

AMENDED IN ASSEMBLY MAY 26, 2006  
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 or 15 years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, *and the person is at least 10 years older than 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.~~

*This bill would make any person who commits a lewd or lascivious act upon a child who is 14, 15, 16, or 17 years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the person or the child and the person is at least 10 years older than the child, is guilty of a felony. Because this bill would*

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

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

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

23 (c) (1) Any person who commits an act described in  
24 subdivision (a) with the intent described in that subdivision, and  
25 the victim is a child of ~~14 or 15 years~~ 14, 15, 16, or 17 years of  
26 age, and that person is at least 10 years older than the child, is  
27 guilty of a public offense and shall be punished by imprisonment

1 in the state prison for one, two, or three years, or by  
2 imprisonment in a county jail for not more than one year. In  
3 determining whether the person is at least 10 years older than the  
4 child, the difference in age shall be measured from the birth date  
5 of the person to the birth date of the child.

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

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

20 *(3) Nothing in this subdivision shall preclude prosecution and*  
21 *punishment under any other provision of law providing a greater*  
22 *penalty, including, but not limited to, Section 261.5, subdivision*  
23 *(b) of Section 286, subdivision (b) of Section 288a, or subdivision*  
24 *(h) or (i) of Section 289.*

25 (d) In any arrest or prosecution under this section or Section  
26 288.5, the peace officer, district attorney, and the court shall  
27 consider the needs of the child victim or dependent person and  
28 shall do whatever is necessary, within existing budgetary  
29 resources, and constitutionally permissible to prevent  
30 psychological harm to the child victim or to prevent  
31 psychological harm to the dependent person victim resulting  
32 from participation in the court process.

33 (e) Upon the conviction of any person for a violation of  
34 subdivision (a) or (b), the court may, in addition to any other  
35 penalty or fine imposed, order the defendant to pay an additional  
36 fine not to exceed ten thousand dollars (\$10,000). In setting the  
37 amount of the fine, the court shall consider any relevant factors,  
38 including, but not limited to, the seriousness and gravity of the  
39 offense, the circumstances of its commission, whether the  
40 defendant derived any economic gain as a result of the crime, and

1 the extent to which the victim suffered economic losses as a  
2 result of the crime. Every fine imposed and collected under this  
3 section shall be deposited in the Victim-Witness Assistance Fund  
4 to be available for appropriation to fund child sexual exploitation  
5 and child sexual abuse victim counseling centers and prevention  
6 programs pursuant to Section 13837.

7 If the court orders a fine imposed pursuant to this subdivision,  
8 the actual administrative cost of collecting that fine, not to  
9 exceed 2 percent of the total amount paid, may be paid into the  
10 general fund of the county treasury for the use and benefit of the  
11 county.

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

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

18 (A) Twenty-four hour health facilities, as defined in Sections  
19 1250, 1250.2, and 1250.3 of the Health and Safety Code.

20 (B) Clinics.

21 (C) Home health agencies.

22 (D) Adult day health care centers.

23 (E) Secondary schools that serve dependent persons and  
24 postsecondary educational institutions that serve dependent  
25 persons or elders.

26 (F) Sheltered workshops.

27 (G) Camps.

28 (H) Community care facilities, as defined by Section 1402 of  
29 the Health and Safety Code, and residential care facilities for the  
30 elderly, as defined in Section 1569.2 of the Health and Safety  
31 Code.

32 (I) Respite care facilities.

33 (J) Foster homes.

34 (K) Regional centers for persons with developmental  
35 disabilities.

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

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

40 (N) Board and care facilities.

1 (O) Any other protective or public assistance agency that  
2 provides health services or social services to elder or dependent  
3 persons, including, but not limited to, in-home supportive  
4 services, as defined in Section 14005.14 of the Welfare and  
5 Institutions Code.

6 (P) Private residences.

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

10 (A) Bathing.

11 (B) Dressing.

12 (C) Grooming.

13 (D) Medication storage.

14 (E) Medical dispensation.

15 (F) Money management.

16 (3) “Dependent person” means any person who has a physical  
17 or mental impairment that substantially restricts his or her ability  
18 to carry out normal activities or to protect his or her rights,  
19 including, but not limited to, persons who have physical or  
20 developmental disabilities or whose physical or mental abilities  
21 have significantly diminished because of age. “Dependent  
22 person” includes any person who is admitted as an inpatient to a  
23 24-hour health facility, as defined in Sections 1250, 1250.2, and  
24 1250.3 of the Health and Safety Code.

25 (g) Paragraph (2) of subdivision (b) and paragraph (2) of  
26 subdivision (c) apply to the owners, operators, administrators,  
27 employees, independent contractors, agents, or volunteers  
28 working at these public or private facilities and only to the extent  
29 that the individuals personally commit, conspire, aid, abet, or  
30 facilitate any act prohibited by paragraph (2) of subdivision (b)  
31 and paragraph (2) of subdivision (c).

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

36 SEC. 2. No reimbursement is required by this act pursuant to  
37 Section 6 of Article XIII B of the California Constitution because  
38 the only costs that may be incurred by a local agency or school  
39 district will be incurred because this act creates a new crime or  
40 infraction, eliminates a crime or infraction, or changes the

1 penalty for a crime or infraction, within the meaning of Section  
2 17556 of the Government Code, or changes the definition of a  
3 crime within the meaning of Section 6 of Article XIII B of the  
4 California Constitution.

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