
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 757 **Hearing Date:** January 9, 2018
Author: Glazer
Version: January 3, 2018
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Prostitution: Sex Offender Registration and DNA Collection*

HISTORY

Source: Alameda County District Attorney's Office

Prior Legislation: SB 1355 (Glazer) held Senate Public Safety 2016
AB 390 (Cooper) held Senate Public Safety 2015
Proposition 69 November 2, 2004
SB 883 (Margett) not heard Assembly Public Safety 2004
SB 284 (Brulte) failed Senate Public Safety 2003
SB 1242 (Brulte) Chapter 632, Stats. 2002
AB 2105 (La Suer) Chapter 160, Stats. 2002
AB 673 (Migden) Chapter 906, Stats. 2001
AB 2814 (Machado) Chapter 823, Stats. 2000
AB 557 (Nakano) not heard in Senate Public Safety 1999-2000
SB 654 (Schiff) Chapter 475, Stats. 1999
AB 1332 (Murray) Chapter 696, Stats. 1998

Support: Association for Los Angeles Deputy Sheriffs; Association of Deputy District Attorneys; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California Narcotic Officers Association; California State Sheriffs' Association; Crime Victims United; Los Angeles County Professional Peace Officers Association; Los Angeles Police Protective League; Riverside Sheriffs' Association

Opposition: ACLU; California Attorneys for Criminal Justice; California Public Defenders Association; Courage Campaign

PURPOSE

The purpose of this bill is to require a person convicted of misdemeanor solicitation of a minor to register as a sex offender for 10 years and an adult convicted of misdemeanor solicitation of a minor to give a sample to the DNA databank.

Existing law provides that the Department of Justice (DOJ), through its DNA Laboratory, is responsible for the management and administration of the state's DNA and Forensic Identification Database and Data Bank Program and for liaising with the Federal Bureau of

Investigation (FBI) regarding the state's participation in a national or international DNA database and data bank program such as the Combined DNA Index System (CODIS) that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories nationwide. (Penal Code, § 295 (g).)

Existing law provides that DOJ can perform DNA analysis, other forensic identification analysis, and examination of palm prints pursuant to the Act only for identification purposes. (Penal Code § 295.1 (a) & (b).)

Existing law provides that the DOJ DNA Laboratory is to serve as a repository for blood specimens, buccal swab, and other biological samples collected and is required to analyze specimens and samples and store, compile, correlate, compare, maintain, and use DNA and forensic identification profiles and records related to the following:

- Forensic casework and forensic unknowns;
- Known and evidentiary specimens and samples from crime scenes or criminal investigations;
- Missing or unidentified persons;
- Persons required to provide specimens, samples, and print impressions;
- Legally obtained samples; and
- Anonymous DNA records used for training, research, statistical analysis of populations, quality assurance, or quality control. (Penal Code § 295.1)

Existing law specifies that the Director of Corrections, or the Chief Administrative Officer of the detention facility, jail, or other facility at which the blood specimens, buccal swab samples, and thumb and palm print impressions were collected send them promptly to the DOJ. (Penal Code § 298.)

Existing law requires the DNA Laboratory of DOJ to establish procedures for entering data bank and database information. (Penal Code § 298(b)(6).)

Existing law provides any person arrested for or charged with a felony and any person required to register as a sex offender or arsonist shall be required to submit buccal swab samples, a full palm print impression of each hand and any blood specimens or other biological samples required for submission to the DNA databank. (Penal Code § 296)

Existing law makes it a misdemeanor for an individual to solicit, or 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. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation by another person who is 18 years of age or older to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in an act of prostitution. (Penal Code § 647 (b)(2))

Existing law makes it a misdemeanor for an individual to solicit, or who 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. An individual

agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation by someone who is a minor to so engage, regardless of whether the offer or solicitation was made by a minor who also possessed the specific intent to engage in an act of prostitution. (Penal Code § 647 (b)(3))

This bill provides that a person, excluding a juvenile, convicted of Penal Code 647 (b) (3), must submit the required samples to be included in the DNA databank.

Existing law generally requires persons convicted of enumerated sex offenses to register within five working days of coming into a city or county, with specified law enforcement officials in the city, county or city and county where he or she is domiciled, as specified.¹ (Penal Code § 290.) Existing law provides that registration generally must be updated annually, within five working days of a registrant's birthday. (Penal Code § 290.012(a).) In some instances, registration must be updated once every 30 or 90 days, as specified. (Penal Code §§ 290.011, 290.012.)

Existing law provides that as of January 2, 2021, there will be a three tiered registration system for sex offender registration and a person will be required to register for at least 10 years, at least 20 years or for their lifetime depending on what crime is requiring registration. (Penal Code § 290)

This bill provides that an adult convicted of Penal Code 647 (b) or (3) must register as a sex and when tiered registry takes effect in 2021 then the registration will fall within tier one, requiring registration or a period of 10 years.

