
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 382 **Hearing Date:** April 6, 2021
Author: Caballero
Version: March 23, 2021
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Human trafficking: restraining orders*

HISTORY

Source: Children’s Advocacy Institute, University of San Diego School of Law

Prior Legislation: AB 1735 (Cunningham), Ch. 805, Stats. 2018
AB 1850 (Waldron), Ch. 673, Stats. 2014
SB 226 (Cedillo), Ch. 498, Stats. 2003
SB 723 (Pavley), Ch. 155, Stats. 2011

Support: 3 Strands Global Foundation; American Association of University Women – California; California Catholic Conference; California Coalition of School Safety Professionals; California District Attorneys Association; Humans Against Trafficking; Los Angeles School Police Officers Association; Palos Verdes Police Officers Association; Riverside Sheriffs’ Association; Sacramento District Attorney’s Office; San Diego County District Attorney’s Office; Santa Ana Police Officers Association; South Bay Coalition; 1 private individual

Opposition: California Attorneys for Criminal Justice

PURPOSE

The purpose of this bill is to include commercial exploitation of a minor in existing provisions of law that authorize courts to issue a restraining order during the pendency of criminal proceedings and upon conviction of specified offenses.

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. (Pen. Code, § 236.1, subd. (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. (Pen. Code, § 236.1, subd. (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.

(Pen. Code, § 236.1, subd. (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. (Pen. Code, § 290, subd. (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. (Pen. Code, § 136.1, subds. (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. (Pen. Code, § 136.2, subd. (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. (Pen. Code, § 136.2, subd. (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. (Pen. Code, § 136.2, subd. (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. (Pen. Code, § 136.2, subd. (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.

(Pen. Code, §§ 136.2, subd. (i)(1).)

Existing law provides that the post-conviction protective order authorized above may be issued by the court regardless of whether the defendant is sentenced to the state prison or a county jail or subject to mandatory supervision, or whether imposition of sentence is suspended and the defendant is placed on probation. It is the intent of the Legislature in enacting this subdivision that the duration of a restraining order issued by the court be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of a victim and the victim's immediate family. (Pen. Code, § 136.2, subd. (i)(1).)

Existing law prohibits a person who is subject to a protective order from owning, possessing, purchasing, attempting to purchase or receive, a firearm while the protective order is in effect and the court shall order a person subject to the protective order to relinquish ownership or possession of any firearms. (Pen. Code, § 136.2, subd. (d).)

Existing law states that if a court does not issue a protective order in a case involving domestic violence, the court is required to consider, on its own motion, to issue an order restraining the defendant from possessing a firearm. (Pen. Code, § 136.2, subd. (a)(1)(G)(ii).)

This bill applies the firearm restraining order provision above on cases involving commercial sexual exploitation of a minor.

This bill states that when a defendant has been charged with human trafficking of a minor for the purpose of engaging in, or maintaining, a commercial sex act, the court shall consider issuing a protective order during the pendency of the criminal proceedings on its own motion.

This bill provides that when a defendant has been convicted of a crime of human trafficking, the court shall consider issuing an order restraining the defendant from any contact with the victim of the crime for a duration of up to 10 years.

This bill provides that in all cases of human trafficking, the prosecutor shall inquire of the court whether it will issue a restraining order.

COMMENTS

1. Need for This Bill

According to the author of the bill:

Commonly, victims of crimes recoil at the idea of ever again encountering the person who committed the crime against them. For the reasons described above, this is tragically not so for the child victims of CSEC [commercial sexual exploitation of children]. Children who are sexually exploited for profit *are likely to want to return to being exploited*. Many do not even view themselves as victims at all. “[CSEC] victims often relapse to exploitation many times before they permanently leave their exploiters, and interventions must take this cycle into account.”

In courtrooms that routinely address the needs of abused and neglected children in or out of foster care, lawyers and judges routinely -- almost every case -- issue orders that establish boundaries between the child and the adults in their lives. When CSEC cases are heard there, orders preventing the exploiter from having contact with the child-victim are frequently issued and often issued *sua sponte*.

The same should be commonplace in our criminal courts but it is not. There are two reasons for this.

The first reason is simply custom and practice. District Attorneys do not as routinely seek and judges do not as routinely issue restraining orders in criminal cases. This even though they could.

Which leads to the second reason. Before additions to the Penal Code explicitly permitted -- and therefore motivated -- DAs and judges to seek restraining orders in domestic violence cases, the law permitted such orders to issue under the general statute permitting for so-called Criminal Protective Orders or "Stay-Away" Orders. Such orders in domestic violence cases were rare, however, which is why the law, was amended *to showcase domestic violence restraining orders in eight different explicit mentions*. See Penal Code section 136.2(a)(1)(G)(ii), (2), (e)(1)-(2), (h), and (i)(1)-(2)).

When it comes to the code educating judges and DAs about the availability of restraining orders in CSEC cases, CSEC victims are similarly situated (i.e., invisible) to victims of domestic violence before these amendments. Penal Code section 136.2 currently contains a means by which orders can be issued in CSEC cases, but it is so hard to find that the judges with whom we have consulted about this bill made no mention of its existence.

2. Restraining Orders, Generally

As a general matter, a court can issue a restraining order in any criminal proceeding pursuant to Penal Code Section 136.2 where it finds good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. Protective orders issued under this statute are valid only during the pendency of the criminal proceedings. (*People v. Ponce* (2009) 173 Cal.App.4th 378, 382.)

