
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 1042 **Hearing Date:** April 26, 2022
Author: Grove
Version: March 28, 2022
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Violent felonies: serious felonies: human trafficking*

FOR VOTE ONLY

HISTORY

Source: Kern County District Attorney's Office

Prior Legislation: AB 1665 (Seyarto), failed Assem. Public Safety, 2022
AB 786 (Kiley), failed Assem. Public Safety, 2019
AB 2823 (Nazarian), held Sen. Appropriations, 2018
SB 976 (Bates), failed Sen. Public Safety, 2018
SB 770 (Glazer), held in Sen. Public Safety, 2018
SB 75 (Bates), failed Sen. Public Safety, 2017
SB 1269 (Galgiani), failed Sen. Public Safety, 2016
AB 1321 (Jones), failed Assem. Public Safety, 2013
AB 16 (Swanson), held in Assem. Appropriations, 2009
AB 426 (Galgiani), failed Sen. Public Safety, 2007
SB 1256 (Bermudez), failed Sen. Public Safety, 2006

Support: Alameda County District Attorney's Office; Alliance Against Family Violence and Sexual Assault; Alpha House – Fresno; Arvin Police Department; Bear Valley Police Department; Breaking the Chains; California Police Chiefs Association; California State Sheriffs' Association; Children's Advocacy Centers of California; Church Without Walls; City of Barstow; City of Needles; Crime Victims United; Fresno County Board of Supervisors; Fresno County District Attorney; Fresno Family Healing Center; Fresno Police Department; Global Strategic Operatives for the Eradication of Human Trafficking; Humboldt County District Attorney; Lighthouse Recovery Center, Fresno; Kern Coalition Against Human Trafficking; Kern County Sheriff's Department; Los Angeles County Sheriff's Department; Lucerne Valley Economic Development Assoc.; Marin County Coalition to End Human Trafficking; Million Kids; Morongo Basin Unity Home; Mountain Counseling and Training; Nevada County District Attorney; Nomi Network NY; Orange County District Attorney; Orange County Human Trafficking Task Force Agencies; Orange County Sheriff-Coroner; Peace Officers Research Association of California; Pittsburg Police Department; Sacramento County District Attorney; SAFE Family Justice Centers – Riverside Counties; San Bernardino County District Attorney's Office; San Bernardino County Sheriff's Department; San Diego County District Attorney's Office; San Luis Obispo

County District Attorney; Saving Innocence LA; Taft Police Department; Tulare County Child Abuse Prevention Council; Tulare County District Attorney; Tulare County Human Trafficking Task Force; Tulare County Sheriff's Department; Ventura County District Attorney; Visalia Police Department; Women's Center - High Desert; Yolo County District Attorney; ZOE International; over 2,300 private individuals

Opposition: ACLU California Action; California Attorneys for Criminal Justice; California Coalition for Women Prisoners; California Public Defenders Association; Ella Baker Center for Human Rights; Free to Thrive; Loyola Law School, the Sunita Jain Anti-Trafficking Initiative; National Center for Youth Law; Survived & Punished; The Young Women's Freedom Center

PURPOSE

The purpose of this bill is to designate human trafficking as a “violent felony” and a “serious felony” make it a strike for purposes of the Three Strikes Law.

Existing law states that a person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services is guilty of human trafficking and shall be punished by imprisonment in the state prison for 5, 8, or 12 years and a fine of not more than \$500,000. (Pen. Code, § 236.1, subd. (a).)

Existing law states that a person who deprives or violates the personal liberty of another with the intent to commit specified crimes including pimping, pandering, or child pornography, is guilty of human trafficking and shall be punished by imprisonment in the state prison for 8, 14, or 20 years and a fine of not more than \$500,000. (Pen. Code, § 236.1, subd. (b).)

Existing law specifies that a person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to commit specified crimes including pimping, pandering, or child pornography, is guilty of human trafficking. A violation is punishable by imprisonment in the state prison as follows:

- Five, 8, or 12 years and a fine of not more than \$500,000; or
- Fifteen years to life and a fine of not more than \$500,000 when the offense involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person. (Pen. Code, § 236.1, subd. (c).)

