
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1771 **Hearing Date:** June 28, 2016
Author: O'Donnell
Version: May 19, 2016
Urgency: No **Fiscal:** Yes
Consultant: JM

Subject: *Prostitution*

HISTORY

Source: Long Beach City Prosecutor

Prior Legislation: AB 1695 (Knox) Ch. 981, Stats. 1998

Support: California District Attorneys Association; California Statewide Law Enforcement Association; City of Long Beach; Junior Leagues of California State Public Affairs Committee; Long Beach Human Trafficking Task Force; Los Angeles County Board of Supervisors; National Council of Jewish Women Long Beach

Opposition: American Civil Liberties Union; California Attorneys for Criminal Justice; California Public Defenders Association; Legal Services for Prisoners with Children

Assembly Floor Vote: 79 - 1

PURPOSE

The purpose of this bill is to: 1) increase the penalty for the misdemeanor of aiding or supervising a prostitute from six months to one year in jail; 2) provide that repeatedly speaking, watching or monitoring a person soliciting for prostitution, as defined, is evidence of the crime of aiding or supervising a prostitute; 3) provide that receiving money from a person soliciting for prostitution, as defined, is evidence of aiding or supervising a prostitute; and 4) specifically authorize a juvenile court judge to dismiss a petition for aiding or supervising a prostitute where the minor committed the offense through duress or coercion.

Existing law provides that any person who lives or derives support or maintenance in whole or in part from the earnings or proceeds from another person's prostitution is guilty of a felony, with a sentence of 3, 4, or 6 years in state prison. If the prostitute is under the age of 16, the penalty is 3, 6, or 8 years. (Pen. Code § 266h.)

Existing law provides that any person who procures, encourages, persuades or induces another person to become a prostitute is guilty of a felony, with a sentence of 3, 4, or 6 years in state

prison. If the prostitute is under the age of 16, the penalty is 3, 6, or 8 years. (Penal Code § 266i.)

Existing law provides that it is unlawful for a person to direct, supervise, recruit, or otherwise aid another person in the commission of a violation of specified prostitution offenses. Additionally, a person may not collect or receive all or part of the proceeds earned from an act or acts of prostitution committed by another person. Violation of these provisions is a misdemeanor punishable by up to six months in the county jail. (Pen. Code § 653.23, subds. (a) & (b); Pen. Code § 653.26.)

Existing law provides that in determining whether a person is guilty of directing or supervising a prostitute – defined as a person loitering for the purposes of prostitution - the following circumstances may be considered:

- a) The offender repeatedly speaks or communicates with another person who is acting in violation of loitering for the purpose of engaging in prostitution.
- b) The offender repeatedly or continuously monitors or watches another person who is acting in violation of loitering for the purpose of engaging in prostitution.
- c) The offender 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 loitering for the purpose of engaging in prostitution.
- d) The offender 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 loitering for the purpose of engaging in prostitution.
- e) The offender 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 loitering for the purpose of engaging in prostitution.
- f) The offender receives or appears to receive money from another person who is acting in violation of loitering for the purpose of engaging in prostitution.
- g) The offender engages in any of the behavior described above, inclusive, in regard to, or on behalf of two or more persons who are in violation of loitering for the purpose of engaging in prostitution.
- h) The offender has been convicted of violating specified prostitution related offenses.
- i) The offender has engaged, within six months prior to the arrest in any behavior described in this subdivision, or in any other behavior indicative of prostitution activity.

Existing law provides that where an act is declared to be a public offenses and no penalty is specified, the offense is a misdemeanor. (Pen. Code § 19.4)

Existing law provides, in the absence of any more specific penalty, that a misdemeanor is punishable by imprisonment in a county jail for up to six months, a fine of up to \$1,000, or both. (Pen. Code § 19.)

This bill increases the penalty for soliciting or aiding a prostitute from a maximum sentence of 6 months in the county jail to a maximum of one year in the county jail.

This bill specifies that if someone is repeatedly speaking to or communicating with a person who is soliciting sex for money or a person who is offering sexual services for compensation – as prohibited by Penal Code Section 647, subdivision (b) – the person speaking to or communicating with the other party may be guilty of the crime of supervising or aiding a prostitute.

This bill specifies that if someone repeatedly or continuously monitors or watches another person who is soliciting sex for money or a person who is offering sexual services for compensation – as prohibited by Penal Code Section 647, subdivision (b) - the person speaking to or communicating with the other party may be guilty of the crime of supervising or aiding a prostitute.

This bill specifies that if someone receives or appears to receive money from another person who is soliciting sex for money or a person who is offering sexual services for compensation - as prohibited by Penal Code Section 647, subdivision (b) - they may be guilty of the crime of supervising or aiding a prostitute.

