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**Assembly
California Legislature**



**ASSEMBLY COMMITTEE ON
PUBLIC SAFETY**
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AGENDA

9:00 a.m. – January 12, 2016
State Capitol, Room 126

<u>Item</u>	<u>Bill No. & Author</u>	<u>Counsel/ Consultant</u>	<u>Summary</u>
1.	AB 201 (Brough)	Mr. Caswell	Registered sex offenders: local ordinances.
2.	AB 898 (Gonzalez)	Ms. Uribe	Parole suitability: notice.
3.	AB 1106 (Jones-Sawyer)	Mr. Billingsley	Criminal procedure: arraignment pilot program.
4.	AB 1272 (Grove)	Ms. Uribe	Crimes against persons with disabilities, children, and elder and dependent adults.
5.	AB 1276 (Santiago)	Ms. Choe	Child witnesses: human trafficking.
6.	AB 1395 (Salas)	Ms. Choe	Money laundering: criminal activity: lotteries and gaming.
7.	AB 1543 (Brough)	Mr. Billingsley	Animals: abuse. (Urgency)

FOR VOTE ONLY

8. AB 733 (Chavez) Mr. Caswell Crimes: prostitution.

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Date of Hearing: January 12, 2016
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 201 (Brough) – As Amended: April 21, 2015

SUMMARY: Allows cities and counties to adopt ordinances, rules or regulations that are more restrictive than state law regarding the ability of people who are required to register as sex offenders to reside or be present at certain locations within the city or county. Specifically, **this bill:**

- 1) Provides that a local agency is not preempted by state law from enacting and enforcing an ordinance that restricts a person required to register as a sex offender, pursuant to existing law, from residing or being present at certain locations within the local agency's jurisdiction.
- 2) Allows a local agency to adopt ordinances, rules, or regulations that are more restrictive than state law relating to the ability of a person required to register as a sex offender to reside or be present at certain locations within the local agency's jurisdiction.
- 3) Defines, for the purposes of this bill, "local agency" to mean a city, county, or city and county.

EXISTING LAW:

- 1) Requires persons convicted of enumerated sex offenses to register within five working days of coming into a city or county, with specified law enforcement officials in the city, county, or city and county where he or she is domiciled, as specified. (Pen. Code, § 290.)
- 2) Provides that it is unlawful for any registered sex offender to reside within 2,000 feet of any public or private school, or park where children regularly gather. Further states that nothing in this section shall prohibit municipal jurisdictions from enacting local ordinances that further restrict the residency of any sex registrants. (Pen. Code, § 3003.5.)
- 3) Requires persons convicted of specified sex offenses to register for life, or re-register if the person has been previously registered, upon release from incarceration, placement, commitment, or release on probation. States that the registration shall consist of all of the following (Pen. Code, § 290.015, subd. (a).):
 - a) A statement signed in writing by the person, giving information as shall be required by the Department of Justice (DOJ) and giving the name and address of the person's employer, and the address of the person's place of employment, if different from the employer's main address;
 - b) Fingerprints and a current photograph taken by the registering official;

- c) The license plate number of any vehicle owned by, regularly driven by or registered in the name of the registrant;
 - d) Notice to the person that he or she may have a duty to register in any other state where he or she may relocate; and,
 - e) Copies of adequate proof of residence, such as a California driver's license or identification card, recent rent or utility receipt or any other information that the registering official believes is reliable.
- 4) States every person who is required to register, as specified, who is living as a transient shall be required to register for the rest of his or her life as follows:
- a) He or she shall register, or reregister if the person has previously registered, within five working days from release from incarceration, placement or commitment, or release on probation, pursuant to Penal Code Section 290(b), except that if the person previously registered as a transient less than 30 days from the date of his or her release from incarceration, he or she does not need to reregister as a transient until his or her next required 30-day update of registration. If a transient is not physically present in any one jurisdiction for five consecutive working days, he or she shall register in the jurisdiction in which he or she is physically present on the fifth working day following release, as specified. Beginning on or before the 30th day following initial registration upon release, a transient shall reregister no less than once every 30 days thereafter. A transient shall register with the chief of police of the city in which he or she is physically present within that 30-day period, or the sheriff of the county if he or she is physically present in an unincorporated area or city that has no police department, and additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is physically present upon the campus or in any of its facilities. A transient shall reregister no less than once every 30 days regardless of the length of time he or she has been physically present in the particular jurisdiction in which he or she reregisters. If a transient fails to reregister within any 30-day period, he or she may be prosecuted in any jurisdiction in which he or she is physically present.
 - b) A transient who moves to a residence shall have five working days within which to register at that address, in accordance with Penal Code Section 290(b). A person registered at a residence address in accordance with that provision who becomes transient shall have five working days within which to reregister as a transient in accordance with existing law.
 - c) Beginning on his or her first birthday following registration, a transient shall register annually, within five working days of his or her birthday, to update his or her registration with the entities described in existing law. A transient shall register in whichever jurisdiction he or she is physically present on that date. At the 30-day updates and the annual update, a transient shall provide current information as required on the DOJ annual update form, including the information.
 - d) A transient shall, upon registration and re-registration, provide current information as required on the DOJ registration forms, and shall also list the places where he or she sleeps, eats, works, frequents, and engages in leisure activities. If a transient changes or adds to the places listed on the form during the 30-day period, he or she does not need to

report the new place or places until the next required re-registration. (Pen. Code, § 290.011, subs. (a) to (d).)

- 5) Provides that willful violation of any part of the registration requirements constitutes a misdemeanor if the offense requiring registration was a misdemeanor, and constitutes a felony if the offense requiring registration was a felony or if the person has a prior conviction of failing to register. (Pen. Code, § 290.018, subs. (a)&(b).)
- 6) Provides that within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the DOJ. (Pen. Code § 290.015, subd. (b).)
- 7) States that a misdemeanor failure to register shall be punishable by imprisonment in a county jail not exceeding one year, and a felony failure to register shall be punishable in the state prison for 16 months, two or three years. (Pen. Code, § 290.018, subs. (a)&(b).)
- 8) Provides that the DOJ shall make available information concerning persons who are required to register as a sex offender to the public via an internet Web site. The DOJ shall update the Web site on an ongoing basis. Victim information shall be excluded from the Web site. (Pen. Code § 290.46.) The information provided on the Web site is dependent upon what offenses the person has been convicted of, but generally includes identifying information and a photograph of the registrant.
- 9) Generally prevents the use of the information on the website from being used in relation to the following areas: (Pen. Code, § 290.46, subd. (1)(2).)
 - a) Health insurance;
 - b) Insurance;
 - c) Loans;
 - d) Credit;
 - e) Employment;
 - f) Education, scholarships, or fellowships;
 - g) Housing or accommodations; and
 - h) Benefits, privileges, or services provided by any business establishment.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "The purpose of AB 201 is to authorize local governments to enact ordinances relating to convicted sex offenders. Cities and counties are within their rights to pass laws that benefit their communities. Local governments have the best ability to serve their unique populations and geographical needs. Recently this authority was invalidated when an Orange County court ruled that state law excluded local

municipalities from making laws relating to sex offenders. In resolution, the disposition of the case stated, 'If the Legislature wishes to do so, it can amend Section 290.03 to permit local ordinances.'

"Prior to this ruling many cities and counties had taken action by enacting ordinances that would protect their residents. These cities and counties are now faced with the harrowing choice of repealing local ordinances, compromising the safety of their communities, or face the excessive cost of litigation. AB 201 restores a jurisdiction issue that has left local governments unable to protect their communities in an appropriate way. AB 201 will restore authority to local agencies and authorize the ability to implement their own ordinances to protect their friends and neighbors from becoming victims of convicted sexual predators."

- 2) **State Preemption/Fully Occupying the Field:** Article XI, Section 7 of the California Constitution allows cities and counties to make and enforce within their limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws. However, courts have found that if otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. A conflict exists if the local legislation "duplicates, contradicts or enters an area fully occupied by general law, either expressly or by legislative implication."
- 3) **Impact of Residency Restrictions:** The Office of the Inspector General (OIG) in October of 2014 conducted a review and assessment of sex offenders on parole and the impact of residency restrictions on this population. The OIG Report concluded, "The residency restrictions imposed by Jessica's Law, which prohibit parole sex offenders from living within 2,000 feet of a school or park where children congregate, contribute to homelessness among parole sex offenders. According to the California Sex Offender Management Board (CASOMB), there were only 88 sex offenders on parole registered as transient when Proposition 83 was passed in November 2006. As of June 2014, there were 1,556 sex offender parolees identified as transient by the California Department of Corrections and Rehabilitation (CDCR). While this represents 3.38 percent of all parolees, the incidence of homelessness is 19.95 percent (approximately one in five) among the subset of parolees who are sex offenders."

"Transient sex offenders are more 'labor intensive' than are parolees who have a permanent residence. The OIG interviewed parole administrators in 12 parole districts, who said that because transient sex offenders are moving frequently, monitoring their movement is time consuming. Transient sex offenders must register with law enforcement monthly (as opposed to yearly for those with permanent residences), thus requiring more frequent registration compliance tracking by parole agents. Adding further to the workload associated with monitoring transients, agents are required to conduct weekly face-to-face contacts with them."

"While Jessica's Law leaves open the door for local governments to impose their own restrictions on paroled sex offenders, parolees are finding relief from residency restrictions in the courts."

- 4) **Supreme Court Ruling on Residency Restrictions:** In March of 2015, the Supreme Court unanimously ruled that the provisions in state law prohibiting sex offenders from living within 2,000 feet of schools or parks, as applied in San Diego County, are unconstitutional

and bear "no rational relationship to advancing the state's legitimate goal of protecting children from sexual predators" (*In Re Taylor* [2015] 60 Cal. 4th 1019). The Supreme Court said sex offenders can still be banned from living near parks and schools, but such a determination must be made on a case-by-case basis.

As a result, several cities and counties have repealed – or are in the process of repealing – local ordinances with blanket residency bans. In addition, the California Department of Corrections and Rehabilitation (CDCR), on the advice of the Attorney General, issued new regulations requiring parole agents to individually determine residency restrictions for each of the 6,000 offenders they monitor.

- 5) **Presence Restrictions/Exclusion Zones:** Existing state law is silent regarding where registered sex offenders are allowed to be *present*. These restrictions are known as presence restrictions or exclusion zones. Numerous local jurisdictions enacted a variety of ordinances establishing "child safety zones" to restrict registered sex offenders from being present at parks, libraries, swimming pools, arcades, piers, and other similar locations where children regularly gather. Many of these ordinances were the subject of litigation, and local governments across the state repealed some or all of their ordinances as a result.

In addition, last year, an appellate court opinion in *People v. Nguyen* (222 Cal. App. 4th 1168, 2014) found that state law's comprehensive scheme regulating the daily life of sex offenders fully occupies the field, therefore preempting a City of Irvine ordinance restricting sex offenders from visiting city parks and recreational facilities. The Supreme Court declined a petition to review this decision.

- 6) **California's Sex Offender Management Board's Background:** On September 20, 2006, Governor Arnold Schwarzenegger signed Assembly Bill 1015, which created the California Sex Offender Management Board (CASOMB). AB 1015 had been introduced by Assembly Members Judy Chu and Todd Spitzer and passed the California Legislature with nearly unanimous bipartisan support.

Because California is the most populated state in the Union and has had lifetime registration for its convicted sex offenders since 1947, California has more registered sex offenders than any other state with about 88,000 identified sex offenders (*per DOJ, August 2007*).

Currently, the California Department of Corrections and Rehabilitation (CDCR) supervises about 10,000 of those 88,000 sex offenders, of which about 3,200 have been designated as "high-risk sex offenders". (*CDCR Housing Summit, March 2007*). Additionally, there are about 22,500 adult sex offenders serving time in one of 32 state prisons operated by CDCR (*California Sex Offender Management Task Force Report, July 2007*).

While it is commonly believed that most sexual assaults are committed by strangers, the research suggests that the overwhelming majority of sex offenders victimize people known to them; approximately 90% of child victims know their offenders, as do 80% of adult victims [per Kilpatrick, D.G., Edmunds, C.N., & Seymour, A.K. *Rape in America: A Report to the Nation* (1992). Arlington, VA: National Victim Center.]

- 7) **CASOMB 2014 Year End Recommendations:** In their 2014 Year End Report^[1], the California Sex Offender Management Board (CASOMB) made five recommendations for California policy makers. *The last two recommendations are specifically contrary to the intentions of this legislation.*

As CASOMB continues to track the status of sex offender management in California, many areas would benefit from major or minor improvements. However, certain policies and practices deserve the highest priority. Most of them repeat previous CASOMB recommendations, some of which remain on the list since the initial CASOMB Recommendations statement in 2010 (www.casomb.org).

CASOMB urges decision makers to take steps to implement the following recommendations in order to make the systems for sex offender management in California rational and consistent and designed to improve the safety of California citizens and communities:

- a) Enact a tiered sex offender registry so that length of registration and extent of community notification relate to the risk level and dangerousness of the offender, to enable law enforcement to identify and concentrate resources on dangerous offenders.
 - b) Require participation in the Containment Model for sex offenders released to community supervision (PRCS).
 - c) Provide state funding for sex offenders on probation and sex offenders on PRCS to ensure that all registered sex offenders under supervision participate in the Containment Model.
 - d) *Amend state law on residency restrictions to apply such restrictions on a case by case basis, depending on the risk level and type of offender.*
 - e) *Avoid enactment of exclusion zones that apply to all registrants because no evidence shows they are effective in reducing sexual re-offending, and they may be counter-productive.*
- 8) **Additional Restrictions are Ineffective:** An October 2014 report released by the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking ("SMART") in the Federal Department of Justice developed the Sex Offender Management Assessment and Planning Initiative (SOMAPI), a project designed to assess the state of research and practice in sex offender management. That report states in part:

"Despite the intuitive value of using science to guide decisionmaking, laws and policies designed to combat sex offending are often introduced or enacted without empirical support. The reasons why this occurs are complex and are not explored here. However, there is little question that both public safety and the efficient use of public resources would be enhanced if sex offender management strategies were based on evidence of

^[1] http://www.cce.csus.edu/portal/admin/handouts/CASOMB_End_of_Year_Report_to_Legislature_2014.pdf

effectiveness... (S)udies have revealed that proximity to schools and other pces where children congregate had little relation to where offenders met child victims." [2]

According to the 2014 Year End Report by the California Sex Offender Management Board, in 2014 an appellate court determined that local ordinances governing where sex offenders can go in the community are unconstitutional because the state has "occupied" the field of sex offender management by enacting a comprehensive scheme for the registration, management and control of sex offenders in the state. The California Supreme Court declined to review this decision, which is, therefore, final. (People v. Godinez (2014) 222 Cal. App.4th 1168.)

CASOMB has discussed whether to recommend a model ordinance on where sex offenders can go in the community. ***However, no research shows that exclusion zones are helpful in preventing re-offense.*** Restrictions about where the offender can go in a community are routinely imposed as part of the individual parole and probation conditions because they can be fashioned to relate to the particular offender. State laws already preclude registered sex offenders from being on school campuses and from working with children under defined circumstances. (Pen. Code, §§ 626.81 & 290.95.) There is no evidence that broader restrictions will be effective, or will not be counter-productive by preventing offenders from obtaining appropriate employment.

CASOMB takes the position that any law precluding sex offenders from being in particular places ("exclusion zones") must be tailored to the individual, including a consideration of the California Sex Offender Management Board Year End Report, February 3, 2015, risk level of the offender in order to be effective and need to have reasonable distances and protected places along with consistency in implementation statewide. Correlating the tiered registry and exclusion zones would assist law enforcement in monitoring those individuals most likely to reoffend and would increase options for housing and employment in the interest of developing offender stability in order to prevent recidivism.

9) **Difficulty in Finding Appropriate Housing for Sex Registrants:** According to the 2014 End of Year Report by the CASOMB, every thoughtful consideration of sex offender management practices takes into account the need for lifestyle stabilization and the importance of reliable housing in the service of risk reduction and community safety. Having an alarmingly large number of transient sex offenders in California does not make communities safer.

- a) Number of sex registrants who register as transient – 6,692 (AS OF 1/15/15)
- b) Number of parolees who are homeless and transient – 1,382 (AS OF 1/30/15)
- c) Number of probationers who are homeless and transient - unknown

CASOMB has looked carefully into these issues and has repeatedly stated that the promulgation of conditions which actually create homelessness and transience among registered sex offenders while producing no discernible benefit to community safety is counterproductive and continues to be the single most problematic aspect of sex offender

[2] SOMAPI (<http://smart.gov/SOMAPI/index.html>.)

management policy in California. CASOMB continues to recommend the elimination of one size-fits-all restrictions on where registered sex offenders may live.

10) **Lack of Notice to Registrants Likely Make this Bill Unconstitutional:** In addition to the myriad of other reasons why this bill is probably unconstitutional, the lack of a provision in the bill to provide notice to sex offenders in particular jurisdiction as to what the rules and regulations are in that area also make this bill unconstitutional. One reason why regulation of sex offenders should be a matter of statewide concern (much like firearms rules and regulations) is that we do not want to have a patchwork of laws throughout the state that can be inconsistent and lead to prosecution of offenders who do not actually know that they are violating a local regulation. In *Lambert v. California* (1957) 355 U.S. 255, the United States Supreme Court held that requiring convicted felons to register within five days of coming into the City of Los Angeles which such persons had not had actual notice of the city's registration requirement was an unconstitutional denial of due process. Unlike persons who are informed of their duty to register, it is unclear how persons subject to potentially multiple and varying local ordinances restricting their presence would gain actual knowledge of the restriction.

11) **This Legislation Opens Local Jurisdictions to a Flood of Lawsuits:** Across the state of California, local jurisdictions have attempted to pass a number of presence restrictions. Nearly all, if not all, presence restrictions passed by local governments that prevent registered sex offenders from being in a particular area have been thrown out on a variety of grounds. Most of the lawsuits focus on a lack of Due Process under the 14th Amendment to the United States Constitution which requires both procedural due process (including notice) as well as substantive due process. Additionally, the lawsuits allege ex post facto violations, when they are imposed against people who were convicted and then had additional restrictions placed on them which were not in place at the time of the conviction. Another basis for lawsuits is that registrants lose their 5th Amendment property interests to public facilities that they are charged taxes to support.

