
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1730 **Hearing Date:** June 21, 2016
Author: Atkins
Version: May 27, 2016
Urgency: No **Fiscal:** Yes
Consultant: AA

Subject: *Human Trafficking: Pilot Program for Minors*

HISTORY

Source: Author

Prior Legislation: None

Support: California Public Defenders Association; California Statewide Law Enforcement Association; County of San Diego; Fraternal Order of Police; Los Angeles Professional Peace Officers Association; San Diego County Board of Supervisors; San Diego County District Attorney; State Coalition of Probation Organizations

Opposition: None known

Assembly Floor Vote: 80 - 0

PURPOSE

The purpose of this bill is to require the Board of State and Community Corrections to establish pilot projects in three specified counties to address the need for services relating to the commercial sexual exploitation of youth, as specified.

Current law establishes the “Board of State and Community Corrections” (“BSCC”), as specified. (Penal Code § 6024.) Current law provides the following mission for the BSCC:

The mission of the board shall include providing statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California’s adult and juvenile criminal justice system, including addressing gang problems. This mission shall reflect the principle of aligning fiscal policy and correctional practices, including, but not limited to prevention, intervention, suppression, supervision, and incapacitation, to promote a justice investment strategy that fits each county and is consistent with the integrated statewide goal of improved public safety through cost-effective, promising, and evidence-based strategies for managing criminal justice populations. (Penal Code § 6024(b).)

This bill would require the BSCC to “establish a pilot project in each of the Counties of Sacramento, San Diego, and Santa Clara, in which, if the county elects to participate in the pilot project, the chief probation officer of the county shall create a program to provide services to

youth within his or her jurisdiction that addresses the need for services relating to the commercial sexual exploitation of youth.”

This bill would require that programs receiving funding for this project “be licensed by the State Department of Social Services and may include, but shall not be limited to, programs that do the following:

- (1) Assess the youth victim’s condition, including a review of the extent of trauma suffered, physical and mental health, and the status of age-appropriate developmental factors, such as educational status.
- (2) Serve exploited youth in a services-rich environment, including trauma-informed counseling services.
- (3) Research options, make recommendations, and work to find solutions to provide specialized services and permanent placement solutions for the youth.
- (4) Provide staff who are trained to work with, and experienced in working with, child sex trafficking victims.
- (5) Include peer mentors in the design and provision of service delivery.

This bill contains uncodified legislative findings and declarations concerning human trafficking and the commercial sexual exploitation of children in the United States, as specified.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several 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 December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 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* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed

capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 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 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. Stated Need for This Bill

The author states:

Human trafficking is modern day slavery and, unfortunately, this crime is growing rapidly in our state. According to the FBI, the San Francisco, Los Angeles and San Diego metropolitan areas comprise three of the nation's 13 areas of 'high intensity' child sex trafficking exploitation in the country.

Currently, many child victims of sex trafficking, once removed from the sex trade environment, have only two options for housing: juvenile detention and court-ordered foster care placement. Due to this limited range of options, juvenile detention too often means placement of some duration in juvenile hall. Although the foster care system is building service capacity, it does not have a suitable array of specially-tailored service options for this population. Moreover, in the foster care system, it can take some time to finalize a long-term placement appropriate for child sex trafficking victims, and these victims often need a place to stay immediately after being recovered from their trafficker.

Consequently, there are few facilities around the state that have the comprehensive services necessary to assist in the recovery and care of these child victims. Child sex trafficking victims have specific needs; many have suffered the same level of trauma as a prisoner of war. Without these services, or without a place to go, victims often end up back on the streets with their traffickers.

AB 1730 creates a pilot program that would provide commercially sexually exploited children a safe place to stay with trauma-informed, mental health services that can help them recover and thrive. Other aspects of the pilot program's design criteria include assessment of the youth victim's condition; development and recommendations for permanent placement solutions; staff experienced to work with these victims as well as survivor, peer mentors; and a secure and protective service delivery setting secluded from the victim's trafficking environment, such as a geographically remote location, a staff protective presence, or any combination of strategies intended to protect the victim.

