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OAKLAND

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**Introduced by Senator Huff**

February 25, 2015

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An act to amend Section 647 of the Penal Code, relating to prostitution.

LEGISLATIVE COUNSEL'S DIGEST

SB 420, as introduced, Huff. Prostitution.

Existing law provides that a person who solicits or agrees to engage in or engages in any act of prostitution is guilty of disorderly conduct, a misdemeanor.

This bill would recast these provisions and eliminate engaging in an act of prostitution from the definition of the offense. The bill would rename "prostitution" as "commercial sexual contact" for purposes of these provisions. The bill would provide that the offense is committed when (1) an individual solicits another to engage in an act of commercial sexual contact with the intent to receive compensation, money, or anything of value, and with the specific intent to so engage; (2) an individual solicits another who is 18 years of age or older to engage in an act of commercial sexual contact in exchange for the individual providing compensation, money, or anything of value to the other, or who manifests an acceptance of an offer or solicitation by another who is 18 years of age or older to so engage, regardless of whether the offer or solicitation by the other was made by a person who also possessed the specific intent to engage in an act of commercial sexual contact; or (3) an individual solicits another who is a minor to engage in an act of commercial sexual contact in exchange for the individual providing compensation, money, or anything of value to the minor, or who manifests an acceptance of an offer or solicitation by someone who is a minor to so engage, regardless of whether the offer or solicitation by

the minor was made by a person who also possessed the specific intent to engage in an act of commercial sexual contact.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 647 of the Penal Code is amended to  
2 read:

3 647. Except as provided in subdivision (1), every person who  
4 commits any of the following acts is guilty of disorderly conduct,  
5 a misdemeanor:

6 (a) ~~Who~~ *An individual who* solicits anyone to engage in or who  
7 engages in lewd or dissolute conduct in any public place or in any  
8 place open to the public or exposed to public view.

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

22 (b) (1) *An individual who solicits another to engage in an act*  
23 *of commercial sexual contact with the intent to receive*  
24 *compensation, money, or anything of value, and with the specific*  
25 *intent to so engage.*

26 (2) *An individual who solicits another who is 18 years of age*  
27 *or older, to engage in an act of commercial sexual contact in*  
28 *exchange for the individual providing compensation, money, or*  
29 *anything of value to the other, or, who manifests an acceptance*  
30 *of an offer or solicitation by another who is 18 years of age or*  
31 *older to so engage, regardless of whether the offer or solicitation*  
32 *by the other was made by a person who also possessed the specific*  
33 *intent to engage in an act of commercial sexual contact.*

1 (3) *An individual who solicits another who is a minor to engage*  
2 *in an act of commercial sexual contact in exchange for the*  
3 *individual providing compensation, money, or anything of value*  
4 *to the minor, or who manifests an acceptance of an offer or*  
5 *solicitation by someone who is a minor to so engage, regardless*  
6 *of whether the offer or solicitation by the minor was made by a*  
7 *person who also possessed the specific intent to engage in an act*  
8 *of commercial sexual contact.*

9 (4) *No manifestation of acceptance of an offer or solicitation*  
10 *to engage in an act of commercial sexual contact shall constitute*  
11 *a violation of this subdivision unless some act, in addition to the*  
12 *manifestation of acceptance, is done within this state in furtherance*  
13 *of the commission of the act of commercial sexual contact by the*  
14 *person manifesting an acceptance of an offer or solicitation to*  
15 *engage in that act. As used in this subdivision, "commercial sexual*  
16 *contact" includes any lewd act between persons for money or other*  
17 *consideration.*

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

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

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

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

37 (g) When a person has violated subdivision (f), a peace officer,  
38 if he or she is reasonably able to do so, shall place the person, or  
39 cause him or her to be placed, in civil protective custody. The  
40 person shall be taken to a facility, designated pursuant to Section

1 5170 of the Welfare and Institutions Code, for the 72-hour  
2 treatment and evaluation of inebriates. A peace officer may place  
3 a person in civil protective custody with that kind and degree of  
4 force which would be lawful were he or she effecting an arrest for  
5 a misdemeanor without a warrant. A person who has been placed  
6 in civil protective custody shall not thereafter be subject to any  
7 criminal prosecution or juvenile court proceeding based on the  
8 facts giving rise to this placement. This subdivision shall not apply  
9 to the following persons:

10 (1) Any person who is under the influence of any drug, or under  
11 the combined influence of intoxicating liquor and any drug.

12 (2) Any person who a peace officer has probable cause to believe  
13 has committed any felony, or who has committed any misdemeanor  
14 in addition to subdivision (f).

15 (3) Any person who a peace officer in good faith believes will  
16 attempt escape or will be unreasonably difficult for medical  
17 personnel to control.

