

AMENDED IN SENATE AUGUST 15, 2016
AMENDED IN SENATE JUNE 28, 2016
AMENDED IN SENATE JUNE 15, 2016
AMENDED IN ASSEMBLY MAY 5, 2016
AMENDED IN ASSEMBLY APRIL 13, 2016
AMENDED IN ASSEMBLY MARCH 15, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1708

Introduced by Assembly Member Gonzalez
(Coauthor: Senator Anderson)

January 25, 2016

An act to amend Section 647 of the Penal Code, relating to disorderly conduct.

LEGISLATIVE COUNSEL'S DIGEST

AB 1708, as amended, Gonzalez. Disorderly conduct: prostitution.
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 or by a fine not exceeding \$1,000, or by both that fine and imprisonment. Existing law also imposes increased minimum terms of imprisonment for a violation of that provision if a person has previously been convicted of soliciting or agreeing to engage in or engaging in any act of prostitution. Existing law defines "prostitution" to include any lewd act between persons for money or other consideration. Existing law additionally makes prostitution involving

soliciting a minor punishable by imprisonment of not less than 2 days and not more than one year and a fine not exceeding \$10,000. Existing law allows a court to, when the interests of justice are best served, reduce or eliminate the mandatory 2 days in the county jail.

~~This bill would recast the provisions regarding prostitution to distinguish between a person who commits prostitution with intent to receive compensation, in exchange for providing compensation to a person who is 18 years of age or older, or in exchange for providing compensation to a minor. The bill would require a conviction either upon proof of the intent to receive compensation, money, or anything of value and with the specific intent to engage in an act of prostitution, or upon the individual providing compensation, money, or anything of value to the other person. The bill would require a person who commits prostitution by providing money or other consideration to serve at least 72 continuous hours in the county jail, to be served on days other than days of regular employment of the person, as specified. In all cases in which probation is granted, the bill would also require as a condition of probation that the person be confined in a county jail for at least 24 hours. The bill would expand the scope of prostitution by soliciting a minor to include a situation where the person who was solicited is posing as a minor and the person engaged in the solicitation had specific intent to solicit a minor. The bill would provide that the provisions involving soliciting a minor apply only to persons who commit prostitution by providing money or other consideration. The bill would require a person who commits prostitution by soliciting a minor to serve a period of at least 72 continuous hours in the county jail, to be served on days other than days of regular employment of the person, as specified, and would prohibit the court from eliminating the mandatory minimum sentence. In all cases in which probation is granted, the bill would also require as a condition of probation that the person be confined in a county jail for at least 48 hours. The bill would additionally make a person who commits prostitution by providing money or other consideration punishable by a minimum fine of \$1,000. The bill would require a portion of those fines, as specified, to be used by the county where the offense occurred for services for victims of human trafficking. The bill would clarify that nothing in these provisions shall preclude prosecution under any other provision of law. By revising the scope of a crime, the bill would impose a state-mandated local program.~~

This bill would recast these provisions to distinguish between the different individuals who are guilty of disorderly conduct by soliciting,

agreeing to engage in, or engaging in, any act of prostitution based on whether the person is soliciting or agreeing to receive compensation, money, or anything of value for an act of prostitution, as specified, or the person is soliciting or agreeing to provide compensation, money, or anything of value for an act of prostitution with a minor or with an adult, as specified. The bill would provide that committing disorderly conduct by soliciting or agreeing to provide compensation is punishable by a fine of not less than \$250 but not exceeding \$1,000, and imprisonment in a county jail for not less than 72 hours, or if probation is granted, not less than 48 hours, as specified, and not exceeding 6 months. The bill would provide that committing disorderly conduct by soliciting or agreeing to provide compensation when the defendant knew or should have known that the person solicited was a minor or the person was posing as a minor, is punishable by a fine of not less than \$1,000 but not exceeding \$10,000, and imprisonment in a county jail for not less than 72 hours, or if probation is granted, not less than 48 hours, as specified, and not exceeding one year. By imposing those mandatory terms of incarceration, 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.

