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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** SB 376                      **Hearing Date:** April 18, 2023  
**Author:** Rubio  
**Version:** March 16, 2023  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Human trafficking: victim rights*

### HISTORY

**Source:** Coalition to Abolish Slavery and Trafficking

**Prior Legislation:** SB 382 (Caballero) Chapter 87, Stats. 2022  
AB 1735 (Cunningham) Chapter 805, Stats. 2018  
AB 1850 (Waldron) Chapter 673, Stats. 2014  
SB 226 (Cedillo) Chapter 498, Stats. 2003  
SB 723 (Pavley) Chapter 155, Stats. 2011

**Support:** Child Abuse Prevention Center

**Opposition:** The California Public Defenders Association

### PURPOSE

***The purpose of this bill is to provide that a victim of human trafficking or abuse has the right to have a human trafficking advocate and a supporter person of the victim's choosing present at an interview by a law enforcement authority.***

*Existing law* states 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 effect or maintain a violation of specified sex offenses is guilty of human trafficking. (Penal Code § 236.1 (c).)

*Existing law* defines "commercial sex act" to mean sexual conduct on account of which anything of value is given or received by a person. (Penal Code § 236.1 (h)(2).)

*Existing law* punishes human trafficking of a minor for the purpose of engaging in a commercial sexual act as follows:

- Imprisonment in the state prison for 5, 8, or 12 years and a fine of not more than \$500,000; or,

- Imprisonment for 15 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. (Penal Code § 236.1 (c)(1)-(2).)

*Existing law* requires a person convicted of human trafficking of a minor for the purpose of engaging in a commercial sexual act to register on the sex offender registry. (Penal Code § 290, (c)(1).)

*Existing law* provides that any person who knowingly and maliciously prevents or dissuades, or attempts to prevent or dissuade, any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law is guilty of a crime. (Penal Code §§ 136.1 (a)(1)(2).)

*Existing law* authorizes the trial court in a criminal case to issue protective orders when there is a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. (Penal Code § 136.2 (a).)

*Existing law* provides that a person violating a protective order may be punished for any substantive offense described in provisions of law related to intimidation of witnesses or victims, or for contempt of court. (Penal Code § 136.2 (b).)

*Existing law* states that when the defendant is charged with a crime involving domestic violence, rape, or a crime that requires the defendant to register on the sex offender registry, the court shall consider issuing a protective order on its own motion. (Penal Code § 136.2 (e)(1).)

*Existing law* states that the court may consider, when determining whether good cause exists to issue a restraining order during the pendency of criminal proceedings, the underlying nature of the offense charged, the defendant's relationship to the victim, the likelihood of continuing harm to the victim, any current restraining order or protective order issued by civil or criminal court involving the defendant, and the defendant's criminal history. (Penal Code § 136.2 (h)(2).)

*Existing law* requires a court to consider issuing a protective order that may be valid for up to 10 years, to protect the victim of the crime when a defendant is convicted of any of the following crimes:

- a) A crime involving domestic violence;
- b) Human trafficking for labor or services;
- c) Rape, spousal rape, and statutory rape;
- d) Pimping and pandering;
- e) Gang offenses; and,
- f) Any offense requiring sex offender registration. (Penal Code §§ 136.2 (i)(1).)

*Existing law* gives a victim of sex assault has the right to have a victim advocate and a support person at law enforcement interviews. (Penal Code § 679.04)

*Existing law* provides "Human trafficking victim service organization" means a nongovernmental organization or entity that provides shelter, program, or other support services to victims of human trafficking and their children and that does all of the following:

- (1) Employs staff that meet the requirements of a human trafficking caseworker as set forth in this section.
- (2) Operates a telephone hotline, advertised to the public, for survivor crisis calls.
- (3) Offers psychological support and peer counseling provided in accordance with this section.
- (4) Makes staff available during normal business hours to assist victims of human trafficking who need shelter, programs, or other support services. (Evidence Code §1038.2(d))

*This bill* provides that a victim of human trafficking or abuse, has the right to have a human trafficking advocate and a support person of the victim's choosing present at an interview by a law enforcement authority, prosecutor, or defense attorney.

