

## RESOLUTION 02-06-2008

### DIGEST

#### Prostitution: Legalization

Repeals Penal Code sections 647f, 315, 316, 266h, 653.20, 653.22, 653.23, and 653.24; amends Penal Code sections 647, 647.1, 318, 266i and 11225; and adds Health and Safety Code section 429.13 to decriminalize prostitution and adopt safer sex practices.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### History:

Similar to Resolution 03-07-2007, which was approved.

#### Reasons:

This resolution Repeals Penal Code sections 647f, 315, 316, 266h, 653.20, 653.22, 653.23, and 653.24; amends Penal Code sections 647, 647.1, 318, 266i and 11225; and adds Health and Safety Code section 429.13 to decriminalize prostitution and adopt safer sex practices. This resolution should be approved in principle for the public health and safety benefits to those engaged in prostitution, their clients, and the public at large.

Efforts to legislate “lifestyle” issues have a history of failure. See, for example, the Volstead Act (prohibition). The behaviors continue, usually underground and therefore unregulated.

Decriminalizing prostitution and establishing regulations concerning the safer sex practices of those engaged in prostitution will have a positive impact upon the public health. A 1993 study found no reported cases of prostitution-related HIV/AIDS in Nevada where brothels have been licensed in any county with a population of fewer than 400,000. (Albert, Warner, et. al., *Condom Use among Female Commercial Sex Workers in Nevada’s Legal Brothels*, Am J Public Health 1995 November; 85(11):1514-1520.)

Regulation of prostitution also would reduce violence and other associated criminal behavior. Prostitutes are at risk of violent attacks from their customers as well as those who engage in other criminal activity often found in conjunction with prostitution. Decriminalization of prostitution will help to separate sexual behavior from these and other illegal activities. Legitimizing prostitution will allow those involved to benefit from labor rights available in other industries. Moreover, revenue generated for the state will offset costs associated with health and licensing issues. This resolution will keep intact all of the laws which prohibit forced prostitution as well as protection of minors.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to repeal Penal Code sections 647f, 315, 316, 266h, 653.20, 653.22, 653.23 and 653.24; to amend Penal Code sections 647, 647.1, 318, 266i and 11225; and to add Health and Safety Code section 429.13 to read as follows::

1 § 647

2 Every person who commits any of the following acts is guilty of disorderly conduct, a  
3 misdemeanor:

4 (a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct  
5 in any public place or in any place open to the public or exposed to public view.

6 ~~(b) Who solicits or who agrees to engage in or who engages in any act of  
7 prostitution. A person agrees to engage in an act of prostitution when, with specific  
8 intent to so engage, he or she manifests an acceptance of an offer or solicitation to so  
9 engage, regardless of whether the offer or solicitation was made by a person who also  
10 possessed the specific intent to engage in prostitution. No agreement to engage in an act  
11 of prostitution shall constitute a violation of this subdivision unless some act, in addition  
12 to the agreement, is done within this state in furtherance of the commission of an act of  
13 prostitution by the person agreeing to engage in that act. As used in this subdivision,  
14 "prostitution" includes any lewd act between persons for money or other consideration.~~

15 ~~(c)~~ (b) Who accosts other persons in any public place or in any place open to the  
16 public for the purpose of begging or soliciting alms.

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

19 ~~(e)~~ (d) Who loiters or wanders upon the streets or from place to place without  
20 apparent reason or business and who refuses to identify himself or herself and to account  
21 for his or her presence when requested by any peace officer so to do, if the surrounding  
22 circumstances would indicate to a reasonable person that the public safety demands this  
23 identification.

24 ~~(f)~~ (e) Who is found in any public place under the influence of intoxicating liquor,  
25 any drug, controlled substance, toluene, or any combination of any intoxicating liquor,  
26 drug, controlled substance, or toluene, in a condition that he or she is unable to exercise  
27 care for his or her own safety or the safety of others, or by reason of his or her being  
28 under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any  
29 combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs or  
30 prevents the free use of any street, sidewalk, or other public way.

31 ~~(g)~~ (f) When a person has violated subdivision (f), a peace officer, if he or she is  
32 reasonably able to do so, shall place the person, or cause him or her to be placed, in civil  
33 protective custody. The person shall be taken to a facility, designated pursuant to Section  
34 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of  
35 inebriates.