Existing law includes the following offenses within the definition of “violent felony”:

- Murder or voluntary manslaughter;
- Mayhem;
- Rape or spousal rape accomplished by means of force or threats of retaliation;
- Sodomy by force or fear of immediate bodily injury on the victim or another person;

- Oral copulation by force or fear of immediate bodily injury on the victim or another person;
- Lewd acts on a child under the age of 14 years, as defined;
- Any felony punishable by death or imprisonment in the state prison for life;
- Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice, or any felony in which the defendant has used a firearm, as specified;
- Any robbery;
- Arson of a structure, forest land, or property that causes great bodily injury;
- Arson that causes an inhabited structure or property to burn;
- Sexual penetration accomplished against the victim's will by means of force, menace or fear of immediate bodily injury on the victim or another person;
- Attempted murder;
- Explosion or attempted explosion of a destructive device with the intent to commit murder;
- Explosion or ignition of any destructive device or any explosive which causes bodily injury to any person;
- Explosion of a destructive device which causes death or great bodily injury;
- Kidnapping;
- Assault with intent to commit mayhem, rape, sodomy or oral copulation;
- Continuous sexual abuse of a child;
- Carjacking, as defined;
- Rape or penetration of genital or anal openings by a foreign object;
- Felony extortion;
- Threats to victims or witnesses, as specified;
- First degree burglary, as defined, where it is proved that another person other than an accomplice, was present in the residence during the burglary;
- Use of a firearm during the commission of specified crimes; and,
- Possession, development, production, and transfers of weapons of mass destruction. (Pen. Code, § 667.5, subd. (c).)

Existing law imposes a three-year sentence enhancement for each prior separate prison term served by the defendant if the prior offense was a violent felony and the new offense is a violent felony. (Pen. Code § 667.5, subd. (a).)

Existing law includes the following offenses within the definition of “serious felonies”:

- Murder or voluntary manslaughter;
- Mayhem;
- Rape;
- Sodomy by force, violence, duress, menace, or threat or fear of bodily injury;
- Oral copulation by force, violence, duress, menace or threat or fear of bodily injury;
- Lewd act with child under fourteen years of age;
- Any felony punishable by death or life imprisonment;
- Any felony in which defendant personally inflicts great bodily injury on any person other than an accomplice or personally uses a firearm;
- Attempted murder;
- Assault with intent to commit rape or robbery;
- Assault with a deadly weapon or instrument on a peace officer;
- Assault by a life prisoner on a non-inmate;
- Assault with a deadly weapon by an inmate;
- Arson;
- Exploding a destructive device or any explosive with intent to injure;
- Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem;
- Exploding a destructive device or any explosive with intent to murder;
- Burglary of an inhabited dwelling;
- Robbery or bank robbery;
- Kidnapping;

- Holding a hostage by an inmate;
- Attempt to commit a crime punishable by life imprisonment or death;
- Any felony where defendant personally used a dangerous or deadly weapon;
- Sale or furnishing heroin, cocaine, PCP, or methamphetamine to a minor;
- Forcible penetration with a foreign object;
- Grand theft involving a firearm;
- Any gang-related felony;
- Assault with the intent to commit mayhem or specified sex offenses;
- Maliciously throwing acid or flammable substances;
- Witness intimidation;
- Assault with a deadly weapon or firearm or assault on a peace officer or firefighter;
- Assault with a deadly weapon on a public transit employee;
- Criminal threats;
- Discharge of a firearm at an inhabited dwelling, vehicle, or aircraft;
- Commission of rape or sexual penetration in concert;
- Continuous sexual abuse of a child;
- Shooting from a vehicle;
- Any attempt to commit a “serious” felony other than assault;
- Any violation of the 10 years, 20 years, 25 years to life gun law;
- Possession or use of any weapon of mass destruction; and,
- Any conspiracy to commit a “serious” felony. (Pen. Code, §§ 1192.7, subd. (c).)

