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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 1051                      **Hearing Date:** July 7, 2015  
**Author:** Maienschein  
**Version:** May 4, 2015  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** JM

*Subject: Human Trafficking*

## HISTORY

**Source:** Alameda County District Attorney; County of San Diego; San Diego Regional Chamber of Commerce

**Prior Legislation:** SB 473 (Block) 2014, Vetoed

**Support:** California Alliance of Child and Family Services; California Catholic Conference; California District Attorneys Association; California Narcotics Officers' Association; California Police Chiefs Association; California State Sheriffs Association; California Statewide Law Enforcement Association; City of Camarillo; Contra Costa County; County of Los Angeles; Crime Victims United of California; Junior Leagues of California; Grossmont Union High School District; Junior League of Napa-Sonoma; Junior League of San Diego; Los Angeles County District Attorney; Peace Officers Research Association of California; San Bernardino County; San Diego County District Attorney; San Diego County Sheriff; San Francisco Unified School District; Urban Counties Caucus

**Opposition:** California Attorneys for Criminal Justice; Legal Services for Prisoners with Children

**Assembly Floor Vote:** 74 - 0

## PURPOSE

*The purpose of this bill is to: 1) add human trafficking to the list of crimes constituting a pattern of gang activity; and 2) enact a new one-year prison enhancement if the defendant's underlying offense is either human trafficking involving a minor, or abduction of a minor for purposes of prostitution, and the offense was committed on the grounds of a school, or within 1,000 feet of a school while the school is open for classes or programs, or minors are using the facility.*

*Existing law* defines "criminal street gang" as any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more enumerated offenses, having a common name or identifying sign or symbol, and whose members engage in a pattern of gang activity.

(Pen. Code § 186.22, subd. (f).)

*Existing law* provides that a pattern of criminal gang activity can be established by a single prior offense and the crime charged in the current prosecution. (*People v. Gardeley* (1996) 14 Cal.4th 605, 625.)

*Existing law* does not require that a person convicted of a gang-related crime<sup>1</sup> be shown to be a member of a gang. The defendant in a gang-related case need not have been involved in the conduct establishing a pattern of gang activity. (*People v. Gardeley* (1996) 14 Cal.4th 605, 621-622.)

*Existing law* provides that any person who actively participates in a criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity and who promotes, furthers, or assists in any felonious conduct by members of the gang, shall be punished by imprisonment in the county jail for up to one year, or by 16 months, 2, or 3 years in state prison. (Pen. Code § 186.22, subd. (a).)

*Existing law* provides that any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in criminal conduct by gang members, shall receive a sentence enhancement or special gang penalty<sup>2</sup>, as specified immediately below. (Pen. Code § 186.22, subd. (b).)

- The (minimum) enhancements (in addition to the prison term for the underlying felony) are:
  - Felony (other than specified)                      2, 3, or 4 years
  - Serious felony    5 years
  - Violent felony    10 years
  - Home invasion robbery                              life, min. 15 years before parole eligibility
  - Carjacking    life, min. 15 years
  - Shooting from vehicle                              life, min. 15 years
  - Extortion or witness intimidation              life, min. 7 years

*Existing law* defines a “pattern of criminal gang activity” as the following:

- The commission of two or more of enumerated offenses - commonly called “predicate offenses;
- At least one of the offenses must have occurred after the effective date of the gang statute and the last of the offenses occurred within three years of a prior offense;
- The offenses were committed on separate occasions, or by two or more persons.
- The offenses need not result in a conviction, although prosecutors typically prove the pattern through prior convictions, as proof of convictions is generally certain and simple.

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<sup>1</sup> The term “gang-related” generally means any crime done for the benefit of, at the direction of, or in association with a gang, with the specific intent to promote criminal conduct by gang members. (Pen. Code § 186.22, subd. (b).)

