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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 2498                      **Hearing Date:** June 28, 2016  
**Author:** Bonta  
**Version:** June 21, 2016  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Human Trafficking*

## HISTORY

**Source:** Alameda County District Attorney

**Prior Legislation:** None known

**Support:** Association of Orange County Deputy Sheriffs'; California Catholic Conference; California Catholic Conference; California State Sheriffs' Association; California Statewide Law Enforcement Association; Crime Victims United of California; Fraternal Order of Police; California Immigrant Policy Center; Junior Leagues of California State Public Affairs Committee; League of California Cities; Long Beach Police Officers Association; Planned Parenthood Affiliates of California; Peace Officers Research Association of California; Sacramento County Deputy Sheriffs' Association; WestCoast Children's Clinic

**Opposition:** None known

**Assembly Floor Vote:** 76 - 0

## PURPOSE

*The purpose of this bill is to prohibit law enforcement agencies from disclosing the names, addresses, and images of human trafficking victims and their immediate family, except under specified circumstance; to expand the list of criminal actions that take precedence over all other criminal actions in the order of trial to include human trafficking, as defined; and to exempt the names, addresses, and images of victims of human trafficking and their immediate family, as specified, from disclosure pursuant to the California Public Records Act (CPRA).*

*Existing law*, the California Constitution, declares the people's right to transparency in government. ("The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny....") (Cal. Const., art. I, Sec. 3.)

*Existing law*, the California Public Records Act (CPRA), governs the disclosure of information collected and maintained by public agencies. (Government Code §. 6250 et seq.)

*Existing law* provides that generally, all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. There are 30 general categories of

documents or information that are exempt from disclosure, essentially due to the character of the information, and unless it is shown that the public's interest in disclosure outweighs the public's interest in nondisclosure of the information, the exempt information may be withheld by the public agency with custody of the information. (Government Code § 6254.)

*Existing law* makes certain criminal record information, including records of complaints to, or investigations conducted by, or any investigatory or security files compiled by any other state or local police agency confidential, but requires state and local law enforcement agencies to make public specified information, including the full name, physical description, date and time of arrest, time and date of booking, and factual circumstances surrounding an arrest, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation. (Government Code §6254(f).)

*Existing law* provides, notwithstanding any disclosure required under the investigatory exemption under the CPRA, that the name of a victim of certain sexual crimes, including a victim of human trafficking, may be withheld from disclosure at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. (Government Code Sec. 6254(f)(2).)

*Existing law* requires state and local law enforcement agencies to disclose, subject to certain restrictions, the current address of every individual arrested by the agency and the current address of the victim of a crime, if the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator, as defined. However, notwithstanding this general disclosure requirement, the address of the victim of certain sexual crimes, including human trafficking, must remain confidential. (Government Code § 6254 (f)(3).)

*This bill* would provide that the names, addresses, and images of a victim of human trafficking, and of the victim's immediate family, other than a family member who is charged with a criminal offense arising from the same incident, shall be withheld from a public records request and remain confidential.

*This bill* would provide that if the victim's native language is not English any information on his or her rights should be provided in his or her native language.

*Existing law* requires an employee of a law enforcement agency who personally received a report from a person alleging that he or she has been the victim of a sex offense, to inform the person making the report that his or her name will become a matter of public record unless he or she requests that it not become a matter of public record, and additionally provides that if the victim makes this request then the law enforcement agency shall not disclose the name of a victim. (Penal Code § 293 (a)-(d).)

*Existing law* provides that any victim of a sexual crime who has not elected to exercise his or her right to keep her name confidential may request to be identified in all court records and proceedings as either Jane Doe or John Doe, if the court finds that such an order is reasonably necessary to protect the privacy of the person and will not unduly prejudice the prosecution or the defense. (Penal Code Sec. 293.5.)

*This bill* would prohibit a law enforcement agency from disclosing the names, addresses, or images of a person who alleges to be a victim of human trafficking, or of that alleged victim's immediate family, other than a family member who is charged with a criminal offense arising from the same incident, unless the disclosure is made to a prosecutor, parole officer of the Department of Corrections and Rehabilitation, hearing officers of the parole authority, probation officers of county probation departments, or other persons or public agencies where authorized or required by law.

*This bill* would define "sex offense," for purposes of the Penal Code sections amended by this bill, to include human trafficking, and makes conforming changes to clarify that a person who was forced to commit acts of prostitution because he or she is a victim of human trafficking is the victim of a sexual offense.

*Existing law* provides that certain criminal actions, especially those involving sexual offenses, take precedence over other criminal actions in the order of the trial calendar. (Penal Code § 1048.)

*This bill* would add criminal actions alleging human trafficking to the list of criminal cases that take precedence over all other criminal actions in the trial calendar.

#### 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 The Bill

According to the author:

AB 2498 will help the security and safety of human trafficking victims by ensuring that victims have the right to mask their names and images, as well as the name, images and addresses of their immediate family members, from a public records request.

The bill also provides guidance to country courts to hear time-sensitive cases quickly, thus sending a clear message to traffickers that justice for these victims is a top priority.

### 2. Privacy Protections for Human Trafficking Victims

Under existing law enforcement shall not disclose the name of a victim of a sex offense except to the prosecutor, parole officers, parole hearing officers, probation officers or others who are authorized or required by law to have this information. This bill would provide that law enforcement shall also not disclose information about an alleged victim of human trafficking or information about the victim’s immediate family members, unless the family member is charged with the offense.

### 3. Court Calendaring

The law sets forth the order in which the court shall calendar cases unless the court finds good cause to set cases out of order. In general the order is:

- In-custody felonies;
- In-custody misdemeanors;

- Out of custody felonies;
- Out of custody misdemeanors.

There is an exception to the usual order for when a minor or senior is a material witness to a specified sex offense. The law states that these cases shall be given precedence.

This bill would add human trafficking cases, when the victim is a minor or a senior to the cases that have priority in scheduling.

#### **4. CPRA**

This bill was heard and passed in Senate Judiciary on June 14 on a vote of 7-0. That committee looked more closely at the changes to the California Public Records Act (CPRA).

Generally the CPRA makes all public records subject to public inspection unless a specific provision of the CPRA or another statute exempts the record from disclosure. For example, records relating to a criminal investigation, where disclosure might endanger the success of the investigation, are specifically exempted from the disclosure requirements of the CPRA. However, this exemption expressly states that certain information about both the person arrested for the crime and the victim must be disclosed to victims and their representatives, other law enforcement agencies for specified purposes, and to persons requesting the information for scholarly, journalistic, political, or governmental uses. The names of victims of sexual crimes are usually only exempt from disclosure under the CPRA if the victim has affirmatively requested that his or her name be kept confidential, but the home addresses of victims of sexual crimes are kept confidential as a matter of course.

This bill creates stronger confidentiality protections for victims of human trafficking than those afforded to other sexual crime victims by protecting specified family members and protecting the images of the victims, but also by offering these protections automatically instead of requiring the victim to “opt in.”

**-- END --**