

OFFICE OF THE CLERK

2007 MAY -3 PM 3:24
Date: May 17, 2007

CITY OF OAKLAND

BILL ANALYSIS



Bill Number: 499

Bill Author: Sandre Swanson

DEPARTMENT INFORMATION

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RECOMMENDED POSITION: (SUPPORT, SUPPORT IF AMENDED, NEUTRAL, WATCH, OPPOSE, NOT RELEVANT)

Summary of the Bill

AB499 provides for prolonged detention of minors engaged in specified acts of prostitution, and states that they shall not be criminally prosecuted in order that they may be placed in a secure facility for treatment as sexually exploited minors.

Positive Factors for Oakland

AB499 will expand the rights and services for children identified as sexually exploited minors. It provides law enforcement agencies the necessary tools to conduct thorough and sensitive preliminary investigations concerning sexually exploited minors, while safeguarding these victims from being returned to the streets and their exploiters (i.e., pimps), before a full screening and assessment can be completed by law enforcement, mental health and victim advocates.

Negative Factors for Oakland

At present, AB499 contains some constitutional issues that must be resolved by the author before it can progress, which include:

- The *right to due process of law* under the Fourteenth Amendment
- The *right to a speedy public trial* under the Sixth Amendment
- The *right to an attorney* under the Sixth Amendment

Item: _____
Rules & Legislation Comte.
May 17, 2007

On Tuesday, April, 24, 2007, the California State Assembly – Public Safety Committee, refused to pass AB499 *as is* until these matters are addressed.

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

Critical (top priority for the City lobbyist, city position required ASAP)

Very Important (priority for the City lobbyist, city position necessary)

Some what important (City position desirable if time and resources are available)

Very Important (priority for City lobbyist, city position necessary)

Somewhat Important (City position desirable if time and resources are available)

Minimal or **None (do not review with City Council, position not required)**

Known support:

Alameda County Interagency Child Protection Council (ICPC) and Sexually Abused Children Exploited Youth (SACEY), The Alameda County District Attorney’s Office, and the Oakland Police Department are all in support of AB499.

The Los Angeles District Attorney’s Office supports the bill; however, will not endorse it until those constitutional issues listed on page-one have been addressed.

Known Opposition:

American Civilian Liberties Union (ACLU)

Attach bill text and state/federal legislative committee analysis, if available.

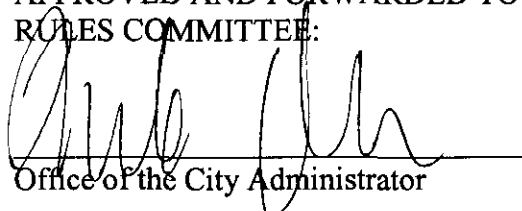
Assembly Bill # 499 and Analysis Attached

Respectfully Submitted,



Wayne G. Tucker
Chief of Police

APPROVED AND FORWARDED TO
RULES COMMITTEE:


Office of the City Administrator

Item: _____
Rules & Legislation Comte.
May 17, 2007

BILL NUMBER: AB 499 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Swanson

FEBRUARY 20, 2007

An act to amend Sections 647, 653.22, 653.23, 679.01, 679.04, 11165.1, and 11166.3 of the Penal Code, and to amend Sections 300 and 313 of, and to add Sections 307.6 and 626.1 to, the Welfare and Institutions Code, relating to sexually exploited minors.

LEGISLATIVE COUNSEL'S DIGEST

AB 499, as introduced, Swanson. Sexually exploited minors.

(1) Existing law provides that a minor under the jurisdiction of the juvenile court who is in need of protective services shall receive care, treatment, and guidance consistent with his or her best interest and the best interest of the public. Existing law provides that a minor under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with his or her best interest, that holds the minor accountable for his or her behavior, and that is appropriate for his or her circumstances.

Under existing law, it is a misdemeanor to solicit or engage in lewd or dissolute conduct in any public place, to solicit or engage in any act of prostitution, to loiter in any public place with the intent to commit prostitution, or to supervise or otherwise aid a prostitute.

This bill would declare the intent of the Legislature that minors arrested for prostitution should not be prosecuted, but rather treated as victims, and taken to a secure detention center or safe house and processed the same as a person who is a victim of sexual abuse or domestic violence. The bill would require a peace officer, if a person under 18 years of age has violated any of the prostitution-related provisions described above, to place the person in civil protective custody on a safety hold as a sexually exploited minor and to take the person to a secure protective facility, as specified. The bill would provide that a person who has been placed in civil protective custody on a safety hold as a sexually exploited minor shall not thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to that placement. By imposing new duties on local law enforcement authorities, the bill would impose a state-mandated local program.

(2) Existing law establishes statutory rights of victims and witnesses of crime, as specified, and authorizes a law enforcement officer to provide a victim's rights card to the victim of a crime. Existing law provides that a victim of sexual assault has the right to have victim advocates and a support person of the victim's choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys. Existing law defines "victim" for purposes of these provisions as a person against whom a crime has been committed.

This bill would include a sexually exploited minor, as described in paragraph (1) above, within the definition of "victim" for purposes of these provisions. The bill would also give sexually

exploited minors the right to have victim advocates and a support person of the victim's choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys. By imposing new duties on local law enforcement and criminal justice authorities, the bill would impose a state-mandated local program.

(3) Existing law establishes the Child Abuse and Neglect Reporting Act, which requires specified persons who have knowledge of or observe a child in their professional capacity or within the scope of their employment, whom the person knows or reasonably suspects has been the victim of child abuse or neglect to make a report to a child protective agency, as defined. Existing law defines "sexual abuse" to include sexual assault or sexual exploitation, as specified, for purposes of these provisions.

