
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 510 **Hearing Date:** April 9, 2019
Author: Jones
Version: February 21, 2019
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Human Trafficking: Additional Term of Sentence*

HISTORY

Source: County of San Diego

Prior Legislation: SB 303 (Morrell), never heard in Senate Public Safety 2017
AB 2513 (Williams), held in Senate Appropriations in 2016
AB 1051 (Maienschein), held in Senate Appropriations 2015
SB 473 (Block), vetoed in 2014
Proposition 35, as approved by the voters on November 6, 2012
AB 1571 (Donnelly), failed passage in Assembly Public Safety in 2012
AB 559 (Swanson), never heard in Assembly Public Safety 2009
AB 22 (Lieber), Ch. 240, Stats. 2005
SB 751 (Morrow), failed passage in Senate Public Safety in 2005

Support: California State Sheriffs' Association; San Diego County District Attorney's Office

Opposition: ACLU of California; California Public Defenders Association

PURPOSE

This purpose of this bill is to enact a one-year sentence enhancement if the defendant's underlying offense is either human trafficking involving a minor, or abduction of a minor for purposes of prostitution, and the offense was committed on the grounds of a school, or within 1,000 feet of a school while the school is open for classes or programs, or minors are using the facility.

Existing law provides that a person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, is guilty of human trafficking and shall be punished by imprisonment in the state prison for 5, 8, or 12 years and a fine of up to \$500,000. (Pen. Code, § 236.1, subd. (a).)

Existing law provides that a 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, as specified, is guilty of human trafficking. (Pen. Code, § 236.1, subd. (c).)

Existing law provides the following penalties for human trafficking of a minor:

- Five, 8, or 12 years and a fine of up to \$500,000.
- Fifteen years-to-life and a fine of up to \$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. (Pen. Code, § 236.1, subd. (c)(1) & (c)(2).)

Existing law provides that in determining whether a minor was caused, induced, or persuaded to engage in a commercial sex act, the totality of the circumstances, including the age of the victim, his or her relationship to the trafficker or agents of the trafficker, and any handicap or disability of the victim, must be considered. (Pen. Code, § 236.1, subd. (d).)

Existing law provides that consent by a victim of human trafficking who is a minor at the time of the commission of the offense is not a defense to criminal prosecution. (Pen. Code, § 236.1, subd. (e).)

Existing law provides that mistake of fact as to the age of a victim of human trafficking who is a minor at the time of the commission of the offense is not a defense to criminal prosecution. (Pen. Code, § 236.1, subd. (f).)

Existing law provides that the definition of human trafficking in the state's Penal Code is the same as the definition of "severe form of trafficking" under federal law. (Pen. Code, § 236.1, subd. (g).)

Existing federal law defines "severe form of human trafficking" as:

- 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; or
- 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. (22 U.S.C. § 7102(11).)

Existing law provides the following enhancements and fines in human trafficking cases:

- Discretionary fine of up to \$1,000,000 in addition to any other penalty, fine, or restitution imposed. (Pen. Code, § 236.4, subd. (a).)
- Five, 7, or 10 year sentence consecutive prison term for a defendant who inflicts great bodily injury on the victim of human trafficking. (Pen. Code, § 236.4, subd. (b).)
- Five year consecutive prison term for each prior human trafficking conviction. (Pen. Code, § 236.4, subd. (c).)

Existing law provides that every person who takes away any other person under the age of 18 years from the father, mother, 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. (Pen. Code, § 267.)

This bill provides that a person who is convicted of a violation of human trafficking of a minor, or taking a minor from the minor's parent or guardian with the intention of prostituting the

minor, if the violation takes place on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school during hours that the school is open for classes or school-related programs or at any time when minors are using the facility, shall receive a one-year term in state prison in addition to any other penalty imposed.

COMMENTS

1. Need for This Bill

According to the author:

According to the Department of Defense, human trafficking, including commercial sexual exploitation, is the world's fastest growing crime. This crime targets our most vulnerable youth, who are often recruited within the walls of the schools they attend. California harbors three of the Federal Bureau of Investigation's 13 highest child sex trafficking areas: Los Angeles, San Francisco and San Diego. A 2016 U.S. Department of Justice funded study conducted by the University of San Diego and Point Loma Nazarene University found that the average age of entry into sex trafficking in San Diego County is 16.1 years of age and all 20 San Diego County high schools that participated in this study confirmed recruitment was happening with their students. This bill would create a safe school zone by imposing an additional term of sentence for human trafficking crimes that take place on the ground of, or within 1,000 feet of, a school.

2. Human Trafficking: Existing Penalties and Enhancements

The state's human trafficking law was enacted by AB 22 (Lieber) Chapter 240, Statutes of 2005. AB 22 provided that the essence of human trafficking is the deprivation of the victim's liberty in order to place the person in sexual commerce or obtain labor. The human trafficking law was amended by Proposition 35 in 2012. The initiative significantly increased and established fairly comprehensive penalties for human trafficking. Human trafficking of minors can be done through inducements and persuasion. The use of coercion, fraud, force or duress against a minor does, however, subject a defendant to a term of 15-years-to-life in prison.