36

37 § 647f

38 ~~In any accusatory pleading charging a violation of subdivision (b) of Section 647,  
39 if the defendant has been previously convicted one or more times of a violation of that  
40 subdivision or of any other offense listed in subdivision (d) of Section 1202.1, and in  
41 connection with one or more of those convictions a blood test was administered pursuant  
42 to Section 1202.1 or 1202.6 with positive test results, of which the defendant was  
43 informed, the previous conviction and positive blood test results, of which the defendant  
44 was informed, shall be charged in the accusatory pleading. If the previous conviction and  
45 informed test results are found to be true by the trier of fact or are admitted by the  
46 defendant, the defendant is guilty of a felony.~~

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§ 647.1

In addition to any fine assessed under Section 647, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates subdivision (a) ~~or (b)~~ of Section 647, or, if the offense involves intravenous use of a controlled substance, subdivision (f) of Section 647, with the proceeds of this fine to be used in accordance with Section 1463.23.

The court shall, however, take into consideration the defendant's ability to pay and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this section.

§ 315.

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

§ 316.

~~Every person who keeps any disorderly house, or any house for the purpose of assignation or prostitution, or any house of public resort, by which the peace, comfort, or decency of the immediate neighborhood is habitually disturbed, or who keeps any inn in a disorderly manner; and every person who lets any apartment or tenement, knowing that it is to be used for the purpose of assignation or prostitution, is guilty of a misdemeanor.~~

§ 318.

Whoever, through invitation or device, prevails upon any person to visit any room, building, or other places kept for the purpose of illegal gambling ~~or prostitution~~, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not exceeding six months, or fined not exceeding five hundred dollars (\$500), or be punished by both that fine and imprisonment.

§ 266h.

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

~~(b) Any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits or receives compensation for soliciting for the person, when the~~

92 prostitute is a minor, is guilty of pimping a minor, a felony, and shall be punishable as  
93 follows:

94 (1) If the person engaged in prostitution is a minor over the age of 16 years, the  
95 offense is punishable by imprisonment in the state prison for three, four, or six years.

96 (2) If the person engaged in prostitution is under 16 years of age, the offense is  
97 punishable by imprisonment in the state prison for three, six, or eight years.

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99 § 266i.

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

103 (1) Procures another person for the purpose of prostitution.

104 (2) By promises, threats, violence, or by any device or scheme, causes, induces,  
105 persuades or encourages another person to become a prostitute.

106 (3) Procures for another person a place as an inmate in a house of prostitution or  
107 as an inmate of any place in which prostitution is encouraged or allowed within this state.

108 (4) By promises, threats, violence or by any device or scheme, causes, induces,  
109 persuades or encourages an inmate of a house of prostitution, or any other place in which  
110 prostitution is encouraged or allowed, to remain therein as an inmate.

111 (5) By fraud or artifice, or by duress of person or goods, or by abuse of any  
112 position of confidence or authority, procures another person for the purpose of  
113 prostitution, or to enter any place in which prostitution is encouraged or allowed within  
114 this state, or to come into this state or leave this state for the purpose of prostitution.

115 (6) Receives or gives, or agrees to receive or give, any money or thing of value  
116 for procuring, or attempting to procure, another person for the purpose of prostitution, or  
117 to come into this state or leave this state for the purpose of prostitution.

118 (7) Derives or receives support from prostitution.

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

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

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

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126 § 11225.

127 (a) Every building or place used for the purpose of illegal gambling as defined by  
128 state law or local ordinance, ~~lewdness, assignation, or prostitution~~, and every building or  
129 place in or upon which acts of illegal gambling as defined by state law or local ordinance,  
130 ~~lewdness, assignation, or prostitution~~, are held or occur, is a nuisance which shall be  
131 enjoined, abated, and prevented, and for which damages may be recovered, whether it is a  
132 public or private nuisance.

133 Nothing in this subdivision shall be construed to apply the definition of a nuisance  
134 to a private residence where illegal gambling is conducted on an intermittent basis and  
135 without the purpose of producing profit for the owner or occupier of the premises.

136 (b) Every building or place used as a bathhouse which as a primary activity  
137 encourages or permits conduct that according to the guidelines of the federal Centers for

138 Disease Control can transmit AIDS, including, but not limited to, anal intercourse, oral  
139 copulation, or vaginal intercourse, is a nuisance which shall be enjoined, abated, and  
140 prevented, and for which damages may be recovered, whether it is a public or private  
141 nuisance.

142 For purposes of this subdivision, a "bathhouse" means a business which, as its  
143 primary purpose, provides facilities for a spa, whirlpool, communal bath, sauna, steam  
144 bath, mineral bath, mud bath, or facilities for swimming.

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146 § 653.20.

147 ~~For purposes of this chapter, the following definitions apply:~~

148 ~~(a) "Commit prostitution" means to engage in sexual conduct for money or other~~  
149 ~~consideration, but does not include sexual conduct engaged in as a part of any stage~~  
150 ~~performance, play, or other entertainment open to the public.~~

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

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

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159 § 653.22.