This bill would clarify that a sexually exploited minor, as described in paragraph (1) above, is a form of sexual exploitation within the definition of "sexual abuse" for purposes of these provisions.

(4) Existing law, part of the Child Abuse and Neglect Reporting Act, states the Legislature's intent that in each county the law enforcement agencies and the county welfare or probation department shall develop and implement cooperative arrangements in order to coordinate existing duties in connection with the investigation of suspected child abuse or neglect cases.

This bill, instead, would require the law enforcement agencies and county welfare or probation department in each county to develop and implement a joint policy with cooperative arrangements in order to coordinate existing duties in connection with the investigation of suspected child abuse or neglect cases, including the appropriate handling of sexually exploited minors, as described in paragraph (1) above. By imposing new duties on local authorities, the bill would impose a state-mandated local program.

(5) Existing law provides that a child who has been abused or neglected, as described, is within the jurisdiction of the juvenile court and may be adjudged a dependent child of the juvenile court. This provision applies, among other things, if the child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in the Child Abuse and Neglect Reporting Act, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.

This bill would clarify that a sexually exploited minor may be found within the jurisdiction of the juvenile court and adjudged a dependent child of the juvenile court.

(6) Existing law authorizes a peace officer to take a minor that the officer has reasonable cause to believe is within the jurisdiction of the juvenile court, either as a dependent child or as a ward of the court, into temporary custody without a warrant, as specified. Existing law provides procedures for processing the minor thereafter.

This bill would require an officer who takes a sexually exploited minor into temporary custody pursuant to specified provisions to take the minor to a secure protective facility designated by the county that offers victim services to establish a safety plan and secure appropriate placement for the minor. The bill would require the receiving organization to take immediate steps to notify the minor's parent, guardian, or a responsible relative of the place to which the minor was taken, and would require the officer to make a report of suspected child abuse or neglect. By imposing new duties on local law

enforcement, the bill would impose a state-mandated local program.

(7) Existing law requires the release within 48 hours of a minor who is taken into temporary custody by a peace officer or probation officer for suspected abuse or neglect, unless a petition to declare him or her a dependent child has been filed.

This bill would authorize a sexually exploited minor who is taken into temporary custody by a peace officer or probation officer to be held in custody in excess of 48 hours in order to establish a safety plan and secure appropriate placement for the minor.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature that minors arrested for prostitution should not be prosecuted, but rather treated as victims. These children should be taken to a secure detention center or safe house and processed the same as a person who is a victim of sexual abuse or domestic violence.

SEC. 2. Section 647 of the Penal Code is amended to read:

647. Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution.

~~No~~ An agreement to engage in an act of prostitution shall not constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

(e) Who loiters or wanders upon the streets or from place to place without apparent reason or business and who refuses to identify himself or herself and to account for his or her presence when requested by any peace officer so to do, if the surrounding circumstances would indicate to a reasonable person that the public safety demands this identification.

(f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any

combination of any intoxicating liquor, drug, controlled substance, or toluene, in a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.

(g) When a person has violated subdivision (f), a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody. The person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force which would be lawful were he or she effecting an arrest for a misdemeanor without a warrant. ~~No~~ A person who has been placed in civil protective custody shall not thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to this placement. This subdivision shall not apply to the following persons:

(1) Any person who is under the influence of any drug, or under the combined influence of intoxicating liquor and any drug.

(2) Any person who a peace officer has probable cause to believe has committed any felony, or who has committed any misdemeanor in addition to subdivision (f).

(3) Any person who a peace officer in good faith believes will attempt escape or will be unreasonably difficult for medical personnel to control.

(h) Who loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant. As used in this subdivision, "loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

(i) Who, while loitering, prowling, or wandering upon the private property of another, at any time, peeks in the door or window of any inhabited building or structure, without visible or lawful business with the owner or occupant.

(j) Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.

(k) (1) Any person who looks through a hole or opening, into, or otherwise views, by means of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, camera, motion picture camera, or camcorder, the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside. This subdivision shall not apply to those areas of a private business used to count currency or other negotiable instruments.

(2) Any person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person under or through the clothing being worn by that other person, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person and

invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy.

(3) (A) Any person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person.

(B) Neither of the following is a defense to the crime specified in this paragraph:

(i) The defendant was a cohabitant, landlord, tenant, cotenant, employer, employee, or business partner or associate of the victim, or an agent of any of these.

(ii) The victim was not in a state of full or partial undress.

(l) If a person under 18 years of age has violated subdivision (a) or (b), a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody on a safety hold as a sexually exploited minor. The person shall be taken to a secure protective facility, designated pursuant to Section 307.6 of the Welfare and Institutions Code. A peace officer may place a minor in civil protective custody on a safety hold with that kind and degree of force that would be lawful were he or she effecting an arrest for a misdemeanor without a warrant. A person who has been placed in civil protective custody on a safety hold as a sexually exploited minor shall not thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to this placement.

~~(l)~~

(m) In any accusatory pleading charging a violation of subdivision (b), if the defendant has been once previously convicted of a violation of that subdivision, the previous conviction shall be charged in the accusatory pleading. If the previous conviction is found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or is admitted by the defendant, the defendant shall be imprisoned in a county jail for a period of not less than 45 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 45 days in a county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in a county jail for at least 45 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 45 days in confinement in a county jail.

