

AMENDED IN ASSEMBLY JANUARY 4, 2016

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 733

Introduced by Assembly Member Chávez

February 25, 2015

An act to amend Sections 290, 290.46, and 647 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 733, as amended, Chávez. Crimes: 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 provides that if a person solicits a minor, and the person knew or should have known that the person solicited was a minor at the time of the solicitation, the violation is punishable by imprisonment in a county jail for not less than 2 days and not more than one year, or by a fine not exceeding \$10,000, or both.

This bill would make the fine for a person convicted of soliciting a minor mandatory and would ~~fix the amount of the fine at \$10,000.~~ *authorize a court to exercise its discretion in setting the amount of the fine, provided that amount is not less than \$3,000.* This bill would require that a person convicted of soliciting a minor make restitution to the minor that includes the cost of mental health counseling for the minor.

Existing law, the Sex Offender Registration Act, requires persons convicted of specified sex offenses, or attempts to commit those offenses, to register with local law enforcement agencies while residing in the state or while attending school or working in the state. Existing law requires the terms of probation or parole for all persons placed on formal probation or parole for an offense that requires registration as a sex offender to include, among other things, participation in, or completion of, a sex offender management program, as specified. Existing law requires the Department of Justice to make available to the public information concerning registered sex offenders on an Internet Web site, as specified. Existing law also authorizes a person registered as a sex offender to file an application for exclusion from the Internet Web site and establishes the requirements for exclusion.

This bill would require a person who is convicted of soliciting a minor to register as a sex ~~offender~~. *offender if the conviction is the person's second conviction for solicitation of a minor.* This bill would require a court that grants probation to or suspends the imposition of a sentence for a person convicted of soliciting a minor to require participation in a sex offender management program as a condition of probation or the suspension of imposition of the person's sentence. This bill would require the department to make available to the public specified information regarding the person on that Internet Web site. This bill would authorize the person to apply for exclusion from the Internet Web site described above if the person has satisfied all conditions of probation or suspension of imposition of his or her sentence and has not been convicted of any other offense requiring registration as a sex offender in a 5-year period following satisfaction of those conditions.

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

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 290 of the Penal Code is amended to
- 2 read:
- 3 290. (a) Sections 290 to 290.024, inclusive, shall be known
- 4 and may be cited as the Sex Offender Registration Act. All
- 5 references to "the Act" in those sections are to the Sex Offender
- 6 Registration Act.
- 7 (b) Every person described in subdivision (c), for the rest of his
- 8 or her life while residing in California, or while attending school

1 or working in California, as described in Sections 290.002 and
2 290.01, shall be required to register with the chief of police of the
3 city in which he or she is residing, or the sheriff of the county if
4 he or she is residing in an unincorporated area or city that has no
5 police department, and, additionally, with the chief of police of a
6 campus of the University of California, the California State
7 University, or community college if he or she is residing upon the
8 campus or in any of its facilities, within five working days of
9 coming into, or changing his or her residence within, any city,
10 county, or city and county, or campus in which he or she
11 temporarily resides, and shall be required to register thereafter in
12 accordance with the Act.

13 (c) The following persons shall be required to register:

14 Any person who, since July 1, 1944, has been or is hereafter
15 convicted in any court in this state or in any federal or military
16 court of a violation of Section 187 committed in the perpetration,
17 or an attempt to perpetrate, rape or any act punishable under
18 Section 286, 288, 288a, or 289, Section 207 or 209 committed
19 with intent to violate Section 261, 286, 288, 288a, or 289, Section
20 220, except assault to commit mayhem, subdivision (b) and (c) of
21 Section 236.1, Section 243.4, paragraph (1), (2), (3), (4), or (6) of
22 subdivision (a) of Section 261, paragraph (1) of subdivision (a) of
23 Section 262 involving the use of force or violence for which the
24 person is sentenced to the state prison, Section 264.1, 266, or 266c,
25 subdivision (b) of Section 266h, subdivision (b) of Section 266i,
26 Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5,
27 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2,
28 Section 311.3, 311.4, 311.10, 311.11, or 647.6, subdivision (b) of
29 Section 647, if the person convicted solicited a minor and knew
30 or should have known that the person solicited was a minor at the
31 time of the ~~offense~~, *offense and the conviction is the person's*
32 *second conviction of that offense*, former Section 647a, subdivision
33 (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense
34 involving lewd or lascivious conduct under Section 272, or any
35 felony violation of Section 288.2; any statutory predecessor that
36 includes all elements of one of the above-mentioned offenses; or
37 any person who since that date has been or is hereafter convicted
38 of the attempt or conspiracy to commit any of the above-mentioned
39 offenses.

