
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1675 **Hearing Date:** June 21, 2016
Author: Mark Stone
Version: June 9, 2016
Urgency: No **Fiscal:** Yes
Consultant: AA

Subject: *Juveniles: Prostitution*

HISTORY

Source: Equality California

Prior Legislation: None

Support: American Civil Liberties Union of California; California Attorneys for Criminal Justice; California District Attorneys Association; California Public Defenders Association; Legal Services for Prisoners with Children

Opposition: California District Attorneys Association; San Diego District Attorney

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to require that minors accused of prostitution-related crimes be subject to informal probation in lieu of a formal delinquency petition, as specified.

Under current law, the purpose of juvenile court law “is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor’s family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public.” (Welfare and Institutions Code (“WIC”) § 202.)

Current law generally authorizes probation to provide a period of informal probation for a period of up to six months in lieu of filing a delinquency petition for a minor who appears to be likely to come within the delinquency jurisdiction of the juvenile court, as specified. (WIC § 654.)

Current law generally authorizes courts to order minors subject to a delinquency petition with a period of informal or formal probation, as specified. (WIC §§ 654.2, 725 and 727.)

This bill would enact a new law to require that, in lieu of requesting that a petition be filed by the prosecuting attorney to declare the minor a delinquent ward of the court, probation shall provide informal probation for the minor “and delineate a specific program of supervision for the minor” where a minor is alleged 1) to have solicited, agreed to engage in, or who engages in any act of prostitution, as defined in Penal Code section 647(b), or 2) to have loitered with intent to commit prostitution, as defined in Penal Code section 653.22.

This bill would provide that in addition to providing informal probation supervision in these cases, the probation officer would be required to make a report to the county child welfare agency if the officer has reason to believe the minor is a dependent ward of the juvenile court, as specified.

This bill would require the child welfare agency to investigate the report, as specified.

Current law excludes minors from being eligible for informal probation supervision for certain alleged offense categories, as specified. (WIC § 654.3.)

This bill would provide that a minor who “will be participating in the program of supervision” required by this bill would be eligible for informal probation, 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:

While California law states that children cannot consent to sex, children continue to be convicted as prostitutes. The majority of these children are trafficked and forced, induced or coerced into commercial sex. Others are runaways who find themselves on the streets with no other means to survive. All are victims.

Fortunately, children who are involved in prostitution are beginning to be treated and provided services as victims. Task forces, programs and services have been put into place, and even scarce public dollars have been allocated to help these children. However, the fact remains that these children will always be viewed -- and more importantly, treated -- as criminals as long as they are wards of delinquency and can be prosecuted as prostitutes.

AB 1675 would continue to allow for the detainment or arrest of a minor who law enforcement believes is engaging in prostitution.

However, the bill provides that, instead of facing prosecution, the minor can receive much-needed support, including but not limited to, mental health and educational services.

2. Informal Supervision Rather Than Wardship; What This Bill Would Do

Juvenile delinquency actions are begun by the filing of a petition under Welfare and Institutions Code section 602. The petition alleges criminal offenses and is brought by the district attorney.

In lieu of the filing of a petition, current law authorizes probation to provide a period of informal supervision, known as informal probation, for relatively low level offenses. (WIC §§ 654, 654.2.) If the probation officer concludes that the minor is within the juvenile court's jurisdiction, or likely soon will be, the officer can delineate a specific program of supervision for the minor for up to six months to try to adjust the situation that brings the minor within the juvenile court's jurisdiction. (WIC § 654; *In re Adam R.* (1997) 57 Cal.App.4th 348.)

The discretion to initially determine whether to institute informal supervision against the minor rests with the probation officer and cannot be delegated to the prosecution. (*Charles S. v. Superior Court* (1982) 32 Cal.3d 741, 746.)

Informal supervision is a voluntary contract between the probation officer, the minor, and the parents or guardians. The juvenile may be placed on informal probation for up to six months. If the juvenile successfully completes this program, the case is then closed. If the juvenile is unsuccessful at any time during the six-month period, the probation department may make a referral to the district attorney's office for a formal petition to the juvenile court. (WIC § 654.) Importantly, the court cannot require a minor to admit the truth of the petition before granting informal supervision. (*In re Ricky J.* (2005) 128 Cal.App.4th 783.)

This bill would require probation to put a minor alleged to have engaged in a prostitution crime on informal probation in lieu of requesting that a delinquency petition be filed on the minor. Unlike current law, which authorizes but does not require informal probation in lieu of a formal filing, this bill would require informal probation for prostitution offenses. The bill would revise the existing provision that excludes minors who have previously been on informal probation from getting it again, to provide that this exclusion would not apply to a minor “who will be participating” in informal probation because of a prostitution offense. The bill also would require probation to make a report to county child welfare, as specified.

3. 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.

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

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.

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

Members may wish to discuss whether, in cases where a minor is alleged to have violated a prostitution crime, informal probation rather than the filing of a delinquency petition should be required, as proposed by this bill.

4. Opposition

The San Diego District Attorney's office opposes this bill, stating in part:

The juvenile justice system's primary goal is for rehabilitation, in addition to accountability, and protecting the public. Already, . . . the probation department has the authority to proceed informally, place a juvenile on a voluntary contract, and divert the juvenile from delinquency proceedings by offering services. While counseling is an important first step in rehabilitating those who commit these violations, without the possibility of delinquency proceedings in the event of repeated failures at diversion, the bill eliminates an important incentive to succeed. . . .

. . . (T)he message sent to juveniles, that prostitution is not a crime, may have the unintended consequence of encouraging rather than discouraging this kind of behavior, which may be considered by them to be an enterprising way of earning money.

-- END --

² *Id.*