

AMENDED IN ASSEMBLY MAY 5, 2016
AMENDED IN ASSEMBLY APRIL 13, 2016
AMENDED IN ASSEMBLY MARCH 15, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1708

Introduced by Assembly Member Gonzalez

January 25, 2016

An act to amend Section 647 of, and to add Section 266m to, the Penal Code, relating to disorderly conduct.

LEGISLATIVE COUNSEL'S DIGEST

AB 1708, as amended, Gonzalez. Disorderly conduct: prostitution.

Existing law provides that a person who solicits or agrees to engage in or engages in any act of prostitution is guilty of disorderly conduct, a misdemeanor, punishable by imprisonment in the county jail for no more than 6 months or by a fine not exceeding \$1,000, or by both that fine and imprisonment. Existing law also imposes increased minimum terms of imprisonment for a violation of that provision if a person has previously been convicted of soliciting or agreeing to engage in or engaging in any act of prostitution. Existing law defines "prostitution" to include any lewd act between persons for money or other consideration. Existing law additionally makes prostitution involving soliciting a minor punishable by imprisonment of not less than 2 days and not more than one year and a fine not exceeding \$10,000. Existing law allows a court to, when the interests of justice are best served, reduce or eliminate the mandatory 2 days in the county jail.

Existing law provides various penalties for human trafficking and sex trafficking offenses.

This bill would require a person convicted of a human trafficking offense or a specified sex trafficking offense, when any part of the violation takes place upon the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school during the hours that the school is open for classes or school-related programs, or at any time when minors are using the facility, to receive, in addition to any other penalty imposed, an additional term of one year in state prison.

This bill would recast the provisions regarding prostitution to distinguish between a person who commits prostitution with intent to receive compensation, in exchange for providing compensation to a person who is 18 years of age or older, or in exchange for providing compensation to a minor. The bill would require a conviction either upon proof of the intent to receive compensation, money, or anything of value and with the specific intent to engage in an act of prostitution, or upon the individual providing compensation, money, or anything of value to the other person. The bill would require a person who commits prostitution by providing money or other consideration to serve at least ~~72~~ *24 continuous* hours in the county ~~jail~~. *jail, to be served on days other than days of regular employment of the person, as specified.* The bill would expand the scope of prostitution involving soliciting a minor to include a situation where the person who was solicited is posing as a minor and the person engaged in the solicitation had specific intent to solicit a minor. The bill would provide that the provisions involving soliciting a minor apply only to persons who commit prostitution involving providing money or other consideration. The bill would require a person who commits prostitution involving soliciting a minor to serve a period of at least ~~72~~ *48 continuous* hours in the county jail, *to be served on days other than days of regular employment of the person, as specified,* and would prohibit the court from eliminating the mandatory minimum sentence. The bill would additionally make a person who commits prostitution by providing money or other consideration punishable by a minimum fine of \$1,000. This bill would require those fines to be used by the county where the offense occurred for services for victims of human trafficking. *By revising the scope of a 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.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 266m is added to the Penal Code, to read:
2 266m. A person who is convicted of a violation of Section
3 236.1 for an offense committed against a minor, or Section 267 if
4 the violation takes place on the grounds of, or within 1,000 feet
5 of, a public or private elementary, vocational, junior high, or high
6 school during hours that the school is open for classes or
7 school-related programs or at any time when minors are using the
8 facility, shall receive, in addition to any other penalty imposed, an
9 additional term of one year in the state prison.

10 SEC. 2. Section 647 of the Penal Code is amended to read:

11 647. Except as provided in subdivision (l), a person who
12 commits any of the following acts is guilty of disorderly conduct,
13 a misdemeanor:

14 (a) An individual who solicits anyone to engage in or who
15 engages in lewd or dissolute conduct in any public place or in any
16 place open to the public or exposed to public view.

17 (b) (1) An individual who solicits, or who agrees to engage in,
18 or who engages in, any act of prostitution with the intent to receive
19 compensation, money, or anything of value, and with the specific
20 intent to so engage.

21 (2) An individual who solicits, or who agrees to engage in, or
22 who engages in, any act of prostitution with another person who
23 is 18 years of age or older in exchange for the individual providing
24 compensation, money, or anything of value to the other person.
25 An individual agrees to engage in an act of prostitution when, with
26 specific intent to so engage, he or she manifests an acceptance of
27 an offer or solicitation by another person who is 18 years of age
28 or older to so engage, regardless of whether the offer or solicitation
29 was made by a person who also possessed the specific intent to
30 engage in an act of prostitution.

31 (3) An individual who solicits, or who agrees to engage in, or
32 who engages in, any act of prostitution with another person who
33 is a minor in exchange for the individual providing compensation,

1 money, or anything of value to the minor. An individual agrees to
2 engage in an act of prostitution when, with specific intent to so
3 engage, he or she manifests an acceptance of an offer or solicitation
4 by someone who is a minor to so engage, regardless of whether
5 the offer or solicitation was made by a minor who also possessed
6 the specific intent to engage in an act of prostitution.

