
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 1129 **Hearing Date:** April 19, 2016
Author: Monning
Version: February 17, 2016
Urgency: No **Fiscal:** No
Consultant: JM

Subject: *Prostitution: Sanctions*

HISTORY

Source: California Public Defenders Association

Prior Legislation: SB 244 (Liu) 2014, Died in Assembly Public Safety

Support: American Civil Liberties Union; Legal Services for Prisoners with Children

Opposition: California District Attorneys Association; California Police Chiefs Association

PURPOSE

The purpose of this bill is to repeal statutory provisions imposing mandatory minimum prostitution jail terms for repeat offenders and specifically authorizing the court to impose a driver's license suspension on a first-time offender where a prostitution offense occurred within 1,000 feet of a residence.

Existing law provides that any person who solicits, agrees to engage in, or engages in an act of prostitution is guilty of misdemeanor. Prostitution includes any lewd act between persons for money or other consideration. (Pen. Code § 647, subd. (b).)

Existing law provides that any person who solicits another person to engage in any lewd or dissolute act in a public place is guilty of a misdemeanor. (Pen. Code § 647, subd. (a).)

Existing law provides that any person is convicted for a second prostitution offense shall serve a sentence of at least 45 days, no part of which can be suspended or reduced by the court, regardless of whether or not the court grants probation. (Pen. Code § 647, subd. (k).)

Existing law provides that any person convicted for a third prostitution offense shall serve a sentence of at least 90 days, no part of which can be suspended or reduced by the court regardless of whether or not the court grants probation. (Pen. Code § 647, subd. (k).)

Existing law authorizes a sentencing court to suspend the driver's license of a person convicted of a prostitution offense that occurred with the use of a motor vehicle within 1,000 feet of a

“private residence.” The court may restrict for six months the person’s driving privilege to necessary travel to and from the person’s place of employment or education. If operation of a motor vehicle is necessary for the performance of the person’s employment duties, the court may allow driving for that purpose. (Pen. Code § 647, subd. (k); Veh. Code § 13201.5.)

This bill repeals the mandatory minimum terms for repeated prostitution offenses, leaving discretion with the court to impose an appropriate sentence.

This bill repeals the specific authority of a court to order suspension of the driver’s license of a convicted prostitution defendant if the offense was committed with a vehicle within 1,000 feet of a residence.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state’s ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v.*

Brown (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

Mandatory minimum sentencing laws grew largely out of 1980's tough-on-crime laws that sought stiffer punishments for drug and violent crimes and shifted much of sentencing from rehabilitation to punishment and deterrence. Statutory minimum sentences have increased jail and prison populations over subsequent decades and stripped the court's ability to address the underlying issues that cause a person to offend in the first place.

California's prostitution laws contain some of the harshest mandatory misdemeanor penalties by requiring a mandatory minimum sentence of up to 90 days in jail for reoffending. Penal Code Section 647 requires that upon a second prostitution conviction... an offender must serve a minimum of 45 days in county jail, and 90 days upon a third conviction. The court can also ... restrict an individual's ability to drive for up to six months, so long as the offense involved the use of a vehicle, or was committed within a thousand feet of a residence. These sentences are based on the assumption that mandatory jail time will deter future offenders. The efficacy of mandatory minimums as a deterrent to crime has been the subject of debate, with many researchers concluding that they have been massively ineffective. An October, 2011 United States Sentencing Commission report to the US Congress state that: "Some scholars counter the claims...that [mandatory minimum] penalties serve as an effective deterrent to crime. ...[R]esearch ... has found little evidence to support the argument that mandatory minimums prevent crime. In fact, many assert ... [that] certainty of punishment through the prosecution of more offenders ... is the more cost effective deterrent compared to the severity of punishment..." (Page 98)

California's prison and jail overcrowding problem ... has culminated in the realignment of the entire criminal justice system, pushing supervision of more

serious offenders to the county jails, and an increase in the use of... supervision for low-level...offenses. Requiring a “john” or sex-worker to spend a minimum of 45, or 90 days in jail ... creates the potential for the need to release more serious offenders in order to make room for those convicted of recidivist-prostitution.