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

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

28 (j) (1) Any person who looks through a hole or opening, into,  
29 or otherwise views, by means of any instrumentality, including,  
30 but not limited to, a periscope, telescope, binoculars, camera,  
31 motion picture camera, camcorder, or mobile phone, the interior  
32 of a bedroom, bathroom, changing room, fitting room, dressing  
33 room, or tanning booth, or the interior of any other area in which  
34 the occupant has a reasonable expectation of privacy, with the  
35 intent to invade the privacy of a person or persons inside. This  
36 subdivision shall not apply to those areas of a private business  
37 used to count currency or other negotiable instruments.

38 (2) Any person who uses a concealed camcorder, motion picture  
39 camera, or photographic camera of any type, to secretly videotape,  
40 film, photograph, or record by electronic means, another,

1 identifiable person under or through the clothing being worn by  
2 that other person, for the purpose of viewing the body of, or the  
3 undergarments worn by, that other person, without the consent or  
4 knowledge of that other person, with the intent to arouse, appeal  
5 to, or gratify the lust, passions, or sexual desires of that person and  
6 invade the privacy of that other person, under circumstances in  
7 which the other person has a reasonable expectation of privacy.

8 (3) (A) Any person who uses a concealed camcorder, motion  
9 picture camera, or photographic camera of any type, to secretly  
10 videotape, film, photograph, or record by electronic means, another,  
11 identifiable person who may be in a state of full or partial undress,  
12 for the purpose of viewing the body of, or the undergarments worn  
13 by, that other person, without the consent or knowledge of that  
14 other person, in the interior of a bedroom, bathroom, changing  
15 room, fitting room, dressing room, or tanning booth, or the interior  
16 of any other area in which that other person has a reasonable  
17 expectation of privacy, with the intent to invade the privacy of that  
18 other person.

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

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

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

25 (4) (A) Any person who intentionally distributes the image of  
26 the intimate body part or parts of another identifiable person, or  
27 an image of the person depicted engaged in an act of sexual  
28 intercourse, sodomy, oral copulation, sexual penetration, or an  
29 image of masturbation by the person depicted or in which the  
30 person depicted participates, under circumstances in which the  
31 persons agree or understand that the image shall remain private,  
32 the person distributing the image knows or should know that  
33 distribution of the image will cause serious emotional distress, and  
34 the person depicted suffers that distress.

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

39 (C) As used in this paragraph, “intimate body part” means any  
40 portion of the genitals, the anus and in the case of a female, also

1 includes any portion of the breasts below the top of the areola, that  
2 is either uncovered or clearly visible through clothing.

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

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

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

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

12 (5) This subdivision shall not preclude punishment under any  
13 section of law providing for greater punishment.

14 (k) In any accusatory pleading charging a violation of  
15 subdivision (b), if the defendant has been once previously convicted  
16 of a violation of that subdivision, the previous conviction shall be  
17 charged in the accusatory pleading. If the previous conviction is  
18 found to be true by the jury, upon a jury trial, or by the court, upon  
19 a court trial, or is admitted by the defendant, the defendant shall  
20 be imprisoned in a county jail for a period of not less than 45 days  
21 and shall not be eligible for release upon completion of sentence,  
22 on probation, on parole, on work furlough or work release, or on  
23 any other basis until he or she has served a period of not less than  
24 45 days in a county jail. In all cases in which probation is granted,  
25 the court shall require as a condition thereof that the person be  
26 confined in a county jail for at least 45 days. In no event does the  
27 court have the power to absolve a person who violates this  
28 subdivision from the obligation of spending at least 45 days in  
29 confinement in a county jail.

30 In any accusatory pleading charging a violation of subdivision  
31 (b), if the defendant has been previously convicted two or more  
32 times of a violation of that subdivision, each of these previous  
33 convictions shall be charged in the accusatory pleading. If two or  
34 more of these previous convictions are found to be true by the jury,  
35 upon a jury trial, or by the court, upon a court trial, or are admitted  
36 by the defendant, the defendant shall be imprisoned in a county  
37 jail for a period of not less than 90 days and shall not be eligible  
38 for release upon completion of sentence, on probation, on parole,  
39 on work furlough or work release, or on any other basis until he  
40 or she has served a period of not less than 90 days in a county jail.

1 In all cases in which probation is granted, the court shall require  
2 as a condition thereof that the person be confined in a county jail  
3 for at least 90 days. In no event does the court have the power to  
4 absolve a person who violates this subdivision from the obligation  
5 of spending at least 90 days in confinement in a county jail.