COMMENTS

1. Need for This Bill

According to the author:

Buyers of sex, or Johns, perpetuate sex trafficking by creating a demand for it. Although there have been efforts to protect these minors, not enough has been done to address those that perpetuate this system. Research shows a correlation between the sexual exploitation by Johns and other violent crimes they commit.

In 2006, a data analysis by the Oakland Police Department's Special Victims Unit (SVU) found that the vast majority of Oakland's unsolved homicides also involved victims who were or suspected to be engaged in prostitution activity. Of nearly 200 unsolved homicides in Oakland, 85 percent of these cases involved the victim being a prostitute. Furthermore, during 2014-2015, 2,610 women and girls were arrested or rescued from prostitution, of which 10 percent were minors.

This is not a problem limited to Oakland. Of the 245 Johns arrested in Oakland in 2014-2015, only one-third were Oakland residents, according to the Oakland Police Department. The remaining two-thirds of those arrested came from 52 other cities across the Bay Area and state, including seven counties outside of Alameda County. A handful came from three other states. This requires a statewide response.

2. Register as a Sex Offender

This bill would require any person who solicits a minor for prostitution to register as a sex offender. When tiered registry takes effect, this crime will fall within tier one thereby requiring registration for 10 years.

The registration requirement in this bill includes a minor who solicits another minor.

Sex or sex acts with a minor can already be charged as a number of offenses that already requires registration. Would having a person register as a sex offender for this offense discourage prosecutors from charging the more serious offenses?

Penal Code 647 (b)(3) does not require the person to actually know that the individual they are soliciting is under 18. Should a person who unknowingly solicits a person under 18 for prostitution be required to register as a sex offender for 10 years with all the consequences that come with registration?

Should a minor who solicits another minor as a prostitute be required to register as a sex offender for life and suffer all the consequences that come with registration?

3. DNA Databank

This bill would provide that any adult who is convicted of solicitation of a minor or adult be required to give his or her DNA to the DNA databank.

The profile derived from a DNA sample is uploaded into the state's DNA databank, which is part of the national Combined DNA Index System (CODIS), and can be accessed by local, state and federal law enforcement agencies and officials. When a DNA profile is uploaded, it is compared to profiles contained in the Convicted Offender and Arrestee Indices; if there is a "hit," the laboratory conducts procedures to confirm the match and, if confirmed, obtains the identity of the suspect. The uploaded profile is also compared to crime scene profiles contained in the Forensic Index; again, if there is a hit, the match is confirmed by the laboratory. CODIS also performs weekly searches of the entire system. In CODIS, the profile does not include the name of the person from whom the DNA was collected or any case-related information, but only a specimen identification number, an identifier for the agency that provided the sample, and the name of the personnel associated with the analysis. CODIS is also the name of the related computer software program. CODIS's national component is the National DNA Index System (NDIS), the receptacle for all DNA profiles submitted by federal, state, and local forensic laboratories. DNA profiles typically originate at the Local DNA Index System (LDIS), then migrate to the State DNA Index System (SDIS), containing forensic profiles analyzed by local and state laboratories, and then to NDIS.

The only misdemeanors in the DNA databank are those sex offense misdemeanors for which registration is required. These offenses are forcible sex offenses or a person is guilty because the person is a minor and can't consent. Should solicitation of minor also require a DNA sample?

4. Argument in Support

In support the Alameda County District Attorney states:

Buyers of sex, perpetuate sex trafficking by creating a demand for it. Although there have been efforts to protect minors, not enough has been done to address those that perpetuate this system. As long as there is demand, there will be an exploiter to fill it. Individuals who purchase human beings for sex fuel the market that traffickers supply with victims. Until we eliminate the demand, the sex exploitation of our society's most vulnerable girls, women and men and boys, will continue.

5. Argument in Opposition

In opposition the ACLU notes:

The sex offender registration requirements of this bill will place a disproportionate burden on low-income communities of color and LGBTQ communities. In California, people who are required to register as sex offenders are currently required to do so for the remainder of their natural lives. This is true regardless of their individual circumstances or the nature of the crime for which they were convicted. People deemed "transient," meaning they do not have a stable residence, are required to register every 30 days and face criminal charges if they fail to do so. In addition to potential criminal charges for technical violations of the registration laws, the social consequences of registration can place already disadvantaged communities at greater disadvantage. For instance, inclusion on sex offender registries can make it more difficult to get a job, find housing, parent and rehabilitate. Inclusion on registries can be destabilizing in other ways as well, causing some people to fall into depression and exacerbating other mental health conditions.

Given the wealth gaps and disparate criminal justice system treatment low-income people of color and LGBTQ people already face, as well as the higher increases of mental illness in these populations due to various forms of trauma—including trauma based on racism, homophobia, and transphobia—a bill that will disproportionately require people from these communities to register on account of a solicitation conviction will only continue to widen the gaps.

Given that low-income people of color and LGBTQ people are stopped, arrested, and convicted for the crimes in SB 757 at higher rates than higher income people, whites, and non-LGBTQ people, respectively, it follows that they will also be disproportionately impacted by the negative consequences of DNA collection and sex offender registration requirements, thus further widening the disparities plaguing our criminal justice system.

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