By and large, lawsuits against local jurisdictions have been extraordinarily successful. In the last 12 months, more than 30 lawsuits have been filed throughout the state to challenge presence restrictions. Passing this bill would only encourage more local jurisdictions to pass presence restrictions which would also be found unconstitutional. As a result of these lawsuits 42 local jurisdictions have repealed their presence restrictions and seven other jurisdictions have stayed enforcement of their local laws.

12) **Argument in Support:** According to the *City of Carson*, "Local ordinances regulating where it is appropriate for offenders to live and congregate have recently come under attack, and your bill is the first step to restoring local residents' peace of mind, and allowing for locally elected officials to continue advocating for their ongoing safety.

"Different cities throughout the state face various challenges to maintaining a quality standard of living depending on their economic status, education, crime rates, gang activity, and police presence, among other factors. While the state currently requires certain prohibitions for sex offenders after the passage of Proposition 83 (2006), a statewide law of this nature, however well intentioned, cannot address the specific issue that are faced by each individual locality. Local ordinances are vital for locally elected officials to be able to

continue maintaining a quality standard of living precisely because they are to account for the various conditions unique to their locality.

"While we recognize these ordinances may create a hardship for registered sex offenders, when weighed against the benefit for public safety, we view AB 201 as an extension of the spirit of Section 290 of the Penal Code, that this bill 'does not intend...to inflict retribution or additional punishment on any persons convicted of a sex offense.' Rather local ordinances are meant to enhance the statewide system, and have the effect of 'reducing the risk of recidivism posed by these offenders, thereby protecting victims and potential victims from future harm."

13) Argument in Opposition:

- a) According to the *Sex Offender Management Board*, "One of the principles under which CASOMB operates is that **policies and practices should be guided by the best available scientific research**. Making such research available and recommending policies and practices consistent with verifiable knowledge and recommending against policies and practices which the research finds ineffective, useless, or counterproductive is a major part of CASOMB's efforts to increase public safety. A national panel of experts on sex offender management issues stated the following:

*"Perpetrators of sex crimes are often seen as needing special management practices. As a result, jurisdictions across the country have implemented laws and policies that focus specifically on sex offenders, often with extensive public support. At the same time, the criminal justice community has increasingly recognized that **crime control and prevention strategies—including those targeting sex offenders—are far more likely to work when they are based on scientific evidence.** (Emphasis added.)*
<http://smart.gov/SOMAPI/index.html>

"CASOMB consistently urges policy makers to be familiar with and follow what is known and supported by research and, whenever such research is available, not to advance policies which are not evidence-based.

"When it comes to residence restrictions and, to a slightly lesser extent, exclusion zones, the research and evidence is sufficiently clear. *There is no research which supports the use of these strategies, there is substantial research showing that such policies have no effect on preventing recidivism, and there is growing body of research which indicates that residence restrictions actually increase sex offender recidivism and decrease community safety.*

"In support of the statement that residence restrictions actually make communities less safe because they increase the risk of sexual recidivism, some yet-unpublished research recently conducted in a 2016 California study provides data showing that about 18% of sexual re-offenses in the probation group of registered sex offenders were committed by individuals who were registered as transients at the time of arrest on the new sex offense. More striking is the finding that 29% of sexual re-offenses in the parolee sex offender group were committed by individuals who were registered as transients at the time of re-arrest. Since transient sex offenders make up only about 8% of the overall population of sex offenders living in California communities, it is obvious that the rate of reoffending among those who are transient is quite disproportionately high. (Source: verbal report by

DOJ staff at CASOMB meeting on November 19, 2015.) A substantial body of criminal justice research supports the fact that 'lifestyle stability' is a 'protective factor' and that anything which undermines such stability amplifies the risk of reoffending.

"The proponents of residence restrictions and exclusion zones, as put forth in AB 201, appear to begin with the premise and assumption that such policies will make California citizens safer. The Analysis of AB 201 by the Assembly Committee on Local Government provides the following Author's Statement:

"Prior to this ruling many cities and counties had taken action by enacting ordinances that would protect their residents. These cities and counties are now faced with the harrowing choice of repealing local ordinances, compromising the safety of their communities, or face the excessive cost of litigation. AB 201 restores a jurisdiction issue that has left local governments unable to protect their communities in an appropriate way. AB 201 will restore authority to local agencies and authorize the ability to implement their own ordinances to protect their friends and neighbors from becoming victims of convicted sexual predators.

"As articulated in several places in this paper, the claim that residence restrictions make communities safer is one which has no support in the scientific literature. It is a claim which CASOMB and numerous other authoritative sources strongly reject as untrue. It is not a proper foundation upon which to build effective policies.

"As CASOMB has stated previously, those who are really interested in reducing the risk of recidivism by registered sex offenders should be raising and addressing the question of *where can they safely live* rather than merely creating restrictions on where they cannot live.

"PART TWO: RECOMMENDATIONS OF EXPERTS

"Whether residence restrictions and exclusion zones are good public policies is not a question which should be decided by "common sense" or other considerations, including the impulse to further punish sex offenders because of the damage they have done to innocent victims. The anger most citizens feel about sex offenders and their crimes makes it difficult to think clearly and legislate wisely with the goal of preventing future victimization. The body of knowledge produced by scientific research should be the guiding force in identifying effective policies.

"A number of respected bodies have reviewed the research regarding residence restrictions and exclusion zones and have published their conclusions. CASOMB is not aware of any similar statements from experts in support of such policies.

"(1) **USDOJ SMART Office:** A national group of highly respected experts has issued recommendations against the adoption and continued use of residence restrictions. The United States Department of Justice under the auspices of the 'SMART Office' convened a panel of recognized national experts. This panel, named the *Sex Offender Management Assessment and Planning Initiative* (SOMAPI), issued their Report in October of 2014. In that document, they recommended against adopting residence restrictions.

*“ Finally, the evidence is fairly clear that residence restrictions are not effective. In fact, the research suggests that residence restrictions may actually increase offender risk by undermining offender stability and the ability of the offender to obtain housing, work, and family support. **There is nothing to suggest this policy should be used at this time.** ’ **SOMAPI forum participants do not recommend expanding the residency restriction policy.** ’ (Emphasis added.)*
(<http://smart.gov/SOMAPI/index.html>)

“(2) ATSA: The international *Association for the Treatment of Sexual Abusers* (ATSA) issued a statement regarding residence restrictions. In that document, ATSA strongly recommended against the use of residence restriction policies. The research supporting that conclusion is also provided. *ATSA supports evidence-based public policy and practice. Research consistently shows that residence restrictions do not reduce sexual reoffending or increase community safety. In fact, these laws often create more problems than they solve, including homelessness, transience, and clustering of disproportionate numbers of offenders in areas outside of restricted zones. Housing instability can exacerbate risk factors for reoffending. Therefore, in the absence of evidence that these laws accomplish goals of child protection, ATSA does not support the use of residence restrictions as a feasible strategy for sex offender management.* (Emphasis added.) (www.ATSA.org)

“(3) California Supreme Court: In the landmark Taylor case regarding residence restrictions in San Diego County, the California Supreme Court determined that the restrictions, as applied in San Diego County, were unconstitutional. The decision made a number of strong statements about the practice of imposing residence restrictions and based their decision in part on the “no rational basis” principle. In other words, the court held that, although the intentions of protecting the community may have been admirable, there was no reason to think that residence restrictions did anything meaningful to actually achieve that end. It is difficult to advance a ‘no rational basis’ argument because the presumption is that the government has implemented a policy which bears some relationship to the goal it is attempting to achieve. The Taylor decision is believed to be the first ‘no rational basis’ determination regarding residence restrictions which has been decided against the government.

“The court’s decision, filed on 3-2-15, included the following language: ‘As will be explained, we agree that section 3003.5(b)’s residency restrictions are unconstitutional as applied across the board to petitioners and similarly situated registered sex offenders on parole in San Diego County. Blanket enforcement of the residency restrictions against these parolees has severely restricted their ability to find housing in compliance with the statute, greatly increased the incidence of homelessness among them, and hindered their access to medical treatment, drug and alcohol dependency services, psychological counseling and other rehabilitative social services available to all parolees, while further hampering the efforts of parole authorities and law enforcement officials to monitor, supervise, and rehabilitate them in the interests of public safety. It thus has infringed their liberty and privacy interests, however limited, *while bearing no rational relationship to advancing the state’s legitimate goal of protecting children from sexual predators*, and has violated their basic constitutional right to be free of unreasonable, arbitrary, and oppressive official action.’ (Emphasis added.) In re WILLIAM TAYLOR et al., on Habeas Corpus. Ct.App. 4/1 D059574 S206143

"(4) CASOMB: For many years, CASOMB has recommended against adopting or continuing residence restrictions in California. These repeated recommendations can be found in papers and Reports on www.CASOMB.org, and include numerous research references and facts supporting that position. *'CASOMB has ... repeatedly stated that the promulgation of conditions which actually create homelessness and transience among registered sex offenders while producing no discernible benefit to community safety is counterproductive and continues to be the single most problematic aspect of sex offender management policy in California. CASOMB continues to recommend the elimination of one-size-fits-all restrictions on where registered sex offenders may live.'* (www.CASOMB.org Year End Report, February 2015)

"It is worth noting that none of the statements and arguments made by proponents and supporters of this Bill and none of the Analysis provided by the Assembly Committee on Local Government have made any reference to these highly credible authorities."

"PART THREE: ASSUMPTIONS HELD BY PROPONENTS OF AB 201

"The push to pass AB 201 and there by empower local jurisdictions to create their own versions of residence restrictions and exclusion zones appears to be grounded on the acceptance by proponents of a large number of assumptions which are simply not true.

"ASSUMPTION 1. The most basic assumption which appears to be accepted by the proponents of this Bill is that Residence Restrictions and Exclusion Zones are actually effective in preventing the commission of new sex offenses by previously identified (PC 290 Registrant) individuals. See the Author's statement provided in PART ONE above. As stated previously, this assumption is not true. These types of policies simply do not accomplish the purposes for which they have been enacted.

"ASSUMPTION 2. All convicted sex offenders are equally likely to reoffend and so it is effective to develop "one-size-first-all policies. This assumption is false. There is a wide range of re-offense risk among sex offenders. For this reason, California has put a great deal of thought and effort into developing systems to evaluate the risk level for each PC 290 Registrant and to following the widely accepted "Risk Principle," which urges that more effort be put into the management of higher risk offenders and less into those whose risk to reoffend is lower. Risk levels are determined through a system developed by the legislatively-created State Authorized Risk Assessment Tools for Sex Offenders (www.SARATSO.org) committee. The SARATSO system is being effectively used throughout the state and the various management interventions are calibrated to take that risk into account. Opening the door to "blanket" one-size-fits-all policies would move the state back in the opposite direction and would ignore California's thoughtfully developed risk-based approach.

"ASSUMPTION 3. Most convicted sex offenders will reoffend and extremely robust controls and restrictions are needed to stop them. This assumption is not supported by the research. Measuring and accurately stating recidivism rates is very complex. However, all of the various published studies indicate that the overall rate is considerably lower than is commonly believed. The largest single study of sex offender recidivism conducted to date found a sexual recidivism rate of 5.3 percent for the entire sample of sex offenders based on an arrest during the 3-year follow-up period.

"Research conducted in California by one of the most highly respected researchers in the world has found that the recidivism rates for sex offenders who have been identified by SARATSO risk assessment instruments (cf. www.SARATSO.org) as 'Low to Medium risk' fall in the range of 1 to 2 percent.

"ASSUMPTION 4. Every sex offender will continue to be a significant risk to reoffend for the remainder of his or her life. The research provides ample evidence that this assumption is not true. The longer a sex offender remains offense-free in the community, the lower the risk that that individual will reoffend in the future. Because California continues to be one of the four states requiring universal lifetime registration, many, many thousands of California's approximately 83,000 registered sex offenders living in the state's communities have reached the point where, according to the risk assessment research, their risk of reoffending is negligible. Yet apparently they would all fall under the scope of this Bill and, with no scientifically defensible justification, would be subject to residence restrictions and exclusion zones.

"ASSUMPTION 5. Previously convicted sex offenders account for a substantial proportion of the new sex offenses committed. This assumption is false. The research has found that only about 5% of new sex offenses were committed by individuals previously convicted of a sex offense. Conversely, almost all new sex offenses are committed by individuals who have never been previously convicted of a sex offense. Efforts to prevent new sexual victimizations by focusing on PC 290 Registrants are misplaced and a waste of resources. Instead, broader prevention strategies should be given increased attention and resources.

"ASSUMPTION 6. Sex offenders are all alike in terms of their potential danger to offend against a juvenile victim and so all need the same restrictions with respect to limiting their access to children. This assumption is obviously not true. Many sex offenses involve victimization of adult women or men. When it comes to offenders with no history of victimizing children, community safety is not improved by regulating their access to places where children gather.

"ASSUMPTION 7. Sex offenders prowl California communities looking for children to molest. This assumption is discredited by the research. Although "stranger danger" perspective paints compelling images of sex offenders lurking in the bushes to snatch and molest a child, the reality is that sex offenses perpetrated against strangers account for only about 5% of total offenses. In the vast majority of cases, the offender is already known to the victim through some existing relationship, including being a member of the same family. Formulating policies based on the belief that "stranger danger" represents much of the problem needing attention diverts attention from the other types of prevention efforts are needed to attempt to reduce the 95% of actual victimization events.

"ASSUMPTION 8. Sex offenders find their victims and commit their crimes in or around schools or parks or other places where children gather. This assumption is not correct. Research on these questions discloses that such scenarios are by far the exception. Most contact with child victims and most actual offenses occur in the home of the victim or the offender. Of the very small number of sex offenses actually committed in or around a school, the majority were committed by teachers or staff who had never been convicted of a prior sex offense. Similarly, very few victims were encountered or

offenses committed occurred in parks or similar locations. Where do sex offenders find their victims and commit their offenses? Not in the places from which they would be restricted by this Bill.

"(Note that the research upon which each of the above statements is based can be provided upon request.)

"PART FOUR: CONSEQUENCES – INTENDED AND UNINTENDED

"It is likely that many of California's 540 local jurisdictions (58 Counties and 482 Municipalities) will enact some form of residence restriction and exclusion zone regulations. It is impossible to predict how many will actually do so. Prior to the court ruling determining that they were in violation of the California constitution, many local ordinances had been put in place. Numbers cited suggest that 70 Municipalities and 5 Counties had restrictions in place. Others were presumably in the process of being enacted.

"Because there is no system in place or anticipated to keep track of all of the possible local ordinances and regulations, it will be very difficult for anyone governed by or involved with this local-jurisdiction system to actually know what the rules are. Before the court decision prohibiting such local regulations was issued, CASOMB staff had made attempts to track the emergence of new local regulations. Staff found the effort frustrating, challenging, and extremely time-consuming and eventually were unable to continue the monitoring. This Bill makes no provision for any such tracking as a new set of regulations begin to roll out across the state.

"The Bill also makes no provision for the notification of registered individuals who might be directly impacted by new local residence restrictions or exclusion zones. If the Bill and the new local ordinances apply to all registrants, then as many as 83,000 individuals could be impacted. Since it is likely that not all local jurisdictions will create local regulations, the number would probably not be that high, but could easily be tens of thousands.

"Because the introduction of regulations purporting to prevent sexual reoffending is often – in the view of some observers – driven more by political considerations than by well-informed policy considerations, it appears quite possible that local jurisdictions, especially those in certain parts of the state where many smaller jurisdictions are geographically contiguous, will vie with each other to avoid being seen as a 'safe-haven' for sex offenders and will escalate efforts to match or surpass the restrictions imposed by their neighboring communities. A notorious example of this mentality on the national stage is that politicians in Georgia openly stated that their intent was to put in place stringent regulations which would drive sex offenders out of the state. Such a stance reflects an attitude of "we don't really care where they go, just get them out of here."

"ANTICIPATED DESIRED CONSEQUENCES

"Although, based on the above information, it seems highly unlikely, it is possible that a very small number of offenses might be prevented by the actions of local jurisdictions made possible by this Bill.

"ANTICIPATED UNDESIRED CONSEQUENCES

"It appears likely that local restrictions will apply to ALL PC 290 registrants. Prop 83 (Jessica's Law) was completely unclear and so the RR was never applied to all registrants. The state's previous experience with residence restrictions is based upon their application primarily to those on state parole – approximately 6,000 individuals. By contrast, ordinances developed under AB 201 could impact as many as 83,000 registrants living in California communities. The potential for dislocation, loss of previously stable living arrangements, fragmentation of families, loss of jobs due to exclusion zones and other foreseeable consequences would be massive.

"The consequences of efforts to apply residence restrictions and exclusion zones to all of the state's Registrants who live in jurisdictions which would implement AB 201 must be considered. No one appears to have made any estimate regarding the number of citizens who would be forced by residence restrictions to move, including those who own their own homes. There is no estimate about the amount of homelessness and transience which would result. Projections based on the experience of CDCR in enforcing residence restrictions on parolees suggest that those numbers would be considerable. There has been no apparent effort to estimate the number of jobs which would be lost because the place where a Registrant works – and may have worked for many years – happens to be in an area declared an exclusion zone by the local jurisdiction.

"Historically and currently, CDCR Parole Agents have been depending on Global Positioning Monitoring (GPS Ankle Bracelets) to monitor exclusion zones. (Such case-specific exclusion zones can be and frequently are imposed by parole authorities in response to individualized needs and concerns.) The use of this costly equipment and the supporting tracking systems is now limited to parolees and some county probationers. The cost of requiring such tracking for all PC 290 registrants would be absolutely prohibitive. Yet without such a system, it would appear impossible to do any type of consistent enforcement of exclusion zone restrictions. Only if local law enforcement should happen to find a registrant in an exclusion zone would the presumed effectiveness of creating such zones have any chance of being realized.

"PART FIVE: ADDITIONAL CONSIDERATIONS

"Experts advise that case-by-case decisions about where sex offenders may live or be present are far preferable to blanket, one-size-fits-all policies. Fortunately, California's current system allows such case-based determinations to be made for individual sex offenders under direct criminal justice system supervision. The time when convicted sex offenders are most likely to commit a new offense occurs during the initial period after release. Over time the risk diminishes. It is during this initial period that authorities have the greatest control over these individuals since they are supervised under the authority of the California Department of Corrections and Rehabilitation's Division of Parole Operations (CDCR-DAPO) or under one of the state's 58 County Adult Probation Departments. These supervising agencies can use case information to make individually tailored requirements regarding where specific offenders may live or may be present during their period of supervision. These periods of parole or probation vary in length. CDCR parolees are under supervision for periods of 5, 10, or 20 years or, in certain cases, for life. Those on county probation are usually supervised for periods of 3 or 5 years.

