

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2013-2014 Regular Session

S
B

1
3
8
8

SB 1388 (Lieu)
As Introduced February 21, 2014
Hearing date: April 22, 2014
Penal Code
JM:mc

SOLICITATION OF MINORS FOR PROSTITUTION

HISTORY

Source: Los Angeles County Board of Supervisors; California Against Slavery

Prior Legislation: AB 90 (Swanson) – Ch. 457, Stats. 2011
AB 17 (Swanson) – Ch. 211, Stats. 2010

Support: Freedom from Exploitation; Soroptomist International of Vista; Soroptomists Together Against Trafficking; Laura’s House; Community Overcoming Relationship Abuse (CORA); Journey Community Church; California Narcotic Officers Association; California Police Chiefs Association; California Catholic Conference, Inc.

Opposition: California Attorneys for Criminal Justice; California Public Defenders Association (unless amended)

KEY ISSUES

WHERE A DEFENDANT IS CONVICTED OF PROVIDING A CHILD UNDER THE AGE OF 16 TO ANOTHER FOR SEXUAL PURPOSES, OR PLACES A MINOR INTO PROSTITUTION, SHOULD THE COURT HAVE DISCRETION TO IMPOSE A FINE OF BETWEEN \$5,000 AND \$20,000 FOR PAYMENT INTO THE VICTIM WITNESS FUND FOR CHILD SEXUAL ABUSE COUNSELING AND PREVENTION?

(CONTINUED)

SHOULD THE TERM "PROSTITUTION" BE REPLACED IN THE APPLICABLE CODE SECTIONS WITH THE TERM "COMMERCIAL SEX ACT," WITH SEPARATE PROVISIONS FOR PURCHASERS AND PROVIDERS OF COMMERCIAL SEX?

SHOULD ANY PERSON GRANTED PROBATION FOR PURCHASING OR AGREEING TO PURCHASE A COMMERCIAL SEX ACT BE REQUIRED TO SERVE A JAIL TERM OF AT LEAST 48 HOURS AND PAY A FINE OF BETWEEN \$1,000 AND \$50,000, AND SHOULD A PERSON NOT GRANTED PROBATION BE REQUIRED TO SERVE THE 48-HOUR CONTINUOUS JAIL TERM?

SHOULD FINES COLLECTED IN COMMERCIAL SEX CRIME CASES BE DEPOSITED IN THE VICTIM WITNESS ASSISTANCE FUND AND DIVIDED EQUALLY BETWEEN ENTITIES THAT SERVE SEXUALLY EXPLOITED PERSONS AND LAW ENFORCEMENT FOR SEX COMMERCE PREVENTION PROGRAMS?

SHOULD AN ADULT CONVICTED OF A COMMERCIAL SEX ACT INVOLVING A MINOR BE SUBJECT TO AN ADDITIONAL FINE OF BETWEEN \$1,000 AND \$10,000, TO BE DEPOSITED IN THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN SERVICES FUND, AS CREATED BY THIS BILL?

PURPOSE

The purposes of this bill are to 1) provide that where a defendant is convicted of furnishing a minor under the age of 16 to another person for sexual conduct, or placing a minor into prostitution, the court may impose an additional fine of \$5,000 and \$20,000; 2) replace the term "prostitution" (exchange of anything of value for a lewd act) with the term "commercial sex" and define as separate crimes the (a) purchasing or agreeing to purchase sex; and (b) agreeing to provide or providing sex; 3) require a person granted probation for purchasing or agreeing to purchase a commercial sexual act to serve a continuous jail term of at least 48 hours and pay a mandatory fine of between \$1,000 and \$50,000, the proceeds of which shall be paid into the Victim Witness Assistance Fund, with 50% provided to persons exploited through commercial sex and 50% to law enforcement programs to prevent sex purchasing; and 4) create a Commercial Sexual Exploitation of Children Services Fund (CSECSF) for services to sexually exploited children, to be funded by a fine of between \$1,000 and \$10,000 imposed on any defendant convicted of the crime of commercial sex with a minor.

Sex Crimes Against or Involving Minors

Existing law 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).)

(More)

Existing law provides the following penalties for unlawful sexual intercourse:

- Where the defendant is not more than three years older or three years younger than the minor, the offense is a misdemeanor.
- 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.
- 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).)

Existing law 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:

- 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, 2 years or 3 years.
- In other cases sodomy with a minor is a wobbler, with a felony prison term of 16 months, 2 years or 3 years. (Pen. Code §§ 286, subd. (b), 288a, subd. (b), 289, subd. (h).)

Existing law 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).)

Existing law 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).)

Existing law 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).)

Commercial Sex Crimes Involving Minors

Existing law includes numerous crimes concerning sexual exploitation of minors for commercial purposes. These crimes include:

- 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

(More)

minor under the age of 16, the crime is punishable by a prison term of three, six or eight years. (Pen. Code § 266h, subds. (a)-(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).)
- **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.)
- **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.)

