



CITY OF MARTINEZ

CITY COUNCIL AGENDA

April 15, 2015

TO: Mayor and City Council
FROM: Eric Ghisletta, Interim Chief of Police
PREPARED BY: Aaron Roth, Lieutenant
SUBJECT: Senate Bill 608 (Liu) Homelessness "Right to Rest Act"
DATE: April 7, 2015

RECOMMENDATION:

Consider letter opposing Senate Bill 608 (Liu) Homelessness "Right to Rest Act", which allows the homeless to "rest" on public property without being subject to applicable criminal sanctions.

BACKGROUND:

SB 608, introduced by Senator Liu on February 27, 2015, would enact The Right to Rest Act. The bill would provide homeless persons the right to use public space without discrimination based on their housing status. SB 608 describes basic human and civil rights that may be exercised without being subject to criminal or civil sanctions or harassment, including the right to:

- Use and to move freely in public spaces...without time limitations that discriminate based on housing status;
- Rest in public spaces* and to protect oneself from the elements in a non-obstructive manner;
- Eat, share, accept or give food in any public space in which having food is not prohibited;
- Perform religious observances in public spaces without discrimination based on housing status; and
- Occupy a motor vehicle or a recreational vehicle legally parked or parked with the permission of the property owner.

*The bill defines public spaces as "any property that is owned, in whole or in part, by any state or local government entity of any property upon which there is an easement for public use and that is held open to the public including, but not limited to, plazas, courtyards, parking lots, sidewalks, public transportation facilities and services, public buildings, shopping centers, and parks."

The Martinez Police Department currently responds annually to hundreds of reports of homeless persons blocking pathways, or being disruptive, to businesses in the downtown area, as well as other areas in the city. In the downtown area, a majority of the businesses are adjacent to city-owned pathways, or plazas, that are specifically outlined in the proposed bill. The passage of SB 608 would not allow for the removal or contact of individuals violating any laws associated with disorderly conduct, including those individuals who would be disruptive to the free movement of pedestrians.

This proposed bill could not only have a negative financial impact on the downtown businesses should people not be able to have free access to patronize them, but this bill could also create a safety issue with regard to individuals being unable to traverse these areas free of obstacles or debris.

FISCAL IMPACT:

Unknown at this time. SB 608 does not contain any provisions for the funding of homeless services that would allow the City to offer an alternative to engaging in any potentially unsafe, disruptive or disorderly conduct.

ACTION:

Motion authorizing the Mayor to sign a letter opposing Senate Bill 608 (Liu) Homelessness "Right to Rest Act."

Attachments:
Draft Letter
SB 608

APPROVED BY:


Rob Braulik, City Manager



City of Martinez

525 Henrietta Street, Martinez, CA 94553-2394

(925) 372-3505
FAX (925) 229-5012

April 15, 2015

Honorable Senator Carol Liu
California State Senate
State Capitol, Room 5097
Sacramento, CA 95814
FAX: (916) 651-4925

RE: SB 608 (Liu) The Right to Rest Act Notice of Opposition

Dear Senator Liu:

On behalf of the City of Martinez, I write to inform you of our opposition to your SB 608. While the measure is well-intended, we do not believe it would make a positive contribution to combating homelessness in our state and within our communities.

SB 608 would enact The Right to Rest Act, which would provide homeless persons the right to use public space without discrimination based on their housing status. It would describe basic human and civil rights that may be exercised without being subject to criminal or civil sanctions or harassment, including the right to:

- Use and to move freely in public spaces...without time limitations that discriminate based on housing status;
- Rest in public spaces* and to protect oneself from the elements in a nonobstructive manner;
- Eat, share, accept or give food in any public space in which having food is not prohibited;
- Perform religious observances in public spaces without discrimination based on housing status; and
- Occupy a motor vehicle or a recreational vehicle legally parked or parked with the permission of the property owner.

The bill defines public spaces as “any property that is owned, in whole or in part, by any state or local government entity of any property upon which there is an easement for public use and that is held open to the public including, but not limited to, plazas, courtyards, parking lots, sidewalks, public transportation facilities and services, public buildings, shopping centers, and parks.”