<sup>2</sup> An enhancement is a specific term or number of years added to the standard sentence for a crime. A special penalty provision is a separate sentencing scheme, not simply a term of years added to the standard sentence

*Existing law* specifies the list of crimes constituting a pattern of gang activity:

- 1) Assault with a deadly weapon or by means of force likely to produce great bodily injury;
- 2) Robbery;
- 3) Unlawful homicide or manslaughter;
- 4) Sale, possession for sale, manufacture, et cetera, of controlled substances;
- 5) Shooting at an inhabited dwelling or occupied motor vehicle;
- 6) Discharging or permitting the discharge of a firearm from a motor vehicle;
- 7) Arson;
- 8) Intimidation of witnesses and victims;
- 9) Grand theft, as specified;
- 10) Grand theft of any firearm, vehicle, trailer, or vessel;
- 11) Burglary;
- 12) Rape;
- 13) Looting, as defined;
- 14) Money laundering;
- 15) Kidnapping;
- 16) Mayhem;
- 17) Aggravated mayhem;
- 18) Torture;
- 19) Felony extortion;
- 20) Felony vandalism;
- 21) Carjacking;
- 22) Sale, delivery, or transfer of a firearm;
- 23) Possession of a pistol, revolver, or other firearm capable of being concealed upon the person;
- 24) Threats to commit crimes resulting in death or great bodily injury, as defined;
- 25) Theft and unlawful taking or driving of a vehicle;
- 26) Felony theft of an access card or account information, as defined;
- 27) Counterfeiting, designing, using, attempting to use an access card, as defined;
- 28) Felony fraudulent use of an access card or account information, as defined;
- 29) Identity theft, as defined and specified;
- 30) Wrongfully obtaining Department of Motor Vehicles (DMV) documentation, as defined;
- 31) Prohibited possession of a firearm;
- 32) Carrying a concealed firearm, as specified;
- 33) Carrying a loaded firearm, as specified. (Pen. Code § 186.22, subd. (e).)

*Existing law* provides that a pattern of gang activity cannot be established solely by . . . offenses enumerated in paragraphs (26) to (30) - crimes involving access card, identity theft and fraudulent obtaining of DMV documentation. (Pen. Code § 186.22, subd. (j).)”

*Existing law* provides that any person who deprives or violates the personal liberty of another is guilty of human trafficking if the person specifically intends one of the following: 1) to effect or maintain a specified felony commercial sex or prostitution-related offense; 2) commit extortion; 3) specified child pornography offenses or 4) obtain forced labor or services. (Pen. Code § 236.1, subd. (a)-(b).)

- Human trafficking for forced or coerced labor or services is punishable by a prison term of 5, 8 or 12 years and a fine of up to \$500,000. (Pen. Code § 236.1, subd. (b).)

- Human trafficking involving forced or coerced sex trafficking, child pornography or extortion is punishable by a prison term of 8, 14 or 20 years and a fine of up to \$500,000. (Pen. Code § 236.1, subd. (b).)

*Existing law* provides that human trafficking of a minor does not include an element of deprivation of the victim’s liberty. Trafficking of a minor is committed through inducing, persuading causing a minor to engage commercial sex acts, child pornography or extortion, or attempting to do so, is punishable as follows:

- 5, 8 or 12 years in prison and a fine of up to \$500,000.
- 15-years-to-life and a fine of up to \$500,000 if the offense involved force, threats, coercion, fraud or deceit, as specified. (Pen. Code § 236.1, subd. (c).)

*Existing law* includes these special rules applicable to human trafficking of a minor:

- Whether the defendant caused, induced or persuaded a minor to engage in a commercial sex act depends on the totality of circumstances, including the relationship between the victim and the defendant.
- Mistake of fact as to the age of the victim is not a defense.
- Consent by a minor to an act underlying a human trafficking charge is not a defense. (Pen. Code § 236.1, subd. (d)-(f))

*Existing law* provides for the following enhancements and special fines in human trafficking cases:

- The court may impose on the defendant an additional fine of up to \$1,000,000. (Pen. Code § 236.4, subd. (a).)
- A defendant who inflicts great bodily injury on the victim of human trafficking shall be punished by a consecutive prison term enhancement of 5, 7, or 10 years. (Pen. Code § 236.4, subd. (b).)
- A defendant shall receive a consecutive prison enhancement term of 5 years for each prior human trafficking conviction.

*Existing law* provides that all fines imposed in trafficking offenses shall be deposited into the Victim Witness Assistance Fund, to be paid or granted as follows:

- 70% to public agencies and non-profits to provide direct victim services.
- 30% to law enforcement and prosecutors in jurisdiction where charges filed for prevention, witness protection and rescue. (Pen. Code § 236.4, subd. (d).)

*Existing law* defines “unlawful deprivation of liberty” as sustained and substantial restriction of another’s liberty accomplished through fraud, deceit, coercion, violence, duress, menace or a credible threat of injury to the victim or another person. (Pen. Code § 186.22, subd. (d).)

*Existing law* provides that a victim of human trafficking may bring a civil lawsuit for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. (Civ. Code § 52.5.)

