

2011 MAY 26 PM 7:19

CITY OF OAKLAND
BILL ANALYSIS



Date: May 18, 2011
Bill Number: AB 90
Bill Author: Assembly Member Swanson

DEPARTMENT INFORMATION

Department: Department of Human Services
Contact: Sara Bedford E-mail: sbedford@oaklandnet.com
Telephone: 510-238-6794 Fax 510-238-7207

RECOMMENDED POSITION: SUPPORT

Summary of the Bill

AB90, introduced in January 2011 by Assembly Member Swanson (Alameda), expands the scope of the offense of human trafficking to provide that any person who causes, induces, encourages, or persuades a person under 18 years of age to engage in a commercial sex act, as defined, with the intent to effect or maintain specified felonies is guilty of human trafficking.

1. The bill states that standard of proof of trafficking shall be a showing that the defendant caused, induced, encouraged, or persuaded the victim; this will replace the current law requiring a showing of force, fraud, or coercion.
2. The rationale for this distinction is that requiring a showing of force as it relates to a minor trafficking victim does not reflect the reality of how our children are recruited, exploited, and sold for sex. The vast majority of traffickers utilize manipulation, deceit, and trickery to achieve their goals. Because subtle forms of coercion elude the coerced, minors are frequently unaware of or unable to articulate the mechanism of their exploitation; and
3. This bill will make California law consistent with federal law and ensure that minors trafficked in California receive the same protection under the law as minors trafficked into California. Though state law specifically states that it is intended to conform to federal law, it can be construed to require a showing of force or coercion. This ambiguity hinders prosecutors from prosecuting traffickers to the fullest extent possible.
4. The bill states that any person who commits human trafficking involving a sexually exploited minor shall be punished by a fine of not more than one hundred thousand dollars (\$100,000).

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5. The bill states that every fine imposed and collected will be deposited in the Victim-Witness Assistance Fund to fund services for victims of human trafficking. At least 50 percent of the fines collected and deposited pursuant to this section shall be granted to community-based organizations that serve victims of human trafficking.

Positive Factors for Oakland

AB90 could deter tracking minors for sexual exploitation by making prosecution of traffickers easier; it could also increase funding for local agencies providing services to sexually exploited minors. Existing California law conflicts with federal law and hinders prosecutors from prosecuting traffickers. AB90 will make California law consistent with federal law and allow more traffickers to be prosecuted. Because our state human trafficking law does not mandate prison as a disposition, cases can be resolved without the need for a jury trial which often results when a prison term is nonnegotiable.

Negative Factors for Oakland

According to the State bill analysis, changing the Penal Code will have State financial impacts, in excess of \$150,000 per year for increased state prison terms. In 2009 and 2010 combined, 13 persons were committed to state prison under this section. If this bill results in two additional persons per year receiving the six-year midterm sentence, in four years the increased cost for incarceration will exceed \$250,000, assuming full sentence credit and \$50,000 per capita. It is not clear the financial impacts to Oakland specifically.

It is also not clear which anti-trafficking services will be funded and who will make that decision.

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

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

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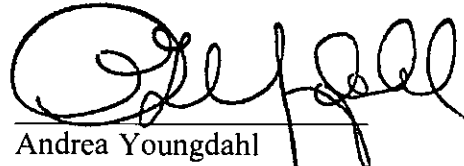
Known support:

Support for AB 90 includes Alameda County District Attorney's Office, American Association of University Women, California State PTA, California State Sheriffs' Association, California Coalition for Youth, American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, Children's Advocacy Institute, Concerned Women for America, The Child Abuse Prevention Center, Crime Victims United of California, California Nurses Association, Coalition for Youth, California District Attorney's Association, L.A. County Probation Officers Union, Polaris Project, California National Organization for Women

Known Opposition:

None at this time.

