


<p>California Department of Justice DIVISION OF LAW ENFORCEMENT Kevin Gardner, Chief</p> 	<h1>INFORMATION BULLETIN</h1>	
<p><i>Subject:</i> Law enforcement obligations for implementing Senate Bill 1322 and protecting commercially sexually exploited children</p>	<p><i>No.</i> DLE-2017-01</p>	<p><i>Contact for information:</i> AMANDA PLISNER Deputy Attorney General Statewide Human Trafficking Coordinator (213) 897-2182</p>
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**TO: All California State and Local Law Enforcement Agencies**

This Bulletin provides a summary of Senate Bill (SB) 1322, which amended Penal Code Sections 647 and 653.22 and became effective January 1, 2017. These amendments eliminate the application of prostitution and loitering for prostitution charges to minors, and indicate that minors who are loitering or purchased for the purposes of prostitution will be treated as commercially sexually exploited children (“CSEC”) under the Welfare and Institutions Code rather than as perpetrators of crimes. Specifically, pursuant to Welfare and Institutions Code sections 300, subdivision (b), paragraph (2), and 305, these CSEC may be deemed dependents of the court and placed in temporary custody. The purpose of these amendments is to clarify that CSEC are child abuse victims and, in turn, require law enforcement officers to facilitate service by the dependency court system rather than the delinquency court system. (Sen. Rules Com., Off. Of Sen. Floor Analyses, reading analysis of Sen. Bill No. 1322 (2015-2016 Reg. Sess.) as amended Aug. 4, 2016, pg. 5.)

This Bulletin provides a summary of the law and suggested protocols that law enforcement officers should follow when contacting CSEC whose conduct, if committed by an adult, would constitute a violation of Penal Code sections 647(b) or 653.22.

This Bulletin does not create or confer any rights for or on any person or entity, nor does it impose any requirements beyond those required under applicable law and regulations.

Please direct your questions regarding this Bulletin to Statewide Human Trafficking Coordinator Amanda Plisner at: [Amanda.Plisner@doj.ca.gov](mailto:Amanda.Plisner@doj.ca.gov).

**SB 1322’s CHANGES TO THE LAW**

In September 2016, California enacted SB 1322, amending Penal Code Sections 647 and 653.22. A summary of the changes to the law impacted by SB 1322 are discussed below:

**1. Eliminates Application of Prostitution-Related Offenses to Any Youth Under 18 Years of Age**

SB 1322 amends the Penal Code to eliminate the application of prostitution and loitering with the intent to commit prostitution charges to any child under the age of 18. (Pen. Code, §§ 647, subd. (b)(2) & 653.22, subd. (b)(2).)

**2. Juvenile Court Jurisdiction Over of a Child Alleged to Have Engaged in Conduct Described by Penal Code Sections 674(b) or 653.22**

The amended Penal Code provisions allow for a child who is engaging in the conduct described by Penal Code sections 647(b) or 653.22 to be “adjudged a dependent child of the court” (pursuant to Welf. & Inst. Code, § 300, subd. (b)(2)) if the child’s parent or guardian failed to or is unable to protect the child.

### **3. Temporary Custody of a Child Alleged to Have Engaged in Conduct Described by Penal Code Sections 674(b) or 653.22**

An officer may take a child engaged in conduct described by Penal Code sections 647(b) or 653.22 into temporary custody without a warrant if the officer “has reasonable cause” to believe that (a) the youth’s circumstances subject him or her to being adjudged a dependent of the court under Welfare and Institution Code, Section 300, *and* (b) the child:

- A. Immediately needs medical care,
- B. Faces imminent danger of physical or sexual abuse, or
- C. The youth’s health or safety is threatened by his or her physical environment or unattended status.

If the child is unattended when contacted by law enforcement, the officer must attempt to contact the youth’s parent or guardian. If the parent or guardian cannot be reached, the county welfare department is to assume custody. (Welf. & Inst. Code, §§ 300 and 305, subd. (a).)

### **EXISTING LAW**

Two previously enacted bills constitute the bulk of law governing CSEC in California. Their effect is summarized below:

#### **1. SB 855 – Requirements for Opt-In Counties**

SB 855, enacted into law in 2014, explicitly identified CSEC as victims of child abuse, as reflected by the addition of subsection (b)(2) to Welfare and Institutions Code section 300, and established a state-funded CSEC program to which counties could opt-in. As part of the opt-in program, counties receive additional funding for the provision of training, prevention activities, and intervention services to CSEC or youth who are at risk of becoming CSEC. Participating counties must form a multidisciplinary team (“MDT”) to coordinate case management, case planning, and services for CSEC, and must create interagency protocols for the provision of services aimed at preventing and/or intervening in situations involving dependent youth who have been identified as CSEC or are at risk of becoming CSEC.

See California Department of Social Services (“CDSS”) All-County Information Notice No. I-83-16 (hereinafter, “ACIN 83-16”), November 23, 2016, for more information regarding the opt-in program.

