

AMENDED IN SENATE MAY 19, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 776

Introduced by Senator Block

February 27, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

SB 776, as amended, Block. 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. *Existing law defines prostitution to include any lewd act between persons for money or other consideration.*

This bill would ~~require~~ *authorize* the court to impose ~~an additional~~ a fine of not less than ~~\$700~~ \$500, and not more than \$2,000, *except as specified*, 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. agreed to provide, provided, or solicited another to accept money or other consideration for any lewd act.~~ The bill would require that ~~an unspecified percentage~~ 75% 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.

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 (b)~~ *this section*, an
4 individual who commits any of the following acts is guilty of
5 disorderly conduct, 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) *(1)* Who solicits or who agrees to engage in or who engages
10 in 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 *(2) Except as otherwise provided in this section, any person*
23 *who violates this subdivision by agreeing to provide, providing,*
24 *or soliciting another to accept money or other consideration for*
25 *any lewd act, is subject to punishment by imprisonment in a county*
26 *jail for up to six months, a fine, or both that fine and imprisonment.*
27 *Except as otherwise provided in this section, a fine imposed*
28 *pursuant to this section shall be at least five hundred dollars*
29 *(\$500), but shall not exceed two thousand dollars (\$2,000), and*
30 *shall be imposed subject to the defendant’s ability to pay. If the*
31 *defendant is unable to pay the minimum fine of five hundred dollars*

1 (\$500), the court shall impose a fine that the defendant is able to
2 pay, as determined by the court.

3 (3) Seventy-five percent of the moneys collected pursuant to
4 paragraph (2) shall be retained by the county and used to fund
5 shelter, counseling, and other direct services and exit programs
6 for victims of commercial sexual exploitation and sexual abuse.
7 Moneys collected pursuant to paragraph (2) shall be deposited in
8 a fund designated by the board of supervisors of the county.

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

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

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

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

28 (g) If a person has violated subdivision (f), a peace officer, if
29 he or she is reasonably able to do so, shall place the person, or
30 cause him or her to be placed, in civil protective custody. The
31 person shall be taken to a facility, designated pursuant to Section
32 5170 of the Welfare and Institutions Code, for the 72-hour
33 treatment and evaluation of inebriates. A peace officer may place
34 a person in civil protective custody with that kind and degree of
35 force that would be lawful were he or she effecting an arrest for a
36 misdemeanor without a warrant. A person who has been placed
37 in civil protective custody shall not thereafter be subject to any
38 criminal prosecution or juvenile court proceeding based on the
39 facts giving rise to this placement. This subdivision shall not apply
40 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 shall not be eligible for release upon completion of sentence,
13 on probation, on parole, on work furlough or work release, or on
14 any other basis until he or she has served a period of not less than
15 45 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. In no event does the
18 court have the power to absolve a person who violates this
19 subdivision from the obligation of spending at least 45 days in
20 confinement in a county jail.

21 In any accusatory pleading charging a violation of subdivision
22 (b), if the defendant has been previously convicted two or more
23 times of a violation of that subdivision, each of these previous
24 convictions shall be charged in the accusatory pleading. If two or
25 more of these previous convictions are found to be true by the jury,
26 upon a jury trial, or by the court, upon a court trial, or are admitted
27 by the defendant, the defendant shall be imprisoned in a county
28 jail for a period of not less than 90 days and shall not be eligible
29 for release upon completion of sentence, on probation, on parole,
30 on work furlough or work release, or on any other basis until he
31 or she has served a period of not less than 90 days in a county jail.
32 In all cases in which probation is granted, the court shall require
33 as a condition thereof that the person be confined in a county jail
34 for at least 90 days. In no event does the court have the power to
35 absolve a person who violates this subdivision from the obligation
36 of spending at least 90 days in confinement in a county jail.

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

1 committed within 1,000 feet of a private residence and with the
2 use of a vehicle. In lieu of the suspension, the court may order a
3 person's privilege to operate a motor vehicle restricted, for not
4 more than six months, to necessary travel to and from the person's
5 place of employment or education. If driving a motor vehicle is
6 necessary to perform the duties of the person's employment, the
7 court may also allow the person to drive in that person's scope of
8 employment.

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

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

18 (m) (1) If a crime is committed in violation of *paragraph (1)*
19 *of* subdivision (b) and the person who was solicited was a minor
20 at the time of the offense, and if the defendant knew or should
21 have known that the person who was solicited was a minor at the
22 time of the offense, the violation is punishable by imprisonment
23 in a county jail for not less than two days and not more than one
24 year, or by a fine not exceeding ten thousand dollars (\$10,000),
25 or by both that fine and imprisonment.

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

31 ~~(n) (1) Notwithstanding any other law, in addition to any other~~
32 ~~fine or penalty imposed, the court shall order a defendant who is~~
33 ~~convicted of a violation of subdivision (b) to pay a fine of not less~~
34 ~~than seven hundred dollars (\$700) and not more than two thousand~~
35 ~~dollars (\$2,000) if the defendant provided or offered to provide,~~
36 ~~or manifested an acceptance of an offer or solicitation for the~~
37 ~~defendant to provide, compensation, money, or anything of value,~~
38 ~~in exchange for an act of prostitution if the prostitute is 18 years~~
39 ~~of age or older.~~

1 ~~(2) _____ percent of the moneys collected pursuant to this~~
2 ~~subdivision shall be retained by the county and used to fund shelter,~~
3 ~~counseling, and other direct services and exit programs for victims~~
4 ~~of commercial sexual exploitation and sexual abuse. Moneys~~
5 ~~collected pursuant to this subdivision shall be deposited in a fund~~
6 ~~designated by the board of supervisors of the county.~~

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