

AMENDED IN ASSEMBLY MARCH 29, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**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 653.22 and 653.23 of, and repeal Section 653.26 of, the Penal Code, relating to prostitution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1771, as amended, 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. *prostitution.*

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. *The bill would make additional conforming changes.*

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 653.22 of the Penal Code is amended to  
2 read:

3 653.22. (a) It is unlawful for any person to loiter in any public  
4 place with the intent to commit prostitution. This intent is  
5 evidenced by acting in a manner and under circumstances which  
6 openly demonstrate the purpose of inducing, enticing, or soliciting  
7 prostitution, or procuring another to commit prostitution.

8 (b) Among the circumstances that may be considered in  
9 determining whether a person loiters with the intent to commit  
10 prostitution are that the person:

11 (1) Repeatedly beckons to, stops, engages in conversations with,  
12 or attempts to stop or engage in conversations with passersby,  
13 indicative of soliciting for prostitution.

14 (2) Repeatedly stops or attempts to stop motor vehicles by  
15 hailing the drivers, waving arms, or making any other bodily  
16 gestures, or engages or attempts to engage the drivers or passengers  
17 of the motor vehicles in conversation, indicative of soliciting for  
18 prostitution.

1 (3) Has been convicted of violating this section, subdivision (a)  
2 or (b) of Section 647, or any other offense relating to or involving  
3 prostitution, within five years of the arrest under this section.

4 (4) Circles an area in a motor vehicle and repeatedly beckons  
5 to, contacts, or attempts to contact or stop pedestrians or other  
6 motorists, indicative of soliciting for prostitution.

7 (5) Has engaged, within six months prior to the arrest under this  
8 section, in any behavior described in this subdivision, with the  
9 exception of paragraph (3), or in any other behavior indicative of  
10 prostitution activity.

11 (c) The list of circumstances set forth in subdivision (b) is not  
12 exclusive. The circumstances set forth in subdivision (b) should  
13 be considered particularly salient if they occur in an area that is  
14 known for prostitution activity. Any other relevant circumstances  
15 may be considered in determining whether a person has the  
16 requisite intent. Moreover, no one circumstance or combination  
17 of circumstances is in itself determinative of intent. Intent must  
18 be determined based on an evaluation of the particular  
19 circumstances of each case.

20 *(d) A violation of this section is a misdemeanor.*

21 **SECTION 1.**

22 *SEC. 2.* Section 653.23 of the Penal Code is amended to read:

23 653.23. (a) It is unlawful for any person to do either of the  
24 following:

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

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

31 (b) Among the circumstances that may be considered in  
32 determining whether a person is in violation of subdivision (a) are  
33 that the person does the following:

34 (1) Repeatedly speaks or communicates with another person  
35 who is acting in violation of subdivision (b) of Section 647 or  
36 subdivision (a) of Section 653.22.

37 (2) Repeatedly or continuously monitors or watches another  
38 person who is acting in violation of subdivision (b) of Section 647  
39 or subdivision (a) of Section 653.22.

1 (3) Repeatedly engages or attempts to engage in conversation  
2 with pedestrians or motorists to solicit, arrange, or facilitate an act  
3 of prostitution between the pedestrians or motorists and another  
4 person who is acting in violation of subdivision (a) of Section  
5 653.22.

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

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

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

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

21 (8) Has been convicted of violating this section, subdivision (a)  
22 or (b) of Section 647, subdivision (a) of Section 653.22, Section  
23 236.1, 266h, or 266i, or any other offense relating to or involving  
24 prostitution within five years of the arrest under this section.

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

29 ~~(10) Has been convicted of a criminal offense described in~~  
30 ~~subdivision (e) of Section 186.22 under the California Street~~  
31 ~~Terrorism Enforcement and Prevention Act (Chapter 11~~  
32 ~~(commencing with Section 186.20) of Title 7 of Part 1) within five~~  
33 ~~years of the arrest under subdivision (a), and is an active participant~~  
34 ~~in a criminal street gang as defined in subdivision (f) of Section~~  
35 ~~186.22.~~

36 (c) The list of circumstances set forth in subdivision (b) is not  
37 exclusive. The circumstances set forth in subdivision (b) should  
38 be considered particularly salient if they occur in an area that is  
39 known for prostitution activity. Any other relevant circumstances  
40 may be considered. Moreover, no one circumstance or combination

1 of circumstances is in itself determinative. A violation of  
2 subdivision (a) shall be determined based on an evaluation of the  
3 particular circumstances of each case.

4 (d) This section does not preclude the prosecution of a suspect  
5 for a violation of Section 236.1, 266h, or 266i, or for any other  
6 offense, or for a violation of this section in conjunction with a  
7 violation of Section 236.1, 266h, or 266i, or any other offense.

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

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

13 ~~653.26. A violation of any provision of this chapter is a~~  
14 ~~misdemeanor punishable by imprisonment in a county jail not to~~  
15 ~~exceed one year, by a fine not to exceed one thousand dollars~~  
16 ~~(\$1,000), or by both that imprisonment and fine.~~

17 *SEC. 3. Section 653.26 of the Penal Code is repealed.*

18 ~~653.26. A violation of any provision of this chapter is a~~  
19 ~~misdemeanor.~~

20 ~~SEC. 3.~~

21 *SEC. 4. No reimbursement is required by this act pursuant to*  
22 *Section 6 of Article XIII B of the California Constitution because*  
23 *the only costs that may be incurred by a local agency or school*  
24 *district will be incurred because this act creates a new crime or*  
25 *infraction, eliminates a crime or infraction, or changes the penalty*  
26 *for a crime or infraction, within the meaning of Section 17556 of*  
27 *the Government Code, or changes the definition of a crime within*  
28 *the meaning of Section 6 of Article XIII B of the California*  
29 *Constitution.*