Additionally, the mandatory sentences required under conviction of Penal Code 647 ... specifically forbid judicial intervention. This ... prevents a judge from tailoring a sentence for a specific offender, or ordering alternative probationary sanctions, such as participation in diversion and rehabilitation programs that target the root cause of the recidivism. The Sentencing Commission’s 2011 report further describes that: “[T]he Judicial Conference has long urged Congress ‘to reconsider the wisdom’ of mandatory minimum penalties because they ‘block judges from considering the individual circumstances of particular cases.’ ...[T]he resulting sentence may be unfair or irrational.” (Page 95)

Mandatory jail time also creates a potential disincentive for offenders to take part in ... probation or treatment, as an offender may opt to choose the 45 days in jail in order to avoid [lengthy] supervision and drug treatment. A mandatory sentence shifts discretion from judges to prosecutors who can create their own charging schemes and use the threat of incarceration to gain plea-deal convictions. Many of those who engage in prostitution are victims of human trafficking and forced into sex work. They should not be incarcerated for 45 to 90 days. Ending mandatory minimums will allow judges to recognize trafficking and use discretion in sentencing. Judges will have discretion to order a sentence longer than 90 days for a recidivist john, or recommend diversion for trafficking victims.

SB 1129 will also remove the current Vehicle Code Section 13201.5 provisions that allow the courts to remove a person’s driving privileges for engaging in prostitution. These punitive statutes allow a judge to suspend a person’s driver’s license for up to 30 days, or restrict their driver’s license for up to 6 months, if the prostitution was committed within 1,000 feet of a private residence and with the use of a vehicle. This arbitrary and summary removal of a person’s license for up to 6 months is excessive, and would likely derail any rehabilitative efforts that could dissuade an offender from engaging in further prostitution.

2. Enactment of Mandatory Minimum Sentences and Driver’s License Suspension Provisions

The authority of a court to suspend for 30 days the driver’s license of a prostitution offender was enacted by AB 2949 (Harvey), Ch. 1019, Stats. of 1996. AB 1788 (Wright), Ch. 758, Stats. of 1998 authorized the court to impose a six month suspension of a driver’s license or a convicted prostitution offender, except for travel to and from work. The Senate Floor Analysis of AB 1788 explained:

The Prostitution Abatement and Neighborhood Protection Act and authorized courts to suspend the driving privilege of any person convicted of soliciting, agreeing to, or engaging in, an act of prostitution with the use of a vehicle and

within 1,000 feet of a private residence for up to 30 days. AB 2949's intent was to deter individuals from "cruising" residential neighborhoods in search of prostitutes. According to Los Angeles County: "The existing 30 days suspension is little more than an inconvenience for many offenders. A six month suspension should cause violators to think about potential penalties before engaging in acts of prostitution in an automobile. It will help keep prostitution away from residential neighborhoods."

Committee staff is unaware of any studies of the effect the driver's license suspension had on prostitution offenses committed within 1,000 feet of private residence. Existing law does not define the term "private residence." A thousand feet is the length of three and 1/3 football fields. It would appear that many, if not most, prostitution offenses in urban areas occur within 1,000 feet of residences. Committee staff found no cases applying or interpreting the license suspension provisions.

3. A Defendant Required to Serve a Minimum Jail Term as a Condition of Probation is Likely to Refuse Probation

If the court does not impose sentence for a repeated prostitution offenses, but places the defendant on probation, *the 45 and 90-day terms must be imposed as a condition of probation* – the same penalty as the minimum penalty for an executed sentence. Many, if not most, county jails are crowded, particularly in urban areas. A defendant who is convicted of a prostitution offense in a county with crowded jail conditions would very likely refuse probation because he would know that he would not serve more than 45 or 90 days, depending on whether it is the second or subsequent offense, upon a straight sentence without probation.

A defendant who is not on probation cannot be monitored by the probation department or the court. A defendant who is not on probation cannot be ordered to engage in rehabilitative or restorative justice programs. If the odds of getting caught committing such a crime is low, and that may be likely, such a person could remain a significant source of demand for prostitution.