SB 608 would exempt conduct that is protected by the bill, as described above, from the definition of the crime of disorderly conduct. Finally it would authorize a person whose rights have been violated pursuant to these provisions to enforce those rights in a civil

action in which the court may award the prevailing party injunctive and declaratory relief, restitution, damages, statutory damages of \$1,000 per violation, and attorney's fees and costs.

SB 608 contains no solutions for homelessness. It contains no new programs, no funding for housing, and no effort to improve services. It creates a special set of exemptions and privileges for one group of people and undermines the equal applicability of laws.

The Martinez Police Department currently responds annually to hundreds of reports of homeless persons being disruptive within the city limits. The department works closely with homeless outreach programs in an attempt to provide shelter to the homeless as an alternative to making arrests and writing citations for disorderly conduct. Unfortunately, not all homeless individuals are willing to take advantage of the limited programs that exist for them due to the parameters surrounding those programs. As a result, these individuals subject themselves to being arrested or cited for disorderly conduct violations, as those unwilling to receive services are often the same individuals who willfully block sidewalks and plaza areas creating an unsafe environment for others. Enforcing the current law is sometimes the only means the police department has as a way to address unsafe and disorderly behavior.

We believe that real solutions lie in providing resources for affordable housing and for treating underlying problems, not creating a special set of exemptions, privileges and rights for the homeless to occupy public and private property without complying with laws that apply to all others in society. Such an approach would create social disorder and undermine the ability of all others to access clean and non-threatening public spaces, while jeopardizing property rights and the economic viability of local businesses.

While we oppose the approach of SB 608, we share your desire to address the root causes of homelessness. To do so we must work together to provide more resources for affordable housing such as those proposed by AB 35 (Chiu and Atkins) which increases affordable housing tax credits by \$300 million and AB 1335 (Atkins) which would provide a permanent source of funding for affordable housing. These bills represent more constructive approaches to solving this chronic problem.

For the reasons mentioned above, the City of Martinez opposes AB 608.

Sincerely,

Rob Schroder,
Mayor

C: Senator Lois Wolk
Assembly Member Susan Bonilla
Senator Jim Beall, Chair, Senate Committee on Transportation & Housing, Fax: 916-651-4915
Senator Hannah-Beth Jackson, Chair, Senate Judiciary Committee, Fax: 916-651-4919
Dan Carrigg, Legislative Representative, League of California Cities, Fax: 916-658-8240

Introduced by Senator LiuFebruary 27, 2015

An act to add Part 2.2 (commencing with Section 53.8) to Division 1 of, the Civil Code, and to amend Section 647 of the Penal Code, relating to homelessness.

LEGISLATIVE COUNSEL'S DIGEST

SB 608, as introduced, Liu. Homelessness.

Existing law, the Unruh Civil Rights Act, provides that all persons within the state are free and equal, regardless of their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation, and are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

This bill would enact the Right to Rest Act, which would afford persons experiencing homelessness the right to use public space without discrimination based on their housing status. Because the bill would require local agencies to perform additional duties, it would impose a state-mandated local program. The bill would describe basic human and civil rights that may be exercised without being subject to criminal or civil sanctions or harassment, including the right to use and to move freely in public spaces, the right to rest in public spaces and to protect oneself from the elements, the right to eat in any public space in which having food is not prohibited, the right to perform religious observances in public spaces, and the right to occupy a motor vehicle or a recreational vehicle legally parked or parked with the permission of the property owner, as specified.

The bill would authorize a person whose rights have been violated pursuant to these provisions to enforce those rights in a civil action in

which the court may award the prevailing party injunctive and declaratory relief, restitution, damages, statutory damages of \$1,000 per violation, and fees and costs.

Existing law provides that any person who lodges in any building, structure, vehicle, or place without the permission of the owner or person entitled to the possession or in control of it, is guilty of disorderly conduct.