This system of sex offender management is already in place in California. The Legislature has included in the Penal Code explicit requirements that sex offenders under supervision be engaged in a certified specialized treatment program and that supervisors and treatment providers hold regular meetings and communicate regularly in accord with the 'Containment Model.' This sex offender management approach, including individualized supervision guided by the "Risk Principle" paired with a specialized rehabilitative treatment program, is viewed by experts as the most effective approach to reducing sex offender recidivism.

"Although it extremely difficult to estimate the costs involved with implementing, enforcing, and defending the local ordinances which might be created under this Bill, it is clear that they could be substantial. It may be true that there would be no costs to the state itself. There would definitely be costs to local government jurisdictions. The costs of filing, pursuing and responding to anticipated lawsuits would be considerable. It is certain that there would be fiscal impacts on individual citizens, including potentially tens of thousands of registrants who could lose their housing and, in some cases, their jobs. Landlords would lose income as tenants were forced to relocate. Whether it would even be possible to estimate all of the costs is questionable. To pass such legislation without even attempting to do so seems irresponsible.

"Given the history of residence restrictions in California, the proliferation of previous court challenges, and the decision returned by the California Supreme Court in the Taylor case, it seems predictable that there will be numerous court cases subsequent to the implementation of this Bill. The process of bringing lawsuits is, of course, a very costly one and much of the cost would be incurred by local jurisdictions defending their ordinances. Ultimately, such a process is also likely to take years.

"It seems improbable that decision makers in the state's 540 local jurisdictions would have the internal expertise or access to such expertise to support the crafting of ordinances which would really have some chance of improving sex offender management and reducing recidivism. Based upon past history, it seems more likely that the local decisions would be influenced by "common sense" and other considerations which would not be helpful in drafting solid policies. The history of the emergence of sex offender management policies throughout the United States is filled with experiences of jurisdictions creating policies which are not grounded in good science and verifiable knowledge.

"FINAL NOTE: As CASOMB has stated repeatedly in its Reports and other documents, it is unfortunate that so much energy goes into introducing and even implementing policies and practices which research says do not work rather than into actualizing the many possible policies and practices which could actually reduce sexual victimization in California."

- b) According to the *American Civil Liberties Union*, "The ACLU of California regrets to inform you that we must oppose AB 201, which would allow local jurisdictions to enact more restrictive residency limitations and limitations on being present in specific locations than currently provided under state law for people registered as sex offenders. AB 201 will lead to the unconstitutional deprivation of individuals' basic rights and liberty, thereby exposing local jurisdictions to costly litigation. It will also increase the

incidence of homelessness among sex offenders, making it more difficult to manage the sex offender population and putting public safety at risk.

"Just one month ago, the California Supreme Court invalidated the statewide residency requirements for sex offenders as applied to parolees living in San Diego County. (*In re Taylor*, March 2, 2015, S206143.) In its analysis, the Supreme Court noted that

"parolees retain certain basic rights and liberty interests, and enjoy a measure of constitutional protection against the arbitrary, oppressive and unreasonable curtailment of the core values of unqualified liberty even while they remain in the constructive legal custody of state prison authorities until officially discharged from parole. (*Id.* slip op p. 27.)

"The court found that, as applied to paroled sex offenders in San Diego County, the statewide residency restrictions effectively prevented most individuals from finding housing. Of the sex offender parolees in San Diego County, 34% were homeless. Of those with a home, nearly half were under a court order preventing the residency requirements from being applied to them during the pendency of the litigation.

"Further, the trial court and the Supreme Court quoted the findings of the California Department of Corrections and Rehabilitations' Sex Offender Supervision and GPS Monitoring Task Force (Task Force), as follows:

"The Task Force studied the increased rate of homelessness among paroled sex offenders following the enactment of section 3003.5(b)'s residency restrictions and reported that between 2007 and 2010, the number of homeless sex offender parolees statewide reflected an alarming increase of 'approximately 24 times.' (Task Force, Rep., *supra*, at pp. 4, 17.) A specific finding was made that "[h]omeless sex offenders put the public at risk. These offenders are unstable and more difficult to supervise for a myriad of reasons." (*Id.* at slip op p. 17.)

"The Supreme Court ultimately held that:

"Blanket enforcement of the residency restrictions against these parolees has severely restricted their ability to find housing in compliance with the statute, greatly increased the incidence of homelessness among them, and hindered their access to medical treatment, drug and alcohol dependency services, psychological counseling and other rehabilitative social services available to all parolees, while further hampering the efforts of parole authorities and law enforcement officials to monitor, supervise, and rehabilitate them in the interests of public safety. It thus has infringed their liberty and privacy interests, however limited, while bearing no rational relationship to advancing the state's legitimate goal of protecting children from sexual predators, and has violated their basic constitutional right to be free of unreasonable, arbitrary, and oppressive official action. (*Id.* at slip op pp. 3-4.)

"AB 201 would empower local jurisdictions to enact even more restrictive residency requirements and would permit local ordinances that would apply to registered sex offenders who are no longer on parole, as well as those on parole. As the Supreme Court noted, even sex offenders on parole retain basic rights and liberty interests under the state

and federal constitution. The rights of individual who are no longer on parole are even stronger.

"AB 201 essentially invites local jurisdictions to pass residency restrictions that would have the effect of preventing registered sex offenders from finding a place to live within the jurisdiction. This will no doubt be an appealing invitation to many communities. It is, however, an invitation to violate the constitution. Local ordinances that restrict residency requirements beyond existing state law will lead to costly litigation.

"Because registrants are such a reviled group, there is a significant danger that local governments will act based on fear and passion rather than evidence and logic and will enact measures that harm, rather than help, public safety. In its ruling, the Supreme Court emphasized the public safety problems caused by severe residency restrictions, such as an increase in homelessness that makes it more difficult for the police to protect the public from those registrants who do pose a danger to the public.

"Moreover, ordinances that prohibit registered sex offenders from being 'present' in specific location pose major constitutional issues. These ordinances frequently prohibit people from being "present" in parks and libraries, and from standing on public sidewalks. These areas are quintessential public forums, where the public has a long recognized and constitutionally protected right to engage in First Amendment activity. Given the complexity of the legal issues involved, it is highly likely that local communities will continue to enact ordinances that violate multiple constitutional rights, leading to costly litigation."

14) Related Legislation:

- a) AB 262 (Lackey) places additional residency restrictions on Sexually Violent Predators conditionally released for community outpatient treatment. AB 262 failed passage in the Assembly Public Safety Committee.
- b) SB 267 (Leyva), provides that a local agency is not preempted by state law from enacting and enforcing an ordinance that restricts a person required to register as a sex offender for an offense committed against a minor from being present at schools, parks, day care centers, or other locations where children regularly gather within the local agency's jurisdiction. SB 267 also allows a local agency to adopt ordinances, rules, or regulations that are more restrictive than state law relating to a person's ability to be present at schools, parks, day care centers, or other locations where children regularly gather within the local agency's jurisdiction when the person is required to register as a sex offender for an offense committed against a minor. SB 267 has yet to be heard in the Senate Public Safety Committee.

- 15) **Prior Legislation:** AB 655 (Quirk-Silva), of 2013-14 Legislative Session, would provide that the Legislature does not preempt local agencies from enacting ordinances that restrict where persons required to register as sex offenders may go within a municipality. AB 655 was held in the Senate Rules Committee.

REGISTERED SUPPORT / OPPOSITION

Support

Association of California Cities – Orange County
City of Aliso Viejo
City of Carson
City of Irvine
City of Laguna Niguel
City of San Juan Capistrano
Crime Victims United of California
Fraternal Order of Police
League of California Cities
Long Beach Police Officers Association
Los Angeles County Professional Peace Officers Association
Orange County Board of Supervisors
Orange County District Attorney's Office
Orange County Sheriff's Department
Sacramento County Deputy Sheriffs' Association
Santa Ana Police Officers Association

Opposition

Alameda County Board of Supervisors
American Civil Liberties Union
California Attorneys for Criminal Justice
California Civil Liberties Advocacy
California Public Defenders Association
California Reform Sex Offender Laws
California Sex Offender Management Board
Housing California
San Diego County Apartment Association

21 private individuals

Analysis Prepared by:

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Date of Hearing: January 12, 2016
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 898 (Gonzalez) – As Amended January 4, 2016

SUMMARY: Provides that when an inmate who was convicted of the murder of a firefighter becomes eligible for a parole-suitability hearing, the Board of Parole Hearings (BPH) must give written notice of the hearing to the department that had employed the deceased firefighter. Specifically, **this bill:**

- 1) Adds a murdered firefighter's former fire department employer to the list of persons that the BPH must notify of a parole-suitability hearing.
- 2) Makes technical, non-substantive changes.

EXISTING LAW:

- 1) Requires the BPH to send written notice to each of the following persons before it meets to consider the parole suitability or setting of a parole date of an inmate serving a life sentence:
 - a) The superior court judge before whom the prisoner was tried and convicted;
 - b) The attorney who represented the defendant at trial;
 - c) The district attorney of the county in which the offense was committed;
 - d) The law enforcement agency that investigated the case; and,
 - e) If the prisoner was convicted of the murder of a peace officer, the law enforcement agency which had employed that officer at the time of the murder. (Pen. Code, § 3042, subd. (a).)
- 2) Provides that these entities must be notified at least 30 days before the BPH meets to review or consider the parole suitability or the setting of a parole date. (Pen. Code, § 3042, subd. (a).)
- 3) Allows the entities who receive notice of the parole-suitability hearing to submit information to the BPH for its consideration. (Pen. Code, § 3042, subd. (f)(3).)
- 4) Requires the BPH to review and consider all information received from the judge and these other persons, and to consider adjusting the terms or conditions of parole to reflect the comments or concerns raised by this information. (Pen. Code, § 3042, subd. (f)(3).)

- 5) Requires the BPH to provide the victim 90-days' notice of an upcoming parole-suitability hearing, if he or she requests that notice be given. (Pen. Code, § 3043, subd. (a).)
- 6) Allows the victim to personally appear at the suitability hearing or to submit a recorded statement expressing his or her views. (Pen. Code, §§ 3043, subd. (b)(1), and 3043.2, subd. (a)(1).)
- 7) States that any person interested in the grant or denial of parole may submit a statement supporting or opposing parole and that such statements must be considered by the hearing panel. (Pen. Code, § 3043.5.)
- 8) Requires the Director of the California Department of Corrections and Rehabilitation to give written notice to the State Fire Marshal, and all police departments and the sheriff in the county in which the person was convicted before releasing an inmate convicted of arson. (Pen. Code, § 11150.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 898 will ensure that a murdered firefighter's former employer is included in the notification process administered by the Board of Parole Hearings, which is already in place for the former employer of a murdered peace officer.

"Firefighters are a vital part of our public safety community in California since they constantly risk their lives in order to ensure the safety of others. They face similar stress and risk just like their law enforcement colleagues face while on-duty, which can result in loss of life. Moreover, parts of California are often under a state of emergency and thousands of people have been forced to evacuate their homes as fire crews struggle to contain deadly wildfires, some caused by malicious human intention.

"Under California law, arson is defined as the 'willful and malicious burning of property' and is often charged as a felony crime as a result of its destructive and deadly nature. According to the California Department of Justice, 37,128 arson crimes were reported from 2010 to 2014 in California. Arson isn't a victimless crime since it can take the lives of people and our firefighters.

"It is only appropriate that in these limited instances, a former employing fire department be extended the same notification courtesy as local law enforcement agencies when dealing with the possible parole of a prisoner convicted of murdering a firefighter. The notification requirement proposed by AB 898 will provide an appropriate opportunity for the fire department to reflect on the actions of the individual and voice their opinion about a prisoner remaining behind bars or being released back into their community."

- 2) **Parole-Suitability Hearings:** Inmates serving indeterminate "life" sentences that include the possibility of parole are not automatically entitled to parole, but are entitled to be considered for parole at a parole-suitability hearing. The BPH has exclusive authority to determinate parole suitability, and suitability for parole must first be found before a parole date is set. (*In*

re Dannenberg (2005) 34 Cal.4th 1061, 1080.)

The BPH can consider all relevant and reliable information, but there are suitability factors specified by both statute and administrative regulations. (15 Cal. Code Regs., § 2402, subd. (b).) These include: the nature of the commitment offense and inmate's degree of insight into the offense, the inmate's prison record, recent psychological evaluations, and the inmate's parole plans. The overriding concern is whether the inmate poses a current threat to public safety. (*In re Dannenberg, supra*, 34 Cal.4th at p. 1084.) The BPH has broad discretion in how to weigh these factors, and its determination that an inmate is unsuitable will be upheld as long as it is supported by "some evidence." (*In re Lawrence* (2008) 44 Cal.4th 1181, 1213.)

The BPH must send notice of a parole-suitability hearing to the trial judge, the prosecutor, defense counsel, the investigating law enforcement agency, and in the case of the murder of a peace officer, the officer's employer. (Pen. Code, § 3042, subd. (a).) These individuals are entitled to submit a statement expressing their views on whether the inmate should be paroled. Additionally, the victim of the crime may request that the BPH notify him or her of any scheduled parole-suitability hearing. The victim is entitled to personally appear to express his or her views on the granting of parole, or may submit a written or recorded statement instead. (Pen. Code, § 3043.) Finally, any person interested in the grant or denial of parole may submit a statement supporting or opposing parole. (Pen. Code, § 3043.5.) The board must consider all statements submitted in making its decision.

While under existing law the employer of a murdered firefighter may already submit a statement expressing its views on the grant of parole, this bill will ensure that the agency which employed the deceased firefighter has notice that a parole-suitability hearing has been scheduled.

- 3) **Murder of a Firefighter:** Murder is the unlawful killing of a person with malice. There are two degrees of murder. First degree murder is premeditated murder, or murder committed in the course of specified felonies including arson (first degree felony murder), or murder committed by certain specified methods (including the use of a destructive device or explosive).¹ (Pen. Code, § 189.) Second degree murder is non-premeditated murder, or murder committed in the course of felonies not listed in Penal Code section 189 but which are inherently dangerous to human life. (*Ibid.*)

Murder which occurs during the commission of a felony is known as felony murder. The primary purpose of the felony-murder rule is to deter felons from killing negligently or accidentally by holding them strictly liable for the killings they commit when they commit a felony. (*People v. Billa* (2003) 31 Cal.4th 1064, 1069.)

The mental state required for first degree felony murder is simply the specific intent to commit the underlying felony. There does not need to be an intent to kill. There is no requirement of a strict "causal" or "temporal" relationship between the felony and the

¹ Murder committed by specified means can be not just a theory of first degree murder, but also a special circumstance under Penal Code section 190.2 which increases the punishment from 25 years to life to life without parole or death. If the death penalty or a sentence of life without parole is imposed, a defendant would not be eligible for a parole-consideration hearing, and the provisions of this bill would not apply.

murder. All that is required is that the two "are parts of one continuous transaction." There is, however, a requirement of proof beyond a reasonable doubt of the underlying felony. (*People v. Berryman* (1993) 6 Cal.4th 1048, 1085.) Felony murder applies even if the felony itself is not occurring or has been abandoned when the homicide takes place, so long as the homicide is related to the felony and resulted as a natural and probable consequence of the felony. (*People v. Birden* (1986) 179 Cal.App.3d 1020, 1024-1025.) Thus, if a firefighter dies while extinguishing a fire proven to be arson, the defendant can be convicted of first degree felony murder.

For a second degree felony murder conviction, the death must occur during the commission of felonies that are "inherently dangerous to human life." (*People v. Hansen* (1994) 9 Cal.4th 300, 308.) An inherently dangerous felony is one which, "by its very nature" "cannot be committed without creating a substantial risk that someone will be killed." (*People v. Burroughs* (1984) 35 Cal.3d 824, 833.) Also, an inherently dangerous felony is one carrying a high probability that death will result. (*People v. Patterson* (1989) 49 Cal.3d 615, 627.) "In determining whether a felony is inherently dangerous, the court looks to the elements of the felony in the abstract, not the particular facts of the case, i.e., not to the defendant's specific conduct." (*Ibid.*) The judge, not the jury, decides if a felony is inherently dangerous to life. (*People v. Schaefer* (2004) 118 Cal.App.4th 893, 899-902.) Among the felonies which have been found to be inherently dangerous to human life are burning a motor vehicle, in light of the danger of gasoline explosion (*People v. Nichols* (1970) 3 Cal.3d 150, 162-163); manufacturing methamphetamine, in light of the danger of explosion of volatile chemicals used in the manufacturing process (*People v. James* (1998) 62 Cal.App.4th 244, 257-271); and reckless and malicious possession of a destructive device or explosive (*People v. Morse* (1992) 2 Cal.App.4th 620, 644-646). As with first degree felony murder, second degree felony murder requires proof of the specific intent to commit the underlying felony, even if the underlying felony is a general intent crime. (*People v. Jones* (2000) 82 Cal.App.4th 663, 667-668.) Under these examples, a criminal defendant might be convicted of second degree murder of a firefighter who dies as a result of trying to extinguish the explosion.

- 4) **Argument in Support:** The *California Professional Firefighters*, a co-sponsor of this bill, state, "This bill would simply provide a courtesy notification to the fire department of record where the instance of the original criminal conviction was the murder of a firefighter. Firefighters who survive and remain on duty after the tragic murder of one of their own, often stand in the shoes of the deceased firefighter and will serve the surviving family as a surrogate brother, sister, father or mother. As such, being given the opportunity to learn of a related parole hearing will provide appropriate notice to that firefighting family to participate with the victims and stand with the survivors. This can be particularly helpful in instances where the victim impact statement is submitted, which includes not only the physical, financial, emotional and spiritual effects of a crime, but also how a neighborhood or community has been affected.

"Ultimately, the modest notification requirement proposed by AB 898 will provide an appropriate opportunity for the fire department, together with the victim's family and the surrounding community, to reflect on the actions of the individual and voice their opinion about a prisoner remaining behind bars or being released back into their community."

- 5) **Prior Legislation:** AB 1025 (Thurman), Chapter 483, Statutes of 1981, provided that where a prisoner who is the subject of a parole-suitability hearing was convicted of the murder of a peace officer, notice of the hearing must be given to the law enforcement agency which had employed that peace officer at the time of the murder.

