

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**

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

February 13, 2013

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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 ~~the~~ 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 ~~without~~ *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, and subsequently distributes the image taken, ~~where the distribution of the image would cause a reasonable person to suffer serious emotional distress with the intent to cause serious emotional distress, and the other person suffers serious emotional distress~~ would constitute disorderly conduct 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.
- 9 (b) Who solicits or who agrees to engage in or who engages in
- 10 any act of prostitution. A person agrees to engage in an act of
- 11 prostitution when, with specific intent to so engage, he or she

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

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

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

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

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

30 (g) When a person has violated subdivision (f), a peace officer,  
31 if he or she is reasonably able to do so, shall place the person, or  
32 cause him or her to be placed, in civil protective custody. The  
33 person shall be taken to a facility, designated pursuant to Section  
34 5170 of the Welfare and Institutions Code, for the 72-hour  
35 treatment and evaluation of inebriates. A peace officer may place  
36 a person in civil protective custody with that kind and degree of  
37 force which would be lawful were he or she effecting an arrest for  
38 a misdemeanor without a warrant. A person who has been placed  
39 in civil protective custody shall not thereafter be subject to any  
40 criminal prosecution or juvenile court proceeding based on the

1 facts giving rise to this placement. This subdivision shall not apply  
2 to the following persons:

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

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

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

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

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

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

31 (2) Any person who uses a concealed camcorder, motion picture  
32 camera, or photographic camera of any type, to secretly videotape,  
33 film, photograph, or record by electronic means, another,  
34 identifiable person under or through the clothing being worn by  
35 that other person, for the purpose of viewing the body of, or the  
36 undergarments worn by, that other person, without the consent or  
37 knowledge of that other person, with the intent to arouse, appeal  
38 to, or gratify the lust, passions, or sexual desires of that person and  
39 invade the privacy of that other person, under circumstances in  
40 which the other person has a reasonable expectation of privacy.

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

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

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

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

18 (4) (A) Any person who photographs or records by any means  
19 the image of another, identifiable person ~~without~~ *with* his or her  
20 consent who is in a state of full or partial undress in any area in  
21 which the person being photographed or recorded has a reasonable  
22 expectation of privacy, and subsequently distributes the image  
23 taken, ~~where the distribution of the image would cause a reasonable~~  
24 ~~person to suffer serious emotional distress.~~ *with the intent to cause*  
25 *serious emotional distress, and the other person suffers serious*  
26 *emotional distress.*

27 (B) *Nothing in this subdivision precludes punishment under any*  
28 *section of law providing for greater punishment.*

29 (k) In any accusatory pleading charging a violation of  
30 subdivision (b), if the defendant has been once previously convicted  
31 of a violation of that subdivision, the previous conviction shall be  
32 charged in the accusatory pleading. If the previous conviction is  
33 found to be true by the jury, upon a jury trial, or by the court, upon  
34 a court trial, or is admitted by the defendant, the defendant shall  
35 be imprisoned in a county jail for a period of not less than 45 days  
36 and shall not be eligible for release upon completion of sentence,  
37 on probation, on parole, on work furlough or work release, or on  
38 any other basis until he or she has served a period of not less than  
39 45 days in a county jail. In all cases in which probation is granted,  
40 the court shall require as a condition thereof that the person be

1 confined in a county jail for at least 45 days. In no event does the  
2 court have the power to absolve a person who violates this  
3 subdivision from the obligation of spending at least 45 days in  
4 confinement in a county jail.

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

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

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

37 (2) If the victim of a violation of subdivision (j) was a minor at  
38 the time of the offense, the violation is punishable by imprisonment  
39 in a county jail not exceeding one year, or by a fine not exceeding

1 two thousand dollars (\$2,000), or by both that fine and  
2 imprisonment.

3 SEC. 2. No reimbursement is required by this act pursuant to  
4 Section 6 of Article XIII B of the California Constitution because  
5 the only costs that may be incurred by a local agency or school  
6 district will be incurred because this act creates a new crime or  
7 infraction, eliminates a crime or infraction, or changes the penalty  
8 for a crime or infraction, within the meaning of Section 17556 of  
9 the Government Code, or changes the definition of a crime within  
10 the meaning of Section 6 of Article XIII B of the California  
11 Constitution.

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

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