

**Introduced by Senators Lieu, Hill, and Mitchell
(Principal coauthor: Senator Huff)**

February 21, 2014

An act to amend Sections 266k and 647 of the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

SB 1388, as introduced, Lieu. Human trafficking.

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, by a fine not exceeding \$1,000, or by both that fine and imprisonment. Disorderly conduct includes, but is not limited to, soliciting or agreeing to engage in or engaging in any act of prostitution, and agreeing to engage in an act of prostitution when, with specific intent to so engage, the person manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution.

This bill would instead make a person who seeks to purchase or purchases a commercial sex act guilty of a misdemeanor, punishable by imprisonment in the county jail for at least 48 hours, but not more than 6 months, and by a fine of at least \$1,000, and, if probation is granted, by a fine of at least \$1,000, but not more than \$50,000, to be deposited in the Victim-Witness Assistance Fund to fund grants to local programs. The bill would also authorize the court to order a defendant who is convicted of a violation of the above offense, involving any person who was a minor at the time of the offense, to pay an additional fine of not less than \$1,000 and not more than \$10,000. This fine would

not be imposed upon a defendant who is a minor at the time of the offense. Moneys collected would be deposited into the Commercial Sexual Exploitation of Children Services Fund, which would be created in the State Treasury. These moneys would be available, upon appropriation by the Legislature, for the purpose of funding child sexual exploitation and child sexual abuse victim counseling centers and programs that fund services for child victims of human trafficking.

Existing law authorizes the court to order a person convicted of violating certain prohibitions against the prostitution of a minor to pay an additional fine not to exceed \$20,000.

This bill would require that the additional fine be not less than \$5,000.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. Section 266k of the Penal Code is amended to
2 read:

3 266k. (a) Upon the conviction of any person for a violation
4 of Section 266h or 266i, the court may, in addition to any other
5 penalty or fine imposed, order the defendant to pay an additional
6 fine not to exceed five thousand dollars (\$5,000). In setting the
7 amount of the fine, the court shall consider any relevant factors,
8 including, but not limited to, the seriousness and gravity of the
9 offense and the circumstances of its commission, whether the
10 defendant derived any economic gain as the result of the crime,
11 and the extent to which the victim suffered losses as a result of the
12 crime. Every fine imposed and collected under this section shall
13 be deposited in the Victim-Witness Assistance Fund to be available
14 for appropriation to fund child sexual exploitation and child sexual
15 abuse victim counseling centers and prevention programs under
16 Section 13837.

17 (b) Upon the conviction of any person for a violation of Section
18 266j or 267, the court may, in addition to any other penalty or fine
19 imposed, order the defendant to pay an additional fine ~~not to exceed~~
20 *of not less than five thousand dollars (\$5,000) and not more than*
21 *twenty thousand dollars (\$20,000).*

22 (c) Fifty percent of the fines collected pursuant to subdivision
23 (b) and deposited in the Victim-Witness Assistance Fund pursuant

1 to subdivision (a) shall be granted to community-based
2 organizations that serve minor victims of human trafficking.

3 (d) If the court orders a fine to be imposed pursuant to this
4 section, the actual administrative cost of collecting that fine, not
5 to exceed 2 percent of the total amount paid, may be paid into the
6 general fund of the county treasury for the use and benefit of the
7 county.

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

9 647. Except as provided in ~~subdivision~~ *subdivisions (k), (l),*
10 *and (m)*, every person who commits any of the following acts is
11 guilty of disorderly conduct, a misdemeanor:

12 (a) Who solicits anyone to engage in or who engages in lewd
13 or dissolute conduct in any public place or in any place open to
14 the public or exposed to public view.

15 ~~(b) Who solicits or who agrees to engage in or who engages in~~
16 ~~any act of prostitution. A person agrees to engage in an act of~~
17 ~~prostitution when, with specific intent to so engage, he or she~~
18 ~~manifests an acceptance of an offer or solicitation to so engage,~~
19 ~~regardless of whether the offer or solicitation was made by a person~~
20 ~~who also possessed the specific intent to engage in prostitution.~~
21 ~~No agreement to engage in an act of prostitution shall constitute~~
22 ~~a violation of this subdivision unless some act, in addition to the~~
23 ~~agreement, is done within this state in furtherance of the~~
24 ~~commission of an act of prostitution by the person agreeing to~~
25 ~~engage in that act. As used in this subdivision, "prostitution"~~
26 ~~includes any lewd act between persons for money or other~~
27 ~~consideration.~~