REGISTERED SUPPORT / OPPOSITION:

Support

California Professional Firefighters (Co-Sponsor)
CAL Fire Local 2881 (Co-Sponsor)
California Fire Chiefs Association
California Labor Federation
California Special Districts Association
Fire Districts Association of California
Peace Officers Research Association of California

Opposition

None

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

Date of Hearing: January 12, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1106 (Jones-Sawyer) – As Amended January 4, 2016

SUMMARY: Establishes a five year pilot project, in six counties, requiring the judge to make a finding of probable cause that a crime has been committed when an out of custody defendant is facing a misdemeanor charge, upon request by the defendant. Specifically, **this bill:**

- 1) Establishes a pilot project for five years in six counties to be selected by the Judicial Council.
- 2) Specifies that the Judicial Council shall include the County of Los Angeles within the six counties to be selected.
- 3) Specifies that the remaining five counties to be selected shall include counties representing small, medium, and large counties, by population.
- 4) Specifies that the following arraignment procedures will apply in the pilot project counties:
 - a) When the defendant is out of custody at the time he or she appears before the magistrate for arraignment and the defendant has plead not guilty to a misdemeanor charge, the magistrate, on motion of counsel for the defendant or the defendant, shall determine whether there is probable cause to believe that the defendant committed a criminal offense;
 - b) The determination of probable cause shall be made immediately, unless the court grants a continuance for a good cause not to exceed three court day;
 - c) In determining the existence of probable cause, the magistrate shall consider any warrant of arrest with supporting affidavits, and the sworn complaint together with any documents or reports incorporated by reference, or any other documents of similar reliability; and
 - d) If the court determines that no probable cause exists, it shall dismiss the complaint and discharge the defendant.
- 5) Specifies that if the charge is dismissed, the prosecution may refile the complaint within 15 days of the dismissal.
- 6) States that a second dismissal based on lack of probable will bar any further prosecution for the same offense.

- 7) Specifies that the law will become inoperative on July 1, 2022, and repealed as of January 1, 2023, unless there is further legislation as specified.

EXISTING LAW:

- 1) Requires that if the defendant is in custody at the time they appear before the magistrate for arraignment and, if the public offense is a misdemeanor to which the defendant has pleaded not guilty, the magistrate, on motion of counsel for the defendant or the defendant, shall determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty thereof (Pen. Code, § 991, subd. (a).)
- 2) Requires the determination of probable cause to be made immediately unless the court grants a continuance for good cause not to exceed three court days. (Pen. Code, § 991, subd. (b).)
- 3) States that in determining the existence of probable cause, the magistrate shall consider any warrant of arrest with supporting affidavits, and the sworn complaint together with any documents or reports incorporated by reference thereto, which, if based on information and belief, state the basis for such information, or any other documents of similar reliability. (Pen. Code, § 991, subd. (d).)
- 4) Provides that if, after examining these documents, the court determines that there exists probable cause to believe that the defendant has committed the offense charged in the complaint, it shall set the matter for trial. (Pen. Code, § 991, subd. (e).)
- 5) Requires the court dismiss the complaint and discharge the defendant if it determines that no probable cause exists. (Pen. Code, § 991, subd. (f).)
- 6) Allows the prosecution to refile the complaint within 15 days of the dismissal of a complaint pursuant to Penal Code section 991. (Pen. Code, § 991, subd. (g).)
- 7) States that a second dismissal pursuant to this section is a bar to any other prosecution for the same offense. (Pen. Code, § 991, subd. (h).)
- 8) Requires that when a defendant is arrested, they are to be taken before the magistrate without unnecessary delay, and, in any event, within 48 hours, excluding Sundays and holidays. (Pen. Code, § 825, subd. (a)(1).)
- 9) Prescribes that the 48 hour limitation for arraignment be extended when:
 - a) The 48 hours expire at a time when the court in which the magistrate is sitting is not in session, that time shall be extended to include the duration of the next court session on the judicial day immediately following. (Pen. Code, § 825, subd. (a)(2).)
 - b) The 48 hours expire at a time when the court in which the magistrate is sitting is in session, the arraignment may take place at any time during that session. However, when the defendant's arrest occurs on a Wednesday after the conclusion of the day's court session, and if the Wednesday is not a court holiday, the defendant shall be taken before the magistrate not later than the following Friday, if the Friday is not a court holiday. (Pen. Code, § 825, subd. (a)(2).)

- 10) Allows after the arrest, any attorney at law entitled to practice in the courts of record of California, at the request of the prisoner or any relative of the prisoner, visit the prisoner. Any officer having charge of the prisoner who willfully refuses or neglects to allow that attorney to visit a prisoner is guilty of a misdemeanor. Any officer having a prisoner in charge, who refuses to allow the attorney to visit the prisoner when proper application is made, shall forfeit and pay to the party aggrieved the sum of five hundred dollars (\$500), to be recovered by action in any court of competent jurisdiction. (Pen. Code, § 825, subd. (b).)
- 11) Requires the time specified in the notice to appear be at least 10 days after arrest when a person has been released by the officer after arrest and issued a citation. (Pen. Code, § 853.6(b).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Current law is replete with various means to weed out weak, baseless, or insufficiently supported lawsuits, whether criminal or civil. Such means are designed to prevent unnecessary stress, oppression, and expense for civil and criminal defendants, and also to prevent unnecessary consumption of court time and resources. By identifying meritless cases at an early stage before complex and expensive proceedings, including a jury trial, such costs are prevented.

"Federal constitutional law requires a probable cause determination by an impartial magistrate within 48 hours of arrest for those in custody on criminal charges. The US Constitution, State Constitution, and statutory law require probable cause determination for accused felons, whether in custody or not, by way of a grand jury indictment or a felony preliminary hearing.

"After a felony preliminary hearing, a defendant can seek a review of the preliminary hearing judge's ruling by way of a Penal Code section 995 motion. If a misdemeanor defendant is in custody he or she can seek a probable cause determination from the judge presiding at his arraignment by way of a Penal Code 991 motion. What is missing from this otherwise comprehensive scheme is any vehicle for measuring the merit of misdemeanor charges for a defendant who is not in custody. He or she is not entitled to an initial probable cause determination or a 991 motion because he is not in custody, and he is not entitled to a preliminary hearing or a 995 motion because he is not charged with a felony.

"Preparation for a misdemeanor trial requires investigation, subpoenaing of witnesses, extensive discovery of the opposing party's evidence, and often the filing of legal motions and the analysis of physical evidence and the employment of expert witnesses.

"Like in-custody defendants, out of custody defendants charged with a misdemeanor also have a significant interest in not facing unsupported charges and having the specter of a trial looming over them for months. These individuals must take time from their work, school or other activities, facing the anxiety of being charged with a crime. In the face of such demands, some innocent defendants are forced to 'take a deal' rather than risk losing a job or failing their school work. The time and expense required for this preparation could be

obviated if there was a convenient means for washing out the weak and baseless cases at an early stage.

“In the wake of Proposition 47, it has been projected that misdemeanor trial courts statewide will be inundated with thousands and perhaps tens of thousands of what were formerly low level felonies. These courts and defendants will be without the means to weed out the weakest of those charges. Without additional authority to evaluate those cases, the courts may very well find themselves overwhelmed with pending misdemeanor trials.

“In addressing these concerns, and pursuant to the Governor’s recommendation, AB 1106 will establish a carefully crafted pilot that will provide such authority on a limited basis. Specifically, the bill will establish, by July 1, 2017, a 5-year pilot project in six counties that would require a judge to make a finding of probable cause in determining whether a crime has been committed when a defendant is out of custody and facing a misdemeanor charge. The bill requires that the County of Los Angeles be included among the six counties in the pilot and that the remaining five counties be selected based on population size, including small, medium, and large counties.

“This bill would provide that, within the applicable counties, the probable cause determination be made at the point that the prosecution should have provided all of its evidence to the defense. The determination will be based on all of that evidence, as long as it meets the minimum test of reliability.

“Though hundreds of thousands of misdemeanors are filed in this state each year and tens of thousands of misdemeanants are in custody at arraignment, experience has shown, since PC § 991 was enacted in 1980, that only a small fraction of those defendants will bring a PC § 991 motion. When they do bring the motion, it normally takes the judge only a few minutes to read the documents, listen to arguments, and make his ruling. When defendants are not in custody, and their liberty is consequently not at stake, it is even less likely that they will bring a motion unless they legitimately believe there is insufficient probable cause to support the charges.

“The legal calculus dictates that far less time will be consumed by hearing a few additional PC § 991 motions for out-of-custody misdemeanants than will be saved from having to conduct meritless misdemeanor trials that could otherwise be identified and eliminated at an early stage. This bill will show how it can benefit the prosecution by allowing it more time to gather and present evidence to support its claim of probable cause, and screening out-of-custody misdemeanor cases before they potentially become an unnecessary burden on our trial courts.

“AB 1106 provides an inexpensive and streamlined mechanism in identifying meritless cases and should pay dividends for those selected counties in saved time, stress, and resources for all involved.”

- 2) **Governor’s Veto Message:** AB 696 (Jones-Sawyer), of the 2015-2016 Legislative Session, was vetoed by the Governor. AB 696 would have required a probable cause determination for out of custody misdemeanor defendants upon request by the defense.

The Governor’s veto message was as follows: “I understand the potential benefits to a

defendant in having the court make this determination earlier in the process. However, the impact on the courts is unclear and could well be significant. I would welcome a small, carefully crafted pilot to assess the impact of this proposal.”

- 3) **Argument in Support:** According to *California Public Defenders Association*, “AB 1106 is responsive to the Governor's veto message on AB 696 that suggests a pilot program be created.

“AB 1106 would create an arraignment pilot program that would provide a judicial determination of probable cause for out of custody individuals charged with misdemeanors. This would save time and money by identifying meritless cases at an early stage in the proceedings.

“AB 1106 would save money and time for county government who fund prosecutors' and public defense for indigents. Preparation for a misdemeanor trial requires investigation, subpoenaing of witnesses, extensive discovery of the opposing party's evidence, and often the filing of legal motions and the analysis of physical evidence and the employment of expert witnesses. The time and expense required for this preparation could be obviated if the court could make a probable cause determination washing out weak and baseless cases at an early stage.

“AB 1106 would prevent jurors from sitting through an entire misdemeanor trial only to feel that their time has been wasted by a baseless case. Even if the misdemeanor trial judge suspects that the case may be weak, the judge has no power to make that determination before trial. The judge must wait for the prosecution to conclude its case at trial before it may rule on the sufficiency of evidence under the authority granted to the court under Penal Code section 1118 or 1118.1. By then the court has expended virtually all the resources involved in a full trial.

“AB 1106 will provide the courts with the authority to efficiently handle the thousands, perhaps tens of thousands of new misdemeanors created by Proposition 47. It will amend Penal Code section 991 to allow courts to make probable cause determinations for out-of-custody misdemeanors as well as custody misdemeanors.

“Finally, AB 1106 will prevent unnecessary stress, oppression and expense for innocent people who have been wrongly arrested and charged with misdemeanors. The disruption of an individual's life when under the shadow of a criminal charge can be enormous. They must take time from their work, school or other activities. They face the anxiety of being charged with a crime. In the face of such demands, some innocent defendants are forced to take a 'deal' rather than risk losing a job or failing their school work.”

- 4) **Related Legislation:** AB 696 (Jones-Sawyer), of the 2015-2016 Legislative Session, would have required probable cause determination for out of custody misdemeanor defendants upon request by the defense. AB 696 was vetoed by the governor.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association

Opposition

None

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: January 12, 2016
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1272 (Grove) – As Amended January 4, 2016
As Proposed to be Amended in Committee

SUMMARY: Requires the court to make reasonable efforts to avoid scheduling a case involving a crime committed against a person with a developmental disability when the prosecutor has another trial set.

EXISTING LAW:

- 1) Entitles both the prosecution and a defendant have a right to a speedy trial. (Cal. Const., Art. I, § 13.)
- 2) Provides that absent good cause, a defendant is entitled to have felony charges against him or her dismissed if he or she is not brought to trial within 60 days after arraignment. (Pen. Code, §§ 1049.5 & 1382, subd. (a)(2).)
- 3) Allows a trial court to grant continuances only upon a showing of "good cause." (Pen. Code, § 1050, subd. (e).)
- 4) States that neither the convenience of the parties nor a stipulation of the parties is in and of itself good cause. (Pen. Code, § 1050, subd. (e).)
- 5) Provides that scheduling conflicts of a prosecutor in specific types of cases does constitute good cause for a continuance. (Pen. Code, § 1050, subd. (g)(2).)
- 6) Requires the court to make reasonable efforts to avoid scheduling a murder, sexual assault, child abuse, or career criminal prosecution case when the prosecutor has another trial set. (Pen. Code, § 1048.1.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "People with developmental disabilities are victimized by violent crimes at much higher rates than the general population. The perpetrators often go free for reasons that include the difficulties with prosecuting these complex cases.

"Current law requires a court to make reasonable efforts to avoid setting a trial for certain complex and difficult-to-prosecute crimes on the same day that the prosecutor is scheduled for another trial. This allows district attorneys to assign specialized prosecutors to these

cases.

"This bill will extend this flexibility to cases of crimes against people with developmental disabilities."

- 2) **Trial Continuances:** A defendant has a right to a speedy trial guaranteed by both the Sixth Amendment of the United States Constitution and by the California Constitution. To implement an accused's constitutional right to a speedy trial, the Legislature has prescribed certain time periods within which an accused must be brought to trial. (See Pen. Code, § 1382.) The California Supreme Court has held that a delay without good cause of more than the 60-day time period is a legislatively determined violation of a defendant's constitutional right to a speedy trial. (*Sykes v. Superior Court* (1973) 9 Cal.3d 83, 89.)

Good cause is not defined in statute; rather, what constitutes good cause depends on the totality of the circumstances in each case. (*People v. Johnson* (1980) 26 Cal.3d 557, 570.) Generally, unavailability of the prosecutor due to calendar conflicts does not constitute good cause in and of itself. (See e.g., *Batey v. Superior Court* (1977) 71 Cal.App.3d 952.) However, the Legislature has determined that when the prosecutor is unavailable to try a case involving murder, career criminal prosecutions, child abuse, domestic violence, certain sex offenses, and stalking, this constitutes automatic good cause for a continuance of up to 10 days. (Pen. Code, § 1050, subd. (g)(2).)

Existing law also directs judges to take reasonable efforts to avoid double setting a prosecutor for trial where one of the cases involves a charge of murder, sexual assault, child abuse or a career criminal prosecution. (Pen. Code, § 1048.1.)

This bill would add cases in which it is charged that the victim is a person with a developmental disability, as defined, to these provisions. It does not provide that automatic good cause for continuance of a criminal trial includes cases where a victim is a person with a developmental disability. The court retains discretion to manage its trial calendar.

- 3) **Argument in Support:** According to the *Arc and United Cerebral Palsy California Collaboration*, the sponsor of this bill, "Current law requires a court to make reasonable efforts to avoid setting a trial for certain complex and difficult-to-prosecute crimes on the same day that the prosecutor is scheduled for another trial. This allows district attorneys to assign specialized prosecutors to these cases.

"The bill will extend this flexibility to cases of crimes against people with developmental disabilities.

"Supporting an identical provision of SB 663 (Lara) of 2014, the Judicial Council wrote:

"The council believes that cases involving crimes against persons with developmental disabilities are very difficult, very sensitive, and much more challenging than other criminal cases. Thus, the council believes that it is reasonable to require courts to make reasonable efforts to avoid setting these trials on the same day that another case is set for trial involving the same prosecuting attorney. The council also notes that the population to which SB 663 applies is not so large that it would make it difficult for the courts to make this

accommodation. SB 663 also gives court flexibility because it requires courts to make "reasonable efforts" to make this accommodation rather than requiring courts to do so in all instances."

4) Prior Legislation:

- a) SB 663 (Lara) of the 2013-2014 Legislative session would have, in part, added cases in which it is charged that the victim is developmentally disabled to the provisions directing courts to make reasonable efforts to not set conflicting trial dates for a prosecutor. SB 663 was amended to an unrelated subject matter.
- b) AB 501 (Nakano), Chapter 382, Statutes of 1999, required reasonable efforts to be made by the court in scheduling a trial date for a vertical prosecution career criminal case to avoid setting that trial on the same day another trial is set for the same prosecuting attorney.

REGISTERED SUPPORT / OPPOSITION:

Support

The Arc and United Cerebral Palsy California Collaboration (Sponsor)

Opposition

None

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

Amendments Mock-up for 2015-2016 AB-1272 (Grove (A))

*******Amendments are in BOLD*******

Mock-up based on Version Number 96 - Amended Assembly 1/4/16
Submitted by: Sandy Uribe, Assembly Public Safety Committee

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. ~~Section 368.7 is added to the Penal Code, to read:~~

~~368.7. (a) When a law enforcement agency finds probable cause to believe that a person who holds a state professional or occupational credential, license, permit, or other authorization that allows the person to provide services to children, dependent adults, elders, or persons with disabilities has committed a crime under any of the following provisions of law, the law enforcement agency shall promptly send a copy of its report, including the finding of probable cause, to the state agency that issued the credential, license, permit, or other authorization:~~

~~(1) Sexual exploitation by a physician and surgeon, psychotherapist, or drug or alcohol abuse counselor, as defined in Section 729 of the Business and Professions Code.~~

~~(2) Rape or other crime as defined in Chapter 1 (commencing with Section 261) of Title 9 of Part 1.~~

~~(3) Elder or dependent adult abuse, failure to report elder or dependent adult abuse, interfering with a report of elder or dependent adult abuse, or other crimes as defined in this chapter.~~

~~(4) A hate crime motivated by antidisability bias, as defined in Chapter 1 (commencing with Section 422.55) of Title 11.6 of Part 1.~~

~~(5) Sexual abuse, as defined in Section 11165.1.~~

~~(6) Child abuse, failure to report child abuse, or the interfering with the report of child abuse.~~

~~(b) Notwithstanding any other law, a state agency receiving a report pursuant to this section shall promptly investigate the report and, if it substantiates the report, shall take any action that it finds warranted, which may include revoking the credential, license, permit, or other authorization. The state agency shall cooperate with the law enforcement agency and any prosecuting attorney to avoid jeopardizing any criminal investigation or prosecution.~~

Sandy Uribe
Assembly Public Safety Committee
01/07/2016
Page 1 of 2

~~SEC. 2.~~ Section 1048.1 of the Penal Code is amended to read:

1048.1. (a) In scheduling a trial date at an arraignment in superior court involving any of the following offenses, reasonable efforts shall be made to avoid setting that trial, when that case is assigned to a particular prosecuting attorney, on the same day that another case is set for trial involving the same prosecuting attorney:

(1) Murder, as defined in subdivision (a) of Section 187.