This bill permits prior human trafficking convictions to be considered in determining whether a person may be guilty of the crime of supervising or aiding a prostitute.

This bill permits a juvenile court, on grounds that the minor was coerced or subject to duress, to dismiss a petition alleging that a minor directed or supervised a prostitute.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is

1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

While law enforcement has had some success curtailing this activity, the nature of human trafficking creates obstacles for prosecutors trying to keep offenders behind bars. While pimping and human trafficking are subject to felony prosecution, this charge is only applied on relatively few occasions because sex trafficking victims often do not cooperate with law enforcement. This is especially true in cases where the victim fears retaliation from her pimp or trafficker. In cases where victims do not provide statements against the pimp or trafficker, only the misdemeanor charge of “supervising a prostitute” can be filed.

On October 4, 2014 an undercover police officer arrested Jerome Hubbard during a bust of an “escort service” acting as a front for prostitution. Despite phone messages on Hubbard’s phone indicating he oversaw multiple acts of prostitution, without the testimony of the victim, Hubbard could only be charged with “supervising a prostitute” and not pimping or human trafficking. Hubbard faced a maximum six-month jail sentence (the same as the “prostitute”) for this misdemeanor charge. Due to the limitations in sentencing options, criminals like

Hubbard can be released and free to resume their criminal activity in a matter of months.

The Hubbard case highlights a problem with our ability to keep offenders behind bars when they facilitate the illicit activities of these gangs. Obtaining evidence of the boasts of committing the crime and catching them in the act are not enough to keep these individuals behind bars for a reasonable period of time. The six-month maximum sentence on the misdemeanor of "supervising a prostitute" does not recognize the role this crime plays in human trafficking operations.

2. Differences Between Supervising or Aiding a Prostitute and Pimping and Pandering

Supervising or aiding a prostitute and pimping or pandering are related crimes, but they have distinct elements.

a) Pimping in Contrast with Aiding a Prostitute

Pimping is a felony and may be punished by three, four, or six years in state prison (or three, six, or eight years if the prostitute was under 16 years of age. Aiding a prostitute is a misdemeanor and may be punished by six months in the county jail, a fine of no more than one thousand dollars (\$1,000), or both. Pimping is defined as either soliciting prostitution by finding a customer - "john" - for a prostitute and collecting a fee from the john *or* some of the prostitute's pay, or collecting some or all of a prostitute's pay even if you played no part in finding the john.

Pimping includes an element that the defendant helped find customers for a prostitute and received some money for his or her role in the transaction. But one can be convicted of aiding a prostitute even if he or she did not find the john or arrange the transaction, and even if he or she received no money for your role. To be convict a defendant of pimping, the prosecutor must show that the defendant lived off of the earnings of a prostitute and knew that the other person was a prostitute. In contrast, a person can be convicted of aiding a prostitute if he or she received any money that was earned from prostitution, for any reason. One cannot be convicted of pimping unless a prostitution transaction actually occurred. But one can be convicted of aiding a prostitute by simply helping another person loiter with the intent to commit prostitution—even without proof that a prostitution offense occurred.

b) Pandering in Contrast That With Aiding a Prostitute

Pandering is similar to pimping. A person can violate California's law against pandering when you encourage or persuade someone to engage in prostitution, and make that person available for the purpose of prostitution. Like pimping, pandering is a felony and may be punished by three, four, or six years in state prison (or three, six, or eight years if the prostitute was under the age of 16. The crime of supervising or aiding a prostitute includes "recruiting" someone to engage in an act of prostitution or to loiter for the purpose of prostitution. Appellate decisions have reversed convictions on the basis that a defendant only violates Penal Code 653.23 PC by recruiting "customers for prostitutes or prostitutes for customers," not by recruiting someone to become a prostitute. In other words, a person is guilty of supervising or otherwise aiding a prostitute only if the person who was recruited actually starts working as a prostitute or loitering for prostitution.

SHOULD THIS BILL INCLUDE A PROVISION THAT A PROSECUTION FOR SUPERVISING A PROSTITUTE DOES NOT LIMIT PROSECUTION UNDER ANY OTHER PROVISION OF LAW?

3. Dismissal of Juvenile Court Delinquency Petitions for Aiding Prostitution Where the Offense was Committed Under Duress or Coercion

Human trafficking generally includes an element or inherent character of control over the victim. It has been noted that many victims of human trafficking and other exploited minors are coerced into committing crimes to benefit the trafficker or controlling person. Numerous bills have considered authority for courts to clear the records of those who committed offenses under duress. (See, AB 1585 (Alejo) Ch. 708, Stats. 2014.) This bill would take the more direct step of specifically authorizing the juvenile court to dismiss a delinquency petition of the minor committed the crime because of duress or coercion.

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