

ASSEMBLY BILL

No. 1528

Introduced by Assembly Member Donnelly

January 23, 2012

An act to amend Sections 647 and 647.7 of, and to add Section 647g to, the Penal Code, relating to disorderly conduct.

LEGISLATIVE COUNSEL'S DIGEST

AB 1528, as introduced, Donnelly. Disorderly conduct: invasion of privacy: felony.

Existing law establishes the offense of disorderly conduct to include specified invasions of privacy, and makes the offense a misdemeanor, punishable as provided.

This bill would instead make those specified invasion of privacy offenses a felony punishable by imprisonment in a state prison for 16 months, or 2 or 3 years. By increasing the penalty for an existing crime, this bill would impose a state-mandated local program.

This bill would also delete obsolete provisions, and make conforming changes.

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:

SECTION 1. Section 647 of the Penal Code is amended to read:

647. ~~Except as provided in subdivision (f), every~~ Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

(e) Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.

(f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled substance, or toluene, in a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs

1 or prevents the free use of any street, sidewalk, or other public
2 way.

3 (g) When a person has violated subdivision (f), a peace officer,
4 if he or she is reasonably able to do so, shall place the person, or
5 cause him or her to be placed, in civil protective custody. The
6 person shall be taken to a facility, designated pursuant to Section
7 5170 of the Welfare and Institutions Code, for the 72-hour
8 treatment and evaluation of inebriates. A peace officer may place
9 a person in civil protective custody with that kind and degree of
10 force which would be lawful were he or she effecting an arrest for
11 a misdemeanor without a warrant. No person who has been placed
12 in civil protective custody shall thereafter be subject to any criminal
13 prosecution or juvenile court proceeding based on the facts giving
14 rise to this placement. This subdivision shall not apply to the
15 following persons:

16 (1) Any person who is under the influence of any drug, or under
17 the combined influence of intoxicating liquor and any drug.

18 (2) Any person who a peace officer has probable cause to believe
19 has committed any felony, or who has committed any misdemeanor
20 in addition to subdivision (f).

21 (3) Any person who a peace officer in good faith believes will
22 attempt escape or will be unreasonably difficult for medical
23 personnel to control.

24 (h) Who loiters, prowls, or wanders upon the private property
25 of another, at any time, without visible or lawful business with the
26 owner or occupant. As used in this subdivision, "loiter" means to
27 delay or linger without a lawful purpose for being on the property
28 and for the purpose of committing a crime as opportunity may be
29 discovered.

30 (i) Who, while loitering, prowling, or wandering upon the private
31 property of another, at any time, peeks in the door or window of
32 any inhabited building or structure, without visible or lawful
33 business with the owner or occupant.

34 ~~(j) (1) Any person who looks through a hole or opening, into,~~
35 ~~or otherwise views, by means of any instrumentality, including,~~
36 ~~but not limited to, a periscope, telescope, binoculars, camera,~~
37 ~~motion picture camera, camcorder, or mobile phone, the interior~~
38 ~~of a bedroom, bathroom, changing room, fitting room, dressing~~
39 ~~room, or tanning booth, or the interior of any other area in which~~
40 ~~the occupant has a reasonable expectation of privacy, with the~~

1 intent to invade the privacy of a person or persons inside. This
2 subdivision shall not apply to those areas of a private business
3 used to count currency or other negotiable instruments.

4 (2) ~~Any person who uses a concealed camcorder, motion picture~~
5 ~~camera, or photographic camera of any type, to secretly videotape,~~
6 ~~film, photograph, or record by electronic means, another,~~
7 ~~identifiable person under or through the clothing being worn by~~
8 ~~that other person, for the purpose of viewing the body of, or the~~
9 ~~undergarments worn by, that other person, without the consent or~~
10 ~~knowledge of that other person, with the intent to arouse, appeal~~
11 ~~to, or gratify the lust, passions, or sexual desires of that person and~~
12 ~~invade the privacy of that other person, under circumstances in~~
13 ~~which the other person has a reasonable expectation of privacy.~~

