

RESOLUTION 10-06-2017

DIGEST

Prostitution Related Convictions: Repeal of Driver’s License Suspension

Deletes Vehicle Code section 13201.5 and amends Penal Code section 647 to prohibit suspension of driver’s licenses based on a conviction of prostitution related offenses.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution deletes Vehicle Code section 13201.5 and amends Penal Code section 647 to prohibit suspension of driver’s licenses based on a conviction of prostitution related offenses. This resolution should be approved in principle because there is no evidence that the threat of suspension of the driver’s license of an individual convicted of soliciting prostitution increases compliance with anti-prostitution laws.

Driver’s license suspensions are reasonable where the underlying conviction involves the reckless or unsafe use of a motor vehicle; however, where the most current evidence does not confirm a nexus between compliance with current anti-prostitution laws and the threat of (or actual) suspension of an individual’s driver’s license, this punishment is ineffective. Decoupling driver’s license suspensions from non-driving offenses also makes sense to focus the limited resources of the court and law enforcement on addressing motor vehicle violations through suspensions and developing other, more effective programs to prevent prostitution and related crimes.

This resolution is related to Resolutions 10-03-2017 and 10-07-2017.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to repeal Vehicle Code section 13201.5 and amend Penal Code section 647 to read as follows:

- 1 § 13201.5
- 2 (a) ~~A court may suspend, for not more than 30 days, the privilege of any person to~~
- 3 ~~operate a motor vehicle upon conviction of subdivision (b) of Section 647 of the Penal Code~~
- 4 ~~where the violation was committed within 1,000 feet of a private residence and with the use of a~~
- 5 ~~vehicle.~~
- 6 (b) ~~A court may suspend, for not more than 30 days, the privilege of any person to~~
- 7 ~~operate a motor vehicle upon conviction of subdivision (a) of Section 647 of the Penal Code,~~
- 8 ~~where a peace officer witnesses the violator pick up a person who is engaging in loitering with~~
- 9 ~~the intent to commit prostitution, as described in Section 653.22 of the Penal Code, and the~~

10 violator subsequently engages with that person in a lewd act within 1,000 feet of a private
11 residence and with the use of a vehicle.

12 ~~(c) Instead of ordering the suspension under subdivision (a) or (b), a court may order a~~
13 ~~person's privilege to operate a motor vehicle restricted for not more than six months to necessary~~
14 ~~travel to and from the person's place of employment or education. If driving a motor vehicle is~~
15 ~~necessary to perform the duties of the person's employment, the court may also allow the person~~
16 ~~to drive in that person's scope of employment.~~

17
18 § 647

19 Except as provided in paragraph (5) of subdivision (b) and subdivision (l), every person
20 who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

21 (a) An individual who solicits anyone to engage in or who engages in lewd or dissolute
22 conduct in any public place or in any place open to the public or exposed to public view.

23 (b) (1) An individual who solicits, or who agrees to engage in, or who engages in, any act
24 of prostitution with the intent to receive compensation, money, or anything of value from another
25 person. An individual agrees to engage in an act of prostitution when, with specific intent to so
26 engage, he or she manifests an acceptance of an offer or solicitation by another person to so
27 engage, regardless of whether the offer or solicitation was made by a person who also possessed
28 the specific intent to engage in an act of prostitution.

29 (2) An individual who solicits, or who agrees to engage in, or who engages in, any act of
30 prostitution with another person who is 18 years of age or older in exchange for the individual
31 providing compensation, money, or anything of value to the other person. An individual agrees
32 to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an
33 acceptance of an offer or solicitation by another person who is 18 years of age or older to so
34 engage, regardless of whether the offer or solicitation was made by a person who also possessed
35 the specific intent to engage in an act of prostitution.

36 (3) An individual who solicits, or who agrees to engage in, or who engages in, any act of
37 prostitution with another person who is a minor in exchange for the individual providing
38 compensation, money, or anything of value to the minor. An individual agrees to engage in an
39 act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of
40 an offer or solicitation by someone who is a minor to so engage, regardless of whether the offer
41 or solicitation was made by a minor who also possessed the specific intent to engage in an act of
42 prostitution.

