
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 2221 **Hearing Date:** June 21, 2016
Author: Cristina Garcia
Version: April 19, 2016
Urgency: No **Fiscal:** Yes
Consultant: ML

Subject: *Criminal Procedure: Human Trafficking Witnesses*

HISTORY

Source: Author

Prior Legislation: AB 1730 (Atkins) – Introduced 1/28/2016
AB 1760 (Santiago) – Introduced 2/2/2016
SB 1322 (Mitchell) – Introduced 2/19/2016

Support: Bakersfield Police Department; California Police Chiefs Association; Los Angeles County District Attorney's Office; Peace Officers Research Association of California

Opposition: None Known

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to authorize minor victims of human trafficking to be provided with victim witness assistance prior to testifying.

Existing law specifies that a prosecuting witness in a case involving a violation or attempted violation of specified offenses, including human trafficking, shall be entitled, for support, to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness. (Penal Code, § 868.5.)

Existing law states that only one of those support persons may accompany the witness to the witness stand, although the other may remain in the courtroom during the witness' testimony. (Penal Code, § 868.5.)

This bill specifies that prior to being subpoenaed as a witness in a human trafficking case, a minor who is a victim of human trafficking must be provided with assistance from the local county Victim Witness Assistance Center.

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. Stated Need for This Bill

The author states:

Both federal and state laws define human trafficking with a critical component: Victims are exploited by “force, fraud, or coercion”.¹ “Force” in regards to human trafficking typically means physical and/or sexual abuse as well as isolation and confinement. Coercion is a psychological form of control, which may include threats of harm made to the victim or the victim’s family. Victims experiencing these circumstances are under extreme duress and serious vulnerability.

Children and youth in the foster care system are significantly more at risk to be human trafficked. Of suspected or confirmed child victims of sex trafficking, 46.7% were from a group home, foster care, Department of Child and Family Services care or a shelter. The victims of human trafficking are extremely vulnerable populations and require added measures to advocate for their safety.²

Human trafficking victims are caught in a “he-said, she-said” situation, and oftentimes will have to testify in order to establish that there was indeed a crime against them. Having endured an already traumatic experience, there is no need for these victims to relive the atrocities from their assailant.

The majority of human trafficked children have roots in our foster care system. Many of these children have lacked the stability and support every child deserves. In order to protect victims from further exploitation, prior to taking the stand, AB 2221 will provide victims with assistance from the local county Victim Witness Assistance Center. This measure is to ensure that there is someone by their side walking them through this difficult process, helping them transition from a victim to a survivor.

2. Victim Witness Assistance Programs

Victims of crime may suffer physical, emotional, or financial harm. Victims and witnesses to a crime may face retaliation or intimidation in connection with their potential participation in the criminal justice system. Victims and witness can also be confused by a criminal justice system that is not familiar to them. Victim Witness Assistance Programs can provide assistance with these issues. These programs are frequently connected to the county district attorney’s office. Victim Witness Assistance Programs generally have trained and experienced advocates provide services for victims and witnesses interacting with the criminal justice system. Services can include crisis counseling, orientation to the criminal justice system, community referrals, assistance with applying for victim compensation, a support group for family members of homicide victims, and many other services.

-- END --

¹ The Crime of Human Trafficking. The State of Human Trafficking in California 2012. <http://oag.ca.gov/sites/all/files/agweb/pdfs/ht/human-trafficking-2012.pdf>

² California Human Trafficking Fact Sheet. Center for Public Policy Studies. <http://www.htcourts.org/wp-content/uploads/CA-HT-Fact-Sheet-2.27.13.pdf?Factsheet=HT-CA>.