

**Introduced by Senator Monning**

February 17, 2016

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An act to amend Section 647 of the Penal Code, and to repeal Section 13201.5 of the Vehicle Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1129, as introduced, Monning. Prostitution: sanctions.

Existing law provides that a person who solicits or agrees to engage in or engages in lewd or dissolute conduct in public, as specified, or an act of prostitution is guilty of disorderly conduct, a misdemeanor. If a defendant is convicted a 2nd time of an act of prostitution, as specified, existing law requires the defendant to be imprisoned in a county jail for a period of not less than 45 days, as specified, and if the defendant is convicted 3 or more times, that minimum period of imprisonment is not less than 90 days, as specified.

Existing law also authorizes a court to suspend, for not more than 30 days, the privilege of a person to operate a motor vehicle if a defendant is convicted of one of the disorderly conduct crimes described above, as specified, and the crime was committed within 1,000 feet of a private residence and with the use of a private vehicle.

This bill would delete those additional sanctions imposed for engaging in prohibited acts relating to prostitution.

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:

1 647. Except as provided in subdivision ~~(j)~~, (k), every person  
2 who commits any of the following acts is guilty of disorderly  
3 conduct, a misdemeanor:

4 (a) Who solicits anyone to engage in or who engages in lewd  
5 or dissolute conduct in any public place or in any place open to  
6 the public or exposed to public view.

7 (b) Who solicits or who agrees to engage in or who engages in  
8 any act of prostitution. A person agrees to engage in an act of  
9 prostitution when, with specific intent to so engage, he or she  
10 manifests an acceptance of an offer or solicitation to so engage,  
11 regardless of whether the offer or solicitation was made by a person  
12 who also possessed the specific intent to engage in prostitution.  
13 ~~No~~ An agreement to engage in an act of prostitution ~~shall~~ *does not*  
14 constitute a violation of this subdivision unless some act, in  
15 addition to the agreement, is done within this state in furtherance  
16 of the commission of an act of prostitution by the person agreeing  
17 to engage in that act. As used in this subdivision, “prostitution”  
18 includes any lewd act between persons for money or other  
19 consideration.

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

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

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

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

39 (g) ~~When~~ *If* a person has violated subdivision (f), a peace officer,  
40 if he or she is reasonably able to do so, shall place the person, or

1 cause him or her to be placed, in civil protective custody. The  
2 person shall be taken to a facility, designated pursuant to Section  
3 5170 of the Welfare and Institutions Code, for the 72-hour  
4 treatment and evaluation of inebriates. A peace officer may place  
5 a person in civil protective custody with that kind and degree of  
6 force ~~which~~ *that* would be lawful were he or she effecting an arrest  
7 for a misdemeanor without a warrant. A person who has been  
8 placed in civil protective custody shall not thereafter be subject to  
9 any criminal prosecution or juvenile court proceeding based on  
10 the facts giving rise to this placement. This subdivision ~~shall~~ *does*  
11 not apply to the following persons:

12 (1) ~~Any~~ A person who is under the influence of any drug, or  
13 under the combined influence of intoxicating liquor and any drug.

14 (2) ~~Any~~ A person who a peace officer has probable cause to  
15 believe has committed any felony, or who has committed any  
16 misdemeanor in addition to subdivision (f).

17 (3) ~~Any~~ A person who a peace officer in good faith believes  
18 will attempt escape or will be unreasonably difficult for medical  
19 personnel to control.

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

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

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

1 (2) ~~Any~~A person who uses a concealed camcorder, motion  
2 picture camera, or photographic camera of any type, to secretly  
3 videotape, film, photograph, or record by electronic means, another,  
4 identifiable person under or through the clothing being worn by  
5 that other person, for the purpose of viewing the body of, or the  
6 undergarments worn by, that other person, without the consent or  
7 knowledge of that other person, with the intent to arouse, appeal  
8 to, or gratify the lust, passions, or sexual desires of that person and  
9 invade the privacy of that other person, under circumstances in  
10 which the other person has a reasonable expectation of privacy.

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

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

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

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

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

38 (B) A person intentionally distributes an image described in  
39 subparagraph (A) when he or she personally distributes the image,

1 or arranges, specifically requests, or intentionally causes another  
2 person to distribute that image.

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

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

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

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

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

16 (5) This subdivision ~~shall~~ *does* not preclude punishment under  
17 any section of law providing for greater punishment.