160 ~~(a) It is unlawful for any person to loiter in any public place with the intent to~~  
161 ~~commit prostitution. This intent is evidenced by acting in a manner and under~~  
162 ~~circumstances which openly demonstrate the purpose of inducing, enticing, or soliciting~~  
163 ~~prostitution, or procuring another to commit prostitution.~~

164 ~~(b) Among the circumstances that may be considered in determining whether a~~  
165 ~~person loiters with the intent to commit prostitution are that the person:~~

166 ~~(1) Repeatedly beckons to, stops, engages in conversations with, or attempts to~~  
167 ~~stop or engage in conversations with passersby, indicative of soliciting for prostitution.~~

168 ~~(2) Repeatedly stops or attempts to stop motor vehicles by hailing the drivers,~~  
169 ~~waving arms, or making any other bodily gestures, or engages or attempts to engage the~~  
170 ~~drivers or passengers of the motor vehicles in conversation, indicative of soliciting for~~  
171 ~~prostitution.~~

172 ~~(3) Has been convicted of violating this section, subdivision (a) or (b) of Section~~  
173 ~~647, or any other offense relating to or involving prostitution, within five years of the~~  
174 ~~arrest under this section.~~

175 ~~(4) Circles an area in a motor vehicle and repeatedly beckons to, contacts, or~~  
176 ~~attempts to contact or stop pedestrians or other motorists, indicative of soliciting for~~  
177 ~~prostitution.~~

178 ~~(5) Has engaged, within six months prior to the arrest under this section, in any~~  
179 ~~behavior described in this subdivision, with the exception of paragraph (3), or in any~~  
180 ~~other behavior indicative of prostitution activity.~~

181 ~~(c) The list of circumstances set forth in subdivision (b) is not exclusive. The~~  
182 ~~circumstances set forth in subdivision (b) should be considered particularly salient if they~~  
183 ~~occur in an area that is known for prostitution activity. Any other relevant circumstances~~

184 may be considered in determining whether a person has the requisite intent. Moreover,  
185 no one circumstance or combination of circumstances is in itself determinative of intent.  
186 Intent must be determined based on an evaluation of the particular circumstances of each  
187 case.

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189 § 653.23.

190 (a) It is unlawful for any person to do either of the following:

191 (1) Direct, supervise, recruit, or otherwise aid another person in the commission  
192 of a violation of subdivision (b) of Section 647 or subdivision (a) of Section 653.22.

193 (2) Collect or receive all or part of the proceeds earned from an act or acts of  
194 prostitution committed by another person in violation of subdivision (b) of Section 647.

195 (b) Among the circumstances that may be considered in determining whether a  
196 person is in violation of subdivision (a) are that the person does the following:

197 (1) Repeatedly speaks or communicates with another person who is acting in  
198 violation of subdivision (a) of Section 653.22.

199 (2) Repeatedly or continuously monitors or watches another person who is acting  
200 in violation of subdivision (a) of Section 653.22.

201 (3) Repeatedly engages or attempts to engage in conversation with pedestrians or  
202 motorists to solicit, arrange, or facilitate an act of prostitution between the pedestrians or  
203 motorists and another person who is acting in violation of subdivision (a) of Section  
204 653.22.

205 (4) Repeatedly stops or attempts to stop pedestrians or motorists to solicit,  
206 arrange, or facilitate an act of prostitution between pedestrians or motorists and another  
207 person who is acting in violation of subdivision (a) of Section 653.22.

208 (5) Circles an area in a motor vehicle and repeatedly beckons to, contacts, or  
209 attempts to contact or stop pedestrians or other motorists to solicit, arrange, or facilitate  
210 an act of prostitution between the pedestrians or motorists and another person who is  
211 acting in violation of subdivision (a) of Section 653.22.

212 (6) Receives or appears to receive money from another person who is acting in  
213 violation of subdivision (a) of Section 653.22.

214 (7) Engages in any of the behavior described in paragraphs (1) to (6), inclusive, in  
215 regard to or on behalf of two or more persons who are in violation of subdivision (a) of  
216 Section 653.22.

217 (8) Has been convicted of violating this section, subdivision (a) or (b) of Section  
218 647, subdivision (a) of Section 653.22, Section 266h, or 266i, or any other offense  
219 relating to or involving prostitution within five years of the arrest under this section.

220 (9) Has engaged, within six months prior to the arrest under subdivision (a), in  
221 any behavior described in this subdivision, with the exception of paragraph (8), or in any  
222 other behavior indicative of prostitution activity.

