

AMENDED IN ASSEMBLY SEPTEMBER 3, 2013

AMENDED IN ASSEMBLY AUGUST 21, 2013

AMENDED IN SENATE JUNE 17, 2013

AMENDED IN SENATE JUNE 11, 2013

AMENDED IN SENATE MAY 7, 2013

SENATE BILL

No. 255

**Introduced by Senator Cannella
(Coauthors: Senators Anderson, Beall, De León, Hancock, and
Knight)**

February 13, 2013

An act to amend Section 647 of the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 255, as amended, Cannella. Disorderly conduct: invasion of privacy.

Existing law provides that any person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person is guilty of disorderly conduct, which is a misdemeanor. Under existing

law, (1) a first violation of that offense is punishable by imprisonment in a county jail not exceeding 6 months, or by a fine not exceeding \$1,000, or by both that fine and imprisonment, and (2) a 2nd or subsequent violation of that offense, or any violation of that offense in which the victim was, at the time of the offense, a minor, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding \$2,000, or by both that fine and imprisonment.

This bill would provide that any person who photographs or records by any means the image of ~~another, identifiable person with his or her consent who is in a state of full or partial undress in any area in which the person being photographed or recorded has a reasonable expectation of privacy~~ *the intimate body part or parts of another identifiable person, under circumstances where the parties agree or understand that the image shall remain private, and the person* subsequently distributes the image taken, with the intent to cause serious emotional distress, and ~~the other depicted person suffers serious emotional distress would constitute distress, is guilty of~~ *disorderly conduct and* subject to that same punishment.

By creating a new crime, this bill 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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. 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 647 of the Penal Code is amended to
2 read:

3 647. Except as provided in subdivision (l), every person who
4 commits any of the following acts is guilty of disorderly conduct,
5 a misdemeanor:

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

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

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

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

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

23 (f) Who is found in any public place under the influence of
24 intoxicating liquor, any drug, controlled substance, toluene, or any
25 combination of any intoxicating liquor, drug, controlled substance,
26 or toluene, in a condition that he or she is unable to exercise care
27 for his or her own safety or the safety of others, or by reason of
28 his or her being under the influence of intoxicating liquor, any
29 drug, controlled substance, toluene, or any combination of any
30 intoxicating liquor, drug, or toluene, interferes with or obstructs
31 or prevents the free use of any street, sidewalk, or other public
32 way.

33 (g) When a person has violated subdivision (f), a peace officer,
34 if he or she is reasonably able to do so, shall place the person, or
35 cause him or her to be placed, in civil protective custody. The
36 person shall be taken to a facility, designated pursuant to Section
37 5170 of the Welfare and Institutions Code, for the 72-hour
38 treatment and evaluation of inebriates. A peace officer may place
39 a person in civil protective custody with that kind and degree of
40 force which would be lawful were he or she effecting an arrest for

1 a misdemeanor without a warrant. A person who has been placed
2 in civil protective custody shall not thereafter be subject to any
3 criminal prosecution or juvenile court proceeding based on the
4 facts giving rise to this placement. This subdivision shall not apply
5 to the following persons:

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

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

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

14 (h) Who loiters, prowls, or wanders upon the private property
15 of another, at any time, without visible or lawful business with the
16 owner or occupant. As used in this subdivision, “loiter” means to
17 delay or linger without a lawful purpose for being on the property
18 and for the purpose of committing a crime as opportunity may be
19 discovered.

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

24 (j) (1) Any person who looks through a hole or opening, into,
25 or otherwise views, by means of any instrumentality, including,
26 but not limited to, a periscope, telescope, binoculars, camera,
27 motion picture camera, camcorder, or mobile phone, the interior
28 of a bedroom, bathroom, changing room, fitting room, dressing
29 room, or tanning booth, or the interior of any other area in which
30 the occupant has a reasonable expectation of privacy, with the
31 intent to invade the privacy of a person or persons inside. This
32 subdivision shall not apply to those areas of a private business
33 used to count currency or other negotiable instruments.

