

AMENDED IN ASSEMBLY APRIL 13, 2016

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1708

Introduced by Assembly Member Gonzalez

January 25, 2016

An act to amend Section 647 of, and to add Section 266m to, the Penal Code, relating to disorderly conduct.

LEGISLATIVE COUNSEL'S DIGEST

AB 1708, as amended, Gonzalez. 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 or by a fine not exceeding \$1,000, or by both that fine and imprisonment. Existing law also imposes increased minimum terms of imprisonment for a violation of that provision if 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. Existing law additionally makes prostitution involving soliciting a minor punishable by imprisonment of not less than 2 days and not more than one year and a fine not exceeding \$10,000. Existing law allows a court to, when the interests of justice are best served, reduce or eliminate the mandatory 2 days in the county jail.

Existing law provides various penalties for human trafficking and sex trafficking offenses.

This bill would require a person convicted of a human trafficking offense or a specified sex trafficking offense, when any part of the violation takes place upon the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school during the hours that the school is open for classes or school-related programs, or at any time when minors are using the facility, to receive, in addition to any other penalty imposed, an additional term of one year in state prison.

~~This bill would recast those provisions~~ *the provisions regarding prostitution to distinguish between a person who commits prostitution by providing money or other consideration and a person who commits prostitution by receiving money or other consideration. The bill would provide that prostitution committed by receiving money or other consideration is not a crime for a person under 18 years of age and that it is an affirmative defense that a person engaged in the acts constituting the offense did so due to being a victim of human trafficking: with intent to receive compensation, in exchange for providing compensation to a person who is 18 years of age or older, or in exchange for providing compensation to a minor. The bill would require a conviction either upon proof of the intent to receive compensation, money, or anything of value and with the specific intent to engage in an act of prostitution, or upon the individual providing compensation, money, or anything of value to the other person. The bill would require a person who commits prostitution by providing money or other consideration to serve at least 72 hours in the county jail. The bill would expand the scope of prostitution involving soliciting a minor to include a situation where the person who was solicited is posing as a minor and the person engaged in the solicitation had specific intent to solicit a minor. The bill would provide that the provisions involving soliciting a minor apply only to persons who commit prostitution involving providing money or other consideration. The bill would require a person who commits prostitution involving soliciting a minor to serve a period of at least 72 hours in the county jail, and would prohibit the court from eliminating the mandatory minimum sentence. The bill would additionally make a person who commits prostitution by providing money or other consideration punishable by a minimum fine of \$1,000. This bill would require those fines to be used by the county where the offense occurred for services for victims of human trafficking.*

~~Existing law provides various penalties for human trafficking and sex trafficking offenses.~~

~~This bill would require a person convicted of a human trafficking offense, specified sex trafficking offenses, or certain felony human trafficking offenses, where any part of the violation takes place upon the grounds of, or within 1,000 feet of, a public or private elementary school, vocational, junior high, or high school during the hours that the school is open for classes or school-related programs, or at any time when minors are using the facility, to receive, in addition to any other penalty imposed, punishment of one year in state prison.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 266m is added to the Penal Code, to read:
2 266m. A person who is convicted of a violation of Section 236.1
3 for an offense committed against a minor, or Section 267 if the
4 violation takes place on the grounds of, or within 1,000 feet of, a
5 public or private elementary, vocational, junior high, or high
6 school during hours that the school is open for classes or
7 school-related programs or at any time when minors are using the
8 facility, shall receive, in addition to any other penalty imposed,
9 an additional term of one year in the state prison.

10 ~~SECTION 1.~~

11 SEC. 2. Section 647 of the Penal Code is amended to read:

12 647. Except as provided in subdivision (1), a person who
13 commits any of the following acts is guilty of disorderly conduct,
14 a misdemeanor:

15 (a) ~~Who~~ An individual who solicits anyone to engage in or who
16 engages in lewd or dissolute conduct in any public place or in any
17 place open to the public or exposed to public view.

18 (b) ~~(1) Who solicits or who agrees to engage in or who engages~~
19 ~~in any act of prostitution and provides money or other~~
20 ~~consideration.~~

21 ~~(2) Who solicits or who agrees to engage in or who engages in~~
22 ~~any act of prostitution and receives money or other consideration.~~

1 ~~(3) A person agrees to engage in an act of prostitution when,~~
2 ~~with specific intent to so engage, he or she manifests an acceptance~~
3 ~~of an offer or solicitation to so engage, regardless of whether the~~
4 ~~offer or solicitation was made by a person who also possessed the~~
5 ~~specific intent to engage in prostitution. An agreement to engage~~
6 ~~in an act of prostitution does not violate this subdivision unless~~
7 ~~some act, in addition to the agreement, is done within this state in~~
8 ~~furtherance of the commission of an act of prostitution by the~~
9 ~~person agreeing to engage in that act. As used in this subdivision,~~
10 ~~“prostitution” includes any lewd act between persons for money~~
11 ~~or other consideration.~~

