

AMENDED IN ASSEMBLY JULY 2, 2014

AMENDED IN SENATE MAY 20, 2014

AMENDED IN SENATE MAY 14, 2014

SENATE BILL

No. 1388

Introduced by Senators Lieu, Hill, and Mitchell

(Principal coauthor: Senator Huff)

(Coauthors: Assembly Members Cooley, Eggman, and Olsen)

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 amended, 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 a 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 a 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.

This bill would provide that if that crime is committed and the person who was solicited was a minor at the time of the offense, and if the defendant knew or should have known that the person who was solicited was a minor at the time of the offense, the violation is punishable by imprisonment in a county jail for not less than 2 days, except as specified, and not more than one year, or by a fine not exceeding \$10,000, or by both that fine and imprisonment.

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.~~ not exceed \$25,000.

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

1 (b) Upon the conviction of any person for a violation of Section
2 266j or 267, the court may, in addition to any other penalty or fine
3 imposed, order the defendant to pay an additional fine not to exceed
4 ~~twenty~~ *twenty-five* thousand dollars ~~(\$20,000)~~. (*\$25,000*).

5 (c) Fifty percent of the fines collected pursuant to subdivision
6 (b) and deposited in the Victim-Witness Assistance Fund pursuant
7 to subdivision (a) shall be granted to community-based
8 organizations that serve minor victims of human trafficking.

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

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

15 647. Except as provided in subdivision (I), every person who
16 commits any of the following acts is guilty of disorderly conduct,
17 a misdemeanor:

18 (a) Who solicits anyone to engage in or who engages in lewd
19 or dissolute conduct in any public place or in any place open to
20 the public or exposed to public view.

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

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

37 (d) Who loiters in or about any toilet open to the public for the
38 purpose of engaging in or soliciting any lewd or lascivious or any
39 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~~ “*intimate body*
10 *part*” means any portion of the genitals, and in the case of a female,
11 also includes any portion of the breasts below the top of the areola,
12 that is either uncovered or visible through less than fully opaque
13 clothing.

14 (C) ~~Nothing in this~~ *This subdivision precludes shall not preclude*
15 punishment under any section of law providing for greater
16 punishment.

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

33 In any accusatory pleading charging a violation of subdivision
34 (b), if the defendant has been previously convicted two or more
35 times of a violation of that subdivision, each of these previous
36 convictions shall be charged in the accusatory pleading. If two or
37 more of these previous convictions are found to be true by the jury,
38 upon a jury trial, or by the court, upon a court trial, or are admitted
39 by the defendant, the defendant shall be imprisoned in a county
40 jail for a period of not less than 90 days and shall not be eligible

1 for release upon completion of sentence, on probation, on parole,
2 on work furlough or work release, or on any other basis until he
3 or she has served a period of not less than 90 days in a county jail.
4 In all cases in which probation is granted, the court shall require
5 as a condition thereof that the person be confined in a county jail
6 for at least 90 days. In no event does the court have the power to
7 absolve a person who violates this subdivision from the obligation
8 of spending at least 90 days in confinement in a county jail.

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

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

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

30 (m) (1) *If a crime is committed in violation of subdivision (b)*
31 *and the person who was solicited was a minor at the time of the*
32 *offense, and if the defendant knew or should have known that the*
33 *person who was solicited was a minor at the time of the offense,*
34 *the violation is punishable by imprisonment in a county jail for*
35 *not less than two days and not more than one year, or by a fine*
36 *not exceeding ten thousand dollars (\$10,000), or by both that fine*
37 *and imprisonment.*

38 (2) *The court may, in unusual cases, when the interests of justice*
39 *are best serviced, reduce or eliminate the mandatory two days of*
40 *imprisonment in a county jail required by this subdivision. If the*

1 *court reduces or eliminates the mandatory two days' imprisonment,*
2 *the court shall specify the reason on the record.*

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Senate May 20, 2014. (JR11)**

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