40 SEC. 2. Section 290.46 of the Penal Code is amended to read:

1 290.46. (a) (1) On or before the dates specified in this section,
2 the Department of Justice shall make available information
3 concerning persons who are required to register pursuant to Section
4 290 to the public via an Internet Web site as specified in this
5 section. The department shall update the Internet Web site on an
6 ongoing basis. All information identifying the victim by name,
7 birth date, address, or relationship to the registrant shall be
8 excluded from the Internet Web site. The name or address of the
9 person's employer and the listed person's criminal history other
10 than the specific crimes for which the person is required to register
11 shall not be included on the Internet Web site. The Internet Web
12 site shall be translated into languages other than English as
13 determined by the department.

14 (2) (A) On or before July 1, 2010, the Department of Justice
15 shall make available to the public, via an Internet Web site as
16 specified in this section, as to any person described in subdivision
17 (b), (c), or (d), the following information:

18 (i) The year of conviction of his or her most recent offense
19 requiring registration pursuant to Section 290.

20 (ii) The year he or she was released from incarceration for that
21 offense.

22 (iii) Whether he or she was subsequently incarcerated for any
23 other felony, if that fact is reported to the department. If the
24 department has no information about a subsequent incarceration
25 for any felony, that fact shall be noted on the Internet Web site.

26 However, no year of conviction shall be made available to the
27 public unless the department also is able to make available the
28 corresponding year of release of incarceration for that offense, and
29 the required notation regarding any subsequent felony.

30 (B) (i) Any state facility that releases from incarceration a
31 person who was incarcerated because of a crime for which he or
32 she is required to register as a sex offender pursuant to Section
33 290 shall, within 30 days of release, provide the year of release
34 for his or her most recent offense requiring registration to the
35 Department of Justice in a manner and format approved by the
36 department.

37 (ii) Any state facility that releases a person who is required to
38 register pursuant to Section 290 from incarceration whose
39 incarceration was for a felony committed subsequently to the

1 offense for which he or she is required to register shall, within 30
2 days of release, advise the Department of Justice of that fact.

3 (iii) Any state facility that, prior to January 1, 2007, released
4 from incarceration a person who was incarcerated because of a
5 crime for which he or she is required to register as a sex offender
6 pursuant to Section 290 shall provide the year of release for his or
7 her most recent offense requiring registration to the Department
8 of Justice in a manner and format approved by the department.
9 The information provided by the Department of Corrections and
10 Rehabilitation shall be limited to information that is currently
11 maintained in an electronic format.

12 (iv) Any state facility that, prior to January 1, 2007, released a
13 person who is required to register pursuant to Section 290 from
14 incarceration whose incarceration was for a felony committed
15 subsequently to the offense for which he or she is required to
16 register shall advise the Department of Justice of that fact in a
17 manner and format approved by the department. The information
18 provided by the Department of Corrections and Rehabilitation
19 shall be limited to information that is currently maintained in an
20 electronic format.

21 (3) The State Department of State Hospitals shall provide to the
22 Department of Justice Sex Offender Tracking Program the names
23 of all persons committed to its custody pursuant to Article 4
24 (commencing with Section 6600) of Chapter 2 of Part 2 of Division
25 6 of the Welfare and Institutions Code, within 30 days of
26 commitment, and shall provide the names of all of those persons
27 released from its custody within five working days of release.

