
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: SB 1072 **Hearing Date:** April 19, 2022
Author: Dahle
Version: April 4, 2022
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Violent felonies: human trafficking*

HISTORY

Source: Author

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: California Association of Highway Patrolmen; California District Attorneys Association; California State Sheriffs' Association; Concerned Women for America; Peace Officers Research Association of California

Opposition: ACLU California Action; California Attorneys for Criminal Justice; California Coalition for Women Prisoners; California Public Defenders Association; Free to Thrive; National Center for Youth Law; Survived & Punished; Young Women's Freedom Center

PURPOSE

The purpose of this bill is to designate human sex trafficking as a "violent felony" subjecting the offense to enhanced penalties.

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, except if the prior prison term was served prior to a period of ten years in which the defendant remained free of custody and the commission of a new felony. (Pen. Code § 667.5, subd. (a).)

Existing law provides that the term for an offense, though otherwise punishable as a county jail felony, must be served in state prison if the current or a prior conviction is for an offense on the violent felony list. (Pen. Code, § 1170, subd. (h)(3).)

Existing law limits the award of presentence conduct credits to 15 percent of actual confinement time on a violent felony prison term. (Pen. Code, § 2933.1.)

This bill adds human sex trafficking offenses to the list of offenses designated as a “violent felony.”

COMMENTS

1. Need for This Bill

According to the author of this bill:

Human trafficking ranks among the fastest growing crimes in California, with perpetrators of the crime becoming more organized each year. Currently, the most egregious forms of human trafficking involving sex acts and the coercion of children for sex acts are not considered a serious or violent felony.

In 2016, the voters of this state approved Proposition 57, which among its many drafting errors and vagaries, included the undefined term "convicted of a non-violent felony offense." Generally it was assumed, and confirmed by the Governor's spokesman, that the term meant only the 23 offenses/categories of crime listed in Penal Code section 667.5 (c). However, presumably the intention behind leaving the term undefined was to allow the Legislature and Governor an opportunity to alter the definition of "non-violent" if needed. That is exactly what this measure aims to do. While most nonviolent crimes involve criminal conduct in which no physical injury occurs, many crimes involving physical injury and threat of physical injury are considered "nonviolent" simply because they aren't included in code.

It is time that California draws the appropriate attention to human trafficking by including it in the crimes listed under PC 667.5 (i.e. violent felonies) for which special consideration be given upon sentencing. The majority of victims in California are local young adults who suffer horrific conditions.

2. Human Trafficking Generally

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 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. 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 purposes of obtaining forced labor or services is imprisonment in state prison for up to 12 years. Human trafficking for the purpose of specified sexual conduct, obscene matter or extortion, is punishable by 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).)

4. Violent Felony Designation

This bill adds human trafficking to the list of offenses that are designated a "violent felony." While the crime of human trafficking is not listed as a violent felony, the act of human trafficking could involve crimes that are already designated as a violent serious felony such as rape, kidnapping, threatening a victim or witness, personal use of a dangerous or deadly weapon, among others. Additionally, any felony where great bodily injury is inflicted on another person or any felony punishable by life in prison is already a violent felony. (Pen. Code, § 667.5, subd. (c).)

Designating an offense as a violent felony affects enhancements, credit earning limitations, sentencing restrictions, among others consequences.

a. Enhancements

Existing law requires a person who is convicted of a violent felony who has been convicted of a prior violent felony to receive a three-year sentencing enhancement for each prior prison term served. (Pen. Code, § 667.5.) If the violent felony was committed for the benefit of a gang, the person shall receive an additional 10 years on top of their sentence. (Pen. Code, § 186.22, subd. (b).)

b. Credit Earning Limitations

Generally, when a person is confined in state prison, the defendant may earn additional credits against their sentence at a rate of 6 months for every 6 months served (50 percent). (Pen. Code, § 2933.) These credits must be earned, and likewise may be forfeited. (*Ibid.*) However, persons convicted of certain offenses can have their custody credit earning further limited. Under Penal Code section 2933.1, a defendant convicted of a violent felony as defined by Penal Code section 667.5, subdivision (c), has their presentence conduct credits limited to 15 percent of actual confinement time. (Cal. Code Regs., tit. 15, § 3043.1; *People v. Brown* (2012) 54 Cal.4th 314, 321.)