2. Background: Probation Services

Probation officers are involved throughout juvenile criminal justice proceedings. The probation department may be used at the "front end" of the juvenile justice system for first-time, low-risk offenders or at the "back end" as an alternative to institutional confinement for more serious offenders. The responsibilities of juvenile probation departments include the intake screening of cases referred to juvenile courts, predisposition or presentence investigation of juveniles, and court-ordered supervision of juvenile offenders.

Juvenile probation officers investigate and provide information to the court about the juvenile's educational status, family situation, and any risk factors to assist the court in making decisions at every step in the juvenile process. When the court makes orders regarding the conduct of the juvenile, the probation officers are responsible for supervising the juvenile to ensure they follow those orders.

The primary goal of the juvenile criminal justice system is rehabilitation of the juvenile. Sentencing by the court and supervision by probation are meant to further that rehabilitative goal. As part of their supervisory responsibilities, the probation officers provide support to the juvenile and their family to help with the process of rehabilitation. That support can take the form of classes, services, or programs offered or facilitated by the probation department.

Juvenile victims of human trafficking enter the juvenile justice system when they are arrested for a crime that might, or might not be, related to the fact that they are a victim of human trafficking. To the extent that effective rehabilitation for those juveniles is going to take place, it is important to have resources to address the needs of those juveniles as victims of human trafficking.

3. Background: Alameda and Los Angeles Pilot Projects

The Legislature has authorized pilot programs in Alameda and Los Angeles Counties to create, implement, and deliver standardized training curricula that would provide a protocol for law enforcement and social services to assess and recognize sexually exploited minors within the juvenile justice system.

The Alameda County pilot project is part of a larger project called "H.E.A.T (Human Exploitation and Trafficking) Watch." H.E.A.T Watch is a multidisciplinary, multisystem program that brings together individuals and agencies from law

enforcement, health care, advocacy, victim and support services, the courts, probation agencies, the commercial sector, and the community to (1) ensure the safety of victims and survivors and (2) pursue accountability for exploiters and traffickers. Strategies employed by H.E.A.T. Watch include, among others, stimulating community engagement, coordinating training and information sharing, and coordinating the delivery of victim and support services.

The program uses a multisector approach to coordinate the delivery of support services. For example, multidisciplinary case review (modeled on the multidisciplinary team approach) is used to create emergency and long-term safety plans. Referrals for case review are made by law enforcement, prosecutors, probation officials, and social service organizations that have come into contact with these youth. This approach enables members of the multidisciplinary team to share confidential information with agencies that can assist youth in need of services and support. (Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States, A Guide for Providers of Victim and Support Services. Institute of Medicine and National Research Council, Pp. 30-31.)

In a March 23, 2011 progress report on the AB 499 Diversion Program, the Alameda County District Attorney's Office (ACDAO) stated: "As a result of the passage of AB 499, the ACDAO has been able to develop a comprehensive system response that directs Commercially Sexually Exploited Children (CSEC) away from the criminal justice system and into programs offering specialized services essential for the stabilization, safety, and recovery of these vulnerable children. . . .

The Legislature authorized the same pilot project for Los Angeles County. (SB 1279 (Pavley), Chapter 116, Statutes of 2010.) The sunsets for these programs would be eliminated under SB 1064 (Hancock), currently pending in the Assembly.

4. Background: Commercial Sexual Exploitation of Minors

Addressing the treatment of children who engage in acts of prostitution has been an issue policy makers have been examining closely in recent years. Earlier this year this Committee passed SB 1322 (Mitchell), which would decriminalize prostitution committed by minors. That bill is pending in the Assembly.

As explained in this Committee's analysis of SB 1322, recent years have seen a great increase in awareness of and concerns about minors – most often girls - engaged in commercial sex activities. Organized, coerced trafficking has received the most attention. Sex trafficking has been described as sexual slavery. Trafficked minors are isolated, controlled by and made dependent on their exploiters, and can even be perversely loyal because of the manufactured dependency.