(2) An alleged sexual assault offense, as described in subdivisions (a) and (b) of Section 11165.1.

(3) An alleged child abuse offense, as described in Section 11165.6.

(4) A case being handled in the Career Criminal Prosecution Program pursuant to Chapter 2.2 (commencing with Section 999b).

(5) An alleged offense against a person with a developmental disability.

(b) For purposes of this section, “developmental disability” has the same meaning as found in Section 4512 of the Welfare and Institutions Code.

SEC. 3 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Date of Hearing: January 12, 2016
Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1276 (Santiago) – As Amended January 4, 2016

SUMMARY: Authorizes a minor, 17 years of age or younger, to testify at trial out of the presence of the defendant and jury by way of closed-circuit television in human trafficking cases. Applies the same procedures as currently permitted for allowing a minor, 13 years of age or younger, to testify by means of closed-circuit television in specified cases provided the court makes certain findings.

EXISTING LAW:

- 1) States that it is the intent of the Legislature to provide the court with discretion to employ alternative court procedures to protect the rights of a child witness, the rights of the defendant, and the integrity of the judicial process. In exercising its discretion, the court necessarily will be required to balance the rights of the defendant or defendants against the need to protect a child witness and to preserve the integrity of the court's truthfinding function. This discretion is intended to be used selectively when the facts and circumstances in an individual case present compelling evidence of the need to use these alternative procedures. (Pen. Code, § 1347, subd. (a).)
- 2) Authorizes a court in a criminal proceeding, upon written notice by the prosecutor made at least three days prior to the date of the preliminary hearing or trial date on which the testimony of the minor is scheduled, or during the course of the proceeding on the court's own motion, may order that the testimony of a minor 13 years of age or younger at the time of the motion be taken by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant or defendants, and attorneys, and communicated to the courtroom by means of closed-circuit television, if the court makes all of the following findings:
 - a) The minor's testimony will involve a recitation of the facts of any of the following:
 - i) An alleged sexual offense committed on or with the minor;
 - ii) An alleged violent felony, as defined; or
 - iii) An alleged felony offense of willful harm or injury to a child or corporal punishment of a child of which the minor is a victim;
 - b) The impact on the minor of one or more of the factors enumerated in the following paragraphs, inclusive, is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness unless closed-circuit testimony is used:

- i) Testimony by the minor in the presence of the defendant would result in the child suffering serious emotional distress so that the child would be unavailable as a witness.
 - ii) The defendant used a deadly weapon in the commission of the offense.
 - iii) The defendant threatened serious bodily injury to the child or the child's family, threatened incarceration or deportation of the child or a member of the child's family, threatened removal of the child from the child's family, or threatened the dissolution of the child's family in order to prevent or dissuade the minor from attending or giving testimony at any trial or court proceeding, or to prevent the minor from reporting the alleged sexual offense, or from assisting in criminal prosecution.
 - iv) The defendant inflicted great bodily injury upon the child in the commission of the offense.
 - v) The defendant or his or her counsel behaved during the hearing or trial in a way that caused the minor to be unable to continue his or her testimony.
- c) The equipment available for use of closed-circuit television would accurately communicate the image and demeanor of the minor to the judge, jury, defendant or defendants, and attorneys. (Pen. Code, § 1347, subd. (b).)
- 3) Directs the court, in making the determination required by this section, to consider the age of the minor, the relationship between the minor and the defendant or defendants, any handicap or disability of the minor, and the nature of the acts charged. The minor's refusal to testify shall not alone constitute sufficient evidence that the special procedure described in this section is necessary to obtain the minor's testimony. (Pen. Code, § 1347, subd. (b)(2)(E).)
 - 4) Allows the court to question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the support person, the prosecutor, and defense counsel present. The defendant or defendants shall not be present. The court shall conduct the questioning of the minor and shall not permit the prosecutor or defense counsel to examine the minor. The prosecutor and defense counsel shall be permitted to submit proposed questions to the court prior to the session in chambers. Defense counsel shall be afforded a reasonable opportunity to consult with the defendant or defendants prior to the conclusion of the session in chambers. (Pen. Code, § 1347, subd. (d)(3).)
 - 5) Provides that when a court orders the testimony of a minor to be taken in another place outside the courtroom, nothing in this section prohibits the court from ordering the minor to be brought into the courtroom for a limited purpose, including the identification of the defendant or defendants as the court deems necessary. (Pen. Code, § 1347, subd. (h).)
 - 6) States that it is the intent of the Legislature in enacting this section to provide the court with discretion to employ alternative court procedures to protect the rights of a child witness, the rights of the defendant, and the integrity of the judicial process. In exercising its discretion, the court necessarily will be required to balance the rights of the defendant or defendants against the need to protect a child witness and to preserve the integrity of the court's truthfinding function. This discretion is intended to be used selectively when the facts and

circumstances in the individual case present compelling evidence of the need to use these alternative procedures. (Pen. Code, § 1347, subd. (a).)

- 7) Provides that any person who deprives or violates the personal liberty of any other with the intent to obtain forced labor or services is guilty of human trafficking and shall be punished in state prison for 5, 8, or 12 years and a fine of not more than \$500,000. (Pen. Code, § 236.1, subd. (a).)
- 8) States that any person who deprives or violates the personal liberty of any other with the intent to effect or maintain a violation of specified offenses related to sexual conduct, obscene matter or extortion is guilty of human trafficking and shall be punished by imprisonment in the state prison for 8, 14 or 20 years and a fine of not more than \$500,000. (Pen. Code, § 236.1, subd. (b).)
- 9) Specifies the following penalties for any person who causes, induces, or persuades, or attempts to cause, induce, persuade, a person who is minor at the time of commission of the offense to engage in a commercial sex act, as provided:
 - a) 5, 8, or 12 years and a fine of not more than \$500,000; or,
 - b) 15-years-to-life and a fine of not more than \$500,000 when the offense involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person. (Pen. Code, § 236.1, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Testifying in court can be traumatic for victims of human trafficking who are minors. Facing the perpetrator in court and being asked to recall horrifying details of the crime can cause severe emotional distress. When personally facing the perpetrator makes effective communication in court difficult or leads a minor fearing retaliation to refuse to testify, the result is often ineffective prosecution. AB 1276 will ensure that minors 17 years and younger who are victims of human trafficking are protected from experiencing additional trauma by allowing them to testify in court via closed-circuit television, while preserving the integrity of the court's truthfinding function."
- 2) **Sixth Amendment Right to Confrontation:** The Sixth Amendment of the U.S. Constitution provides, that "in all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." (U.S. Const., amend. VI.) The constitutional right of the accused to confront witnesses against him or her is a fundamental right essential to a fair trial. (*Pointer v. Texas* (1965) 380 U.S. 400.) Fundamental rights are the most important rights guaranteed in the Constitution, and the protection of the right to confrontation is as important as the freedom of speech and the freedom of religion. The right guaranteed under the confrontation clause includes the right to face the person's accuser, requiring the witness to make his or her statements under oath, thus impressing upon the witness the seriousness of the matter and guarding against the lie by the possibility of a penalty for perjury; forcing the witness to submit to cross-examination; and permitting the jury to observe the demeanor of the witness in making his or her statement, thus aiding the

jury in assessing the witness's credibility. (*Maryland v. Craig* (1990) 497 U.S. 836, 845-846.)

The Sixth Amendment right to confrontation guarantees the defendant a face-to-face meeting with witnesses against him. (*Maryland v. Craig, supra*, 497 U.S. at p. 855, citing *Coy v. Iowa* (1988) 487 U.S. 1012, 1016.) The purpose of this guarantee originates from the desire to prevent conviction by anonymous accusers and absentee witnesses. (*Ibid.*) "[F]ace-to-face confrontation enhances the accuracy of factfinding by reducing the risk that a witness will wrongfully implicate an innocent person. . . . (It is always more difficult to tell a lie about a person "to his face" than "behind his back." . . . That face-to-face presence may, unfortunately, upset the truthful rape victim or abused child; but by the same token it may confound and undo the false accuser, or reveal the child coached by a malevolent adult')." (*Maryland v. Craig* (1990) 497 U.S. at pp. 846-847, citing *Ohio v. Roberts* (1980) 448 U.S. 56, 63.)

The right to confront witnesses face-to-face, however, is not an indispensable element of the confrontation clause. (*Maryland v. Craig, supra*, 497 U.S. 836.) The *Maryland v. Craig, supra*, case involved sexual abuse of a 6-year-old child. The prosecutor relied on a state statutory procedure permitting a judge to receive, by one-way closed circuit television, the testimony of an alleged child abuse victim upon determining that the child's courtroom testimony would result in the child suffering serious emotional distress, such that he or she could not reasonably communicate. The Supreme Court held that "the state interest in protecting child witnesses from the trauma of testifying in a child abuse case is sufficiently important to justify the use of a special procedure that permits a child witness in such cases to testify at trial against a defendant in the absence of face-to-face confrontation with the defendant." (*Maryland v. Craig, supra*, 497 U.S. at p. 855.)

The Supreme Court cautioned, however, that their ruling "[t]hat the face-to-face confrontation requirement is not absolute does not, of course, mean that it may easily be dispensed with. As we suggested in *Coy*, our precedents confirm that a defendant's right to confront accusatory witnesses may be satisfied absent a physical, face-to-face confrontation at trial only where denial of such confrontation is necessary to further an important public policy and only where the reliability of the testimony is otherwise assured. (*Maryland v. Craig, supra*, 497 U.S. at p. 850.) Four Justices dissented in the majority opinion. Justice Scalia, writing for the dissent, stated "[t]he purpose of enshrining this protection in the Constitution was to assure that none of the many policy interests from time to time pursued by statutory law could overcome a defendant's right to face his or her accusers in court." (*Maryland v. Craig, supra*, 497 U.S. at p. 861.)

In fact, "[i]n recent years, the Supreme Court of the United States's understanding of the meaning of this Clause may well be the single part of constitutional law – certainly of criminal procedure – that has undergone the most radical change.

"Two Supreme Court judgments [in recent years] have introduced this change and have greatly expanded the right of the accused in criminal prosecutions to confront the witnesses against them." (See Fenner, *Today's Confrontation Clause (After Crawford and Melendez-Diaz)*, (Nov. 2009) 43 Creighton L.Rev. 35, p. 101, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1507257> (as of May 1, 2015).) This bill goes against the trend by eroding a defendant's right to confront his or her accuser.

Moreover, the human trafficking statute authorizes severe punishments, including substantial terms of imprisonment in state prison. If the crime involves a minor, a defendant may face up to 20 years in state prison, and in some instances imprisonment for 15-years-to-life. (Pen. Code, § 236.1.) Considering how serious the existing punishments are for human trafficking, should the Legislature expand the circumstances that would allow witnesses to avoid face-to-face confrontation with the defendant, when the purpose of this confrontation is to ensure a fair trial?

- 3) **Contemporaneous Testimony for Child Witnesses: Legislative History:** Existing law provides courts with discretion to authorize a child victim under 14 to testify by means of closed-circuit television in specified felony cases. The court must make a finding by clear and convincing evidence that the impact on the minor is so substantial as to make the minor unavailable and one or more of the enumerated factors exist. The court may hear testimony from witnesses such as a social worker or therapist to establish the impact on the minor. A child's refusal to testify does constitute sufficient evidence that the contemporaneous testimony is necessary. (Pen. Code, § 1347.)

Prior to 1998, this statute applied to child victims 10 years of age or younger. This statute was amended by AB 1692 (Bowen), Chapter 670, Statutes of 1998, to apply the procedure to child victims who were 13 years of age or younger. AB 1692, as amended April 27, 1998, applied these provisions to child witnesses 15 years of age or younger. "Responding to the suggestion that section 1347 should be consistent with the law that punishes more severely lewd acts upon a child 'under the age of 14' (Assem. Com. on Public Safety, Analysis of Assem. Bill No. 1692 (1997–1998 Reg. Sess.) as amended Apr. 27, 1998, p. 3; see Sen. Com. on Public Safety, Analysis of Assem. Bill No. 1692 (1997–1998 Reg. Sess.) as amended June 23, 1998), the Legislature revised the statute to authorize courts to order the testimony of a minor '13 years of age or younger' to be taken by closed-circuit television." (*People v. Cornett* (2012) 53 Cal. 4th 1261, 1269.)

- 4) **Enhanced Protections for Children Under 14 Years Old:** While a person under the age of 18 is a minor under the law, the statute authorizing contemporaneous testimony is more narrowly tailored to protect young children under the age of 14, not all minors, from the trauma of facing his or her abuser in court. (Pen. Code, § 1347.) Limiting this enhanced protection to children under 14 years old reflects the state's interest in protecting young children from harm, while still balancing the rights of the defendant and protecting the integrity of the judicial process. (Pen. Code, § 1347, subd. (a).)

The state's deliberate protection of children under 14 is evidenced by the existence of current statutes that punish more harshly an act committed against a child under the age of 14 compared to acts committed against children 14 and over. (Pen. Code, §§ 264, subd. (c)(1); 264.1, subd. (b)(1); 271; 286, subd. (c)(2)(B), 288, subd. (a); 288a, subd. (c)(2)(B); 288.5; 289, subd. (a)(1)(B); 667.61, subd. (j)(2); 667.8; 667.85; and 667.9.) Furthermore, the state's juvenile court system also demonstrates this enhanced protection for minors who are under the age of 14 and charged with committing a crime. The statutory framework that authorizes minors to be tried in adult court rather than juvenile court for the commission of serious offenses applies to minors 14 years of age and older. (Welf. & Inst. Code, § 707, subd. (b).)

Because Penal Code Section 1347 interferes with a defendant's constitutional right to

confrontation, the statute must be narrowly tailored to serve a compelling state interest. (*Globe Newspaper Co. v. Superior Court* (1982) 457 U.S. 596, 607.) The compelling state interest is the desire to provide children under 14 with more protections than older children.

This bill would create a new statute authorizing a witness under the age of 18 to testify through the use of closed-circuit television in human trafficking cases. Allowing this procedure to be used for all minors in human trafficking cases, rather than those under 14 years of age, may mean that the procedure is not narrowly tailored to meet a compelling state interest as required to pass constitutional muster.

- 5) **Argument in Support:** According to *Coalition Against Slavery and Trafficking*, "Minors who are victims of human trafficking are among the most vulnerable and exploited people in the world. In California, startling numbers of children are forced into sex and/or labor trafficking each year. Rape, abuse, isolation, confinement, and emotional, physical, and psychological trauma are just some conditions these young victims face.

"Minors who are victims of human trafficking often experience Post Traumatic Stress Disorder (PTSD), depression, substance abuse, suicidal thoughts or behavior, in addition to physical trauma. Testifying in court can be particularly traumatic for minors who are victims of human trafficking. Facing the perpetrator in court and recalling horrifying and personal details of the abuse forces the victims to relive the crime mentally and emotionally, leading them to feel as though the abuse is recurring and re-experiencing a lack of control and terror. Furthermore, the minor victims' inability to communicate effectively in court or refusal to testify against their trafficker can lead to ineffective prosecution of the case."

- 6) **Argument in Opposition:** According to the *American Civil Liberties Union of California*, "The Sixth Amendment to the United States Constitution guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witness against him." (U.S. Const. Amend. VI.) The right of confrontation has long been considered "one of the fundamental guarantees of life and liberty." (*Kirby v. United States* (1899) 174 U.S. 47, 55; see also *Giles v. California* (2008) 554 U.S. 353.) Cross-examination is a core component of the truth-seeking process in our adversarial system. The U.S. Supreme Court has noted that, "face-to-face confrontation enhances the accuracy of factfinding by reducing the risk that a witness will wrongfully implicate an innocent person." (*Maryland v. Craig* (1990) 497 U.S. 836, 846.) The court has acknowledged the burden this places on some witnesses:

It is always more difficult to tell a lie about a person 'to his face' than 'behind his back.' ... That face-to-face presence may, unfortunately, upset the truthful rape victim or abused child; but by the same token it may confound and undo the false accuser, or reveal the child coached by a malevolent adult.

(*Coy v. Iowa* (1988) 487 U.S. 1012, 1019-20.)

"Historically, California has been very cautious about enacting legislation that could undermine the criminal factfinding process or inadvertently lead to wrongful convictions. Given these important considerations, the state's existing closed circuit television testimony statute explicitly limits the use of the procedure only to children 13 years of age and younger, and even then only in specified circumstances. When faced with a previous proposal to

expand the statute and increase the age to 15, the Legislature specifically rejected the proposal and instead drew the line at 13, determining that age to be the appropriate age at which to limit the statute. Notably, this line appears in over 25 other state statutes, the state having chosen time and again to treat children 13 years of age and younger differently from older individuals. (Footnotes omitted.)

"By expanding the use of closed circuit television to teenage witnesses up to age 17, AB 1276 strays too far from the limited circumstances in which the procedure has previously been applied, and threatens to undermine our criminal process."

- 7) **Related Legislation:** SB 176 (Mitchell), Chapter 155, Statutes of 2015, codifies existing case law that allows a minor 13 years of age or younger to testify by way of closed circuit television if the testimony would involve the recitation of facts of an alleged violent felony, whether or not the minor was a victim.
- 8) **Prior Legislation:**
 - a) SB 138 (Maldonado), Chapter 480, Statutes of 2005, added specified child abuse and child endangerment cases to the list of instances when closed-circuit testimony is permissible for child witnesses.
 - b) SB 1559 (Figueroa), Chapter 96, Statutes of 2002, deleted the sunset date of January 1, 2003, in provisions of law which allow a minor 13 years of age or younger to testify by way of closed-circuit television under specified circumstances.
 - c) AB 1692 (Bowen), Chapter 670, Statutes of 1998, increased the age from 10 years old and younger to 13 years old or younger for child witnesses who may be permitted to testify at trial or a preliminary hearing by way of closed-circuit television where the court finds by clear and convincing evidence that the victim would otherwise be unavailable.
 - d) AB 1077 (Cardoza), Chapter 669, Statutes of 1998, authorized the testimony of a child 10 years of age or under who is the victim of a violent crime to be transmitted to the courtroom by way of closed-circuit television.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office
 California Catholic Conference
 California District Attorneys Association
 California State Lodge, Fraternal Order of Police
 Children's Law Center of California
 Coalition to Abolish Slavery and Trafficking
 Consumer Attorneys of California
 Court Appointed Special Advocates for Children of Los Angeles
 Katherine & George Alexander Community Law Center, Santa Clara University
 League of California Cities
 Long Beach Police Officers Association

Los Angeles County Professional Peace Officers Association
Mary Magdalene Project
National Council of Jewish Women California
Sacramento County Deputy Sheriffs' Association
Santa Ana Police Officers Association

One private individual

Opposition

American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Public Defenders

Analysis Prepared by: Stella Choe / PUB. S. / (916) 319-3744

Date of Hearing: January 12, 2016
Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1395 (Salas) – As Amended January 4, 2016

SUMMARY: Adds to the list of crimes for which a person can be prosecuted for money laundering. Specifically, this bill expands the definition of "criminal activity" to include misdemeanor gambling violations for purposes of money laundering.