Existing law 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).)

Existing law 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).)

This bill provides that where a defendant is convicted under 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).)

Prostitution Offenses Generally

Existing law provides that any person who solicits, agrees to engage in, or engages in an act of prostitution¹ is guilty of 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).)

¹ Soliciting or engaging in an act of prostitution is a form of disorderly conduct. (Pen. Code § 647.)

Existing law 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 of prostitution.² (Pen. Code § 647, subd. (b).)

Existing law 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).)

Existing law provides that where any person is convicted of 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).)

This bill substitutes the term “commercial sex act” for “act of prostitution” in the section and subdivision (Pen. Code § 647, subd. (b)) setting out the basic definition of a crime involving an exchange of something of value for sex, or an offer to do so.

This bill separately defines the crimes of *purchasing or agreeing to purchase* a commercial sex act and *performing or agreeing to perform* a commercial sex act.

This bill provides that a person convicted of purchasing or agreeing to purchase a commercial sex act is guilty of a misdemeanor, punishable by imprisonment in the county jail for no less than 48 hours of continuous confinement and no more than six months and a fine of up to \$1,000. Where the court grants the defendant probation, the defendant must serve at least 48 hours of continuous confinement and pay a fine of at least \$1,000 and up to \$50,000. The court may not waive the requirement that a defendant – whether granted probation or not – serve at least 48 hours of continuous confinement.

This bill provides that fines collected from a person who has been convicted of purchasing or offering to purchase a commercial sex act shall be deposited in the Victim-Witness Assistance Fund to fund grants to “local programs.” Fifty percent of each fine shall be granted to public agencies and nonprofit corporations providing exit or recovery services to persons exploited through commercial sex. Fifty percent of the fines shall be granted to law enforcement and prosecution agencies in the jurisdiction of the crime “to fund programs to prevent sex purchasing.”

This bill provides that where an adult defendant is convicted of purchasing or offering to purchase a commercial sex, or convicted of performing or agreeing to perform a commercial sex act, and the crime involves a minor, the court may order the defendant to pay an additional fine of not less than \$1,000 and not more than \$10,000. The proceeds of this fine shall be deposited

² This provision concerns the use of police decoys to solicit a defendant for an act of prostitution.

in the Commercial Sexual Exploitation of Children Services Fund (CSECSF), which is created in the State Treasury by this bill, with the following features:

- The fund will be administered by an undesignated agency.
- Money in the fund is available, upon legislative appropriation, for child sexual abuse and exploitation counseling centers, as specified, and programs for child victims of human trafficking, as specified.
- Then administrative costs of collecting the fine, not to exceed 2% of the total paid, may be paid into the county treasury.

This bill does *not* designate an agency or entity to house and manage the Commercial Sexual Exploitation of Children Services Fund.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the last several years, severe overcrowding in California's prisons has been the focus of evolving and expensive litigation relating to conditions of confinement. On May 23, 2011, the United States Supreme Court ordered California to reduce its prison population to 137.5 percent of design capacity within two years from the date of its ruling, subject to the right of the state to seek modifications in appropriate circumstances.

Beginning in early 2007, Senate leadership initiated a policy to hold legislative proposals which could further aggravate the prison overcrowding crisis through new or expanded felony prosecutions. Under the resulting policy, known as "ROCA" (which stands for "Receivership/Overcrowding Crisis Aggravation"), the Committee held measures that created a new felony, expanded the scope or penalty of an existing felony, or otherwise increased the application of a felony in a manner which could exacerbate the prison overcrowding crisis. Under these principles, ROCA was applied as a content-neutral, provisional measure necessary to ensure that the Legislature did not erode progress towards reducing prison overcrowding by passing legislation, which would increase the prison population.

In January of 2013, just over a year after the enactment of the historic Public Safety Realignment Act of 2011, the State of California filed court documents seeking to vacate or modify the federal court order requiring the state to reduce its prison population to 137.5 percent of design capacity. The State submitted that the, ". . . population in the State's 33 prisons has been reduced by over 24,000 inmates since October 2011 when public safety realignment went into effect, by more than 36,000 inmates compared to the 2008 population . . . , and by nearly 42,000 inmates since 2006" Plaintiffs opposed the state's motion, arguing that, "California prisons, which currently average 150% of capacity, and reach as high as 185% of capacity at one prison, continue to deliver health care that is constitutionally deficient." In an order dated January 29, 2013, the federal court granted the state a six-month extension to achieve the 137.5 % inmate population cap by December 31, 2013.

(More)

The Three-Judge Court then ordered, on April 11, 2013, the state of California to “immediately take all steps necessary to comply with this Court’s . . . Order . . . requiring defendants to reduce overall prison population to 137.5% design capacity by December 31, 2013.” On September 16, 2013, the State asked the Court to extend that deadline to December 31, 2016. In response, the Court extended the deadline first to January 27, 2014 and then February 24, 2014, and ordered the parties to enter into a meet-and-confer process to “explore how defendants can comply with this Court’s June 20, 2013 Order, including means and dates by which such compliance can be expedited or accomplished and how this Court can ensure a durable solution to the prison crowding problem.”

