
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 1414 **Hearing Date:** April 16, 2024
Author: Grove
Version: February 16, 2024
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Crimes: solicitation of a minor*

HISTORY

Source: Author

Prior Legislation: AB 1970 (Boerner Horvath), held in Assem. Public Safety Comm., 2022
AB 1173 (Rubio), failed passage Assem. Public Safety Comm., 2021
AB 892 (Choi), failed passage Assem. Public Safety Comm., 2021
AB 2862 (Rubio), held in Assem. Public Safety Comm., 2020
AB 663 (Cunningham), held in Sen. Approps., 2019
SB 303 (Morrell), held in Sen. Public Safety Comm., 2017
SB 982 (Huff), held in Sen. Approps., 2014

Support: Bakersfield Crisis Pregnancy Center, INC.; Bilateral Safety Corridor Coalition; Breaking the Chains; California City Police; California Association of Highway Patrolmen; California Baptist for Biblical Values; California Catholic Conference; California Commission on Sexual Exploitation; California Family Council; California Police Chiefs Association; California State Sheriffs' Association; Childhelp; Church Without Walls; City of Taft; City of Taft Police Department; City of Tehachapi; Compadres Connect; Concerned Women for America; Cooliage Triangle; County of Kern; County of San Luis Obispo; Empowerment (Dess Perkins Foundation); Exodus Cry; Forgotten Children INC.; Fresno County District Attorney Lisa A. Smittcamp; Fresno Police Department; Garden Pathways; Global Hope 365; Greater Bakersfield Chamber of Commerce; Greater Bakersfield Republican Assembly; Helping US; Interfaith Statewide Coalition; Journey Out; Kern County Fire Chief; Kern County Probation Department; Kern County Sheriff's Office; Kern County Supervisor Jeff Flores; Kern High School District; Lighthouse Baptist Church; Love Never Fails; Lucerne Valley Economic Development Association (LVEDA); Magdalene Hope, INC.; National Center on Sexual Exploitation (NCOSE); People's Association of Justice Advocates; Project Rescue; Real Impact; Republican National Hispanic Assembly of California (RNHA Ca); San Bernardino County Sheriff's Department; San Diego City Attorney's Office; Santa Barbara Women's Political Committee; Sower Education Group - Rachel Thomas; The American Council for Evangelicals; The Foundation United; Tulare County Probation Department; Tulare County Sheriff; Tulare District Attorney; Tulare County; US Representative, David G. Valadao; Visalia Police Department; Women's Center-high Desert, INC.; Zoe International; 6 private individuals

Opposition: California Public Defenders Association; Californians for Safety and Justice; Californians United for a Responsible Budget; Ella Baker Center for Human Rights; Initiate Justice; Initiate Justice Action; Rubicon Programs; Santa Cruz Barrios Unidos; Smart Justice; Young Women's Freedom Center

PURPOSE

The purpose of this bill is to: 1) remove the requirement that a person who solicited a minor for an act of solicitation knew or should have known that the person solicited was a minor, 2) increase the penalty for solicitation of minor punishable in state prison for 2, 3, or 4 years, and 3) require a person convicted of soliciting a minor, on or after January 1, 2025, to register as a sex offender.

Existing law makes it a misdemeanor to solicit anyone to engage in or engage in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view. (Pen. Code, § 647, subd. (a).)

Existing law makes it a misdemeanor to solicit, agree to engage in, or engage in any act of prostitution with the intent to receive compensation, money, or anything of value from another person. This act is punishable by (Pen. Code, § 647, subd. (b)(1).)

Existing law makes it a misdemeanor to solicit, agree to engage in, or engage in, any act of prostitution with another person who is 18 years of age or older in exchange for the individual providing compensation, money, or anything of value to the other person. (Pen. Code § 647, subd. (b)(2).)

Existing law makes it a misdemeanor to solicit, or agree to engage in, or engage in, any act of prostitution with another person who is a minor in exchange for the individual providing compensation, money, or anything of value to the minor. (Pen. Code § 647, subd. (b)(3).)

Existing law provides that if the crime of solicitation of a minor is committed and the defendant knew or should have known that the person solicited was a minor at the time of the offense, the violation is punishable by imprisonment in a county jail for a minimum of two days and not more than one year, or by a fine not \$10,000, or by both that fine and imprisonment. (Pen. Code § 647, subd. (1)(1).)

This bill removes the requirement that the person soliciting prostitution knew or should have known that the person being solicited was a minor at the time of the offense in order to be guilty of the heightened misdemeanor penalty in subdivision (1) of Penal Code Section 647.

