

AMENDED IN SENATE APRIL 6, 2015

**SENATE BILL**

**No. 776**

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**Introduced by Senator Block**

February 27, 2015

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An act to amend Section 647 of the Penal Code, relating to ~~prostitution~~: *disorderly conduct*.

LEGISLATIVE COUNSEL'S DIGEST

SB 776, as amended, Block. ~~Prostitution.—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, by a fine not exceeding \$1,000, or by both that fine and imprisonment. Existing law also provides for increased minimum terms of imprisonment for a violation of that provision when a person has previously been convicted of soliciting or agreeing to engage in or engaging in any act of prostitution.*

*This bill would require the court to impose an additional fine of not less than \$700 and not more than \$2,000 on a defendant if the defendant provided or offered to provide, or manifested an acceptance of an offer or solicitation for the defendant to provide, compensation, money, or anything of value, in exchange for an act of prostitution if the prostitute is 18 years of age or older. The bill would require that an unspecified percentage of the moneys collected from that fine be retained by the county and used to fund shelter, counseling, and other direct services and exit programs for victims of commercial sexual exploitation and sexual abuse.*

~~Existing law makes it a misdemeanor to commit specified acts of disorderly conduct, including soliciting or agreeing to engage in or engaging in any act of prostitution.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

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), an individual who  
4 commits any of the following acts is guilty of disorderly conduct,  
5 a misdemeanor:

6 (a) An individual who solicits another 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) Who solicits or who agrees to engage in or who engages in  
10 any act of prostitution. A person agrees to engage in an act of  
11 prostitution when, with specific intent to so engage, he or she  
12 manifests an acceptance of an offer or solicitation to so engage,  
13 regardless of whether the offer or solicitation was made by a person  
14 who also possessed the specific intent to engage in prostitution.  
15 No agreement to engage in an act of prostitution shall constitute  
16 a violation of this subdivision unless some act, in addition to the  
17 agreement, is done within this state in furtherance of the  
18 commission of an act of prostitution by the person agreeing to  
19 engage in that act. As used in this subdivision, "prostitution"  
20 includes any lewd act between persons for money or other  
21 consideration.

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

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

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

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

11 (g) If a person has violated subdivision (f), a peace officer, if  
12 he or she is reasonably able to do so, shall place the person, or  
13 cause him or her to be placed, in civil protective custody. The  
14 person shall be taken to a facility, designated pursuant to Section  
15 5170 of the Welfare and Institutions Code, for the 72-hour  
16 treatment and evaluation of inebriates. A peace officer may place  
17 a person in civil protective custody with that kind and degree of  
18 force that would be lawful were he or she effecting an arrest for a  
19 misdemeanor without a warrant. A person who has been placed  
20 in civil protective custody shall not thereafter be subject to any  
21 criminal prosecution or juvenile court proceeding based on the  
22 facts giving rise to this placement. This subdivision shall not apply  
23 to the following persons:

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

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

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

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

38 (i) Who, while loitering, prowling, or wandering upon the private  
39 property of another, at any time, peeks in the door or window of

1 any inhabited building or structure, without visible or lawful  
2 business with the owner or occupant.

3 (j) (1) Any person who looks through a hole or opening, into,  
4 or otherwise views, by means of any instrumentality, including,  
5 but not limited to, a periscope, telescope, binoculars, camera,  
6 motion picture camera, camcorder, or mobile phone, the interior  
7 of a bedroom, bathroom, changing room, fitting room, dressing  
8 room, or tanning booth, or the interior of any other area in which  
9 the occupant has a reasonable expectation of privacy, with the  
10 intent to invade the privacy of a person or persons inside. This  
11 subdivision shall not apply to those areas of a private business  
12 used to count currency or other negotiable instruments.

13 (2) Any person who uses a concealed camcorder, motion picture  
14 camera, or photographic camera of any type, to secretly videotape,  
15 film, photograph, or record by electronic means, another,  
16 identifiable person under or through the clothing being worn by  
17 that other person, for the purpose of viewing the body of, or the  
18 undergarments worn by, that other person, without the consent or  
19 knowledge of that other person, with the intent to arouse, appeal  
20 to, or gratify the lust, passions, or sexual desires of that person and  
21 invade the privacy of that other person, under circumstances in  
22 which the other person has a reasonable expectation of privacy.

23 (3) (A) Any person who uses a concealed camcorder, motion  
24 picture camera, or photographic camera of any type, to secretly  
25 videotape, film, photograph, or record by electronic means, another,  
26 identifiable person who may be in a state of full or partial undress,  
27 for the purpose of viewing the body of, or the undergarments worn  
28 by, that other person, without the consent or knowledge of that  
29 other person, in the interior of a bedroom, bathroom, changing  
30 room, fitting room, dressing room, or tanning booth, or the interior  
31 of any other area in which that other person has a reasonable  
32 expectation of privacy, with the intent to invade the privacy of that  
33 other person.

