
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 2513 **Hearing Date:** June 28, 2016
Author: Williams
Version: June 21, 2016
Urgency: No **Fiscal:** No
Consultant: JM

Subject: *Human Trafficking*

HISTORY

Source: Author

Prior Legislation: Proposition 35, of the November 2012 election
SB 40 (Romero) – Chapter 3, Stats. of 2007

Support: California State Sheriffs' Association; California District Attorneys Association;
Chief Probation Officers of California; Peace Officers Research Association of
California; Santa Barbara Women's Political Committee

Opposition: Legal Services for Prisoners with Children

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to define a sentence enhancement of one year in a human trafficking conviction where the defendant recruited or enticed the victim from a shelter or foster placement.

Existing law generally provides that a court must, on the record, state a reason for each sentencing choice. (Pen. Code § 1170, subs. (b), (c) and (d)(2)(I).)

Existing law provides that when a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. (Pen. Code, § 1170, subd. (b).)

Existing law provides that when a sentencing enhancement specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. (Pen. Code, § 1170.1, subd. (d).)

Existing law provides that sentencing choices requiring a statement of a reason include "[s]electing one of the three authorized prison terms referred to in section 1170(b) for either an offense or an enhancement." (Cal. Rules of Court, Rule 4.406(b)(4).)

Existing law requires the sentencing judge to consider relevant criteria enumerated in the Rules of Court. (Pen. Code, § 1170, subd. (a)(3), Cal. Rules of Court, Rule 4.409.)

Existing law provides that, in exercising discretion to select one of the three authorized prison terms referred to in section 1170, subdivision (b), "the sentencing judge may consider circumstances in aggravation or mitigation, and any other factor reasonably related to the sentencing decision. The relevant circumstances may be obtained from the case record, the probation officer's report, other reports and statements properly received, statements in aggravation or mitigation, and any evidence introduced at the sentencing hearing." (Cal. Rules of Court, Rule 4.420(b), Pen.Code, § 1170, subd. (b).)

Existing law prohibits the sentencing court from using a fact charged and found as an enhancement as a reason for imposing the upper term unless the court exercises its discretion to strike the punishment for the enhancement. (Pen. Code, § 1170, subd. (b), Cal. Rules of Court, Rule 4.420(c).)

Existing law prohibits the sentencing court from using a fact that is an element of the crime to impose a greater term. (Pen. Code § 1170, subs. (b), (c) and (d)(2)(I); Cal. Rules of Court, Rule 4.420(d).)

Existing law enumerates circumstances in aggravation, relating both to the crime and to the defendant, as specified. (Cal. Rules of Court, Rule 4.421.)

Existing law enumerates circumstances in mitigation, relating both to the crime and to the defendant, as specified. (Cal. Rules of Court, Rule 4.423.)

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, subd. (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, subd. (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, subd. (c).)

This bill defines a one-year enhancement of sentence imposed on a defendant convicted of human trafficking where the jury finds that the defendant recruited, enticed, or obtained the victim from a shelter or placement that is designed to serve runaway youth, foster children, homeless persons, or victims of human trafficking or domestic violence.

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:

AB 2513 amends Proposition 35, the Californians Against Sexual Exploitation (CASE) Act initiative, to define a new sentencing enhancement in human trafficking cases. Specifically, the bill would authorize a prosecutor to seek a one-year sentence enhancement where the jury finds to be true an allegation that the defendant recruited, enticed, or obtained the human trafficking victim from a shelter or placement that is designed to serve runaway youth, foster children, homeless persons, or victims of human trafficking or domestic violence. It is our responsibility as a society to care for those who are defenseless and in need of community support. Discouraging offenders from preying on the easiest targets in our community, and punishing them for doing so, is critical to protect these individuals from trafficking and adequately reflect the culpability of the defendant.

2. Enhancements for Human Trafficking Sentences; the Human Trafficking Laws are Designed to be Comprehensive

The basic human trafficking law was enacted by AB 22 (Lieber) Ch. 240, Stats. 2005. AB 22 provided that the essence of human trafficking is the deprivation of the victim's liberty in order to place the person in sexual commerce or obtain labor. The human trafficking law was amended by Proposition 35 in 2012. The initiative greatly increased penalties, set special procedures and rules of evidence and eliminated the element of deprivation of liberty if the victim is a minor. The penalties established by the initiative are especially comprehensive and arguably cover the full range of circumstances in human trafficking. The initiative stated the following as its main purpose: "To combat the crime of human trafficking and *ensure just and effective punishment* of people who promote or engage in the crime of human trafficking." (Italics added.) The ballot argument stated: "Prop. 35 holds human traffickers accountable for their horrendous crimes."