223 (c) The list of circumstances set forth in subdivision (b) is not exclusive. The  
224 circumstances set forth in subdivision (b) should be considered particularly salient if they  
225 occur in an area that is known for prostitution activity. Any other relevant circumstances  
226 may be considered. Moreover, no one circumstance or combination of circumstances is  
227 in itself determinative. A violation of subdivision (a) shall be determined based on an  
228 evaluation of the particular circumstances of each case.

229 ~~(d) Nothing in this section shall preclude the prosecution of a suspect for a~~  
230 ~~violation of Section 266h or 266i or for any other offense, or for a violation of this~~  
231 ~~section in conjunction with a violation of Section 266h or 266i or any other offense.~~

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233 § 653.24.

234 ~~If any section, subdivision, sentence, clause, phrase, or portion of this chapter is for any~~  
235 ~~reason held invalid or unconstitutional by any court of competent jurisdiction, that~~  
236 ~~portion shall be deemed a separate, distinct, and independent provision, and that holding~~  
237 ~~shall not affect the validity of the remaining portion of the chapter.~~

238

239 § 429.13

240 Operators of Businesses of Prostitution must adopt and promote safer sex practices –

241 (1) Every operator of a business of prostitution must –

242 (a) Take all reasonable steps to give health information (whether oral or written)  
243 to sex workers and clients; and

244 (b) If the person operates a brothel, display health information prominently in  
245 that brothel; and

246 (c) Not state or imply that a medical examination of a sex worker means the sex  
247 worker is not infected, or likely to be infected, with a sexually transmissible  
248 infection; and

249 (d) The owner and operator of a businesses of prostitution must not discourage  
250 the use of prophylactics in the course of the business.

251 (2) The obligations in this section apply only in relation to commercial sexual  
252 services provided for the business and to sex workers and clients in connection with those  
253 services.

254 (3) In this section, health information means information on safer sex practices  
255 and on services for the prevention and treatment of sexually transmissible infections.

256 (4) The director of the Health Services Department may implement suitable  
257 regulations to enforce the above.

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

**PROPONENT:** Bar Association of San Francisco

**STATEMENT OF REASONS:**

Existing Law: Current law makes providing sexual services a crime. It is also a crime to maintain a place where sexual services are provided (disorderly house), and to derive income from one who provides sexual services.

This Resolution: Incorporates legislation which has been enacted in New Zealand with positive experience.

The Problem: People have bought and sold sexual services throughout history. Historically, prostitution has been regulated and criminalized in keeping with varying moral perspectives. Current condemnation and criminal prohibitions have not abated the prostitution, but rather,

have been harmful to sex workers and to the general public as prostitution is driven underground. The underground nature of the prostitution business creates dangers and vulnerabilities for sex workers and their clients and negatively impacts public health and safety. This illegal status makes it easier for predators to commit acts of violence against prostitutes including human trafficking. Prohibitions make regulation impossible.

By bringing sex work into daylight, we will:

1. Reduce violence. Legal sex work creates environments in which oversight is possible which protects prostitutes and clients from violence including rape, robbery, battery, extortion, etc.

2. Reduce trafficking in human beings in the sex trade. This measure will provide a lawful environment for the sexual service industry, shifting enforcement resources to actual incidences of abuse rather than consensual commercial sex in general.

3. Promote public health. Current research reflects that prostitutes have a rate of sexually transmitted disease infections that is equal to other comparable segments of the population. Openness in the sex industry will support sexual health educational initiatives including safe sex practices and access to medical services for sex workers.

4. Promote labor rights and OSHA standards in the sex industry. Workers in the sex industry deserve the same rights as workers in any other trade, including the right to legal protection from crimes such as on the job harassment, as well as wage and hour laws. Legal sex industry businesses can be regulated as are other industries applying OSHA and other standard business regulations.

5. Promote positive community relations. A legal sex industry provides support for community feedback addressing issues of zoning, traffic, advertising and public health.

This section retains Penal Code Sections 266, 266 a, 266 e, and 266 f. These sections punish procurement of minors, procurement by force or fraud, acquiring a prostitute, and selling a prostitute. The penalties for these offenses remain quite severe.

The prohibition of pimping a minor has been transferred from Penal Code Section 266 h to Penal Code Section 266 i. It carries a punishment of between three and eight years.

This proposal also enacts Health and Safety Code Section 429.13, allowing for enforcement of safe sex practices in the business of prostitution.

#### **IMPACT STATEMENT:**

Civil Code Sections 798.56(c)(1) and 799.70(d) provide remedies to a landlord if a resident is convicted of prostitution. These will have to be addressed.

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