In any accusatory pleading charging a violation of subdivision (b), if the defendant has been previously convicted two or more times of a violation of that subdivision, each of these previous convictions shall be charged in the accusatory pleading. If two or more of these previous convictions are found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or are admitted by the defendant, the defendant shall be imprisoned in a county jail for a period of not less than 90 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until

he or she has served a period of not less than 90 days in a county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in a county jail for at least 90 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 90 days in confinement in a county jail.

In addition to any punishment prescribed by this section, a court may suspend, for not more than 30 days, the privilege of the person to operate a motor vehicle pursuant to Section 13201.5 of the Vehicle Code for any violation of subdivision (b) that was committed within 1,000 feet of a private residence and with the use of a vehicle. In lieu of the suspension, the court may order a person's privilege to operate a motor vehicle restricted, for not more than six months, to necessary travel to and from the person's place of employment or education. If driving a motor vehicle is necessary to perform the duties of the person's employment, the court may also allow the person to drive in that person's scope of employment.

SEC. 3. Section 653.22 of the Penal Code is amended to read:

653.22. (a) It is unlawful for any person to loiter in any public place with the intent to commit prostitution. This intent is evidenced by acting in a manner and under circumstances ~~which~~ that openly demonstrate the purpose of inducing, enticing, or soliciting prostitution, or procuring another to commit prostitution.

(b) Among the circumstances that may be considered in determining whether a person loiters with the intent to commit prostitution are that the person:

(1) Repeatedly beckons to, stops, engages in conversations with, or attempts to stop or engage in conversations with passersby, indicative of soliciting for prostitution.

(2) Repeatedly stops or attempts to stop motor vehicles by hailing the drivers, waving arms, or making any other bodily gestures, or engages or attempts to engage the drivers or passengers of the motor vehicles in conversation, indicative of soliciting for prostitution.

(3) Has been convicted of violating this section, subdivision (a) or (b) of Section 647, or any other offense relating to or involving prostitution, within five years of the arrest under this section.

(4) Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists, indicative of soliciting for prostitution.

(5) Has engaged, within six months prior to the arrest under this section, in any behavior described in this subdivision, with the exception of paragraph (3), or in any other behavior indicative of prostitution activity.

(c) The list of circumstances set forth in subdivision (b) is not exclusive. The circumstances set forth in subdivision (b) should be considered particularly salient if they occur in an area that is known for prostitution activity. Any other relevant circumstances may be considered in determining whether a person has the requisite intent. Moreover, no one circumstance or combination of circumstances is in itself determinative of intent. Intent ~~must~~ shall be determined based on an evaluation of the particular circumstances of each case.

(d) *If a person under 18 years of age has violated subdivision (a), a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody on a safety hold as a sexually exploited minor. The person shall be taken to a secure protective facility, designated pursuant to Section 307.6 of the Welfare and Institutions Code. A*

peace officer may place a minor in civil protective custody on a safety hold with that kind and degree of force that would be lawful were he or she effecting an arrest for a misdemeanor without a warrant. A person who has been placed in civil protective custody on a safety hold as a sexually exploited minor shall not thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to this placement.

SEC. 4. Section 653.23 of the Penal Code is amended to read:

653.23. (a) It is unlawful for any person to do either of the following:

(1) Direct, supervise, recruit, or otherwise aid another person in the commission of a violation of subdivision (b) of Section 647 or subdivision (a) of Section 653.22.

(2) Collect or receive all or part of the proceeds earned from an act or acts of prostitution committed by another person in violation of subdivision (b) of Section 647.

(b) Among the circumstances that may be considered in determining whether a person is in violation of subdivision (a) are that the person does the following:

(1) Repeatedly speaks or communicates with another person who is acting in violation of subdivision (a) of Section 653.22.

(2) Repeatedly or continuously monitors or watches another person who is acting in violation of subdivision (a) of Section 653.22.

(3) Repeatedly engages or attempts to engage in conversation with pedestrians or motorists to solicit, arrange, or facilitate an act of prostitution between the pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22.

(4) Repeatedly stops or attempts to stop pedestrians or motorists to solicit, arrange, or facilitate an act of prostitution between pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22.

(5) Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists to solicit, arrange, or facilitate an act of prostitution between the pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22.

(6) Receives or appears to receive money from another person who is acting in violation of subdivision (a) of Section 653.22.

(7) Engages in any of the behavior described in paragraphs (1) to (6), inclusive, in regard to or on behalf of two or more persons who are in violation of subdivision (a) of Section 653.22.

(8) Has been convicted of violating this section, subdivision (a) or (b) of Section 647, subdivision (a) of Section 653.22, Section 266h, or 266i, or any other offense relating to or involving prostitution within five years of the arrest under this section.

(9) Has engaged, within six months prior to the arrest under subdivision (a), in any behavior described in this subdivision, with the exception of paragraph (8), or in any other behavior indicative of prostitution activity.

(c) The list of circumstances set forth in subdivision (b) is not exclusive. The circumstances set forth in subdivision (b) should be considered particularly salient if they occur in an area that is known for prostitution activity. Any other relevant circumstances may be considered. Moreover, no one circumstance or combination of circumstances is in itself determinative. A violation of subdivision (a) shall be determined based on an evaluation of the particular circumstances of each case.

(d) Nothing in this section shall preclude the prosecution of a suspect for a violation of Section 266h or 266i or for any other offense, or for a violation of this section in conjunction with a

violation of Section 266h or 266i or any other offense.

