

ASSEMBLY BILL

No. 2199

Introduced by Assembly Member Campos

February 18, 2016

An act to amend Sections 261.5 and 647.64 the Penal Code, relating to sexual offenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 2199, as introduced, Campos. Sexual offenses against minors: persons in a position of authority.

(1) Existing law provides various circumstances that constitute rape, which are punishable by imprisonment in the state prison for 3, 6, or 8 years, except as specified.

Existing law also prescribes circumstances that constitute unlawful sexual intercourse, some of which involve an adult perpetrator who engages in that unlawful intercourse with a minor, as specified. Unlawful sexual intercourse under those circumstances is punishable by imprisonment for 2, 3, or 4 years, and also may be subject to designated civil penalties or fines. Under existing law, any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to a specified provision of law for 2, 3, or 4 years.

This bill would subject any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age and is convicted of a felony a sentence enhancement of 2, 4, or 6 years, if the perpetrator holds a position of authority over the minor with whom he or she engaged in the act of

unlawful sexual intercourse. By changing the penalty for the commission of unlawful sexual intercourse under the above circumstances, this bill would impose a state-mandated local program.

(2) Existing law makes it a misdemeanor to annoy or molest a child under 18 years of age. Existing law makes it a misdemeanor to engage in conduct with an adult whom the perpetrator believes is a child if that conduct would otherwise violate the above provision if directed toward a child and if the perpetrator is motivated by an unnatural or abnormal sexual interest in children.

This bill would subject a person who violates those provisions with respect to a minor under 16 years of age over whom the person holds a position of authority to an additional term of imprisonment of 2, 4, or 6 years beyond the otherwise applicable term. By creating a new crime, the bill would impose a state-mandated local program.

(3) 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:

1 SECTION 1. Section 261.5 of the Penal Code is amended to
 2 read:
 3 261.5. (a) Unlawful sexual intercourse is an act of sexual
 4 intercourse accomplished with a person who is not the spouse of
 5 the perpetrator, if the person is a minor. For the purposes of this
 6 section, a “minor” is a person under the age of 18 years and an
 7 “adult” is a person who is at least 18 years of age.
 8 (b) Any person who engages in an act of unlawful sexual
 9 intercourse with a minor who is not more than three years older
 10 or three years younger than the perpetrator, is guilty of a
 11 misdemeanor.
 12 (c) Any person who engages in an act of unlawful sexual
 13 intercourse with a minor who is more than three years younger
 14 than the perpetrator is guilty of either a misdemeanor or a felony,
 15 and shall be punished by imprisonment in a county jail not

1 exceeding one year, or by imprisonment pursuant to subdivision
2 (h) of Section 1170.

3 (d) Any person 21 years of age or older who engages in an act
4 of unlawful sexual intercourse with a minor who is under 16 years
5 of age is guilty of either a misdemeanor or a felony, and shall be
6 punished by imprisonment in a county jail not exceeding one year,
7 or by imprisonment pursuant to subdivision (h) of Section 1170
8 for two, three, or four years.

9 (e) *Notwithstanding any other provision of this section, a person*
10 *who is guilty of a felony pursuant to subdivision (d) who holds a*
11 *position of authority over the minor with whom he or she has*
12 *engaged in an act of unlawful sexual intercourse, shall be punished*
13 *by an additional term of imprisonment in a county jail for two,*
14 *four, or six years.*

15 (1) *For purposes of this subdivision, a person is in a “position*
16 *of authority” if he or she, by reason of that position, is able to*
17 *exercise undue influence over a minor. A “position of authority”*
18 *includes, but is not limited to, a parent, stepparent, foster parent,*
19 *relative, partner of the parent or relative, caretaker, youth leader,*
20 *recreational director, athletic manager, coach, teacher, counselor,*
21 *therapist, religious leader, doctor, employee of one of those*
22 *aforementioned persons, or coworker.*

23 (2) *For purposes of this subdivision, “undue influence” has the*
24 *same meaning as that term is defined in Section 15610.70 of the*
25 *Welfare and Institutions Code.*

26 (e)

27 (f) (1) *Notwithstanding any other provision of this section, an*
28 *adult who engages in an act of sexual intercourse with a minor in*
29 *violation of this section may be liable for civil penalties in the*
30 *following amounts:*

31 (A) *An adult who engages in an act of unlawful sexual*
32 *intercourse with a minor less than two years younger than the adult*
33 *is liable for a civil penalty not to exceed two thousand dollars*
34 *(\$2,000).*

35 (B) *An adult who engages in an act of unlawful sexual*
36 *intercourse with a minor at least two years younger than the adult*
37 *is liable for a civil penalty not to exceed five thousand dollars*
38 *(\$5,000).*

39 (C) *An adult who engages in an act of unlawful sexual*
40 *intercourse with a minor at least three years younger than the adult*

1 is liable for a civil penalty not to exceed ten thousand dollars
2 (\$10,000).

