
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 662 **Hearing Date:** June 25, 2019
Author: Cunningham
Version: February 15, 2019
Urgency: No **Fiscal:** Yes
Consultant: JK

Subject: *Crimes Against Minors*

HISTORY

Source: Author

Prior Legislation: AB 1882 (Cervantes), 2018, vetoed
AB 371 (Cooley), 2018, failed passage in Senate Appropriations
AB 1771 (O'Donnell), 2016, failed passage in Senate Rules
Prop 35, 2012

Support: California District Attorneys Association

Opposition: None known

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is change the crime of enticing a female under the age of 18 into prostitution gender neutral.

Existing law specifies that a person who inveigles or entices any unmarried female, of previous chaste character, under the age of 18 years, into any house of ill fame, or of assignation, or elsewhere, for the purpose of prostitution, or to have illicit carnal connection with any man; and every person who aids or assists in such inveiglement or enticement; and every person who, by any false pretenses, false representation, or other fraudulent means, procures any female to have illicit carnal connection with any man, is punishable as a felony by imprisonment in the state prison, or as a misdemeanor by imprisonment in a county jail not exceeding one year, or by a fine not exceeding \$2,000, or by both such fine and imprisonment. (Pen. Code, § 266.)

Existing law states that the crime of pandering occurs when a person engages in any of the following acts:

- 1) Procures another person for the purpose of prostitution;
- 2) By promises, threats, violence, or by any device or scheme, causes, induces, persuades, or encourages another person to become a prostitute;

- 3) Procures for another person a place as an inmate in a house of prostitution or as an inmate of any place in which prostitution is encouraged or allowed within this state;
- 4) By promises, threats, violence, or by any device or scheme, causes, induces, persuades, or encourages an inmate of a house of prostitution, or any other place in which prostitution is encouraged or allowed, to remain therein as an inmate;
- 5) By fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procures another person for the purpose of prostitution, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into this state or leave this state for the purpose of prostitution; or
- 6) Receives or gives, or agrees to receive or give, any money or thing of value for procuring, or attempting to procure, another person for the purpose of prostitution, or to come into this state or leave this state for the purpose of prostitution. (Pen. Code, § 266i (a).)

Existing law provides that a person that commits any of the acts described above is guilty of pandering, a felony, and shall be punishable by imprisonment in the state prison for three, four, or six years. (Pen. Code, § 266i (a).)

Existing law specifies that any person who does any of the acts described above with another person who is a minor is guilty of pandering, a felony, and shall be punishable as follows:

- 1) If the other person is a minor 16 years of age or older, the offense is punishable by imprisonment in the state prison for three, four, or six years; or
- 2) If the other person is under 16 years of age, the offense is punishable by imprisonment in the state prison for three, six, or eight years. (Pen. Code, § 266i (b).)

Existing law provides that a person who deprives or violates the personal liberties of another with the intent to obtain forced labor or services is guilty of human trafficking and shall be punished by a state prison term of 5, 8, or 12 years. (Pen. Code, § 236.1 (a).)

Existing law provides that any person who deprives or violates the personal liberties of another with the intent to effect or maintain a violation of specified sex offenses, is guilty of human trafficking and shall be punished by a state prison term of 8, 14, or 20 years. (Pen. Code, § 236.1 (b).)

Existing law provides that any person who causes or persuades, or attempts to cause or persuade, a minor to engage in a commercial sex act, with the intent to effect a violation of specified sex offenses is guilty of human trafficking and shall be punished by a state prison term of 5, 8, or 12 years, unless the offense involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, in which case the punishment is 15 years to life in state prison. (Pen. Code § 236.1 (c).)

Existing law states that every person who contacts or communicates with a minor, or attempts to contact or communicate with a minor, with intent to commit a specified offense involving the minor, shall be punished by imprisonment in the state prison for the term prescribed for an attempt to commit the intended offense. A person convicted of a violation of this statute who has

previously been convicted of a violation of this statute shall be punished by an additional and consecutive term of imprisonment in the state prison for five years. (Pen. Code, § 288.3)

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

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

This bill changes the crime of enticing a female into a house of prostitution to allow the victim to be a person of any gender.

This bill deletes the element from that crime that requires the victim be “unmarried”.

This bill deletes the element from that crime that requires the victim be “of previous chaste character.”

This bill deletes the element from that crime that requires the solicitor be “any man.”

COMMENTS

1. Need for This Bill

According to the author:

Penal Code 266 has not been updated in more than 30 years. It is a virtually useless statute due to the outdated language, and might even have constitutional issues as written. Both females and males can be victims of forced prostitution and our law should not discriminate based on gender. This bill modernizes the language in the statute.

2. Penal Code Section 266

Penal Code Section 266 was enacted in 1872 and last amended in 1983. This outdated law requires that the victim be, not only, female but “unmarried” and “of previous chaste character”, all characteristics having nothing to do with the legality or severity of the crime. This law also requires the solicitor to be a man. These gendered assumptions have been widely disproven. It has been found that males who are minors are also being solicited for prostitution, disproportionately LGBTQ youth.¹

This bill deletes these elements and replaces gendered expressions with gender neutral terms.

¹ <https://oag.ca.gov/sites/all/files/agweb/pdfs/ht/polaris-typology-of-modern-slavery.pdf>

3. Equal Protection Clause of the United States Constitution

The concept of equal protection recognizes that persons who are similarly situated with respect to a law's legitimate purposes must be treated equally. Accordingly, the first prerequisite to a claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner. This initial inquiry is not whether persons are similarly situated for all purposes, but whether they are similarly situated for purposes of the law challenged. (*People v. Brown* (2012) 54 Cal.4th 314.)

In deciding whether a particular law or action violates the Equal Protection Clause, courts have used three distinct tests. In 1976, the Supreme Court announced a third equal protection test that, thus far, has been applied most often in cases challenging classifications made on the basis of sex. This test is more demanding than the rational basis test and more forgiving than strict scrutiny and, consequently, is referred to as the “intermediate scrutiny” or “heightened scrutiny” test. It provides that classifications by sex are constitutional only if they serve important government objectives and are closely and substantially related to the achievement of those objectives. A law will not pass this test if the law could be written to achieve the same purpose without referring to sex. Likewise, if the law serves no “important” objectives, it is unconstitutional.²

The current law regarding “inveigling and enticing” makes a distinction on the basis of sex by requiring the victim to be female. The current law has not been challenged on the basis of equal protection. Such a challenge would likely trigger “intermediate scrutiny” of the law based on the requirement that the victim be female. It is possible that if a court did find that men and women were similarly situated with respect to such a crime, that limiting the crime to female victims served an “important” objective that might satisfy intermediate scrutiny. As a general matter, California law does not predicate the status of a victim based on their gender. This bill seeks to make the crime of “inveigling and enticing” gender neutral.³

-- END --

² https://www.aclu.org/files/pdfs/about/rightsofwomen_chapter1.pdf

³ Ibid