

**Senate Appropriations Committee Fiscal Summary
Senator Christine Kehoe, Chair**

AB 1844 (Fletcher)

Hearing Date: 08/12/2010

Amended: As Proposed to be Amended

Consultant: Jacqueline Wong-Hernandez **Policy Vote: Public Safety 7-0**

BILL SUMMARY: AB 1844 would change numerous statutes governing sex offenses and sex offenders, as well as other crimes. This bill would:

- 1) Increase the punishment for various sex offenses, as specified.
- 2) Prohibit a person on parole for specified sex offenses to enter any park where children regularly gather without express permission from his/her parole agent.
- 3) Require lifetime parole for certain habitual sex offenders, and increase the length of parole, as specified, for all sex offenders.
- 4) Require the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) Review Committee, on or before January 1, 2012, to select an actuarial instrument that measures dynamic risk factors, and another that measures risk of future sexual violence to be administered as specified.
- 5) Require that with respect to persons convicted of specified sex offenses, the Department of Justice (DOJ) make available to the public via the department's website, the static SARATSO score and information on risk level based on the SARATSO future violence tool.
- 6) Impose specified conditions of probation, including participation in an approved sex offender management program (SOMP), on persons released on formal supervised probation for an offense requiring registration as a sex offender, as specified. The bill would similarly require participation in an approved SOMP, as a condition of parole, for specified persons released on parole.
- 7) Change the punishment for certain existing "wobblers" that are not sex offenses.

Fiscal Impact (in thousands)

Major Provisions	2010-11	2011-12	2012-13	Fund
Increases "triad" sentencing	Substantial new costs, beginning in 2013-14			General
Increases "one strike" sentencing	Potentially substantial costs beginning in 2026			General
Increases parole length/scope	-----Substantial ongoing costs-----			General
New risk assessment policies	Substantial development, equipment, staff costs; Potentially low tens of millions			General
Requires SOMP programs	Substantial development and implementation costs; potentially substantial future incarceration cost avoidance			General
DOJ website information	\$0	\$35	Minor and absorbable	General
Mandate: County probation	Likely millions annually in reimbursable activities			General
Wobbler reductions	<up to \$16,000>	<up to \$32,000>	<up to \$32,000>	General
Human Trafficking fines	Unknown, potentially significant revenue			Special*

*Victim-Witness Assistance Fund

STAFF COMMENTS: SUSPENSE FILE. As Proposed to be Amended.

AB 1844 would enact the Chelsea King Child Predator Prevention Act of 2010, making numerous changes to statutes governing sex offenses and sex offenders. The full range of fiscal implications for the State of California cannot be determined, because many costs will be driven by the future actions of numerous individuals who will interact with these provisions. Local law enforcement, district attorneys and public defenders, the Department of Corrections and Rehabilitation (CDCR), probation officers, parole agents, mental health professionals, the SARATSO Review Committee, actuarial risk assessment instrument vendors, the DOJ, and individual sex offenders, will all make decisions that will affect the costs of implementing this bill.

With regard to the existing determinate sentences for sex offenses, this bill would:

- 1) Increase the punishment for assault with the intent to commit mayhem, rape, sodomy, oral copulation, or with the intent to commit, by force, rape, spousal rape, or sexual penetration in concert with another, from imprisonment in state prison for 2, 4, or 6 years, to 5, 7, or 9 years, as specified. Additional state incarceration costs, to the extent that new convictions occur, would begin in 2013-14.
- 2) Increase the punishment for rape, sodomy accomplished against the victim's will, oral copulation accomplished against the victim's will, and sexual penetration accomplished against the victim's will from imprisonment in state prison for 3, 6, or 8 years to 9, 11, or 13 years if the victim is under 14 years old, or 7, 9, or 11 years if the victim was 14 years of age or older. This bill would provide that if these crimes are committed in concert with another person upon a child who is under 14 years of age they are punishable in state prison for 10, 12, or 14 years, and if committed in concert upon a minor who is 14 years of age or older by imprisonment for 7, 9, or 11 years, as specified. Additional state incarceration costs, to the extent that new convictions occur, would begin in 2014-15.
- 3) Increase the punishment for a person who commits any lewd or lascivious act upon a child who is under 14 years of age, or upon a dependent person, as defined, by use of force or fear from imprisonment in state prison for 3, 6, or 8 years, to 5, 8, or 10 years. Additional state incarceration costs, to the extent that new convictions occur, would begin in 2014-15.

The extent to which new costs would result directly from these provisions depends on the number of new specified crimes committed, how the crimes are charged (including the use of enhancements under existing law and Three Strikes), and the degree to which plea deals are reached. Based on CDCR data from 2008-09 of the number of new admissions to state prison in that year under principal offenses listed above, increasing the determinate sentencing triads would likely result in a future net population increase of 8 inmates in 2013-14; a population increase of 20 inmates in 2014-15; a population increase of 130 inmates annually by 2019-20. In those years, the increase of inmates (relative to a statewide population of approximately 160,000) would

be small, and not uniquely require additional staff or construction; the marginal cost of incarceration is approximately \$24,000.