The parties were not able to reach an agreement during the meet-and-confer process. As a result, the Court ordered briefing on the State’s requested extension and, on February 10, 2014, issued an order extending the deadline to reduce the in-state adult institution population to 137.5% design capacity to February 28, 2016. The order requires the state to meet the following interim and final population reduction benchmarks:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and
- 137.5% of design bed capacity by February 28, 2016.

If a benchmark is missed the Compliance Officer (a position created by the February 10, 2016 order) can order the release of inmates to bring the State into compliance with that benchmark.

In a status report to the Court dated February 18, 2014, the state reported that as of February 12, 2014, California’s 33 prisons were at 144.3 percent capacity, with 117,686 inmates. 8,768 inmates were housed in out-of-state facilities.

The ongoing prison overcrowding litigation indicates that prison capacity and related issues concerning conditions of confinement remain unresolved. While real gains in reducing the prison population have been made, even greater reductions may be required to meet the orders of the federal court. Therefore, the Committee’s consideration of ROCA bills – bills that may impact the prison population – will be informed by the following questions:

- Whether a measure erodes realignment and impacts the prison population;
- Whether a measure addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a bill corrects a constitutional infirmity or legislative drafting error;
- Whether a measure proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy; and,
- Whether a bill addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

Senate Bill 1388 addresses a few oversights in California's sexual exploitation law and ensures that individuals convicted of pimping or soliciting a minor will face significant financial penalties. This measure further specifies that funds collected as a result of these fines go directly to support services and counseling for child victims of commercial sexual exploitation. Finally, SB 1388 will require sex buyers convicted of solicitation or engagement in a commercial sex act, regardless of the age of the individual solicited, to face a penalty structure similar to those convicted of a DUI.

Specifically, SB 1388 sets the minimum fine for conviction of pimping of a minor at \$5,000 and maintains the maximum fine of \$20,000. SB 1388 would also establish a fine of not less than \$1,000 and not more than \$10,000 for any sex buyer convicted of soliciting a minor. This measure specifies that funds collected from these fines be directed to a county Victim Services Fund to provide support services for child sexual exploitation and child sexual abuse victim counseling services and programs for child victims of human sex trafficking. SB 1388 will make a person who seeks to purchase or who purchases a commercial sex act guilty of a misdemeanor punishable in a county jail for at least 48 hours, but not more than six months and by a fine of at least \$1,000 and not more than \$50,000.

2. Non-Prostitution Related Sex Crimes Against Minors

This bill concerns sexual commerce, with particular emphasis on crimes in which adults purchase or agree to purchase sexual acts with a minor. Sexual conduct with a minor constitutes a felony in most instances, regardless of whether anything of value was offered or exchanged for the sexual acts. Arguably, the exchange of money could be an aggravating factor in the underlying sex crime, as it could be seen as an improper attempt to normalize the behavior or coerce the victim. If the minor involved in commercial sex of was under the age of 14, the defendant has committed the felony of lewd conduct, with a prison term of three, six or eight years. (Pen. Code § 288, subd. (a).) The crime is punishable by a term of 5, 8 or 10 years if the defendant used force, threats, duress or coercion. Solicitation of an act of prostitution from a minor under the age of 14 could likely be prosecuted as attempted lewd conduct – the intention to commit the crime and a direct step towards it commission. The prison or jail term of an attempt is generally one-half the punishment for the completed crime. Where the defendant solicited or employed a minor who was 14 or 15 years old, and the defendant was at least 10 years older than the minor, the defendant has committed an alternate felony-misdemeanor.

(More)

Any defined sex act – sodomy, sexual penetration, oral copulation or sexual intercourse – with a minor is a crime. The penalties depend on the relative ages of the defendant and the minor and whether the crime involved some form of force, coercion or improper advantage.

A defendant charged with a prostitution-related offense involving a minor could also be charged and convicted of a sex crime in the same case. Generally, because the defined sex crime and the sexual commerce offense would involve a single transaction or act, the defendant could only be punished for one offense – the offense carrying the greatest penalty. (Pen. Code § 654.)

DO MOST PROSTITUTION INCIDENTS IN WHICH AN ADULT SOUGHT TO PURCHASE SEX FROM A MINOR CONSTITUTE ATTEMPTED OR COMPLETED SEX CRIMES?

3. Fine for Sexual Commerce with a Minor Does not Include an Element that the Defendant Knew Or Should Have Known that the Incident Involved a Minor

This bill provides that in a prostitution-commercial sex offense in which the defendant purchased or offered to purchase sex from a minor, the court has discretion to impose a fine of between \$1,000 and \$10,000. A 16 or 17-year-old minor acting as a prostitute could appear to be an adult. In such circumstances, it cannot be said that the defendant intended to exploit minors or knew that he was exploiting a minor for sexual services. Further, advocates have noted that a substantial proportion of juveniles placed into prostitution are around 12 or 13 years old. An adult would clearly know that a 12-year prostitute was not an adult.