28 (b) (1) On or before July 1, 2005, with respect to a person who
29 has been convicted of the commission or the attempted commission
30 of any of the offenses listed in, or who is described in, paragraph
31 (2), the Department of Justice shall make available to the public
32 via the Internet Web site his or her name and known aliases, a
33 photograph, a physical description, including gender and race, date
34 of birth, criminal history, prior adjudication as a sexually violent
35 predator, the address at which the person resides, and any other
36 information that the Department of Justice deems relevant, but not
37 the information excluded pursuant to subdivision (a). On or before
38 January 1, 2013, the department shall make available to the public
39 via the Internet Web site his or her static SARATSO score and

1 information on an elevated risk level based on the SARATSO
2 future violence tool.

3 (2) This subdivision shall apply to the following offenses and
4 offenders:

5 (A) Section 187 committed in the perpetration, or an attempt to
6 perpetrate, rape or any act punishable under Section 286, 288,
7 288a, or 289.

8 (B) Section 207 committed with intent to violate Section 261,
9 286, 288, 288a, or 289.

10 (C) Section 209 committed with intent to violate Section 261,
11 286, 288, 288a, or 289.

12 (D) Paragraph (2) or (6) of subdivision (a) of Section 261.

13 (E) Section 264.1.

14 (F) Section 269.

15 (G) Subdivision (c) or (d) of Section 286.

16 (H) Subdivision (a), (b), or (c) of Section 288, provided that the
17 offense is a felony.

18 (I) Subdivision (c) or (d) of Section 288a.

19 (J) Section 288.3, provided that the offense is a felony.

20 (K) Section 288.4, provided that the offense is a felony.

21 (L) Section 288.5.

22 (M) Subdivision (a) or (j) of Section 289.

23 (N) Section 288.7.

24 (O) Any person who has ever been adjudicated a sexually violent
25 predator, as defined in Section 6600 of the Welfare and Institutions
26 Code.

27 (P) A felony violation of Section 311.1.

28 (Q) A felony violation of subdivision (b), (c), or (d) of Section
29 311.2.

30 (R) A felony violation of Section 311.3.

31 (S) A felony violation of subdivision (a), (b), or (c) of Section
32 311.4.

33 (T) Section 311.10.

34 (U) A felony violation of Section 311.11.

35 (c) (1) On or before July 1, 2005, with respect to a person who
36 has been convicted of the commission or the attempted commission
37 of any of the offenses listed in paragraph (2), the Department of
38 Justice shall make available to the public via the Internet Web site
39 his or her name and known aliases, a photograph, a physical
40 description, including gender and race, date of birth, criminal

1 history, the community of residence and ZIP Code in which the
2 person resides or the county in which the person is registered as a
3 transient, and any other information that the Department of Justice
4 deems relevant, but not the information excluded pursuant to
5 subdivision (a). On or before July 1, 2006, the Department of
6 Justice shall determine whether any person convicted of an offense
7 listed in paragraph (2) also has one or more prior or subsequent
8 convictions of an offense listed in subdivision (c) of Section 290,
9 and, for those persons, the Department of Justice shall make
10 available to the public via the Internet Web site the address at
11 which the person resides. However, the address at which the person
12 resides shall not be disclosed until a determination is made that
13 the person is, by virtue of his or her additional prior or subsequent
14 conviction of an offense listed in subdivision (c) of Section 290,
15 subject to this subdivision.

16 (2) This subdivision shall apply to the following offenses:

17 (A) Section 220, except assault to commit mayhem.

18 (B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

19 (C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
20 (i), of Section 286.

21 (D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
22 (i), of Section 288a.

23 (E) Subdivision (b), (d), (e), or (i) of Section 289.

24 (F) Subdivision (b) of Section 647, if the person convicted
25 solicited a minor and knew or should have known that the person
26 solicited was a minor at the time of the offense.

