



# OFFICE OF THE DISTRICT ATTORNEY

COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

**DAN DOW**  
District Attorney

**ERIC J. DOBROTH**  
Assistant District Attorney

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Chief Deputy District Attorney

**SHERYL M. WOLCOTT**  
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**LISA B. MUSCARI**  
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**TERRY O'FARRELL**  
Chief, Bureau of Investigation

July 23, 2021

The Honorable John Laird  
California State Senate  
State Capitol, Room 4040  
Sacramento, CA 95814

The Honorable Jordan Cunningham  
California State Assembly  
State Capitol, Suite #4012  
Sacramento, CA 94249

Subject: Legislative Proposal Regarding Sex Crimes Committed by Teachers and Law Enforcement Officers

Dear Senator Laird and Assemblymember Cunningham,

I am writing to propose legislation to deal with two loopholes in California law. First, it is not a crime in California for a teacher, coach, or youth services worker to have sex with an 18-year-old student under their care and instruction. Second, it is not a crime for a law enforcement officer to have a sexual relationship with a victim of crime whom the officer met during the official performance of his or her duties.

With regard to the first issue, several other states do have laws that make it a crime for a teacher, coach, or youth services worker to have a sexual relationship with a student, no matter the age of the student. California Assembly Bill 1861 in 2012 would have done this, but the bill died in Assembly Public Safety Committee without a floor vote. Recently, we prosecuted a former Morro Bay High School teacher, Tyler Andree, for having sex with one of his students during the spring semester of 2020. The student turned 18 [REDACTED] while school was still in session. Whether the sex occurred prior or after the student's 18<sup>th</sup> birthday was not conclusive, therefore a plea agreement was reached. This case revealed the loophole in current law that does not allow a teacher to be prosecuted criminally for having sex with a student after the student's 18<sup>th</sup> birthday. Yet, no teacher, coach, or youth service worker should ever abuse their position of access, trust, and authority to fulfill their sexual desires with a student of any age.

The second issue involves law enforcement officers who pursue a sexual relationship with a victim after meeting the victim through the course of their duties as an investigating law enforcement officer. Several years ago, a Paso Robles Police Department officer, Chris McGuire, was found to have carried out a consensual sexual

Letter to Senator John Laird and Assemblymember Jordan Cunningham

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relationship, while on duty, with a woman he met during an official investigation into the woman's reported assault by another individual. After a lengthy investigation and review by the District Attorney's Office, there was a finding of no criminal act having occurred. However, given the professional nature of the meeting of the parties at a time when the woman was particularly vulnerable as a victim of a crime, it was clearly a breach of trust and an abuse of authority for McGuire to exploit this woman by developing a sexual relationship with her. This conduct by a law enforcement professional should be prohibited as a crime, like similar conduct by a medical doctor or psychotherapist is. Business and Professions Code section 729 makes it a crime for a physician, surgeon, psychotherapist, or alcohol and drug abuse counselor to have a sexual relationship with their patient or client. I have attached the language of Assembly Bill 1861 (2012 session) for your review and consideration in hopes that you would sponsor this proposal in the very near future.

Similarly, California Penal Code section 289.6 currently makes it a crime for an employee of a health facility, a detention facility, or a Department of Corrections and Rehabilitation employee for engaging in a sexual relationship with a patient, inmate, or a previously incarcerated individual on parole. This 'status' based offense should also apply to law enforcement officers who take advantage of and exploit victims of crime whom they have come in contact with during the official performance of their duties. I have attached my proposed draft to amend this section with an additional subsection that would prohibit law enforcement officers from engaging in a consenting sexual relationship with a person who is a victim of sexual abuse, domestic violence, human trafficking, sexual exploitation and where the consenting sexual activity occurs within one year of the date of the initial crime report or during the pendency of the criminal investigation or subsequent prosecution, whichever is later.

I am firmly committed to assisting your offices in all efforts to make these proposals part of your legislative agenda. I urge you to make this a priority for either the current or next legislative session. If you have any questions or require further assistance on my part, please do not hesitate to contact me.

Sincerely,



DAN DOW

District Attorney

County of San Luis Obispo, State of California



**AB-1861 School employees: conduct with pupils.** (2011-2012)

SHARE THIS:



AMENDED IN ASSEMBLY APRIL 10, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE— 2011-2012 REGULAR SESSION

**ASSEMBLY BILL**

**NO. 1861**

**Introduced by Assembly Member Olsen**

***(Coauthor(s): Assembly Member Bill Berryhill, Halderman, Nestande, Perea)***

***(Coauthor(s): Senator Rubio)***

**February 22, 2012**

**An act to add Section 1243.5 to the Government Code, and to add Section 288.6 to the Penal Code, relating to school employees.**

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1861, as amended, Olsen. School employees: conduct with pupils.