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

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

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

1 (4) (A) Any person who intentionally distributes the image of  
2 the intimate body part or parts of another identifiable person, or  
3 an image of the person depicted engaged in an act of sexual  
4 intercourse, sodomy, oral copulation, sexual penetration, or an  
5 image of masturbation by the person depicted or in which the  
6 person depicted participates, under circumstances in which the  
7 persons agree or understand that the image shall remain private,  
8 the person distributing the image knows or should know that  
9 distribution of the image will cause serious emotional distress, and  
10 the person depicted suffers that distress.

11 (B) A person intentionally distributes an image described in  
12 subparagraph (A) when he or she personally distributes the image,  
13 or arranges, specifically requests, or intentionally causes another  
14 person to distribute that image.

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

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

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

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

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

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

30 (k) In any accusatory pleading charging a violation of  
31 subdivision (b), if the defendant has been once previously convicted  
32 of a violation of that subdivision, the previous conviction shall be  
33 charged in the accusatory pleading. If the previous conviction is  
34 found to be true by the jury, upon a jury trial, or by the court, upon  
35 a court trial, or is admitted by the defendant, the defendant shall  
36 be imprisoned in a county jail for a period of not less than 45 days  
37 and shall not be eligible for release upon completion of sentence,  
38 on probation, on parole, on work furlough or work release, or on  
39 any other basis until he or she has served a period of not less than  
40 45 days in a county jail. In all cases in which probation is granted,

1 the court shall require as a condition thereof that the person be  
2 confined in a county jail for at least 45 days. In no event does the  
3 court have the power to absolve a person who violates this  
4 subdivision from the obligation of spending at least 45 days in  
5 confinement in a county jail.

6 In any accusatory pleading charging a violation of subdivision  
7 (b), if the defendant has been previously convicted two or more  
8 times of a violation of that subdivision, each of these previous  
9 convictions shall be charged in the accusatory pleading. If two or  
10 more of these previous convictions are found to be true by the jury,  
11 upon a jury trial, or by the court, upon a court trial, or are admitted  
12 by the defendant, the defendant shall be imprisoned in a county  
13 jail for a period of not less than 90 days and shall not be eligible  
14 for release upon completion of sentence, on probation, on parole,  
15 on work furlough or work release, or on any other basis until he  
16 or she has served a period of not less than 90 days in a county jail.  
17 In all cases in which probation is granted, the court shall require  
18 as a condition thereof that the person be confined in a county jail  
19 for at least 90 days. In no event does the court have the power to  
20 absolve a person who violates this subdivision from the obligation  
21 of spending at least 90 days in confinement in a county jail.

22 In addition to any punishment prescribed by this section, a court  
23 may suspend, for not more than 30 days, the privilege of the person  
24 to operate a motor vehicle pursuant to Section 13201.5 of the  
25 Vehicle Code for any violation of subdivision (b) that was  
26 committed within 1,000 feet of a private residence and with the  
27 use of a vehicle. In lieu of the suspension, the court may order a  
28 person's privilege to operate a motor vehicle restricted, for not  
29 more than six months, to necessary travel to and from the person's  
30 place of employment or education. If driving a motor vehicle is  
31 necessary to perform the duties of the person's employment, the  
32 court may also allow the person to drive in that person's scope of  
33 employment.

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

38 (2) If the victim of a violation of subdivision (j) was a minor at  
39 the time of the offense, the violation is punishable by imprisonment  
40 in a county jail not exceeding one year, or by a fine not exceeding

1 two thousand dollars (\$2,000), or by both that fine and  
2 imprisonment.

3 (m) (1) If a crime is committed in violation of subdivision (b)  
4 and the person who was solicited was a minor at the time of the  
5 offense, and if the defendant knew or should have known that the  
6 person who was solicited was a minor at the time of the offense,  
7 the violation is punishable by imprisonment in a county jail for  
8 not less than two days and not more than one year, or by a fine not  
9 exceeding ten thousand dollars (\$10,000), or by both that fine and  
10 imprisonment.

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

16 (n) (1) *Notwithstanding any other law, in addition to any other*  
17 *fine or penalty imposed, the court shall order a defendant who is*  
18 *convicted of a violation of subdivision (b) to pay a fine of not less*  
19 *than seven hundred dollars (\$700) and not more than two thousand*  
20 *dollars (\$2,000) if the defendant provided or offered to provide,*  
21 *or manifested an acceptance of an offer or solicitation for the*  
22 *defendant to provide, compensation, money, or anything of value,*  
23 *in exchange for an act of prostitution if the prostitute is 18 years*  
24 *of age or older.*

25 (2) \_\_\_\_\_ percent of the moneys collected pursuant to this  
26 subdivision shall be retained by the county and used to fund shelter,  
27 counseling, and other direct services and exit programs for victims  
28 of commercial sexual exploitation and sexual abuse. Moneys  
29 collected pursuant to this subdivision shall be deposited in a fund  
30 designated by the board of supervisors of the county.

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