4. Study of Homeless Young People Engaged in Survival-Sex Prostitution in New York City

A 2008 John Jay College study¹ of commercially, sexually exploited homeless youth in New York city found that these young people often sought out customers and found customers for each other. Sexually exploited youth sought older white customers who were perceived to have more money, although the actual range of customers was relatively wide. A 2012 New Yorker article reported that these young people in lived in harsh conditions and risked becoming "lifers" on the street. Programs and services for them were scarce and typically short-term.²

¹ <https://www.ncjrs.gov/pdffiles1/nij/grants/225083.pdf>, pp 48-49., 32-102.

² <http://www.newyorker.com/magazine/2012/12/10/netherland>

5. Limited Studies of the Demographics of Prostitution Customers

A draft University of Chicago study by Steven Levitt and Sudhir Alladi Venkatesh (Freakonomics) examined street-level prostitution in certain Chicago neighborhoods known for prostitution, including a neighborhood where prostitution was controlled by pimps and a neighborhood where prostitutes were independent. Levitt estimated that there were 1,200 acts of prostitution per arrest, indicating that even street-level prostitution customers generally need not fear arrest. The Chicago study noted that more upscale prostitution occurred over the Internet and through escort services, where the likelihood of arrest was low. Freakonomics publications later noted that the cost of prostitution had declined in recent decades, likely indicating that customers were spread across economic classes.

Levitt found “many men making a few visits and a small number of men making very frequent visits.” He found that 25 johns were arrested twice and 2,969 johns were arrested once. As in the Western Criminology Review study discussed in Comment # 6, Leavitt concluded that some men may have learned from one arrest how to avoid another. However, some johns may have been arrested multiple times because they were not good at distinguishing between an actual prostitute and a police decoy.

A 2008 review in the Electronic Journal of Human Sexuality of studies from cities across the country found wide variance in education, income and ethnicity among prostitution customers. There were some regional differences, such as lower levels of education in Indianapolis, marginally higher income in Portland, Oregon.

6. Recidivism Studies on Persons Convicted of Purchasing Sex – Effects of Special Programs

A study in 2002 in the Western Criminology Review of a now defunct first-offender program in Portland, Oregon (SEEP) found very low recidivism rates for all prostitution arrestees, regardless of whether they participated in SEEP, were referred to SEEP but did not attend, or were not referred to the program. The study considered only a two-year period and a relatively small number of offenders. The researchers inferred from the data that an arrest, per se, could have deterred offenders, as prostitution offenses involve significant shame. The authors, however, also questioned if the offenders continued to solicit prostitutes but simply learned how to avoid arrest. They could not say whether the education from the SEEP program would have led the participants to avoid prostitution for a substantial time in the future.

A number of other cities adopted special first-offender prostitution diversion programs that educate “johns” about the harms caused by or attendant to the commercial sex trade. The San Francisco program – First Offender Prostitution Program (FOPP) – was one of the first of these programs. The program required men arrested for the first time for a prostitution offense to attend a one-day course of the harms caused or exacerbated by the demand for prostitution. Men who completed the course were diverted out of the criminal justice system. A report on the San Francisco FOPP conducted by Abt Associates concluded that program was well run and effective. The claims of a sharp

drop in recidivism in the Abt report have been harshly criticized and questioned. One study by researchers from DePaul University and American University found methodological flaws in the Abt report. The study from the Western Criminology Review (noted above) found that recidivism rates attributable to FOPP programs are difficult to measure, as johns arrested for prostitution offenses can easily learn how to avoid arrest. Further, the increasing shift of prostitution to the Internet makes it difficult to measure recidivism.

DOES RESEARCH INDICATE THAT AN ARREST, PER SE, MAY BE A SUBSTANTIAL DETERRENT FOR MEN WHO SOLICIT PROSTITUTES?

IS THERE DATA ABOUT THE EFFECT OF MANDATORY MINIMUM PENALTIES IN EXISTING LAW FOR REPEAT PROSTITUTION OFFENDERS?

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