(e) *If a person under 18 years of age has violated subdivision (a), a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody on a safety hold as a sexually exploited minor. The person shall be taken to a secure protective facility, designated pursuant to Section 307.6 of the Welfare and Institutions Code. A peace officer may place a minor in civil protective custody on a safety hold with that kind and degree of force that would be lawful were he or she effecting an arrest for a misdemeanor without a warrant. A person who has been placed in civil protective custody on a safety hold as a sexually exploited minor shall not thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to this placement.*

SEC. 5. Section 679.01 of the Penal Code is amended to read:

679.01. As used in this title, the following definitions shall control:

(a) "Crime" means an act committed in this state which, if committed by a competent adult, would constitute a misdemeanor or felony.

(b) "Sexually exploited minor" means a person under 18 years of age who has been placed in civil protective custody on a safety hold based on a violation of subdivision (a) or (b) of Section 647, subdivision (a) of Section 653.22, or subdivision (a) of Section 653.23.

~~(b)~~

(c) "Victim" means a person against whom a crime has been committed. "Victim" includes a sexually exploited minor.

~~(a)~~

(d) "Witness" means any person who has been or is expected to testify for the prosecution, or who, by reason of having relevant information, is subject to call or likely to be called as a witness for the prosecution, whether or not any action or proceeding has yet been commenced.

SEC. 6. Section 679.04 of the Penal Code is amended to read:

679.04. (a) A victim of sexual assault as the result of any offense specified in paragraph (1) of subdivision (b) of Section 264.2, or a sexually exploited minor, has the right to have victim advocates and a support person of the victim's choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys. However, the support person may be excluded from an interview by law enforcement or the district attorney if the law enforcement authority or the district attorney determines that the presence of that individual would be detrimental to the purpose of the interview. As used in this section, "victim advocate" means a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, or a victim advocate working in a center established under Article 2 (commencing with Section 13835) of Chapter 4 of Title 6 of Part 4.

(b) (1) Prior to the commencement of the initial interview by law enforcement authorities or the district attorney pertaining to any criminal action arising out of a sexual assault, a victim of sexual assault as the result of any offense specified in Section 264.2 shall be notified orally or in writing by the attending law enforcement authority or district attorney that the victim has the right to have victim advocates and a support person of the victim's choosing present at the interview or contact. This subdivision applies to investigators and agents employed or retained by law enforcement or the district attorney.

(2) At the time the victim is advised of his or her rights pursuant to paragraph (1), the attending law enforcement authority or district attorney shall also advise the victim of the right to have victim advocates and a support person present at any interview by the defense attorney or investigators or agents employed by the defense attorney.

(c) An initial investigation by law enforcement to determine whether a crime has been committed and the identity of the suspects shall not constitute a law enforcement interview for purposes of this section.

SEC. 7. Section 11165.1 of the Penal Code is amended to read:

11165.1. As used in this article, "sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(a) "Sexual assault" means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 (lewd or lascivious acts upon a child), 288a (oral copulation), 289 (sexual penetration), or 647.6 (child molestation).

(b) Conduct described as "sexual assault" includes, but is not limited to, all of the following:

(1) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(2) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose.

(4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

(5) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(c) "Sexual exploitation" refers to any of the following:

(1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(2) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

(3) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, video tape,

negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(4) Conduct involving a violation of subdivision (a) or (b) of Section 647, subdivision (a) of Section 653.22, or subdivision (a) of Section 653.23 by a minor.

SEC. 8. Section 11166.3 of the Penal Code is amended to read:

11166.3. (a) ~~The Legislature intends that in~~

In each county, the law enforcement agencies and the county welfare or probation department shall develop and implement a joint policy with cooperative arrangements in order to coordinate existing duties in connection with the investigation of suspected child abuse or neglect cases, including the appropriate handling of sexually exploited minors, as described in paragraph (4) of subdivision (c) of Section 11165.1. The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the county welfare or probation department that it is investigating the case within 36 hours after starting its investigation. The county welfare department or probation department shall, in cases where a minor is a victim of actions specified in Section 288 of this code and a petition has been filed pursuant to Section 300 of the Welfare and Institutions Code with regard to the minor, evaluate what action or actions would be in the best interest of the child victim. Notwithstanding any other provision of law, the county welfare department or probation department shall submit in writing its findings and the reasons therefor to the district attorney on or before the completion of the investigation. The written findings and the reasons therefor shall be delivered or made accessible to the defendant or his or her counsel in the manner specified in Section 859.

(b) The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the district office of the State Department of Social Services any case reported under this section if the case involves a facility specified in paragraph (5) or (6) of subdivision (a) of Section 1502, Section 1596.750 or 1596.76 of the Health and Safety Code, and the licensing of the facility has not been delegated to a county agency. The law enforcement agency shall send a copy of its investigation report and any other pertinent materials to the licensing agency upon the request of the licensing agency.

SEC. 9. Section 300 of the Welfare and Institutions Code is amended to read:

300. ~~Any~~ A child who comes within any of the following descriptions is within the jurisdiction of the juvenile court, which may adjudge that person to be a dependent child of the court:

(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian ~~which~~ that indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks ~~where~~ if there is no evidence of serious physical injury.

(b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. ~~No~~ A child shall not be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family.

~~Whenever~~ If it is alleged that a child comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the child from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian, (2) the risks to the child posed by the course of treatment or nontreatment proposed by the parent or guardian, (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.

(c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. ~~No~~ A child shall not be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, *specifically including sexual exploitation of a minor, as described in paragraph (4) of subdivision (c) of Section 11165.1*, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.

(e) The child is under ~~the age of~~ five years of age and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which

causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse ~~which~~ that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child ~~may~~ shall not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse pursuant to Section 332.

(f) The child's parent or guardian caused the death of another child through abuse or neglect.

