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AMENDED IN SENATE SEPTEMBER 2, 2005
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AMENDED IN ASSEMBLY MAY 4, 2005
AMENDED IN ASSEMBLY APRIL 21, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 22

**Introduced by Assembly Members Lieber and Liu and Senator
Kuehl**

(Principal coauthor: Senator Alquist)

**(Coauthors: Assembly Members Bermudez, Chan, Chavez, Cohn,
DeVore, Goldberg, Hancock, Shirley Horton, Koretz, Leno,
Leslie, Levine, Matthews, Pavley, Sharon Runner, and Ruskin)**

(Coauthors: Senators Cedillo, Escutia, and Romero)

December 6, 2004

An act to add ~~Sections 52.5 and 1670.7~~ *Section 52.5* to the Civil Code, to add Article 8.8 (commencing with Section 1038) to Chapter 4 of Division 8 of the Evidence Code, to amend Section 13956 of the Government Code, and to amend Sections 186.2, 273.7, 1202.4, and 14023 of, to add Sections 236.1 and 236.2 to, and to add and repeal Title 6.7 (commencing with Section 13990) to Part 4 of, the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

AB 22, as amended, Lieber. Trafficking in persons.

Existing law establishes the offenses of slavery and involuntary servitude. Existing law also makes it an offense to entice an unmarried female minor for purposes of prostitution, as specified, or to aid or assist with the same, or to procure by fraudulent means, any female to have illicit carnal connection with any man. Existing law also makes it a crime to take away any minor as specified, for purposes of prostitution.

This bill would establish the crime of trafficking of a person for forced labor or services or for effecting or maintaining other specified felonies, and the crime of trafficking of a minor for those purposes, punishable by terms of imprisonment in the state prison for 3, 4, or 5 years, or 4, 6, or 8 years, respectively. The bill would permit a victim of trafficking to bring a civil action for actual damages, provide for restitution and punitive damages, and would establish a victim-caseworker privilege.

By creating new crimes, this bill would impose a state-mandated local program.

~~Existing law regulates contractual agreements and makes certain types of contracts void as against public policy, as specified.~~

~~This bill would declare that a contract which purports to permit a wage deduction for the cost of transporting a person to the United States is void as against public policy.~~

The bill would require state and local law enforcement agencies to issue a Law Enforcement Agency Endorsement for all trafficking victims within 15 business days of initial contact with the victim.

By imposing new duties on local law enforcement agencies, this bill would impose a state-mandated local program.

Existing law establishes various advisory bodies in connection with domestic violence.

The bill would establish a task force to study various issues in connection with human trafficking and to advise the Legislature, as specified. The provisions relating to the task force would be repealed January 1, 2008.

Existing law requires the Attorney General to give priority to matters involving organized crime, gang activities, drug trafficking, and cases involving a high degree of risk to the witness.

This bill would include human trafficking in that list of priorities.

This bill would incorporate additional changes in Section 186.2 of the Penal Code proposed by AB 988 to become operative only if this bill and AB 988 are enacted and become effective on or before January 1, 2006, and this bill is enacted last.

This bill would incorporate additional changes in Section 1202.4 of the Penal Code proposed by SB 972 to become operative only if this bill and SB 972 are enacted and become effective on or before January 1, 2006, and this bill is enacted last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as, the
2 California Trafficking Victims Protection Act.

3 SEC. 2. Section 52.5 is added to the Civil Code, to read:

4 52.5. (a) A victim of human trafficking, as defined in Section
5 236.1 of the Penal Code, may bring a civil action for actual
6 damages, compensatory damages, punitive damages, injunctive
7 relief, any combination of those, or any other appropriate relief.
8 A prevailing plaintiff may also be awarded attorney’s fees and
9 costs.

10 (b) In addition to the remedies specified herein, in any action
11 under subdivision (a), the plaintiff may be awarded up to three
12 times his or her actual damages or ten thousand dollars
13 (\$10,000), whichever is greater. In addition, punitive damages
14 may also be awarded upon proof of the defendant’s malice,
15 oppression, fraud, or duress in committing the act of human
16 trafficking.

1 (c) An action brought pursuant to this section shall be
2 commenced within five years of the date on which the trafficking
3 victim was freed from the trafficking situation, or if the victim
4 was a minor when the act of human trafficking against the victim
5 occurred, within eight years after the date the plaintiff attains the
6 age of majority.