28 *(b) (1) Who agrees to purchase or purchases a commercial sex*
29 *act. A person agrees to purchase a commercial sex act if, with*
30 *specific intent to so purchase, he or she manifests an acceptance*
31 *of an offer or solicitation to purchase the act, regardless of whether*
32 *the offer or solicitation was made by a person who also possessed*
33 *the specific intent to engage in a commercial sex act. An agreement*
34 *to purchase a commercial sex act does not violate this paragraph*
35 *unless some act, in addition to the agreement, is done within this*
36 *state in furtherance of the commission of a commercial sex act by*
37 *the person who has agreed to purchase that act.*

38 *(2) Who agrees to perform or performs a commercial sex act.*
39 *A person agrees to perform a commercial sex act if, with specific*
40 *intent to so perform, he or she manifests an acceptance of an offer*

1 *or solicitation to perform the act, regardless of whether the offer*
2 *or solicitation was made by a person who also possessed the*
3 *specific intent to engage in a commercial sex act. An agreement*
4 *to perform a commercial sex act does not violate this paragraph*
5 *unless some act, in addition to the agreement, is done within this*
6 *state in furtherance of the commission of a commercial sex act by*
7 *the person who has agreed to perform that act.*

8 (3) *For purposes of this subdivision, “commercial sex act”*
9 *means any lewd act between persons for money or other*
10 *consideration.*

11 (c) Who accosts other persons in any public place or in any
12 place open to the public for the purpose of begging or soliciting
13 alms.

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

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

20 (f) Who is found in any public place under the influence of
21 intoxicating liquor, any drug, controlled substance, toluene, or any
22 combination of any intoxicating liquor, drug, controlled substance,
23 or toluene, in a condition that he or she is unable to exercise care
24 for his or her own safety or the safety of others, or by reason of
25 his or her being under the influence of intoxicating liquor, any
26 drug, controlled substance, toluene, or any combination of any
27 intoxicating liquor, drug, or toluene, interferes with or obstructs
28 or prevents the free use of any street, sidewalk, or other public
29 way.

30 (g) When a person has violated subdivision (f), a peace officer,
31 if he or she is reasonably able to do so, shall place the person, or
32 cause him or her to be placed, in civil protective custody. The
33 person shall be taken to a facility, designated pursuant to Section
34 5170 of the Welfare and Institutions Code, for the 72-hour
35 treatment and evaluation of inebriates. A peace officer may place
36 a person in civil protective custody with that kind and degree of
37 force ~~which~~ *that* would be lawful were he or she effecting an arrest
38 for a misdemeanor without a warrant. A person who has been
39 placed in civil protective custody shall not thereafter be subject to
40 any criminal prosecution or juvenile court proceeding based on

1 the facts giving rise to this placement. This subdivision shall not
2 apply to the following persons:

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

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

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

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

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

21 (j) (1) Any person who looks through a hole or opening, into,
22 or otherwise views, by means of any instrumentality, including,
23 but not limited to, a periscope, telescope, binoculars, camera,
24 motion picture camera, camcorder, or mobile phone, the interior
25 of a bedroom, bathroom, changing room, fitting room, dressing
26 room, or tanning booth, or the interior of any other area in which
27 the occupant has a reasonable expectation of privacy, with the
28 intent to invade the privacy of a person or persons inside. This
29 subdivision shall not apply to those areas of a private business
30 used to count currency or other negotiable instruments.

31 (2) Any person who uses a concealed camcorder, motion picture
32 camera, or photographic camera of any type, to secretly videotape,
33 film, photograph, or record by electronic means, another,
34 identifiable person under or through the clothing being worn by
35 that other person, for the purpose of viewing the body of, or the
36 undergarments worn by, that other person, without the consent or
37 knowledge of that other person, with the intent to arouse, appeal
38 to, or gratify the lust, passions, or sexual desires of that person and
39 invade the privacy of that other person, under circumstances in
40 which the other person has a reasonable expectation of privacy.

1 (3) (A) Any person who uses a concealed camcorder, motion
2 picture camera, or photographic camera of any type, to secretly
3 videotape, film, photograph, or record by electronic means, another,
4 identifiable person who may be in a state of full or partial undress,
5 for the purpose of viewing the body of, or the undergarments worn
6 by, that other person, without the consent or knowledge of that
7 other person, in the interior of a bedroom, bathroom, changing
8 room, fitting room, dressing room, or tanning booth, or the interior
9 of any other area in which that other person has a reasonable
10 expectation of privacy, with the intent to invade the privacy of that
11 other person.