EXISTING LAW:

- 1) States that any person who conducts or attempts to conduct a transaction within a seven-day period involving a monetary instrument or instruments of a total value exceeding \$5,000, or a total value exceeding \$25,000 within a 30-day period, through one or more financial institutions with the specific intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal activity, or knowing that the monetary instrument represents the proceeds of, or is derived directly or indirectly from the proceeds of, criminal activity, as defined, is guilty of the crime of money laundering. (Pen. Code, § 186.10, subd. (a).)
- 2) Defines "criminal activity" for purposes of money laundering to mean a criminal offense punishable under the laws of this state by death, imprisonment in the state prison, or imprisonment in a county-jail-eligible felony or from a criminal offense committed in another jurisdiction punishable under the laws of that jurisdiction by death or imprisonment for a term exceeding one year. (Pen. Code, § 186.9, subd. (e).)
- 3) Provides that a person convicted of money laundering may be punished by imprisonment in county jail for either a misdemeanor with a maximum of one year or a felony and by a fine of not more than \$250,000 or twice the value of the property transacted, whichever is greater. On a second or subsequent conviction, the maximum fine that may be imposed is \$500,000 or five times the value of the property transacted, whichever is greater. (Pen. Code, § 186.10, subd. (a).)
- 4) Enhances the penalty of a person convicted of money laundering as follows:
 - a) A mandatory additional term of one year to be served consecutive to the punishment if the value of the transaction or transactions exceeds \$50,000 but is less than \$150,000;
 - b) A mandatory additional term of two years to be served consecutive to the punishment if the value of the transaction or transactions exceeds \$150,000 but is less than \$1,000,000;
 - c) A mandatory additional term of three years to be served consecutive to the punishment if the value of the transaction or transactions exceeds \$1,000,000 but is less than \$2,500,000; or

- d) A mandatory additional term of four years to be served consecutive to the punishment if the value of the transaction or transactions exceeds \$2,500,000. (Pen. Code, § 186.10, subd. (c)(1).)
- 5) Prohibits lotteries, with exceptions for the California State Lottery, bingo for charitable purposes, and charitable raffles conducted by a non-profit, tax-exempt organization, and makes the violation of those crimes punishable as a misdemeanor. (Pen. Code, §§ 319-329.)
- 6) Defines a "lottery" as any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or any interest in such property, upon agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known. (Pen. Code, § 319.)
- 7) States that every person who deals, plays, or carries on, opens, or causes to be opened, or who conducts either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noire, rondo, tan, fan-tan, seven-and-a-half, twenty-one, hokey-pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative of value, and every person who plays or bets at or against any of those prohibited games is guilty of a misdemeanor punishable by a fine not less than \$1,000 or by imprisonment in the county jail not exceeding 6 months, or by both the fine and imprisonment. (Pen. Code, § 330.)
- 8) Prohibits any person from using or offering for use any method intended to be used by a person interacting with an electronic video monitor to simulate gambling or play gambling-themed games in a business establishment that (A) directly or indirectly implements the predetermination of sweepstakes cash, cash-equivalent prizes, or other prizes of value, or (B) otherwise connects a sweepstakes player or participant with sweepstakes cash, cash-equivalent prizes, or other prizes of value, except as specified. (Bus. & Prof. Code, § 17539.1, subd. (a)(12).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, "In 2014, I authored Assembly Bill (AB) 1439 to clarify that gambling at sweepstakes cafes is illegal. Specifically, the bill made internet gambling sweepstakes at these cafes an unfair business practice and gave the Attorney General, district attorneys, and city attorneys the authority to bring civil suit to subject operators to civil penalties for violations.

"On June 25, 2015 the California Supreme Court ruled in *People ex rel. v. Grewal* that computerized sweepstakes found at internet cafes are illegal under state gambling laws. In a unanimous ruling, the court rejected arguments that the sweepstakes are different from slot machines because they have predetermined outcomes.

"Despite AB 1439 and the *Grewal* decision, new examples of illegal gambling establishments have emerged. These operators claim they are not offering gambling or

sweepstakes, but rather 'social gaming and mining.' While the business model may have changed, the underlying nature of the games these cafes are offering has not.

"AB 1395 would provide law enforcement with the ability to use criminal remedies when combatting egregious cases of organized, illegal gambling. Specifically, the bill incorporates violations of the gambling laws into organized crime and money laundering statutes. This approach has been used successfully in other states and will give law enforcement the right tools to go after illegal gambling."

- 2) **Penalties for Money Laundering:** Under current law, money laundering is punishable as a "wobbler," meaning that it may be punished as a misdemeanor or a felony. The crime of money laundering requires the defendant to conduct a transaction with money or funds knowing that the money or funds, rather than the transaction, represents the proceeds of, or is derived directly or indirectly from the proceeds of, criminal activity. The money or funds must be composed of at least \$ 5,000 of proceeds from criminal activity. In order to be guilty of money laundering, the defendant must either (1) have the specific intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal activity, or (2) know the monetary instrument represents the proceeds of, or is derived directly or indirectly from the proceeds of, criminal activity. (See *People v. Mays* (2007) 148 Cal. App. 4th 13; Pen. Code, § 186.10, subd. (a).)

The penalties may be enhanced with additional jail time for felony money laundering if the transaction amount exceeds \$50,000. (Pen. Code, § 186.10, subd. (c).) The defendant may also be fined up to \$250,000 or two times the value of the property transacted, or on a second or subsequent offense, \$500,000 or five times the value of the property transacted, whichever is greater. (Pen. Code, § 186.10, subd. (a).)

This bill would authorize the use of the money laundering penalty scheme for unlawful gambling and lotteries, which are misdemeanor offenses. Currently, only felonies may be prosecuted under money laundering. In order to receive the enhanced penalty for money laundering, the defendant must have committed the underlying offense, here unlawful gambling or lotteries, and in addition the elements of money laundering must be proven.

- 3) **Argument in Support:** According to the *Kern County District Attorney's Office*, the sponsor of this bill, "Based on the new sweepstakes law and the *Grewal* decision, one might think that the industry responsible for developing and promoting this form of gambling would abdicate. Unfortunately, however, they have not been dissuaded. To the contrary, the industry continues to slightly modify their business model in an effort to avoid the new sweepstakes law and the *Grewal* decision. The current models they are using were designed to give the appearance that the games involve 'social gaming and mining' or 'games of skill.'

"Although the law enforcement community intends to continue pursuing these gambling promoters, current California law offers prosecutors very limited tools with which to fight this battle. Specifically, all violations of the Penal Code provisions regarding slot machines and lotteries are misdemeanors, and misdemeanors only. As it stands now, a large, organized criminal enterprise engaged in operating illegal slot machines or lotteries can only be charged under the gambling statutes with misdemeanors. Although the operators could be charged for violations related to unfair business practices, the prospect of paying civil penalties does not seem particularly appropriate for egregious criminal conduct and this far has only been

partially effective. We strongly support the passage of AB 1395 because it would enable prosecutors to pursue money laundering violations in limited, severe cases of illegal gambling when the proceeds of the gambling operations exceed \$5000.00 within a seven-day period or \$25,000.00 within a thirty-day period. We believe that without this proposed legislative change, the industry responsible for developing and promoting this form of gambling may very well continue to move forward with their operations with the understanding that it is 'worth the risk.'"

- 4) **Argument in Opposition:** None.
- 5) **Prior Legislation:** AB 1439 (Salas), Chapter 592, Statutes of 2014, prohibited any person, when conducting a contest or sweepstakes, from using an electronic video monitor to simulate gambling or play gambling-themed games that offers the opportunity to win sweepstakes cash, cash equivalent prizes, or other prizes of value.

REGISTERED SUPPORT / OPPOSITION:

Support

Kern County District Attorney's Office (Sponsor)
California District Attorneys Association
San Diego District Attorney's Office

Opposition

None

Analysis Prepared by: Stella Choe / PUB. S. / (916) 319-3744

Date of Hearing: January 12, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1543 (Brough) – As Amended January 4, 2016

SUMMARY: Provides that a person who commits animal abuse may be punished by an additional fine not to exceed \$5,000 for each violation, in addition to the base fine of up to \$20,000. Specifically, **this bill:**

- 1) Allows a separate fine, up to \$5,000, for each conviction of animal cruelty, in addition to the base fine of up to \$20,000 for each conviction of animal cruelty.
- 2) Exempts the additional fine from the penalty assessments which are generally added to fines for criminal offenses.
- 3) Requires the additional fines to be paid to the local public animal control agency that has jurisdiction over the location where the violation occurred.
- 4) Allows the animal control agency to use moneys from the specified fine to compensate a person or nonprofit organization who incurred costs for the animal's medical care or rehabilitation as a result of the animal cruelty, when the owner or caretaker of the animal was the person who committed the animal cruelty.
- 5) Allows the animal control agency to use moneys from the specified fine to compensate a person, including a nonprofit organization, who incurs costs for the animal's medical care, rehabilitation, or recovery when the animal has no identifiable owner or caretaker.
- 6) Requires a person who commits animal abuse in a rehabilitative facility for animals to pay for and successfully complete an appropriate counseling course, as determined by the court, designed to evaluate and treat behavior or conduct disorders.
- 7) Defines "rehabilitative facility for animals" for these purposes as a facility at which medical care or rehabilitative services are provided to animals, including, but not limited to, an animal sanctuary, animal shelter, or aquarium.

EXISTING LAW:

- 1) Specifies the actions of a person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal as a criminal offense. (Pen. Code, § 597.)
- 2) Specifies when a person overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded,

driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor as a criminal offense. (Pen. Code, § 597, subd. (b).)

- 3) Specifies the actions of a person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish, as a criminal offense. (Pen. Code, § 597, subd. (c).)
- 4) Requires punishment as a felony by imprisonment pursuant to subdivision (h) of Section 1170, or by a fine of not more than twenty thousand dollars (\$20,000), or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail for not more than one year, or by a fine of not more than twenty thousand dollars (\$20,000), or by both that fine and imprisonment for violations of Penal Code section 597 (animal cruelty). (Pen. Code, § 597, subd. (d).)
- 5) Specifies that upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as specified, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as specified, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition. (Pen. Code, § 597, subd. (g).)
- 6) Specifies that mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state. (Pen. Code, § 597, subd. (g).)
- 7) Requires that if a defendant is granted probation for a conviction of animal cruelty, the court shall order the defendant to pay for, and successfully complete, counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders. If the court finds that the defendant is financially unable to pay for that counseling, the court may develop a sliding fee schedule based upon the defendant's ability to pay. The counseling shall be in addition to any other terms and conditions of probation, including any term of imprisonment and any fine. If the court does not order custody as a condition of probation for a conviction under this section, the court shall specify on the court record the reason or reasons for not ordering custody. This does not apply to cases involving police dogs or horses as described in Section 600. (Pen. Code, § 597, subd. (h).)
- 8) Provides that any person who maliciously strikes, beats, kicks, stabs, shoots, or throws, hurls, or projects any rock or object at any horse being used by a peace officer, or any dog being supervised by a peace officer in the performance of his or her duties is a public offense. If the injury inflicted is a serious injury, as specified, the person shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, two or three years,

- or in a county jail for not exceeding one year, or by a fine not exceeding two thousand dollars, or by both a fine and imprisonment. If the injury inflicted is not a serious injury, the person shall be punished by imprisonment in the county jail for not exceeding one year, or by a fine not exceeding one thousand dollars, or by both a fine and imprisonment. (Pen. Code, § 600, subd. (a).)
- 9) States that any person who willfully and maliciously interferes with, or obstructs, any horse or dog being used by a peace officer or any dog being supervised by a peace officer in the performance of his or her duties by frightening, teasing, agitating, harassing, or hindering the horse or dog shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$1,000, or by both. (Pen. Code, § 600, subd. (b).)
 - 10) Provides that any person who, with the intent to inflict serious injury or death, personally causes the death, destruction, or serious physical injury of a horse or dog being used by, or under the direction of, a peace officer shall, upon conviction of a felony under this section, in addition and consecutive to the punishment prescribed for the felony, be punished by an additional term of imprisonment for one year. (Pen. Code, § 600, subd. (c).)
 - 11) Defines "serious injury" to include bone fracture, loss or impairment of function of any bodily member, wounds requiring extensive suturing, or serious crippling. (Pen. Code, § 600, subd. (c).)
 - 12) Provides that any person with the intent to inflict that injury, personally causes great bodily injury to a person not an accomplice, shall, upon conviction of a felony under this section, in addition and consecutive be punished by an additional term of imprisonment in the state prison for two years unless the conduct can be punished under Penal Code section 12022.7 or it is an element of a separate offense for which the person is convicted. (Pen. Code, § 600, subd. (d).)
 - 13) Requires the defendant to make restitution to the agency owning the animal and employing the peace officer for any veterinary bills, replacement costs of the animal if it is disabled or killed, and the salary of the peace officer for the period of time his or her services are lost to the agency. (Pen. Code, § 600, subd. (e).)
 - 14) Specifies that owner or keeper of an abandoned or neglected animal is personally liable to the seizing agency for the full cost of the seizure and care of the animal. The charges for the seizure and care of the animal shall be a lien on the animal. The animal shall not be returned to its owner until the charges are paid and the owner demonstrates to the satisfaction of the seizing agency or the hearing officer that the owner can and will provide the necessary care for the animal. (Pen. Code, § 597.1, subd. (f)(4).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Animal abuse continues to be an issue in California. Recent high-profile cases have involved vicious attacks on animals in protective facilities such as aquariums, sanctuaries and shelters. These acts are especially egregious and require an elevated response.

“These nonprofit organizations and local agencies provide care for abused animals without compensation or assistance except through charitable donations to the organization. AB 1543 acknowledges the work of these organizations and aids their efforts by directing them an additional portion of penalty fines.

“Causing harm to an animal in protective care is an indication of a troubled mental/emotional state. AB 1543 requires that perpetrators convicted of harming an animal in a shelter, sanctuary, aquarium or other such safe haven complete an appropriate court-appointed counseling course. Counseling will identify depraved behavior and prevent further acts violence against animals and humans.”

2) **Current Law Allows a \$20,000 Fine for Each Separate Conviction of Animal Cruelty:**

The fine of up to \$20,000 can be imposed whether the conviction is for a felony or a misdemeanor. If the defendant is convicted of multiple counts of animal cruelty the court can impose a fine of up to \$20,000 for each count. That maximum fine is significantly higher than almost all other felony convictions. Generally, the maximum fine for an individual felony conviction is \$10,000. Generally, the maximum fine for an individual misdemeanor conviction is \$1,000.

3) **Penalty Assessments and Fees Quadruple the Cost of a \$20,000 Fine:**

There are penalty assessments and fees assessed on the base fine for a crime. Assuming a defendant was fined the maximum \$20,000, for a single conviction, as provided by current law, the following penalty assessments would be imposed pursuant to the Penal Code and the Government Code:

Base Fine:	\$ 20,000
Penal Code 1464 state penalty on fines:	20,000 (\$10 for every \$10)
Penal Code 1465.7 state surcharge:	4,000 (20% surcharge)
Code 1465.8 court operation assessment:	40 (\$40 fee per offense)
Government Code 70372 court construction penalty:	10, 000 (\$5 for every \$10)
Government Code 70373 assessment:	30 (\$30 per felony/misdo)
Government Code 76000 penalty:	14,000 (\$7 for every \$10)
Government Code 76000.5 EMS penalty:	4,000 (\$2 for every \$10)
Government Code 76104.6 DNA fund penalty:	2,000 (\$1 for every \$10)
Government Code 76104.7 add'l DNA fund penalty:	8,000 (\$4 for every \$10)
Total Fine with Assessments:	\$82,070

4) **This Bill Creates an Additional Fine Without Requiring Any Additional Criminal Conduct:**

Existing law provides for a fine of up to \$20,000 when a person commits a crime of animal cruelty. (Pen. Code § 597.) This bill adds a second fine without requiring any additional conduct by the defendant to the crime more serious than the conduct which forms the basis for the fine of up to \$20,000.

5) **Existing Law Requires Defendants to Make Restitution to Victims of Their Crime:**

All persons who suffer losses as a result of criminal activity have the right to restitution from those convicted of that crime. (Cal. Const., art. I, § 28(b), Pen. Code § 1202.4.) In addition, courts can order restitution as a condition to probation. (Pen. Code § 1203.1, subd. (a)(3).) The courts’ power to order restitution as a condition of probation is even broader than what is

required under direct victim restitution. Courts can, among other reasons, direct a defendant to make restitution as a condition of probation as long as the restitution is reasonably related to the crime of which the defendant was convicted. (Pen. Code § 1203.1, subd. (j).)

Given the requirement of victim restitution and the power of the court to order restitution as a condition of probation, current law provides mechanisms for reimbursement to compensate owners, organizations, or other individuals that incur costs to rehabilitate animals injured as a result of animal cruelty.

