

Date of Hearing: March 26, 2019
Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 663 (Cunningham) – As Amended March 21, 2019

SUMMARY: Increases the maximum fine for solicitation of an adult for purposes of prostitution from a maximum of \$1,000 to a maximum of \$2,000. Specifically, **this bill**:

- 1) Increases the maximum fine for solicitation of an adult for purposes of prostitution from a maximum of \$1,000 to a maximum of \$2,000.
- 2) Specifies that if the court finds that the defendant does not have the ability to pay, it may reduce the amount of the fine or waive it.
- 3) Requires that 75% of the moneys collected from fines for solicitation offenses 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.

EXISTING LAW:

- 1) 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.)
- 2) 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).)
- 3) 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).)
- 4) 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).)
- 5) 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).)

- 6) 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).)
- 7) 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).)
- 8) Decriminalizes prostitution for those under 18 years of age. (Pen. Code § 647, subd. (b)(5.)

FISCAL EFFECT: Unknown**COMMENTS:**

- 1) **Author's Statement:** According to the author, "Human Trafficking is an epidemic that is plaguing our state. It has been called 'modern-day slavery.' In California alone in 2017, the National Human Trafficking Hotline received approximately 3,998 calls related to potential cases. It is estimated that one quarter of trafficking victims are children.

"But this illegal industry cannot survive without johns. Taking fines paid by people convinced of such crimes, and using that as a funding stream to support rehabilitation services for trafficking victims, just makes sense.

"Allocating 75% of the fines generated from this section for counties to set-up counseling and health services for victims will give victims the necessary resources to heal and get their lives back on track."

- 2) **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.

- 3) **Prioritization of Court-Ordered Debt:** Current law prioritizes the order in which delinquent court-ordered debt received is to be satisfied. The priorities are 1) victim restitution, 2) state surcharge, 3) restitution fines, penalty assessments, and other fines, with payments made on a proportional basis to the total amount levied for all of these items, and, 4) state/county/city reimbursements, and special revenue items. (See Pen. Code, § 1203.1d.)

This bill directs 75% of the fines collected for solicitation offenses be allocated to the counties to fund shelters, and provide counseling, and other services for victims of commercial sexual exploitation and commercial sexual abuse. Based on the order of prioritization, the diverted funds would be in the group allocated last.

- 4) **Argument in Support:** According to *End Violence Against Women International*, “AB 663 replaces the current fine of \$1,000 for a prostitution offense, with no minimum mandatory, to \$500-\$2,000, depending on the defendant’s ability to pay. This not only sends the message that exploitation will not be tolerated, but the revenue from these fines will be used to provide services for men and women who have experienced sexual exploitation and abuse.”
- 5) **Argument in Opposition:** According to the *California Public Defenders Association*, “AB 663 would place yet additional burdens on the poor. The consequences of criminal debt on the poor include additional incarceration for failure to pay the fines, financial burdens on their families, an inability to successfully reintegrate into the community, homelessness, and for many of the poor, a return to jail or prison.

“AB 663 is bad public policy. The system of financing criminal justice system on the backs of poor and the incarcerated perverts incentives across the board. Courts increase fees to pay for the court system. Probation officers become bill collectors – focused on whether probationer paid his probation fees rather than helping individual get back on track and become productive citizens. Ultimately, the taxpayers pay when individuals who are unable to pay their fines elect to stay in jail and receive credit for jail time against the fines and fees.”

- 6) **Related Legislation:**

- a) AB 444 (Choi), would require a person convicted of solicitation of a minor to register as a sex offender. AB 444 is pending hearing in this committee.
- b) AB 927 (Jones-Sawyer), would require an ability to pay finding before the imposition of any fines, fees, or assessments related to a criminal proceeding. AB 927 will be heard by this committee today.
- c) SB 485 (Beall), would eliminate court discretion to suspend a person’s driver’s license upon conviction for crimes that do not involve Vehicle Code violations, including the

crime of solicitation. SB 485 is pending in the Senate Public Safety Committee.

7) Prior Legislation:

- a) SB 776 (Block), of the 2015-2016 Legislative Session, was identical to this bill. SB 776 was held in this committee.
- b) SB 1388 (Lieu), Statutes of 2014, Chapter 714, imposed fines for solicitation of a minor. Provisions that would have imposed a mandatory minimum jail sentence for a first-offense and mandatory minimum fines were amended out of the bill in the Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Crime Victims United of California
End Violence Against Women International

Oppose

California Public Defenders Association

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744