43 (4) A manifestation of acceptance of an offer or solicitation to engage in an act of
44 prostitution does not constitute a violation of this subdivision unless some act, in addition to the
45 manifestation of acceptance, is done within this state in furtherance of the commission of the act
46 of prostitution by the person manifesting an acceptance of an offer or solicitation to engage in
47 that act. As used in this subdivision, "prostitution" includes any lewd act between persons for
48 money or other consideration.

49 (5) Notwithstanding paragraphs (1) to (3), inclusive, this subdivision does not apply to a
50 child under 18 years of age who is alleged to have engaged in conduct to receive money or other
51 consideration that would, if committed by an adult, violate this subdivision. A commercially
52 exploited child under this paragraph may be adjudged a dependent child of the court pursuant to
53 paragraph (2) of subdivision (b) of Section 300 of the Welfare and Institutions Code and may be
54 taken into temporary custody pursuant to subdivision (a) of Section 305 of the Welfare and
55 Institutions Code, if the conditions allowing temporary custody without warrant are met.

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

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

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

62 (f) Who is found in any public place under the influence of intoxicating liquor, any drug,
63 controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled
64 substance, or toluene, in a condition that he or she is unable to exercise care for his or her own
65 safety or the safety of others, or by reason of his or her being under the influence of intoxicating
66 liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor,
67 drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or
68 other public way.

69 (g) If a person has violated subdivision (f), a peace officer, if he or she is reasonably able
70 to do so, shall place the person, or cause him or her to be placed, in civil protective custody. The
71 person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and
72 Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may
73 place a person in civil protective custody with that kind and degree of force that would be lawful
74 were he or she effecting an arrest for a misdemeanor without a warrant. A person who has been
75 placed in civil protective custody shall not thereafter be subject to any criminal prosecution or
76 juvenile court proceeding based on the facts giving rise to this placement. This subdivision does
77 not apply to the following persons:

78 (1) A person who is under the influence of any drug, or under the combined influence of
79 intoxicating liquor and any drug.

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

82 (3) A person who a peace officer in good faith believes will attempt escape or will be
83 unreasonably difficult for medical personnel to control.

84 (h) Who loiters, prowls, or wanders upon the private property of another, at any time,
85 without visible or lawful business with the owner or occupant. As used in this subdivision,
86 "loiter" means to delay or linger without a lawful purpose for being on the property and for the
87 purpose of committing a crime as opportunity may be discovered.

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

91 (j) (1) A person who looks through a hole or opening, into, or otherwise views, by means
92 of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, camera,
93 motion picture camera, camcorder, or mobile phone, the interior of a bedroom, bathroom,
94 changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in
95 which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy
96 of a person or persons inside. This subdivision does not apply to those areas of a private business
97 used to count currency or other negotiable instruments.

98 (2) A person who uses a concealed camcorder, motion picture camera, or photographic
99 camera of any type, to secretly videotape, film, photograph, or record by electronic means,
100 another, identifiable person under or through the clothing being worn by that other person, for
101 the purpose of viewing the body of, or the undergarments worn by, that other person, without the

102 consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust,
103 passions, or sexual desires of that person and invade the privacy of that other person, under
104 circumstances in which the other person has a reasonable expectation of privacy.

105 (3) (A) A person who uses a concealed camcorder, motion picture camera, or
106 photographic camera of any type, to secretly videotape, film, photograph, or record by electronic
107 means, another, identifiable person who may be in a state of full or partial undress, for the
108 purpose of viewing the body of, or the undergarments worn by, that other person, without the
109 consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing
110 room, fitting room, dressing room, or tanning booth, or the interior of any other area in which
111 that other person has a reasonable expectation of privacy, with the intent to invade the privacy of
112 that other person.