Based on CDCR's population increase projection in a given year, the additional cost of incarceration would be approximately \$192,000 General Fund (GF) in 2013-14, \$480,000 GF in 2014-15, and \$3,120,000 GF by 2019-20. As the total number of inmates incarcerated in state prisons grows (CDCR projects that these provisions will result in an increase of 357 inmates in 2029-30), the cost per inmate grows, because a larger population requires additional staff, beds, and other overhead considerations which are not fully considered in the marginal incarceration cost estimate. Additionally, as inmates age, their healthcare needs grow and tend to be more expensive. Those costs would vary by inmate, and cannot be determined.

This bill would further provide that any person who is convicted of certain sex offenses currently punishable by imprisonment in a state prison for 15 years-to-life, committed upon a victim who is under 14 years of age, shall receive a sentence of 25 years-to-life. This provision would also result in a sentence increase of at least 10 years, and would result in future incarceration (both custody and long term healthcare) costs of an unknown magnitude.

AB 1844 would also make changes to existing "one strike" sex crimes, currently punishable by imprisonment in state prison for 15 years-to-life or 25 years-to-life. This bill would provide that these specified felonies committed upon a victim who is under 14 years of age shall be punished by imprisonment in state prison for life without the possibility of parole (LWOP) if the offender is 18 years of age or older or 25 years-to-life if the offender is under 18 years of age. This bill would add as a circumstance the infliction of bodily harm, as defined, on a victim who is under 14 years of age to the list of existing specified circumstances for which the extended terms could be imposed.

This bill would also provide that when rape, spousal rape, rape in concert, sexual penetration, sodomy, or oral copulation committed against the victim's will are committed under two of a specified list of circumstances, upon a minor 14 years of age or older, the punishment shall be LWOP if the offender is 18 years of age or older. The punishment shall be 25 years-to-life if the offender is under 18 years of age. If the crime is committed under one (instead of two) of the specified circumstances, the punishment shall be 25 years-to-life.

The extent to which these provisions would result in an actual increase in prison sentences is unclear. Under existing law, after 15 or 25 years (as specified), the Board of Parole Hearings (BPH) would *consider* parole; the inmates could be denied parole continually and serve life sentences under existing law. One strike sex crimes are often particularly heinous, and there is very little data on the degree to which BPH will release individuals serving those sentences, because most have not yet reached their parole dates. Additionally, some inmates will die in prison before reaching their parole dates, or before successfully being paroled, more than 15 or 25 years from conviction. Moreover, because a potential LWOP sentence would apply only to future offenders, it is unclear to what degree plea bargains will result from the threat of such a sentence.

This bill makes numerous changes to parole and probation requirements and restrictions for sex offenders. This bill would:

1) Increase the duration of parole for certain offenders. It would require lifetime parole for habitual sex offenders, persons convicted of kidnapping a child under 14 years of age with the intent to commit a specified sexual offense, and persons convicted of other specified sex crimes, including the aggravated sexual assault of a child. This bill would, unless a longer period of parole applies, impose a 10-year parole period on individuals convicted of kidnapping with the intent to commit specified sex offenses, and other specified sexual offenses. This bill would also impose a 20-year parole period on inmates convicted and required to register as sex offenders for rape, sodomy, lewd or lascivious acts, continuous sexual abuse of a child, and other specified sex crimes, in which one or more of the victims of the offense was a child under 14 years of age, as specified.

CDCR estimates the cost of parole supervision to be \$5,965 per year for each parolee. The associated costs for GPS monitoring add approximately \$1,600, annually. Due to the volume of parolees likely to be affected by these provisions, CDCR's full cost calculation is an appropriate estimate of true future cost. Extending parole, as specified above and based on 2008-09 admissions data previously reported, would result in annual increased parole costs of nearly \$3,000,000 GF in 2024-25; parole costs would continue to increase every year thereafter. These estimates are specific to increased length of time under parole supervision, and do not include practical interaction with the additional parole regulations established by this bill.

2) Establish new conditions of parole for sex offenders. It would require, among other provisions, parolees to participate in approved SOMPs, and submit to polygraph tests. This bill would make it a misdemeanor for a person on parole for specified sex offenses to enter any park where children regularly gather without express permission from the person's parole agent.

A longer duration of parole, with increased conditions of that parole, will likely result in increased parole revocations. To the extent that the approved SOMPs are successful at reducing recidivism, however, future costs may be mitigated. Parole supervision is far less expensive than custodial supervision, although the new services required in this bill will increase the state cost of sex offenders' parole to an unknown degree. These costs compound the costs of increased parole duration previously noted. This bill specifies that sex offender participants will pay for their own participation, to the extent which they are able, but the degree to which that will occur is unknown. This bill specifies that individuals will not be denied parole due to an inability to pay for their participation in required activities. Additionally, significant costs will be incurred to coordinate and staff SOMPs, as well as polygraph testing, that will not be recoverable for some time, if ever.

3) Impose specified conditions of supervised probation that are similar to parole restrictions, including participation in an approved SOMP.