27 (d) (1) On or before July 1, 2005, with respect to a person who
28 has been convicted of the commission or the attempted commission
29 of any of the offenses listed in, or who is described in, this
30 subdivision, the Department of Justice shall make available to the
31 public via the Internet Web site his or her name and known aliases,
32 a photograph, a physical description, including gender and race,
33 date of birth, criminal history, the community of residence and
34 ZIP Code in which the person resides or the county in which the
35 person is registered as a transient, and any other information that
36 the Department of Justice deems relevant, but not the information
37 excluded pursuant to subdivision (a) or the address at which the
38 person resides.

39 (2) This subdivision shall apply to the following offenses and
40 offenders:

- 1 (A) Subdivision (a) of Section 243.4, provided that the offense
2 is a felony.
- 3 (B) Section 266, provided that the offense is a felony.
- 4 (C) Section 266c, provided that the offense is a felony.
- 5 (D) Section 266j.
- 6 (E) Section 267.
- 7 (F) Subdivision (c) of Section 288, provided that the offense is
8 a misdemeanor.
- 9 (G) Section 288.3, provided that the offense is a misdemeanor.
- 10 (H) Section 288.4, provided that the offense is a misdemeanor.
- 11 (I) Section 626.81.
- 12 (J) Section 647.6.
- 13 (K) Section 653c.
- 14 (L) Any person required to register pursuant to Section 290
15 based upon an out-of-state conviction, unless that person is
16 excluded from the Internet Web site pursuant to subdivision (e).
17 However, if the Department of Justice has determined that the
18 out-of-state crime, if committed or attempted in this state, would
19 have been punishable in this state as a crime described in
20 subdivision (c) of Section 290, the person shall be placed on the
21 Internet Web site as provided in subdivision (b) or (c), as applicable
22 to the crime.
- 23 (e) (1) If a person has been convicted of the commission or the
24 attempted commission of any of the offenses listed in this
25 subdivision, and he or she has been convicted of no other offense
26 listed in subdivision (b), (c), or (d) other than those listed in this
27 subdivision, that person may file an application with the
28 Department of Justice, on a form approved by the department, for
29 exclusion from the Internet Web site. If the department determines
30 that the person meets the requirements of this subdivision, the
31 department shall grant the exclusion and no information concerning
32 the person shall be made available via the Internet Web site
33 described in this section. He or she bears the burden of proving
34 the facts that make him or her eligible for exclusion from the
35 Internet Web site. However, a person who has filed for or been
36 granted an exclusion from the Internet Web site is not relieved of
37 his or her duty to register as a sex offender pursuant to Section
38 290 nor from any otherwise applicable provision of law.
- 39 (2) This subdivision shall apply to the following offenses:
- 40 (A) A felony violation of subdivision (a) of Section 243.4.

1 (B) Section 647.6, if the offense is a misdemeanor.

2 (C) A felony violation of Section 311.1, subdivision (b), (c), or
3 (d) of Section 311.2, or Section 311.3, 311.4, 311.10, or 311.11 if
4 the person submits to the department a certified copy of a probation
5 report filed in court that clearly states that all victims involved in
6 the commission of the offense were at least 16 years of age or older
7 at the time of the commission of the offense.

8 (D) (i) An offense for which the offender successfully
9 completed probation, provided that the offender submits to the
10 department a certified copy of a probation report, presentencing
11 report, report prepared pursuant to Section 288.1, or other official
12 court document that clearly demonstrates that the offender was
13 the victim's parent, stepparent, sibling, or grandparent and that the
14 crime did not involve either oral copulation or penetration of the
15 vagina or rectum of either the victim or the offender by the penis
16 of the other or by any foreign object.

17 (ii) An offense for which the offender is on probation at the
18 time of his or her application, provided that the offender submits
19 to the department a certified copy of a probation report,
20 presentencing report, report prepared pursuant to Section 288.1,
21 or other official court document that clearly demonstrates that the
22 offender was the victim's parent, stepparent, sibling, or grandparent
23 and that the crime did not involve either oral copulation or
24 penetration of the vagina or rectum of either the victim or the
25 offender by the penis of the other or by any foreign object.

