

AMENDED IN SENATE JUNE 28, 2016

AMENDED IN SENATE JUNE 15, 2016

AMENDED IN ASSEMBLY MAY 5, 2016

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
(Coauthor: Senator Anderson)

January 25, 2016

An act to amend Section 647 of, and to add Section 266m to, of 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 the provisions regarding prostitution to distinguish between a person who commits prostitution 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 continuous hours in the county jail, to be served on days other than days of regular employment of the person, as specified. In all cases in which probation is granted, the bill would also require as a condition of probation that the person be confined in a county jail for at least 24 hours. The bill would expand the scope of prostitution ~~involving~~ *by* 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~~ *by* providing money or other consideration. The bill would require a person who commits prostitution ~~involving~~ *by* soliciting a minor to serve a period of at least 72 continuous hours in the county jail, to be served on days other than days of regular employment of the person, as specified, and would prohibit the court from eliminating the mandatory minimum sentence. In all cases in which probation is granted, the bill would also require as a condition of probation that the person be confined in a county jail for at least 48

hours. The bill would additionally make a person who commits prostitution by providing money or other consideration punishable by a minimum fine of \$1,000. The bill would require ~~those fines~~ *a portion of those fines, as specified*, to be used by the county where the offense occurred for services for victims of human trafficking. The bill would clarify that nothing in ~~this section~~ *these provisions* shall preclude prosecution under any *other* provision of law. By revising the scope of a crime, the bill would impose a state-mandated local program.

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.

The 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~~
3 ~~236.1 for an offense committed against a minor, or Section 267 if~~
4 ~~the violation takes place on the grounds of, or within 1,000 feet~~
5 ~~of, a 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, an~~
9 ~~additional term of one year in the state prison.~~

10 ~~SEC. 2.~~

11 ~~SECTION 1.~~ Section 647 of the Penal Code is amended to read:
12 ~~647. Except as provided in subdivision (l), a person who~~
13 ~~commits any of the following acts is guilty of disorderly conduct,~~
14 ~~a misdemeanor:~~

15 ~~(a) 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) 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.~~

1 (2) An individual who solicits, or who agrees to engage in, or
2 who engages in, any act of prostitution with another person who
3 is 18 years of age or older in exchange for the individual providing
4 compensation, money, or anything of value to the other person.
5 An individual agrees to engage in an act of prostitution when, with
6 specific intent to so engage, he or she manifests an acceptance of
7 an offer or solicitation by another person who is 18 years of age
8 or older to so engage, regardless of whether the offer or solicitation
9 was made by a person who also possessed the specific intent to
10 engage in an act of prostitution.

11 (3) An individual who solicits, or who agrees to engage in, or
12 who engages in, any act of prostitution with another person who
13 is a minor in exchange for the individual providing compensation,
14 money, or anything of value to the minor. An individual agrees to
15 engage in an act of prostitution when, with specific intent to so
16 engage, he or she manifests an acceptance of an offer or solicitation
17 by someone who is a minor to so engage, regardless of whether
18 the offer or solicitation was made by a minor who also possessed
19 the specific intent to engage in an act of prostitution.

20 (4) A manifestation of acceptance of an offer or solicitation to
21 engage in an act of prostitution shall not constitute a violation of
22 this subdivision unless some act, in addition to the manifestation
23 of acceptance, is done within this state in furtherance of the
24 commission of the act of prostitution by the person manifesting
25 an acceptance of an offer or solicitation to engage in that act. As
26 used in this subdivision, “prostitution” includes any lewd act
27 between persons for money or other consideration.

28 (5) Except as provided in ~~subdivisions (k) and (m)~~, *paragraph*
29 *(6) and subdivision (k)*, a violation of paragraph (2) or (3) is
30 punishable by imprisonment in a county jail for not less than 72
31 hours and not more than six months and by a fine of ~~one thousand~~
32 ~~dollars (\$1,000)~~. *The fine imposed not less than two hundred fifty*
33 *dollars (\$250) but not exceeding one thousand dollars (\$1,000).*
34 *An amount of two hundred fifty dollars (\$250) of the fine shall be*
35 *deposited in the treasury of the county in which the offense*
36 *occurred and used by the county to fund services for victims of*
37 *human trafficking. Upon a violation of paragraph (2) or (3), a*
38 *person is not eligible for release upon completion of sentence, on*
39 *probation, on parole, on work furlough or work release, or on any*
40 *other basis until he or she has served a period of not less than 24*

1 continuous hours in a county jail. In all cases in which probation
2 is granted, the court shall require as a condition of probation that
3 the person be confined in a county jail for at least 24 hours. The
4 court shall order that a person punished under this subdivision,
5 who is to be punished by imprisonment in the county jail, be
6 imprisoned on days other than days of regular employment of the
7 person, as determined by the court. If the court determines that 24
8 hours of continuous imprisonment would interfere with the person's
9 work schedule, the court shall allow the person to serve the
10 imprisonment whenever the person is normally scheduled for time
11 off from work. The court may make this determination based upon
12 a representation from the defendant's attorney or upon an affidavit
13 or testimony from the defendant.