Increasing the conditions of county-supervised probation constitutes a reimbursable state mandate on county probation officers. Existing law specifies that offenders shall be referred to appropriate treatment programs to the extent that they are available in the county. This bill requires SOMP participation, and probation officers would be responsible for managing this process. County probation officers will have to be trained on new conditions, some of which require extensive new monitoring for compliance. Additionally, county probation officers must be trained on conducting soon-to-be-adopted sex offender risk assessments, as specified.

The scope and expense of mandates on county probation officers will vary by county, but will likely be in the millions during initial implementation years. After the new systems are in place, that cost could drop to hundreds of thousands of dollars, annually. The exact amount would also depend on the extent of the claimed mandate expenses that are approved by the Commission on State Mandates.

This bill would require the SARATSO Review Committee, on or before January 1, 2012, to select an actuarial instrument that measures dynamic risk factors, and another actuarial instrument that measures risk of future sexual violence to be administered, as specified. This process will likely involve hiring experts to consult on product selection and implementation, in addition to the actuarial instrument cost. This provision is likely to be the most immediate cost incurred by this bill; costs will be in the millions to procure and implement two new instruments for assessing individuals' risk of future sexual violence. Additional workload will include determining the processes for using these instruments in conjunction with the existing Static-99 assessment, and determining appropriate SOMP placement and parole supervision level based on the results.

This bill would also require specified training for persons who would administer the dynamic SARATSO and the future violence SARATSO. In addition to certain existing CDCR staff who would have to be trained, these provisions will likely result in a need to hire or contract additional professionals to both administer the risk assessments and train staff to administer them. This bill provides that county probation officers "may" be trained to administer the risk assessments; because of the new requirements to place specified sex offenders who are on probation in appropriate SOMP, it is likely that county probation officers will (for practical purposes) require this specific training. Such training may be considered an additional reimbursable state mandate on county probation departments. These costs will be substantial, but the exact amount will be determined by system centralization and efficiency, who ultimately assesses the offenders, and the extent to which the instruments are utilized.

Use of static, dynamic, and future sexual violence risk assessments simultaneously, in conjunction with multi-agency coordination, mandatory polygraph tests, and other reforms adopted by this bill, are often referred to as a "Containment Approach" or "Containment Model" program for sex offenders. Various studies on the effectiveness of containment models in other states have shown positive results in recidivism reduction. To the extent that the containment strategies in this bill are effective, sex offenses (and their myriad associated costs for the state, local governments, and victims) could be reduced.

This bill would require that DOJ make available to the public via the department's website the static SARATSO score and information on an elevated risk level based on the SARATSO future violence tool, for specified sex offenders. DOJ has indicated that there would be a one-time cost of \$35,000 GF to make changes to application screen profiles, add fields to the database, replicate table structures for scores in the California Sex and Arson Registry, and to change the file extraction logic to include static, dynamic, and violence information.

AB 1844 changes sentencing with regard to certain "wobbler" crimes; these offenses can be punished as either misdemeanors or felonies. Under existing law, every person who has been convicted of petty theft, grand theft, auto theft, burglary, carjacking, robbery, or receiving stolen property, and is subsequently convicted of petty theft, can be punished by imprisonment in the county jail not exceeding one year, or in state prison. This bill would require instead that only persons convicted three or more times of a qualifying offense would be subject to imprisonment in the state prison for later conviction of petty theft. However, individuals required to register as sex offenders, or with a prior serious or violent felony conviction, or who have been previously sentenced under the Three Strikes law, would remain subject to imprisonment in the state prison with one prior qualifying offense (as in current law).

During fiscal year 2008-09, the number of individuals admitted to state prisons for petty theft convictions with fewer than three prior qualifying offenses was 1,329. There is insufficient data to determine the number of those inmates whose prior offenses would be exceptions to the change (and thus, they would have still been eligible for state prison). If that number were to hold constant in future years, the effect of changing the wobbler provisions would be that up to 665 individuals in fiscal year 2010-11, and up to 1,329 individuals in subsequent fiscal years, would be charged with misdemeanors and not be sentenced to state prison. Based on the marginal cost per inmate, CDCR could avoid incarceration costs of up to \$16,000,000 in fiscal year 2010-11, and up to \$32,000,000 GF in subsequent fiscal years.

The degree to which this cost avoidance will help CDCR offset the new costs created by this bill is likely significant, but cannot be determined. The future savings achieved by the change in wobbler provisions also does not depend on enacting the provisions of this bill that create new programs and costs; the changes affect two unrelated statutes. Both areas of the bill, however, do impact CDCR's costs and budget. As a practical matter, the cost avoidance will help to offset costs to CDCR.

The author's proposed amendments would specify that human trafficking of a minor for the purposes of commercial sex acts, shall be punished by (in addition to other applicable penalties) a fine of up to \$100,000 to be deposited in the Victim-Witness Assistance Fund. The amendments would also specify the role of DOJ in processing criminal background checks for sex offender management professionals who will be administering risk assessments or employed in contracted SOMPs, as well as its fee authority. The author has proposed other non-substantive, clarifying amendments.