(g) The child has been left without any provision for support; physical custody of the child has been voluntarily surrendered pursuant to Section 1255.7 of the Health and Safety Code and the child has not been reclaimed within the 14-day period specified in subdivision (e) of that section; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful. *This subdivision includes sexual exploitation of a minor, as described in paragraph (4) of subdivision (c) of Section 11165.1, that is not otherwise subject to subdivision (d).*

(h) The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty ~~when~~ if the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.

(j) The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.

It is the intent of the Legislature that nothing in this section disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services ~~which~~ that support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating

homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control. The Legislature further declares that a child whose parent has been adjudged a dependent child of the court pursuant to this section shall not be considered to be at risk of abuse or neglect solely because of the age, dependent status, or foster care status of the parent.

As used in this section, "guardian" means the legal guardian of the child.

SEC. 10. Section 307.6 is added to the Welfare and Institutions Code, to read:

307.6. (a) Notwithstanding Section 307, an officer who takes a minor suspected of being a person described in Section 300 into temporary custody pursuant to subdivision (a) of Section 305 shall, in a case in which the minor has been placed in civil protective custody on a safety hold as a sexually exploited minor based on a violation of subdivision (a) or (b) of Section 647, subdivision (a) of Section 653.22, or subdivision (a) of Section 653.23, take the minor to a secure protective facility designated by the county that offers victim services to establish a safety plan and secure appropriate placement for the minor. Organizations or programs receiving referrals pursuant to this section shall have a contract or an agreement with the county to provide shelter care or counseling. Employees of a program receiving referrals pursuant to this section are "child care custodians" for the purpose of the requirements of Section 11165.7 of the Penal Code. The receiving organization shall take immediate steps to notify the minor's parent, guardian, or a responsible relative of the place to which the minor was taken.

(b) The officer shall make a report of suspected child abuse or neglect as required pursuant to Section 11166 of the Penal Code.

SEC. 11. Section 313 of the Welfare and Institutions Code is amended to read:

313. (a) ~~Whenever~~ (1)

If a minor is taken into custody by a peace officer or probation officer, except when ~~such~~ the minor willfully misrepresents himself as 18 or more years of age, ~~such~~ the minor shall be released within 48 hours after having been taken into custody, excluding nonjudicial days, unless within ~~said~~ that period of time a petition to declare him or her a dependent child has been filed pursuant to ~~the provisions of this~~ chapter.

~~(b) Whenever~~

(2) If a minor ~~who has been~~ is held in custody for more than six hours by the probation officer ~~is~~ and subsequently released ~~and no~~ without the filing of a petition ~~is filed~~, the probation officer shall prepare a written explanation ~~of why the minor was held~~ for holding the minor in custody for more than six hours. The written explanation shall be prepared within 72 hours after the minor is released from custody and filed in the record of the case. A copy of the written explanation shall be sent to the parents, guardian, or other person having care or custody of the minor.

(b) If a minor is taken into custody by a peace officer or probation officer, and taken to a secure protective facility pursuant

to Section 307.6, the minor may be held in custody in excess of 48 hours in order to establish a safety plan and secure appropriate placement for the minor.

SEC. 12. Section 626.1 is added to the Welfare and Institutions Code, to read:

626.1. (a) Notwithstanding Section 626, an officer who takes a minor into temporary custody under Section 625 shall, in any case in which a minor has been placed in civil protective custody on a safety hold as a sexually exploited minor based on a violation of subdivision (a) or (b) of Section 647, subdivision (a) of Section 653.22, or subdivision (a) of Section 653.23, take the minor to a secure protective facility designated by the county that offers victim services to establish a safety plan and secure appropriate placement for the minor. Organizations or programs receiving referrals pursuant to this section shall have a contract or an agreement with the county to provide shelter care or counseling. Employees of a program receiving referrals pursuant to this section are "child care custodians" for the purpose of the requirements of Section 11165.7 of the Penal Code. The receiving organization shall take immediate steps to notify the minor's parent, guardian, or a responsible relative of the place to which the minor was taken.

(b) The officer shall make a report of suspected child abuse or neglect as required pursuant to Section 11166 of the Penal Code.

SEC. 13. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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Date of Hearing: April 24, 2007
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Jose Solorio, Chair

499 (Swanson) – As Introduced: February 20, 2007
As Proposed to be Amended in Committee

SUMMARY: Provides for prolonged detention of minors engaged in specified acts of prostitution and states that they shall not be criminally prosecuted in order that they may be placed in a secure facility for treatment as sexually exploited minors. Specifically this bill:

- 1) States that minors who are suspected of, or detained for, prostitution or loitering with the intent to commit prostitution shall not be subject to any criminal prosecution or juvenile court proceeding and shall be held as sexually exploited minors.
- 2) Requires that officers detain and take any sexually exploited minor into custody in a secure detention center, local division facility, or a secure safe house.
- 3) Mandates that an alleged sexually exploited minor be brought before a court within 48 hours and the court shall order an assessment to determine whether the minor is sexually exploited and in need of protective services, and in order to establish a safety plan and secure appropriate placement for the minor.
- 4) States that the minor may be held in custody for up to 30 days until the assessment is completed.
- 5) States that the assessment shall be performed by the appropriate county agency or court-appointed expert within those 30 days.
- 6) Requires that if at the completion of an assessment that if the court finds the minor is sexually exploited, the court shall order the minor held in a secure setting for his or her safety to allow for the participation and completion of a sexually exploited minor program, or for the determination of a secure appropriate placement for the minor.
- 7) Specifies that repeat offenses shall result in arrest and criminal prosecution, but the minor shall be permitted to participate in the programs for sexually exploited minors.
- 8) States that this section shall not affect any other provision related to the punishment for pimping and pandering as a minor, and any minor who pimps and panders or otherwise sexually exploits another child shall be prosecuted to the fullest extent of the law.