Existing law authorizes a court, in unusual cases, when the interests of justice are best served, to reduce or eliminate the mandatory two days of imprisonment in a county jail required under Penal Code section 647, subd. (1)(1). If the court reduces or eliminates the mandatory two days' imprisonment, the court shall specify the reason on the record. (Pen. Code, § 647, subd. (1)(2).)

This bill deletes the above provision.

This bill increases the punishment for a person convicted of soliciting a minor from a misdemeanor punishable by imprisonment for a minimum of two days and a maximum of one year and/or a maximum fine of \$10,000 to a felony punishable by 2, 3, or 4 years in state prison and/or a maximum fine of \$25,000.

Existing law requires persons convicted of specified crimes to annually register as a sex offender for a minimum term of ten or twenty years, or life. (Pen. Code, § 290.)

This bill requires a person who is convicted of soliciting a minor, on or after January 1, 2025, to annually register as a sex offender for a minimum of ten years.

COMMENTS

1. Need for This Bill

According to the author of this bill:

SB 1414 states that any individual who solicits, agrees to engage in, or engages in any act of commercial sex with a minor will face felony charges. If passed, this law will hold these offenders accountable under strict liability (meaning buyers can't just claim they thought the child was of age) and they will face imprisonment in the state prison, along with fines up to \$25,000 and mandatory registration as a sex offender. We must continue to shed light on the darkness of human trafficking, bring justice and protection to those who are most vulnerable. We are sending a clear message with SB 1414— Not one more child should have to suffer at the hands of those who seek to exploit and harm them.

2. Solicitation of a Minor

Existing law provides that the penalty for solicitation of a minor, who the person knew or should have known was a minor, is a minimum of two days imprisonment in county jail and up to one year in county jail and/or a fine of not more than \$10,000. Existing law also provides that the court may, in unusual circumstance eliminate the mandatory two days in jail. (Pen. Code, § 647, subd. (1).) Where there is no showing that the defendant knew or should have known the person was a minor, the offense is punishable by up to six months in the county jail and/or a fine up to \$1,000. (Pen. Code, § 647, subd. (b)(3).)

This bill would instead make all solicitation of a minor a state prison felony offense with a penalty of two, three or four years in state prison, and/or a fine not exceeding \$25,000, regardless of whether the defendant knew or should have known the person was a minor. In doing so, this bill lowers the bar as to what must be proven to obtain a criminal conviction while at the same time increasing the punishment under the statute to a state prison felony.

A number of other crimes, including crimes with felony penalties, already exist relating to solicitation of a minor. Soliciting (arranging a meeting with) a minor for lewd purposes is punishable as a misdemeanor, or as a state prison felony under some circumstances (if the defendant goes to the arranged meeting or is required to register as a sex offender). (Pen. Code, § 288.4.) To be guilty of this offense the defendant must believe the person is a minor. (*Ibid.*) Contacting a minor with the intent to commit a specified sex offense is punishable in state

prison. (Pen. Code, § 288.3.) To be guilty of this offense, the defendant must have known or should have known the person is a minor. (*Ibid.*) “Sexting” a minor is a wobbler punishable as a misdemeanor or state prison felony. (Pen. Code, § 288.2.) To be guilty of this offense, the defendant must have known, or should have known, or believed that the person is a minor. (*Ibid.*) Luring or attempting to lure a minor under the age of 14 is punishable as an infraction or misdemeanor. (Pen. Code, § 272, subd. (b)(1).) To be guilty of this offense, the defendant must have known or reasonably should have known that the minor is under 14 years of age. (*Ibid.*)

Statutory rape is punishable as a misdemeanor or a county jail felony depending on the difference in age between the defendant and the victim. (Pen. Code, § 261.5.) Good faith reasonable belief that that minor was an adult is a defense to the crime. (*People v. Hernandez* (1964) 61 Cal. 2d 529.) Lewd acts with a minor 14 or 15 years of age and under is punishable as a misdemeanor in some circumstances or a state prison felony. (Pen. Code, § 288.) Due to the younger age of the intended victims in this offense, mistake of fact regarding the minor’s age is not a defense. (*People v. Paz* (2000) 80 Cal. App. 4th 293.)

