

Introduced by Senator HuffFebruary 11, 2014

An act to amend Sections 261.9 and 647 of the Penal Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

SB 982, as introduced, Huff. Prostitution: minors: punishment.

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 a county jail for no more than 6 months, by a fine not exceeding \$1,000, or by both that fine and imprisonment.

This bill would, notwithstanding the above provisions, make it a felony, punishable in a county jail for 16 months or 2 or 3 years, to seek to procure or to procure the sexual services of a prostitute in violation of the above provisions if the prostitute is under 18 years of age. By increasing the punishment for a crime, this 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 261.9 of the Penal Code is amended to
2 read:

3 261.9. (a) *A person who seeks to procure or does procure the*
4 *sexual services of a prostitute in violation of subdivision (b) of*
5 *Section 647, if the prostitute is under 18 years of age, is guilty of*
6 *a felony punishable by imprisonment pursuant to subdivision (h)*
7 *of Section 1170.*

8 (b) Any person convicted of seeking to procure or procuring
9 the sexual services of a prostitute in violation of subdivision (b)
10 of Section 647, if the prostitute is under 18 years of age, shall be
11 ordered by the court, in addition to any other penalty or fine
12 imposed, to pay an additional fine in an amount not to exceed
13 twenty-five thousand dollars (\$25,000).

14 ~~(b)~~

15 (c) Every fine imposed and collected pursuant to this section
16 shall, upon appropriation by the Legislature, be available to fund
17 programs and services for commercially sexually exploited minors
18 in the counties where the underlying offenses are committed.

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

20 647. Except as provided in *subdivision (a) of Section 261.9*
21 *and subdivision (l)*, every person who commits any of the following
22 acts is guilty of disorderly conduct, a misdemeanor:

23 (a) Who solicits anyone to engage in or who engages in lewd
24 or dissolute conduct in any public place or in any place open to
25 the public or exposed to public view.

26 (b) Who solicits or who agrees to engage in or who engages in
27 any act of prostitution. A person agrees to engage in an act of
28 prostitution when, with specific intent to so engage, he or she
29 manifests an acceptance of an offer or solicitation to so engage,
30 regardless of whether the offer or solicitation was made by a person
31 who also possessed the specific intent to engage in prostitution.
32 ~~No~~ An agreement to engage in an act of prostitution shall *not*
33 constitute a violation of this subdivision unless some act, in
34 addition to the agreement, is done within this state in furtherance
35 of the commission of an act of prostitution by the person agreeing
36 to engage in that act. As used in this subdivision, “prostitution”
37 includes any lewd act between persons for money or other
38 consideration.

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~~ *that* would be lawful were he or she effecting an arrest
28 for a misdemeanor without a warrant. A person who has been
29 placed in civil protective custody shall not thereafter be subject to
30 any criminal prosecution or juvenile court proceeding based on
31 the facts giving rise to this placement. This subdivision shall not
32 apply 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 photographs or records by any means
10 the image of the intimate body part or parts of another identifiable
11 person, under circumstances where the parties agree or understand
12 that the image shall remain private, and the person subsequently
13 distributes the image taken, with the intent to cause serious
14 emotional distress, and the depicted person suffers serious
15 emotional distress.

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

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

22 (k) In any accusatory pleading charging a violation of
23 subdivision (b), if the defendant has been once previously convicted
24 of a violation of that subdivision, the previous conviction shall be
25 charged in the accusatory pleading. If the previous conviction is
26 found to be true by the jury, upon a jury trial, or by the court, upon
27 a court trial, or is admitted by the defendant, the defendant shall
28 be imprisoned in a county jail for a period of not less than 45 days
29 and shall not be eligible for release upon completion of sentence,
30 on probation, on parole, on work furlough or work release, or on
31 any other basis until he or she has served a period of not less than
32 45 days in a county jail. In all cases in which probation is granted,
33 the court shall require as a condition thereof that the person be
34 confined in a county jail for at least 45 days. In no event does the
35 court have the power to absolve a person who violates this
36 subdivision from the obligation of spending at least 45 days in
37 confinement in a county jail.

38 In any accusatory pleading charging a violation of subdivision
39 (b), if the defendant has been previously convicted two or more
40 times of a violation of that subdivision, each of these previous

1 convictions shall be charged in the accusatory pleading. If two or
2 more of these previous convictions are found to be true by the jury,
3 upon a jury trial, or by the court, upon a court trial, or are admitted
4 by the defendant, the defendant shall be imprisoned in a county
5 jail for a period of not less than 90 days and shall not be eligible
6 for release upon completion of sentence, on probation, on parole,
7 on work furlough or work release, or on any other basis until he
8 or she has served a period of not less than 90 days in a county jail.
9 In all cases in which probation is granted, the court shall require
10 as a condition thereof that the person be confined in a county jail
11 for at least 90 days. In no event does the court have the power to
12 absolve a person who violates this subdivision from the obligation
13 of spending at least 90 days in confinement in a county jail.

14 In addition to any punishment prescribed by this section, a court
15 may suspend, for not more than 30 days, the privilege of the person
16 to operate a motor vehicle pursuant to Section 13201.5 of the
17 Vehicle Code for any violation of subdivision (b) that was
18 committed within 1,000 feet of a private residence and with the
19 use of a vehicle. In lieu of the suspension, the court may order a
20 person's privilege to operate a motor vehicle restricted, for not
21 more than six months, to necessary travel to and from the person's
22 place of employment or education. If driving a motor vehicle is
23 necessary to perform the duties of the person's employment, the
24 court may also allow the person to drive in that person's scope of
25 employment.

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

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

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

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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