- 6) **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.
- 7) **The Additional Fines Collected by This Bill Would Not Be Distributed to the General Fund:** This bill would collect a fine that would not go to the general fund, as the vast majority of criminal fines do. Instead the additional fines collected under the provisions of this bill would be distributed to the local public animal control agency that has jurisdiction in the location where the violation was committed. The local public animal control agency may use the money to compensate individuals or nonprofits who incurred costs for the animal's medical care or rehabilitation as a result of the animal cruelty unless the person was the abuser.
- 8) **This Bill Adds a Counseling Requirement for a Defendant Convicted of Animal Abuse in a Rehabilitative Facility for Animals that is Duplicative of Existing Law:** Existing law requires any defendant granted probation for a violation of animal abuse to complete counseling as determined by the court to treat behavior or conduct disorders. (Pen. Code § 597, subd. (h).) This bill adds the same counseling requirement if the defendant commits the violation of animal cruelty in a rehabilitative facility for animals. There is no need to add a provision to require counseling based on a narrower set of circumstances.
- 9) **Argument in Support:** According to *The Humane Society*, "Despite felony animal cruelty provisions in state law, violent attacks on animals are all too common in California. Vicious attacks on rescued animals who are in the care of government or non-profit animal care organizations are thankfully rare, but are especially egregious. By seeking enhanced penalties and counseling for criminals who harm these most vulnerable animals, AB 1543 is another step toward deterring such acts. We understand you plan to amend AB 1543 to direct the additional \$5,000 penalty to the local animal care agency where an eligible crime occurs, which we think makes your legislation even more efficient and appropriate.

"Strong laws to protect animals from cruelty are obviously important for the animals' sake. But a number of studies have drawn links between the abuse of animals and violence against people. A 2001-2004 study by the Chicago Police Department "revealed a startling propensity for offenders charged with crimes against animals to commit other violent offenses toward human victims." Of those arrested for animal crimes, 65% had been arrested for battery against another person. (Degenhardt, B. 2005. Statistical Summary of Offenders Charged with Crimes against Companion Animals July 2001-July 2005. Report from the Chicago Police Department.) Of 36 convicted multiple murderers questioned in one study,

46% admitted committing acts of animal torture as adolescents. (Cohen, W. (1996). Congressional Register, 142(141), Oct. 3.) And of seven school shootings that took place across the country between 1997 and 2001, all involved boys who had previously committed acts of animal cruelty.”

- 10) **Argument in Opposition:** According to the *ACLU of California*, “Given that existing fines appear sufficient to punish the conduct underlying Penal Code section 597, we do not believe this bill is necessary.

“Current law already provides adequate fines for those who violate Penal Code section 597. A person convicted of either a felony or misdemeanor violation of the statute can be punished, in addition to any applicable terms of imprisonment, by a fine of up to \$20,000. A fine of \$20,000 is already equal to 66% of the average per capita annual income in California. The additional \$5,000, as proposed by the bill could result in a person being required to pay a total fine equal to 83% the average annual income. Such fines, nearly impossible for an average Californian to pay without being rendered penniless, will only further expand the growing number of Californians saddled with court-ordered debt and increase the existing \$10 billion in debt yet to be collected. Thus, increasing fines as proposed by the bill makes little sense, especially when there is no indication that existing fines have been insufficient.”

11) Prior Legislation:

- a) AB 1117 (Smyth), Chapter 553, Statutes of 2011, specified that the owner of an animal seized pursuant to a search warrant shall be liable for the costs of caring for and treating the animal and that these costs will be a lien on the animal which must be paid before the animal is returned.
- b) SB 917 (Lieu), Chapter 131, Statutes of 2011, conformed the misdemeanor penalty for overloading, torturing, tormenting, maims, mutilates, tortures or wound a living animal, punishable by up to one year in jail.
- c) AB 2012 (Lieu), of the Legislative Session of 2009-2010, would have conformed the misdemeanor penalty for overloading, torturing, tormenting, maims, mutilates, tortures or wounds a living animal, punishable for up to one year in jail for the misdemeanor portion of the existing wobbler. AB 2012 was vetoed by the governor.

REGISTERED SUPPORT / OPPOSITION:

Support

American Society for the Prevention of Cruelty to Animals
Aquarium of the Pacific
Beagle Freedom Project
California Civil Liberties Advocacy
California Council for Wildlife Rehabilitators
City of Jorupa Valley
Humane Society
In Defense of Animals

Pacific Marine Mammal Center

Opposition

American Civil Liberties Union of California

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: January 12, 2016

Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Bill Quirk, Chair

AB 733 (Chávez) – As Amended January 4, 2016

FOR VOTE ONLY

SUMMARY: Requires sex offender registration, placement on the Megan's Law Website, and mandates a minimum \$3,000 fine (\$12,370 with penalties and assessments) for solicitation of a minor. Specifically, **this bill:**

- 1) Creates a mandatory fine of \$3,000 for solicitation of a minor.
- 2) Requires that a person convicted of solicitation of a minor make restitution to the minor that includes the cost of mental health counseling for the minor.
- 3) Requires a person to register as a sex offender who is convicted of a second or subsequent offense of soliciting a minor:
 - a) Specifies that these offenders, who are granted probation, shall participate in a sex offender management program as a condition of probation.
 - b) Requires specified postings about the offender on the Megan's Law Website. Permits an offender to petition for removal from the Megan's Law Website if the person has satisfied all conditions of probation or suspension of imposition of his or her sentence and has not been convicted of any other offense requiring registration as a sex offender in a 5-year period following satisfaction of those conditions.

EXISTING LAW:

- 1) Requires persons convicted of specified sex offenses to register for life, or reregister if the person has been previously registered, upon release from incarceration, placement, commitment, or release on probation. States that the registration shall consist of all of the following (Pen. Code, § 290.015, subd. (a.):
 - a) A statement signed in writing by the person, giving information as shall be required by DOJ and giving the name and address of the person's employer, and the address of the person's place of employment, if different from the employer's main address;
 - b) Fingerprints and a current photograph taken by the registering official;
 - c) The license plate number of any vehicle owned by, regularly driven by or registered in the name of the registrant;

- d) Notice to the person that he or she may have a duty to register in any other state where he or she may relocate; and,
 - e) Copies of adequate proof of residence, such as a California driver's license or identification card, recent rent or utility receipt or any other information that the registering official believes is reliable.
- 2) States every person who is required to register, as specified, who is living as a transient shall be required to register for the rest of his or her life as follows:
- a) He or she shall register, or reregister if the person has previously registered, within five working days from release from incarceration, placement or commitment, or release on probation, pursuant to Penal Code Section 290(b), except that if the person previously registered as a transient less than 30 days from the date of his or her release from incarceration, he or she does not need to reregister as a transient until his or her next required 30-day update of registration. If a transient is not physically present in any one jurisdiction for five consecutive working days, he or she shall register in the jurisdiction in which he or she is physically present on the fifth working day following release, as specified. Beginning on or before the 30th day following initial registration upon release, a transient shall reregister no less than once every 30 days thereafter. A transient shall register with the chief of police of the city in which he or she is physically present within that 30-day period, or the sheriff of the county if he or she is physically present in an unincorporated area or city that has no police department, and additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is physically present upon the campus or in any of its facilities. A transient shall reregister no less than once every 30 days regardless of the length of time he or she has been physically present in the particular jurisdiction in which he or she reregisters. If a transient fails to reregister within any 30-day period, he or she may be prosecuted in any jurisdiction in which he or she is physically present.
 - b) A transient who moves to a residence shall have five working days within which to register at that address, in accordance with Penal Code Section 290(b). A person registered at a residence address in accordance with that provision who becomes transient shall have five working days within which to reregister as a transient in accordance with existing law.
 - c) Beginning on his or her first birthday following registration, a transient shall register annually, within five working days of his or her birthday, to update his or her registration with the entities described in existing law. A transient shall register in whichever jurisdiction he or she is physically present on that date. At the 30-day updates and the annual update, a transient shall provide current information as required on the DOJ annual update form, including the information.
 - d) A transient shall, upon registration and re-registration, provide current information as required on the DOJ registration forms, and shall also list the places where he or she sleeps, eats, works, frequents, and engages in leisure activities. If a transient changes or adds to the places listed on the form during the 30-day period, he or she does not need to report the new place or places until the next required re-registration. (Pen. Code, §

290.011, subs. (a) to (d).)

- 3) Provides that willful violation of any part of the registration requirements constitutes a misdemeanor if the offense requiring registration was a misdemeanor, and constitutes a felony if the offense requiring registration was a felony or if the person has a prior conviction of failing to register. (Pen. Code, § 290.018, subs. (a)&(b).)
- 4) Provides that within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the DOJ. (Pen. Code § 290.015, subd. (b).)
- 5) States that a misdemeanor failure to register shall be punishable by imprisonment in a county jail not exceeding one year, and a felony failure to register shall be punishable in the state prison for 16 months, two or three years. (Pen. Code, § 290.018, subs. (a)&(b).)
- 6) Provides that the DOJ shall make available information concerning persons who are required to register as a sex offender to the public via an internet website. The DOJ shall update the website on an ongoing basis. Victim information shall be excluded from the website. (Pen. Code § 290.46.) The information provided on the website is dependent upon what offenses the person has been convicted of, but generally includes identifying information and a photograph of the registrant.
- 7) Generally prevents the use of the information on the website from being used in relation to the following areas: (Pen. Code, § 290.46, subd. (1)(2).)
 - a) Health insurance;
 - b) Insurance;
 - c) Loans;
 - d) Credit;
 - e) Employment;
 - f) Education, scholarships, or fellowships;
 - g) Housing or accommodations; and
 - h) Benefits, privileges, or services provided by any business establishment.
- 8) Provides that any person who solicits, agrees to engage in, or engages in an act of prostitution is guilty of a misdemeanor. The crime does not occur unless the person specifically intends to engage in an act of prostitution and some act is done in furtherance of agreed upon act. Prostitution includes any lewd act between persons for money or other consideration. (Pen. Code, § 647, subd. (b).)
- 9) Provides that if the defendant agreed to engage in an act of prostitution, the person soliciting the act of prostitution need not specifically intend to engage in an act or prostitution. (Pen.

Code § 647, subd. (b).)

- 10) Provides that where any person is convicted of a second prostitution offense, the person shall serve a sentence of at least 45 days, no part of which can be suspended or reduced by the court regardless of whether or not the court grants probation. (Pen. Code § 647, subd. (k).)
- 11) Provides that where any person is convicted for a third prostitution offense, the person shall serve a sentence of at least 90 days, no part of which can be suspended or reduced by the court regardless of whether or not the court grants probation. (Pen. Code § 647, subd. (k).)
- 12) Defines “unlawful sexual intercourse” as an act of sexual intercourse accomplished with a person under the age of 18 years, when no other aggravating elements – such as force or duress – are present. (Pen. Code § 261.5, subd. (a).)
- 13) Provides the following penalties for unlawful sexual intercourse:
 - a) Where the defendant is not more than three years older or three years younger than the minor, the offense is a misdemeanor;
 - b) Where the defendant is more than three years older than the minor, the offense is an alternate felony-misdemeanor, punishable by a jail term of up to one year, a fine of up to \$1,000, or both, or by a prison term of 16 months, two years or three years and a fine of up to \$10,000; or,
 - c) Where the defendant is at least 21 years of age and the minor is under the age of 16, the offense is an alternate felony-misdemeanor, punishable by a jail term of up to one year, a fine of up to \$1,000, or both, or by a prison term of 16 months, two years or three years and a fine of up to \$10,000. (Pen. Code § 261.5, subd (b)-(d).)
- 14) Provides that in the absence of aggravating elements each crime of sodomy, oral copulation or penetration with a foreign or unknown object with a minor is punishable as follows:
 - a) Where the defendant is over 21 and the minor under 16 years of age, the offense is a felony, with a prison term of 16 months, two years or three years.
 - b) In other cases sodomy with a minor is a wobbler, with a felony prison term of 16 months, two years or three years. (Pen. Code §§ 286, subd. (b), 288a, subd. (b), 289, subd. (h).)
- 15) Provides that where each crime of sodomy, oral copulation or penetration with a foreign or unknown object with a minor who is under 14 and the perpetrator is more than 10 years older than the minor, the offense is a felony, punishable by a prison term of 3, 6 or 8 years. (Pen. Code §§ 286, subd. (c)(1), 288a, subd. (c)(1), 289, subd. (j).)
- 16) Provides that any person who engages in lewd conduct – any sexually motivated touching or a defined sex act – with a child under the age of 14 is guilty of a felony, punishable by a prison term of 3, 6 or 8 years. Where the offense involves force or coercion, the prison term is 5, 8 or 10 years. (Pen. Code § 288, subd. (b).)

- 17) Provides that where any person who engages in lewd conduct with a child who is 14 or 15 years old, and the person is at least 10 years older than the child, the person is guilty of an alternate felony-misdemeanor, punishable by a jail term of up to one year, a fine of up to \$1,000, or both, or by a prison term of 16 months, two years or three years and a fine of up to \$10,000. (Pen. Code § 288, subd. (c)(1).)
- 18) Includes numerous crimes concerning sexual exploitation of minors for commercial purposes. These crimes include:
- a) Pimping: Deriving income from the earnings of a prostitute, deriving income from a place of prostitution, or receiving compensation for soliciting a prostitute. Where the victim is a minor under the age of 16, the crime is punishable by a prison term of three, six or eight years. (Pen. Code § 266h, subs. (a)-(b);
 - b) Pandering: Procuring another for prostitution, inducing another to become a prostitute, procuring another person to be placed in a house of prostitution, persuading a person to remain in a house of prostitution, procuring another for prostitution by fraud, duress or abuse of authority, and commercial exchange for procurement. (Pen. Code § 266i, subd. (a).);
 - c) Procurement: Transporting or providing a child under 16 to another person for purposes of any lewd or lascivious act. The crime is punishable by a prison term of three, six, or eight years, and by a fine not to exceed \$15,000. (Pen. Code § 266j.)
 - d) Taking a minor from her or his parents or guardian for purposes of prostitution. This is a felony punishable by a prison term of 16 months, two years, or three years and a fine of up to \$2,000. (Pen. Code § 267.); and,
- 19) Provides that where a person is convicted of pimping or pandering involving a minor the court may order the defendant to pay an additional fine of up to \$5,000. In setting the fine, the court shall consider the seriousness and circumstances of the offense, the illicit gain realized by the defendant and the harm suffered by the victim. The proceeds of this fine shall be deposited in the Victim-Witness Assistance Fund and made available to fund programs for prevention of child sexual abuse and treatment of victims. (Pen. Code § 266k, subd. (a).)
- 20) Provides that where a defendant is convicted of taking a minor under the age 16 from his or her parents to provide to others for prostitution (Pen. Code § 267) or transporting or providing a child under the age of 16 for purposes of any lewd or lascivious act (Pen. Code § 266j), the court may impose an additional fine of up to \$20,000. (Pen. Code § 266k, subd. (b).)
- 21) Provides that where a defendant is convicted under the Penal Code of taking a minor (under the age of 18) from his or her parents for purposes of prostitution (Pen. Code § 267), or transporting or providing a child under the age of 16 for purposes of any lewd or lascivious act (266j), the court, if it decides to impose a specified additional fine, the fine must be no less than \$5,000, but no more than \$20,000. (Pen. Code § 266k, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "it is horrifying to know that California is notorious for trafficking children for sex. We must work harder to increase punishments for those who commit such heinous acts and this preventive measure will address just that."
- 2) **Heavy Penalties and Registration Requirements Already Exist for Persons who Engage in Sexual Acts with Minors:** Under current law, existing penalties which are almost too numerous to count exist for crimes involving various sexual acts with minors. From lewd and lascivious acts with a child to statutory rape, any individual who is an adult that engages in sexual contact with a minor is punished under California law. The penalties for these offenses almost universally include long prison sentences, and require sex registration. This bill would add the crime of a second or subsequent misdemeanor solicitation for prostitution to the list of offenses which would require sex registration and inclusion on the Megan's Law Website.
- 3) **California's Sex Offender Management Board's Background:** On September 20, 2006, Governor Arnold Schwarzenegger signed Assembly Bill 1015, which created the California Sex Offender Management Board. AB 1015 had been introduced by Assembly Members Judy Chu and Todd Spitzer and passed the California Legislature with nearly unanimous bipartisan support.

Because California is the most populated state in the Union and has had lifetime registration for its convicted sex offenders since 1947, California has more registered sex offenders than any other state with about 88,000 identified sex offenders (per DOJ, August 2007). Currently, the California Department of Corrections and Rehabilitation (CDCR) supervises about 10,000 of those 88,000 sex offenders, of which about 3,200 have been designated as "high-risk sex offenders". (CDCR Housing Summit, March 2007). Additionally, there are about 22,500 adult sex offenders serving time in one of 32 state prisons operated by CDCR (California Sex Offender Management Task Force Report, July 2007).

While it is commonly believed that most sexual assaults are committed by strangers, the research suggests that the overwhelming majority of sex offenders victimize people known to them; approximately 90% of child victims know their offenders, as do 80% of adult victims [per Kilpatrick, D.G., Edmunds, C.N., & Seymour, A.K. Rape in America: A Report to the Nation (1992). Arlington, VA: National Victim Center.]

- 4) **Sex Offender Registration and the Megan's Law Website:** According to a 2014 report by the California Sex Offender Management Board¹, the intent of registration was to assist law enforcement in tracking and monitoring sex offenders since they were viewed as the group most likely to commit another sex offense. It was thought that having their names and addresses known to law enforcement and with the expansion of community notification also available to the public would dissuade them from committing a new offense, enable members

¹ <http://www.cce.csus.edu/portal/admin/handouts/Tiering%20Background%20Paper%20FINAL%20FINAL%204-2-14.pdf>

of the public to exercise caution around them, enable law enforcement to monitor them and, if necessary, solve new sex offense cases more readily. Although research suggests that use of a registry may help law enforcement solve sex crimes against children involving strangers more quickly, United States DOJ statistics tell us that most crimes against children (about 93%) are committed not by a stranger but by a person known to the child and his or her family, usually an acquaintance or family member.

Since 1947, earlier by far than any other state, California has required “universal lifetime” registration for persons convicted of most sex crimes. (Pen. Code, § 290.) Though every other state has instituted some form of registration since then, California is among only four states which require lifetime registration for every convicted sex offender, no matter the nature of the crime or the level of risk for reoffending. Almost all other states use some version of a “tiering” or “level” system which: 1. recognizes that not all sex offenders are the same, 2. provides meaningful distinctions between different types of offenders and 3. requires registration at varying levels and for various periods of time. There are nearly 100,000 registrants today in California, a number accumulated over the past 66 years since the Registry was created in 1947. In 2004 California began to provide pictures and other identifying information on the Megan’s Law website for about 80% of registrants. (www.meganslaw.ca.gov)

There are about 98,000 registered sex offenders on California’s registry. About 76,000 live in California communities and the other 22,000 are currently in custody. Of these offenders, 80% are posted on the state’s Megan’s Law web site with their full address or ZIP Code and other information, depending upon the offense they committed. About 20% are not posted or are excluded from posting on the web site by law, again depending on the conviction offense. Posting on the web site does not take into account years in the community without reoffending, the offender’s risk level for committing a new sexual or violent crime, or successful completion of treatment. About one-third of registered offenders are considered “moderate to high risk” while the remaining two-thirds are “moderate to low risk” or “low risk.” Local police departments and sheriff’s offices are charged with managing the registration process. Registered sex offenders must re-register annually on their birthdays as well as every time they have a change of address. Transient sex offenders re-register every 30 days and sexually violent predators every 90 days. Registration information collected by law enforcement is sent to the California Department of Justice (DOJ) and stored in the California Sex and Arson Registry. If an offender’s information is posted online and he fails to register or re-register on time, he will be shown as “in violation” on the Megan’s Law web site. When proof is provided by local law enforcement to DOJ of a registrant’s death, he or she is removed from the registry. Every ten years since the Registry was first established has been marked by a dramatic increase in the number of registrants.