A 2013 report on commercial sexual exploitation of minors published by the Institute of Medicine (supported by a grant between the National Academy of Sciences and the U.S. Department of Justice) concluded in part:

It is important to understand that commercial sexual exploitation and sex trafficking of minors are manifestations of child abuse. By doing so, one can gather valuable insights from the nation's work on child abuse and neglect over

the past several decades and gain a better understanding of the challenges that must be overcome to confront these crimes. . . .

This report reveals that the complex needs of these young people are not being adequately met by either criminal justice or child protection systems. Further, mandatory reporting of suspected cases will not help these youth if the resources they need are unavailable. It is time to refocus the perspective on these problems and direct efforts toward preventing commercial sexual exploitation and sex trafficking of minors; identifying youth at risk and those who have become ensnared; and developing effective, evidence- and trauma-informed approaches that can enable them to reclaim their lives.

. . . The committee's ultimate goals in this report are to identify what is known about commercial sexual exploitation and sex trafficking of minors and to define strategies for improving prevention and identification of and interventions for victims and survivors of these crimes. As noted in Chapter 1, the committee was guided in its work by three principles:

1. Commercial sexual exploitation and sex trafficking of minors should be understood as acts of abuse and violence against children and adolescents.
2. Minors who are commercially sexually exploited or trafficked for sexual purposes should not be considered criminals.
3. Identification of victims and survivors and any intervention, above all, should do no further harm to any child or adolescent.¹

This report included the following recommendation:

All national, state, local, tribal, and territorial jurisdictions should develop laws and policies that redirect young victims and survivors of commercial sexual exploitation and sex trafficking from arrest and prosecution as criminals or adjudication as delinquents to systems, agencies, and services that are equipped to meet their needs. Such laws should apply to all children and adolescents under age 18.

Drawing on its analysis of federal, state, tribal, and local laws and their application . . . , as well as new understandings of adolescent development . . . , the committee concluded that current laws are inadequate to prevent, identify, and respond to commercial sexual exploitation and sex trafficking of minors. Therefore, the committee urges states and local, tribal, and territorial jurisdictions to develop laws that, at a minimum,

- prevent commercially sexually exploited children and adolescents from being arrested or prosecuted for prostitution;
- provide victims and survivors of commercial sexual exploitation and sex trafficking of minors with needed support services; and
- apply to children and adolescents at least up to age 18.

¹ IOM (Institute of Medicine) and NRC (National Research Council). 2013. Confronting commercial sexual exploitation and sex trafficking of minors in the United States. Washington, DC: The National Academies Press.

These laws will need to be evaluated over time to determine best practices. Further, laws and practices that divert victims from the criminal or juvenile justice system to the child welfare system to receive supportive services could include older adolescents (over age 18) who have been victims of commercial sexual exploitation or sex trafficking since childhood. The committee believes a number of other recent legislative initiatives may also merit further consideration, with care being taken to avoid adverse consequences for victims and survivors while maintaining strong penalties for exploiters. These initiatives include decriminalization of prostitution for minors in recognition that they are victims, not criminals. . . . (emphasis in original)²

5. Suggested Consideration

As currently drafted the bill specifies the counties that could conduct the pilot programs the bill proposes. The author may wish to consider making this a competitive grant, open to counties wishing to apply.

6. Amendments

The author offers the following amendments to be taken in Committee:

- Add the following evaluation component for the pilot created by this bill:

A county that establishes a pilot program pursuant to this section shall conduct an evaluation of its impact and effectiveness. The evaluation shall include, but not be limited to, monitoring the program's effect on youth being served, if any, and its effectiveness with respect to program participants, including outcome-related data for program participants compared to youth who do not participate in the pilot.

- Permit participating counties the flexibility to decide if the county foster care or probation agency or both would participate in the pilot.
- State that the intent of the pilot is to test a service model which would produce improved outcomes youth victims of trafficking.
- Add a 5-year sunset.
- Delete the findings and declarations contained in Section one.

-- END --

² *Id.*