The 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 647 of the Penal Code is amended to
- 2 read:
- 3 647. Except as provided in subdivision (I), a person who
- 4 commits any of the following acts is guilty of disorderly conduct,
- 5 a misdemeanor:
- 6 (a) An individual who solicits anyone to engage in or who
- 7 engages in lewd or dissolute conduct in any public place or in any
- 8 place open to the public or exposed to public view.
- 9 (b) (1) An individual who solicits, or who agrees to engage in,
- 10 or who engages in, any act of prostitution with the intent to receive
- 11 compensation, money, or anything of value, and with the specific

1 ~~intent to so engage.~~ *value from the other person. An individual*
2 *agrees to engage in an act of prostitution when, with specific intent*
3 *to so engage, he or she manifests an acceptance of an offer or*
4 *solicitation by another person to so engage, regardless of whether*
5 *the offer or solicitation was made by a person who also possessed*
6 *the specific intent to engage in an act of prostitution.*

7 (2) An individual who solicits, or who agrees to engage in, or
8 who engages in, any act of prostitution with another person who
9 is 18 years of age or older in exchange for the individual providing
10 compensation, money, or anything of value to the other person.
11 An individual agrees to engage in an act of prostitution when, with
12 specific intent to so engage, he or she manifests an acceptance of
13 an offer or solicitation by another person who is 18 years of age
14 or older to so engage, regardless of whether the offer or solicitation
15 was made by a person who also possessed the specific intent to
16 engage in an act of prostitution.

17 (3) An individual who solicits, or who agrees to engage in, or
18 who engages in, any act of prostitution with another person who
19 is a minor in exchange for the individual providing compensation,
20 money, or anything of value to the minor. An individual agrees to
21 engage in an act of prostitution when, with specific intent to so
22 engage, he or she manifests an acceptance of an offer or solicitation
23 by someone who is a minor to so engage, regardless of whether
24 the offer or solicitation was made by a minor who also possessed
25 the specific intent to engage in an act of prostitution.

26 (4) A manifestation of acceptance of an offer or solicitation to
27 engage in an act of prostitution shall not constitute a violation of
28 this subdivision unless some act, in addition to the manifestation
29 of acceptance, is done within this state in furtherance of the
30 commission of the act of prostitution by the person manifesting
31 an acceptance of an offer or solicitation to engage in that act. As
32 used in this subdivision, “prostitution” includes any lewd act
33 between persons for money or other consideration.

34 (5) Except as provided in paragraph (6) and subdivision (k), a
35 violation of paragraph (2) or (3) is punishable by imprisonment in
36 a county jail for not less than 72 hours and not more than six
37 months and by a fine of not less than two hundred fifty dollars
38 (\$250) but not exceeding one thousand dollars (\$1,000). ~~An amount~~
39 ~~of two hundred fifty dollars (\$250) of the fine shall be deposited~~
40 ~~in the treasury of the county in which the offense occurred and~~

1 ~~used by the county to fund services for victims of human~~
2 ~~trafficking.~~ Upon a violation of paragraph (2) or (3), a person is
3 not eligible for release upon completion of sentence, on probation,
4 on parole, on work furlough or work release, or on any other basis
5 until he or she has served a period of not less than 24 continuous
6 hours in a county jail. In all cases in which probation is granted,
7 the court shall require as a condition of probation that the person
8 be confined in a county jail for at least 24 hours. The court shall
9 order that a person punished under this ~~subdivision,~~ *paragraph,*
10 who is to be punished by imprisonment in the county jail, be
11 imprisoned on days other than days of regular employment of the
12 person, as determined by the court. If the court determines that 24
13 hours of continuous imprisonment would interfere with the person's
14 work schedule, the court shall allow the person to serve the
15 imprisonment whenever the person is normally scheduled for time
16 off from work. The court may make this determination based upon
17 a representation from the defendant's attorney or upon an affidavit
18 or testimony from the defendant.

19 (6) If a defendant violates paragraph (3) and knew or should
20 have known that the person who was solicited was a minor at the
21 time of the offense, or if a defendant violates paragraph (2) and
22 the person who was solicited was a person posing as a minor and
23 the defendant had specific intent to solicit a minor, the violation
24 is punishable by imprisonment in a county jail for not less than 72
25 hours and not more than one year and by a fine not less than one
26 thousand dollars (\$1,000) but not exceeding ten thousand dollars
27 (\$10,000). ~~The fine imposed shall be deposited in the treasury of~~
28 ~~the county in which the offense occurred and used by the county~~
29 ~~to fund services for victims of human trafficking.~~ Upon a violation
30 of this paragraph, a person is not eligible for release upon
31 completion of sentence, on probation, on parole, on work furlough
32 or work release, or on any other basis until he or she has served a
33 period of not less than 48 continuous hours in a county jail. In all
34 cases in which probation is granted, the court shall require as a
35 condition of probation that the person be confined in a county jail
36 for at least 48 hours. The court shall order that a person punished
37 under this paragraph, who is to be punished by imprisonment in
38 the county jail, be imprisoned on days other than days of regular
39 employment of the person, as determined by the court. If the court
40 determines that 48 hours of continuous imprisonment would

1 interfere with the person's work schedule, the court shall allow
2 the person to serve the imprisonment whenever the person is
3 normally scheduled for time off from work. The court may make
4 this determination based upon a representation from the defendant's
5 attorney or upon an affidavit or testimony from the defendant.