*This bill* provides that prior to being present at an interview conducted by a law enforcement authority, prosecutor, or defense attorney, a human trafficking advocate shall advise the victim of applicable limitations on the confidentiality between the victim and the human trafficking advocate.

*This bill* defines "human trafficking advocate as a person employed by an organization specified in Evidence Code Section 1038.2.

*This bill* provides that prior to the commencement of the initial interview by a law enforcement authority or prosecutor pertaining to a criminal action arising out of a human trafficking incident, a victim of human trafficking or abuse shall be notified orally or in writing by attending law enforcement authority that the victim has the right to have a human trafficking person of the victim's choosing present at the interview.

*This bill* provides at the time the victim is advised of their rights, the attending law enforcement authority or prosecutor shall also advise the victim of the right to have a human trafficking advocate and support person present at an interview by the defense attorney or investigators or agents employed by the defense attorney.

*This bill* provides that an initial investigation by law enforcement to determine whether a crime has been committed and the identity of the suspects does not constitute a law enforcement interview for purposes of this section.

## COMMENTS

### 1. Need for This Bill

According to the author:

Survivors of human trafficking are often left in extremely vulnerable positions. Many are arrested for crimes they were forced to commit, and this may cause them to feel fearful of stepping forward with their traumatic experiences. This poses a huge barrier to break the cycle and escape their circumstances, and makes them

vulnerable to being trafficked again. Because of these factors, it is crucial for victims to have a right to an advocate that would help navigate them through any interview by law enforcement authorities, prosecutors, or defense attorneys. This bill would additionally require law enforcement to notify or advise a victim of human trafficking of this right. Under current state law, survivors of domestic violence and sexual assault are already granted the right to an advocate, and survivors of human trafficking experience similar obstacles. This critical resource will increase potential survivor cooperation with the investigation and/or prosecution.

## 2. Right to have a victim's advocate.

Under existing law, a person who is a victim of a sex offense has the right to have a victim's advocates and a person of their choice during the sex assault exam and other stages of the investigation. This bill gives a victim of human trafficking or abuse the right to have a human trafficking advocate and support person of the victim's choosing present at an interview by law enforcement by law enforcement, prosecutor, or defense attorney.

The bill excludes initial exams by law enforcement when an initial determination is being made as to whether a crime has been committed and to identify the suspects. Is this clear enough to let law enforcement know when the right to the advocate occurs? What if the victim is also one of the suspects, does that change the timing?

This bill mimics the existing law regarding sex assault victims but also allowing a support person of the victim's choosing. Should there be any limit on who the support person could be or any ability to exclude a chosen support person? Unlike sex assault victims where it is unlikely that the victim will ask the perpetrator of the crime to be present, human trafficking can be very complex and could it be possible that the victim would pick a person, who even if not the main perpetrator, is involved with the perpetrator? What if the support person is another victim, could it hurt the prosecutor's case if they were to hear each other's testimony? If law enforcement suspects the support person may be tangentially involved in the human trafficking or another victim should they be able to exclude them?

## 3. Right to have advocate present at interview with defense attorney

Along with having the right to have a victim's advocate and support person present at law enforcement and prosecutor interviews, this bill also gives the person the right to have these people present at interviews with their defense attorney and their investigators. While a defense attorney may decide to allow a support person to be present during some discussions with a client, could an absolute right interfere with an attorney's ability to defend a person vigorously? Does it interfere with attorney client privilege? Could it result in a victim not fully trusting or listening to the counsel of their attorney, what if an advocate tries to advise the victim differently than defense counsel would? Could it result in a delay in conversations or settlement of a case if a support person must be waited for?

The California Public Defenders Association also raises these issues stating:

This both interferes with the attorney client relationship between the human trafficking victim and their attorney and the right of the defendant if it is not the human trafficking victim to freely investigate their case. If the human trafficking

victim is charged with an offense, SB 376 would interfere with the attorney's ability to zealously defend their client. A human trafficking victim might not trust their attorney or listen to their lawyer's advice. Additionally, the support person might advocate in what they perceive to be the victim's best interest regardless of what the victim desires.

If on the other hand, SB 376 is designed to give the victim protection from the accused's lawyer, it is not necessary. The victim already had the right to refuse a defense lawyer's interview or have anyone present that they desire. The victim does not need a mandated "minder".

**-- END --**