

ASSEMBLY BILL

No. 16

Introduced by Assembly Member Swanson

December 1, 2008

An act to amend Sections 667.1, 667.5, and 1192.7 of, and to add Section 647.5 to, the Penal Code, relating to sex crimes, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 16, as introduced, Swanson. Sex crimes: minor victims: punishment.

Under existing law, any person who solicits or who agrees to engage in or who engages in any act of prostitution is guilty of a misdemeanor.

This bill would make it a felony for any person to solicit another person who is under 18 years of age to engage in an act of prostitution in return for money or other consideration or to agree to give another person who is under 18 years of age money or other consideration in return for the other person committing an act of prostitution. Because this bill would increase the punishment for an existing crime, it would impose a state-mandated local program.

Under existing law, including the Three Strikes Law, a person who is convicted of or who has a prior conviction for a serious or violent felony, is subject to additional years of imprisonment in the state prison, as specified.

This bill would include within the definition of a serious and a violent felony the crimes of soliciting or agreeing to engage in an act of prostitution with a person under 18 years of age, pimping a minor, pandering a minor, and procuring a minor.

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. This act shall be known and may be cited as the
2 Human trafficking Penalties Act

3 SEC. 2. Section 647.5 is added to the Penal Code, to read:

4 647.5. Any person who solicits another person who is under
5 18 years of age to engage in an act of prostitution in return for
6 money or other consideration or who agrees to give another person
7 who is under 18 years of age money or other consideration in return
8 for the other person committing an act of prostitution is guilty of
9 a felony. As used in this section, "prostitution" includes any lewd
10 act between persons for money or other consideration.

11 SEC. 3. Section 667.1 of the Penal Code is amended to read:

12 667.1. Notwithstanding subdivision (h) of Section 667, for all
13 offenses committed on or after the effective date of this act, all
14 references to existing statutes in subdivisions (c) to (g), inclusive,
15 of Section 667, are to those statutes as they existed on the effective
16 date of this act, including amendments made to those statutes by
17 ~~the any act enacted during the 2005–06~~ or prior to the 2009–10
18 Regular Session that amended this section.

19 SEC. 4. Section 667.5 of the Penal Code is amended to read:

20 667.5. Enhancement of prison terms for new offenses because
21 of prior prison terms shall be imposed as follows:

22 (a) Where one of the new offenses is one of the violent felonies
23 specified in subdivision (c), in addition to and consecutive to any
24 other prison terms therefor, the court shall impose a three-year
25 term for each prior separate prison term served by the defendant
26 where the prior offense was one of the violent felonies specified
27 in subdivision (c). However, no additional term shall be imposed
28 under this subdivision for any prison term served prior to a period

1 of 10 years in which the defendant remained free of both prison
2 custody and the commission of an offense which results in a felony
3 conviction.

4 (b) Except where subdivision (a) applies, where the new offense
5 is any felony for which a prison sentence is imposed, in addition
6 and consecutive to any other prison terms therefor, the court shall
7 impose a one-year term for each prior separate prison term served
8 for any felony; provided that no additional term shall be imposed
9 under this subdivision for any prison term served prior to a period
10 of five years in which the defendant remained free of both prison
11 custody and the commission of an offense which results in a felony
12 conviction.

13 (c) For the purpose of this section, “violent felony” shall mean
14 any of the following:

15 (1) Murder or voluntary manslaughter.

16 (2) Mayhem.

17 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)
18 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section
19 262.

20 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.

21 (5) Oral copulation as defined in subdivision (c) or (d) of Section
22 288a.

23 (6) Lewd or lascivious act as defined in subdivision (a) or (b)
24 of Section 288.

25 (7) Any felony punishable by death or imprisonment in the state
26 prison for life.

27 (8) Any felony in which the defendant inflicts great bodily injury
28 on any person other than an accomplice which has been charged
29 and proved as provided for in Section 12022.7, 12022.8, or 12022.9
30 on or after July 1, 1977, or as specified prior to July 1, 1977, in
31 Sections 213, 264, and 461, or any felony in which the defendant
32 uses a firearm which use has been charged and proved as provided
33 in subdivision (a) of Section 12022.3, or Section 12022.5 or
34 12022.55.

35 (9) Any robbery.

36 (10) Arson, in violation of subdivision (a) or (b) of Section 451.

37 (11) Sexual penetration as defined in subdivision (a) or (j) of
38 Section 289.

39 (12) Attempted murder.

40 (13) A violation of Section 12308, 12309, or 12310.

1 (14) Kidnapping.

2 (15) Assault with the intent to commit a specified felony, in
3 violation of Section 220.

4 (16) Continuous sexual abuse of a child, in violation of Section
5 288.5.

6 (17) Carjacking, as defined in subdivision (a) of Section 215.

