
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 663 **Hearing Date:** June 25, 2019
Author: Cunningham
Version: May 16, 2019
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Prostitution*

HISTORY

Source: Author

Prior Legislation: SB 1322 (Mitchell), Stats. of 2016, Ch. 654
SB 776 (Block), 2015, failed passage in Assembly Public Safety
SB 1388 (Lieu), Stats. of 2014, Ch. 714

Support: Crime Victims United of California; End Violence Against Women International

Opposition: California Attorneys for Criminal Justice

Assembly Floor Vote: 71 - 4

PURPOSE

The purpose of this bill specifies that 75% of fines collected for convictions of soliciting a minor for purposes of prostitution shall be diverted to the county to be used to fund shelters, counseling, and other services for victims of commercial sexual exploitation and commercial sexual abuse. Specifies a fine of up to \$2,000 for soliciting a minor for purposes of prostitution.

Existing law states that, except in cases where a statute specifies a different punishment, the punishment for a misdemeanor is imprisonment in the county jail not exceeding six months, or a fine of up to \$1,000, or both. (Pen. Code, § 19.)

Existing law provides that a person who solicits, agrees to engage in, or engages in an act of prostitution with the intent to receive compensation, money, or anything of value from another person is guilty of a misdemeanor. (Pen. Code § 647, subd. (b)(1).)

Existing law provides that a person who solicits, or who agrees to engage in, or who engages in, any act of prostitution with another person who is 18 years of age or older in exchange for the individual providing compensation, money, or anything of value to the other person is guilty of a misdemeanor. (Pen. Code § 647, subd. (b)(2).)

Existing law provides that a person who solicits, or who agrees to engage in, or who engages in, any act of prostitution with another person who is a minor in exchange for the individual providing compensation, money, or anything of value to the minor is guilty of a misdemeanor. (Pen. Code § 647, subd. (b)(3).)

Existing law punishes the solicitation of a minor by imprisonment in a county jail for not less than two days and not more than one year, or by a fine of up to \$10,000, or by both, if the defendant knew, or should have known, that the person solicited was a minor at the time of the offense. (Pen. Code, §, 647, subd. (m).)

Existing law punishes persons who solicit a minor for purposes of prostitution for a second or subsequent conviction with up to one year in the county jail and a fine of up to \$2,000. (Pen. Code, §, 647, subd. (l).)

Existing law states that an individual agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation by another person to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in an act of prostitution. (Pen. Code, § 647, subd. (b).)

Existing law states that a manifestation of acceptance of an offer or solicitation to engage in an act of prostitution does not constitute a violation unless some act, in addition to the manifestation of acceptance, is done in furtherance of the commission of the act of prostitution by the person manifesting an acceptance of an offer or solicitation to engage in that act. (Pen. Code, § 647, subd. (b)(4).)

Existing law decriminalizes prostitution for those under 18 years of age. (Pen. Code § 647, subd. (b)(5).)

This bill requires that 75% of the moneys collected from fines for solicitation offenses for persons under the age of 18 be retained by the county and used to fund shelter, counseling, and other direct services and exit programs for victims of commercial sexual exploitation and commercial sexual abuse.

This bill states that if the defendant does not have the ability to pay, the court may reduce the amount of the fine or waive it.

This bill specifies a fine of up to \$2,000 for solicitation of a minor, as specified.

COMMENTS

1. Need for This Bill

According to the author:

Under Penal Code 19 the current authorized fine for a prostitution violation is \$1,000 with no mandatory minimum fine.

Unfortunately, for Johns and sexual exploitation rings, this is merely a slap on the wrist and incentives them to continue to prostitute victims. California needs to send a message through the pocketbooks of these Johns that exploitation of any victim shall not be tolerated.

2. Prostitution Generally

The basic crime of prostitution is a misdemeanor offense. (Pen. Code § 647(b).) Prostitution can be generally defined as "soliciting or agreeing to engage in a lewd act between persons for money or other consideration." Lewd acts include touching the genitals, buttocks, or female breast of either the prostitute or customer with some part of the other person's body for the purpose of sexual arousal or gratification of either person.

To implicate a person for prostitution themselves, the prosecutor must prove that the defendant "solicited" or "agreed" to "engage" in prostitution. A person agrees to engage in prostitution when the person accepts an offer to commit prostitution with specific intent to accept the offer, whether or not the offerer has the same intent.

For the crime of "soliciting a prostitute" the prosecutors must prove that the defendant requested that another person engage in an act of prostitution, and that the defendant intended to engage in an act of prostitution with the other person, and the other person received the communication containing the request. The defendant must do something more than just agree to engage in prostitution. The defendant must do some act in furtherance of the agreement to be convicted. Words alone may be sufficient to prove the act in furtherance of the agreement to commit prostitution.

Violation of Pen. Code § 647(b) is a misdemeanor. For a first offense conviction of prostitution the defendant faces up to 180 days in jail. If a defendant has one prior conviction of prostitution he or she must receive a county jail sentence of not less than 45 days. If the defendant has two or more prior convictions, the minimum sentence is 90 days in the county jail.

In addition to the punishment described above, if the defendant has a conviction of prostitution, he or she faces fines, probation, possible professional licensing restrictions or revocations, possible immigration consequences, possible asset forfeiture, and possible driving license restrictions.

