is necessary, within existing budgetary  
21 resources, and constitutionally permissible to prevent  
22 psychological harm to the child victim or to prevent  
23 psychological harm to the dependent person victim resulting  
24 from participation in the court process.

25 (e) Upon the conviction of any person for a violation of  
26 subdivision (a) or (b), the court may, in addition to any other  
27 penalty or fine imposed, order the defendant to pay an additional  
28 fine not to exceed ten thousand dollars (\$10,000). In setting the  
29 amount of the fine, the court shall consider any relevant factors,  
30 including, but not limited to, the seriousness and gravity of the  
31 offense, the circumstances of its commission, whether the  
32 defendant derived any economic gain as a result of the crime, and  
33 the extent to which the victim suffered economic losses as a  
34 result of the crime. Every fine imposed and collected under this  
35 section shall be deposited in the Victim-Witness Assistance Fund  
36 to be available for appropriation to fund child sexual exploitation  
37 and child sexual abuse victim counseling centers and prevention  
38 programs pursuant to Section 13837.

39 If the court orders a fine imposed pursuant to this subdivision,  
40 the actual administrative cost of collecting that fine, not to

1 exceed 2 percent of the total amount paid, may be paid into the  
2 general fund of the county treasury for the use and benefit of the  
3 county.

4 (f) For purposes of paragraph (2) of subdivision (b) and  
5 paragraph (2) of subdivision (c), the following definitions apply:

6 (1) “Caretaker” means an owner, operator, administrator,  
7 employee, independent contractor, agent, or volunteer of any of  
8 the following public or private facilities when the facilities  
9 provide care for elder or dependent persons:

10 (A) Twenty-four hour health facilities, as defined in Sections  
11 1250, 1250.2, and 1250.3 of the Health and Safety Code.

12 (B) Clinics.

13 (C) Home health agencies.

14 (D) Adult day health care centers.

15 (E) Secondary schools that serve dependent persons and  
16 postsecondary educational institutions that serve dependent  
17 persons or elders.

18 (F) Sheltered workshops.

19 (G) Camps.

20 (H) Community care facilities, as defined by Section 1402 of  
21 the Health and Safety Code, and residential care facilities for the  
22 elderly, as defined in Section 1569.2 of the Health and Safety  
23 Code.

24 (I) Respite care facilities.

25 (J) Foster homes.

26 (K) Regional centers for persons with developmental  
27 disabilities.

28 (L) A home health agency licensed in accordance with  
29 Chapter 8 (commencing with Section 1725) of Division 2 of the  
30 Health and Safety Code.

31 (M) An agency that supplies in-home supportive services.

32 (N) Board and care facilities.

33 (O) Any other protective or public assistance agency that  
34 provides health services or social services to elder or dependent  
35 persons, including, but not limited to, in-home supportive  
36 services, as defined in Section 14005.14 of the Welfare and  
37 Institutions Code.

38 (P) Private residences.

1 (2) “Board and care facilities” means licensed or unlicensed  
2 facilities that provide assistance with one or more of the  
3 following activities:

- 4 (A) Bathing.
- 5 (B) Dressing.
- 6 (C) Grooming.
- 7 (D) Medication storage.
- 8 (E) Medical dispensation.
- 9 (F) Money management.

10 (3) “Dependent person” means any person who has a physical  
11 or mental impairment that substantially restricts his or her ability  
12 to carry out normal activities or to protect his or her rights,  
13 including, but not limited to, persons who have physical or  
14 developmental disabilities or whose physical or mental abilities  
15 have significantly diminished because of age. “Dependent  
16 person” includes any person who is admitted as an inpatient to a  
17 24-hour health facility, as defined in Sections 1250, 1250.2, and  
18 1250.3 of the Health and Safety Code.

19 (g) Paragraph (2) of subdivision (b) and paragraph (2) of  
20 subdivision (c) apply to the owners, operators, administrators,  
21 employees, independent contractors, agents, or volunteers  
22 working at these public or private facilities and only to the extent  
23 that the individuals personally commit, conspire, aid, abet, or  
24 facilitate any act prohibited by paragraph (2) of subdivision (b)  
25 and paragraph (2) of subdivision (c).

26 (h) Paragraph (2) of subdivision (b) and paragraph (2) of  
27 subdivision (c) do not apply to a caretaker who is a spouse of, or  
28 who is in an equivalent domestic relationship with, the dependent  
29 person under care.

30 SEC. 2. No reimbursement is required by this act pursuant to  
31 Section 6 of Article XIII B of the California Constitution because  
32 the only costs that may be incurred by a local agency or school  
33 district will be incurred because this act creates a new crime or  
34 infraction, eliminates a crime or infraction, or changes the  
35 penalty for a crime or infraction, within the meaning of Section  
36 17556 of the Government Code, or changes the definition of a  
37 crime within the meaning of Section 6 of Article XIII B of the  
38 California Constitution.

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