The bill would also exempt conduct that is protected by the bill from this definition of the crime of disorderly conduct.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

- 1 SECTION 1. This act shall be known and may be cited as “The
- 2 Right to Rest Act.”
- 3 SEC. 2. The Legislature finds and declares all of the following:
- 4 (a) According to the Housing and Urban Development’s report
- 5 to Congress, 136,826 people were estimated to be homeless in
- 6 California in 2013, a rate that is unprecedented following a deep
- 7 and prolonged economic recession, a severe shortage of safe and
- 8 affordable housing, a failed veteran and civilian mental health
- 9 system, and a diminished social safety net.
- 10 (b) According to the United States Department of Education,
- 11 259,656 school children were known to have experienced
- 12 homelessness in the 2012–13 school year.
- 13 (c) Homelessness is an independent risk factor for a number of
- 14 illnesses, making people more susceptible to increased health
- 15 problems due to high stress, sleep deprivation, unsanitary
- 16 surroundings, lack of access to hygiene facilities, and a myriad of
- 17 other situational stressors experienced by people without stable
- 18 housing. Subsequently, people who are chronically homeless are

1 more medically frail and three to four times more likely to die
2 prematurely than their housed counterparts.

3 (d) Throughout California, local governments have enacted
4 ordinances that make it illegal to rest or seek nourishment in public
5 spaces.

6 (e) These local ordinances do not reduce the incidence of
7 homelessness or crime. Instead, they result in increased
8 incarceration rates and financial indebtedness of people who simply
9 have no means of support and prolong homelessness by making
10 it more difficult for people to secure housing, employment, and
11 medical care.

12 (f) While these ordinances apply to all residents, they
13 disproportionately impact people without homes, who have no
14 private place to rest or seek nourishment, and are often selectively
15 applied by law enforcement to people based upon their appearance
16 or an assumption of homelessness.

17 (g) In practice, these ordinances deprive persons experiencing
18 homelessness and those who may be perceived as homeless of a
19 safe and legal place to rest and seek nourishment, which adversely
20 impacts their health and well-being.

21 (h) Sleep deprivation impairs cognitive processes and puts one
22 at risk for obesity, heart disease, heart attack, heart failure, irregular
23 heartbeat, high blood pressure, stroke, diabetes, and depression.
24 People who are homeless suffer from sleep deprivation and, absent
25 a place to rest, they suffer it more frequently.

26 (i) Lacking the resources necessary to obtain adequate legal
27 representation, homeless persons are often denied relief or damages
28 through the courts.

29 (j) Both the federal government, through its Interagency Council
30 on Homelessness, and the United Nations, have recognized that
31 discrimination and criminalization violate a homeless person's
32 human rights and have called upon state and local governments to
33 cease enactment and enforcement of those laws.

34 (k) Homelessness and the increasing criminalization of
35 homelessness and discrimination against those experiencing
36 homelessness are widespread throughout California and are matters
37 of statewide concern.

38 (l) Section 1 of Article I of the California Constitution provides
39 that "[a]ll people are by nature free and independent and have
40 inalienable rights. Among these are enjoying and defending life

1 and liberty, acquiring, possessing, and protecting property, and
2 pursuing and obtaining safety, happiness, and privacy,” without
3 qualification as to whether or not a person is, or appears to be,
4 homeless.

5 (m) Subdivision (a) of Section 7 of Article I of the California
6 Constitution provides that “[a] person may not be deprived of life,
7 liberty, or property without due process of law or denied equal
8 protection of the laws... .”

9 (n) Concordant with this fundamental belief, a person should
10 not be subject to discrimination based on his or her income, housing
11 status, or ability or desire to appear housed. Therefore, it is the
12 intent of the Legislature in enacting this legislation to protect the
13 rights of all Californians, regardless of their housing status and
14 ameliorate the adverse effects caused by the criminalization of
15 homelessness on our communities and our citizens.

16 (o) Decriminalization of rest allows municipal governments to
17 redirect resources from local enforcement activities to activities
18 that address the root causes of homelessness and poverty.

19 SEC. 3. Part 2.2 (commencing with Section 53.8) is added to
20 Division 1 of the Civil Code, to read:

21
22 PART 2.2. HOMELESS PERSONS

23
24 53.8. For purposes of this part, the following definitions shall
25 apply:

26 (a) “BID” means a business improvement district, as established
27 pursuant to Chapter 2 (commencing with Section 36520) of Part
28 6 of Division 18 of, or Chapter 2 (commencing with Section 36620)
29 of Part 7 of Division 18 of, the Streets and Highways Code, or any
30 public-private partnership established under any municipal or
31 county law authorized pursuant to Chapter 1 (commencing with
32 Section 36500) of Part 6 of Division 18 of, or Chapter 2
33 (commencing with Section 36620) of Part 7 of Division 18 of, the
34 Streets and Highways Code, whether or not the phrase “business
35 improvement district” is part of the public-private partnership’s
36 name.

