

ASSEMBLY BILL

No. 179

Introduced by Assembly Member Portantino

February 2, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

AB 179, as introduced, Portantino. Crime.

Existing law provides that any person who willfully and lewdly commits any lewd or lascivious act, upon or with the body, or any part or member thereof, of 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 punishable by imprisonment in the state prison for 3, 6, or 8 years.

This bill would make technical, nonsubstantive changes to these provisions.

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

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~~ 14
7 *years of age*, with the intent of arousing, appealing to, or gratifying
8 the lust, passions, or sexual desires of that person or the child, is

1 guilty of a felony and shall be punished by imprisonment in the
2 state prison for three, six, or eight years.

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

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

14 (c) (1) Any person who commits an act described in subdivision
15 (a) with the intent described in that subdivision, and the victim is
16 a child of 14 or 15 years *of age*, and that person is at least 10 years
17 older than the child, is guilty of a public offense and shall be
18 punished by imprisonment in the state prison for one, two, or three
19 years, or by imprisonment in a county jail for not more than one
20 year. In determining whether the person is at least 10 years older
21 than the child, the difference in age shall be measured from the
22 birth date of the person to the birth date of the child.

23 (2) Any person who is a caretaker and commits an act described
24 in subdivision (a) upon a dependent person, with the intent
25 described in subdivision (a), is guilty of a public offense and shall
26 be punished by imprisonment in the state prison for one, two, or
27 three years, or by imprisonment in a county jail for not more than
28 one year.

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

36 (e) Upon the conviction of any person for a violation of
37 subdivision (a) or (b), the court may, in addition to any other
38 penalty or fine imposed, order the defendant to pay an additional
39 fine not to exceed ten thousand dollars (\$10,000). In setting the
40 amount of the fine, the court shall consider any relevant factors,

including, but not limited to, the seriousness and gravity of the offense, the circumstances of its commission, whether the defendant derived any economic gain as a result of the crime, and the extent to which the victim suffered economic losses as a result of the crime. Every fine imposed and collected under this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs pursuant to Section 13837.

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

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

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

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

(B) Clinics.

(C) Home health agencies.

(D) Adult day health care centers.

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

(F) Sheltered workshops.

(G) Camps.

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

(I) Respite care facilities.

(J) Foster homes.

(K) Regional centers for persons with developmental disabilities.

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

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

1 (N) Board and care facilities.

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

7 (P) Private residences.

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

11 (A) Bathing.

12 (B) Dressing.

13 (C) Grooming.

14 (D) Medication storage.

15 (E) Medical dispensation.

16 (F) Money management.

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

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

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

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