7 (4) A manifestation of acceptance of an offer or solicitation to
8 engage in an act of prostitution shall not constitute a violation of
9 this subdivision unless some act, in addition to the manifestation
10 of acceptance, is done within this state in furtherance of the
11 commission of the act of prostitution by the person manifesting
12 an acceptance of an offer or solicitation to engage in that act. As
13 used in this subdivision, “prostitution” includes any lewd act
14 between persons for money or other consideration.

15 (5) Except as provided in subdivisions (k) and (m), a violation
16 of paragraph (2) or (3) is punishable by imprisonment in a county
17 jail for not less than 72 hours and not more than six months and
18 by a fine of one thousand dollars (\$1,000). The fine imposed shall
19 be deposited in the treasury of the county in which the offense
20 occurred and used by the county to fund services for victims of
21 human trafficking. Upon a violation of paragraph (2) or (3), a
22 person is not eligible for release upon completion of sentence, on
23 probation, on parole, on work furlough or work release, or on any
24 other basis until he or she has served a period of not less than ~~three~~
25 ~~days~~ *24 continuous hours* in a county jail. ~~In all cases in which~~
26 ~~probation is granted, the court shall require as a condition of~~
27 ~~probation that the person be confined in a county jail for at least~~
28 ~~three days. The court shall not absolve a person who violates~~
29 ~~paragraph (2) or (3) from the obligation of spending at least 72~~
30 ~~hours in confinement in a county jail. The court shall order that~~
31 *a person punished under this subdivision, who is to be punished*
32 *by imprisonment in the county jail, be imprisoned on days other*
33 *than days of regular employment of the person, as determined by*
34 *the court. If the court determines that 24 hours of continuous*
35 *imprisonment would interfere with the person’s work schedule,*
36 *the court shall allow the person to serve the imprisonment*
37 *whenever the person is normally scheduled for time off from work.*
38 *The court may make this determination based upon a*
39 *representation from the defendant’s attorney or upon an affidavit*
40 *or testimony from the defendant.*

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

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

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

10 (f) Who is found in any public place under the influence of
11 intoxicating liquor, any drug, controlled substance, toluene, or any
12 combination of any intoxicating liquor, drug, controlled substance,
13 or toluene, in a condition that he or she is unable to exercise care
14 for his or her own safety or the safety of others, or by reason of
15 his or her being under the influence of intoxicating liquor, any
16 drug, controlled substance, toluene, or any combination of any
17 intoxicating liquor, drug, or toluene, interferes with or obstructs
18 or prevents the free use of any street, sidewalk, or other public
19 way.

20 (g) When a person has violated subdivision (f), a peace officer,
21 if he or she is reasonably able to do so, shall place the person, or
22 cause him or her to be placed, in civil protective custody. The
23 person shall be taken to a facility, designated pursuant to Section
24 5170 of the Welfare and Institutions Code, for the 72-hour
25 treatment and evaluation of inebriates. A peace officer may place
26 a person in civil protective custody with that kind and degree of
27 force which would be lawful were he or she effecting an arrest for
28 a misdemeanor without a warrant. A person who has been placed
29 in civil protective custody shall not thereafter be subject to any
30 criminal prosecution or juvenile court proceeding based on the
31 facts giving rise to this placement. This subdivision shall not apply
32 to the following persons:

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

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

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

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

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

11 (j) (1) Any person who looks through a hole or opening, into,
12 or otherwise views, by means of any instrumentality, including,
13 but not limited to, a periscope, telescope, binoculars, camera,
14 motion picture camera, camcorder, or mobile phone, the interior
15 of a bedroom, bathroom, changing room, fitting room, dressing
16 room, or tanning booth, or the interior of any other area in which
17 the occupant has a reasonable expectation of privacy, with the
18 intent to invade the privacy of a person or persons inside. This
19 subdivision shall not apply to those areas of a private business
20 used to count currency or other negotiable instruments.

21 (2) Any person who uses a concealed camcorder, motion picture
22 camera, or photographic camera of any type, to secretly videotape,
23 film, photograph, or record by electronic means, another,
24 identifiable person under or through the clothing being worn by
25 that other person, for the purpose of viewing the body of, or the
26 undergarments worn by, that other person, without the consent or
27 knowledge of that other person, with the intent to arouse, appeal
28 to, or gratify the lust, passions, or sexual desires of that person and
29 invade the privacy of that other person, under circumstances in
30 which the other person has a reasonable expectation of privacy.