SHOULD A LAW AUTHORIZING A SPECIAL FINE IN CASES WHERE AN ADULT COMMITTED A SEXUAL COMMERCE CRIME INVOLVING A MINOR INCLUDE AN ELEMENT THAT THE ADULT KNEW OR SHOULD HAVE KNOWN THAT THE OTHER PERSON WAS A MINOR?

4. Incentive to Refuse Probation for Defendants Convicted of Offering to Purchase or Purchasing Commercial Sex

This bill provides that where a person convicted of agreeing to purchase or purchasing a commercial sex act is granted probation, the defendant must serve a continuous jail term of at least 48 hours and pay a fine of between \$1,000 and \$50,000. The sentencing court cannot decline to impose the jail term. A person convicted of such a crime who is not granted probation must serve a continuous jail term of at least 48 hours, but there is no requirement that the defendant pay a fine. If the court imposes a fine, the maximum fine is \$1,000, the default maximum misdemeanor fine.

Arguably, subjecting only persons granted probation for purchasing or agreeing to purchase a commercial sex act to a mandatory fine of between \$1,000 and \$50,000 creates a very strong incentive for defendants to refuse probation. A defendant who refused probation would serve his jail term and face no more than a \$1,000 fine. A defendant who refuses probation would not receive supervision after serving his jail term and could not have his punishment modified,

(More)

unlike a probationer. The court has essentially no authority over a person who refuses probation and has suffered whatever punishment the court imposes.

BECAUSE THE BILL INCLUDES A MANDATORY FINE OF BETWEEN \$1,000 AND \$50,000 ONLY FOR A DEFENDANT GRANTED PROBATION FOR A COMMERCIAL SEX ACT CRIME, DOES THIS CREATE AN INCENTIVE FOR DEFENDANTS TO REFUSE PROBATION?

5. Penalty Structure in this Bill for Purchasing or Agreeing to Purchase Commercial Sex Act is Modeled on Driving Under the Influence Penalties

The bill sponsor – California Against Slavery – has noted that the penalties in the bill for those who purchase or offer to purchase commercial sex are modeled on the penalty structure for driving under the influence (DUI) offenses. For example, similar to DUI penalties, the bill would require 48 hours of continuous custody and mandatory payment of a fine between \$1,000 and \$50,000. However, the fines in this bill for commercial sex customers are much higher than DUI fines.

California DUI laws have been found³ to be relatively effective in reducing the incidence and harms of that offense. It should be noted that the applicable DUI fines of from \$390 to \$1,000 - while significant – appear to be relatively collectible. Further, a defendant would be motivated to accept probation and pay fines and comply with other conditions so as to maintain a restricted driver's license. That is not likely true as to the fine in this bill of up to \$50,000, which is actually a fine of over \$200,000 with penalty assessments. (See Comment #5.) It is also unclear what would motivate prostitution probationers to fully comply with special conditions, such as a sex buyers' program modeled on the drinking driver programs.

6. Penalty Assessments Effectively Quadruple a Criminal Fine – Difficulty Collecting Fines

Concerns about Collecting High Fines from Criminal Convictions

It has been often noted that California criminal fines – especially penalty assessments added to each fine - can be very difficult and expensive to collect eliminating the value of the fine.⁴ A special fine imposed on commercial sex buyers that would fund effective programs for persons sexually persons could be valuable in reducing sex trafficking and the harms it creates or exacerbates. These harms include poverty, homelessness, drug dependence and other conditions that are associated with entry into commercial sex.

³ http://apps.dmv.ca.gov/about/profile/rd/r_d_report/Section_5/S5-236.pdf.

⁴ <https://www.library.ca.gov/crb/06/03/06-003.pdf>.

Penalty Assessments

Mandatory penalty assessments and fees - 310% as of April, 2013 - are assessed on the base fine for a crime. The penalty assessment structure is extremely complex. As the balance of this comment demonstrates, the penalty assessments generally have little or nothing to do with the crime for which the fine-paying defendant was convicted. Assuming a defendant was fined \$10,000 as the maximum fine, the following penalty assessments would be imposed pursuant to the Penal Code and the California Government Code:

Base Fine:	\$ 10,000
Penal Code 1464 assessment:	\$10,000 (\$10 for every \$10)
Penal Code 1465.7 surcharge:	2,000 (20% surcharge)
Penal Code 1465.8 assessment:	40 (\$40 fee per offense)
Government Code 70372 assessment:	5,000 (\$5 for every \$10)
Government Code 70373 assessment:	30 (\$30 for felony or misd.)
Government Code 76000 assessment:	7,000 (\$7 for every \$10)
Government Code 76000.5 assessment:	2,000 (\$2 for every \$10)
Government Code 76104.6 assessment:	1,000 (\$1 for every \$10)
Government Code 76104.7 assessment:	4,000 (\$4 for every \$10)
Total Fine with Assessments:	\$41,070