Existing law additionally defines the following as a “serious felony” when the offenses involve the personal infliction of great bodily injury on any person other than an accomplice, or the personal use of a dangerous or deadly weapon:

- Gross vehicular manslaughter while intoxicated and vehicular manslaughter while intoxicated;
- Driving under the influence and causing injury;
- Evading a pursuing peace officer causing serious bodily injury or death; or
- Reckless driving causing great bodily injury when the person previously has been convicted of specified driving offenses. (Pen. Code, § 1192.8.)

Existing law prohibits plea bargaining in any case in which the indictment or information charges a “serious” felony unless there is insufficient evidence to prove the charge, the testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence. (Pen. Code, § 1192.7, subd. (a)(2).)

Existing law provides that any person convicted of a “serious” felony who has previously been convicted of a “serious” felony receives, in addition to the sentence imposed by the court, an additional and consecutive five-year enhancement for each such prior conviction. (Pen. Code, § 667, subd. (a)(1).)

Existing law defines a "strike" prior as any “serious felony” listed in Penal Code sections 1192.7, subdivision (c) and 1192.8, and any “violent felony” listed in Penal Code section 667.5(c). (Pen. Code, §§ 667, subd. (d)(1) and 1170.12, subd. (b)(1).)

Existing law provides that where a defendant is convicted of any felony with a prior conviction for a single serious or violent felony, the sentence imposed must be twice the term otherwise provided as punishment. (Pen. Code §§ 667, subd. (d)(1) and 1170.12, subd. (c)(1).)

Existing law provides that a defendant, who is convicted of any current felony, with prior convictions of two or more "violent" or "serious" felonies, must receive a life sentence with a minimum term of 25 years. (Pen. Code § 667, subsd. (a) and (d)(2)(i); Pen. Code § 1170.12, subd. (c)(2)(A).)

Existing law requires a defendant affected by a prior strike to be committed to state prison, and disallows diversion or probation. (Pen. Code, §§ 667, subd. (c) and 1170.12, subd. (a).)

Existing law requires consecutive rather than concurrent sentencing for multiple offenses committed by a defendant affected by a prior strike, unless the current felony convictions arise out of the same set of operative facts. (Pen. Code, §§ 667, subd. (c)(6) and 1170.12, subd. (a)(6).)

Existing law specifies all references to existing statutes in specified portions of the Three Strikes Law are to statutes as they existed on November 7, 2012. (Pen. Code § 667, subd. (h).)

This bill amends the above date to January 1, 2023 thereby expanding the offenses that count as strikes to include human trafficking.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Penal Code sections 667.5(c) and 1192.7(c) lists the crimes that are defined as “serious” and “violent” under California law. Human trafficking is not contained on either list. As such, the trafficking of adults and young children is considered a “non-serious” and “non-violent” crime in California. This bill would add human trafficking to the list of “serious” and “violent” crimes in California, also making this crime a “strike” under the Three Strikes Law.

Human trafficking is one of the most serious and violent crimes facing Californians today. The California Attorney General has noted that California is one of the largest sites for human trafficking in the United States and it profits off our most vulnerable populations¹.

Human trafficking is the fastest growing criminal enterprise in the world². Traffickers have learned that it is a low-cost crime that yields high profits with minimal risk to the trafficker, especially since human beings are a reusable commodity³. The trafficking of children is particularly rampant in California, with traffickers forcing kids as young as 11-12 years-old⁴ to have sex with upwards of 15 men a day or more. The average age a child is forced into the sex trade is between 11-14 years-old⁵. Labor trafficking is no less insidious, as victims of labor trafficking are forced to work long hours in unsanitary and inhuman working conditions for little or no pay⁶. Labor traffickers will often tell their victims they will not be believed if they try to report the crime and the authorities will deport them.⁷

2. Human Trafficking

According to the California Department of Justice’s (DOJ) website:

The United States is widely regarded as a destination country for human trafficking. Federal reports have estimated that 14,500 to 17,500 victims are trafficked into the United States annually. This does not include the number of victims who are trafficked within the United States each year. According to the National Human Trafficking Hotline, 10,949 cases of human trafficking were reported in the United States in 2018. According to the hotline, California is one of the largest sites of human trafficking in the United States. In 2018, 1,656 cases