Respectfully Submitted,



Andrea Youngdahl
Director, Department of Human Services

Prepared by:
Sara Bedford
Policy and Planning Manager

APPROVED FOR FORWARDING TO THE
RULES & LEGISLATION COMMITTEE:



Office of City Administrator

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Date of Hearing: May 4, 2011

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Felipe Puentes, Chair

AB 90 (Swanson) - As Amended: April 4, 2011

Policy Committee: Public
SafetyVote: 7-0

Urgency: No State Mandated Local Program:
Yes Reimbursable: No

SUMMARY

This bill expands the definition of "human trafficking" to include causing or persuading a minor under the age of 18 to engage in a commercial sex act, as specified, with the intent to commit pimping, pandering, sexual exploitation of a child, enticement, use of a minor in pornography, extortion, or solicitation of prostitution.

(Human trafficking involving a minor under the age of 18 is punishable by four, six, or eight years in state prison.)

FISCAL EFFECT

Minor to moderate annual GF costs for increased state prison terms, potentially in excess of \$150,000 per year, to the extent the expanded definition of human trafficking results in additional commitments. In 2009 and 2010 combined, 13 persons were committed to state prison under this section. If this bill results in two additional persons per year receiving the six-year midterm sentence, in four years the increased cost for incarceration will exceed \$250,000, assuming full sentence credit and \$50,000 per capita.

Though proponents of this bill contend it is merely a consistent clarification of the intent of current law, if the clarification is helpful in gaining convictions and state prison commitments, there will be attendant costs. If there are no attendant costs, there is arguably no need for the clarification.

COMMENTS

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1) Rationale. The author and sponsor, the Alameda County D.A.'s Office, contend this bill simply clarifies an ambiguity in state law, and a discrepancy between state and federal law, regarding the need to prove force or coercion in the trafficking of minors.

According to the Alameda County D.A., due to unclear draftsmanship in current human trafficking law, the issue of whether proof of force or coercion is required, when a minor is sold for sex, is unclear. The ambiguity of state law places local prosecutors at a significant disadvantage in the fight to protect vulnerable minors and hold accountable those who profit from exploiting them.

Current Penal Code Section 236.1(f) states the "Legislature finds that the definition of human trafficking in this section is equivalent to the federal definition." Despite the fact that the federal definition clearly states that prosecutors do not have to prove force or coercion in domestic minor sex trafficking cases, Section 236.1 does not explicitly state what it implies.

As a result, according to proponents, the statute may be misinterpreted, resulting in the misconception that force or coercion must be proven when trafficking victims are minors. AB 2319 is intended to remedy what the Alameda D.A. views as a drafting defect.

2) Current law specifies that depriving or violating the liberty of another with the intent to commit a felony violation of enticement of a minor into prostitution, pimping or pandering, abduction of a minor for the purposes of prostitution, extortion, or to obtain forced labor or services, is human trafficking. Depriving or violating the liberty of another includes substantial and sustained restriction of another's liberty via fraud, deceit, coercion, violence, duress, menace, or threat.

Human trafficking of a person over the age of 18 is punishable by imprisonment by three, four, or five years. If the victim is under 18 the offense is punishable by four, six, or eight years.

3)Federal law defining human trafficking states in part, "The

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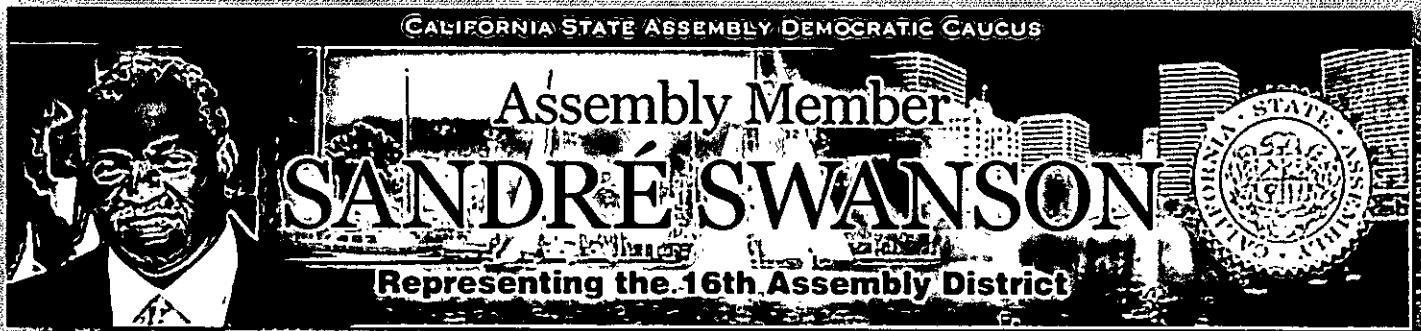
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term 'severe forms of trafficking in persons' means: sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery." Federal law does not require force, fraud or coercion if the victim is under 18 years of age.