12 ~~(4) Paragraph (2) of this subdivision does not apply to a person~~
13 ~~under 18 years of age.~~

14 ~~(5) It shall be an affirmative defense to a violation of paragraph~~
15 ~~(2) that the acts constituting the violation were committed by a~~
16 ~~person as a result of being a victim of human trafficking, as defined~~
17 ~~by Section 236.1.~~

18 *(b) (1) An individual who solicits, or who agrees to engage in,*
19 *or who engages in, any act of prostitution with the intent to receive*
20 *compensation, money, or anything of value, and with the specific*
21 *intent to so engage.*

22 *(2) An individual who solicits, or who agrees to engage in, or*
23 *who engages in, any act of prostitution with another person who*
24 *is 18 years of age or older in exchange for the individual providing*
25 *compensation, money, or anything of value to the other person.*
26 *An individual agrees to engage in an act of prostitution when, with*
27 *specific intent to so engage, he or she manifests an acceptance of*
28 *an offer or solicitation by another person who is 18 years of age*
29 *or older to so engage, regardless of whether the offer or solicitation*
30 *was made by a person who also possessed the specific intent to*
31 *engage in an act of prostitution.*

32 *(3) An individual who solicits, or who agrees to engage in, or*
33 *who engages in, any act of prostitution with another person who*
34 *is a minor in exchange for the individual providing compensation,*
35 *money, or anything of value to the minor. An individual agrees to*
36 *engage in an act of prostitution when, with specific intent to so*
37 *engage, he or she manifests an acceptance of an offer or*
38 *solicitation by someone who is a minor to so engage, regardless*
39 *of whether the offer or solicitation was made by a minor who also*
40 *possessed the specific intent to engage in an act of prostitution.*

1 (4) *A manifestation of acceptance of an offer or solicitation to*
2 *engage in an act of prostitution shall not constitute a violation of*
3 *this subdivision unless some act, in addition to the manifestation*
4 *of acceptance, is done within this state in furtherance of the*
5 *commission of the act of prostitution by the person manifesting an*
6 *acceptance of an offer or solicitation to engage in that act. As used*
7 *in this subdivision, “prostitution” includes any lewd act between*
8 *persons for money or other consideration.*

9 ~~(6)~~

10 (5) Except as provided in subdivisions (k) and (m), a violation
11 of paragraph ~~(1)~~ (2) or (3) is punishable by imprisonment in a
12 county jail for not less than 72 hours and not more than six months
13 and by a fine ~~not exceeding~~ of one thousand dollars (\$1,000). The
14 fine imposed shall be deposited in the treasury of the county in
15 which the offense occurred and used by the county to fund services
16 for victims of human trafficking. Upon a violation of paragraph
17 ~~(1)~~, (2) or (3), a person is not eligible for release upon completion
18 of sentence, on probation, on parole, on work furlough or work
19 release, or on any other basis until he or she has served a period
20 of not less than three days in a county jail. In all cases in which
21 probation is granted, the court shall require as a condition of
22 probation that the person be confined in a county jail for at least
23 three days. The court shall not absolve a person who violates
24 paragraph ~~(1)~~ (2) or (3) from the obligation of spending at least
25 72 hours in confinement in a county jail.

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

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

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

35 (f) Who is found in any public place under the influence of
36 intoxicating liquor, any drug, controlled substance, toluene, or any
37 combination of any intoxicating liquor, drug, controlled substance,
38 or toluene, in a condition that he or she is unable to exercise care
39 for his or her own safety or the safety of others, or by reason of
40 his or her being under the influence of intoxicating liquor, any

1 drug, controlled substance, toluene, or any combination of any
2 intoxicating liquor, drug, or toluene, interferes with or obstructs
3 or prevents the free use of any street, sidewalk, or other public
4 way.

5 (g) When a person has violated subdivision (f), a peace officer,
6 if he or she is reasonably able to do so, shall place the person, or
7 cause him or her to be placed, in civil protective custody. The
8 person shall be taken to a facility, designated pursuant to Section
9 5170 of the Welfare and Institutions Code, for the 72-hour
10 treatment and evaluation of inebriates. A peace officer may place
11 a person in civil protective custody with that kind and degree of
12 force which would be lawful were he or she effecting an arrest for
13 a misdemeanor without a warrant. A person who has been placed
14 in civil protective custody shall not thereafter be subject to any
15 criminal prosecution or juvenile court proceeding based on the
16 facts giving rise to this placement. This subdivision shall not apply
17 to the following persons:

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

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

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

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

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

36 (j) (1) Any person who looks through a hole or opening, into,
37 or otherwise views, by means of any instrumentality, including,
38 but not limited to, a periscope, telescope, binoculars, camera,
39 motion picture camera, camcorder, or mobile phone, the interior
40 of a bedroom, bathroom, changing room, fitting room, dressing

1 room, or tanning booth, or the interior of any other area in which
2 the occupant has a reasonable expectation of privacy, with the
3 intent to invade the privacy of a person or persons inside. This
4 subdivision shall not apply to those areas of a private business
5 used to count currency or other negotiable instruments.

