

ASSEMBLY BILL

No. 1718

Introduced by Assembly Member Wagner

February 13, 2014

An act to amend Section 647 of the Penal Code, relating to disorderly conduct.

LEGISLATIVE COUNSEL'S DIGEST

AB 1718, as introduced, Wagner. Disorderly conduct: prostitution.

Existing law provides that a person is guilty of disorderly conduct, a misdemeanor, when a person solicits or agrees to engage in or engages in any act of prostitution, as defined. Existing law imposes certain additional requirements on an accusatory pleading charging a violation of those provisions, and provides for certain enhanced penalties for violations of those provisions, if the defendant has been previously convicted of a violating those provisions.

This bill would instead provide that a person who solicits or who agrees to engage in or who engages in any act of prostitution in exchange for his or her receipt of money or other consideration from another person is guilty of disorderly conduct, a misdemeanor.

The bill would also provide that a person who solicits or who agrees to engage in or who engages in any act of prostitution in exchange for his or her payment, or offer to pay, another person money or other consideration, is guilty of disorderly conduct. The bill would make that offense punishable by confinement in a county jail for a minimum of 48 hours and a maximum of 6 months, and by a fine of not less than \$1,000 and not more than \$10,000. If the other person is a minor, as defined, 16 years of age or older, the bill would make that offense punishable by confinement in the state prison for 16 months, or 2 or 3

years, and by a fine of not less than \$1,000 and not more than \$25,000. If the other person is a minor, as defined, 16 years of age or younger, the bill would make that offense punishable by confinement in the state prison for 16 months, or 2 or 3 years, by a fine of not less than \$1,000 and not more than \$25,000, and by requiring the defendant to register as a sex offender. The bill would also impose additional requirements on an accusatory pleading charging a violation of its provisions, and require certain enhanced penalties for multiple convictions of violations of its provisions or certain existing provisions of law. By creating new crimes and increasing the obligations of county jail facilities, 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 647 of the Penal Code is amended to
 2 read:
 3 647. Except as provided in ~~subdivision (d)~~ subdivisions (b), (k),
 4 and (l), every person who commits any of the following acts is
 5 guilty of disorderly conduct, 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) (1) Who solicits or who agrees to engage in or who engages
 10 in any act of prostitution *in exchange for his or her receipt of*
 11 *money or other consideration from another person.* ~~For purposes~~
 12 *of this subdivision, a person agrees to engage in an act of*
 13 *prostitution when, with specific intent to so engage, he or she*
 14 *manifests an acceptance of an offer or solicitation to so engage,*
 15 *regardless of whether the offer or solicitation was made by a person*
 16 *who also possessed the specific intent to engage in prostitution.*
 17 ~~No~~ *For purposes of this subdivision, an agreement to engage in*
 18 *an act of prostitution shall in exchange for the receipt or payment*
 19 *of, or offer to pay, money or other consideration does not constitute*

1 a violation of this subdivision unless some act, in addition to the
2 agreement, is done within this state in furtherance of the
3 commission of an act of prostitution by the person agreeing to
4 engage in that act. ~~As used in this subdivision, "prostitution"~~
5 ~~includes any lewd act between persons for money or other~~
6 ~~consideration.~~

7 (2) (A) *Who solicits or who agrees to engage in or who engages*
8 *in any act of prostitution in exchange for his or her payment, or*
9 *offer to pay, another person money or other consideration.*

10 (B) *A violation of this paragraph is punishable as follows:*

11 (i) *Confinement in a county jail for a minimum of 48 hours and*
12 *a maximum of six months, and a fine of not less than one thousand*
13 *dollars (\$1,000) and not more than ten thousand dollars (\$10,000).*

14 (ii) *Confinement in the state prison for 16 months, or two or*
15 *three years, and a fine of not less than one thousand dollars*
16 *(\$1,000) and not more than twenty-five thousand dollars (\$25,000)*
17 *if the other person is a minor who is 16 years of age or older.*

18 (iii) *Confinement in the state prison for 16 months, or two or*
19 *three years, a fine of not less than one thousand dollars (\$1,000)*
20 *and not more than twenty-five thousand dollars (\$25,000), and*
21 *registration as a sex offender pursuant to Section 290 if the other*
22 *person is a minor who is 15 years of age or younger.*

23 (C) *For purposes of this paragraph, "minor" means a person*
24 *who is 17 years of age or younger.*

25 (D) *Neither of the following is a defense to a violation of this*
26 *paragraph:*

27 (i) *Consent of the other person who the defendant pays, or offers*
28 *to pay, money or other consideration.*

29 (ii) *Mistake of fact as to the age of the other person at the time*
30 *the defendant pays, or offers to pay, money or other consideration.*

31 (E) *This paragraph does not prohibit prosecution of a defendant*
32 *under any other applicable law.*

33 (c) *Who accosts other persons in any public place or in any*
34 *place open to the public for the purpose of begging or soliciting*
35 *alms.*

36 (d) *Who loiters in or about any toilet open to the public for the*
37 *purpose of engaging in or soliciting any lewd or lascivious or any*
38 *unlawful act.*

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

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

14 (g) When a person has violated subdivision (f), a peace officer,
15 if he or she is reasonably able to do so, shall place the person, or
16 cause him or her to be placed, in civil protective custody. The
17 person shall be taken to a facility, designated pursuant to Section
18 5170 of the Welfare and Institutions Code, for the 72-hour
19 treatment and evaluation of inebriates. A peace officer may place
20 a person in civil protective custody with that kind and degree of
21 force which would be lawful were he or she effecting an arrest for
22 a misdemeanor without a warrant. A person who has been placed
23 in civil protective custody shall not thereafter be subject to any
24 criminal prosecution or juvenile court proceeding based on the
25 facts giving rise to this placement. This subdivision shall not apply
26 to the following persons:

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

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

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

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

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

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

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

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

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

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

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

2 (4) (A) Any person who photographs or records by any means
3 the image of the intimate body part or parts of another identifiable
4 person, under circumstances where the parties agree or understand
5 that the image shall remain private, and the person subsequently
6 distributes the image taken, with the intent to cause serious
7 emotional distress, and the depicted person suffers serious
8 emotional distress.