Distribution of Penalty Assessments:

- State penalty of \$10 for every \$10. 70 % is transmitted to the state and 30 percent remains with the county. The state portion of penalty is distributed in specified percentages among: the Fish and Game Preservation Fund (0.33 percent); the Restitution Fund (32.02 percent); the Peace Officers Training Fund (23.99 percent); the Driver Training Penalty Assessment Fund (25.70 percent); the Corrections Training Fund (7.88 percent); the Local Public Prosecutors and Public Defenders Fund (0.78 percent, not to exceed \$850,000 per year); the Victim-Witness Assistance Fund (8.64 percent); and the Traumatic Brain Injury Fund (0.66 percent). (Penal Code § 1464.)
- County penalty assessment of \$7 for every \$10 upon every fine or penalty including all Vehicle Code offense and any local ordinance adopted pursuant to the Vehicle Code except parking offenses. The money collected shall be placed in any of the following funds if established by a County Board of Supervisors: Courthouse Construction Fund; a Criminal Justice Facilities Construction Fund; Automated Fingerprint Identification Fund; Emergency Medical Services Fund; DNA Identification Fund. (Gov. Code § 76000 et seq.)
- State surcharge of 20 % for deposit in the General Fund. (Pen. Code § 1465.7.)
- "State Court Facilities Construction Fund" – up to \$5 for every \$10. Each county determines the amount – for local courthouse construction. (Gov. Code §§ 70372, 76100.)

(More)

- \$1 on every \$10 for DNA databank implementation. (Gov. Code § 76104.6)
- State-only penalty of \$4 for every \$10. (Gov. Code § 76104.7.)
- \$2 on every \$10 to support emergency medical services. (Gov. Code § 76000.5.)
- \$4 on every Vehicle Code violation or local ordinance for the Emergency Medical Air Transportation Act Fund. (Government Code § 76000.10.)
- Flat fee of \$40 to ensure adequate funding for court security. (Penal Code § 1465.8.)

7. Payment of Criminal Fines to a Law Enforcement Entity – Bounty Issues and Precedent for Funding Law Enforcement Activities through Fines

The payment of criminal fines or fees to a law enforcement entity or for direct law enforcement purposes raises issues of an improper bounty – an incentive for law enforcement agencies to pursue investigations based on financial interest, rather than public safety. These concerns may be heightened when government budgets are strained.

Further, designating that criminal fines be paid to a particular kind of law enforcement program could set a precedent under which other law enforcement entities could press to receive the proceeds of criminal fines. Investigations of many crimes – murders, sexual assaults, financial crimes, construction fraud and worker’s compensation fraud – may be as costly and complicated as commercial sex crimes. For example, the Contractors’ State License Board uses stings to catch unlicensed contractors. If criminal fines are used to fund decoy programs in which law enforcement personnel pretend to be commercial sex workers, law enforcement officers and prosecutors who handle other complex cases could well demand that fines be used to support their operations.

To avoid creation of an incentive for law enforcement to pursue certain crimes for financial purposes, not solely law enforcement purposes, and to avoid a precedent for funding law enforcement through criminal fines, it is suggested that the bill could be amended to deposit special fines in commercial sex cases into victim services.

In this bill, another concern is that the law *enforcement* funding is designated for *prevention* programs. As the name states, law enforcement entities enforce the criminal law by arresting subjects and collecting evidence for the prosecutor. Law enforcement agencies conduct prostitution “stings” in which a law enforcement decoy pretends to be a prostitute in order to arrest a person for solicitation of prostitution. While this can be said to prevent a prostitution offense on the night of arrest, it cannot be determined if the arrested person would seek out prostitutes at a later time. Further, the person might learn from the arrest how to avoid decoys and arrests on other occasions. Further, law enforcement entities generally do not have programs to turn prostitutes away from sexual commerce and toward different employment and social contacts and conducting stings to arrest sex purchasers would not directly affect sex workers.

WOULD DIRECT DISTRIBUTION OF SPECIAL FINES FROM COMMERCIAL SEX CRIME CONVICTIONS RAISE CONCERNS THAT INVESTIGATION AND PROSECUTION OF SUCH CRIMES COULD BE BASED ON FINANCIAL INCENTIVES, RATHER THAN SOLELY FOR LAW ENFORCEMENT PURPOSES?