14 *(6) If a defendant violates paragraph (3) and knew or should*
15 *have known that the person who was solicited was a minor at the*
16 *time of the offense, or if a defendant violates paragraph (2) and*
17 *the person who was solicited was a person posing as a minor and*
18 *the defendant had specific intent to solicit a minor, the violation*
19 *is punishable by imprisonment in a county jail for not less than*
20 *72 hours and not more than one year and by a fine not less than*
21 *one thousand dollars (\$1,000) but not exceeding ten thousand*
22 *dollars (\$10,000). The fine imposed shall be deposited in the*
23 *treasury of the county in which the offense occurred and used by*
24 *the county to fund services for victims of human trafficking. Upon*
25 *a violation of this paragraph, a person is not eligible for release*
26 *upon completion of sentence, on probation, on parole, on work*
27 *furlough or work release, or on any other basis until he or she has*
28 *served a period of not less than 48 continuous hours in a county*
29 *jail. In all cases in which probation is granted, the court shall*
30 *require as a condition of probation that the person be confined in*
31 *a county jail for at least 48 hours. The court shall order that a*
32 *person punished under this paragraph, who is to be punished by*
33 *imprisonment in the county jail, be imprisoned on days other than*
34 *days of regular employment of the person, as determined by the*
35 *court. If the court determines that 48 hours of continuous*
36 *imprisonment would interfere with the person's work schedule,*
37 *the court shall allow the person to serve the imprisonment*
38 *whenever the person is normally scheduled for time off from work.*
39 *The court may make this determination based upon a*

1 *representation from the defendant's attorney or upon an affidavit*
2 *or testimony from the defendant.*

3 (7) *This subdivision does not prohibit prosecution under any*
4 *other law.*

5 (c) Who accosts other persons in any public place or in any
6 place open to the public for the purpose of begging or soliciting
7 alms.

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

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

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

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

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

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

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

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

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

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

27 (2) Any person who uses a concealed camcorder, motion picture
28 camera, or photographic camera of any type, to secretly videotape,
29 film, photograph, or record by electronic means, another,
30 identifiable person under or through the clothing being worn by
31 that other person, for the purpose of viewing the body of, or the
32 undergarments worn by, that other person, without the consent or
33 knowledge of that other person, with the intent to arouse, appeal
34 to, or gratify the lust, passions, or sexual desires of that person and
35 invade the privacy of that other person, under circumstances in
36 which the other person has a reasonable expectation of privacy.

37 (3) (A) Any person who uses a concealed camcorder, motion
38 picture camera, or photographic camera of any type, to secretly
39 videotape, film, photograph, or record by electronic means, another,
40 identifiable person who may be in a state of full or partial undress,

1 for the purpose of viewing the body of, or the undergarments worn
2 by, that other person, without the consent or knowledge of that
3 other person, in the interior of a bedroom, bathroom, changing
4 room, fitting room, dressing room, or tanning booth, or the interior
5 of any other area in which that other person has a reasonable
6 expectation of privacy, with the intent to invade the privacy of that
7 other person.

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

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

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

14 (4) (A) Any person who intentionally distributes the image of
15 the intimate body part or parts of another identifiable person, or
16 an image of the person depicted engaged in an act of sexual
17 intercourse, sodomy, oral copulation, sexual penetration, or an
18 image of masturbation by the person depicted or in which the
19 person depicted participates, under circumstances in which the
20 persons agree or understand that the image shall remain private,
21 the person distributing the image knows or should know that
22 distribution of the image will cause serious emotional distress, and
23 the person depicted suffers that distress.

24 (B) A person intentionally distributes an image described in
25 subparagraph (A) when he or she personally distributes the image,
26 or arranges, specifically requests, or intentionally causes another
27 person to distribute that image.

