

RESOLUTION 06-10-2017 (REVISED)

DIGEST

Child Prostitution: Eliminate Harmful Language Regarding Exploited Children

Amends Penal Code sections 261.9, 266, 266h, 267, 315, 653.20, and 11165.1 to remove statutory references to children as engaging in prostitution or being prostitutes.

RESOLUTION COMMITTEE ANALYSIS

History:

Similar to Resolutions 06-10-2014 and 07-04-2016, which were withdrawn, and Resolution 09-09-2013, which was disapproved.

Reasons:

This resolution amends Penal Code sections 261.9, 266, 266h, 267, 315, 653.20, and 11165.1 to remove statutory references to children as engaging in prostitution or being prostitutes.

In 2016, the Legislature amended Penal Code sections 647 and 653.22, to make it legally impossible for a child, defined as anyone under 18 years of age, to be capable of committing prostitution. However, the language in the above-mentioned code sections continues to use the term prostitute when referring to a child under the age of 18, which, as stated, is a legal impossibility.

The Resolutions Committee initially recommended disapproval of this resolution. The full Conference voted to approve.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code sections 261.9, 266, 266h, 266i, 267, 315, 653.20, and 11165.1, to read as follows:

- 1 § 261.9
- 2 (a) Any person convicted of seeking to commercially sexually exploit a minor to procure
- 3 or procuring the sexual services of a prostitute in violation of subdivision (b) of Section 647, if
- 4 prostitute is under 18 years of age, shall be ordered by the court, in addition to any other penalty
- 5 or fine imposed, to pay an additional fine in an amount not to exceed twenty-five thousand
- 6 dollars (\$25,000).
- 7 (b) Every fine imposed and collected pursuant to this section shall, upon appropriation by
- 8 the Legislature, be available to fund programs and services for commercially sexually exploited
- 9 minors in the counties where the underlying offenses are committed.
- 10
- 11 § 266
- 12 Every person who inveigles or entices any unmarried female, of previous chaste
- 13 character, under the age of 18 years, into any house of ill fame, or of assignation, or elsewhere,
- 14 for the purpose of ~~prostitution~~ commercial sexual exploitation, ~~or to have illicit carnal connection~~

15 ~~with any man~~; and every person who aids or assists in such inveiglement or enticement; and
16 every person who, by any false pretenses, false representation, or other fraudulent means,
17 procures any female to have illicit carnal connection with any man, is punishable by
18 imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, or
19 by a fine not exceeding two thousand dollars (\$2,000), or by both such fine and imprisonment.

20
21 § 266h

22 (a) Except as provided in subdivision (b), any person who, knowing another person is a
23 prostitute, lives or derives support or maintenance in whole or in part from the earnings or
24 proceeds of the person's prostitution, or from money loaned or advanced to or charged against
25 that person by any keeper or manager or inmate of a house or other place where prostitution is
26 practiced or allowed, or who solicits or receives compensation for soliciting for the person, is
27 guilty of pimping, a felony, and shall be punishable by imprisonment in the state prison for three,
28 four, or six years.

29 (b) Any person who, knowingly sexually exploits a minor ~~another person is a prostitute~~,
30 lives or derives support or maintenance in whole or in part from the earnings or proceeds of the
31 commercial sexual exploitation of a minor ~~person's prostitution~~, or from money loaned or
32 advanced to or charged against that ~~person~~ minor by any keeper or manager or inmate of a house
33 or other place where commercial sexual exploitation ~~prostitution~~ is practiced or allowed, or who
34 solicits or receives compensation for soliciting the minor ~~for the person~~, when the commercial
35 sexual exploitation ~~prostitute~~ is of a minor, is guilty of pimping a minor, a felony, and shall be
36 punishable as follows:

37 (1) If the victim of commercial sexual exploitation ~~prostitute~~ is a minor 16 years of age or
38 older, the offense is punishable by imprisonment in the state prison for three, four, or six years.

39 (2) If the victim of commercial sexual exploitation ~~prostitute~~ is under 16 years of age, the
40 offense is punishable by imprisonment in the state prison for three, six, or eight years.