EXISTING LAW:

- 1) Defines the following as "disorderly conduct", a misdemeanor (Penal Code Section 647):

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- a) Solicitation of any person to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view;
 - b) Solicitation or agreement to engage in or engagement in any act of prostitution. A person 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 to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration;
 - c) Loitering in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act; and,
 - d) Loitering or wandering upon the streets or from place to place without apparent reason or business and refusing to identify himself or herself and to account for his or her presence when requested by any peace officer so to do if the surrounding circumstances would indicate to a reasonable person that the public safety demands this identification.
- 2) Prohibits loitering in any public place with the intent to commit prostitution. (Penal Code Section 653.22.) Among the circumstances that may be considered in determining whether a person loiters with the intent to commit prostitution are that the person:
- a) Repeatedly beckons to, stops, engages in conversations with, or attempts to stop or engage in conversations with passersby, indicative of soliciting for prostitution;
 - b) Repeatedly stops or attempts to stop motor vehicles by hailing the drivers, waving arms, or making any other bodily gestures, or engages or attempts to engage the drivers or passengers of the motor vehicles in conversation, indicative of soliciting for prostitution;
 - c) Has been convicted of violating prostitution laws within five years of the arrest under this section;
 - d) Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists, indicative of soliciting for prostitution.
 - e) Has engaged, within six months prior to the arrest under this section, in any behavior described above, or in any other behavior indicative of prostitution activity; or,
 - f) The list of circumstances is not exclusive. Any other relevant circumstances may be considered in determining whether a person has the requisite intent. Moreover, no one circumstance or combination of circumstances is in itself determinative of intent. Intent must be determined based on an evaluation of the particular circumstances of each case.
- 3) Provides victims of sexual assault the right to have victim advocates and a support person of the victim's choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys. However, the support person may be excluded from an

interview by law enforcement or the district attorney if the law enforcement authority or the district attorney determines that the presence of that individual would be detrimental to the purpose of the interview. As used in this section, "victim advocate" means a sexual assault counselor. (Penal Code Section 679.04.)

- 4) Mandates that when a minor is taken into custody by a peace officer or probation officer, the minor shall be released within 48 hours after having been taken into custody unless a petition to declare the child a dependant of the court has been filed. [Welfare and Institutions Code (WIC) Section 313.]
- 5) Allows courts to adjudge that person to be a dependent child of the court under the following circumstances (WIC Section 300):
 - a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted non-accidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.
 - b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a child comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, non-treatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the child from suffering serious physical harm or illness. In making its determination, the court shall consider: (1) the nature of the treatment proposed by the parent or guardian; (2) the risks to the child posed by the course of treatment or non-treatment proposed by the parent or guardian; (3) the risk, if any, of the course of treatment being proposed by the petitioning agency; and, (4) the likely success of the courses of treatment or non-treatment proposed by the parent or guardian and agency. The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.

- c) The child is suffering serious emotional damage, or is at substantial risk of suffering, serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No child shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.
- d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, by his or her parent or guardian or a member of his or her household; or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.
- e) The child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse pursuant to Section 332.
- f) The child's parent or guardian caused the death of another child through abuse or neglect.
- g) The child has been left without any provision for support; physical custody of the child has been voluntarily surrendered and the child has not been reclaimed within 14 days; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful.
- h) The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.
- i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.
- j) The child's sibling has been abused or neglected, and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall

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consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Procedural Due Process Concerns: This bill, as drafted, requires the minor be subjected to confinement without a procedure for a hearing before a neutral magistrate. Such confinement implicates Due Process Concerns under the Fourteenth Amendment to the United States Constitution.

The Fourteenth Amendment states in part:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law*; nor deny any person within its jurisdiction the equal protection of the laws." [Emphasis added.]

The Fourteenth Amendment applies the concept of "fundamental fairness" through procedural due process upon all of the states in the Union. Hence, the state government may accomplish physical restraint (e.g., imprisonment) or physical intrusion only if appropriate procedures are followed. [See Ingram v. Wright, (1977) 430 U.S. 651.] In general, an individual has been deprived of a "liberty interest" for procedural due process purposes if he or she is the subject of a government order prohibiting him or her from engaging in lawful activities. The most common method of satisfying Procedural Due Process, as required constitutionally, is to grant an opportunity for judicial review, as soon as practicable if not before depriving a person of life, liberty or property. The executive branch (law enforcement) may not significantly deprive a person of liberty without permitting them an opportunity to appear before the judiciary (a magistrate) to determine if the deprivation of their liberty interest is warranted.

- a) Secure Detention Facility: This bill permits a peace officer or probation officer to take a minor detained for prostitution to a "secure detention facility" or a "local division facility." The minor is not to be charged with a crime and enjoys no protections provided criminal defendants. The minor is to be brought before a court within 48 hours so that the court can order an evaluation within 30 days. The minor is not provided an attorney. No mechanism exists for the minor to petition the court to release he or she from custody at this point. The court is given no choice but to order the evaluation. During this 30-day period, the minor must remain in a "secure detention facility" having never been charged with a crime, and having no representation.
- b) Secure Setting: If the court determines that the minor is sexually exploited following the 30-day evaluation, the minor is then placed in an undefined "secure setting" so that he or she may participate and complete a "sexually exploited minor program." No definition is provided for where this secure setting is. The secure setting is presumably confinement, and may in fact be a jail or a detention facility. No indication is given as to whether the

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minor is free to leave. Additionally, no information is provided as to the contents of the program or how long the minor must remain in custody to complete the program.