8. Limited Distribution of Fines into the Victim Witness Fund for Sex Trafficking Victims

The Victim Witness Assistance Fund is largely funded by a small portion of the penalty assessments imposed on each criminal fine, except parking offenses and specifically exempt fines. Local victim-witness assistance programs also receive federal Victims of Crime Act and Violence Against Women Act funding. A negligible amount of income – \$20,000 in 2013-14 is generated from surplus money investments and penalties on specific felony convictions⁵. In 2013-14, the fund is projected to have a negative balance of \$83,000. In 2014-15, the fund is projected to have a balance of \$5.8 million due to a \$10.1 million General Fund loan repayment from 2011. Each county designates an agency to operate a victim witness assistance program. The district attorney is the designated agency in all but seven counties (three in probation departments and one in a county sheriff's office).

Only eight community-based agencies received money from the fund in fiscal year 2012-2013 for child sexual abuse and exploited homeless youth. These agencies received \$978,000 from the fund, with \$256,500 going to the Child Sexual Abuse Treatment Program and \$721,500 to the Homeless Youth and Exploitation Program. The Homeless Youth program also received \$356,000 General Fund money in fiscal year 2012.

There appear to be a great unmet need for funding of community-based agencies that provide services to sex trafficking victims and homeless minors who could become involved in commercial sex. Only eight community-based agencies received money from the fund in fiscal year 2012-2013 for services to child sexual abuse victims and exploited homeless youth. These agencies received \$978,000 from the fund, with \$256,500 going to the Child Sexual Abuse Treatment Program and \$721,500 to the Homeless Youth and Exploitation Program. The Homeless Youth program also received \$356,000 General Fund money in fiscal year 2012.

COULD FINES IN ADULT PROSTITUTION CASES BE USED TO FUND COLLABORATIVE COURTS FOR MINORS INVOLVED IN SEXUAL COMMERCE?

WOULD DISTRIBUTION OF FINE PROCEEDS TO COLLABORATIVE COURTS BY THE JUDICIAL COUNCIL REDUCE CONCERNS ABOUT SELF-DEALING BY A PARTICULAR COUNTY'S COURT SYSTEM?

⁵ This entire amount is \$5,000 less than the maximum amount of a single special fine authorized by Penal Code § 261.9 to be imposed on purchasers of sex from a minor.

9. Recidivism Studies on Persons Convicted of Purchasing Sex – Effects of Special Programs

A study⁶ in 2002 in the *Western Criminology Review* of a now defunct first-offender program in Portland (SEEP) found very low recidivism rates for *all* prostitution arrestees regardless of whether they were referred to SEEP and participated, were referred to SEEP but did not attend, or were not referred to the program. The study considered only a two-year period and a relatively small number of offenders. The researchers inferred from the data that an arrest, per se, could have deterred offenders, as prostitution offenses involve significant shame. The authors, however, also questioned if the offenders continued to solicit prostitutes but simply learned how to avoid arrest. They could not say whether the education from the SEEP program would have led the participants to avoid prostitution for a substantial time in the future.

A number of cities around the country have adopted special first-offender prostitution diversion programs that educate men arrested for soliciting an act of prostitution about the harms caused by or attendant to the commercial sex trade. The San Francisco program – First Offender Prostitution Program (FOPP) – was one of the first of these programs. The program requires men arrested for the first time for a prostitution offense to attend a one-day course of the harms caused or exacerbated by the demand for prostitution. Men who complete the course are diverted out of the criminal justice system.⁷

A report on the San Francisco FOPP conducted by Abt Associates concluded that program was well run and effective. The program educated participants about the risk of harm to prostitution customers, such as robbery, reinforcement of sexually compulsive behaviors and sexually transmitted diseases (STD). The course also examined the negative consequences for prostitutes, such as drug abuse, STDs and other health problems, criminal convictions, exploitation by pimps, rape and other violence and harm to the community. The Abt report found a sharp drop in recidivism attributable to the program.⁸

The claims of a sharp drop in recidivism in the Abt report have been criticized and questioned. One study by researchers from DePaul University and American University found methodological flaws in the Abt report.⁹ The study from the *Western Criminology Review* (noted above) found that recidivism rates attributable to FOPP programs are difficult to measure, as johns arrested for prostitution offenses can easily learn how to avoid arrest. Further, the increasing shift of prostitution to the Internet makes it difficult to measure recidivism.¹⁰

**DOES RESEARCH INDICATE THAT AN ARREST, PER SE, MAY BE A SUBSTANTIAL
DETERRENT FOR MEN WHO SOLICIT PROSTITUTES?**

⁶ <http://wcr.sonoma.edu/v3n2/monto.html>.

⁷ <http://sagesf.org/first-offender-prostitution-program-fopp>.

⁸ <https://www.ncjrs.gov/pdffiles1/nij/grants/222451.pdf>.

⁹ <http://rightswork.org/wp-content/uploads/2012/09/John-Schools.Lovell.Jordan.7.12.pdf>.

10. Limited Studies of the Demographics of Prostitution Customers

According to a John Jay College study of commercially, sexually exploited homeless youth in New York often sought out customers. (See Comment #12.) Particularly in Manhattan, or through the Internet, CSEC sought older white customers who were perceived to have more money. However, the range of customers was relatively wide.