3. History of Sex Offender Registration

California was the first state to require sex offender registration in 1947. The stated purpose for sex offender registration is to deter offenders from committing future crimes, provide law enforcement with an additional investigative tool, and increase public protection. [*Wright vs. Superior Court* (1997) 15 Cal.4th 521, 526; Alissa Pleau (2007) *Review of Selected 2007 California Legislation: Closing a Loophole in California's Sex Offender Registration Laws*, 38 McGeorge L. Rev. 276, 277; *Hatton vs. Bonner* (2004) 365 F. 3rd 955, 961.] California’s sex offender registration law historically required lifetime registration by persons convicted of specified sex crimes. (Pen. Code, § 290 subd. (a).)

In 1996, California enacted "Megan's Law" allowing the public to access an address list of registered sex offenders. Before 2003, members of the public could only obtain the information on the Megan's Law list by calling a "900" number or visiting certain designated law enforcement agencies and reviewing a CD-ROM. However, in 2003, California required the Department of Justice (DOJ) to put the Megan's Law list of offenders on a public access website with the offender's address, photo and list of offenses. (See Pen. Code, § 290.46, subd. (a).) For some offenders with less serious offenses, only their ZIP code is listed. Now, a citizen can enter their address and see if there are registered sex offenders living in the community or even next door.

In 2017, California modified its sex registry to a three-tiered registration system based on seriousness of the crime, risk of sexual reoffending, and criminal history. (SB 384 (Wiener), chapter 541, statutes of 2017.) The recommendation to move to a tiered system came from the California Sex Offender Management Board’s 2010 recommendations report. (See https://casomb.org/docs/CASOMB%20Report%20Jan%202010_Final%20Report.pdf (Jan. 2010), p. 50 [as of Apr. 8, 2024].) According to the committee’s analysis for the bill which started off as SB 421 (Wiener) of that same year:

Based on a survey of several municipal law enforcement agencies in California, it is estimated that local law enforcement agencies spend between 60-66% of their resources dedicated for sex offender supervision on monthly or annual registration paperwork because of the large numbers of registered sex offenders on our registry. If we can remove low risk offenders from the registry it will free up law

enforcement officers to monitor the high risk offenders living in our communities. Law enforcement cannot protect the community effectively when they are in the office doing monthly or annual paperwork for low risk offenders, when they could be out in the community monitoring high risk offenders. Furthermore, the public is overwhelmed by the number of offenders displayed online in each neighborhood and do not know which offenders are considered low risk and which offenders are considered high risk and therefore truly dangerous.

(Sen. Com. on Public Safety, Analysis of Senate Bill No. 421 (2017-18 Reg. Sess.) as amended Apr. 17, 2017, p. 9.) A tier one offender is someone who is required to register for a misdemeanor sex offense or a felony conviction that is not a serious or violent felony. Tier one requires a person to register for a minimum of 10 years. (Pen. Code, § 290, subd. (d)(1).) A tier two offender is a person who is required to register for a felony that is defined as a serious or violent felony or other specified sex offenses, unless the person is otherwise required to register under tier three. Tier two requires a person to register for a minimum of 20 years. (Pen. Code, § 290, subd. (d)(2).) A tier three offender is a person who is convicted a specified offense or under the one-strike sex law, or is designated as a sexually violent predator or habitual sex offender, in addition to other qualifying offenses and circumstances. (Pen. Code, § 290, subd. (d)(3).)

Sex offenders are required to register annually within five working days of their birthday. (Pen. Code, § 290 subd. (b).) If the offender has no fixed address, they are required to register every 30 days. (Pen. Code, § 290.011 subd. (a).) A person is also required to notify law enforcement of any change of address within five days of moving. (Pen. Code, § 290.013.) A person who fails to register as a sex offender within the period required by law is guilty of a felony punishable by 16 months, 2 or 3 years. (Pen. Code, § 290.018 subd. (b).) A person who changes their name is required to inform law enforcement within 5 working days. (Pen. Code, § 290.14, subd. (a).) A person who is required to register their Internet identifiers who adds or changes an Internet identifier is required to report this change within 30 working days of the change. (Pen. Code, § 290.14, subd. (b).)

The minimum time period for completion of the required registration period in tier one or tier two begins on the date of the person's release from incarceration or other commitment on the registerable offense. The time period is tolled during any period of subsequent incarceration or commitment, except that arrests not resulting in conviction, adjudication or revocation of supervision shall not toll the registration period. The minimum time period shall be extended by one year for each misdemeanor conviction of failing to register under this act, and by three years for each felony conviction of failing to register under this act, without regard to the actual time served in custody for the conviction (Pen. Code, § 290, subd. (e).)