26 (iii) If, subsequent to his or her application, the offender commits
27 a violation of probation resulting in his or her incarceration in
28 county jail or state prison, his or her exclusion, or application for
29 exclusion, from the Internet Web site shall be terminated.

30 (iv) For the purposes of this subparagraph, "successfully
31 completed probation" means that during the period of probation
32 the offender neither received additional county jail or state prison
33 time for a violation of probation nor was convicted of another
34 offense resulting in a sentence to county jail or state prison.

35 (E) A violation of subdivision (b) of Section 647, if the offender
36 solicited a minor and knew or should have known that the person
37 solicited was a minor at the time of the offense, if the offender
38 satisfies one of the following:

39 (i) The offender submits to the department a certified copy of
40 a probation report that clearly demonstrates that the offender

1 satisfied all conditions of probation, and the offender has not been
2 convicted of a crime that requires registration as a sex offender
3 pursuant to Section 290 in the five-year period following
4 satisfaction of all conditions of probation.

5 (ii) The offender submits to the department a certified copy of
6 a document from the court that suspended the imposition of the
7 sentence for the violation that clearly demonstrates that the offender
8 satisfied all conditions for the suspension of imposition of the
9 sentence, and the offender has not been convicted of a crime that
10 requires registration as a sex offender pursuant to Section 290 in
11 the five-year period following satisfaction of all conditions of
12 suspension of imposition of the sentence.

13 (3) If the department determines that a person who was granted
14 an exclusion under a former version of this subdivision would not
15 qualify for an exclusion under the current version of this
16 subdivision, the department shall rescind the exclusion, make a
17 reasonable effort to provide notification to the person that the
18 exclusion has been rescinded, and, no sooner than 30 days after
19 notification is attempted, make information about the offender
20 available to the public on the Internet Web site as provided in this
21 section.

22 (4) Effective January 1, 2012, no person shall be excluded
23 pursuant to this subdivision unless the offender has submitted to
24 the department documentation sufficient for the department to
25 determine that he or she has a SARATSO risk level of low or
26 moderate-low.

27 (f) The Department of Justice shall make a reasonable effort to
28 provide notification to persons who have been convicted of the
29 commission or attempted commission of an offense specified in
30 subdivision (b), (c), or (d), that on or before July 1, 2005, the
31 department is required to make information about specified sex
32 offenders available to the public via an Internet Web site as
33 specified in this section. The Department of Justice shall also make
34 a reasonable effort to provide notice that some offenders are
35 eligible to apply for exclusion from the Internet Web site.

36 (g) (1) A designated law enforcement entity, as defined in
37 subdivision (f) of Section 290.45, may make available information
38 concerning persons who are required to register pursuant to Section
39 290 to the public via an Internet Web site as specified in paragraph
40 (2).

1 (2) The law enforcement entity may make available by way of
2 an Internet Web site the information described in subdivision (c)
3 if it determines that the public disclosure of the information about
4 a specific offender by way of the entity's Internet Web site is
5 necessary to ensure the public safety based upon information
6 available to the entity concerning that specific offender.

7 (3) The information that may be provided pursuant to this
8 subdivision may include the information specified in subdivision
9 (b) of Section 290.45. However, that offender's address may not
10 be disclosed unless he or she is a person whose address is on the
11 Department of Justice's Internet Web site pursuant to subdivision
12 (b) or (c).

13 (h) For purposes of this section, "offense" includes the statutory
14 predecessors of that offense, or any offense committed in another
15 jurisdiction that, if committed or attempted to be committed in this
16 state, would have been punishable in this state as an offense listed
17 in subdivision (c) of Section 290.

18 (i) Notwithstanding Section 6254.5 of the Government Code,
19 disclosure of information pursuant to this section is not a waiver
20 of exemptions under Chapter 3.5 (commencing with Section 6250)
21 of Title 1 of Division 7 of the Government Code and does not
22 affect other statutory restrictions on disclosure in other situations.