34 (2) Any person who uses a concealed camcorder, motion picture
35 camera, or photographic camera of any type, to secretly videotape,
36 film, photograph, or record by electronic means, another,
37 identifiable person under or through the clothing being worn by
38 that other person, for the purpose of viewing the body of, or the
39 undergarments worn by, that other person, without the consent or
40 knowledge of that other person, with the intent to arouse, appeal

1 to, or gratify the lust, passions, or sexual desires of that person and
2 invade the privacy of that other person, under circumstances in
3 which the other person has a reasonable expectation of privacy.

4 (3) (A) Any person who uses a concealed camcorder, motion
5 picture camera, or photographic camera of any type, to secretly
6 videotape, film, photograph, or record by electronic means, another,
7 identifiable person who may be in a state of full or partial undress,
8 for the purpose of viewing the body of, or the undergarments worn
9 by, that other person, without the consent or knowledge of that
10 other person, in the interior of a bedroom, bathroom, changing
11 room, fitting room, dressing room, or tanning booth, or the interior
12 of any other area in which that other person has a reasonable
13 expectation of privacy, with the intent to invade the privacy of that
14 other person.

15 (B) Neither of the following is a defense to the crime specified
16 in this paragraph:

17 (i) The defendant was a cohabitant, landlord, tenant, cotenant,
18 employer, employee, or business partner or associate of the victim,
19 or an agent of any of these.

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

21 (4) (A) Any person who photographs or records by any means
22 the image of another, identifiable person with his or her consent
23 who is in a state of full or partial undress in any area in which the
24 person being photographed or recorded has a reasonable
25 expectation of privacy *the intimate body part or parts of another*
26 *identifiable person, under circumstances where the parties agree*
27 *or understand that the image shall remain private, and the person*
28 *subsequently distributes the image taken, with the intent to cause*
29 *serious emotional distress, and the other depicted person suffers*
30 *serious emotional distress.*

31 (B) *As used in this paragraph, intimate body part means any*
32 *portion of the genitals, and in the case of a female, also includes*
33 *any portion of the breasts below the top of the areola, that is either*
34 *uncovered or visible through less than fully opaque clothing.*

35 ~~(B)~~

36 (C) Nothing in this subdivision precludes punishment under
37 any section of law providing for greater punishment.

38 (k) In any accusatory pleading charging a violation of
39 subdivision (b), if the defendant has been once previously convicted
40 of a violation of that subdivision, the previous conviction shall be

1 charged in the accusatory pleading. If the previous conviction is
2 found to be true by the jury, upon a jury trial, or by the court, upon
3 a court trial, or is admitted by the defendant, the defendant shall
4 be imprisoned in a county jail for a period of not less than 45 days
5 and shall not be eligible for release upon completion of sentence,
6 on probation, on parole, on work furlough or work release, or on
7 any other basis until he or she has served a period of not less than
8 45 days in a county jail. In all cases in which probation is granted,
9 the court shall require as a condition thereof that the person be
10 confined in a county jail for at least 45 days. In no event does the
11 court have the power to absolve a person who violates this
12 subdivision from the obligation of spending at least 45 days in
13 confinement in a county jail.

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

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

1 court may also allow the person to drive in that person’s scope of
2 employment.

3 (l) (1) A second or subsequent violation of subdivision (j) is
4 punishable by imprisonment in a county jail not exceeding one
5 year, or by a fine not exceeding two thousand dollars (\$2,000), or
6 by both that fine and imprisonment.

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

12 SEC. 2. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.

21 SEC. 3. This act is an urgency statute necessary for the
22 immediate preservation of the public peace, health, or safety within
23 the meaning of Article IV of the Constitution and shall go into
24 immediate effect. The facts constituting the necessity are:

25 In order to protect the privacy of the public and the safety of the
26 public at the earliest possible time, it is necessary for this act to
27 take effect immediately.