The registration statute requires all persons convicted of a listed crime to register annually within five days of their birthday. (Pen. Code, § 290.012 subd. (a).) Although most registerable offenses are felonies, there some alternate felony/misdemeanor penalties and a few straight misdemeanors. (*See* (Pen. Code, § 243.4 (sexual battery); (Pen. Code, § 266c (obtaining sexual consent by fraud); (Pen. Code, §§ 311.1, 311.2, subd. (c), 311.4, 311.11 (child pornography); (Pen. Code § 647.6 (annoying or molesting a child); and, (Pen. Code, § 314, (1)(2) (indecent exposure).) Certain offenses where the act was engaged in voluntarily, albeit without consent because minors cannot legally consent, only require sex offender registration when there is more than a 10-year age gap between the defendant and the minor. (Pen. Code, § 290, subd. (c)(2).)

A court may also order a person not otherwise required to register as a sex offender if they find that the person committed the offense as a result of sexual compulsion or for the purposes of sexual gratification. (Pen. Code, § 290.006.)

This bill adds solicitation of a minor to the list of offenses that require mandatory sex offender registration under tier one which is registration for a minimum period of 10 years.

4. Creation of New State Prison Felony

In January 2010, a three-judge panel issued a ruling ordering the State of California to reduce its prison population to 137.5% of design capacity because overcrowding was the primary reason that CDCR was unable to provide inmates with constitutionally adequate healthcare. (*Coleman/Plata vs. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.) The United State Supreme Court upheld the decision, declaring that “without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill” inmates in California’s prisons. (*Brown v. Plata* (2011) 131 S. Ct. 1910, 1939; 179 L.Ed.2d 969, 999.)

After continued litigation, on February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows: 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.

CDCR’s March 2024 monthly report on the prison population notes that the state prison population is at 119.6% of design capacity. (<https://www.cdcr.ca.gov/3-judge-court-update/> [as of April 8, 2024].) The monthly report also notes CDCR’s population reduction efforts and evidence of durable compliance with the 137.5% benchmark ordered by the court.

While CDCR is currently in compliance with the three-judge panel’s order on the prison population, the state needs to maintain a “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14).)

This bill increases the punishment for solicitation of a minor from a misdemeanor to a state prison felony. Creating a new state prison felony is inconsistent with the goal of finding a durable solution to prison overcrowding.

5. Argument in Support

According to the Tulare County District Attorney:

California is a hot bed for human trafficking and consistently ranks number one in cases reported to the National Human Trafficking Hotline. Human trafficking is among the world’s fastest growing criminal enterprises and is estimated to be a \$150 billion-a-year global industry. It is a form of modern slavery that profits from the exploitation of our most vulnerable populations. There is no such thing as a child receiving money from a grown adult and saying its consensual sex. The reality is that these children, who are unable to consent to their own exploitation, are victims of sex trafficking.

SB 1414 will give a voice to the children who have suffered from this horrific abuse. California has failed to make the actions of the buyer of sex with a child a serious crime. It takes two criminals to commit the crime of child sex trafficking, a buyer and a seller. Buying sex from a child is a serious crime and should be a felony.

6. Argument in Opposition

According to the California Public Defenders Association:

Existing law criminalizing soliciting a minor for an act of prostitution requires that the person knew or should have known that the person solicited was a minor at the time of the offense. A fundamental tenet of criminal law is that the punishment should fit the crime and that persons who commit more serious crimes are punished more seriously. Existing law does exactly that – punishes those who intentionally seek out minors for prostitution more harshly than those who solicit adult prostitutes by doubling the punishment for soliciting minors. This bill, however, punishes some defendants more harshly – felony punishment and sex offender registration – even when those persons do not have the intent to have sex with a minor. This change will unfortunately lump some defendants into the category of “sex offender” with lifelong consequences for them and their families even though the intent is completely lacking.

...

Although the age of consent in California is 18 years old, in most of the 50 states, 30-31 states, the age of consent is 16 years old. For example, in 30 states ranging from Alabama, Ohio, Pennsylvania to Washington the age of consent is 16 years old. Several states set the age of consent at 17 years old and only 9 other states besides California require an individual to be 18 years old before they can legally consent to have sex. (<https://aspe.hhs.gov/reports/statutory-rape-guide-state-laws-reporting-requirements-1>.) It is misguided to require individuals to register for 10 years on the Sex Offender Registry when they are engaging in an activity that would be legal in 80% of the country.

-- END --