*Existing law* provides that any person who takes away any other person under the age of 18 years from the father, mother, or guardian, or other person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the state prison and a fine not exceeding \$2,000. (Pen. Code, § 267.)

*Exiting law* includes numerous enhancements or special penalty provisions for crimes committed on or near schools or that pose particular danger to children:

- Selling or providing specified drugs to a minor on school grounds: enhancement of 5, 7, or 9 years. (Health & Saf. Code § 11353.5.)
- Manufacturing methamphetamine or PCP in a place where a person under the age of 16- resides: enhancement of 2 years and 5 years where great bodily injury occurs. (Health & Saf. Code § 11379.7.)
- Using minor for drug transactions involving methamphetamine, PCP, LSD on grounds of a church, school, playground, et cetera, (Health & Saf. Code § 11380.1.): enhancement of 1 year (church, playground, et cetera); 2 years (school); 1, 2 or 3 years (minor used was four years younger than the perpetrator).

*Existing law* includes the “Gun-Free School Zone Act,” which prohibits possession of a firearm on the grounds of a school or within 1,000 feet of a school without the written permission of the superintendent or his or her representative.<sup>3</sup> Penalties are imposed pursuant to Section 1170, subdivision (h), such that eligible defendants receive jail felony terms.

- Possession on school grounds is a felony, with a term of two, three or five years.
- Possession within 1,000 feet of school grounds is a felony, with a term of two, three or five years where the defendant has a specified prior conviction, if the person is prohibited from possessing a firearm, per se, or the firearm is concealable on the person.
- The crime is an alternate felony-misdemeanor, with a felony term of two, three or five years, in other cases. (Pen. Code § 626.9. subds. (a)-(f).)

*This bill:*

- Adds human trafficking to the list of offenses that may be used to establish a pattern of criminal activity, and thus the existence of a gang.
- Provides that any person who is convicted of human trafficking, where the offense was committed against a minor, or abduction of a minor for the purpose of prostitution, where any part of the violation takes place on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours that the school is open for classes or school-related programs or at any time when minors are using the facility, shall receive, in addition to any other penalty imposed, punishment of one year in the state prison.

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<sup>3</sup> Exceptions apply for otherwise lawful possession in a private residence.

## RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

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.

In February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "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)). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

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

## COMMENTS

### 1. Need for this Bill

According to the author:

According to recent media stories in the San Diego Union-Tribune and Los Angeles Times regarding a cross-country sex-trafficking ring run out of San Diego County, 22 gang members and associates were charged in the case where about 100 victims were identified, many of whom were recruited from their school. The large scope of this problem and its prevalence has led local school districts to begin training their employees to spot signs and intervene. The Grossmont Union High School District has even developed a manual to aid with training on spotting Human Trafficking and working with law enforcement. The problem of Human Trafficking and the use of schools to recruit victims is growing across the country, and here in San Diego. Current law provides that any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity is subject to certain sentencing. The definition of a criminal street gang triggers enhanced penalties and bail, affects probation and parole conditions, augments law enforcement tools, and affects the way the case is handled by all stakeholders in the system. Penal Code 186.22 defines a criminal gang and lists 33 offenses that are associated with gang activity. Currently that list does not include human trafficking.

### 2. Existing Law; This Bill

A “criminal street gang” is an organization of three or more persons, with a common name or identifying symbols, whose members engage in a “pattern of gang activity” as one of its primary activities. A pattern of gang activity means the commission of two or more of a list of specified offenses that are committed within at least a three-year period. This bill adds human trafficking to the 33 current crimes that can be part of a pattern of gang activity. The 33 crimes that can be alleged as establishing a pattern of gang activity are commonly describe by courts and practitioners as “predicate” gang crimes, because they must be established before gang penalties can be imposed.

Once the existence of the gang is shown, a defendant who commits any crime at the direction of, in association with, or for the benefit of the gang will receive substantially enhanced penalties. Depending on the crime of conviction, the additional penalties for any gang-related felony range from a two year enhancement to a term of at least 15-years to life. A non-gang member who commits a crime in association with others who are gang members will receive a gang punishment, as long as the crime promotes criminal conduct by gang members.

