

AMENDED IN SENATE APRIL 29, 2014

AMENDED IN SENATE APRIL 9, 2014

AMENDED IN SENATE MARCH 17, 2014

SENATE BILL

No. 982

Introduced by Senator Huff

(Coauthors: Senators Berryhill, Cannella, and Lieu)

(Coauthors: Assembly Members Chávez, Olsen, and Wagner)

February 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 amended, 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. *Existing law requires a person convicted of seeking to procure or procuring the sexual services of a prostitute in violation of these provisions, if the prostitute is under 18 years of age, to pay an additional fine in an amount not to exceed \$25,000.*

This bill would, instead, make it either a misdemeanor, punishable by not more than one year in a county jail, or a felony, punishable in a county jail for 16 months or 2 or 3 years, for a person who, in violation of the above provisions, solicits an act of prostitution from, *agrees to engage in an act of prostitution with*, or engages in an act of prostitution with, ~~a another person who is under 18 years of age and the defendant whom the person knows or reasonably should know that the person is~~

under 18 years of age. The bill would make a ~~second~~ *2nd* or subsequent violation of that offense a felony, punishable in a county jail for 16 months or 2 or 3 years. *The bill would also impose an additional fine in an amount not to exceed \$25,000 for a violation of these provisions.* These provisions would apply only to the person who exchanged, or offered to exchange, anything of value with the other person in return for a lewd act. By increasing the punishment for a crime, ~~this~~ *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 261.9 of the Penal Code is amended to
 2 read:

3 261.9. (a) A person who, in violation of subdivision (b) of
 4 Section 647, solicits an act of prostitution from, *agrees to engage*
 5 *in an act of prostitution with*, or engages in an act of prostitution
 6 with, ~~a another person under 18 years of age and the defendant~~
 7 *whom the person* knows or reasonably should know ~~the other~~
 8 ~~person~~ is under 18 years of age, shall be punished as follows:

9 (1) For the first conviction, either as a misdemeanor or as a
 10 felony punishable by imprisonment pursuant to subdivision (h) of
 11 Section 1170.

12 (2) For the second or subsequent conviction, as a felony
 13 punishable by imprisonment pursuant to subdivision (h) of Section
 14 1170.

15 ~~(b) Any person who, in violation of subdivision (b) of Section~~
 16 ~~647, solicits an act of prostitution from, or engages in an act of~~
 17 ~~prostitution with, a person who is under 18 years of age, shall be~~
 18 ~~ordered by the court,~~

19 (3) *The court shall*, in addition to any other penalty or fine
 20 imposed, *order the person* to pay an additional fine in an amount
 21 not to exceed twenty-five thousand dollars (\$25,000).

22 ~~(e)~~

1 (b) Every fine imposed and collected pursuant to this section
2 shall, upon appropriation by the Legislature, be available to fund
3 programs and services for commercially sexually exploited minors
4 in the counties where the underlying offenses are committed.

5 ~~(d)~~

6 (c) This section ~~applies~~ shall apply only to the person who
7 exchanged, or offered to exchange, anything of value with the
8 other person in return for a lewd act.

9 (d) *Prosecution under this section shall not prohibit prosecution*
10 *under any other provision of law.*

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

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

15 (a) Who solicits anyone to engage in or who engages in lewd
16 or dissolute conduct in a public place or in a place open to the
17 public or exposed to public view.

18 (b) Who solicits or who agrees to engage in or who engages in
19 an act of prostitution. A person agrees to engage in an act of
20 prostitution when, with specific intent to so engage, he or she
21 manifests an acceptance of an offer or solicitation to so engage,
22 regardless of whether the offer or solicitation was made by a person
23 who also possessed the specific intent to engage in prostitution.
24 An agreement to engage in an act of prostitution shall not constitute
25 a violation of this subdivision unless some act, in addition to the
26 agreement, is done within this state in furtherance of the
27 commission of an act of prostitution by the person agreeing to
28 engage in that act. As used in this subdivision, "prostitution"
29 includes any lewd act between persons for money or other
30 consideration.