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

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

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

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

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

33 (4) (A) Any person who intentionally distributes the image of
34 the intimate body part or parts of another identifiable person, or
35 an image of the person depicted engaged in an act of sexual
36 intercourse, sodomy, oral copulation, sexual penetration, or an
37 image of masturbation by the person depicted or in which the
38 person depicted participates, under circumstances in which the
39 persons agree or understand that the image shall remain private,
40 the person distributing the image knows or should know that

1 distribution of the image will cause serious emotional distress, and
2 the person depicted suffers that distress.

3 (B) A person intentionally distributes an image described in
4 subparagraph (A) when he or she personally distributes the image,
5 or arranges, specifically requests, or intentionally causes another
6 person to distribute that image.

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

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

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

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

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

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

22 (k) In any accusatory pleading charging a violation of
23 subdivision (b), if the defendant has been once previously convicted
24 of a violation of that subdivision, the previous conviction shall be
25 charged in the accusatory pleading. If the previous conviction is
26 found to be true by the jury, upon a jury trial, or by the court, upon
27 a court trial, or is admitted by the defendant, the defendant shall
28 be imprisoned in a county jail for a period of not less than 45 days
29 and is not eligible for release upon completion of sentence, on
30 probation, on parole, on work furlough or work release, or on any
31 other basis until he or she has served a period of not less than 45
32 days in a county jail. In all cases in which probation is granted,
33 the court shall require as a condition thereof that the person be
34 confined in a county jail for at least 45 days. The court shall not
35 absolve a person who violates this subdivision from the obligation
36 of spending at least 45 days in confinement in a county jail.

37 In any accusatory pleading charging a violation of subdivision
38 (b), if the defendant has been previously convicted two or more
39 times of a violation of that subdivision, each of these previous
40 convictions shall be charged in the accusatory pleading. If two or

1 more of these previous convictions are found to be true by the jury,
2 upon a jury trial, or by the court, upon a court trial, or are admitted
3 by the defendant, the defendant shall be imprisoned in a county
4 jail for a period of not less than 90 days and is not eligible for
5 release upon completion of sentence, on probation, on parole, on
6 work furlough or work release, or on any other basis until he or
7 she has served a period of not less than 90 days in a county jail.
8 In all cases in which probation is granted, the court shall require
9 as a condition thereof that the person be confined in a county jail
10 for at least 90 days. The court shall not have the power to absolve
11 a person who violates this subdivision from the obligation of
12 spending at least 90 days in confinement in a county jail.

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

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

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

34 (m) If a crime is committed in violation of paragraph ~~(1)~~ (3) of
35 subdivision (b) ~~and the person who was solicited was a minor at~~
36 ~~the time of the offense~~, and if the defendant knew or should have
37 known that the person who was solicited was a minor at the time
38 of the offense, or if *a crime is committed in violation of paragraph*
39 *(2) of subdivision (b) and the person who was solicited was a*
40 *person posing as a minor and the person engaged in the solicitation*

1 had specific intent to solicit a minor, the violation is punishable
2 by imprisonment in a county jail for not less than 72 hours and not
3 more than one year and by a fine not less than one thousand dollars
4 (\$1,000) and not exceeding ten thousand dollars (\$10,000). The
5 fine imposed shall be deposited in the treasury of the county in
6 which the offense occurred and used by the county to fund services
7 for victims of human trafficking. Upon a violation of this
8 subdivision, a person is not eligible for release upon completion
9 of sentence, on probation, on parole, on work furlough or work
10 release, or on any other basis until he or she has served a period
11 of not less than 72 hours in a county jail. In all cases in which
12 probation is granted, the court shall require as a condition of
13 probation that the person be confined in a county jail for at least
14 72 hours. The court shall not absolve a person who is governed
15 by this subdivision from the obligation of spending at least 72
16 hours in confinement in a county jail.

17 ~~SEC. 2. Section 266m is added to the Penal Code, to read:~~

18 ~~266m. A person who is convicted of a felony violation of~~
19 ~~Section 236.1, for an offense committed against a minor, or Section~~
20 ~~267, if the violation takes place on the grounds of, or within 1,000~~
21 ~~feet of, a public or private elementary, vocational, junior high, or~~
22 ~~high school, during hours that the school is open for classes or~~
23 ~~school-related programs or at any time when minors are using the~~
24 ~~facility, shall receive, in addition to any other penalty imposed,~~
25 ~~punishment of one year in the state prison.~~

26 SEC. 3. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.