23 (j) (1) Any person who uses information disclosed pursuant to
24 this section to commit a misdemeanor shall be subject to, in
25 addition to any other penalty or fine imposed, a fine of not less
26 than ten thousand dollars (\$10,000) and not more than fifty
27 thousand dollars (\$50,000).

28 (2) Any person who uses information disclosed pursuant to this
29 section to commit a felony shall be punished, in addition and
30 consecutive to any other punishment, by a five-year term of
31 imprisonment pursuant to subdivision (h) of Section 1170.

32 (k) Any person who is required to register pursuant to Section
33 290 who enters an Internet Web site established pursuant to this
34 section shall be punished by a fine not exceeding one thousand
35 dollars (\$1,000), imprisonment in a county jail for a period not to
36 exceed six months, or by both that fine and imprisonment.

37 (l) (1) A person is authorized to use information disclosed
38 pursuant to this section only to protect a person at risk.

39 (2) Except as authorized under paragraph (1) or any other
40 provision of law, use of any information that is disclosed pursuant

1 to this section for purposes relating to any of the following is
2 prohibited:

- 3 (A) Health insurance.
- 4 (B) Insurance.
- 5 (C) Loans.
- 6 (D) Credit.
- 7 (E) Employment.
- 8 (F) Education, scholarships, or fellowships.
- 9 (G) Housing or accommodations.
- 10 (H) Benefits, privileges, or services provided by any business
11 establishment.

12 (3) This section shall not affect authorized access to, or use of,
13 information pursuant to, among other provisions, Sections 11105
14 and 11105.3, Section 8808 of the Family Code, Sections 777.5
15 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871
16 of the Health and Safety Code, and Section 432.7 of the Labor
17 Code.

18 (4) (A) Any use of information disclosed pursuant to this section
19 for purposes other than those provided by paragraph (1) or in
20 violation of paragraph (2) shall make the user liable for the actual
21 damages, and any amount that may be determined by a jury or a
22 court sitting without a jury, not exceeding three times the amount
23 of actual damage, and not less than two hundred fifty dollars
24 (\$250), and attorney’s fees, exemplary damages, or a civil penalty
25 not exceeding twenty-five thousand dollars (\$25,000).

26 (B) Whenever there is reasonable cause to believe that any
27 person or group of persons is engaged in a pattern or practice of
28 misuse of the information available via an Internet Web site
29 established pursuant to this section in violation of paragraph (2),
30 the Attorney General, any district attorney, or city attorney, or any
31 person aggrieved by the misuse is authorized to bring a civil action
32 in the appropriate court requesting preventive relief, including an
33 application for a permanent or temporary injunction, restraining
34 order, or other order against the person or group of persons
35 responsible for the pattern or practice of misuse. The foregoing
36 remedies shall be independent of any other remedies or procedures
37 that may be available to an aggrieved party under other provisions
38 of law, including Part 2 (commencing with Section 43) of Division
39 1 of the Civil Code.

1 (m) The public notification provisions of this section are
2 applicable to every person described in this section, without regard
3 to when his or her crimes were committed or his or her duty to
4 register pursuant to Section 290 arose, and to every offense
5 described in this section, regardless of when it was committed.

6 (n) A designated law enforcement entity and its employees shall
7 be immune from liability for good faith conduct under this section.

8 (o) The Attorney General, in collaboration with local law
9 enforcement and others knowledgeable about sex offenders, shall
10 develop strategies to assist members of the public in understanding
11 and using publicly available information about registered sex
12 offenders to further public safety. These strategies may include,
13 but are not limited to, a hotline for community inquiries,
14 neighborhood and business guidelines for how to respond to
15 information posted on this Internet Web site, and any other resource
16 that promotes public education about these offenders.

17 SEC. 3. Section 647 of the Penal Code is amended to read:

18 647. Except as provided in subdivision (l), every person who
19 commits any of the following acts is guilty of disorderly conduct,
20 a misdemeanor:

21 (a) Who solicits anyone to engage in or who engages in lewd
22 or dissolute conduct in any public place or in any place open to
23 the public or exposed to public view.