Closely associated crimes to prostitution include: abduction of a minor for prostitution (Pen. Code 267); seduction for prostitution (Pen. Code 266); keeping a house of prostitution (Pen. Code 315); leasing a house for prostitution (Pen. Code 318); sending a minor to a house of prostitution (Pen. Code 273e); taking a person against that person's will for prostitution (Pen. Code 266a); compelling a person to live in an illicit relationship (Pen. Code 266b); placing or leaving one's wife in a house of prostitution (Pen. Code 266g); loitering for prostitution (Pen. Code 653.22 subd. (a)); pimping (Pen. Code 266h); or, pandering (Pen. Code 266i). Most of these crimes are punished much more severely than the underlying prostitution offense, particularly the crimes of pimping, pandering, and procurement.

3. Sexual Exploitation of Minors

Sexual conduct with a minor constitutes a felony in most instances, regardless of whether anything of value was offered or exchanged for the sexual acts. If the minor involved in

commercial sex of was under the age of 14, the defendant has committed the felony of lewd conduct, with a prison term of three, six or eight years, or five, eight or 10 years if coercion is involved (Pen. Code § 288, subs. (a) & (b).) Soliciting an act of prostitution from a minor under the age of 14 could likely be prosecuted as attempted lewd conduct. The prison or jail term for an attempt is generally one-half the punishment for the completed crime. Where the defendant solicited or employed a minor who was 14 or 15 years old, and the defendant was at least 10 years older than the minor, the defendant has committed an alternate felony-misdemeanor.

Any defined sex act – sodomy, sexual penetration, oral copulation or sexual intercourse – with a minor is a crime. The penalties depend on the relative ages of the defendant and the minor and whether the crime involved some form of force, coercion or improper advantage. A defendant charged with a prostitution-related offense involving a minor could also be charged and convicted of a sex crime in the same case. Generally, because the defined sex crime and the sexual commerce offense would involve a single transaction or act, the defendant could only be punished for one offense – the offense carrying the greatest penalty. (Pen. Code § 654.)

In 2016 California specified that minors engaged in commercial sexual activity were no longer subject to prosecution for prostitution. SB 1322 (Mitchell), Ch. 654, 2016 specified that these sexually exploited children should be referred to social services and could be adjudicated a dependent child of the juvenile court.

Additionally, SB 1388 (Lieu), Stats. of 2014, Ch. 714, specified that persons convicted of soliciting a minor could suffer a fine of up to \$10,000. SB 1388 also specified an additional fine of up to \$25,000 for placing a minor into prostitution.

This bill would divert 75% of fines collected for convictions of soliciting a minor for purposes of prostitution shall be diverted to the county to be used to fund shelters, counseling, and other services for victims of commercial sexual exploitation and commercial sexual abuse.

4. Fine Schemes for Solicitation of Minors

Under current law we punish solicitation of a minor with up to 6-months in the county jail and a fine of up to \$1,000 if the prosecution cannot show that the offender knew or should have known that the person solicited was under the age of 18-years. This bill would increase this fine to a fine of up to \$2,000.

Regardless of the knowledge requirement, an offender who is convicted of a subsequent offense of soliciting a minor may serve up to a year in the county jail and suffer a fine of up to \$2,000. This bill would make the fine for the underlying offense commiserate with the fine for a subsequent offense.

In addition to these fines and punishments the code imposes additional punishments if the offender knows or should have known that the person solicited was a minor. Under this circumstance the perpetrator must serve a minimum 2-days in county jail, and up to one-year in county jail. Additionally, the offender who knows or should know the person solicited is a minor may be fined up to \$10,000. This fine is a separate fine from the underlying solicitation of a minor offense with no knowledge of the victim's age.

Additionally, as discussed above, any offender who engages in sexual contact with a minor or who lures a minor for purposes of sexual activity will suffer additional heavy felony punishments and fines.

5. Addition of Penalty Assessments to Base Fines

There are penalty assessments and fees assessed on the base fine for a crime. Assuming a defendant was fined \$2,000 as the maximum fine for a criminal offense, the following penalty assessments would be imposed under the Penal Code and the California Government Code:

Penal Code 1464 assessment:	\$2,000	(\$10 for every \$10)
Penal Code 1465.7 surcharge:	\$400	(20% surcharge)
Penal Code 1465.8 assessment:	\$40	(\$40 fee per offense)
Government Code 70372 assessment:	\$1,000	(\$5 for every \$10)
Government Code 70373 assessment:	\$30	(\$30 for felony)
Government Code 76000 assessment:	\$1,400	(\$7 for every \$10)
Government Code 76000.5 assessment:	\$400	(\$2 for every \$10)
Government Code 76104.6 assessment:	\$200	(\$1 for every \$10)
Government Code 76104.7 assessment:	\$800	(\$4 for every \$10)

Based on these calculations, the total payment owed if the court imposed the maximum fine of \$2,000 would be \$8,270.

This figure does not include victim restitution, or the restitution fine, and that other fines and fees, such as the jail-booking fee, attorney fees, own recognizance (OR) release fees, probation-department fees, which may also be applicable.

It should be noted, however, that this bill would allow the court to reduce or to waive the fine if it determines that the defendant does not have the ability to pay the fine.

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