¹ <https://oag.ca.gov/human-trafficking>

² <https://www.justice.gov/usao-ri/human-trafficking>

³ https://www.dhs.gov/blue-campaign/course_choices_p41

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<https://rems.ed.gov/docs/Human%20Trafficking%20101%20for%20School%20Administrators%20and%20Staff.pdf>

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<https://rems.ed.gov/docs/Human%20Trafficking%20101%20for%20School%20Administrators%20and%20Staff.pdf>

⁶ <https://www.ojp.gov/pdffiles1/nij/grants/302157.pdf>

⁷ <https://www.justice.gov/usao-cdca/human-trafficking#LAB>

of human trafficking were reported in California. Of those cases, 1,226 were sex trafficking cases, 151 were labor trafficking cases, 110 involved both labor and sex trafficking, and in 169 cases the type of trafficking was not specified.

There is no single profile of a trafficking victim. Victims of human trafficking include not only men and women lured into forced labor by the promise of a better life in the United States, but also boys and girls who were born and raised here in California. Trafficking victims come from diverse backgrounds in terms of race, color, national origin, disability, religion, age, gender, sexual orientation, gender identity, socioeconomic status, education level, and citizenship status, but one characteristic that they usually share is some form of vulnerability.

Trafficking victims are often isolated from their families and social networks and, in some cases, are separated from their country of origin, native language, and culture. Many domestic victims of sex trafficking are runaway or homeless youth and/or come from backgrounds of sexual and physical abuse, incest, poverty, or addiction. Traffickers exploit these vulnerabilities, promising the victims love, a good job, or a more stable life.

(See California DOJ website <<https://oag.ca.gov/human-trafficking/what-is> > [as of Mar. 29, 2022].)

3. Three Strikes Implications

In 1994, California voters passed Proposition 184, known as the “Three Strikes and You’re Out” law that defined qualifying “strikes” as those felonies listed as "serious" or "violent" on June 30, 1993. That same year, the California Legislature passed similar legislation that was signed into law. (AB 971 (Jones), Chapter 12, Statutes of 1994.) Collectively, Proposition 184 and AB 971 became known as California’s Three Strikes law which imposes longer prison sentences for certain repeat offenders. Proposition 21 of the March 2000 primary election added to the lists of serious and violent felonies and defined qualifying prior strikes as felony listed as serious or violent felonies as of March 8, 2000 – the date that the Proposition 21 took effect.

The Three Strikes law requires a person who is convicted of a felony and who previously has been convicted of one or more violent or serious felonies, known as strikes, to be subject to enhanced penalties. Specifically, if the person has one prior strike, the sentence on any new felony conviction must be double what is specified by statute. If the person has two prior strikes, the sentence on any new felony conviction was 25 years to life, although this provision was amended by Proposition 36, approved by voters in 2012, to require that the third strike must be a serious or violent felony in order to impose the life term.

The Three Strikes law contains a statutory “lock-in” date of November 7, 2012 which was the last date the law was amended. [Proposition 36, approved by California voters on November 7, 2012, which required the third strike to be either a violent or serious felony.] The effect of the lock-in date is to provide that the listed offenses are “strikes” as of that date. As long as an offense is deemed a strike as of the listed date, the Three Strikes sentencing provisions apply to enhance a person’s sentence even if the person was convicted of the offense prior to it being deemed a strike. The specified date also acts to disallow adding a new strike unless the date is extended. This bill amends the lock-in date to January 1, 2023 effectively adding to what constitutes a strike.