6 In addition to any punishment prescribed by this section, a court  
7 may suspend, for not more than 30 days, the privilege of the person  
8 to operate a motor vehicle pursuant to Section 13201.5 of the  
9 Vehicle Code for any violation of subdivision (b) that was  
10 committed within 1,000 feet of a private residence and with the  
11 use of a vehicle. In lieu of the suspension, the court may order a  
12 person's privilege to operate a motor vehicle restricted, for not  
13 more than six months, to necessary travel to and from the person's  
14 place of employment or education. If driving a motor vehicle is  
15 necessary to perform the duties of the person's employment, the  
16 court may also allow the person to drive in that person's scope of  
17 employment.

18 (l) (1) A second or subsequent violation of subdivision (j) is  
19 punishable by imprisonment in a county jail not exceeding one  
20 year, or by a fine not exceeding two thousand dollars (\$2,000), or  
21 by both that fine and imprisonment.

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

27 (m) (1) If a crime is committed in violation of subdivision (b)  
28 and the person who was solicited was a minor at the time of the  
29 offense, and if the defendant knew or should have known that the  
30 person who was solicited was a minor at the time of the offense,  
31 the violation is punishable by imprisonment in a county jail for  
32 not less than two days and not more than one year, or by a fine not  
33 exceeding ten thousand dollars (\$10,000), or by both that fine and  
34 imprisonment.

35 (2) The court may, in unusual cases, when the interests of justice  
36 are best served, reduce or eliminate the mandatory two days of  
37 imprisonment in a county jail required by this subdivision. If the

- 1 court reduces or eliminates the mandatory two days' imprisonment,
- 2 the court shall specify the reason on the record.

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**FILED**  
OFFICE OF THE CITY CLERK  
OAKLAND

City Attorney's Office

**OAKLAND CITY COUNCIL**  
Resolution No. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCIL PRESIDENT LYNETTE GIBSON MCELHANEY  
AND COUNCILMEMBER ABEL GUILLEN

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**ADOPT A RESOLUTION IN SUPPORT OF CALIFORNIA SENATE BILL 420 (HUFF) WHICH WOULD CLEARLY DISTINGUISH THE "SELLER" FROM THE "PURCHASER" OF SEX WITH MINORS IN THE STATE PENALTY CODE, IN ORDER TO ENABLE BETTER DATA COLLECTION AND TRACKING, AND THUS BETTER SHAPE POLICIES TO REDUCE THE DEMAND FOR SEX.**

**WHEREAS**, Oakland has been identified by the Federal Bureau of Investigations as a large hub of sexual exploitation and human trafficking; and

**WHEREAS**, for many years, the Oakland Police Department, the Department of Human Services, Oakland Unified School District, and non-profit service providers, and community leaders have been working to prevent trafficking through education and advocacy, and have been providing intervention services for victims; and

**WHEREAS**, however, these partners recognize that their efforts are not reducing the demand for the purchasing of sex, and have called on elected leaders to change the laws to address that demand; and

**WHEREAS**, in order to better understand the demand for sex with children and adults, accurate data must be made available on the numbers of offenses for buyers and sellers of sex; and

**WHEREAS**, California State Law does not distinguish between persons who sell people for sexual acts and persons who buy sexual acts; and

**WHEREAS**, Senate Bill 420 divides Penal Code Section 6.47B into three separate sections in order to more accurately differentiate the types of crimes that are occurring; and

**WHEREAS**, such a differentiation will allow for better data collection on these types of crimes so that policy makers, law enforcement, and service providers have better data to understand the problem in order to propose solutions to end sexual exploitation; and

**WHEREAS**, Senate Bill 420 would provide that the offense is committed when (1) an individual solicits another to engage in an act of commercial sexual contact with the intent to receive compensation, money, or anything of value, and with the specific intent to so engage; (2) an individual solicits another who is 18

years of age or older to engage in an act of commercial sexual contact in exchange for the individual providing compensation, money, or anything of value to the other, or, who manifests an acceptance of an offer or solicitation by another who is 18 years of age or older to so engage, regardless of whether the offer or solicitation by the other was made by a person who also possessed the specific intent to engage in an act of commercial sexual contact; or (3) an individual solicits another who is a minor to engage in an act of commercial sexual contact in exchange for the individual providing compensation, money, or anything of value to the minor, or who manifests an acceptance of an offer or solicitation by someone who is a minor to so engage, regardless of whether the offer or solicitation by; and

**WHEREAS**, on May 4, 2015 the California State Senate unanimously approved SB 420; and

**WHEREAS**,; and now therefore be it

**RESOLVED**: that the City Council of Oakland strongly supports the passage of Senate Bill 420.

IN COUNCIL, OAKLAND, CALIFORNIA,  
PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND  
PRESIDENT GIBSON MCELHANEY

NOES -  
ABSENT -  
ABSTENTION -

ATTEST:

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LATONDA SIMMONS  
City Clerk and Clerk of the Council of the  
City of Oakland, California