37 (b) “BID agent” means any person hired by a business
38 improvement district.

39 (c) “Discrimination based on housing status” includes any
40 distinction, exclusion, or restriction based on the status of having

1 or not having a fixed or regular residence or that disproportionately
2 impacts person of a particular housing status. Measures taken to
3 ensure equal enjoyment or exercise of the human right to rest shall
4 not be deemed discriminatory.

5 (d) “Harassment” means a knowing or willful course of conduct
6 by law enforcement, public or private security personnel, or a BID
7 agent directed at a specific person that a reasonable person would
8 consider as seriously alarming, threatening, tormenting, or
9 terrorizing.

10 (e) (1) “Homeless persons,” “homeless people,” or “persons
11 experiencing homelessness” means those individuals or members
12 of families who lack a fixed, regular, and adequate nighttime
13 residence including all of the following:

14 (A) Individuals and members of families who are sharing the
15 housing of other persons due to a loss of housing, economic
16 hardship, or a similar reason; are living in motels, hotels, trailer
17 parks, or camping grounds due to the lack of alternative adequate
18 accommodations; are living in emergency or transitional shelters;
19 are abandoned in a hospital; or are awaiting foster care placement.

20 (B) Individuals and members of families who have a primary
21 nighttime residence that is a public or private place not designed
22 for or ordinarily used as a regular sleeping accommodation for
23 human beings, including a car, park, abandoned building, bus or
24 train station, airport, or camping ground.

25 (C) Individuals and members of families who are living in cars,
26 parks, public spaces, abandoned buildings, substandard housing,
27 bus or train stations, or similar settings.

28 (D) Individuals and members of families who, in the preceding
29 36 months, have moved between jurisdictions in order to obtain
30 temporary or seasonal employment in agriculture or fishing work,
31 or have migrated 20 miles or more to a temporary residence to
32 engage in a fishing activity.

33 (2) This definition includes unaccompanied youth and homeless
34 families with children and youth who have experienced a long-term
35 period without living independently in permanent housing, have
36 experienced persistent instability as measured by frequent moves
37 over that period, and can be expected to continue in that status for
38 an extended period of time because of chronic disabilities, chronic
39 physical health or mental health conditions, substance addiction,
40 histories of domestic violence or childhood abuse, the presence of

1 a child or youth with a disability, or multiple barriers to
2 employment.

3 (f) “Motor vehicle” means a motor vehicle as defined in Section
4 415 of the Vehicle Code.

5 (g) “Public space” means any property that is owned, in whole
6 or in part, by any state or local government entity or any property
7 upon which there is an easement for public use and that is held
8 open to the public, including, but not limited to, plazas, courtyards,
9 parking lots, sidewalks, public transportation facilities and services,
10 public buildings, shopping centers, and parks.

11 (h) “Recreational vehicle” means a recreational vehicle as
12 defined in Section 18010 of the Health and Safety Code.

13 (i) “Rest” means the state of not moving, holding certain
14 postures that include, but are not limited to, sitting, standing,
15 leaning, kneeling, squatting, sleeping, or lying.

16 53.81. (a) Persons experiencing homelessness shall be
17 permitted to use public space in the same manner as any other
18 person, without discrimination based on their housing status. In
19 addition, the existence of homelessness requires that civil and
20 human rights that are amply protected in the home and in other
21 private places be extended to the public areas in which homeless
22 persons live to ensure the equal rights of all Californians, whether
23 homeless or housed.

24 (b) Every person in the state shall have the following basic
25 human and civil rights, that may be exercised without being subject
26 to criminal or civil sanctions or harassment by law enforcement,
27 public or private security personnel, or BID agents:

28 (1) The right to use and to move freely in public spaces, without
29 discrimination and without time limitations that discriminate based
30 upon housing status.

31 (2) The right to rest in public spaces and to protect oneself from
32 the elements, in a nonobstructive manner.

33 (3) The right to eat, share, accept, or give food in any public
34 space in which having food is not otherwise generally prohibited.