This bill does not change gang penalties. Rather, it expands the definition of a gang and, with that expansion, furthers the scope of sentencing available under the California Street Terrorism Enforcement and Prevention Act. In addition to sentencing, this bill would impact the admissibility of evidence in these kinds of cases. A prosecutor generally is prohibited from introducing evidence of prior crimes committed by the defendant or associates of the defendant that are not charged in the current offense. This evidence is inadmissible because

jurors might focus on the prior crime and not the evidence in the current case. (*People v. Thompson* (1980) 27 Cal.3d 393.) However, where a defendant is charged with committing a crime for the benefit of a gang, the prosecutor must establish beyond a reasonable doubt that members of the gang have engaged in predicate crimes as a primary activity. The prosecutor can present evidence that the defendant or his gang associates committed any of the crimes in the predicate crime list, regardless of the crime charged in the current case. If this bill is enacted, a prosecutor alleging that a human trafficking offense is gang-related can introduce detailed evidence relating to prior crimes.

### **3. Expansion of Gang Statutes over Time – Predicate Offenses**

The California Street Terrorism Enforcement and Prevention Act (STEP Act) was passed in 1988. The legislative findings as to the purpose of the STEP Act stated: “[I]t is the right of every person . . . to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals.” (Pen. Code § 186.21, italics added.)

Amendments increasing the predicate crimes and penalties have been steadily added to this law. The original predicate offenses included assault (Pen. Code § 245) robbery, unlawful homicide or manslaughter, trafficking in controlled substances, shooting at an inhabited vehicle (added in 1991), arson and witness intimidation. Over time, the offenses of grand theft of a vehicle, grand theft exceeding \$10,000, burglary, rape, looting, money laundering, kidnapping, mayhem, torture, felony extortion, felony vandalism and carjacking, firearm trafficking and handgun possession, criminal threats (Pen Code § 422) and theft or taking of a vehicle have been added. Proposition 21 (March 2000 primary election) greatly increased the enhancement imposed where a defendant committed a felony for the benefit of a gang. SB 444 (Ackerman), Chapter 482, Statutes of 2005, added access card theft and related crimes to the predicate gang crimes list. (A pattern of committing access card crimes cannot alone establish the existence of a gang. The pattern must be shown by access card crimes and commission of at least one other predicate gang offense.)

### **4. Enhancement for Human Trafficking or Abducting a Minor for Prostitution on the Grounds of, or within 1,000 feet of a School**

This bill would direct the court to impose a sentence enhancement of one year in prison if the defendant has been convicted of human trafficking, or abduction of a minor for purposes of prostitution, and the crime occurred on the grounds of a school, or within 1,000 feet of a school. Human trafficking of a minor includes a relatively long list of crimes involving commercial sex, including prostitution and child pornography. If the minor is brought into such activities through “force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person,” the penalty is a term of 15-years-to-life in prison and a fine of up to \$500,000. With *mandatory* penalty assessments, a fine of \$500,000 is actually a fine of over \$2,000,000. It is hard to imagine that a trafficker could lure a minor into commercial sex trade without at least deceit or fraud. That is, if the trafficker misrepresented what the minor would be doing or the conditions under which they would be done, that would clearly appear to be fraud and deceit.

Under existing law, perpetrators face a life sentence or a long determinate prison term and a very large fine for human trafficking that involves bringing a minor into the commercial sex trade. It would appear that if very severe felony penalties would not deter a potential human

trafficker, an additional year in prison would be of little consequence. Further, many, if not all, cases where a minor under the age of 14 is abducted for purposes of prostitution would constitute kidnapping for purposes of engaging in sexual conduct. That form of kidnapping is punishable by a prison term of 5, 8 or 11 years if the minor is under the age of 14. Kidnapping per se - taking a person by force or fear - is punishable by a prison term of 3, 5 or 8 years. (Pen. Code §§ 207-208.)

The punishment for human trafficking of a minor, when the crime does not involve some sort of deceit, coercion or force, is still relatively severe - 5, 8 or 12 years and a fine of up to \$500,000 (again over \$2,000,000 with mandatory penalty assessments). If this bill is enacted, the prison term could perhaps be 13 years instead of 12 in a determinate sentence. For a life term, the defendant would be eligible for parole in 16 years, not 15. Again, it is doubtful that a possible additional year in prison would change a perpetrator's decision to engage in human trafficking of a minor in light of the severe existing penalties.

California sentencing law is so complex that an enhancement for committing human trafficking on or near a school may not necessarily result in additional punishment. In some cases, imposition of the enhancement could result in a lower penalty. The imposition of the prison term for a crime and enhancements attached to that term require the court to make a series of inter-related decisions. The process becomes particularly elaborate when the defendant was convicted of multiple crimes and numerous enhancements apply.