7 (18) Rape, spousal rape, or sexual penetration, in concert, in
8 violation of Section 264.1.

9 (19) Extortion, as defined in Section 518, which would constitute
10 a felony violation of Section 186.22 of the Penal Code.

11 (20) Threats to victims or witnesses, as defined in Section 136.1,
12 which would constitute a felony violation of Section 186.22 of the
13 Penal Code.

14 (21) Any burglary of the first degree, as defined in subdivision
15 (a) of Section 460, wherein it is charged and proved that another
16 person, other than an accomplice, was present in the residence
17 during the commission of the burglary.

18 (22) Any violation of Section 12022.53.

19 (23) A violation of subdivision (b) or (c) of Section 11418. The
20 Legislature finds and declares that these specified crimes merit
21 special consideration when imposing a sentence to display society's
22 condemnation for these extraordinary crimes of violence against
23 the person.

24 *(24) Any violation of subdivision (b) of Section 266h, subdivision*
25 *(b) of Section 266i, Section 266j, or Section 647.5.*

26 (d) For the purposes of this section, the defendant shall be
27 deemed to remain in prison custody for an offense until the official
28 discharge from custody or until release on parole, whichever first
29 occurs, including any time during which the defendant remains
30 subject to reimprisonment for escape from custody or is
31 reimprisoned on revocation of parole. The additional penalties
32 provided for prior prison terms shall not be imposed unless they
33 are charged and admitted or found true in the action for the new
34 offense.

35 (e) The additional penalties provided for prior prison terms shall
36 not be imposed for any felony for which the defendant did not
37 serve a prior separate term in state prison.

38 (f) A prior conviction of a felony shall include a conviction in
39 another jurisdiction for an offense which, if committed in
40 California, is punishable by imprisonment in the state prison if the

1 defendant served one year or more in prison for the offense in the
2 other jurisdiction. A prior conviction of a particular felony shall
3 include a conviction in another jurisdiction for an offense which
4 includes all of the elements of the particular felony as defined
5 under California law if the defendant served one year or more in
6 prison for the offense in the other jurisdiction.

7 (g) A prior separate prison term for the purposes of this section
8 shall mean a continuous completed period of prison incarceration
9 imposed for the particular offense alone or in combination with
10 concurrent or consecutive sentences for other crimes, including
11 any reimprisonment on revocation of parole which is not
12 accompanied by a new commitment to prison, and including any
13 reimprisonment after an escape from incarceration.

14 (h) Serving a prison term includes any confinement time in any
15 state prison or federal penal institution as punishment for
16 commission of an offense, including confinement in a hospital or
17 other institution or facility credited as service of prison time in the
18 jurisdiction of the confinement.

19 (i) For the purposes of this section, a commitment to the State
20 Department of Mental Health as a mentally disordered sex offender
21 following a conviction of a felony, which commitment exceeds
22 one year in duration, shall be deemed a prior prison term.

23 (j) For the purposes of this section, when a person subject to
24 the custody, control, and discipline of the Director of Corrections
25 is incarcerated at a facility operated by the Department of the Youth
26 Authority, that incarceration shall be deemed to be a term served
27 in state prison.

28 (k) Notwithstanding subdivisions (d) and (g) or any other
29 provision of law, where one of the new offenses is committed
30 while the defendant is temporarily removed from prison pursuant
31 to Section 2690 or while the defendant is transferred to a
32 community facility pursuant to Section 3416, 6253, or 6263, or
33 while the defendant is on furlough pursuant to Section 6254, the
34 defendant shall be subject to the full enhancements provided for
35 in this section.

36 This subdivision shall not apply when a full, separate, and
37 consecutive term is imposed pursuant to any other provision of
38 law.

39 SEC. 5. Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) (1) It is the intent of the Legislature that district attorneys prosecute violent sex crimes under statutes that provide sentencing under a “one strike,” “three strikes” or habitual sex offender statute instead of engaging in plea bargaining over those offenses.

(2) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people’s case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(3) If the indictment or information charges the defendant with a violent sex crime, as listed in subdivision (c) of Section 667.61, that could be prosecuted under Sections 269, 288.7, subdivisions (b) through (i) of Section 667, Section 667.61, or 667.71, plea bargaining is prohibited unless there is insufficient evidence to prove the people’s case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence. At the time of presenting the agreement to the court, the district attorney shall state on the record why a sentence under one of those sections was not sought.