Human trafficking of minors can be done through inducements, persuasion and the like. The use of coercion, fraud, force or duress against a minor does, however, subjects as defendant to especially severe penalties, including life terms.

This bill would direct the court to impose a sentence enhancement of one year if the defendant has been convicted of human trafficking and the defendant obtained, enticed the victim for a placement or shelter for runaway youth, or for victims of domestic violence or human trafficking.

Human trafficking of a minor includes a relatively long list of crimes involving commercial sex, including prostitution and child pornography. If the minor is brought into such activities through "force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person," the penalty is a term of 15-years-to-life in prison and a fine of up to \$500,000. With *mandatory* penalty assessments, a fine of \$500,000 is actually a fine of over \$2,000,000. It is hard to imagine that a trafficker could lure a minor into commercial sex trade without at least deceit or fraud. That is, if the trafficker misrepresented what the minor would be

doing or the conditions under which they would be done, that would clearly appear to be fraud and deceit.

It would appear that if very severe felony penalties would not deter a potential human trafficker, an additional year in prison would be of little consequence. Further, many, if not all, cases where a minor under the age of 14 is abducted for purposes of prostitution would constitute kidnapping for purposes of engaging in sexual conduct. That form of kidnapping is punishable by a prison term of 5, 8 or 11 years if the minor is under the age of 14. Kidnapping per se - taking a person by force or fear - is punishable by a prison term of 3, 5 or 8 years. (Pen. Code §§ 207-208.) If kidnapping for a sex offense increases the danger of harm to a victim beyond that inherent in the offense, it is punishable by a life term.

The punishment for human trafficking of a minor, when the crime does not involve some sort of deceit, coercion or force, is still relatively severe - 5, 8 or 12 years and a fine of up to \$500,000 (again over \$2,000,000 with mandatory penalty assessments). If this bill is enacted, the prison term could perhaps be 13 years instead of 12 in a determinate sentence. For a life term, the defendant would be eligible for parole in 16 years, not 15. Again, it is doubtful that a possible additional year in prison would change a perpetrator's decision to engage in human trafficking of a minor in light of the severe existing penalties.

California sentencing law is so complex that an enhancement for committing human trafficking on or near a school may not necessarily result in additional punishment. In some cases, imposition of the enhancement could result in a lower penalty. The imposition of the prison term for a crime and enhancements attached to that term require the court to make a series of inter-related decisions. The process becomes particularly elaborate when the defendant was convicted of multiple crimes and numerous enhancements apply.

For this bill, the most important sentencing rule is the prohibition on "dual use of facts" - the use of one fact to impose more than one punishment. A close reading of many enhancements would reveal that they could also be used as factors in aggravation of the base term - the stated penalty "triad." The sentencing triad for the less egregious form of human trafficking of a minor is 5, 8 or 12 years.

3. Vetoes of Related or Similar Bills

Governor Brown has recently vetoed bills that included what were essentially crimes and penalties that are largely redundant of existing law. Last session (2013-2014), the governor vetoed SB 473 (Block), which proposed to add human trafficking to the gang laws. (Any crime committed for the benefit of a gang is punished by an enhancement or a life term. SB 473 would have added human trafficking to a list of crimes establishing the existence of a gang, per se. Prosecutors seldom have any trouble proving the existence of a gang under existing law.) Similar observations can be made about this bill that were made about SB 473. Governor Brown stated:

I am returning Senate Bill 473 without my signature.

Under current law, human trafficking convictions impose substantial punishment, up to 20 years for sex trafficking offenses and 15 years-to-life for certain crimes involving children. These sentences are more than three times the punishment that existed two years ago. SB 473 would add yet another set of enhancements, the

third in nine years. No evidence has been presented to support these new penalties.

4. Prohibition on Using the Same Fact to Impose an Aggravated Term and an Enhancement

This bill previously provided that where the defendant in a human trafficking case recruited, obtained or enticed the victim from a shelter or placement, the court could consider that as factor in aggravation of sentence. The sentencing court can rely on a factor in aggravation in determining whether to impose the upper term of a “triad” base term. For example, the sentencing triad for trafficking an adult for purposes of committing or maintaining specified sex crimes is 8, 14 or 20 years. The court could impose the upper term based on the fact that the defendant recruited by victim from a homeless shelter or placement for runaway youth.

This bill defines a sentence enhancement for the enticement or recruitment of a person from a shelter or placement for human trafficking. California sentencing law generally prohibits the court from using a fact that underlies an enhancement as a reason to impose the upper term. (Pen. Code § 1170, subd. (b).) Thus, if the court imposed the enhancement defined by this bill, the court could not use the fact that the defendant recruited or obtained the victim from a placement or shelter to impose an upper term sentence.

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