#### **2. SB 794 – Requirements for All Counties to Provide Services for Dependent CSEC**

SB 794, enacted into law in 2015, requires all child welfare and probation departments to take actions to protect youth who are receiving child welfare services and are commercial sexual exploitation (“CSE”) victims or are at risk of becoming CSE victims. Pursuant to SB 795, counties must implement policies and procedures requiring social workers and probation officers to:

- A. Identify the youth;
- B. Document the youth in the Child Welfare Services/Case Management System and any other agency record;
- C. Determine appropriate services for these youth; and
- D. Receive training in the identification, documentation and determination of appropriate services for these youth.

(Welf. & Inst. Code, § 16501.35.)

In addition, child welfare and probation departments must immediately, or within 24 hours, report to law enforcement any dependent child who is identified as a victim of CSE. (Pen. Code, § 11166, subd. (j)(2).)

SB 794 also requires county probation and child welfare departments to develop and implement policies and procedures to expeditiously locate any dependent child missing from care. These policies and procedures must include a mandatory report to law enforcement and the National Center for Missing and Exploited Children any time a child who is receiving child welfare services, and known or suspected to be a CSEC victim, is missing. The report must be made immediately or within 24 hours of learning the child is missing. Law enforcement must then enter the information into the National Crime Information Center. (Pen. Code, §§ 11166, subd. (j)(3).)

For more information about law enforcement officer's obligations to those CSEC victims receiving social services under SB 794, see CDSS's All-County Letter No. 16-85, September 30, 2016 ("ACL 16-85"); and CDSS's guidance in ACIN I-83-16.

### **SUGGESTED PROTOCOL TO COMPLY WITH SB 1322**

Below are suggested law enforcement protocol for CSEC response in light of SB 1322. In cases involving a child who is already receiving child welfare services, law enforcement officers should consider the below suggestions in conjunction with any existing protocol created pursuant to SB 794 and SB 855. In the event of a conflict, officers should defer to existing county protocol.

1. Officer to call child welfare. (Pen. Code, § 11166 [mandatory duty to immediately report child abuse].)
2. Officer to attempt to contact child's parent or guardian (a prerequisite to taking temporary custody of child pursuant to Welfare and Institutions Code section 305, subdivision (a)). **NOTE:** Even if the youth's parent or guardian is reached, the officer must still fulfill his or her mandatory reporter obligation (under the Child Abuse and Neglect Reporting Act) by contacting the child welfare hotline. (Pen. Code, §11166.)
3. Officer may take a child into temporary custody if s/he has reasonable cause to believe that the child would be adjudged a dependent child of the court pursuant to Welfare and Institutions Code section 300 (including subdivision (b), paragraph 2, which refers to trafficked youth) *and* the child:
  - A. Has an immediate need for medical care,
  - B. Is in immediate danger of physical or sexual abuse, OR
  - C. The child's environment poses an immediate threat to the child's health or safety(Welf. & Inst. Code, § 305, subd. (a).)

For an officer to have "reasonable cause" that a youth is subject to being adjudged a dependent of the court under Welfare and Institutions Code section 300(b)(2), as the result of being a trafficked youth, that officer must believe that (a) the child is a trafficking victim and (b) the parent/guardian has failed to, or is unable to, protect the child.

4. Child welfare and other necessary agencies respond (e.g., probation if applicable).
5. Child welfare to investigate the child's circumstances and determine whether the child should be returned to his or her current placement/parent/guardian or placed in an alternative CSEC appropriate environment.
6. Definitions: "Reasonable Cause." The determination of whether "reasonable cause" exists within the meaning of Welfare and Institutions Code section 300(b)(2) is fact driven and must be made on a case-

by-case basis. However, as a general rule, reasonable cause likely exists if there is articulable evidence of each of the prerequisites to taking custody, and the evidence has been investigated and corroborated. (See *Wallis v. Spencer* (2000) 202 F. 3d 1126, 1138.) What constitutes a reasonable investigation depends in part upon a balancing of the time required for additional investigation against the likelihood that the delay would put the child at greater risk, as well as the nature of the allegations. In other contexts, California courts have defined “reasonable cause” as the “state of facts as would lead [an individual] of ordinary care and prudence to believe and conscientiously entertain an honest and strong suspicion” that the specific factual circumstances exist. (See, e.g., *People v. Fein* (1971) 4 Cal. 3d 747, 752.) In an unpublished 2005 case, a California appellate court found that officers had reasonable cause to take a minor into temporary custody when they discovered her in a motel room occupied by an unrelated adult gang member. While this unpublished decision may not be relied upon as binding legal authority, it is an example of how one court interpreted reasonable cause.

For an officer to have “reasonable cause” that a youth is subject to being adjudged a dependent of the court under Welfare and Institutions Code section 300(b)(2), as the result of being a trafficked youth, that officer must believe that (a) the child is a trafficking victim and (b) the parent/guardian has failed to, or is unable to, protect the child.

**[see ACL 16-85]**

For additional information regarding child welfare agencies’ role in the implementation of SB 1322, refer to the California Department of Social Services’ All-County Information Notices.

Sincerely,



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