14 (3) (A) ~~Any person who uses a concealed camcorder, motion~~
15 ~~picture camera, or photographic camera of any type, to secretly~~
16 ~~videotape, film, photograph, or record by electronic means, another,~~
17 ~~identifiable person who may be in a state of full or partial undress,~~
18 ~~for the purpose of viewing the body of, or the undergarments worn~~
19 ~~by, that other person, without the consent or knowledge of that~~
20 ~~other person, in the interior of a bedroom, bathroom, changing~~
21 ~~room, fitting room, dressing room, or tanning booth, or the interior~~
22 ~~of any other area in which that other person has a reasonable~~
23 ~~expectation of privacy, with the intent to invade the privacy of that~~
24 ~~other person.~~

25 (B) ~~Neither of the following is a defense to the crime specified~~
26 ~~in this paragraph:~~

27 (i) ~~The defendant was a cohabitant, landlord, tenant, cotenant,~~
28 ~~employer, employee, or business partner or associate of the victim,~~
29 ~~or an agent of any of these.~~

30 (ii) ~~The victim was not in a state of full or partial undress.~~

31 (k)

32 (j) In any accusatory pleading charging a violation of subdivision
33 (b), if the defendant has been once previously convicted of a
34 violation of that subdivision, the previous conviction shall be
35 charged in the accusatory pleading. If the previous conviction is
36 found to be true by the jury, upon a jury trial, or by the court, upon
37 a court trial, or is admitted by the defendant, the defendant shall
38 be imprisoned in a county jail for a period of not less than 45 days
39 and shall not be eligible for release upon completion of sentence,
40 on probation, on parole, on work furlough or work release, or on

1 any other basis until he or she has served a period of not less than
2 45 days in a county jail. In all cases in which probation is granted,
3 the court shall require as a condition thereof that the person be
4 confined in a county jail for at least 45 days. In no event does the
5 court have the power to absolve a person who violates this
6 subdivision from the obligation of spending at least 45 days in
7 confinement in a county jail.

8 In any accusatory pleading charging a violation of subdivision
9 (b), if the defendant has been previously convicted two or more
10 times of a violation of that subdivision, each of these previous
11 convictions shall be charged in the accusatory pleading. If two or
12 more of these previous convictions are found to be true by the jury,
13 upon a jury trial, or by the court, upon a court trial, or are admitted
14 by the defendant, the defendant shall be imprisoned in a county
15 jail for a period of not less than 90 days and shall not be eligible
16 for release upon completion of sentence, on probation, on parole,
17 on work furlough or work release, or on any other basis until he
18 or she has served a period of not less than 90 days in a county jail.
19 In all cases in which probation is granted, the court shall require
20 as a condition thereof that the person be confined in a county jail
21 for at least 90 days. In no event does the court have the power to
22 absolve a person who violates this subdivision from the obligation
23 of spending at least 90 days in confinement in a county jail.

24 In addition to any punishment prescribed by this section, a court
25 may suspend, for not more than 30 days, the privilege of the person
26 to operate a motor vehicle pursuant to Section 13201.5 of the
27 Vehicle Code for any violation of subdivision (b) that was
28 committed within 1,000 feet of a private residence and with the
29 use of a vehicle. In lieu of the suspension, the court may order a
30 person's privilege to operate a motor vehicle restricted, for not
31 more than six months, to necessary travel to and from the person's
32 place of employment or education. If driving a motor vehicle is
33 necessary to perform the duties of the person's employment, the
34 court may also allow the person to drive in that person's scope of
35 employment.

