



MODERN-DAY SLAVERY

It Ends With Us



## **AB 1761 (Weber)**

### **Human Trafficking Victims Affirmative Defense- As Amended**

**April 2016**

#### **PURPOSE**

Human trafficking victims are some of the most vulnerable people in our community. They are essentially modern day slaves. Despite the widespread recognition that they are victims, the law continues to treat human trafficking victims as criminals with respect to the crimes their traffickers force them to commit. Human Trafficking is a unique crime in that traffickers often financially benefit from having their victims commit illegal acts and may force both children and adults to commit a diverse range of crimes as a result. Traffickers also reinforce their power and control over victims by instilling fear of law enforcement and the systems designed to protect victims so that victims-both adults and children- often initially lie to law enforcement about the circumstances of their trafficking experience or proactively attempt to protect their traffickers.

Because of the unique nature of the trafficking crime, California must take proactive steps to protect these victims and create multiple pathways for victims to be identified so that the real perpetrators can be prosecuted. We must also enact measures to ensure that the complexities of trafficking crimes can be appropriately described to judges and juries.

AB 1761 puts in place an important additional protection for victims to ensure they are not convicted of crimes their traffickers force them to commit. It also strengthens the ability of the judicial system to more fully describe the complexity of this crime through expert testimony.

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#### **WHY YOU SHOULD SUPPORT AB 1761**

- CAST's records show that some victims have been arrested 30 or 40 times in a few years under the control of traffickers. Arresting and convicting victims does not reduce the vicious cycle of trafficking; it perpetuates it. Criminal convictions bind victims to their traffickers and ensures victims are afraid of the very systems designed to protect them.
- Criminal convictions for trafficking victims create long-term barriers for recovery. They leave scars that follow victims into later life and affect them educationally, occupationally, financially, and psychologically.

- Because trafficking victims may fear law enforcement and/or seek to protect their trafficker due to trauma bonding, Public Defenders may be better situated to assist in identifying trafficking victims. They are more likely to screen for this type of victimization if doing so will ensure criminal charges against their clients are dismissed.
- Trafficking crimes, like domestic violence cases, present complex dynamics, including trauma bonding that can be difficult for juries and judges to understand. For this reason, expert testimony can be essential to establish and understanding the complex nature of this offense.
- If trafficking victims are identified earlier, the real traffickers are more likely to be prosecuted and brought to justice.
- California is far behind other states in offering an affirmative defense for trafficking victims. So far **34 states** have passed this legislation to better protect trafficking victims.
- It is costly not just to the victims, but also to the state of California to convict trafficking victims for crimes their traffickers force them to commit. These funds could be better spent prosecuting traffickers.

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## **BILL PROPOSAL**

**Affirmative Defense:** AB 1761 creates an affirmative defense against a crime that was committed as a direct result of being a human trafficking victim. AB 1761 also grants trafficking victims who prevail on the affirmative defense the right to have all records in the case sealed and ensures they do not suffer long-term consequences from their arrest.

**Expert Testimony:** In recognition of the complex dynamics of trafficking crimes, AB 1761 creates a presumption that expert testimony is admissible by either the prosecution or the defense regarding the effects of human trafficking on human trafficking victims.

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## **CASE EXAMPLES**

### **“Star”**

Star (not her real name) an 18 year old from the United States was arrested at the age of 16 on felony pimping and pandering charges, despite the fact that she had been victimized at the hands of her trafficker since the age of 14 through extreme physical violence and threats to her and her family. Her Public Defender identified her as a trafficking victim. After spending almost two years in detention fighting these charges, Star finally plead guilty to felony charges as she was offered time served because she so desperately wanted to leave prison. At 18 she now faces years of barriers from her felony conviction.

### **“Luis”**

Luis (not his real name), an 18-year-old from Mexico, was forced to be a drug mule by traffickers. He believed that he or his family would be killed if he did not do what his traffickers said. He was arrested at the U.S. border on felony drug charges. He remained in detention for over a year. His Public Defender identified him as a trafficking victim. However, because the court case dragged on so long, Luis decided he could not handle it any longer and accepted a plea for felony drug charges. He was then deported to Mexico where his trafficker also resides.

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**Coalition to Abolish Slavery and Trafficking**

Systemic change is at the core of CAST's mission. Taking a survivor-centered approach to ending modern slavery, CAST has a proven track record of working directly with survivors of human trafficking which builds an important bridge between practice and policy to inform effective policy initiatives. . By developing broad-based partnerships, CAST effectively advocates for policies that work to end human trafficking and help survivors rebuild their lives.

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