As noted above, the original goal of registration was to assist law enforcement in tracking and monitoring sex offenders. Over time, registration was expanded to include community notification and also began to encompass a wider variety of crimes and behaviors. Due to these changes, research has focused on exploring the changes in sex 4 CASOMB “Tiering Background Paper” offender registration laws and this has resulted in a constantly growing body of research that has altered the perspective on sex offender registration. This research has made it clear that:

- The sexual recidivism rate of identified sex offenders is lower than the recidivism rate of individuals who have committed any other type of crime except for murder.
- Not all sex offenders are at equal risk to reoffend. Low risk offenders reoffend at low rates, high risk offenders at much higher rates.
- It is possible to use well-researched actuarial risk assessment instruments to assign offenders to groups according to risk level. (i.e. Low, Medium, High.)
- Risk of a new sex offense drops each year the offender remains offense-free in the community. Eventually, for many offenders, the risk becomes so low as to be meaningless and the identification of these individuals through a registry becomes unhelpful due to the sheer numbers on the registry. Research has identified differing time frames of decreased risk for the various categories of offenders (i.e. low, medium, high).
- Research on both general and sexual offenders has consistently indicated that focusing on higher risk offenders delivers the greatest return on efforts to reduce reoffending.
- Completing a properly designed and delivered specialized sex offender treatment program delivered within the context of effective supervision reduces recidivism risk even further. In California, all registered sex offenders on parole or probation are now required by state law to enter and complete such a program.

This bill would add more low-risk sex offenders to the registry, making the monitoring of the existing high-risk sex offenders even more difficult than it already is.

- 5) **The Current Sex Offender Registration System and Megan's Law Website has Become too Unwieldy to be Effective for Law Enforcement:** Again, according to California's Sex Offender Management Board, there are a number of problems with the current system as a result of adding too many low-risk sex offenders. California's system of lifetime registration for all convicted sex offenders has created a registry that is very large and that includes many individuals who do not necessarily pose a risk to the community. The consequences of these realities are that the registry has, in some ways, become counterproductive to improving public safety. When everyone is viewed as posing a significant risk, the ability for law enforcement and the community to differentiate between who is truly high risk and more likely to reoffend becomes impossible. There needs to be a way for all persons to distinguish between sex offenders who require increased monitoring, attention and resources and those who are unlikely to reoffend.

There are many unintended consequences and indirect costs associated with sex offender registration.

- Innocent families and children of offenders (including victims of intra-familial sexual abuse) also bear the consequences of lifetime registration since they can often be identified by the public. Adverse consequences also arise for employers, landlords, neighbors and others.

- There has been a proliferation of residence restrictions and exclusion zones for registered sex offenders in many jurisdictions in California. Violation of these can lead to criminal charges. The obstacles posed by registration status prevent many individuals from obtaining housing or employment and becoming functioning, contributing, tax-paying members of society.
- There is reason to believe that registration policies, especially lifetime registration, keep some victims, particularly family members of the offender, from disclosing the abuse because they wish to avoid the stigma that will impact their family and their own lives for a very long time.
- The presence nearby of one or more registered sex offenders can drive down property values in a neighborhood and make houses difficult to sell. If the current registration system was effective in the ways intended, these might be considered part of the price to pay for the greater good. But, since the current registry does not attain its intended purposes, many of these unintended consequences are without justification.

6) **Minimum Mandatory Fines Remove Judicial Discretion and are Subject to Penalties and Assessments:** Judges are in the best position to determine the appropriate sentence in a particular case. The judge presiding over a particular case is an independent arbiter of the facts and circumstances presented. The Legislature should pause before removing this discretion from judges, and tie their hands in particular matters. For this reason, minimum mandatory fines have been generally disfavored as a form of punishment.

Setting the penalty, or range of penalties, for a crime is an inherently legislative function. The Legislature does have the power to require a minimum term or other specific sentence. (*Keeler v. Superior Court* (1970) 2 Cal.3d 619, 631.) Sentencing, however, is solely a judicial power. (*People v. Tenorio* (1970) 3 Cal.3d 89, 90-93; *People v. Superior Court (Fellman)* (1976) 59 Cal.App.3d 270, 275.) California law effectively directs judges to impose an individualized sentence that fits the crime and the defendant's background, attitude, and record. (Cal. Rules of Court, rules 4.401-4.425.) This bill limits judicial discretion and requires a minimum fine of \$10,000 to be imposed in each case, regardless of the facts of the case and the defendant's record.

Also, there are penalty assessments and fees assessed on the base fine for a crime. Assuming a defendant was fined \$ 3,000 for engaging in prostitution as the minimum fine, the following penalty assessments would be imposed pursuant to the Penal Code and the California Government Code:

Base Fine:	\$ 3,000
Penal Code 1464 assessment:	\$ 3,000 (\$10 for every \$10)
Penal Code 1465.7 surcharge:	600 (20% surcharge)
Penal Code 1465.8 assessment:	40 (\$40 fee per offense)
Government Code 70372 assessment:	1,500 (\$5 for every \$10)
Government Code 70373 assessment:	30 (\$30 for felony or misd.)
Government Code 76000 assessment:	2,100 (\$7 for every \$10)

for the purpose of prostitution by intentionally encouraging or persuading that person to become or continue being a prostitute. (Pen. Code, § 266i.) Oftentimes, pimps use mental, emotional, and physical abuse to keep their prostitutes generating money. Consequently, there has been a paradigm shift where pimping and pandering is now viewed as possible human trafficking.

This new approach has been criticized by some because it blurs the line between human trafficking and prostitution. Sex workers say it discounts their ability to willingly work in the sex industry. (See *Nevada Movement Draws the Line on Human Trafficking* by Tom Ragan, Las Vegas Review Journal, May 26, 2013, <<http://www.reviewjournal.com/news/las-vegas/nevada-movement-draws-line-human-trafficking>>.)

- a) **Prostitution Generally:** The basic crime of prostitution is a misdemeanor offense. (Pen. Code § 647(b).) Prostitution can be generally defined as "soliciting or agreeing to engage in a lewd act between persons for money or other consideration." Lewd acts include touching the genitals, buttocks, or female breast of either the prostitute or customer with some part of the other person's body for the purpose of sexual arousal or gratification of either person.

To implicate a person for prostitution themselves, the prosecutor must prove that the defendant "solicited" or "agreed" to "engage" in prostitution. A person agrees to engage in prostitution when the person accepts an offer to commit prostitution with specific intent to accept the offer, whether or not the offerer has the same intent.

For the crime of "soliciting a prostitute" the prosecutors must prove that the defendant requested that another person engage in an act of prostitution, and that the defendant intended to engage in an act of prostitution with the other person, and the other person received the communication containing the request. The defendant must do something more than just agree to engage in prostitution. The defendant must do some act in furtherance of the agreement to be convicted. Words alone may be sufficient to prove the act in furtherance of the agreement to commit prostitution

Violation of Pen. Code § 647(b) is a misdemeanor. For a first offense conviction of prostitution the defendant faces up to 180 days in jail. If a defendant has one prior conviction of prostitution he or she must receive a county jail sentence of not less than 45 days. If the defendant has two or more prior convictions, the minimum sentence is 90 days in the county jail.

In addition to the punishment described above, if the defendant is conviction of prostitution, he or she faces fines, probation, possible professional licensing restrictions or revocations, possible immigration consequences, possible asset forfeiture, and possible driving license restrictions.

Closely associated crimes to prostitution include: abduction of a minor for prostitution (Pen. Code § 267); seduction for prostitution (Pen. Code § 266); keeping a house of prostitution (Pen. Code § 315); leasing a house for prostitution (Pen. Code § 318); sending a minor to a house of prostitution (Pen. Code 273e); taking a person against that person's will for prostitution (Pen. Code § 266 (a)); compelling a person to live in an illicit relationship (Pen. Code § 266 (b)); placing or leaving one's wife in a house of

prostitution (Pen. Code § 266 (g)); loitering for prostitution (Pen. Code § 653.22 subd. (a)); pimping (Pen. Code § 266 (h)); or, pandering (Pen. Code § 266 (i)). Most of these crimes are punished much more severely than the underlying prostitution offense, particularly the crimes of pimping, pandering, and procurement.

- b) **Human Trafficking Generally:** Human trafficking involves the recruitment, transportation or sale of people for forced labor. Through violence, threats and coercion, victims are forced to work in, among other things, the sex trade, domestic labor, factories, hotels and agriculture. According to the January 2005 United States Department of State's Human Smuggling and Trafficking Center report, "Fact Sheet: Distinctions Between Human Smuggling and Human Trafficking", there is an estimated 600,000 to 800,000 men, women and children trafficked across international borders each year. Of these, approximately 80% are women and girls and up to 50% are minors. A recent report by the Human Rights Center at the University of California, Berkeley cited 57 cases of forced labor in California between 1998 and 2003, with over 500 victims. The report, "Freedom Denied", notes most of the victims in California were from Thailand, Mexico, and Russia and had been forced to work as prostitutes, domestic slaves, farm laborers or sweatshop employees. [University of California, Berkeley Human Rights Center, "Freedom Denied: Forced Labor in California" (February, 2005).] According to the author:

"While the clandestine nature of human trafficking makes it enormously difficult to accurately track how many people are affected, the United States government estimates that about 17,000 to 20,000 women, men and children are trafficked into the United States each year, meaning there may be as many as 100,000 to 200,000 people in the United States working as modern slaves in homes, sweatshops, brothels, agricultural fields, construction projects and restaurants."

In 2012, Californians voted to pass Proposition 35, which modified many provisions of California's already tough human trafficking laws. The proposition increased criminal penalties for human trafficking, including prison sentences up to 15-years-to-life and fines up to \$1,500,000. Additionally, the proposition specified that the fines collected are to be used for victim services and law enforcement. Proposition 35 requires persons convicted of trafficking to register as sex offenders. Proposition 35 prohibits evidence that victim engaged in sexual conduct from being used against victims in court proceedings. Additionally, the proposition lowered the evidential requirements for showing of force in cases of minors.

- i) **Trafficking Victims Protection Act of 2000 (22 USC Sections 7101 *et seq.*):** In October 2000, the Trafficking Victims Protection Act of 2000 (TVPA) was enacted and is comprehensive, addressing the various ways of combating trafficking, including prevention, protection and prosecution. The prevention measures include the authorization of educational and public awareness programs. Protection and assistance for victims of trafficking include making housing, educational, health-care, job training and other federally funded social service programs available to assist victims in rebuilding their lives. Finally, the TVPA provides law enforcement with tools to strengthen the prosecution and punishment of traffickers, making human trafficking a federal crime.

ii) **Recent Update to Human Trafficking Laws:** In 2012, Californians voted to pass Proposition 35, which modified many provisions of California's already tough human trafficking laws. Specifically, Proposition 35 increased criminal penalties for human trafficking offenses, including prison sentences up to 15-years-to-life and fines up to \$1.5 million. The proposition specified that the fines collected are to be used for victim services and law enforcement. In criminal trials, the proposition prohibits the use of evidence that a person was involved in criminal sexual conduct (such as prostitution) to prosecute that person for that crime if the conduct was a result of being a victim of human trafficking, and makes evidence of sexual conduct by a victim of human trafficking inadmissible for the purposes of attacking the victim's credibility or character in court. The proposition lowered the evidentiary requirements for showing of force in cases of minors.

Proposition 35 also requires persons convicted of human trafficking to register as sex offenders and expanded registration requirements by requiring registered sex offenders to provide the names of their internet providers and identifiers, such as e-mail addresses, user names, and screen names, to local police or sheriff's departments. After passage of Proposition 35, plaintiffs American Civil Liberties Union and Electronic Frontier Foundation filed a law suit claiming that these provisions unconstitutionally restricts the First Amendment rights of registered sex offenders in the states. A United States District Court judge granted a preliminary injunction prohibiting the implementation or enforcement of Proposition 35's provisions that require registered sex offenders to provide certain information concerning their Internet use to law enforcement. [*Doe v. Harris* (N.D. Cal., Jan. 11, 2013, No. C12-5713) 2013 LEXIS 5428.]

iii) **California Attorney General's Report on Human Trafficking:** The California Attorney General's Human Trafficking in California 2012 report stated that human trafficking investigations and prosecutions have become more comprehensive and organized. There are nine human trafficking task forces in California, composed of local, state and federal law enforcement and prosecutors.

Data on human trafficking has improved, although the data still does not reflect the actual extent and range of human trafficking. Data from 2010 through 2012 collected by the California task forces are set out in the following chart:

California Human Trafficking Task Forces Data 2010-2012

Investigations	2,552
Victims Identified	1,277
Arrests Made	1,798

Trafficking by Category

Sex Trafficking	56%
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Labor Trafficking	23%
Unclassified or Insufficient Information	21%

9) **Known or Should Have Known:** For all of the provisions of this legislation which are tying additional registration requirements, and punishments for solicitation of a minor, the author has included language which is not in the underlying offense. The defendant must either know that the person is a minor at the time they solicit the minor for prostitution, or they "should know" that the person they are soliciting is a minor. The bill would cover persons who are targeting minors on purpose, but the provisions leave room for people who do not know that they are soliciting a minor with the "should have known" provision.

10) **Argument in Support:** None submitted

11) **Argument in Opposition:** According to *The American Civil Liberties Union*, "AB 733 seeks to equate the crime of soliciting a minor to engage in prostitution with the crime of actually having sex with a minor. The lifetime registration and other penalties contemplated by this bill for the crime of solicitation are excessive and inappropriate.

"AB 733 would make four changes to sentencing laws for individuals convicted of soliciting a prostitute, in violation of Penal Code section 647(b), in cases where the convicted person knew or should have known that the person solicited was a minor. Specifically, AB 733 would: (1) establish a mandatory \$10,000 fine; (2) require lifetime registration as a sex offender; (3) require that a convicted person's information be posted online; and (4) require participation in a sex offender management program as a condition of probation.

"Effectively, AB 733 seeks to equate the crime of soliciting a minor to engage in prostitution with the crime of actually having sex with a minor. This is inappropriate. There is a wide gap between those crimes in terms of the harm caused and the likely risk posed by the person convicted. This is especially true given that the crime of soliciting a minor applies to someone who did not know that the person solicited was a minor but 'should have known.' A person who solicits an individual that he or she 'should have known' is a minor may well stop the encounter upon learning that the individual solicited is in fact a minor. Simply put, individuals who *actually* engage in sex with a minor should face higher penalties than those who do not.

"AB 733 will also make it more difficult to effectively manage true sex offenders. California already requires a vast number of people to register as sex offenders for life, imposing residency and other restrictions. California's Sex Offender Management Board (CASOMB) has strongly criticized the vast scope of the current registration system:

"Under the current system, many local registering agencies are challenged just keeping up with registration paperwork. It takes an hour or more to process each registrant, the majority of whom are low risk offenders. As a result, law enforcement cannot monitor higher risk offenders more intensively in the community due to the sheer numbers now in the registry. Some of the consequences of lengthy and unnecessary registration requirements actually destabilize the lives of registrants and those – such as families – whose lives are often substantially impacted. Such consequences are thought to raise

levels of known risk factors while providing no discernible benefit in terms of community safety.

"CASOMB has become convinced that California policy makers need to rethink the registration laws and the time has come, after nearly 70 years of use, to make some major changes in the state's registration system.²

"Moreover, AB 733 is unnecessary. Courts already have the discretion to order anyone who commits any offense to register as a sex offender under Penal Code section 290.006. Courts also have the discretion to order participation in a sex offender treatment program as a condition of probation, where appropriate. And courts have the power to impose a \$10,000 fine and order appropriate restitution. For these reasons, we respectfully oppose AB 733."

12) **Related Legislation:** AB 201 (Brough), would eliminate the state preemption which prohibits a local agency from enacting local ordinances that restrict a sex offender from residing or being present in specific locations, and authorize local agencies to enact ordinances that are more restrictive than state law. AB 201 is being heard by this committee today.

1) **Prior Legislation:**

- a) AB 90 (Swanson), Statutes of 2011, Ch. 457, included, within the definition of criminal profiteering activity, any crime in which the perpetrator induces, encourages, or persuades, or causes through force, fear, coercion, deceit, violence, duress, menace, or threat of unlawful injury to the victim or to another person, a person under 18 years of age to engage in a commercial sex act, and specifies that the proceeds shall be deposited in a Victim-Witness Fund, as specified.
- b) AB 17 (Swanson), Statutes of 2010, Ch. 211, added abduction or procurement for prostitution to the criminal profiteering asset forfeiture law; provided that the court may impose a fine of up to \$20,000, in addition to any other fines and penalties, where the defendant has been convicted of abduction of a minor for purposes of prostitution or procurement of a minor under the age of 16 for lewd conduct; and provided that 50 percent of the additional fine shall be deposited in the Victim-Witness Assistance Fund for purposes of grants to community-based organizations that serve minor victims of human trafficking.
- c) AB 22 (Lieber), Chapter 240, Statutes of 2005, created the California Trafficking Victims Protection Act, which established civil and criminal penalties for human trafficking and allowed for forfeiture of assets derived from human trafficking. In addition, the Act required law enforcement agencies to provide Law Enforcement Agency Endorsement to trafficking victims, providing trafficking victims with protection from deportation and created the Human Trafficking Task Force.

² California's Sex Offender Management Board Year End Report 2014 (February 2015), at pp. 12-13; available at http://www.cce.csus.edu/portal/admin/handouts/CASOMB_End_of_Year_Report_to_Legislature_2014.pdf.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

American Civil Liberties Union
California Attorneys for Criminal Justice
Legal Services for Prisoners with Children

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