9 (B) As used in this paragraph, intimate body part means any
10 portion of the genitals, and in the case of a female, also includes
11 any portion of the breasts below the top of the areola, that is either
12 uncovered or visible through less than fully opaque clothing.

13 (C) Nothing in this subdivision precludes punishment under
14 any section of law providing for greater punishment.

15 (k) (1) (A) In any accusatory pleading charging a violation of
16 *paragraph (1) of subdivision (b)*, if the defendant has been once
17 previously convicted of a violation of that ~~subdivision~~ *paragraph*,
18 the previous conviction shall be charged in the accusatory pleading.
19 If the previous conviction is found to be true by the jury, upon a
20 jury trial, or by the court, upon a court trial, or is admitted by the
21 defendant, the defendant shall be imprisoned in a county jail for
22 a period of not less than 45 days and shall not be eligible for release
23 upon completion of sentence, on probation, on parole, on work
24 furlough or work release, or on any other basis until he or she has
25 served a period of not less than 45 days in a county jail. In all cases
26 in which probation is granted, the court shall require as a condition
27 thereof that the person be confined in a county jail for at least 45
28 days. In no event does the court have the power to absolve a person
29 who violates this subdivision from the obligation of spending at
30 least 45 days in confinement in a county jail.

31 (B) *In any accusatory pleading charging a violation of clause*
32 *(i) of subparagraph (A) of paragraph (2) of subdivision (b), if the*
33 *defendant has been once previously convicted of a violation of that*
34 *clause or paragraph (1) of subdivision (b), the previous conviction*
35 *shall be charged in the accusatory pleading. If the previous*
36 *conviction is found to be true by the jury, upon a jury trial, or by*
37 *the court, upon a court trial, or is admitted by the defendant, the*
38 *defendant shall be imprisoned in a county jail for a period of not*
39 *less than 90 days and not more than one year.*

1 (C) *In any accusatory pleading charging a violation of clause*
2 *(i) of subparagraph (A) of paragraph (2) of subdivision (b), if the*
3 *defendant has been once previously convicted of a violation of*
4 *clause (ii) or (iii) of that subparagraph, or if the defendant has*
5 *been twice previously convicted of another violation of subdivision*
6 *(b), the previous conviction or convictions shall be charged in the*
7 *accusatory pleading. If the previous conviction or convictions are*
8 *found to be true by the jury, upon a jury trial, or by the court, upon*
9 *a court trial, or are admitted by the defendant, the defendant shall*
10 *be imprisoned in the state prison for a period of 16 months, or two*
11 *or three years, and the defendant shall be punished by a fine of*
12 *not less than one thousand dollars (\$1,000) and not more than*
13 *twenty-five thousand dollars (\$25,000).*

14 (2) (A) *In any accusatory pleading charging a violation of*
15 *paragraph (1) of subdivision (b), if the defendant has been*
16 *previously convicted two or more times of a violation of that*
17 *subdivision paragraph, each of these previous convictions shall*
18 *be charged in the accusatory pleading. If two or more of these*
19 *previous convictions are found to be true by the jury, upon a jury*
20 *trial, or by the court, upon a court trial, or are admitted by the*
21 *defendant, the defendant shall be imprisoned in a county jail for*
22 *a period of not less than 90 days and shall not be eligible for release*
23 *upon completion of sentence, on probation, on parole, on work*
24 *furlough or work release, or on any other basis until he or she has*
25 *served a period of not less than 90 days in a county jail. In all cases*
26 *in which probation is granted, the court shall require as a condition*
27 *thereof that the person be confined in a county jail for at least 90*
28 *days. In no event does the court have the power to absolve a person*
29 *who violates this subdivision from the obligation of spending at*
30 *least 90 days in confinement in a county jail.*

31 (B) *In any accusatory pleading charging a violation of clause*
32 *(ii) or (iii) of subparagraph (A) of paragraph (2) of subdivision*
33 *(b), if the defendant has been once previously convicted of a*
34 *violation of subdivision (b), the previous conviction shall be*
35 *charged in the accusatory pleading. If the previous conviction is*
36 *found to be true by the jury, upon a jury trial, or by the court, upon*
37 *a court trial, or is admitted by the defendant, the defendant shall*
38 *be imprisoned in the state prison for a period of three, four, or six*
39 *years, and the defendant shall be punished by a fine of not less*

1 *than one thousand dollars (\$1,000) and not more than twenty-five*
2 *thousand dollars (\$25,000).*

3 (3) In addition to any punishment prescribed by this section, a
4 court may suspend, for not more than 30 days, the privilege of the
5 person to operate a motor vehicle pursuant to Section 13201.5 of
6 the Vehicle Code for any violation of subdivision (b) that was
7 committed within 1,000 feet of a private residence and with the
8 use of a vehicle. In lieu of the suspension, the court may order a
9 person’s privilege to operate a motor vehicle restricted, for not
10 more than six months, to necessary travel to and from the person’s
11 place of employment or education. If driving a motor vehicle is
12 necessary to perform the duties of the person’s employment, the
13 court may also allow the person to drive in that person’s scope of
14 employment.

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

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

24 SEC. 2. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.

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