

AMENDED IN ASSEMBLY APRIL 20, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1491

Introduced by Assembly Member O'Donnell

February 27, 2015

An act to amend Section 653.23 of the Penal Code, relating to prostitution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1491, as amended, O'Donnell. Prostitution.

Existing law provides that a person who directs, supervises, recruits, or otherwise aids another person in the commission of an act of prostitution, or who collects or receives all or part of the proceeds earned from an act of prostitution committed by another person, is guilty of 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. Existing law specifies certain circumstances that may be used to determine if a person has committed the offense, including repeatedly speaking or communicating with another person, or repeatedly or continuously monitoring or watching another person, who is loitering in a public place with the intent to commit prostitution.

This bill would provide additional circumstances that may be used to determine if a person has committed that offense—~~also include,~~ *including*, but ~~are~~ not limited to, repeatedly speaking or communicating with, or repeatedly or continuously monitoring or watching, another person who solicits or agrees to engage in any act of prostitution. ~~The bill would also provide that a person who commits that offense in~~

~~association with, for the benefit of, or at the direction of, a criminal street gang, is guilty of a misdemeanor or a felony, punishable by imprisonment in a county jail not to exceed one year, or by imprisonment in a state prison for one, 2, or 3 years, as specified. By changing the definition of, and punishment for, an existing crime, this bill would impose a state-mandated local program.~~

Existing law, amended by Proposition 21, an initiative measure enacted by voters at the March 7, 2000, statewide primary election, defines a criminal street gang, and makes a person who actively participates in a criminal street gang, and who promotes, furthers, or assists in criminal conduct of that gang subject to specified penalties. The initiative statute makes any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of, or in association with, any criminal street gang with the specific intent to promote, further, or assist in any criminal conduct by gang members, punishable by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison for one, 2 or 3 years, provided that any person sentenced to imprisonment in the county jail is to be imprisoned for a period not to exceed one year, but not less than 180 days, and is not eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. The initiative statute also provides that if the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in county jail.

This bill would amend that initiative statute by making a person who is guilty of supervising a prostitute while being an active participant in a criminal street gang, punishable by imprisonment in a county jail not to exceed one year, or imprisonment in the state prison or a county jail, or by a fine not to exceed \$1,000, or by both that fine and imprisonment. By changing the punishment for a crime, this bill would impose a state-mandated local program. The bill would require a person who is guilty of supervising a prostitute while being an active participant in a criminal street gang to register as a gang member.

By amending the scope and effect of penalties for crimes subject to the penalty provisions of Proposition 21, this bill would require a 2/3 vote of the Legislature.

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~~^{2/3}. 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 653.23 of the Penal Code is amended to
2 read:

3 653.23. (a) It is unlawful for any person to do either of the
4 following:

5 (1) Direct, supervise, recruit, or otherwise aid another person
6 in the commission of a violation of subdivision (b) of Section 647
7 or subdivision (a) of Section 653.22.

8 (2) Collect or receive all or part of the proceeds earned from an
9 act or acts of prostitution committed by another person in violation
10 of subdivision (b) of Section 647.

11 (b) Among the circumstances that may be considered in
12 determining whether a person is in violation of subdivision (a) are
13 that the person does the following:

14 (1) Repeatedly speaks or communicates with another person
15 who is acting in violation of subdivision (b) of Section 647 or
16 subdivision (a) of Section 653.22.

17 (2) Repeatedly or continuously monitors or watches another
18 person who is acting in violation of subdivision (b) of Section 647
19 or subdivision (a) of Section 653.22.

20 (3) Repeatedly engages or attempts to engage in conversation
21 with pedestrians or motorists to solicit, arrange, or facilitate an act
22 of prostitution between the pedestrians or motorists and another
23 person who is acting in violation of subdivision (a) of Section
24 653.22.

25 (4) Repeatedly stops or attempts to stop pedestrians or motorists
26 to solicit, arrange, or facilitate an act of prostitution between
27 pedestrians or motorists and another person who is acting in
28 violation of subdivision (a) of Section 653.22.

29 (5) Circles an area in a motor vehicle and repeatedly beckons
30 to, contacts, or attempts to contact or stop pedestrians or other
31 motorists to solicit, arrange, or facilitate an act of prostitution
32 between the pedestrians or motorists and another person who is
33 acting in violation of subdivision (a) of Section 653.22.

1 (6) Receives or appears to receive money from another person
2 who is acting in violation of subdivision (b) of Section 647 or
3 subdivision (a) of Section 653.22.

4 (7) Engages in any of the behavior described in paragraphs (1)
5 to (6), inclusive, in regard to, or on behalf of, two or more persons
6 who are in violation of subdivision (a) of Section 653.22.

7 (8) Has been convicted of violating this section, subdivision (a)
8 or (b) of Section 647, subdivision (a) of Section 653.22, Section
9 266h, or 266i, or any other offense relating to or involving
10 prostitution within five years of the arrest under this section.

11 (9) Has engaged, within six months prior to the arrest under
12 subdivision (a), in any behavior described in this subdivision, with
13 the exception of paragraph (8), or in any other behavior indicative
14 of prostitution activity.

15 (c) The list of circumstances set forth in subdivision (b) is not
16 exclusive. The circumstances set forth in subdivision (b) should
17 be considered particularly salient if they occur in an area that is
18 known for prostitution activity. Any other relevant circumstances
19 may be considered. Moreover, no one circumstance or combination
20 of circumstances is in itself determinative. A violation of
21 subdivision (a) shall be determined based on an evaluation of the
22 particular circumstances of each case.

23 (d) Nothing in this section shall preclude the prosecution of a
24 suspect for a violation of Section 266h or 266i or for any other
25 offense, or for a violation of this section in conjunction with a
26 violation of Section 266h or 266i or any other offense.

27 ~~(e) A violation of subdivision (a) committed for the benefit of,~~
28 ~~at the direction of, or in association with, a criminal street gang,~~
29 ~~as defined in subdivision (f) of Section 186.22, with the specific~~
30 ~~intent to promote, further, or assist in any criminal conduct by~~
31 ~~gang members, is a misdemeanor or a felony, and is punishable~~
32 ~~pursuant to subdivision (d) of Section 186.22.~~

33 *(e) If a person is guilty of supervising a prostitute while being*
34 *an active participant in a criminal street gang, as defined in*
35 *subdivision (f) of Section 186.22, a violation of subdivision (a)*
36 *shall be punished by imprisonment in a county jail not to exceed*
37 *one year, or imprisonment pursuant to subdivision (h) of Section*
38 *1170, or by a fine not to exceed one thousand dollars (\$1,000), or*
39 *by both that fine and imprisonment. A person who is guilty of*
40 *supervising a prostitute while being an active participant in a*

1 *criminal street gang shall register as a gang member pursuant to*
2 *Section 186.30.*

3 SEC. 2. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.