3 (D) An adult over the age of 21 years who engages in an act of
4 unlawful sexual intercourse with a minor under 16 years of age is
5 liable for a civil penalty not to exceed twenty-five thousand dollars
6 (\$25,000).

7 (2) The district attorney may bring actions to recover civil
8 penalties pursuant to this subdivision. From the amounts collected
9 for each case, an amount equal to the costs of pursuing the action
10 shall be deposited with the treasurer of the county in which the
11 judgment was entered, and the remainder shall be deposited in the
12 Underage Pregnancy Prevention Fund, which is hereby created in
13 the State Treasury. Amounts deposited in the Underage Pregnancy
14 Prevention Fund may be used only for the purpose of preventing
15 underage pregnancy upon appropriation by the Legislature.

16 (3) In addition to any punishment imposed under this section,
17 the judge may assess a fine not to exceed seventy dollars (\$70)
18 against any person who violates this section with the proceeds of
19 this fine to be used in accordance with Section 1463.23. The court
20 shall, however, take into consideration the defendant's ability to
21 pay, and no defendant shall be denied probation because of his or
22 her inability to pay the fine permitted under this subdivision.

23 SEC. 2. Section 647.6 of the Penal Code is amended to read:

24 647.6. (a) (1) Every person who annoys or molests any child
25 under 18 years of age shall be punished by a fine not exceeding
26 five thousand dollars (\$5,000), by imprisonment in a county jail
27 not exceeding one year, or by both the fine and imprisonment.

28 (2) Every person who, motivated by an unnatural or abnormal
29 sexual interest in children, engages in conduct with an adult whom
30 he or she believes to be a child under 18 years of age, which
31 conduct, if directed toward a child under 18 years of age, would
32 be a violation of this section, shall be punished by a fine not
33 exceeding five thousand dollars (\$5,000), by imprisonment in a
34 county jail for up to one year, or by both that fine and
35 imprisonment.

36 (b) Every person who violates this section after having entered,
37 without consent, an inhabited dwelling house, or trailer coach as
38 defined in Section 635 of the Vehicle Code, or the inhabited portion
39 of any other building, shall be punished by imprisonment in the

1 state prison, or in a county jail not exceeding one year, and by a
2 fine not exceeding five thousand dollars (\$5,000).

3 (c) (1) Every person who violates this section shall be punished
4 upon the second and each subsequent conviction by imprisonment
5 in the state prison.

6 (2) Every person who violates this section after a previous felony
7 conviction under Section 261, 264.1, 269, 285, 286, 288a, 288.5,
8 or 289, any of which involved a minor under 16 years of age, or
9 a previous felony conviction under this section, a conviction under
10 Section 288, or a felony conviction under Section 311.4 involving
11 a minor under 14 years of age shall be punished by imprisonment
12 in the state prison for two, four, or six years.

13 (d) *A person who violates this section with respect to a minor*
14 *under 16 years of age over whom the person holds a position of*
15 *authority shall be punished by an additional term of imprisonment*
16 *for two, four, or six years beyond any term otherwise applicable*
17 *under this Section.*

18 (1) *For purposes of this subdivision, a person is in a “position*
19 *of authority” if he or she, by reason of that position, is able to*
20 *exercise undue influence over a minor. A “position of authority”*
21 *includes, but is not limited to, a parent, stepparent, foster parent,*
22 *relative, partner of the parent or relative, caretaker, youth leader,*
23 *recreational director, athletic manager, coach, teacher, counselor,*
24 *therapist, religious leader, doctor, employee of one of those*
25 *aforementioned persons, or coworker.*

26 (2) *For purposes of this subdivision, “undue influence” has the*
27 *same meaning as that term is defined in Section 15610.70 of the*
28 *Welfare and Institutions Code.*

29 ~~(d)~~

30 (e) (1) In any case in which a person is convicted of violating
31 this section and probation is granted, the court shall require
32 counseling as a condition of probation, unless the court makes a
33 written statement in the court record, that counseling would be
34 inappropriate or ineffective.

35 (2) In any case in which a person is convicted of violating this
36 section, and as a condition of probation, the court prohibits the
37 defendant from having contact with the victim, the court order
38 prohibiting contact shall not be modified except upon the request
39 of the victim and a finding by the court that the modification is in
40 the best interest of the victim. As used in this paragraph, “contact

1 with the victim” includes all physical contact, being in the presence
2 of the victim, communication by any means, any communication
3 by a third party acting on behalf of the defendant, and any gifts.

4 ~~(e) Nothing in this section prohibits~~

5 *(f) This section does not prohibit* prosecution under any other
6 provision of law.

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