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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 2027                      **Hearing Date:** June 28, 2016  
**Author:** Quirk  
**Version:** March 31, 2016  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** ML

**Subject:** *Victims of Crime: Nonimmigrant Status*

### HISTORY

Source: Author

Prior Legislation: SB 1242 (Lara) – pending in Assembly  
SB 674 (De León) – Ch. 721, Stats 2015

Support: American Civil Liberties Union of California; California Police Chiefs Association Inc.

Opposition: California State Sheriffs' Association

Assembly Floor Vote: 73 - 0

### PURPOSE

*The purpose of this bill is to require, upon the request of an immigrant victim of human trafficking, a certifying agency to confirm victim cooperation on the applicable form so that the victim may apply for a T-Visa to temporarily live and work in the United States.*

*Existing federal law* allows an immigrant to receive a T-visa if the Secretary of Homeland Security determines the following:

- a) Is or was a victim of a severe form of trafficking in persons (which may include sex or labor trafficking), as defined by federal law;
- b) Is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands or at a U.S. port of entry due to trafficking;
- c) Has complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking; and,
- d) Would suffer extreme hardship involving unusual and severe harm if removed from the United States. (8 U.S.C. § 1101 (a)(15)(T).)

*Existing state law* requires certifying agencies, upon the request of an immigrant victim of crime, to certify victim helpfulness on the applicable form so that he or she may apply for a U-visa. (Penal Code, § 679.10, subd. (e).)

*Existing state law* creates a rebuttable presumption that an immigrant victim is helpful, has been helpful, or is likely to be helpful, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement. (Penal Code, § 679.10, subd. (f).)

*Existing state law* mandates certifying entities to complete the certification within 90 days of the request, except in cases where the applicant is in immigration removal proceedings, in which case the certification must be completed within 14 days of the request. (Penal Code, § 679.10, subd. (h).)

*This bill* provides that upon a victim or victim's family member's request, a certifying official from a certifying entity shall certify victim cooperation on the Form I-914 Supplement B declaration, when the victim was a victim of human trafficking and has been cooperative, is being cooperative, or is likely to be cooperative with the investigation or prosecution of that crime.

*This bill* creates a rebuttable presumption of cooperation if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.

*This bill* requires the certifying official to fully complete and sign the Form I-914 Supplemental B declaration, and regarding cooperation, include specific details about the nature of the crime investigated or prosecuted, and a detailed description of such cooperation, or likely cooperation.

*This bill* requires the certifying agency to process the declaration within 90 days, unless the person is in removal proceedings, in which case it must be processed within 14 days of request.

*This bill* states that a current investigation, filed charges, or a prosecution, or conviction are not required for the victim to request and obtain the Form I-914 Supplemental B declaration.

*This bill* limits the ability of a certifying official to withdraw the certification to instances where the victim refuses to provide information and assistance when reasonably requested.

*This bill* prohibits a certifying entity from disclosing the immigrant status of a victim or person requesting the Form I-914 Supplemental B declaration, except to comply with federal law or legal process, or upon authorization of the person requesting the declaration.

*This bill* mandates a certifying agency that receives a request for a Form I-914 Supplemental B declaration to report to the Legislature beginning January 1, 2018, and annually thereafter, the following information:

- a) The number of victims that requested the declarations;
- b) The number of declarations that were signed; and,
- c) The number of denials.

*This bill* defines a "certifying entity" as any of the following:

- a) A state or local law enforcement agency;
- b) A prosecutor;
- c) A judge;
- d) The State Department of Labor; or
- e) State or local government agencies that have criminal, civil, or administrative investigative or prosecutorial authority relating to human trafficking.

*This bill* defines a "certifying official" as any of the following:

- a) The head of the certifying entity;
- b) A person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-914 Supplement B declarations on behalf of that agency;
- c) A judge; or
- d) Any other certifying official defined under specified federal regulations.

*This bill* defines "human trafficking" as "severe forms of trafficking in persons" pursuant to specified federal law and which includes either of the following:

- a) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; and,
- b) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

*This bill* states that "human trafficking" also includes criminal offenses for which the nature and elements of the crime are substantially similar to the criminal activity described above, as well as an attempt, conspiracy, or solicitation to commit those offenses.

#### 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. Need for This Bill

According to the author:

Human trafficking is a form of modern-day slavery in which traffickers typically lure individuals with false promises of employment and a better life. Victims of severe forms of human trafficking are provided relief under U.S. immigration law by the Victims of Trafficking in Persons nonimmigrant visa, also known as “T-visa”. This status allows victims of human trafficking to remain in the United States to assist in investigations or prosecutions of human trafficking violators.