Existing law makes it a felony to engage in certain acts with a minor, including willfully and lewdly committing any lewd or lascivious act with a child who is under 14 years of age. Existing law also provides that any elected public officer who takes public office, or is reelected to public office, on or after January 1, 2006, who is convicted of any specified felony arising directly out of his or her official duties, forfeits all rights and benefits under, and membership in, any public retirement system in which he or she is a member, effective on the date of final conviction, as specified.

This bill would make it a felony for any person who is a teacher or employee at a public *or private* elementary or secondary school to engage in a sexual relationship or ~~in excess and~~ inappropriate communications, as defined, with a pupil of any age who is enrolled in the school.

This bill would also require a teacher or ~~school~~ employee *at a public elementary or secondary school* who is convicted of a felony pursuant to those provisions to forfeit all rights and benefits in any public retirement system in which he or she is a member, effective on the date of conviction, as specified. The bill would require any contributions made by that teacher or school employee to the public retirement system to be returned to the teacher or school employee without interest.

By creating a new crime, the 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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 1243.5 is added to the Government Code, to read:

**1243.5.** (a) If a teacher or ~~school~~ employee *of a public elementary or secondary school* is convicted of a violation of Section 288.6 of the Penal Code, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member, effective on the date of the conviction.

(b) Any contributions to the public retirement system made by the teacher or school employee described in subdivision (a) shall be returned, without interest, to the teacher or school employee, in a manner conforming with the requirements of the Internal Revenue Code.

(c) The *public* school district that employs a teacher or school employee described in subdivision (a) shall notify the public retirement system in which the person is a member of the person's conviction.

**SEC. 2.** Section 288.6 is added to the Penal Code, to read:

**288.6.** (a) Any teacher or employee at a public *or private* elementary or secondary school who engages in a sexual relationship or ~~in excess and~~ inappropriate communication with a pupil of any age who is enrolled in the school is guilty of a felony punishable by imprisonment in a county jail pursuant to subdivision (h) of Section 1170.

(b) For purposes of this section, ~~"excess and inappropriate~~ *"inappropriate* communication" means any communication by a school employee to a pupil, regardless of who initiated the communication, that ~~may be viewed as derogatory,~~ *is* sexual, lewd, ~~threatening, harassing, discriminatory, or suggestive~~ *or lascivious* in nature.

(c) In addition to the penalties provided by this section, a ~~person~~ *teacher or employee at a public elementary or secondary school* who is convicted of a violation of this section shall, pursuant to Section 1243.5 of the Government Code, forfeit his or her rights and benefits in any public retirement system in which he or she is a member.

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



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## LEGISLATIVE PROPOSAL

### *“Law Enforcement Officers Exploiting Vulnerable Victims for Consensual Sexual Relationships”*

Law Enforcement Officer Jones responds to a reporting party to investigate a reported sexual assault, domestic violence, human trafficking or other crime. Reporting Party / Victim of Crime is vulnerable and would not have met LEO but for the reporting of victimization. LEO should be prohibited from creating a sexual relationship with that reporting party or victim for a one-year period following initial contact (report of crime) or for the duration of the pendency of the investigation and subsequent resulting prosecution, whichever period is longer.

#### **Penal Code section 289.6**

California Penal Code section 289.6 currently makes it a crime for an employee of a health facility, a detention facility, or a Department of Corrections and Rehabilitation employee for engaging in a sexual relationship with a patient, inmate, or a previously incarcerated individual on parole. This ‘status’ based offense should also apply to law enforcement officers who take advantage of and exploit victims of crime whom they have come in contact with during the official performance of their duties.

#### **New Proposed Section (4) and (k):**

(4) A peace officer, as defined in Chapter 4.5 of the Penal Code, who, during the course of his or her employment comes into contact with a person who reported a crime or identified themselves as being the victim of any crime including but not limited to sexual abuse, domestic violence, human trafficking, sexual exploitation, and who engages in sexual activity with a consenting adult who is a reporting party or victim, where the sexual activity occurs within one year of the date of the initial crime report or during the pendency of the criminal investigation or subsequent prosecution, whichever is later, is guilty of a public offense.

...

(k) Any violation of paragraph (4) of subdivision (a) shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison, or by a fine of not more than ten thousand dollars (\$10,000) or by both that fine and imprisonment.

\*\* this language in proposed (k) makes this a “wobbler”, either a misdemeanor or a felony with a 16-2-3 prison commitment.