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

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

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

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

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

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

3 (k) In any accusatory pleading charging a violation of
4 subdivision (b), if the defendant has been once previously convicted
5 of a violation of that subdivision, the previous conviction shall be
6 charged in the accusatory pleading. If the previous conviction is
7 found to be true by the jury, upon a jury trial, or by the court, upon
8 a court trial, or is admitted by the defendant, the defendant shall
9 be imprisoned in a county jail for a period of not less than 45 days
10 and is not eligible for release upon completion of sentence, on
11 probation, on parole, on work furlough or work release, or on any
12 other basis until he or she has served a period of not less than 45
13 days in a county jail. In all cases in which probation is granted,
14 the court shall require as a condition thereof that the person be
15 confined in a county jail for at least 45 days. The court shall not
16 absolve a person who violates this subdivision from the obligation
17 of spending at least 45 days in confinement in a county jail.

18 In any accusatory pleading charging a violation of subdivision
19 (b), if the defendant has been previously convicted two or more
20 times of a violation of that subdivision, each of these previous
21 convictions shall be charged in the accusatory pleading. If two or
22 more of these previous convictions are found to be true by the jury,
23 upon a jury trial, or by the court, upon a court trial, or are admitted
24 by the defendant, the defendant shall be imprisoned in a county
25 jail for a period of not less than 90 days and is not eligible for
26 release upon completion of sentence, on probation, on parole, on
27 work furlough or work release, or on any other basis until he or
28 she has served a period of not less than 90 days in a county jail.
29 In all cases in which probation is granted, the court shall require
30 as a condition thereof that the person be confined in a county jail
31 for at least 90 days. The court shall not have the power to absolve
32 a person who violates this subdivision from the obligation of
33 spending at least 90 days in confinement in a county jail.

34 In addition to any punishment prescribed by this section, a court
35 may suspend, for not more than 30 days, the privilege of the person
36 to operate a motor vehicle pursuant to Section 13201.5 of the
37 Vehicle Code for any violation of subdivision (b) that was
38 committed within 1,000 feet of a private residence and with the
39 use of a vehicle. In lieu of the suspension, the court may order a
40 person's privilege to operate a motor vehicle restricted, for not

1 more than six months, to necessary travel to and from the person’s
2 place of employment or education. If driving a motor vehicle is
3 necessary to perform the duties of the person’s employment, the
4 court may also allow the person to drive in that person’s scope of
5 employment.

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

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

15 ~~(m) If a crime is committed in violation of paragraph (3) of~~
16 ~~subdivision (b) and if the defendant knew or should have known~~
17 ~~that the person who was solicited was a minor at the time of the~~
18 ~~offense, or if a crime is committed in violation of paragraph (2)~~
19 ~~of subdivision (b) and the person who was solicited was a person~~
20 ~~posing as a minor and the person engaged in the solicitation had~~
21 ~~specific intent to solicit a minor, the violation is punishable by~~
22 ~~imprisonment in a county jail for not less than 72 hours and not~~
23 ~~more than one year and by a fine not less than one thousand dollars~~
24 ~~(\$1,000) and not exceeding ten thousand dollars (\$10,000). The~~
25 ~~fine imposed shall be deposited in the treasury of the county in~~
26 ~~which the offense occurred and used by the county to fund services~~
27 ~~for victims of human trafficking. Upon a violation of this~~
28 ~~subdivision, a person is not eligible for release upon completion~~
29 ~~of sentence, on probation, on parole, on work furlough or work~~
30 ~~release, or on any other basis until he or she has served a period~~
31 ~~of not less than 48 continuous hours in a county jail. In all cases~~
32 ~~in which probation is granted, the court shall require as a condition~~
33 ~~of probation that the person be confined in a county jail for at least~~
34 ~~48 hours. The court shall order that a person punished under this~~
35 ~~subdivision, who is to be punished by imprisonment in the county~~
36 ~~jail, be imprisoned on days other than days of regular employment~~
37 ~~of the person, as determined by the court. If the court determines~~
38 ~~that 48 hours of continuous imprisonment would interfere with~~
39 ~~the person’s work schedule, the court shall allow the person to~~
40 ~~serve the imprisonment whenever the person is normally scheduled~~

1 ~~for time off from work. The court may make this determination~~
2 ~~based upon a representation from the defendant's attorney or upon~~
3 ~~an affidavit or testimony from the defendant.~~

4 ~~(n) Nothing in this section shall preclude prosecution under any~~
5 ~~other provision of law.~~

6 ~~SEC. 3.~~

7 *SEC. 2.* No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.