4)In addition, as minors cannot consent to sexual acts, the proposed clarification appears consistent with the current state law . As noted in the Assembly Public Safety analysis, consent is not required for several other offenses involving sexual contact with children. There is arguably no reason to require force in sexual commercial trafficking cases involving minors as they are not capable of consent at any rate. Moreover, given that Penal Code Section 236.1(f) clearly cross-references the federal provision eliminating the need to show force, this bill appears consistent with the state Penal Code.

5)Similar legislation, AB 2319 (Swanson), 2010, was held on this committee's Suspense File .

Analysis Prepared by : Geoff Long / APPR. / (916) 319-2081



For Immediate Release: January 7, 2011

Contact: Amy Alley 916.319.2016

SWANSON CONTINUES BOLD FIGHT AGAINST CHILD TRAFFICKING

Assemblymember Swanson introduced AB 90 this week, which continues his 4-year long effort to fight human trafficking and the sexual exploitation of minors in our state. AB 90 fixes a serious legal deficiency in state law by eliminating an existing requirement that force, fraud, or coercion be demonstrated in cases where a minor victim is involved.

"Trafficking of a minor should be dealt with consistently by law enforcement and our judiciary – whether the minor is physically held captive or whether the trafficker uses mental coercion to hold the victim captive should not matter for the purposes of conviction. AB 90 tightens up our state laws on human trafficking by conforming them to federal law.



Deputy District Attorney Sharmin Bock, Assemblymember Swanson, and Attorney General Kamala Harris testify in support of Swanson's human trafficking legislation during a 2010 hearing.

"AB 90 is a monumental step toward unraveling many public and legal misperceptions of trafficked victims. It is shameful that our state is unable to prosecute a trafficker because there is no evidence of physical abuse. The sexual abuse the child is suffering because of her forced slavery is physical abuse. And it is irresponsible of our state to relieve a criminal of punishment simply because he used mental force rather than physical force in keeping the minor child captive. This was not the intent of the original law.

AB 90 will fix this problem by codifying the

original intent," said Assemblymember Swanson.

Deputy District Attorney Sharmin Bock, of Alameda County, a well-known expert on the commercial sexual exploitation of minors, worked closely with Swanson to draft AB 90 and the previous version of the bill from 2010, AB 2319. While appearing at the Capitol for a 2010 hearing on AB 2319 Bock made the following statement:

“When most people think of human trafficking victims, they envision women and children from Asia shipped from overseas in shipping containers. This is a misconception. Human trafficking is not a third world or international phenomenon – it is a well-documented domestic problem occurring in our own backyards. It crosses color lines and nationality lines,” said Bock.

“Minors who are sex trafficked suffer from significant physical and mental health problems, including post-traumatic stress disorder, depression, and trauma bonding, resulting from displacement and abuse. They need to be protected by our laws and not treated like criminals,” concluded Deputy District Attorney Bock.

AB 90 makes clear that where a trafficking victim is 18 years of age or younger, a showing of force, fraud, or coercion is not required in proving the elements of the crime. The rationale for this distinction is that minors cannot consent to a sexual act, so to require a showing of force as it relates to a minor trafficking victim is unreasonable. Instead, the standard of proof shall be a showing that the defendant caused, induced, encouraged, or persuaded the victim. This is consistent with federal law and the fact that minors are unable to legally consent to sexual acts.

