

AMENDED IN ASSEMBLY APRIL 6, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1941

Introduced by Assembly Member Fletcher

February 17, 2010

~~An act to amend Section 4022 of the Business and Professions Code, relating to pharmacy. An act to amend Section 288 of the Penal Code, relating to sex offenses.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1941, as amended, Fletcher. ~~Pharmacy: dangerous drug or device. Sex offenses: punishment: fines: use of funds.~~

Existing law makes it a crime for any person, with sexual intent, to commit a lewd or lascivious act, as defined, with a child who is under 14 years of age. In addition to a term of imprisonment, existing law provides that upon the conviction of a violation of these provisions the court may order the defendant to pay an additional fine not to exceed \$10,000 to be deposited in the Victim-Witness Assistance Fund. If the court imposes the fine, existing law allows that the actual administrative cost of collecting the fine may be paid into the county treasury, not to exceed 2% of the amount paid.

This bill would increase the maximum percentage of the fine that may be paid into the county treasury to 3%.

~~Existing law, the Pharmacy Law, provides for the licensure and regulation of the practice of pharmacy by the California State Board of Pharmacy. Existing law defines "dangerous drug" or "dangerous device" for the purposes of this law.~~

~~This bill would make a nonsubstantive, technical change to that definition.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
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
9 guilty of a felony and shall be punished by imprisonment in the
10 state prison for three, six, or eight years.

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

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

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

31 (2) Any person who is a caretaker and commits an act described
32 in subdivision (a) upon a dependent person, with the intent
33 described in subdivision (a), is guilty of a public offense and shall
34 be punished by imprisonment in the state prison for one, two, or

1 three years, or by imprisonment in a county jail for not more than
2 one year.

3 (d) In any arrest or prosecution under this section or Section
4 288.5, the peace officer, district attorney, and the court shall
5 consider the needs of the child victim or dependent person and
6 shall do whatever is necessary, within existing budgetary resources,
7 and constitutionally permissible to prevent psychological harm to
8 the child victim or to prevent psychological harm to the dependent
9 person victim resulting from participation in the court process.

10 (e) Upon the conviction of any person for a violation of
11 subdivision (a) or (b), the court may, in addition to any other
12 penalty or fine imposed, order the defendant to pay an additional
13 fine not to exceed ten thousand dollars (\$10,000). In setting the
14 amount of the fine, the court shall consider any relevant factors,
15 including, but not limited to, the seriousness and gravity of the
16 offense, the circumstances of its commission, whether the
17 defendant derived any economic gain as a result of the crime, and
18 the extent to which the victim suffered economic losses as a result
19 of the crime. Every fine imposed and collected under this section
20 shall be deposited in the Victim-Witness Assistance Fund to be
21 available for appropriation to fund child sexual exploitation and
22 child sexual abuse victim counseling centers and prevention
23 programs pursuant to Section 13837.

24 If the court orders a fine imposed pursuant to this subdivision,
25 the actual administrative cost of collecting that fine, not to exceed
26 2 3 percent of the total amount paid, may be paid into the general
27 fund of the county treasury for the use and benefit of the county.

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

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

34 (A) Twenty-four hour health facilities, as defined in Sections
35 1250, 1250.2, and 1250.3 of the Health and Safety Code.

36 (B) Clinics.

37 (C) Home health agencies.

38 (D) Adult day health care centers.

- 1 (E) Secondary schools that serve dependent persons and
2 postsecondary educational institutions that serve dependent persons
3 or elders.
- 4 (F) Sheltered workshops.
- 5 (G) Camps.
- 6 (H) Community care facilities, as defined by Section 1402 of
7 the Health and Safety Code, and residential care facilities for the
8 elderly, as defined in Section 1569.2 of the Health and Safety
9 Code.
- 10 (I) Respite care facilities.
- 11 (J) Foster homes.
- 12 (K) Regional centers for persons with developmental disabilities.
- 13 (L) A home health agency licensed in accordance with Chapter
14 8 (commencing with Section 1725) of Division 2 of the Health
15 and Safety Code.
- 16 (M) An agency that supplies in-home supportive services.
- 17 (N) Board and care facilities.
- 18 (O) Any other protective or public assistance agency that
19 provides health services or social services to elder or dependent
20 persons, including, but not limited to, in-home supportive services,
21 as defined in Section 14005.14 of the Welfare and Institutions
22 Code.
- 23 (P) Private residences.
- 24 (2) "Board and care facilities" means licensed or unlicensed
25 facilities that provide assistance with one or more of the following
26 activities:
- 27 (A) Bathing.
- 28 (B) Dressing.
- 29 (C) Grooming.
- 30 (D) Medication storage.
- 31 (E) Medical dispensation.
- 32 (F) Money management.
- 33 (3) "Dependent person" means any person who has a physical
34 or mental impairment that substantially restricts his or her ability
35 to carry out normal activities or to protect his or her rights,
36 including, but not limited to, persons who have physical or
37 developmental disabilities or whose physical or mental abilities
38 have significantly diminished because of age. "Dependent person"
39 includes any person who is admitted as an inpatient to a 24-hour

1 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of
2 the Health and Safety Code.

3 (g) Paragraph (2) of subdivision (b) and paragraph (2) of
4 subdivision (c) apply to the owners, operators, administrators,
5 employees, independent contractors, agents, or volunteers working
6 at these public or private facilities and only to the extent that the
7 individuals personally commit, conspire, aid, abet, or facilitate any
8 act prohibited by paragraph (2) of subdivision (b) and paragraph
9 (2) of subdivision (c).

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

14 ~~SECTION 1. Section 4022 of the Business and Professions~~
15 ~~Code is amended to read:~~

16 ~~4022. “Dangerous drug” or “dangerous device” means any~~
17 ~~drug or device unsafe for self-use in humans or animals, and~~
18 ~~includes all of the following:~~

19 ~~(a) Any drug that bears the legend: “Caution: federal law~~
20 ~~prohibits dispensing without prescription,” “Rx only,” or words~~
21 ~~of similar import.~~

22 ~~(b) Any device that bears the statement: “Caution: federal law~~
23 ~~restricts this device to sale by or on the order of a _____,” “Rx~~
24 ~~only,” or words of similar import, the blank to be filled in with the~~
25 ~~designation of the practitioner licensed to use or order use of the~~
26 ~~device.~~

27 ~~(c) Any other drug or device that by federal or state law can be~~
28 ~~lawfully dispensed only on prescription or furnished pursuant to~~
29 ~~Section 4006.~~