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

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

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

117 (4) (A) A person who intentionally distributes the image of the intimate body part or parts
118 of another identifiable person, or an image of the person depicted engaged in an act of sexual
119 intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation by the
120 person depicted or in which the person depicted participates, under circumstances in which the
121 persons agree or understand that the image shall remain private, the person distributing the image
122 knows or should know that distribution of the image will cause serious emotional distress, and
123 the person depicted suffers that distress.

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

127 (C) As used in this paragraph, "intimate body part" means any portion of the genitals, the
128 anus and in the case of a female, also includes any portion of the breasts below the top of the
129 areola, that is either uncovered or clearly visible through clothing.

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

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

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

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

136 (5) This subdivision does not preclude punishment under any section of law providing for
137 greater punishment.

138 ~~(k) In addition to any punishment prescribed by this section, a court may suspend, for not
139 more than 30 days, the privilege of the person to operate a motor vehicle pursuant to Section
140 13201.5 of the Vehicle Code for any violation of subdivision (b) that was committed within
141 1,000 feet of a private residence and with the use of a vehicle. In lieu of the suspension, the court
142 may order a person's privilege to operate a motor vehicle restricted, for not more than six
143 months, to necessary travel to and from the person's place of employment or education. If
144 driving a motor vehicle is necessary to perform the duties of the person's employment, the court
145 may also allow the person to drive in that person's scope of employment.~~

146 ~~(4)-(1) A second or subsequent violation of subdivision (j) is punishable by imprisonment~~
147 ~~in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000),~~

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

152 (1) ~~(m)~~(1) If a crime is committed in violation of subdivision (b) and the person who was
153 solicited was a minor at the time of the offense, and if the defendant knew or should have known
154 that the person who was solicited was a minor at the time of the offense, the violation is
155 punishable by imprisonment in a county jail for not less than two days and not more than one
156 year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both that fine and
157 imprisonment.

158 (2) The court may, in unusual cases, when the interests of justice are best served, reduce
159 or eliminate the mandatory two days of imprisonment in a county jail required by this
160 subdivision. If the court reduces or eliminates the mandatory two days' imprisonment, the court
161 shall specify the reason on the record.

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

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: In its “Best Practices Guide to Reducing Suspended Drivers” report from February 2013, the American Association of Motor Vehicle Administrators (AAMVA) claimed:

- The common belief that a driver license suspension provides effective, sustainable motivation to encourage individuals to comply with court ordered or legislated mandates to avoid suspension is not supported by empirical evidence.
- When licenses are suspended for social non-conformance reasons, the suspension is “watered down” in value; it becomes less serious in the minds of law enforcement, the courts and the public.

As a result, the report recommended that legislatures repeal state laws requiring the suspension of driving privileges for non-highway safety related violations.

The Solution: Because prostitution in a parked car is not a highway-safety-related offense, then Vehicle Code §13201.5, to allow courts to suspend the driver’s licenses for prostitution offenders, should be repealed and Penal Code § 647, also to suspend driver’s licenses, should be amended.

See “Final Report on the Evaluation of the First Offender Prostitution Program (FOPP), Report Summary,” U.S. Department of Justice (Mar. 7, 2008), available at: <https://www.ncjrs.gov/pdffiles1/nij/grants/222451.pdf> (“The [San Francisco FOPP] program is effective in producing positive shifts in attitudes and gains in knowledge. More importantly, the program was found to have reduced recidivism.”).

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

SB 420 (Huff, 2016): to distinguish between people getting paid for sex and the people who are paying for sex.

AB 1322 (Mitchell, 2016): Penal Code 647, for prostitution, no longer applies to a child under age 18.

SB 1129 (Monning, 2016): deleting the mandatory minimum terms of incarceration imposed for engaging in prohibited acts relating to prostitution. SB 1129 initially included a repeal for court-ordered driver's license suspensions for prostitution.

AB 2147 (Eggman, 2016): to impound vehicles used in prostitution. Vetoed by the Governor.

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