31 (3) (A) Any person who uses a concealed camcorder, motion
32 picture camera, or photographic camera of any type, to secretly
33 videotape, film, photograph, or record by electronic means, another,
34 identifiable person who may be in a state of full or partial undress,
35 for the purpose of viewing the body of, or the undergarments worn
36 by, that other person, without the consent or knowledge of that
37 other person, in the interior of a bedroom, bathroom, changing
38 room, fitting room, dressing room, or tanning booth, or the interior
39 of any other area in which that other person has a reasonable

1 expectation of privacy, with the intent to invade the privacy of that
2 other person.

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

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

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

9 (4) (A) Any person who intentionally distributes the image of
10 the intimate body part or parts of another identifiable person, or
11 an image of the person depicted engaged in an act of sexual
12 intercourse, sodomy, oral copulation, sexual penetration, or an
13 image of masturbation by the person depicted or in which the
14 person depicted participates, under circumstances in which the
15 persons agree or understand that the image shall remain private,
16 the person distributing the image knows or should know that
17 distribution of the image will cause serious emotional distress, and
18 the person depicted suffers that distress.

19 (B) A person intentionally distributes an image described in
20 subparagraph (A) when he or she personally distributes the image,
21 or arranges, specifically requests, or intentionally causes another
22 person to distribute that image.

23 (C) As used in this paragraph, “intimate body part” means any
24 portion of the genitals, the anus and in the case of a female, also
25 includes any portion of the breasts below the top of the areola, that
26 is either uncovered or clearly visible through clothing.

27 (D) It shall not be a violation of this paragraph to distribute an
28 image described in subparagraph (A) if any of the following
29 applies:

30 (i) The distribution is made in the course of reporting an
31 unlawful activity.

32 (ii) The distribution is made in compliance with a subpoena or
33 other court order for use in a legal proceeding.

34 (iii) The distribution is made in the course of a lawful public
35 proceeding.

36 (5) This subdivision shall not preclude punishment under any
37 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 is not eligible for release upon completion of sentence, on
6 probation, on parole, on work furlough or work release, or on any
7 other basis until he or she has served a period of not less than 45
8 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. The court shall not
11 absolve a person who violates this subdivision from the obligation
12 of spending at least 45 days in confinement in a county jail.

13 In any accusatory pleading charging a violation of subdivision
14 (b), if the defendant has been previously convicted two or more
15 times of a violation of that subdivision, each of these previous
16 convictions shall be charged in the accusatory pleading. If two or
17 more of these previous convictions are found to be true by the jury,
18 upon a jury trial, or by the court, upon a court trial, or are admitted
19 by the defendant, the defendant shall be imprisoned in a county
20 jail for a period of not less than 90 days and is not eligible for
21 release upon completion of sentence, on probation, on parole, on
22 work furlough or work release, or on any other basis until he or
23 she has served a period of not less than 90 days in a county jail.
24 In all cases in which probation is granted, the court shall require
25 as a condition thereof that the person be confined in a county jail
26 for at least 90 days. The court shall not have the power to absolve
27 a person who violates this subdivision from the obligation of
28 spending at least 90 days in confinement in a county jail.

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

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

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

10 (m) If a crime is committed in violation of paragraph (3) of
11 subdivision (b) and if the defendant knew or should have known
12 that the person who was solicited was a minor at the time of the
13 offense, or if a crime is committed in violation of paragraph (2)
14 of subdivision (b) and the person who was solicited was a person
15 posing as a minor and the person engaged in the solicitation had
16 specific intent to solicit a minor, the violation is punishable by
17 imprisonment in a county jail for not less than 72 hours and not
18 more than one year and by a fine not less than one thousand dollars
19 (\$1,000) and not exceeding ten thousand dollars (\$10,000). The
20 fine imposed shall be deposited in the treasury of the county in
21 which the offense occurred and used by the county to fund services
22 for victims of human trafficking. Upon a violation of this
23 subdivision, a person is not eligible for release upon completion
24 of sentence, on probation, on parole, on work furlough or work
25 release, or on any other basis until he or she has served a period
26 of not less than ~~72 hours~~ *48 continuous hours* in a county jail. ~~In~~
27 ~~all cases in which probation is granted, the court shall require as~~
28 ~~a condition of probation that the person be confined in a county~~
29 ~~jail for at least 72 hours. The court shall not absolve a person who~~
30 ~~is governed by this subdivision from the obligation of spending at~~
31 ~~least 72 hours in confinement in a county jail. The court shall order~~
32 *that a person punished under this subdivision, who is to be*
33 *punished by imprisonment in the county jail, be imprisoned on*
34 *days other than days of regular employment of the person, as*
35 *determined by the court. If the court determines that 48 hours of*
36 *continuous imprisonment would interfere with the person's work*
37 *schedule, the court shall allow the person to serve the*
38 *imprisonment whenever the person is normally scheduled for time*
39 *off from work. The court may make this determination based upon*

1 *a representation from the defendant’s attorney or upon an affidavit*
2 *or testimony from the defendant.*

3 SEC. 3. 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.