Proponents of the Three Strikes law argued that the law would “reduce crime by incapacitating and deterring people who committed repeat offenses by dramatically increasing punishment for people previously convicted of a “serious” or “violent” offense.” (Proposition 184, Voter Information Guide, 1994 General Election.) However, research shows that a decline in crime rates already began prior to the passage of the law. According to a 2005 report by the Legislative Analyst’s Office:

The overall crime rate in California, as measured by the Department of Justice’s California Crime Index, began declining before the passage of the Three Strikes law. In fact, the overall crime rate declined by 10 percent between 1991 and 1994. The crime rate continued to decline after Three Strikes, falling by 43 percent statewide between 1994 and 1999, though it has risen by about 11 percent since 1999. Similarly, the violent crime rate declined by 8 percent between 1991 and 1994 and then fell an additional 43 percent between 1994 and 2003. It is important to note that these reductions appear to be part of a national trend of falling crime rates. National crime rates—as reported by the Federal Bureau of Investigation’s Uniform Crime Report—declined 31 percent between 1991 and 2003, with violent crime declining 37 percent over that period. Researchers have identified a variety of factors that likely contributed to these reductions in national crime rates during much of the 1990s including a strong economy, more effective law enforcement practices, demographic changes, and a decline in handgun use.

(Legislative Analyst’s Office, *A Primer: Three Strikes - The Impact After More Than a Decade* (Oct. 2005) <http://www.lao.ca.gov/2005/3_strikes/3_strikes_102005.htm> [as of Mar. 28, 2022].)

Research also shows that the law disproportionately impacts people of color. According to the Committee on the Revision of the Penal Code’s 2021 annual report:

More than 33,000 people in prison are serving a sentence lengthened by the Three Strikes law — including more than 7,400 people whose current conviction is neither serious nor violent. The population sentenced under the Three Strikes law is a third of the total prison population.

80% of people sentenced under the Three Strikes law are people of color. As with the entire prison population, the racial disparities are even more prevalent for young people sentenced under the law: 90% of those who were 25 or younger at the time of the offense and serving a sentence under the Three Strikes law are people of color.

People of color, particularly Black people, are arrested and prosecuted at disproportionate rates, and the Three Strikes law perpetuates these disparities by subjecting people to harsher penalties once they become justice-involved. While Black people account for less than 30% of the entire prison population, they account for 45% of people serving a third strike sentence.

(*Annual Report and Recommendations 2021*, Committee on Revision of the Penal Code, pp. 43-46, fn. omitted.) Based on the committee’s findings, the committee recommended eliminating or substantially limiting the use of the Three Strikes law. (*Id.* at p. 47.)

4. “Violent” and “Serious” Felony Designations

Violent felonies are found in Penal Code section 667.5 and serious felonies are found Penal Code sections 1192.7 and 1192.8. All violent felonies are encompassed in the serious felony list. (Pen. Code §§ 667.5, subd. (c), 1192.7, subd. (c).) The serious felony list is more expansive than the violent felony list because some of the crimes on the serious felony list are not inherently violent. An example of a serious felony that is not a violent felony is the sale or furnishing of heroin, cocaine, PCP, or methamphetamine to a minor. (Pen. Code § 1192.7, subd. (c)(24).) Sometimes a crime can be either serious or violent depending on the circumstances. A residential burglary is a serious felony, but can be a violent felony if someone other than an accomplice is present. (Pen. Code 667.5, subd. (c)(21).)

In addition to sentencing under the Three Strikes law, a person convicted of a serious or violent felony is subject to specified enhancements that add years to the underlying sentence, prohibited from receiving probation, limited from earning credits, limited from plea bargaining, among other consequences.

5. Existing Human Trafficking Penalties

California’s human trafficking law was enacted by AB 22 (Lieber) Chapter 240, Statutes of 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.

In 2012, California voters enacted Proposition 35 which modified many provisions of California's already tough human trafficking laws. Specifically, Proposition 35 expanded the definition of human trafficking and increased criminal penalties and fines for human trafficking offenses. The proposition specified that the fines collected are to be used for victim services and law enforcement. In criminal trials, the proposition makes evidence of sexual conduct by a victim of human trafficking inadmissible for the purposes of attacking the victim's credibility or character in court. The proposition also lowered the evidentiary requirements for showing of force in cases of minors. (See Proposition 35 voter guide available at Secretary of State's website, <<http://www.voterguide.sos.ca.gov/past/2012/general/propositions/35/analysis.htm>> (as of Apr. 22, 2015).)

