

## RESOLUTION 06-10-2014

### DIGEST

#### Criminal: Promoting the Prostitution of a Minor.

Amends Penal Code section 266h to criminalize promoting prostitution of a minor and provides that every conviction after the first conviction is a felony.

### RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

#### History:

Similar to Resolution 09-09-2013, which was disapproved.

#### Reasons:

This resolution amends Penal Code section 266h to criminalize promoting prostitution of a minor and provides that every conviction after the first conviction is a felony. This resolution should be disapproved because there are current statutes that already cover “promoting” prostitution of a minor.

While there is little doubt society should impose criminal liability on those who solicit, arrange, facilitate, or promote child prostitution, even if the individual did not derive a fee or material gain, existing statutes already provide for such criminal liability. The proponents argue that certain individuals who participate in human trafficking are able to capitalize in gaps in the law. However, the language of Penal Code section 266i criminalizes procuring or producing another for prostitution. Similarly, Penal Code section 266j imposes criminal liability on individuals who intentionally give, transport, provide, or make available, or who offer to give, transport, provide, or make available another person, a child under the age of 16 for the purpose of any lewd or lascivious act as defined in section 288. Finally, Penal Code section 236.1, subdivision (b), states “any person who deprives or violates the personal liberty of another with the intent to effect or maintain a violation of section ... 266h ... is guilty of human trafficking and shall be punished by imprisonment in the state prison for 8, 14, or 20 years and a fine of not more than five hundred thousand dollars (\$500,000).” As there currently exist avenues for law enforcement to prosecute individuals who “promote” prostitution of minors, this resolution is unnecessary.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 266h to read as follows:

#### § 266h

- 1 Pimping and pimping a minor; promoting; punishment
- 2 (a) Except as provided in subdivision (b), any person who, knowing another person is a
- 3 prostitute, lives or derives support or maintenance in whole or in part from the earnings or
- 4 proceeds of the person's prostitution, or from money loaned or advanced to or charged against
- 5 that person by any keeper or manager or inmate of a house or other place where prostitution is
- 6 practiced or allowed, or who solicits or receives compensation for soliciting for the person, is
- 7 guilty of pimping, a felony, and shall be punishable by imprisonment in the state prison for three,
- 8 four, or six years.
- 9 (b) Any person who, knowing another person is a prostitute, lives or derives support or
- 10 maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or
- 11 from money loaned or advanced to or charged against that person by any keeper or manager or

12 inmate of a house or other place where prostitution is practiced or allowed, or who solicits or  
13 receives compensation for soliciting for the person, when the prostitute is a minor, is guilty of  
14 pimping a minor, a felony, and shall be punishable as follows:  
15 (1) If the person engaged in prostitution is a minor 16 years of age or older, the offense is  
16 punishable by imprisonment in the state prison for three, four, or six years.  
17 (2) If the person engaged in prostitution is under 16 years of age, the offense is  
18 punishable by imprisonment in the state prison for three, six, or eight years.  
19 (c) Any person who, knowing another person is a prostitute, directs another to a place  
20 knowing such direction is for the purpose of promoting or facilitating prostitution, or in any  
21 manner knowingly promotes prostitution, when the prostitute is a minor, is guilty of promoting  
22 the prostitution of a minor, which shall be punishable as provided in subdivision (b) except as  
23 follows: the first offense, shall be a misdemeanor punishable as provided in Penal Code, section  
24 19. Conviction under this subdivision does not require proof of monetary gain or other  
25 compensation.

(Proposed new language underlined; language to be deleted stricken.)

**PROPONENT:** Women Lawyers of Sacramento

## **STATEMENT OF REASONS**

The Problem: Penal Code section 266h currently provides that a person is guilty of the felony offense of pimping only if that person derives a profit from the prostitution activities of another. Similarly, other statutes that would seem to criminalize the conduct of a person promoting the commercial sexual exploitation of minors are also aimed at either the customer or another who gains some benefit from the commercial activity. (See e.g., § 266i [procures another for purpose of prostitution]; § 266h [persons who receive material gain], § 266i[influence person to become a prostitute]; § 266j [offer to or make a child available for prostitution].) Even the broadest statute addressing human trafficking penalizes only those who gain some material benefit. (See § 236.1[forced labor].) Consequently, existing law requires law enforcement and prosecutors to establish that the accused has received or intended to receive some material gain from the practice of prostitution. This resolution is necessary because not all persons interested in facilitating and/or promoting the prostitution of a minor do so for compensation. (See e.g., *People v. Zambia* (2011) 51 Cal.4th 965 [Section 266i, pandering, requires specific intent to influence the target to become a prostitute]; *People v. Smith* (1955) 44 Cal.2d 77 [266h of the Penal Code does not proscribe the mere solicitation of a customer for a prostitute].) Persons motivated to promote commercial sexual exploitation of a minor for reasons other than financial gain, (e.g., voyeurism) should also be held to account for their actions.

The Solution: This resolution would amend the law to provide that a person is guilty of promoting child prostitution when the person promotes lewd conduct between a person and a minor where the lewd conduct is for money or other consideration even if the accused does not seek compensation or material gain for his or her conduct.

## **LEGISLATIVE HISTORY**

Not known.

## **IMPACT STATEMENT**

The proposed resolution does not affect any other law, statute or rule.

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