

ASSEMBLY BILL

No. 2186

Introduced by Assembly Member Grove

February 18, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2186, as introduced, Grove. Disorderly conduct.

Existing law makes it a misdemeanor to commit certain acts of disorderly conduct, relating to, among other things, prostitution, loitering, obstruction of the free use of a public way as a result of being under the influence of certain substances, and invasion of privacy by means of an instrumentality, as specified.

This bill would make technical, nonsubstantive changes to some of those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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 (l), ~~every~~ a person who
4 commits any of the following acts is guilty of disorderly conduct,
5 a misdemeanor:
6 (a) Who solicits anyone to engage in or who engages in lewd
7 or dissolute conduct in any public place or in any place open to
8 the public or exposed to public view.

(b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she 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. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

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

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

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

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

(g) When a person has violated subdivision (f), a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody. The person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force ~~which~~ *that* would be lawful were he or she effecting an arrest

1 for a misdemeanor without a warrant. A person who has been
2 placed in civil protective custody shall not thereafter be subject to
3 any criminal prosecution or juvenile court proceeding based on
4 the facts giving rise to this placement. This subdivision shall not
5 apply to the following persons:

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

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

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

14 (h) Who loiters, prowls, or wanders upon the private property
15 of another, at any time, without visible or lawful business with the
16 owner or occupant. As used in this subdivision, "loiter" means to
17 delay or linger without a lawful purpose for being on the property
18 and for the purpose of committing a crime as opportunity may be
19 discovered.

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

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

34 (2) Any person who uses a concealed camcorder, motion picture
35 camera, or photographic camera of any type, to secretly videotape,
36 film, photograph, or record by electronic means, another,
37 identifiable person under or through the clothing being worn by
38 that other person, for the purpose of viewing the body of, or the
39 undergarments worn by, that other person, without the consent or
40 knowledge of that other person, with the intent to arouse, appeal

1 to, or gratify the lust, passions, or sexual desires of that person and
2 invade the privacy of that other person, under circumstances in
3 which the other person has a reasonable expectation of privacy.

4 (3) (A) Any person who uses a concealed camcorder, motion
5 picture camera, or photographic camera of any type, to secretly
6 videotape, film, photograph, or record by electronic means, another,
7 identifiable person who may be in a state of full or partial undress,
8 for the purpose of viewing the body of, or the undergarments worn
9 by, that other person, without the consent or knowledge of that
10 other person, in the interior of a bedroom, bathroom, changing
11 room, fitting room, dressing room, or tanning booth, or the interior
12 of any other area in which that other person has a reasonable
13 expectation of privacy, with the intent to invade the privacy of that
14 other person.

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

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

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

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

31 (B) A person intentionally distributes an image described in
32 subparagraph (A) when he or she personally distributes the image,
33 or arranges, specifically requests, or intentionally causes another
34 person to distribute that image.

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

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

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

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

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

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

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

28 In any accusatory pleading charging a violation of subdivision
29 (b), if the defendant has been previously convicted two or more
30 times of a violation of that subdivision, each of these previous
31 convictions shall be charged in the accusatory pleading. If two or
32 more of these previous convictions are found to be true by the jury,
33 upon a jury trial, or by the court, upon a court trial, or are admitted
34 by the defendant, the defendant shall be imprisoned in a county
35 jail for a period of not less than 90 days and shall not be eligible
36 for release upon completion of sentence, on probation, on parole,
37 on work furlough or work release, or on any other basis until he
38 or she has served a period of not less than 90 days in a county jail.
39 In all cases in which probation is granted, the court shall require
40 as a condition thereof that the person be confined in a county jail

1 for at least 90 days. In no event does the court have the power to
2 absolve a person who violates this subdivision from the obligation
3 of spending at least 90 days in confinement in a county jail.

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

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

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

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

33 (2) The court may, in unusual cases, when the interests of justice
34 are best served, reduce or eliminate the mandatory two days of
35 imprisonment in a county jail required by this subdivision. If the
36 court reduces or eliminates the mandatory two days' imprisonment,
37 the court shall specify the reason on the record.