A violent felony conviction also affects post-sentence credits. Proposition 57, approved by California voters on November 8, 2016, gave incarcerated persons in state prison the ability to earn additional, nonstatutory credits for sustained good behavior and for approved rehabilitative or educational achievements. The ability to earn these credits incentivizes incarcerated people to take responsibility for their own rehabilitation by providing credit-earning opportunities for sustained good behavior, as well as in-prison program and activities participation. The initiative required California Department of Corrections and Rehabilitation (CDCR) to promulgate regulations implementing the credit earning provisions of the initiative. Under CDCR's regulations effective May 1, 2021, a violent felony limits good conduct credits to 33.3 percent of the total incarceration time, as opposed to 50 percent for a non-violent felony. (<https://www.cdcr.ca.gov/proposition57/> [as of Apr. 7, 2022]; 15 Cal. Code of Regs. § 3043.2.) Additionally, a person serving time for a violent felony is not eligible for nonviolent parole consideration.

This bill adds human sex trafficking to the list of violent felonies which would subject the offense to the credit limitations discussed above.

c. Sentencing Restrictions

When a person has a prior violent felony conviction, even if the new offense is not violent and would otherwise be eligible to be served in county jail, the person must serve their sentence in state prison. (Pen. Code, § 1170, subd. (h)(3).) A person convicted of a violent felony cannot receive probation if they are currently on felony probation. (Pen. Code, § 1203, subd. (k).)

Additionally, specified affirmative defenses and vacatur relief provisions do not apply to a person who is charged with or convicted of a violent felony. (See Pen. Code, §§ 236.14 [human trafficking vacatur relief]; 236.23 [human trafficking victim affirmative defense]; 236.24 [intimate partner violence or sexual violence victim affirmative defense].)

d. Three Strikes Implications

Generally, a crime that is listed as a violent felony list in Penal Code section 667.5 are considered strikes for purposes of California's Three Strikes law. However, the Three Strikes law contains a "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,

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 does not amend the lock-in date, thus this bill does not add human sex trafficking as a strike for purposes of the Three Strikes law. However, if the lock-in date is amended at a future date, then all offenses that are currently in Penal Code section 667.5 would become a strike even if it had not originally been included in the Three Strikes law when the offense was added.

5. 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 Apr. 7, 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 list which subjects the offense to additional penalties will result in increased sentences and limited ability to earn credits is inconsistent with the court ordered mandate of maintaining a durable solution to prison overcrowding.

6. Proposition 20

Proposition 20 was a ballot initiative of the November 2020 election which, among other things, would have defined 51 crimes and sentence enhancements as violent in order to exclude them from Proposition 57's nonviolent offender parole program. Human trafficking was on this list. Californians voters overwhelming rejected Proposition 20, by almost 62 percent. (Proposition 20, the "Criminal Sentencing, Parole, and DNA Collection Initiative" <[https://ballotpedia.org/California_Proposition_20,_Criminal_Sentencing,_Parole,_and_DNA_Collection_Initiative_\(2020\)](https://ballotpedia.org/California_Proposition_20,_Criminal_Sentencing,_Parole,_and_DNA_Collection_Initiative_(2020))> [as of Apr. 11, 2022].) Arguably, this bill ignores the will of the voters by adding human trafficking to the list of violent felonies.

7. Argument in Support

According to the California District Attorneys' Association:

Human slavery remains a concern across the country and especially here in California. Both sex and labor traffickers operate across jurisdictional lines in order to avoid detection. California's extensive borders, highways, ports, and airports make it a prime hub for traffickers. The National Human Trafficking Center Resource Hotline receives more reports on human trafficking from California than from any other state. Clearly, something must be done to deter traffickers in California.

SB 1072 seeks to address this issue by making human trafficking a violent offense under 667.5.

8. Argument in Opposition

According to the California Public Defenders Association:

The penalties for a violation of the human sex trafficking statute, Penal Code section 236.1, are already very high; the basic penalty is 5-, 8-, or 12-years prison; with penalties for aggravated offenses of 8, 14, or 20 years for some, and 15 years

to life for others. Many violations of this complex statute are already violent felonies.

Those punishments already fit the crimes involved. Adding them to the “violent felony” list would make the punishment longer because people convicted of violent felonies are only eligible for sentence reduction credits in prison pursuant to Penal Code section 2933.1, and related sections of California Code of Regulations Title 15, related to prisons. For any future offenses, the individuals would be eligible for three additional years in state prison.

There is no reason to believe that those already harsh punishments are not adequate already to deter and punish. There is no reason to believe that increasing those punishments would have any further deterrent impact.

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