31 (c) Who accosts other persons in a public place or in a place
32 open to the public for the purpose of begging or soliciting alms.

33 (d) Who loiters in or about a toilet open to the public for the
34 purpose of engaging in or soliciting a lewd or lascivious or an
35 unlawful act.

36 (e) Who lodges in a building, structure, vehicle, or place,
37 whether public or private, without the permission of the owner or
38 person entitled to the possession or in control of it.

39 (f) Who is found in a public place under the influence of
40 intoxicating liquor, a drug, controlled substance, toluene, or any

1 combination of intoxicating liquor, drug, controlled substance, or
2 toluene, in a condition that he or she is unable to exercise care for
3 his or her own safety or the safety of others, or by reason of his or
4 her being under the influence of intoxicating liquor, a drug,
5 controlled substance, toluene, or a combination of intoxicating
6 liquor, drug, or toluene, interferes with or obstructs or prevents
7 the free use of a street, sidewalk, or other public way.

8 (g) When a person has violated subdivision (f), a peace officer,
9 if he or she is reasonably able to do so, shall place the person, or
10 cause him or her to be placed, in civil protective custody. The
11 person shall be taken to a facility, designated pursuant to Section
12 5170 of the Welfare and Institutions Code, for the 72-hour
13 treatment and evaluation of inebriates. A peace officer may place
14 a person in civil protective custody with that kind and degree of
15 force that would be lawful were he or she effecting an arrest for a
16 misdemeanor without a warrant. A person who has been placed
17 in civil protective custody shall not thereafter be subject to any
18 criminal prosecution or juvenile court proceeding based on the
19 facts giving rise to this placement. This subdivision shall not apply
20 to the following persons:

21 (1) A person who is under the influence of a drug, or under the
22 combined influence of intoxicating liquor and a drug.

23 (2) A person who a peace officer has probable cause to believe
24 has committed any felony, or who has committed a misdemeanor
25 in addition to subdivision (f).

26 (3) A person who a peace officer in good faith believes will
27 attempt escape or will be unreasonably difficult for medical
28 personnel to control.

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

35 (i) Who, while loitering, prowling, or wandering upon the private
36 property of another, at any time, peeks in the door or window of
37 an inhabited building or structure, without visible or lawful
38 business with the owner or occupant.

39 (j) (1) A person who looks through a hole or opening, into, or
40 otherwise views, by means of any instrumentality, including, but

1 not limited to, a periscope, telescope, binoculars, camera, motion
2 picture camera, camcorder, or mobile phone, the interior of a
3 bedroom, bathroom, changing room, fitting room, dressing room,
4 or tanning booth, or the interior of any other area in which the
5 occupant has a reasonable expectation of privacy, with the intent
6 to invade the privacy of a person or persons inside. This subdivision
7 shall not apply to those areas of a private business used to count
8 currency or other negotiable instruments.

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

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

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

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

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

36 (4) (A) A person who photographs or records by any means
37 the image of the intimate body part or parts of another identifiable
38 person, under circumstances where the parties agree or understand
39 that the image shall remain private, and the person subsequently
40 distributes the image taken, with the intent to cause serious

1 emotional distress, and the depicted person suffers serious
2 emotional distress.

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

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

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

25 In an accusatory pleading charging a violation of subdivision
26 (b), if the defendant has been previously convicted two or more
27 times of a violation of that subdivision, each of these previous
28 convictions shall be charged in the accusatory pleading. If two or
29 more of these previous convictions are found to be true by the jury,
30 upon a jury trial, or by the court, upon a court trial, or are admitted
31 by the defendant, the defendant shall be imprisoned in a county
32 jail for a period of not less than 90 days and shall not be eligible
33 for release upon completion of sentence, on probation, on parole,
34 on work furlough or work release, or on any other basis until he
35 or she has served a period of not less than 90 days in a county jail.
36 In all cases in which probation is granted, the court shall require
37 as a condition thereof that the person be confined in a county jail
38 for at least 90 days. In no event does the court have the power to
39 absolve a person who violates this subdivision from the obligation
40 of spending at least 90 days in confinement in a county jail.

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

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

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

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

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