
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1882 **Hearing Date:** June 19, 2018
Author: Cervantes
Version: June 12, 2018
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Sex Crimes: Communication With a Minor*

HISTORY

Source: Alameda County District Attorney

Prior Legislation: AB 371 (Cooley), 2017, held in the Senate Appropriations
AB 2327 (Cooley), 2016, held in the Senate Appropriations

Support: California District Attorneys Association; California Police Chiefs Association; California State Sheriffs' Association; California Statewide Law Enforcement Association; Crime Victims United of California; GFWC California Federation of Women's Clubs; Jewish Public Affairs Committee of California; Junior Leagues of California; Los Angeles County Professional Peace Officers Association; Riverside Sheriffs' Association

Opposition: American Civil Liberties Union of California

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to add human trafficking to the list of offenses for which it is a crime to contact or communicate with a minor for the purposes of committing a crime involving the minor.

Existing law states that a person is guilty of human trafficking if they cause, induce, or persuade a minor, or attempt to cause, induce, or persuade a minor, to engage in a commercial sex act, with the intent to violate specified commercial sex offenses. A person convicted of a violation of this statute shall be punished by imprisonment in the state prison for five, eight, or 12 years and a fine not more than \$500,000. If the offense involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, punishment shall be imprisonment in the state prison for 15 years to life and a fine not more than \$500,000. (Pen. Code, § 236.1 subd. (c).)

Existing law specifies that every person who contacts or communicates with a minor, or attempts to contact or communicate with a minor, who knows or reasonably should know that the person is a minor, with intent to commit any of the following offenses involving the minor shall be punished by imprisonment in the state prison for the term prescribed for an attempt to commit the intended offense. The offenses included in this section are listed as follows: (Pen. Code, §, 288.3, subd. (a).)

- 1) Kidnapping;
- 2) Kidnapping for ransom, reward, extortion, robbery, or rape;
- 3) Rape;
- 4) Rape by a foreign object;
- 5) Willful harm or injury to a child;
- 6) Sodomy;
- 7) Lewd and lascivious acts with a minor;
- 8) Oral copulation;
- 9) Harmful matter sent to minor;
- 10) Forcible sexual penetration; and
- 11) Child pornography.

Existing law defines “contacts or communicates with” as direct and indirect contact or communication personally or by use of an agent or agency, print medium, postal service, common carrier or communication common carrier, electronic communications system, telecommunications, wire, computer, or radio communications device or system. (Pen. Code, § 288.3 subd. (b).)

Existing law states that a person who arranges a meeting with a minor, for the purpose of engaging in lewd or lascivious behavior, shall be punished by a fine not exceeding \$5,000, imprisonment in a county jail not exceeding one year, or both. (Pen. Code, § 288.4.)

Existing law provides that punishment for an attempt is for half the term of imprisonment prescribed for the offense attempted and a fine not exceeding half the largest fine which may be imposed for the offense attempted. (Pen. Code, § 664.)

This bill adds human trafficking to the list of offenses for which it is a crime to contact or communicate with a minor for the purposes of committing a crime involving the minor.

COMMENTS

1. Need for This Bill

According to the author:

Unfortunately, California is one of the most frequent sites of human trafficking in the United States. In 2016, California had over 1,300 incidences of human trafficking, which is more than double what any other state experienced. That is especially concerning given that so many cases of human trafficking go

unreported. In addition, Los Angeles, San Francisco, San Diego, and Sacramento are often cited as being amongst the biggest human trafficking hubs in the Nation.

In late January of this year, a regional human trafficking task force based out of Los Angeles arrested more than 500 human trafficking suspects in a sting operation. As part of the operation, law enforcement officials set up decoy accounts soliciting human trafficking on Facebook and other online platforms, and were taken aback by the amount of traffic these accounts generated. Indeed, ongoing integration of the internet and social media into daily life has made platforms such as Facebook and Instagram a more frequent tool for human traffickers to make contact with potential victims.

AB 1882 would close this loophole by making it a felony to contact a minor with the intent to engage in human trafficking. This will help law enforcement combat the growing use of the internet by human traffickers.

2. Human Trafficking Generally

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

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

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

- a) Trafficking Victims Protection Act of 2000 (22 USC Sections 7101 *et seq.*).

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

b) Recent Update to California's Human Trafficking Laws.

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

Proposition 35 also requires persons convicted of human trafficking to register as sex offenders and expanded registration requirements by requiring registered sex offenders to provide the names of their internet providers and identifiers, such as e-mail addresses, user names, and screen names, to local police or sheriff's departments. Immediately following the passage of Proposition 35, a District Court granted an order enjoining the implementation of the parts of the proposition that requires registered sex offenders to provide identifying information about their online accounts to local law enforcement agencies. On November 18, 2014, the Ninth Circuit Court affirmed the District Court's order granting the preliminary injunction, concluding that "Appellees are likely to succeed on the merits of their First Amendment challenge." (See *Doe v. Harris*, 2014 U.S. App. LEXIS 21808 (9th Cir. Nov. 18, 2014).)

Due to litigation, the provisions in Proposition 35 related to Internet identifiers have never gone into effect. Currently, these provisions are pending a permanent injunction because the court has declared them to violate the First Amendment of the United States Constitution and therefore cannot be enforced. (See Order Staying Case of April 7, 2015 and Scheduling Order of October 26, 2015, 12-cv-05713-THE, *Doe v. Harris*.)

In response to *Doe*, the SB 448 (Hueso), Chapter 772, Statutes of 2016, requires a person convicted of a felony on or after January 1, 2017, for which the person must register as a sex offender, to register his or her Internet identifiers, as defined, to law enforcement if the person used the Internet to identify a victim, or to commit human trafficking or child pornography offenses; and authorizes law enforcement to use the information to investigate a sex crime, kidnapping or human trafficking, as specified.

3. Attempted Sex Offenses Involving a Minor

Various statutes provided punishment for commercial sex acts, including: kidnapping, kidnapping for ransom, reward, or extortion, or to commit robbery or rape, rape, unlawful sexual intercourse with a minor, rape by foreign object, acting in concert by force or violence, pimping, pandering, and prostitution, willful harm or injury to a child, sodomy, lewd or lascivious acts, oral copulation, sending obscene matter to a child, contact of a minor with intent to commit sexual offense, forcible acts of sexual penetration, distributing obscene matter depicting a minor, sexual exploitation of a child, and employing or using a minor to perform obscene acts.

Under existing law a person who fails to complete a crime may be convicted of an attempt. An attempt requires intent to commit a specific crime and a direct but ineffectual act taken towards the commission of the crime. (Pen. Code, § 21 subd., (a).) Attempt is punishable by half of the term of imprisonment prescribed for the offense attempted. (Pen. Code, § 664.) A person who contacts or communicates, or attempts to contact or communicate, with a minor with the intent to commit a sex offense, including human trafficking, could be prosecuted with an attempt to commit the underlying offense.

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