When criminal proceedings have concluded, the court has the authority to issue restraining orders as a condition of probation in cases where probation was granted. In some cases in which probation has not been granted, the court also has the authority to issue post-conviction protective orders. The court is authorized to issue no-contact orders for up to 10 years when a defendant has been convicted of willful infliction of corporal injury to a spouse, former spouse, cohabitant, former cohabitant, or the mother or father of the defendant's child. The court can also issue no-contact orders lasting up to 10 years in cases involving a domestic violence-related offense, rape, spousal rape, statutory rape, or any crime requiring sex offender registration. (Pen. Code, § 136.2, subd. (i)(1).) The same is true of stalking cases. (Pen. Code, § 646.9, subd. (k)).

This bill specifies that when a person is charged with, or convicted of, human trafficking of a minor for purposes of commercial sexual exploitation, the court shall consider issuing a restraining order to prohibit contact with the victim. Existing law already authorizes the court to issue such orders when a person is charged with, or convicted of, a crime requiring registration on the sex offender registry (Pen. Code, § 136.2, subs. (e) & (i)), and commercial sexual exploitation of a minor is such an offense (Pen. Code, § 290, subd. (c)(1)). This bill specifically references this crime in statute to provide clarity in existing law. This bill also provides that in all cases of human trafficking, the prosecutor shall inquire of the court whether it will issue a restraining order.

3. Criminal Contempt

Disobedience of a court order may be punished as criminal contempt. The crime of contempt is a general intent crime. It is proven by showing that the defendant intended to commit the prohibited act, without any additional showing that he or she intended “to do some further act or achieve some additional consequence.” (*People v. Greenfield* (1982) 134 Cal.App.3d Supp. 1, 4.) Nevertheless, a violation must also be willful, which in the case of a court order encompasses both intent to disobey the order, and disregard of the duty to obey the order.” (*In re Karpf* (1970) 10 Cal.App.3d 355, 372.)

Criminal contempt under Penal Code Section 166 is a misdemeanor, and so proceedings under the statute are conducted like any other misdemeanor offense. (*In re McKinney* (1968) 70 Cal.2d 8, 10; *In re Kreitman* (1995) 40 Cal.App.4th 750, 755.) Therefore, the criminal contempt power is vested in the prosecution; the trial court has no power to institute criminal contempt proceedings under the Penal Code. (*In re McKinney*, supra, 70 Cal.2d at p. 13.) A defendant charged with the crime of contempt is “entitled to the full panoply of substantive and due process rights.” (*People v. Kalnoki* (1992) 7 Cal.App.4t Supp. 8, 11.) Therefore, the defendant has the right to a jury trial, regardless of the sentence imposed. (*People v. Earley* (2004) 122 Cal.App.4th 542, 550.)

4. Effects of Restraining Orders

The consequences of having the court issue a restraining order against a person can be severe. For example, the restraining order may prohibit the defendant from being within a certain distance of the person named in the order, thereby implicating the defendant’s right to travel. Depending on the facts, such an order may implicate an individual’s property interests by forcing him or her to vacate his or her own home. Such restrictions may negatively impact an individual’s successful reentry into the community and may lead increase a person’s likelihood to commit new crimes. The restrained person is also prohibited from owning or possessing any firearms.

This bill clarifies the existing authority of the court to issue a restraining order when a defendant has been charged with, or convicted of, an offense requiring sex offender registration. The crime of human trafficking for the purposes of commercial sexual exploitation of a minor is an offense requiring sex offender registration.

This bill also states that the court may issue a restraining order prohibiting the defendant charged with this offense from owning or possessing any firearms upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur.

This bill also requires in all cases of human trafficking, the prosecutor to inquire of the court whether a restraining order will be issued.

5. Argument in Support

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

[W]e know that our youth are being exploited and even more are at risk of exploitation. We know from our cases that our child victims are often so entwined with their trafficker that they can't see the abuse. Traffickers exploit the emotional vulnerability of children, especially those that are runaways, foster youth and those that have been previously abused. The trafficker convinces the victim that they are a family and will always be together. Vulnerable children crave this sense of belonging and will stay loyal to their trafficker even after acts of violence and exploitation.

The Office of the San Diego County District Attorney supports Senate Bill 382 because it will ensure that those most vulnerable among us are able to have the full protection of the law. Having the court routinely consider a post-conviction protective order will allow the victim to heal from the horrific abuse that accompanies trafficking, free from the undue influence and manipulation of the trafficker. Requiring the prosecutor to address the protective order with the court will ensure a full airing of the issues in each matter further protecting the victims.

6. Argument in Opposition

According to California Attorneys for Criminal Justice:

There does not appear to be any demonstrable need to change the laws or procedures already in place – laws that allow Judges and Prosecutors to employ their judgement and discretion to request protective orders when the particular facts of a case require it. Current law already allows the Court to consider, on its own motion, whether to issue protective orders in cases where a defendant is charged with a crime that carries a penalty of compulsory registration under Penal Code section 290. Commercial sexual exploitation of a minor is already included, based on this language, as a crime in which the Court can consider issuing a protective order. The amendments to Penal Code § 136.2 proposed by this bill would simply add additional but unnecessary language to the statute, as the conduct it is seeking to permit is already permissible under the law it seeks to amend.

Furthermore, this bill would force prosecutors to request protective orders in all cases involving the commercial sexual exploitation of minors. The laws and procedure currently in place allow Prosecutors the ability to demand a protective order in any Commercial exploitation of a minor case they feel requires it. The court is also able to issue protective orders, on its own motion, whenever it deems necessary, notwithstanding a request (or not) from the Prosecution.