Attorney General Kamala D. Harris also testified in support of last year’s version of AB 90. At the time of her testimony, the Attorney General was District Attorney of San Francisco, making her powerfully aware of the need for stronger prosecutorial tools to protect children being exploited for profit. Assemblymember Swanson’s office looks forward to further discussions with Attorney General Kamala D. Harris’ Office on how to continue the fight against modern day slavery.

Assemblymember Swanson also introduced AB 12 this year, which increases to \$25,000 the fine against an adult convicted of paying for the sexual services of a minor and directs those fines to community agencies that help sexually exploited minors obtain education, counseling, and shelter.

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POLARIS PROJECT

FOR A WORLD WITHOUT SLAVERY

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★★★★
CHARITY NAVIGATOR
Four Star Charity

April 26, 2011

The Honorable Tom Ammiano
Chair, Public Safety Committee
California State Assembly

RE: AB 12 & AB90 (Assemblyman Swanson) – SUPPORT

Dear Chairman Ammiano & Members of the Public Safety Committee:

On behalf of Polaris Project, an organization committed to combatting human trafficking within the United States, I urge you to support AB 12 & AB 90 by Assemblyman Swanson.

Since 2002, Polaris Project has taken a holistic and comprehensive approach in our work, weaving together national systemic change efforts combined with direct services for survivors. Polaris Project has operated the National Human Trafficking Resource Center (NHTRC) hotline for the country since December 2007. During this time, our human trafficking call specialists have fielded over 30,000 calls from across the nation, referencing over 4,000 potential victims. Polaris Project has also provided direct victim services to more than 300 survivors of human trafficking since 2004 in our D.C. and New Jersey client service offices. We are an active member of the DC Human Trafficking Task Force, the Alliance to End Slavery and Trafficking (ATEST), and the FBI Innocence Lost National Working Group. In addition, we routinely work with states and other advocates to ensure that victims of human trafficking are provided the services and protection they need and deserve.

AB 12, the *Abolition of Child Commerce, Exploitation, and Sexual Slavery Act of 2011*, requires johns who solicit or procure commercial sex from a minor under the age of 16 to pay an additional \$25,000 fine, which will be deposited in the Victims-Witness Assistance Fund. These funds may be appropriated to child sexual exploitation and child sexual abuse victim counseling centers and prevention programs.

AB 90, will remove the requirement of having to prove force, fraud, or coercion when minors are trafficked, making it easier for prosecutors to target those who traffic children for commercial sexual exploitation.

The 2010 U.S. Department of State's Trafficking in Persons Report estimated the number of persons trafficked globally to be 12.3 million people. Nearly 80 percent of the victims are women and girls and 50 percent are children. It is the fastest growing criminal industry in the world consisting of the recruitment, harboring, transportation and subjugation of people for the purpose of forced or coerced labor or sexual

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exploitation. Approximately 100,000 U.S.-born children become victims of commercial sexual exploitation every year.

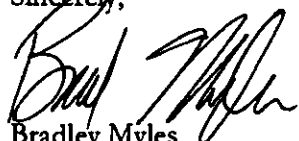
In California, human trafficking flourishes in domestic pimp-controlled street prostitution, commercial-front massage parlors, residential brothels, truck stops, nail salons, agriculture, domestic servitude, and within traveling sales crews. In 2010, the national human trafficking hotline received over 1,200 calls from California which included 24 crisis calls and over 230 tips referencing potential trafficking victims. Of that number, over 130 calls were related to sex trafficking.

California has been a national leader in its efforts to combat the enslavement of women and children in commercial sexual exploitation. However, more must be done to ensure that prosecutors have the tools they need to target sex traffickers and send a clear message that the commercial sexual exploitation of minors will not be tolerated.

Support for AB 12 & AB 90. The increased criminal fines for “johns” who patronize minor victims of sex trafficking will help curb demand for this illegal trade. The funds that are generated will also help victims begin to rebuild their lives once they have been rescued. The removal of the requirement of force, fraud, or coercion when minor trafficking victims are involved will make it easier for prosecutors to target those who commercially exploit children.