(b) As used in this section “plea bargaining” means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, “serious felony” means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6)

1 lewd or lascivious act on a child under 14 years of age; (7) any
2 felony punishable by death or imprisonment in the state prison for
3 life; (8) any felony in which the defendant personally inflicts great
4 bodily injury on any person, other than an accomplice, or any
5 felony in which the defendant personally uses a firearm; (9)
6 attempted murder; (10) assault with intent to commit rape or
7 robbery; (11) assault with a deadly weapon or instrument on a
8 peace officer; (12) assault by a life prisoner on a noninmate; (13)
9 assault with a deadly weapon by an inmate; (14) arson; (15)
10 exploding a destructive device or any explosive with intent to
11 injure; (16) exploding a destructive device or any explosive causing
12 bodily injury, great bodily injury, or mayhem; (17) exploding a
13 destructive device or any explosive with intent to murder; (18) any
14 burglary of the first degree; (19) robbery or bank robbery; (20)
15 kidnapping; (21) holding of a hostage by a person confined in a
16 state prison; (22) attempt to commit a felony punishable by death
17 or imprisonment in the state prison for life; (23) any felony in
18 which the defendant personally used a dangerous or deadly weapon;
19 (24) selling, furnishing, administering, giving, or offering to sell,
20 furnish, administer, or give to a minor any heroin, cocaine,
21 phencyclidine (PCP), or any methamphetamine-related drug, as
22 described in paragraph (2) of subdivision (d) of Section 11055 of
23 the Health and Safety Code, or any of the precursors of
24 methamphetamines, as described in subparagraph (A) of paragraph
25 (1) of subdivision (f) of Section 11055 or subdivision (a) of Section
26 11100 of the Health and Safety Code; (25) any violation of
27 subdivision (a) of Section 289 where the act is accomplished
28 against the victim's will by force, violence, duress, menace, or
29 fear of immediate and unlawful bodily injury on the victim or
30 another person; (26) grand theft involving a firearm; (27)
31 carjacking; (28) any felony offense, which would also constitute
32 a felony violation of Section 186.22; (29) assault with the intent
33 to commit mayhem, rape, sodomy, or oral copulation, in violation
34 of Section 220; (30) throwing acid or flammable substances, in
35 violation of Section 244; (31) assault with a deadly weapon,
36 firearm, machinegun, assault weapon, or semiautomatic firearm
37 or assault on a peace officer or firefighter, in violation of Section
38 245; (32) assault with a deadly weapon against a public transit
39 employee, custodial officer, or school employee, in violation of
40 Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an

1 inhabited dwelling, vehicle, or aircraft, in violation of Section 246;
2 (34) commission of rape or sexual penetration in concert with
3 another person, in violation of Section 264.1; (35) continuous
4 sexual abuse of a child, in violation of Section 288.5; (36) shooting
5 from a vehicle, in violation of subdivision (c) or (d) of Section
6 12034; (37) intimidation of victims or witnesses, in violation of
7 Section 136.1; (38) criminal threats, in violation of Section 422;
8 (39) any attempt to commit a crime listed in this subdivision other
9 than an assault; (40) any violation of Section 12022.53; (41) a
10 violation of subdivision (b) or (c) of Section 11418; (42) *any*
11 *violation of subdivision (b) of Section 266h, subdivision (b) of*
12 *Section 266i, Section 266j, or Section 647.5; and* ~~(42)~~ (43) any
13 conspiracy to commit an offense described in this subdivision.

14 (d) As used in this section, “bank robbery” means to take or
15 attempt to take, by force or violence, or by intimidation from the
16 person or presence of another any property or money or any other
17 thing of value belonging to, or in the care, custody, control,
18 management, or possession of, any bank, credit union, or any
19 savings and loan association.

20 As used in this subdivision, the following terms have the
21 following meanings:

22 (1) “Bank” means any member of the Federal Reserve System,
23 and any bank, banking association, trust company, savings bank,
24 or other banking institution organized or operating under the laws
25 of the United States, and any bank the deposits of which are insured
26 by the Federal Deposit Insurance Corporation.

27 (2) “Savings and loan association” means any federal savings
28 and loan association and any “insured institution” as defined in
29 Section 401 of the National Housing Act, as amended, and any
30 federal credit union as defined in Section 2 of the Federal Credit
31 Union Act.

32 (3) “Credit union” means any federal credit union and any
33 state-chartered credit union the accounts of which are insured by
34 the Administrator of the National Credit Union administration.

35 (e) The provisions of this section shall not be amended by the
36 Legislature except by statute passed in each house by rollcall vote
37 entered in the journal, two-thirds of the membership concurring,
38 or by a statute that becomes effective only when approved by the
39 electors.

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

10 SEC. 7. This act is an urgency statute necessary for the
11 immediate preservation of the public peace, health, or safety within
12 the meaning of Article IV of the Constitution and shall go into
13 immediate effect. The facts constituting the necessity are:

14 In order to protect minors in California from current and ongoing
15 crimes involving sexual exploitation it is necessary that this
16 legislation take effect immediately.