The United States government estimates that each year up to 50,000 people are trafficked illegally into the United States against their will, mostly women and children who are brought as sex slaves.

The T-Visa provides trafficking victims from foreign countries temporary legal status, with an opportunity to apply for permanent residency and access to federal benefits if they cooperate with law enforcement in the investigations of their traffickers.

By stabilizing their status in the United States, immigration relief can be critical to providing victims of crime a greater sense of security that also make it easier for them to assist with law enforcement and prosecutorial efforts.

## 2. Background – T Visas

The *U and T Visa Law Enforcement Resource Guide* from the Department of Homeland Security<sup>1</sup> explains some of the important background and history of T-Visas:

The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000 was enacted to strengthen the ability of law enforcement agencies to investigate and prosecute serious crimes and trafficking in persons, while offering protections to victims of such crimes without the immediate risk of being removed from the country. Congress, in the VTVPA, created the T nonimmigrant status ("T visa") program out of recognition that human trafficking victims without legal status may otherwise be reluctant to help in the investigation or prosecution of this type of criminal activity. Human trafficking, also known as trafficking in persons, is a form of modern-day slavery, in which traffickers lure individuals with false promises of employment and a better life. Immigrants can be particularly vulnerable to human trafficking due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences. Accordingly, under this law, Congress sought not only to prosecute perpetrators of crimes committed against immigrants, but also to strengthen relations between law enforcement and immigrant communities.<sup>2</sup>

The T visa allows eligible victims to temporarily remain and work in the U.S., generally for four years. While in T nonimmigrant status, the victim has an ongoing duty to cooperate with law enforcement's reasonable requests for assistance in the investigation or prosecution of human trafficking. If certain conditions are met, an individual with T nonimmigrant status may apply for adjustment to lawful permanent resident status (i.e., apply for a green card in the United States) after three years in the United States or upon completion of the investigation or prosecution, whichever occurs earlier.<sup>3</sup>

To be eligible for a T-Visa, the immigrant victim must meet four statutory requirements: (1) he or she is or was a victim of a severe form of trafficking in person, as defined by federal law; (2) is in the United States or at a port of entry due to trafficking; (3) has complied with any reasonable request from law enforcement for assistance in the investigation or prosecution of the crime; and (4) would suffer extreme hardship if removed from the United States.<sup>4</sup>

The T-visa declaration at issue in this bill is supplementary evidence of a victim's assistance to law enforcement. Although the declaration is not required for the application (contrast U-visa where a certification of cooperation is required), the U.S. Citizenship and Immigration Services gives significant weight to the declaration when considering the T-visa application.<sup>5</sup>

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<sup>1</sup> [https://www.dhs.gov/sites/default/files/publications/PM\\_15-4344%20U%20and%20T%20Visa%20Law%20Enforcement%20Resource%20Guide%2011.pdf](https://www.dhs.gov/sites/default/files/publications/PM_15-4344%20U%20and%20T%20Visa%20Law%20Enforcement%20Resource%20Guide%2011.pdf)

<sup>2</sup> Id. at p. 9

<sup>3</sup> Id. at pp. 9-10

<sup>4</sup> Id. at p. 9

<sup>5</sup> Id. at pp. 10-11

AB 2027 would require that an official from a state or local entity certify “victim cooperation” on the Form I-914 Supplement B, when the requester was a victim of criminal activity and has been cooperative, is being cooperative, or is likely to be cooperative regarding the investigation or prosecution of that qualifying criminal activity.

### **3. Argument in Support**

The American Civil Liberties Union states in part:

AB 2027 complements existing law by: requiring, upon request, that an official from a state or local entity certify 'victim cooperation' on the supplemental form when specified criteria are satisfied; establishing a rebuttable presumption of survivor cooperation; requiring the certifying entity to process the supplemental form within 90 days of the request and requiring the certifying entity to report annually to the Legislature the number of survivors requesting certification and the number of supplemental forms that were signed and denied.

AB 2027 advances the goals of the federal T visa program by streamlining the existing visa process for a vulnerable population that has been the victim of atrocious crimes, while increasing public safety at the local level by ensuring that law enforcement agencies can investigate and prosecute human traffickers.

### **4. Argument in Opposition**

The California State Sheriffs' Association states in part:

Victim cooperation can be extremely valuable when investigating criminal matters. That being said, AB 2027 contains a rebuttable presumption that effectively states that a victim is being cooperative or is likely to be cooperative unless and until he or she is not cooperative, limiting law enforcement discretion. This determination should be the sole province of the law enforcement entity being asked to sign the certification at issue here and only with regard to the nature of the victim's cooperation.

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