6 (7) This subdivision does not prohibit prosecution under any
7 other law.

8 (c) Who accosts other persons in any public place or in any
9 place open to the public for the purpose of begging or soliciting
10 alms.

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

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

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

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

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

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

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

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

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

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

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

39 (3) (A) Any person who uses a concealed camcorder, motion
40 picture camera, or photographic camera of any type, to secretly

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

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

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

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

16 (4) (A) Any person who intentionally distributes the image of
17 the intimate body part or parts of another identifiable person, or
18 an image of the person depicted engaged in an act of sexual
19 intercourse, sodomy, oral copulation, sexual penetration, or an
20 image of masturbation by the person depicted or in which the
21 person depicted participates, under circumstances in which the
22 persons agree or understand that the image shall remain private,
23 the person distributing the image knows or should know that
24 distribution of the image will cause serious emotional distress, and
25 the person depicted suffers that distress.

26 (B) A person intentionally distributes an image described in
27 subparagraph (A) when he or she personally distributes the image,
28 or arranges, specifically requests, or intentionally causes another
29 person to distribute that image.

30 (C) As used in this paragraph, “intimate body part” means any
31 portion of the genitals, the anus and in the case of a female, also
32 includes any portion of the breasts below the top of the areola, that
33 is either uncovered or clearly visible through clothing.

34 (D) It shall not be a violation of this paragraph to distribute an
35 image described in subparagraph (A) if any of the following
36 applies:

37 (i) The distribution is made in the course of reporting an
38 unlawful activity.

39 (ii) The distribution is made in compliance with a subpoena or
40 other court order for use in a legal proceeding.

1 (iii) The distribution is made in the course of a lawful public
2 proceeding.

3 (5) This subdivision shall not preclude punishment under any
4 section of law providing for greater punishment.

5 (k) In any accusatory pleading charging a violation of
6 subdivision (b), if the defendant has been once previously convicted
7 of a violation of that subdivision, the previous conviction shall be
8 charged in the accusatory pleading. If the previous conviction is
9 found to be true by the jury, upon a jury trial, or by the court, upon
10 a court trial, or is admitted by the defendant, the defendant shall
11 be imprisoned in a county jail for a period of not less than 45 days
12 and is not eligible for release upon completion of sentence, on
13 probation, on parole, on work furlough or work release, or on any
14 other basis until he or she has served a period of not less than 45
15 days in a county jail. In all cases in which probation is granted,
16 the court shall require as a condition thereof that the person be
17 confined in a county jail for at least 45 days. The court shall not
18 absolve a person who violates this subdivision from the obligation
19 of spending at least 45 days in confinement in a county jail.

20 In any accusatory pleading charging a violation of subdivision
21 (b), if the defendant has been previously convicted two or more
22 times of a violation of that subdivision, each of these previous
23 convictions shall be charged in the accusatory pleading. If two or
24 more of these previous convictions are found to be true by the jury,
25 upon a jury trial, or by the court, upon a court trial, or are admitted
26 by the defendant, the defendant shall be imprisoned in a county
27 jail for a period of not less than 90 days and is not eligible for
28 release upon completion of sentence, on probation, on parole, on
29 work furlough or work release, or on any other basis until he or
30 she has served a period of not less than 90 days in a county jail.
31 In all cases in which probation is granted, the court shall require
32 as a condition thereof that the person be confined in a county jail
33 for at least 90 days. The court shall not have the power to absolve
34 a person who violates this subdivision from the obligation of
35 spending at least 90 days in confinement in a county jail.

36 In addition to any punishment prescribed by this section, a court
37 may suspend, for not more than 30 days, the privilege of the person
38 to operate a motor vehicle pursuant to Section 13201.5 of the
39 Vehicle Code for any violation of subdivision (b) that was
40 committed within 1,000 feet of a private residence and with the

1 use of a vehicle. In lieu of the suspension, the court may order a
2 person’s privilege to operate a motor vehicle restricted, for not
3 more than six months, to necessary travel to and from the person’s
4 place of employment or education. If driving a motor vehicle is
5 necessary to perform the duties of the person’s employment, the
6 court may also allow the person to drive in that person’s scope of
7 employment.

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

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

17 SEC. 2. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.