The current penalty for human trafficking for the purpose of obtaining forced labor or services is imprisonment in state prison for up to 12 years. If the offense involves human trafficking for the purpose of specified sexual conduct, obscene matter or extortion, the punishment proscribed is up to 20 years imprisonment in state prison. If the offense involves causing a minor to engage in a commercial sex act, the penalty imposed may be 15-years to life. (Pen. Code, § 236.1.) The court may also impose up to a \$1.5 million fine on a person convicted of human trafficking. (Pen. Code §§ 236.1 and 236.4.) A person convicted of human trafficking for sexual conduct is also required to register as a sex offender. (Pen. Code, § 290, subd. (c).) Any property of money used to facilitate human trafficking is subject to seizure. (Pen. Code, § 236.8.)

If great bodily injury is inflicted on the victim to commit the human trafficking crime, an enhancement adding 5, 7, or 10 years in state prison applies. (Pen. Code, § 236.4, subd. (b).)

This bill adds human trafficking to the list of violent and serious felonies. While the crime of human trafficking is not listed as a violent or serious felony, the act of human trafficking could include crimes that are already designated as a violent or serious felony such as kidnapping,

threatening a victim or witness, personal use of a dangerous or deadly weapon, among others. Additionally, any felony punishable by life in prison is already a violent felony which applies for human trafficking of minor victims for commercial sex acts when the crime involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person. (Pen. Code, § 236.1, subd. (c).)

6. Prison Overcrowding

In January 2010, a three-judge panel issued a ruling ordering the State of California to reduce its prison population to 137.5% of design capacity because overcrowding was the primary reason that CDCR was unable to provide inmates with constitutionally adequate healthcare. (*Coleman/Plata vs. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.) The United State Supreme Court upheld the decision, declaring that “without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill” inmates in California’s prisons. (*Brown v. Plata* (2011) 131 S.Ct. 1910, 1939; 179 L.Ed.2d 969, 999.)

After continued litigation, 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.

The court also ordered California to implement the following population reduction measures in its prisons:

- Increase prospective credit earnings for non-violent second-strike inmates as well as minimum custody inmates.
- Allow non-violent second-strike inmates who have reached 50 percent of their total sentence to be referred to the Board of Parole Hearings (BPH) for parole consideration.
- Release inmates who have been granted parole by BPH but have future parole dates.
- Expand the California Department of Corrections and Rehabilitation’s (CDCR) medical parole program.
- Allow inmates age 60 and over who have served at least 25 years of incarceration to be considered for parole.
- Increase its use of reentry services and alternative custody programs.

(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).) Following the implementation of these measures along with the passage of Proposition 47, approved by California voters in November 2014, California met the federal court’s population cap in December 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*.)

CDCR’s March 2022 report on the prison population notes that as of March 9, 2022, the State’s adult prison population is 91,260, or 111.3 percent of design capacity, down from 111.7 percent in the previous filing. (Three-Judge Court Quarterly Update, CDCR, (March 15, 2022) <https://www.cdcr.ca.gov/3-judge-court-update/> [as of Mar. 29, 2022].)

While CDCR is currently in compliance with the three-judge panel's order on the prison population, the state needs to maintain a "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).)

Adding crimes to the "violent" felony and a "serious" felony lists and creating new strikes will result in increased sentences and will start to reverse the progress made in prison overcrowding.

7. Argument in Support

According to the San Diego County District Attorney's Office:

California consistently ranks number one in the nation in the number of human trafficking cases reported to the National Human Trafficking Hotline. The California Attorney General notes that California is one of the largest sites for human trafficking in the United States, recognizes the serious nature of this crime, and has defined it as "modern day slavery." Human trafficking is among the world's fastest growing criminal enterprises and is estimated to be a \$150 billion-a-year global industry. It is a form of modern day slavery that profits from the exploitation of our most vulnerable populations. SB 1042 will give a voice to the millions of victims that have suffered from this horrific abuse. This bill will fight to protect victims, strengthen prevention and increase the prosecution of those who buy and sell human beings. These horrendous acts should be deemed serious and violent crimes.