18 ~~(k) In any accusatory pleading charging a violation of~~  
19 ~~subdivision (b), if the defendant has been once previously convicted~~  
20 ~~of a violation of that subdivision, the previous conviction shall be~~  
21 ~~charged in the accusatory pleading. If the previous conviction is~~  
22 ~~found to be true by the jury, upon a jury trial, or by the court, upon~~  
23 ~~a court trial, or is admitted by the defendant, the defendant shall~~  
24 ~~be imprisoned in a county jail for a period of not less than 45 days~~  
25 ~~and shall not be eligible for release upon completion of sentence,~~  
26 ~~on probation, on parole, on work furlough or work release, or on~~  
27 ~~any other basis until he or she has served a period of not less than~~  
28 ~~45 days in a county jail. In all cases in which probation is granted,~~  
29 ~~the court shall require as a condition thereof that the person be~~  
30 ~~confined in a county jail for at least 45 days. In no event does the~~  
31 ~~court have the power to absolve a person who violates this~~  
32 ~~subdivision from the obligation of spending at least 45 days in~~  
33 ~~confinement in a county jail.~~

34 In any accusatory pleading charging a violation of subdivision  
35 (b), if the defendant has been previously convicted two or more  
36 times of a violation of that subdivision, each of these previous  
37 convictions shall be charged in the accusatory pleading. If two or  
38 more of these previous convictions are found to be true by the jury,  
39 upon a jury trial, or by the court, upon a court trial, or are admitted  
40 by the defendant, the defendant shall be imprisoned in a county

1 jail for a period of not less than 90 days and shall not be eligible  
2 for release upon completion of sentence, on probation, on parole,  
3 on work furlough or work release, or on any other basis until he  
4 or she has served a period of not less than 90 days in a county jail.  
5 In all cases in which probation is granted, the court shall require  
6 as a condition thereof that the person be confined in a county jail  
7 for at least 90 days. In no event does the court have the power to  
8 absolve a person who violates this subdivision from the obligation  
9 of spending at least 90 days in confinement in a county jail.

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

22 ~~(f)~~

23 (k) (1) A second or subsequent violation of subdivision (j) is  
24 punishable by imprisonment in a county jail not exceeding one  
25 year, or by a fine not exceeding two thousand dollars (\$2,000), or  
26 by both that fine and imprisonment.

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

32 ~~(m)~~

33 (l) (1) If a crime is committed in violation of subdivision (b)  
34 and the person who was solicited was a minor at the time of the  
35 offense, and if the defendant knew or should have known that the  
36 person who was solicited was a minor at the time of the offense,  
37 the violation is punishable by imprisonment in a county jail for  
38 not less than two days and not more than one year, or by a fine not  
39 exceeding ten thousand dollars (\$10,000), or by both that fine and  
40 imprisonment.

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

6 SEC. 2. Section 13201.5 of the Vehicle Code is repealed.

7 ~~13201.5.—(a) A court may suspend, for not more than 30 days,~~  
8 ~~the privilege of any person to operate a motor vehicle upon~~  
9 ~~conviction of subdivision (b) of Section 647 of the Penal Code~~  
10 ~~where the violation was committed within 1,000 feet of a private~~  
11 ~~residence and with the use of a vehicle.~~

12 ~~(b) A court may suspend, for not more than 30 days, the~~  
13 ~~privilege of any person to operate a motor vehicle upon conviction~~  
14 ~~of subdivision (a) of Section 647 of the Penal Code, where a peace~~  
15 ~~officer witnesses the violator pick up a person who is engaging in~~  
16 ~~loitering with the intent to commit prostitution, as described in~~  
17 ~~Section 653.22 of the Penal Code, and the violator subsequently~~  
18 ~~engages with that person in a lewd act within 1,000 feet of a private~~  
19 ~~residence and with the use of a vehicle.~~

20 ~~(c) Instead of ordering the suspension under subdivision (a) or~~  
21 ~~(b), a court may order a person's privilege to operate a motor~~  
22 ~~vehicle restricted for not more than six months to necessary travel~~  
23 ~~to and from the person's place of employment or education. If~~  
24 ~~driving a motor vehicle is necessary to perform the duties of the~~  
25 ~~person's employment, the court may also allow the person to drive~~  
26 ~~in that person's scope of employment.~~