For this bill, the most important sentencing rule is the prohibition on "dual use of facts" - the use of one fact to impose more than one punishment. A close reading of many enhancements would reveal that they could also be used as factors in aggravation of the base term - the stated penalty "triad." The sentencing triad for the less egregious form of human trafficking of a minor is 5, 8 or 12 years. The sentencing triad for abducting a minor for prostitution is 16 months, 2 years or 3 years. Penal Code Section 1170, subdivision (b), provides, in relevant part:

When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. ...The court shall set forth on the record the reasons for imposing the term selected and ***the court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law.*** A term of imprisonment shall not be specified if imposition of sentence is suspended. (Italics and bold font added.)

Under current law, where a defendant has been convicted of human trafficking of a minor without force, coercion or deceit, the court would impose a term of 5, 8 or 12 years. Penal Code Section 1170.1, subdivision (d) provides as to the imposition of the appropriate term:

If an enhancement is punishable by one of three terms, ***the court shall impose the middle term unless there are circumstances in aggravation or mitigation,*** and state the reasons for its sentence choice, other than the middle term, on the record at the time of sentencing.

Thus, the court would sentence a person convicted non-forced, non-coerced, non-fraudulent human trafficking to a term of 8 years unless there are factors in mitigation or aggravation. If the offense occurred on or near a school, the prosecutor would almost certainly argue that the school location or proximity of the crime was a factor in aggravation. If the enhancement described in this bill applied and there were no factors in mitigation and no other factors in aggravation, the following would apply:

- The court could rely on the school location or proximity of the crime as a factor in aggravation and impose the 12-year term. The court could not impose punishment on the enhancement defined by this bill.
- The court could impose the enhancement defined in this bill for human trafficking committed on or near a school and impose the middle term of 8 years and the 1-year enhancement, for a term of 9-years. The court could not impose the upper term based on the school location or proximity factor.

This analysis would also apply to a conviction for abduction for purposes of prostitution. The fact that the crime occurred on or near a school could be used by the trial court as either a factor in aggravation or to impose the enhancement, but not both.

Finally, it appears that most cases of abduction for purposes of prostitution of a minor could be charged as human trafficking in any event. Human trafficking includes the elements of inducing, causing or persuading a person to engage in a commercial sex act. However, those elements are also generally the elements of abduction for prostitution. Abduction for prostitution is defined in terms of taking a minor from her or his parent or guardian, it is difficult to imagine many cases where some coercion, force or deceit would not have been used against the minor.

## 5. Research on Sentences as a Deterrent to Crime

Criminal justice experts and commentators have noted that, with regard to sentencing, “a key question for policy development regards whether enhanced sanctions or an enhanced possibility of being apprehended provide any additional deterrent benefits.

Research to date generally indicates that increases in the certainty of punishment, as opposed to the severity of punishment, are more likely to produce deterrent benefits.<sup>4</sup>

A comprehensive report published in 2014, entitled *The Growth of Incarceration in the United States*, discusses the effects on crime reduction through incapacitation and deterrence, and describes general deterrence compared to specific deterrence:

A large body of research has studied the effects of incarceration and other criminal penalties on crime. Much of this research is guided by the hypothesis

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<sup>4</sup> Valerie Wright, Ph.D., *Deterrence in Criminal Justice Evaluating Certainty vs. Severity of Punishment* (November 2010), The Sentencing Project (<http://www.sentencingproject.org/doc/Deterrence%20Briefing%20.pdf>.)

that incarceration reduces crime through incapacitation and deterrence. Incapacitation refers to the crimes averted by the physical isolation of convicted offenders during the period of their incarceration. Theories of deterrence distinguish between general and specific behavioral responses. General deterrence refers to the crime prevention effects of the threat of punishment, while specific deterrence concerns the aftermath of the failure of general deterrence—that is, the effect on reoffending that might result from the experience of actually being punished. Most of this research studies the relationship between criminal sanctions and crimes other than drug offenses. A related literature focuses specifically on enforcement of drug laws and the relationship between those criminal sanctions and the outcomes of drug use and drug prices.<sup>5</sup>

In regard to deterrence, the authors note that in “the classical theory of deterrence, crime is averted when the expected costs of punishment exceed the benefits of offending. Much of the empirical research on the deterrent power of criminal penalties has studied sentence enhancements and other shifts in penal policy. . . .