35 (4) The right to pray, meditate, worship, or practice religion in
36 public spaces, without discrimination based upon housing status.

37 (5) The right to occupy a motor vehicle or a recreational vehicle,
38 provided that the vehicle is legally parked on public property or
39 parked on private property with permission of the property owner.

1 53.82. (a) Any person whose rights have been violated pursuant
2 to this part may enforce those rights in a civil action.

3 (b) The court may award appropriate injunctive and declaratory
4 relief, restitution for loss of property or personal effects and
5 belongings, actual damages, compensatory damages, exemplary
6 damages, statutory damages of one thousand dollars (\$1,000) per
7 violation, and reasonable attorney’s fees and costs to a prevailing
8 party.

9 SEC. 4. Section 647 of the Penal Code is amended to read:

10 647. Except as provided in subdivision (l), every person who
11 commits any of the following acts is guilty of disorderly conduct,
12 a misdemeanor:

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

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

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

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

35 (e) Who lodges in any building, structure, vehicle, or place;
36 ~~whether public or private~~, without the permission of the owner or
37 person entitled to the possession or in control of it. *This subdivision*
38 *does not apply to conduct that is protected pursuant to Section*
39 *53.81 of the Civil Code.*

1 (f) Who is found in any public place under the influence of
2 intoxicating liquor, any drug, controlled substance, toluene, or any
3 combination of any intoxicating liquor, drug, controlled substance,
4 or toluene, in a condition that he or she is unable to exercise care
5 for his or her own safety or the safety of others, or by reason of
6 his or her being under the influence of intoxicating liquor, any
7 drug, controlled substance, toluene, or any combination of any
8 intoxicating liquor, drug, or toluene, interferes with or obstructs
9 or prevents the free use of any street, sidewalk, or other public
10 way.

11 (g) When a person has violated subdivision (f), a peace officer,
12 if he or she is reasonably able to do so, shall place the person, or
13 cause him or her to be placed, in civil protective custody. The
14 person shall be taken to a facility, designated pursuant to Section
15 5170 of the Welfare and Institutions Code, for the 72-hour
16 treatment and evaluation of inebriates. A peace officer may place
17 a person in civil protective custody with that kind and degree of
18 force which would be lawful were he or she effecting an arrest for
19 a misdemeanor without a warrant. A person who has been placed
20 in civil protective custody shall not thereafter be subject to any
21 criminal prosecution or juvenile court proceeding based on the
22 facts giving rise to this placement. This subdivision shall not apply
23 to the following persons:

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

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

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

32 (h) Who loiters, prowls, or wanders upon the private property
33 of another, at any time, without visible or lawful business with the
34 owner or occupant. As used in this subdivision, “loiter” means to
35 delay or linger without a lawful purpose for being on the property
36 and for the purpose of committing a crime as opportunity may be
37 discovered.

38 (i) Who, while loitering, prowling, or wandering upon the private
39 property of another, at any time, peeks in the door or window of

1 any inhabited building or structure, without visible or lawful
2 business with the owner or occupant.

3 (j) (1) Any person who looks through a hole or opening, into,
4 or otherwise views, by means of any instrumentality, including,
5 but not limited to, a periscope, telescope, binoculars, camera,
6 motion picture camera, camcorder, or mobile phone, the interior
7 of a bedroom, bathroom, changing room, fitting room, dressing
8 room, or tanning booth, or the interior of any other area in which
9 the occupant has a reasonable expectation of privacy, with the
10 intent to invade the privacy of a person or persons inside. This
11 subdivision shall not apply to those areas of a private business
12 used to count currency or other negotiable instruments.

13 (2) Any person who uses a concealed camcorder, motion picture
14 camera, or photographic camera of any type, to secretly videotape,
15 film, photograph, or record by electronic means, another,
16 identifiable person under or through the clothing being worn by
17 that other person, for the purpose of viewing the body of, or the
18 undergarments worn by, that other person, without the consent or
19 knowledge of that other person, with the intent to arouse, appeal
20 to, or gratify the lust, passions, or sexual desires of that person and
21 invade the privacy of that other person, under circumstances in
22 which the other person has a reasonable expectation of privacy.