36 ~~(i) (1) A second or subsequent violation of subdivision (j) is~~
37 ~~punishable by imprisonment in a county jail not exceeding one~~
38 ~~year, or by a fine not exceeding two thousand dollars (\$2,000), or~~
39 ~~by both that fine and imprisonment.~~

1 ~~(2) If the victim of a violation of subdivision (j) was a minor at~~
2 ~~the time of the offense, the violation is punishable by imprisonment~~
3 ~~in a county jail not exceeding one year, or by a fine not exceeding~~
4 ~~two thousand dollars (\$2,000), or by both that fine and~~
5 ~~imprisonment.~~

6 SEC. 2. Section 647.7 of the Penal Code is amended to read:

7 647.7. (a) In any case in which a person is convicted of
8 violating subdivision (i) ~~or (j)~~ of Section 647 *or Section 647g*, the
9 court may require counseling as a condition of probation. Any
10 defendant so ordered to be placed in a counseling program shall
11 be responsible for paying the expense of his or her participation
12 in the counseling program as determined by the court. The court
13 shall take into consideration the ability of the defendant to pay,
14 and no defendant shall be denied probation because of his or her
15 inability to pay.

16 (b) Every person who, having been convicted of violating
17 subdivision (i) ~~or (j)~~ of Section 647, commits a second or
18 subsequent violation of subdivision (i) ~~or (j)~~ of Section 647, shall
19 be punished by imprisonment in a county jail not exceeding one
20 year, by a fine not exceeding one thousand dollars (\$1,000), or by
21 both that fine and imprisonment, ~~except as provided in subdivision~~
22 ~~(e).~~

23 ~~(c) Every person who, having been previously convicted of~~
24 ~~violating subdivision (i) or (j) of Section 647, commits a violation~~
25 ~~of paragraph (3) of subdivision (j) of Section 647 regardless of~~
26 ~~whether it is a first, second, or subsequent violation of that~~
27 ~~paragraph, shall be punished by imprisonment in a county jail not~~
28 ~~exceeding one year, by a fine not exceeding five thousand dollars~~
29 ~~(\$5,000), or by both that fine and imprisonment.~~

30 SEC. 3. Section 647g is added to the Penal Code, to read:

31 647g. Notwithstanding subdivision (h) of Section 1170, every
32 person who commits any of the following acts is guilty of a felony
33 punishable by imprisonment in a state prison for 16 months, or
34 two or three years:

35 (a) Any person who looks through a hole or opening, into, or
36 otherwise views, by means of any instrumentality, including, but
37 not limited to, a periscope, telescope, binoculars, camera, motion
38 picture camera, camcorder, or mobile phone, the interior of a
39 bedroom, bathroom, changing room, fitting room, dressing room,
40 or tanning booth, or the interior of any other area in which the

1 occupant has a reasonable expectation of privacy, with the intent
2 to invade the privacy of a person or persons inside. This subdivision
3 shall not apply to those areas of a private business used to count
4 currency or other negotiable instruments.

5 (b) Any person who uses a concealed camcorder, motion picture
6 camera, or photographic camera of any type, to secretly videotape,
7 film, photograph, or record by electronic means, another,
8 identifiable person under or through the clothing being worn by
9 that other person, for the purpose of viewing the body of, or the
10 undergarments worn by, that other person, without the consent or
11 knowledge of that other person, with the intent to arouse, appeal
12 to, or gratify the lust, passions, or sexual desires of that person and
13 invade the privacy of that other person, under circumstances in
14 which the other person has a reasonable expectation of privacy.

15 (c) (1) Any person who uses a concealed camcorder, motion
16 picture camera, or photographic camera of any type, to secretly
17 videotape, film, photograph, or record by electronic means, another,
18 identifiable person who may be in a state of full or partial undress,
19 for the purpose of viewing the body of, or the undergarments worn
20 by, that other person, without the consent or knowledge of that
21 other person, in the interior of a bedroom, bathroom, changing
22 room, fitting room, dressing room, or tanning booth, or the interior
23 of any other area in which that other person has a reasonable
24 expectation of privacy, with the intent to invade the privacy of that
25 other person.

26 (2) Neither of the following is a defense to the crime specified
27 in this subdivision:

28 (A) The defendant was a cohabitant, landlord, tenant, cotenant,
29 employer, employee, or business partner or associate of the victim,
30 or an agent of any of these.

31 (B) The victim was not in a state of full or partial undress.

32 SEC. 4. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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