A draft University of Chicago study by Steven Levitt and Sudhir Alladi Venkatesh (Freakonomics) conducted a detailed study of street-level prostitution in certain Chicago neighborhoods known for prostitution, including a neighborhood where prostitution was controlled by pimps and a neighborhood where prostitutes were independent.¹⁰ Levitt estimated that there were 1,200 acts of prostitution per arrest, indicating that even street-level prostitution customers generally need not fear arrest. The Chicago study noted that more upscale prostitution occurred over the Internet and through escort services, where the likelihood of arrest was low. Freakonomics publications later noted that the cost of prostitution had declined in recent decades, likely indicating that customers were spread across economic classes.¹¹

Levitt found “many men making a few visits and a small number of men making very frequent visits.” He found 25 johns arrested twice and 2,969 johns who were arrested once. As in the Western Criminology Review study, Leavitt speculated that some men may have learned from one arrest how to avoid another. However, some johns may have been arrested multiple times because they were not good at distinguishing between an actual prostitute and a police decoy.

A 2008 review in the Electronic Journal of Human Sexuality¹² of studies from cities across the country found wide variance in education, income and ethnicity among prostitution customers. There were some regional differences, such as lower levels of education in Indianapolis, likely marginally higher income in Portland, Oregon and similar street level and off-street (massage parlors, escort service, bars) customers in Colorado Springs. However, the Colorado Springs study was conducted between 1988 and 1992, largely before sex commerce became widely available on the Internet.

11. Sex Trafficking of Minors – Estimated Prevalence and Available Data

General Trafficking Prevalence Estimates and Data; 2007 California Data

There appears to be general agreement that sex trafficking of children is increasing and profitable. However, the 2007 Final Report of the California Alliance to Combat Trafficking and Slavery Task Force¹³ noted that California lacked comprehensive statistics on human trafficking. Thus, many statistics on human trafficking in general, and sex trafficking of children in

¹⁰ <http://economics.uchicago.edu/pdf/Prostitution%205.pdf?q=venkatesh>. Levitt noted that the data was preliminary and cautioned those who would cite the report, the study has been widely read and cited.

¹¹ <http://freakonomics.com/books/superfreakonomics/chapter-excerpts/chapter-1/>.

¹² <http://www.ejhs.org/volume11/brewer.htm>.

¹³ The task force was administered by the California Attorney General's Office.

particular, are estimates. The 2007 report did cite statistics from various sources, including a study finding that 80% of documented cases in California occurred in urban areas and the majority of victims were non-citizens. A U.S. State Department report of global trafficking estimated that minors constituted 50% of trafficking victims. (2007 Alliance to Combat Trafficking, Final Report, pp. 33-39.¹⁴) The State Department also noted that 14,500 to 17,500 persons are trafficked into the United States from other countries.¹⁵

The Federal Bureau of Investigation (FBI) conducts 24 Innocence Lost child sexual exploitation task forces and working groups across the country. Through 2007, 365 cases were opened and 281 child victims were located. The Shared Hope International non-profit organization has reported that approximately 100,000 domestic minors are sexually trafficked each year.¹⁶ Numerous examples of trafficking cases were summarized in the California Alliance Report. In 2001, a Berkeley man was prosecuted for smuggling 15 girls from India for labor and sexual exploitation. In 2000, a man was prosecuted for bringing women and girls from Mexico and forcing them to work as prostitutes in Long Beach. (2007 Alliance to Combat Trafficking, Final Report, p. 18.)

2012 Report of the California Attorney General on Human Trafficking

The California Attorney General's Human Trafficking in California 2012¹⁷ 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.¹⁸ 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

¹⁴ http://ag.ca.gov/publications/Human_Trafficking_Final_Report.pdf. The report includes citations to the each of the studies quoted in the report.

¹⁵ <http://oag.ca.gov/human-trafficking/2012>, Ch. 3 p. 48.

¹⁶ http://www.sharedhope.org/Portals/0/Documents/SHI_National_Report_on_DMST_2009.pdf.

¹⁷ <http://oag.ca.gov/human-trafficking/2012>.

¹⁸ <http://oag.ca.gov/human-trafficking/2012>, Ch. 3, pp. 47-53.