24 (b) Who solicits or who agrees to engage in or who engages in
25 any act of prostitution. A person agrees to engage in an act of
26 prostitution when, with specific intent to so engage, he or she
27 manifests an acceptance of an offer or solicitation to so engage,
28 regardless of whether the offer or solicitation was made by a person
29 who also possessed the specific intent to engage in prostitution.
30 No agreement to engage in an act of prostitution shall constitute
31 a violation of this subdivision unless some act, in addition to the
32 agreement, is done within this state in furtherance of the
33 commission of an act of prostitution by the person agreeing to
34 engage in that act. As used in this subdivision, "prostitution"
35 includes any lewd act between persons for money or other
36 consideration.

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

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

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

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

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

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

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

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

38 (h) Who loiters, prowls, or wanders upon the private property
39 of another, at any time, without visible or lawful business with the
40 owner or occupant. As used in this subdivision, "loiter" means to

1 delay or linger without a lawful purpose for being on the property
2 and for the purpose of committing a crime as opportunity may be
3 discovered.

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

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

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

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

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

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

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

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

15 (B) A person intentionally distributes an image described in
16 subparagraph (A) when he or she personally distributes the image,
17 or arranges, specifically requests, or intentionally causes another
18 person to distribute that image.

19 (C) As used in this paragraph, “intimate body part” means any
20 portion of the genitals, the ~~anus and~~ *anus, and*, in the case of a
21 female, also includes any portion of the breasts below the top of
22 the areola, that is either uncovered or clearly visible through
23 clothing.

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

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

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

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

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

35 (k) In any accusatory pleading charging a violation of
36 subdivision (b), if the defendant has been once previously convicted
37 of a violation of that subdivision, the previous conviction shall be
38 charged in the accusatory pleading. If the previous conviction is
39 found to be true by the jury, upon a jury trial, or by the court, upon
40 a court trial, or is admitted by the defendant, the defendant shall

1 be imprisoned in a county jail for a period of not less than 45 days
2 and shall not be eligible for release upon completion of sentence,
3 on probation, on parole, on work furlough or work release, or on
4 any other basis until he or she has served a period of not less than
5 45 days in a county jail. In all cases in which probation is granted,
6 the court shall require as a condition thereof that the person be
7 confined in a county jail for at least 45 days. In no event does the
8 court have the power to absolve a person who violates this
9 subdivision from the obligation of spending at least 45 days in
10 confinement in a county jail.

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

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

39 (l) (1) A second or subsequent violation of subdivision (j) is
40 punishable by imprisonment in a county jail not exceeding one

1 year, or by a fine not exceeding two thousand dollars (\$2,000), or
2 by both that fine and imprisonment.

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

8 (m) (1) If a crime is committed in violation of subdivision (b)
9 and the person who was solicited was a minor at the time of the
10 offense, and if the defendant knew or should have known that the
11 person who was solicited was a minor at the time of the offense,
12 the violation is punishable by imprisonment in a county jail for
13 not less than two days and not more than one year, and by a fine
14 ~~in the an amount of ten thousand dollars (\$10,000): set at the~~
15 *discretion of the court, provided that the amount is not less than*
16 *three thousand dollars (\$3,000).*

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

22 (3) In addition to the punishments specified in this subdivision,
23 the court shall require the person convicted of the crime to make
24 restitution to the person who was solicited pursuant to subdivision
25 (f) of Section 1202.4. The restitution shall include payment for
26 mental health counseling for the person solicited. For the purposes
27 of this subdivision, the person solicited shall be considered the
28 victim for the purposes of Section 1202.4. A victim awarded
29 restitution pursuant to this paragraph may not submit a claim
30 against or recover moneys from the Restitution Fund.

31 (4) If the court grants probation to, or suspends the imposition
32 of sentence for, a person convicted of a violation this subdivision,
33 it shall be a condition of probation or the suspension of the
34 imposition of the sentence that the person convicted shall
35 participate in a sex offender management program for the duration
36 of the probation or the suspended sentence, pursuant to subdivision
37 (b) of Section 1203.067.

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