23 (3) (A) Any person who uses a concealed camcorder, motion
24 picture camera, or photographic camera of any type, to secretly
25 videotape, film, photograph, or record by electronic means, another,
26 identifiable person who may be in a state of full or partial undress,
27 for the purpose of viewing the body of, or the undergarments worn
28 by, that other person, without the consent or knowledge of that
29 other person, in the interior of a bedroom, bathroom, changing
30 room, fitting room, dressing room, or tanning booth, or the interior
31 of any other area in which that other person has a reasonable
32 expectation of privacy, with the intent to invade the privacy of that
33 other person.

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

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

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

1 (4) (A) Any person who intentionally distributes the image of
2 the intimate body part or parts of another identifiable person, or
3 an image of the person depicted engaged in an act of sexual
4 intercourse, sodomy, oral copulation, sexual penetration, or an
5 image of masturbation by the person depicted or in which the
6 person depicted participates, under circumstances in which the
7 persons agree or understand that the image shall remain private,
8 the person distributing the image knows or should know that
9 distribution of the image will cause serious emotional distress, and
10 the person depicted suffers that distress.

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

15 (C) As used in this paragraph, “intimate body part” means any
16 portion of the genitals, the anus and in the case of a female, also
17 includes any portion of the breasts below the top of the areola, that
18 is either uncovered or clearly visible through clothing.

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

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

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

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

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

30 (k) In any accusatory pleading charging a violation of
31 subdivision (b), if the defendant has been once previously convicted
32 of a violation of that subdivision, the previous conviction shall be
33 charged in the accusatory pleading. If the previous conviction is
34 found to be true by the jury, upon a jury trial, or by the court, upon
35 a court trial, or is admitted by the defendant, the defendant shall
36 be imprisoned in a county jail for a period of not less than 45 days
37 and shall not be eligible for release upon completion of sentence,
38 on probation, on parole, on work furlough or work release, or on
39 any other basis until he or she has served a period of not less than
40 45 days in a county jail. In all cases in which probation is granted,

1 the court shall require as a condition thereof that the person be
2 confined in a county jail for at least 45 days. In no event does the
3 court have the power to absolve a person who violates this
4 subdivision from the obligation of spending at least 45 days in
5 confinement in a county jail.

6 In any accusatory pleading charging a violation of subdivision
7 (b), if the defendant has been previously convicted two or more
8 times of a violation of that subdivision, each of these previous
9 convictions shall be charged in the accusatory pleading. If two or
10 more of these previous convictions are found to be true by the jury,
11 upon a jury trial, or by the court, upon a court trial, or are admitted
12 by the defendant, the defendant shall be imprisoned in a county
13 jail for a period of not less than 90 days and shall not be eligible
14 for release upon completion of sentence, on probation, on parole,
15 on work furlough or work release, or on any other basis until he
16 or she has served a period of not less than 90 days in a county jail.
17 In all cases in which probation is granted, the court shall require
18 as a condition thereof that the person be confined in a county jail
19 for at least 90 days. In no event does the court have the power to
20 absolve a person who violates this subdivision from the obligation
21 of spending at least 90 days in confinement in a county jail.

22 In addition to any punishment prescribed by this section, a court
23 may suspend, for not more than 30 days, the privilege of the person
24 to operate a motor vehicle pursuant to Section 13201.5 of the
25 Vehicle Code for any violation of subdivision (b) that was
26 committed within 1,000 feet of a private residence and with the
27 use of a vehicle. In lieu of the suspension, the court may order a
28 person's privilege to operate a motor vehicle restricted, for not
29 more than six months, to necessary travel to and from the person's
30 place of employment or education. If driving a motor vehicle is
31 necessary to perform the duties of the person's employment, the
32 court may also allow the person to drive in that person's scope of
33 employment.

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

38 (2) If the victim of a violation of subdivision (j) was a minor at
39 the time of the offense, the violation is punishable by imprisonment
40 in a county jail not exceeding one year, or by a fine not exceeding

1 two thousand dollars (\$2,000), or by both that fine and
2 imprisonment.

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

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

16 SEC. 5. If the Commission on State Mandates determines that
17 this act contains costs mandated by the state, reimbursement to
18 local agencies and school districts for those costs shall be made
19 pursuant to Part 7 (commencing with Section 17500) of Division
20 4 of Title 2 of the Government Code.