41 § 266i

42 (a) Except as provided in subdivision (b), any person who does any of the following is
43 guilty of pandering, a felony, and shall be punishable by imprisonment in the state prison for
44 three, four, or six years:

45 (1) Procures another person for the purpose of prostitution or commercial sexual
46 exploitation.

47 (2) By promises, threats, violence, or by any device or scheme, causes, induces,
48 persuades, or encourages another person to become a prostitute or to be commercially sexually
49 exploited.

50 (3) Procures for another person a place as an inmate in a house of prostitution or
51 commercial sexual exploitation or as an inmate of any place in which prostitution or commercial
52 sexual exploitation is encouraged or allowed within this state.

53 (4) By promises, threats, violence, or by any device or scheme, causes, induces,
54 persuades, or encourages an inmate of a house of prostitution or commercial sexual exploitation,
55 or any other place in which prostitution or commercial sexual exploitation is encouraged or
56 allowed, to remain therein as an inmate.

57 (5) By fraud or artifice, or by duress of person or goods, or by abuse of any position of
58 confidence or authority, procures another person for the purpose of prostitution or commercial
59 sexual exploitation, or to enter any place in which prostitution or commercial sexual exploitation
60 is encouraged or allowed within this state, or to come into this state or leave this state for the

61 purpose of prostitution or commercial sexual exploitation.

62 (6) Receives or gives, or agrees to receive or give, any money or thing of value for
63 procuring, or attempting to procure, another person for the purpose of prostitution or commercial
64 sexual exploitation, or to come into this state or leave this state for the purpose of prostitution or
65 commercial sexual exploitation.

66 (b) Any person who does any of the acts described in subdivision (a) with another person
67 who is a minor is guilty of pandering, a felony, and shall be punishable as follows:

68 (1) If the other person is a minor 16 years of age or older, the offense is punishable by
69 imprisonment in the state prison for three, four, or six years.

70 (2) If the other person is under 16 years of age, the offense is punishable by
71 imprisonment in the state prison for three, six, or eight years.

72
73 § 267

74 Every person who takes away any other person under the age of 18 years from the father,
75 mother, guardian, or other person having the legal charge of the other person, without their
76 consent, for the purpose of commercial sexual exploitation ~~prostitution~~, is punishable by
77 imprisonment in the state prison, and a fine not exceeding two thousand dollars (\$2,000).

78
79 § 315

80 Every person who keeps a house of ill-fame in this state, resorted to for the purposes of
81 prostitution or lewdness, or an adult who willfully resides in such house, is guilty of a
82 misdemeanor; and in all prosecutions for keeping or resorting to such a house common repute
83 may be received as competent evidence of the character of the house, the purpose for which it is
84 kept or used, and the character of the women inhabiting or resorting to it.

85
86
87 § 653.20

88 For purposes of this chapter, the following definitions apply:

89 (a) "Commit prostitution" means to engage in sexual conduct for money or other
90 consideration, but does not include sexual conduct engaged in as a part of any stage
91 performance, play, or other entertainment open to the public. A minor is not capable of
92 committing prostitution because such a minor is a victim of commercial sexual exploitation.

93 (b) "Public place" means an area open to the public, or an alley, plaza, park, driveway, or
94 parking lot, or an automobile, whether moving or not, or a building open to the general public,
95 including one which serves food or drink, or provides entertainment, or the doorways and
96 entrances to a building or dwelling, or the grounds enclosing a building or dwelling.

97 (c) "Loiter" means to delay or linger without a lawful purpose for being on the property
98 and for the purpose of committing a crime as opportunity may be discovered.