The Office of the San Diego County District Attorney supports SB 1042 because it will ensure that our most vulnerable victims will enjoy the full protection California's sentencing laws which include increased sentences for continued recidivism, reduced custody credits and limitations on plea bargaining. Currently, crimes such as kidnapping, robbery, rape and assault are all, rightfully, strike offenses. However, the crime of human trafficking also involves the deprivation of liberty through the use of force, fear, fraud, deceit, coercion, violence, duress, menace or threat. Human trafficking bears similarities to other strike offenses such as kidnapping, robbery, rape and assault. Serious felonies and strike felonies represent the category of California felonies demonstrated to be the highest priority criminal offenses in the state. The crime of human trafficking deserves to be included on both of these statutory lists.

8. Argument in Opposition

According to Free to Thrive:

As direct service providers and organizations who interact and support survivors of human trafficking, we know that victims and survivors of human trafficking are often misidentified as perpetrators and arrested for human trafficking. Therefore, this bill will hurt victims and survivors, and it will not prevent traffickers from recruiting, grooming, and trafficking more victims while prior victims serve out long sentences on their behalf. Black and Brown girls and

women are the most common victim demographic that has historically been arrested for charges like prostitution, pimping and pandering, and now, human trafficking. This bill would further entrench Black and Brown women and girls into a harmful system.

While there are many reasons victims are arrested for human trafficking, we will provide you with one example from a survivor named Renee:

Renee was living in a residential program for women on parole after having been released from prison. She was going to community college to obtain a degree in psychology and working at a local grocery store. Renee came to Free to Thrive in the hopes that we could help her clear her criminal record so that she could become a licensed therapist and break down the barriers that stood in her way. Renee had been arrested for human trafficking of a minor. As a manipulative strategy, traffickers often force their victims to traffic others to protect themselves. When they do this, most of the evidence of trafficking is against the victim who was forced to traffic another victim. When survivors like Renee are arrested, they are so traumatized and fearful of retribution from their trafficker that they do not disclose their victimization to law enforcement.

In Renee's case, she was in a car with her trafficker and two other victims when they were pulled over. One of the other two victims was a minor. The other victim and Renee were both young adults at the time. Renee, her trafficker and the other adult victim were all Black. The minor was White. The police arrested Renee, the other adult victim, and the trafficker and Renee were charged with human trafficking of a minor. The prosecutor said they would reduce her charges if she testified against her trafficker in court. Her trafficker was a gang member and Renee knew if she said anything she would be labeled as a snitch on the streets and was as good as dead. Subsequently, she decided to keep her mouth shut and served three years of a five year sentence in a California State prison. During that time, no one ever identified her as a victim of human trafficking. Renee, like most victims, went to prison for her trafficker's crimes. Renee, like most victims, was never asked why she was in the car that day.

When Renee was released from prison she knew she wanted to go to college, but had many challenges. Re-integrating back into society was not an easy task to do alone and she wanted to make the path easier for others making this transition. While in college, she started a nonprofit organization to provide support for folks transitioning from prison to college. Over the course of several years, Renee received help from Free to Thrive to file for vacatur - a post conviction relief that could help her clear her record. The 31 page declaration detailing her trafficking and its relation to the charges was unopposed by the prosecutor. A judge ordered Renee's charges to be vacated, officially recognizing her as a victim who should never have been charged with human trafficking.

Survivors who are currently wrongfully arrested and prosecuted are able to consider raising an affirmative defense under California Penal Code 236.23 which excludes violent offenses. Additionally, survivors like Renee who were wrongfully convicted are also able to apply for vacatur relief under California Penal Code 236.14, which also excludes violent offenses. If SB 1042 passes,

human trafficking will also be a charge that becomes barred from relief through affirmative defense and vacatur. Therefore, this bill will not only hurt victims in current and future cases, it will effectively bar relief for survivors from seeking justice and restoration under vacatur.

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