Trafficking by Category

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

Insufficient Reporting of Labor Trafficking

As labor trafficking is greatly under-identified and under-reported, the task force data does not reflect the true extent of labor trafficking. The report noted: “The Work Group’s concerns [about under-reporting of labor trafficking] are further supported by ILO (International Labor Organization), which indicate that the majority of global trafficking is labor, rather than sex, trafficking.”¹⁹

12. Detailed John Jay College of Criminal Justice Study on Commercially Exploited Children (CSEC) found that most CSEC were introduced to Commercial Sex By Peers

Recent years have seen a great increase in awareness of and concerns about minors – most often girls - engaged in commercial sex activities. Organized, coerced trafficking has received the most attention. Sex trafficking of has been described as sexual slavery. Trafficked minors are isolated, controlled by and made dependent on their exploiters, and can even be perversely loyal because of the manufactured dependency.²⁰

However, a detailed 2008 study by the Center for Court Innovation and John Jay College of Criminal Justice found that most of the minors engaging in commercial sex in New York City are homeless or runaway minors who engage in “survival sex” to obtain small amounts of money for food and other necessities. A significant number of these CSEC – commercially sexually exploited children – are gay, lesbian and transgender youth who left unsupportive families and communities. The study authors were surprised to find that most CSEC were recruited or initiated into survival sex by their peers, with no involvement by adult pimps. The John Jay study also reported that many CSEC were simply approached on the street by would-be customers, without any solicitation by the CSEC.²¹ Also surprising, there were as many male CSEC as female in New York City.

Rachel Aviv’s December 2012²² profile of homeless young people in the New Yorker magazine noted the results of the John Jay study and then carefully documented the daily lives of a number of homeless young people on the New York City streets. They often formed informal communities or street families for support. They sometimes shared repeat customers and money earned from

¹⁹ <http://oag.ca.gov/human-trafficking/2012>, Ch. 3, pp. 52-53.

²⁰ Rachel Lloyd, *Girls Like Us*, pp.153-159 Harper Collins, 2011.

²¹ <https://www.ncjrs.gov/pdffiles1/nij/grants/225083.pdf>, pp 48-49,. 32-102.

²² http://www.newyorker.com/reporting/2012/12/10/121210fa_fact_aviv?currentPage=all&pink=HhM7xT.

commercial sex, technically acting as pimps for each other. Adults who purchase sex from CSEC are certainly aware that they are taking advantage of these children. Some men use violence against the homeless young people.

Aviv's profile documented that living on the streets and engaging in survival sex is perilous. The rate of HIV among homeless youth is triple that of the general population. Hunger and illness are common and many show symptoms of psychiatric disorders. Many face the frightening prospect of becoming chronically or permanently homeless. Aviv wrote: "Samantha and Ryan were both terrified of becoming 'lifers.' They saw the signs in their friends, who stopped trying to get job interviews, missed appointments with caseworkers, and cycled in and out of psychiatric hospitals or rehab centers, becoming accustomed to people telling them what to do and when."

13. Girls Collaborative Court Programs for Minors Engaged in Prostitution

Special Court Process

The New Yorker profile noted above described a patchwork of services that are not coordinated or comprehensive. As the CSEC understood, they are constantly in danger of becoming lifers on the street, with the attendant harms of that life. The John Jay study may not reflect the populations of CSEC in cities and areas other than New York. However, the study does indicate that approaches that rely mostly on enforcement of criminal laws against human trafficking and pimping will not likely solve many of the problems of young people who are exploited for commercial sex.

There has been a growing awareness of the value of special juvenile courts for the girls found to be involved in commercial sex. It has been argued that treating juvenile prostitution as a crime problem does little or nothing to address the underlying circumstances that bring minors to engage in commercial sex. Special collaborative courts can organize and monitor supervision and treatment of CSEC girls. Special STAR (Succeeding through Achievement and Resilience) courts have been implemented in Los Angeles as a pilot project that is reportedly being expanded.²³ Alameda County has an established an extensive Girls Court. New York has created a network of 11 Human Trafficking Intervention Courts for juveniles who are at least 16 years old.²⁴

It appears that collaborative courts for minors caught up in sexual commerce have focused almost exclusively on girls. However, the John Jay study and the New Yorker investigative article indicate that there are a substantial number of boys and transgender youth who are CSEC. In New York, the John Jay study found that as many boys as girls were involved in sexual

²³ <http://file.lacounty.gov/bos/supdocs/70403.pdf>.

²⁴ http://www.nytimes.com/2014/01/29/us/a-courts-all-hands-approach-aids-girls-most-at-risk.html?_r=0.

commerce. Arguably, collaborative courts should be organized or designed to handle whatever populations of CSEC are present in the community of the court or courts.

Possible Funding of Girls Courts by Prostitution Fines

Collaborative girls courts have only been implemented on a limited basis, likely because the court system and probation departments have limited funds. A successful girls' court or other collaborative court for minors involved in prostitution could move a minor out of the world of sexual exploitation, limiting the extent of juvenile prostitution and the need for arresting offenders.

Perhaps the author would consider using some of the fines collected from defendants who purchase or offer to purchase sexual services. The concerns of creating a court bounty would be limited by the fact that adult criminal courts would impose fines on prostitution defendants. The proceeds of the fines would be disbursed to the juvenile court – a separate branch of a county superior court system. However, to limit concerns about self-dealing by the superior court in any particular county, perhaps the Judicial Council could distribute the money to collaborative courts that apply for funding through grants or another funding method.
