
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 526 **Hearing Date:** June 23, 2015
Author: Holden
Version: February 23, 2015
Urgency: No **Fiscal:** No
Consultant: JRD

Subject: *Abduction*

HISTORY

Source: Author

Prior Legislation: SB 1388 (Lieu) -- Chapter 714, Statutes of 2014
AB 17 (Swanson) -- Chapter 211, Statutes of 2009

Support: California Police Chiefs; Several individuals

Opposition: California Public Defenders Association

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this legislation is to increase the fine for the crime of abducting a minor for prostitution from a maximum of \$2,000 to a maximum of \$5,000.

Existing law states that a person who, for the purpose of committing a lewd or lascivious act, persuades or entices by false promises, misrepresentations, or the like, any child under 14 years of age, to go out of the country, state, county, or into another part of the same county, is guilty of kidnapping. (Penal Code § 207(b).)

Existing law provides that when a person is convicted of kidnapping a victim under 14 years of age, the kidnapping is punishable by imprisonment in the state prison for 5, 8, or 11 years. (Penal Code § 208.)

Existing law provides that where a person is convicted of pimping or pandering involving a minor the court may order the defendant to pay an additional fine of up to \$5,000. In setting the fine, the court shall consider the seriousness and circumstances of the offense, the illicit gain realized by the defendant and the harm suffered by the victim. The proceeds of this fine shall be deposited in the Victim-Witness Assistance Fund and made available to fund programs for prevention of child sexual abuse and treatment of victims. (Penal Code § 266k(a).)

Existing law states that upon conviction of any person for a violation of either procurement of a child under 16 for lewd or lascivious acts or abduction of a minor for purposes of prostitution, the court may impose an additional fine not to exceed \$25,000. (Penal Code § 266k(b).)

Existing law provides that any person who deprives or violates the personal liberty of another with the intent to effect or maintain a felony violation of enticement of a minor into prostitution, pimping or pandering, abduction of a minor for the purposes of prostitution, child pornography, or extortion, 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. (Penal Code Section 236.1 (b).)

Existing law states that any 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 enticement of a minor into prostitution, pimping or pandering, abduction of a minor for the purposes of prostitution, child pornography, or extortion, is guilty of human trafficking, and shall be punishable by imprisonment in the state prison as follows:

- Five, 8, or 12 years and a fine of not more than \$500,000.
- 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.

(Penal Code Section 236.1(c).)

Existing law provides that every person who takes away any other person under the age of 18 years from the parent, guardian, or other person having the legal charge of the other person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the state prison and a fine not exceeding \$2,000. (Penal Code § 267.)

This bill increases the fine for the crime of abducting a person under the age of 18 years for prostitution from a maximum of \$2,000 to a maximum of \$5,000.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight 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 February of this year the administration reported that as of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed

capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.” (Defendants’ February 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).

While significant gains have been made in reducing the prison population, the state now 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. Need for This Legislation

According to the author:

For more than 30 years, the penalty for committing abduction for the purposes of prostitution has not been increased to match the growing criminal enterprise of human trafficking. AB 526 would increase the penalty threshold of committing abduction for the purposes of prostitution from up to a \$2,000 fine to up to a \$5,000 fine.

2. Effect of Legislation

This legislation would raise the base fine for the crime of abduction for the purposes of prostitution from \$2,000 to \$5,000. Because existing law requires that a number of penalty assessments and fees be added to a base fine, if a defendant was fined the maximum \$5,000, as provided in this bill, the following would be imposed pursuant to the Penal and Government Code:

Base Fine:	\$ 5,000
Penal Code 1464 state penalty on fines:	\$ 5,000 (\$10 for every \$10)
Penal Code 1465.7 state surcharge:	\$ 1,000 (20% surcharge)
Penal Code 1465.8 court operation assessment:	\$ 40 (\$40 fee per offense)

Government Code 70372 court construction penalty:	\$ 2,500 (\$5 for every \$10)
Government Code 70373 assessment:	\$ 30 (\$30 per felony/misdo)
Government Code 76000 penalty:	\$ 3,500 (\$7 for every \$10)
Government Code 76000.5 EMS penalty:	\$ 1,000 (\$2 for every \$10)
Government Code 76104.6 DNA fund penalty:	\$ 500 (\$1 for every \$10)
Government Code 76104.7 addtl DNA fund penalty:	\$ 2,000 (\$4 for every \$10)

Total Fine with Assessments: \$ 20,570¹

Criminal fines and penalties have climbed steadily in recent decades. Government entities tasked with collecting these fines have realized diminishing returns from collection efforts. A recent San Francisco Daily Journal article noted, “When it comes to collecting fines, superior court officials in several counties describe the process as ‘very frustrating,’ ‘crazy complicated’ and ‘inefficient.’” (*State Judges Bemoan Fee Collection Process*, Paul Jones and Saul Sugarman, San Francisco Daily Journal, January 15, 2015.) In fact, according to the Daily Journal article, “[f]elons convicted to prison time usually can’t pay their debts at all. The annual growth in delinquent debt partly reflects a supply of money that doesn’t exist to be collected.” (*Id.*) Given that a conviction for abduction for purposes of prostitution carries prison time, this legislation could contribute to the growing about of delinquent, unpaid debt.

3. Argument in Support

According to the California Police Chiefs Association:

The California Police Chiefs Association is pleased to support Assembly Bill 526, which increases the penalty for abduction for purposes of prostitution from two thousand dollars to five thousand dollars. After drug trafficking, human trafficking is the world’s second most profitable criminal enterprise, a status it shares with illegal arms trafficking. Like drug and arms trafficking, the United States is one of the top destination countries for trafficking in persons.

For more than 30 years, California Penal Code section 267 has not been altered to match the growth of this criminal practice. AB 526 would increase the penalty and serve as a deterrent for committing abduction for the purposes [of] prostitution.

4. Argument in Opposition

According to the California Public Defenders Association:

Under current law, Penal Code §267, “taking away” a minor from his or her parent or guardian, for the purposes of prostitution, is a straight felony with a maximum fine of \$2,000. SB 526 would increase the fine to \$5,000.

This bill would modify a seldom-invoked penal code section. After the passage of Prop 35 in 2012, Penal Code § 236.1 was amended to read, in part, “Any

¹ This figure does not include victim restitution, or the restitution fine, and that other fines and fees, such as the jail booking fee, attorney fees, and probation department fees, may also be applicable.

person who deprives or violates the personal liberty of another with the intent to obtain forces labor or services, is guilty of human trafficking and shall be punished by imprisonment in state prison for 5, 8, or 12 years and a fine of not more than five hundred thousand dollars (\$500,000).”

The punishment is increased for victims who are minors, under certain circumstances, the possible punishment is a life sentence under Penal Code § 236.1(c)(1)-(2).

Prosecutors will not use Penal Code §267, because Penal Code § 236.1 is available to them. In the unlikely event that PC § 267 is charged, it will serve only to hamper low-income defendants from complying with their sentence. Wealthier defendants will be much more able to pay a \$5,000 fine than more defendants. Furthermore, any money that ta defendant has ought to go to the true victim—the prostituted minor. Increasing the statutory fine will take money away from victims and give it to the State.

-- END --