Presently, this bill proposes to permit law enforcement to place a minor in protective custody for an unspecified period of time, depriving him or her of the right to freely participate in society. Though the purposes of this bill may be to treat minors, an inherent ability to abuse this law exists. A minor can be placed in a legal limbo for an unspecified period of time (one month, one year, five years) prior to placement or resolution of his or her legal matters and never have an opportunity to petition for freedom.

A minor could potentially be taken off of the streets for loitering with the intent to engage in prostitution, yet never be informed of the allegations used for detention. The minor would never be permitted to speak with an attorney. The minor could potentially merely be standing on the street, detained, and not actually have done anything wrong. A minor could likewise be detained for prostitution and not actually have engaged in prostitution. Such a minor would have absolutely no due process right to request release or plead his or her innocence before a judge.

- 2) Stripping of Sixth Amendment Rights for Sexually Exploited Minors: The Sixth Amendment to the United States Constitution, as applied to the State of California by the Fourteenth Amendment of the United States Constitution states:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial; by an impartial jury . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for his defence."

By detaining these children indefinitely and not charging them with any crimes, they will naturally not enjoy the benefits the Sixth Amendment guarantees criminal defendants. Specifically:

- a) Denial of the Right to a Speedy and Public Trial: By never providing the minor an opportunity to come before a judge and proclaim his or her innocence of the allegations for which he or she was "detained", he or she is not provided a trial. No provision of this bill states a period of time for which the detention of a minor is permissible. The minor may be detained indefinitely.
- b) Denial of the Right to Instruction and Arraignment on the Allegations Which Serve As the Basis for Detention: No provision of this bill provides for the minor to be informed of the reason or basis for his or her detention. Therefore, due to the fact that he or she not been charged with a crime, he or she may never be informed of the basis for his or her detention.
- c) Denial of the Right to Confront and Compel Witnesses to Testify: Every criminal defendant has the right to confront and examine the witnesses who serve as the basis for the charges against him or her. This right affords the defendant with the opportunity to bring these witnesses before a judge or jury so that the arbiter of facts may determine the credibility of the allegations. By not charging the minor with a crime, the minor does not

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behavior, physical and mental illness."

- b) According to Planned Parenthood, "Teen prostitution is a growing problem across the nation. A study by University of Pennsylvania researchers says that 'child exploitation is the most hidden form of child abuse in the United States and North America today. It is the nation's least recognized epidemic.' The study results say that tens of thousands of United States, Mexican and Canadian children and youths become victims of juvenile pornography, prostitution, and trafficking each year.

"The study estimates that in the United States, 325,000 children a year are subjected to sexual exploitation. Among the sexually exploited children in the United States, the study estimated that 121,911 ran away from home; 6,793 fled mental hospitals, foster homes or other institutions; and 51,602 were thrown out of their homes by parents or guardians. Other groups of commercially sexually exploited children in the United States include girls in gangs; transgender street youths; foreign children brought into the United States illegally, especially from Africa, Asia, Eastern Europe and elsewhere in the Americas; and United States youth who are trafficked nationally and internationally as part of organized sex crime rings.

"According to the study, in the United States, child sexual exploitation affects as many boys as girls, but boys are less well served by human-service and law enforcement systems because of widespread belief that boys are better able than girls to fend for themselves. Given the high levels of emotional dysfunctions, drug abuse and violence that exist for boys living on America's streets, however, this is not true. In time, many boys shift from being victims of sexual abuse to victimizing other boys and girls as pimps and traffickers.

"The study, and many other law enforcement, judicial, and social service and child advocacy organizations recommend that providing protection and services to the sexually exploited minors is a top priority. Planned Parenthood believes this bill takes this first step."

- 8) Arguments in Opposition: None submitted.

REGISTERED SUPPORT / OPPOSITION:

Support

AFSCME
American College of Obstetricians and Gynecologists
Planned Parenthood Affiliates of California
State of California Commission on the Status of Women

Opposition

None

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

have the right to test the credibility of his or her detention.

- d) Denial of the Right to an Attorney: Perhaps the most fundamental right in the criminal justice system is the right to competent representation, especially in the realm of children. To expect a minor to adequately defend himself or herself through the process of detention and look after his or her own rights is unreasonable.
- 3) Fewer Rights than Mentally Disordered Offenders and Sexually Violent Predators: The law provides individuals who are civilly committed in quasi-criminal proceedings with the opportunity to petition for release and the right to counsel. These individuals are permitted the ability to challenge the reasons set forth requiring their commitment and lack of liberty with an attorney, before a jury or a judge. All of these rights are granted statutorily. Minors affected by this bill would not be afforded these rights.
- 4) What is a Sexually Exploited Minor? This bill does not define the standard a court should use when determining what a sexually exploited minor is. A minor who is arrested for prostitution or loitering with the intent to prostitute is to be detained for a determination as to whether he or she a sexually exploited minor. During his or her detention, the court must order a 30-day evaluation to assess whether he or she a sexually exploited minor, but this bill does not set forth what the requirements are for making the determination.
- 5) What Happens When a Court Decides that a Child is Not a Sexually Exploited Minor? This bill provides for what happens when a minor is deemed to be a sexually exploited minor, he or she is detained in a "secure setting" to complete a program. However, this bill does not provide for what happens to the minor who is not deemed "sexually exploited." Is the minor criminally prosecuted for prostitution or loitering with the intent to prostitute? If so, the minor has been assessed and potentially made incriminating statements that can now be used against him or her. The minor may have been held in custody for 32 days without an opportunity to speak with an attorney or petition for release. Witnesses who could testify in their defense may be permanently lost and unavailable. The right of the minor to adequately defend himself or herself from prostitution claims following a 32-day detention with no charges filed would be severely prejudiced.
- 6) What is an "Appropriate County Agency" for Evaluation Purposes? This bill permits "appropriate county agencies" to conduct an evaluation as to whether the minor is sexually exploited. An "appropriate county agency" may be either the police or probation department. This evaluation would presumably be completed without representation for the minor. As a result, the minor could incriminate himself or herself.
- 7) Arguments in Support:
- a) According to the American College of Obstetricians and Gynecologists, "Teens arrested for participating in acts of prostitution should be treated as sexually exploited victims. These girls often have been pulled into a life of prostitution after being molested or groomed for prostitution by an adult. There is a window of opportunity for these young women to be rescued from their situation, given an opportunity to be treated for their abuse, and started down a path of reintegration into society. Lifelong health problems begin from childhood abuse and traumas. Failure to intervene in a way that will break the cycle of abuse will sentence these young women to a lifetime of abusive and criminal