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

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

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

18 (4) (A) Any person who photographs or records by any means
19 the image of the intimate body part or parts of another identifiable
20 person, under circumstances where the parties agree or understand
21 that the image shall remain private, and the person subsequently
22 distributes the image taken, with the intent to cause serious
23 emotional distress, and the depicted person suffers serious
24 emotional distress.

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

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

31 *(k) (1) (A) A person convicted of a violation of paragraph (1)*
32 *of subdivision (b) is guilty of a misdemeanor punishable by*
33 *imprisonment in the county jail for not less than 48 hours of*
34 *continuous confinement, nor more than six months, and by a fine*
35 *of one thousand dollars (\$1,000). In all cases in which probation*
36 *is granted, the court shall require as a condition thereof that the*
37 *person be confined in a county jail for at least 48 hours of*
38 *continuous confinement and pay a fine of at least one thousand*
39 *dollars (\$1,000), but not more than fifty thousand dollars*
40 *(\$50,000). A court shall not waive the requirement that a person*

1 *who violates paragraph (1) of subdivision (b) shall be confined*
2 *for at least 48 continuous hours in a county jail.*

3 *(B) Each fine imposed and collected pursuant to this paragraph*
4 *shall be deposited in the Victim-Witness Assistance Fund to fund*
5 *grants to local programs. Fifty percent of the fines collected and*
6 *deposited shall be granted to public agencies and nonprofit*
7 *corporations that provide exit or recovery programs for individuals*
8 *exploited through commercial sex. Fifty percent of the fines*
9 *collected and deposited shall be granted to law enforcement and*
10 *prosecution agencies in the jurisdiction in which the charges were*
11 *filed to fund programs to prevent sex purchasing.*

12 ~~(k)~~

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

29 ~~h~~

30 (B) In any accusatory pleading charging a violation of
31 subdivision (b), if the defendant has been previously convicted
32 two or more times of a violation of that subdivision, each of these
33 previous convictions shall be charged in the accusatory pleading.
34 If two or more of these previous convictions are found to be true
35 by the jury, upon a jury trial, or by the court, upon a court trial, or
36 are admitted by the defendant, the defendant shall be imprisoned
37 in a county jail for a period of not less than 90 days and shall not
38 be eligible for release upon completion of sentence, on probation,
39 on parole, on work furlough or work release, or on any other basis
40 until he or she has served a period of not less than 90 days in a

1 county jail. In all cases in which probation is granted, the court
 2 shall require as a condition thereof that the person be confined in
 3 a county jail for at least 90 days. In no event does the court have
 4 the power to absolve a person who violates this ~~subdivision~~
 5 *subparagraph* from the obligation of spending at least 90 days in
 6 confinement in a county jail.

7 ~~It~~

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

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

24 (2) *If the victim of a violation of subdivision (j) was a minor at*
 25 *the time of the offense, the violation is punishable by imprisonment*
 26 *in a county jail not exceeding one year, or by a fine not exceeding*
 27 *two thousand dollars (\$2,000), or by both that fine and*
 28 *imprisonment.*

29 (m) (1) *The court may order a defendant who is convicted of*
 30 *a violation of subdivision (b) involving any person who was a*
 31 *minor at the time of the offense, to pay, in addition to any other*
 32 *penalty or fine imposed, a fine of not less than one thousand dollars*
 33 *(\$1,000) and not more than ten thousand dollars (\$10,000). This*
 34 *subdivision does not apply to a defendant who was a minor at the*
 35 *time of the offense.*

36 (2) *Moneys collected pursuant to this subdivision shall be*
 37 *deposited in the Commercial Sexual Exploitation of Children*
 38 *Services Fund, which is hereby created in the State Treasury, to*
 39 *be administered by _____. Moneys deposited in this fund are*
 40 *available, upon appropriation by the Legislature, to fund child*

1 *sexual exploitation and child sexual abuse victim counseling*
2 *centers as described in Section 13837 and programs that fund*
3 *services for child victims of human trafficking as defined in Section*
4 *236.1 in the county in which the fine was collected.*

5 *(3) If the court orders a fine to be imposed pursuant to this*
6 *subdivision, the actual administrative costs of collecting that fine,*
7 *not to exceed 2 percent of the total amount paid, may be paid into*
8 *the general fund of the county treasury for the use and benefit of*
9 *the county.*

O