The passage of AB 12 & AB 90 will make a tangible difference in the lives of these vulnerable children who are trapped with no rights, no freedom, and no knowledge of whom to turn to for help. On behalf of the victims whose voices are too often silenced, we urge you to support AB 12 & AB 90 and bring California one step closer to ending human trafficking.

Sincerely,



Bradley Myles
Executive Director and CEO

2011 MAY 26 PM 7:19

DRAFT

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

RESOLUTION IN SUPPORT OF AB 90 (SWANSON), WHICH REMOVES THE AMBIGUITY IN OUR STATE LAW, MIRRORS FEDERAL LAW, AND MORE ACCURATELY REFLECTS THE REALITY OF DOMESTIC CHILD SEX TRAFFICKING, WITH REVISED LANGUAGE THAT ANY PERSON WHO CAUSES, INDUCES, ENCOURAGES, OR PERSUADES A PERSON UNDER 18 YEARS OF AGE TO ENGAGE IN A COMMERCIAL SEX ACT, IS GUILTY OF HUMAN TRAFFICKING

WHEREAS, sexual slavery of minors through human trafficking is one of the most sophisticated forms of organized crime in the country and is now globally recognized as a modern day form of slavery. Child sex trafficking impacts 300,000-400,000 children in the United States every year, and California is a hub of trafficking activity; and

WHEREAS, children are not safe from trafficking and exploitation in California. The median age for the entrance of girls into prostitution is 12 years of age in California; younger than the international average age of 14. Some children trafficked are as young as four years old; and

WHEREAS, many child victims of trafficking suffer from significant physical and mental health problems, including post-traumatic stress disorder, depression, and trauma bonding, which creates the same kind of confinement as physical coercion; and

WHEREAS, the prosecution of traffickers in California is hindered by inconsistencies with the federal law. Currently, state law specifically states that it is intended to conform to federal law, but at the same time, state law requires a showing of force or coercion; and

WHEREAS, Assembly Bill 90, introduced in January 2011 by Assembly Member Swanson (Alameda), would fix this ambiguity in our state law with revised language specifying that any person who causes, induces, encourages, or persuades a person under 18 years of age to engage in a commercial sex act, is guilty of human trafficking; and

WHEREAS, AB 90 states that the standard of proof of trafficking shall be a showing that the defendant caused, induced, encouraged, or persuaded the victim; this will replace the current law requiring a showing of force, fraud, or coercion. The rationale for this distinction is that requiring a showing of force as it relates to a minor trafficking victim does not reflect the reality of how our children are recruited, exploited, and sold for sex. The vast majority of traffickers utilize manipulation and trickery to achieve their goals. Because subtle forms of coercion elude the coerced, minors are frequently unaware of or unable to articulate the mechanism of their exploitation; and

WHEREAS, AB90 will make California law consistent with federal law. Currently, state law specifically states that it is intended to conform to federal law, but at the same time, state law requires a showing of force or coercion. This ambiguity hinders prosecutors from prosecuting traffickers to the fullest extent possible; and

WHEREAS, AB 90 states that any person who commits human trafficking involving a sexually exploited minor shall be punished by a fine of not more than one hundred thousand dollars (\$100,000); and

WHEREAS, AB 90 states that every fine imposed and collected will be deposited in the Victim-Witness Assistance Fund to fund services for victims of human trafficking. At least 50 percent of the fines collected and deposited pursuant to this section shall be granted to community-based organizations that serve victims of human trafficking; now, therefore, be it

RESOLVED: that the Oakland City Council declares its support for AB 90 (Swanson) to expand the scope of the offense of human trafficking to provide that any person who causes, induces, encourages, or persuades a person under 18 years of age to engage in a commercial sex act, is guilty of human trafficking; and, be it

FURTHER RESOLVED: that the Oakland City Council directs the City Administrator and the City's legislative lobbyist to advocate for the above position in the State Legislature.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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