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Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 499

Amendment 1

Strike out lines 1 to 4, inclusive, of the title, and insert:

An act to add Section 307.6 to the Welfare and Institutions Code, relating to sexually exploited minors.

Amendment 2

On page 4, before line 1, insert:

SECTION 1. Section 307.6 is added to the Welfare and Institutions Code, to read:

307.6. (a) Notwithstanding Section 307 or 626, a person under 18 years of age who is suspected of, or detained for, violating subdivision (a) or (b) of Section 647, subdivision (a) of Section 653.22, ~~or subdivision (a) of Section 653.23 of the Penal Code,~~ shall be held as a sexually exploited minor and shall not be subject to any criminal prosecution or juvenile court proceeding.

(b) Pursuant to subdivision (a), a peace officer or probation officer shall instead detain and take any sexually exploited minor into temporary custody in a secure detention center, the local division facility, or a secure safe house.

(c) Any minor held as a sexually exploited minor shall be brought before the court within 48 hours, at which time the court shall order an assessment to determine whether the minor is sexually exploited and in need of protective services, and in order to establish a safety plan and secure appropriate placement for the minor. The minor shall be held in protective custody no more than 30 days until the assessment is completed. That assessment shall be performed by the appropriate county agency or court-appointed expert within those 30 days. Upon completion of an assessment that finds the minor is sexually exploited, the court shall order the minor held in a secure setting for his or her safety, to allow for the participation and completion of a sexually exploited minor program, or for the determination of secure appropriate placement for the minor.

(d) Upon a second detention pursuant to subdivision (a), a sexually exploited minor shall be subject to arrest and any criminal prosecution or juvenile court proceeding, but shall be allowed to participate in the programs described in subdivisions (b) and (c), subject to the discretion of the court.

(e) This section shall not be construed to affect any other provision related to the punishment for pimping and pandering as a minor, and, notwithstanding this section, any minor who pimps, panders, or otherwise sexually exploits another minor shall be prosecuted to the fullest extent of the law by the district attorney or city attorney.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.



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Substantive

Amendment 3

On page 4, strike out lines 1 to 20, inclusive, and strike out pages 5 to 21,
inclusive

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Rocio V. Dierra
City Attorney

OAKLAND CITY COUNCIL

2007 MAY -3 PM 3: 24 RESOLUTION NO. _____ C.M.S.

**RESOLUTION (1) IN SUPPORT OF ASSEMBLY BILL #499 (SWANSON),
IF AMENDED AS PROVIDED HEREIN, AUTHORIZING A LENGTHIER
DETENTION OF MINORS FOR PROSTITUTION OFFENSES AND
PROVIDING FOR THEIR PLACEMENT IN A SECURED FACILITY FOR
TREATMENT AS SEXUALLY EXPLOITED MINORS IN LIEU OF
CRIMINAL PROSECUTION AND (2) DIRECTING THE CITY'S
LEGISLATIVE LOBBYIST TO ADVANCE THE CITY'S INTERESTS**

WHEREAS, AB499 (Swanson) is currently pending in the California Legislature; and

WHEREAS, this bill will provide for prolonged detention of minors engaged in specified acts of prostitution and states that they shall not be criminally prosecuted in order that they may be placed in a secure facility for treatment as sexually exploited minors; and

WHEREAS, since 1999, the Oakland Police Department (Department) has investigated hundreds of cases involving sexually exploited minors working as prostitutes and has observed a large number of these victims returning to prostitution before adequate services could be provided and/or a criminal investigations conducted; and

WHEREAS, the bill affords minor victims of sexual exploitation a safe and non-threatening environment in which to receive care and assistance; and

WHEREAS, the Department recommends that AB499 be amended to address the following issues under the United States Constitution: (1) the minor's right to due process of law under the Fourteenth Amendment, (2) the minor's right to a speedy public trial under the Sixth Amendment, and (3) the minor's right to an attorney under the Sixth Amendment; and

WHEREAS, once amended to address the minor's constitutional rights as identified above, the Department recommends that AB499 be endorsed and supported by the City of Oakland; and

WHEREAS, the bill enhances the Department's abilities to apprehend those who exploit children and prevents the future victimizations of minors; now therefore be it

RESOLVED: That the City of Oakland declares its support for AB499 (Swanson), if amended to provide for the protection of a minor's constitutional rights as described above; and be it

FURTHER RESOLVED: That the City Administrator and the City's legislative lobbyists are directed to take all steps necessary toward advancing and advocating the City's interests respecting AB499.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST _____
LaTonda Simmons
City Clerk and Clerk of the Council,
City of Oakland, California