99
100 § 11165.1

101 As used in this article, "sexual abuse" means sexual assault or sexual exploitation as
102 defined by the following:

103 (a) "Sexual assault" means conduct in violation of one or more of the following sections:
104 Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), Section 264.1 (rape in
105 concert), Section 285 (incest), Section 286 (sodomy), subdivision (a) or (b), or paragraph (1) of
106 subdivision (c) of Section 288 (lewd or lascivious acts upon a child), Section 288a (oral

107 copulation), Section 289 (sexual penetration), or Section 647.6 (child molestation).
108 (b) Conduct described as "sexual assault" includes, but is not limited to, all of the
109 following:
110 (1) Penetration, however slight, of the vagina or anal opening of one person by the penis
111 of another person, whether or not there is the emission of semen.
112 (2) Sexual contact between the genitals or anal opening of one person and the mouth or
113 tongue of another person.
114 (3) Intrusion by one person into the genitals or anal opening of another person, including
115 the use of an object for this purpose, except that, it does not include acts performed for a valid
116 medical purpose.
117 (4) The intentional touching of the genitals or intimate parts, including the breasts, genital
118 area, groin, inner thighs, and buttocks, or the clothing covering them, of a child, or of the
119 perpetrator by a child, for purposes of sexual arousal or gratification, except that it does not
120 include acts which may reasonably be construed to be normal caretaker responsibilities;
121 interactions with, or demonstrations of affection for, the child; or acts performed for a valid
122 medical purpose.
123 (5) The intentional masturbation of the perpetrator's genitals in the presence of a child.
124 (c) "Sexual exploitation" refers to any of the following:
125 (1) Conduct involving matter depicting a minor engaged in obscene acts in violation of
126 Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section
127 311.4 (employment of minor to perform obscene acts).
128 (2) A person who knowingly promotes, aids, or assists, employs, uses, persuades,
129 induces, or coerces a child, or a person responsible for a child's welfare, who knowingly permits
130 or encourages a child to engage in, or assist others to engage in provision of food, shelter, or
131 payment to a child in exchange for the performance of any sexual act, ~~prostitution~~ or a live
132 performance involving obscene sexual conduct, or to either pose or model alone or with others
133 for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial
134 depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible
135 for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or
136 employee of a public or private residential home, residential school, or other residential
137 institution.
138 (3) A person who depicts a child in, or who knowingly develops, duplicates, prints,
139 downloads, streams, accesses through any electronic or digital media, or exchanges, a film,
140 photograph, videotape, video recording, negative, or slide in which a child is engaged in an act of
141 obscene sexual conduct, except for those activities by law enforcement and prosecution agencies
142 and other persons described in subdivisions (c) and (e) of Section 311.3.
143 (d) "Commercial sexual exploitation" refers to either of the following:
144 (1) The sexual trafficking of a child, as described in subdivision (c) of Section 236.1.
145 (2) The provision of food, shelter, or payment to a child in exchange for the performance
146 of any sexual act described in this section or subdivision (c) of Section 236.1.

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

PROPONENT: Queen's Bench Bar Association

STATEMENT OF REASONS

The Problem: Pursuant to a 2016 Penal Code amendment, children cannot be charged with the crime of prostitution. Unfortunately, the Penal Code has not been amended to eliminate the use of the legally and factually wrong references to children as prostitutes.

When he directed his staff to stop using the terms “child prostitute” and “underage prostitution,” Los Angeles County Sherriff Jim McDonnell explained that using these misnomers strips responsibility from the traffickers and the people who pay to have sex with children. “We must remember that children cannot consent to sex under any circumstance,” McDonnell stated. The continued use of these misnomers is a barrier to treating these children as victims of commercial sexual exploitation rather than as preparators of crime.

“No Such Thing” is a national campaign against child sex trafficking which seeks to end the use of these terms. In launching the campaign, Human Rights Project for Girls explained: “There is a very real way in which the term “child prostitute” diminishes the violence, harm, trauma and coercion that a trafficked child is subject to. The term child prostitute is therefore a misnomer, failing to capture the legal and moral context of what these children endure on a daily basis.”

The Solution: This resolution would solve the problem by removing all reference to children as prostitutes or engaging in prostitution and replacing these references with the appropriate language of commercial sexual exploitation of a minor/child.

Please note that this resolution and 16-06-2017 propose complementary amendments to Penal Code sections 266 and 315. The amendments proposed in this resolution and in 16-05-2017 are intended to work together to eliminate use of outdated and discriminatory language.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

SB1322 – Amendment to Penal Code section 647 signed September 2016, implemented January 2017

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