This bill would direct the court to impose a sentence enhancement of one year if the defendant has been convicted of human trafficking and the conduct took place on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school during hours that the school is open for classes or school-related programs or at any time when minors are using the facility.

Human trafficking of a minor includes a relatively long list of crimes involving commercial sex, including prostitution and child pornography. If the minor is brought into such activities through "force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person," the penalty is a term of 15-years-to-life in prison and a fine of up to \$500,000. With mandatory penalty assessments, a fine of \$500,000 is actually a fine of over \$2,000,000. It seems likely that most cases of human trafficking involving a minor would include force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of an injury. For example, if the trafficker misrepresented what the minor would be doing or the conditions under which they would be done, that would appear to be a case involving fraud or deceit. The punishment for human trafficking of a minor, when the crime does not involve some sort of

deceit, coercion or force, is still relatively severe—5, 8, or 12 years in prison and a fine of up to \$500,000. Arguably, an additional year in prison would have a minor impact on deterring individuals from trafficking minors given the existing high penalties for human trafficking of a minor.

California sentencing law prohibits the “dual use of facts”—the use of one fact to impose more than one punishment. The conduct underlying many enhancements could also be used as factors in aggravation of the base term, the stated penalty “triad.” The sentencing triad for the less egregious form of human trafficking of a minor is 5, 8, or 12 years. The sentencing triad for abducting a minor for prostitution is 16 months, 2 years, or 3 years. Penal Code section 1170, subdivision (b), provides in relevant part:

When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. ...The court shall set forth on the record the reasons for imposing the term selected and ***the court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law.*** A term of imprisonment shall not be specified if imposition of sentence is suspended. (Italics and bold font added.)

Under current law, where a defendant has been convicted of human trafficking of a minor without force, coercion or deceit, the court would impose a term of 5, 8, or 12 years. Penal Code section 1170.1, subdivision (d), provides:

If an enhancement is punishable by one of three terms, ***the court shall impose the middle term unless there are circumstances in aggravation or mitigation,*** and state the reasons for its sentence choice, other than the middle term, on the record at the time of sentencing.

Thus, the court would sentence a person convicted of non-forced, non-coerced, non-fraudulent human trafficking to a term of 8 years unless there were factors in mitigation or aggravation. If the offense occurred on or near a school, the prosecutor would almost certainly argue that the school location or proximity of the crime was a factor in aggravation. If the enhancement described in this bill applied, and there were no factors in mitigation and no other factors in aggravation, the following would apply:

- The court could rely on the school location or proximity of the crime as a factor in aggravation and impose the 12-year term. The court could not impose punishment on the enhancement defined by this bill.
- The court could impose the enhancement defined in this bill for human trafficking committed on or near a school and impose the middle term of 8 years and the 1-year enhancement, for a total term of 9 years. The court could not impose the upper term based on the school location or proximity factor.

This analysis would also apply to a conviction for abduction for purposes of prostitution. The fact that the crime occurred on or near a school could be used by the trial court as either a factor in aggravation or to impose the enhancement, but not both.

Finally, it appears that most cases of abduction for purposes of prostitution of a minor could alternatively be charged as human trafficking. Human trafficking includes the elements of inducing, causing, or persuading a person to engage in a commercial sex act. However, those elements are also generally the elements of abduction for prostitution. Abduction for prostitution is defined in terms of taking a minor from her or his parent or guardian, and it is difficult to imagine many cases where some coercion, force or deceit would not have been used against the minor.

3. Argument in Support

The San Diego Office of the District Attorney writes:

SB 510 strengthens penalties for crimes related to human trafficking and commercial sexual exploitation on or near school grounds.

Existing law imposes specified penalties when a human trafficking offense is committed against a minor. Current law also makes it a felony to take a person under 18 years of age from the parent or guardian, without their consent, for prostitution; however, these existing laws do not go far enough in protecting minors from human trafficking, especially in schools where they should be safe.

...California has the highest number of human trafficking incidents reported by the National Human Trafficking Hotline. University of San Diego and Point Loma Nazarene University released a joint study that estimates there are anywhere from 3,000 to 8,000 victims trafficked each year in San Diego and that the average age of entry into sex trafficking is 16.1 years of age. The study also found all 20 San Diego County high schools that participated in the study confirmed recruitment was happening on their campus and affecting their students.

In San Diego County, human trafficking is the second largest underground economy after drug trafficking. The FBI recently identified our city as one of the top 13 high-intensity child prostitution areas in the nation....

4. Argument in Opposition

The California Public Defenders Association writes:

SB 510 would require that a one year sentence enhancement be imposed on a person convicted of a human trafficking offense against a minor or of taking a minor for the purpose of prostitution, when any part of the violation takes place upon the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school during the hours that the school is open for classes or school-related programs, or at any time when minors are using the facility.

Existing law already makes human trafficking of a minor (PC 236.1) punishable by 5, 8, 12 years in prison or 15 years to life, while taking a minor for the purpose of prostitution without the guardian's consent is punishable as a felony.

While protecting minors is a laudable goal, creating additional sentence enhancements is a failed strategy. It diverts scarce resources to prisons and away from schools and programs to protect vulnerable youth. It results in mass incarceration with its attendant consequences for poor and minority communities.

Moreover, SB 510 would also further complicate our already Byzantine sentencing system.

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