

**ASSEMBLY BILL**

**No. 1771**

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**Introduced by Assembly Member O'Donnell**

February 3, 2016

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An act to amend Sections 653.23 and 653.26 of the Penal Code, relating to prostitution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1771, as introduced, O'Donnell. Prostitution.

Existing law makes 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, guilty of a misdemeanor that is punishable by imprisonment in a county jail for no more than 6 months, by a fine not exceeding \$1,000, or by both that imprisonment and fine. Existing law specifies 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 establish additional circumstances that may be used to determine if a person has committed that offense, including, but 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, or being convicted of a specified criminal offense within 5 years of the arrest and being an active participant in a criminal street gang, as defined.

The bill would also increase the punishment for 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, to a misdemeanor punishable by imprisonment in a county jail for no more than one year, by a fine not exceeding \$1,000, or by both that imprisonment and fine.

By increasing the term in a county jail from no more than 6 months to no more than one year, 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.

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 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

1 person who is acting in violation of subdivision (a) of Section  
2 653.22.

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

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

12 (6) Receives or appears to receive money from another person  
13 who is acting in violation of *subdivision (b) of Section 647 or*  
14 *subdivision (a) of Section 653.22.*

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

18 (8) Has been convicted of violating this section, subdivision (a)  
19 or (b) of Section 647, subdivision (a) of Section 653.22, Section  
20 236.1, 266h, or 266i, or any other offense relating to or involving  
21 prostitution within five years of the arrest under this section.

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

26 (10) *Has been convicted of a criminal offense described in*  
27 *subdivision (e) of Section 186.22 under the California Street*  
28 *Terrorism Enforcement and Prevention Act (Chapter 11*  
29 *(commencing with Section 186.20) of Title 7 of Part 1) within five*  
30 *years of the arrest under subdivision (a), and is an active*  
31 *participant in a criminal street gang as defined in subdivision (f)*  
32 *of Section 186.22.*

33 (c) The list of circumstances set forth in subdivision (b) is not  
34 exclusive. The circumstances set forth in subdivision (b) should  
35 be considered particularly salient if they occur in an area that is  
36 known for prostitution activity. Any other relevant circumstances  
37 may be considered. Moreover, no one circumstance or combination  
38 of circumstances is in itself determinative. A violation of  
39 subdivision (a) shall be determined based on an evaluation of the  
40 particular circumstances of each case.

1 (d) ~~Nothing in this~~ *This section shall does not* preclude the  
2 prosecution of a suspect for a violation of Section ~~266h or 266i~~  
3 *236.1, 266h, or 266i*, or for any other offense, or for a violation  
4 of this section in conjunction with a violation of Section ~~266h or~~  
5 *266i 236.1, 266h, or 266i*, or any other offense.

6 SEC. 2. Section 653.26 of the Penal Code is amended to read:

7 653.26. A violation of any provision of this chapter is a  
8 ~~misdemeanor~~. *misdemeanor punishable by imprisonment in a*  
9 *county jail not to exceed one year, by a fine not to exceed one*  
10 *thousand dollars (\$1,000), or by both that imprisonment and fine.*

11 SEC. 3. No reimbursement is required by this act pursuant to  
12 Section 6 of Article XIII B of the California Constitution because  
13 the only costs that may be incurred by a local agency or school  
14 district will be incurred because this act creates a new crime or  
15 infraction, eliminates a crime or infraction, or changes the penalty  
16 for a crime or infraction, within the meaning of Section 17556 of  
17 the Government Code, or changes the definition of a crime within  
18 the meaning of Section 6 of Article XIII B of the California  
19 Constitution.