Deterrence theory is underpinned by a rationalistic view of crime. In this view, an individual considering commission of a crime weighs the benefits of offending against the costs of punishment. Much offending, however, departs from the strict decision calculus of the rationalistic model. Robinson and Darley (2004) review the limits of deterrence through harsh punishment. They report that offenders must have some knowledge of criminal penalties to be deterred from committing a crime, but in practice often do not.”<sup>6</sup>

Members may wish to discuss whether the “rationalistic view” of crime described above likely would apply to persons who abduct minors for purposes of prostitution from schools, commit human trafficking of a minor or engage in human trafficking as gang activity. That is, would sentencing enhancements and changes in the definition of a gang proposed by this bill be known by these offenders and, if so, whether the additional time or expansion of the gang law would discourage commission of the crime.

The authors of the 2014 report discussed above conclude that incapacitation of certain dangerous offenders can have “large crime prevention benefits,” but that incremental, lengthy prison sentences are ineffective for crime deterrence:

Whatever the estimated average effect of the incarceration rate on the crime rate, the available studies on imprisonment and crime have limited utility for policy. The incarceration rate is the outcome of policies affecting who goes to prison and for how long and of policies affecting parole revocation. Not all policies can be expected to be equally effective in preventing crime. Thus, it is inaccurate to speak of the crime prevention effect of incarceration in the

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<sup>5</sup> *The Growth of Incarceration in the United States* (2014), Jeremy Travis, Bruce Western and Steve Redburn, Editors, Committee on Causes and Consequences of High Rates of Incarceration, The National Research Council, p. 131 (citations omitted) ([http://johnjay.jjay.cuny.edu/nrc/NAS\\_report\\_on\\_incarceration.pdf](http://johnjay.jjay.cuny.edu/nrc/NAS_report_on_incarceration.pdf)),

<sup>6</sup> *Id.* at 132-133.

singular. *Policies that effectively target the incarceration of highly dangerous and frequent offenders can have large crime prevention benefits, whereas other policies will have a small prevention effect or, even worse, increase crime in the long run if they have the effect of increasing postrelease criminality.*

Evidence is limited on the crime prevention effects of most of the policies that contributed to the post-1973 increase in incarceration rates. *Nevertheless, the evidence base demonstrates that lengthy prison sentences are ineffective as a crime control measure. Specifically, the incremental deterrent effect of increases in lengthy prison sentences is modest at best. Also, because recidivism rates decline markedly with age and prisoners necessarily age as they serve their prison sentence, lengthy prison sentences are an inefficient approach to preventing crime by incapacitation unless they are specifically targeted at very high-rate or extremely dangerous offenders.* For these reasons, statutes mandating lengthy prison sentences cannot be justified on the basis of their effectiveness in preventing crime.<sup>7</sup>

Members may wish to discuss whether the sentence enhancement proposed by this bill and the expansion of the definition of a gang would provide any appreciable crime deterrent benefits.

BASED ON THE RESEARCH DESCRIBED ABOVE, WOULD THE SENTENCING ENHANCEMENTS AND EXPANSION OF THE DEFINITION OF A GANG PROPOSED BY THIS BILL IMPROVE PUBLIC SAFETY?

IN A COST-BENEFIT ANALYSIS, WOULD THE ADDED COSTS OF INCARCERATION FROM THE EXPANSION OF THE SENTENCING FOR COMMITTING CRIMES ON OR NEAR SCHOOL GROUNDS AND THE EXPANSION OF THE DEFINITION OF A GANG BE OUTWEIGHED BY ITS PUBLIC SAFETY BENEFIT, EITHER THROUGH INCAPACITATION OR DETERRENCE?

## 6. Prior Legislation

Like this bill, last session AB 473 (Block) also proposed to add human trafficking to the California Street Terrorism Enforcement and Prevention Act. That measure, which passed this Committee (7-0), was vetoed. Governor Brown stated:

I am returning Senate Bill 473 without my signature.

Under current law, human trafficking convictions impose substantial punishment, up to 20 years for sex trafficking offenses and 15 years-to-life for certain crimes involving children. These sentences are more than three times the punishment that existed two years ago. SB 473 would add yet another set of enhancements, the third in nine years. No evidence has been presented to support these new penalties

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<sup>7</sup> *Id.* at 155-156 (emphasis added).

Today I have signed AB 1610, AB 1791, SB 955 and SB 1388, bills that will solidly enhance enforcement of human trafficking laws through use of wiretap, ensuring the availability of a victim's testimony at trial and strengthening penalties for certain human trafficking crimes involving minors.

**-- END --**