7 (d) If a person entitled to sue is under a disability at the time
8 the cause of action accrues, so that it is impossible or
9 impracticable for him or her to bring an action, then the time of
10 the disability is not part of the time limited for the
11 commencement of the action. Disability will toll the running of
12 the statute of limitation for this action.

13 (1) Disability includes being a minor, insanity, imprisonment,
14 or other incapacity or incompetence.

15 (2) The statute of limitations shall not run against an
16 incompetent or minor plaintiff simply because a guardian ad
17 litem has been appointed. A guardian ad litem's failure to bring a
18 plaintiff's action within the applicable limitation period will not
19 prejudice the plaintiff's right to do so after his or her disability
20 ceases.

21 (3) A defendant is estopped to assert a defense of the statute of
22 limitations when the expiration of the statute is due to conduct by
23 the defendant inducing the plaintiff to delay the filing of the
24 action, or due to threats made by the defendant causing duress
25 upon the plaintiff.

26 (4) The suspension of the statute of limitations due to
27 disability, lack of knowledge, or estoppel applies to all other
28 related claims arising out of the trafficking situation.

29 (5) The running of the statute of limitations is postponed
30 during the pendency of any criminal proceedings against the
31 victim.

32 (e) The running of the statute of limitations may be suspended
33 where a person entitled to sue could not have reasonably
34 discovered the cause of action due to circumstances resulting
35 from the trafficking situation, such as psychological trauma,
36 cultural and linguistic isolation, and the inability to access
37 services.

38 (f) A prevailing plaintiff may also be awarded reasonable
39 attorney's fees and litigation costs including, but not limited to,
40 expert witness fees and expenses as part of the costs.

1 (g) Any restitution paid by the defendant to the victim shall be
2 credited against any judgment, award, or settlement obtained
3 pursuant to this section. Any judgment, award, or settlement
4 obtained pursuant to an action under this section shall be subject
5 to the provisions of Section 13963 of the Government Code.

6 (h) Any civil action filed under this section shall be stayed
7 during the pendency of any criminal action arising out of the
8 same occurrence in which the claimant is the victim. As used in
9 this section, a “criminal action” includes investigation and
10 prosecution, and is pending until a final adjudication in the trial
11 court, or dismissal.

12 ~~SEC. 3. Section 1670.7 is added to the Civil Code, to read:~~

13 ~~1670.7. Any provision of a contract which purports to allow a~~
14 ~~deduction from a person’s wages for the cost of transporting that~~
15 ~~person to the United States is void as against public policy.~~

16 SEC. 4. Article 8.8 (commencing with Section 1038) is added
17 to Chapter 4 of Division 8 of the Evidence Code, to read:

18
19 Article 8.8. Human Trafficking Victim-Caseworker Privilege
20

21 1038. (a) A trafficking victim, whether or not a party to the
22 action, has a privilege to refuse to disclose, and to prevent
23 another from disclosing, a confidential communication between
24 the victim and a human trafficking caseworker if the privilege is
25 claimed by any of the following persons:

26 (1) The holder of the privilege.

27 (2) A person who is authorized to claim the privilege by the
28 holder of the privilege.

29 (3) The person who was the human trafficking caseworker at
30 the time of the confidential communication. However, that
31 person may not claim the privilege if there is no holder of the
32 privilege in existence or if he or she is otherwise instructed by a
33 person authorized to permit disclosure. The human trafficking
34 caseworker who received or made a communication subject to
35 the privilege granted by this article shall claim the privilege
36 whenever he or she is present when the communication is sought
37 to be disclosed and he or she is authorized to claim the privilege
38 under this section.

39 (b) A human trafficking caseworker shall inform a trafficking
40 victim of any applicable limitations on confidentiality of

1 communications between the victim and the caseworker. This
2 information may be given orally.

3 1038.1. (a) The court may compel disclosure of information
4 received by a human trafficking caseworker that constitutes
5 relevant evidence of the facts and circumstances involving a
6 crime allegedly perpetrated against the victim and that is the
7 subject of a criminal proceeding, if the court determines that the
8 probative value of the information outweighs the effect of
9 disclosure of the information on the victim, the counseling
10 relationship, and the counseling services. The court may compel
11 disclosure if the victim is either dead or not the complaining
12 witness in a criminal action against the perpetrator.

13 (b) When a court rules on a claim of privilege under this
14 article, it may require the person from whom disclosure is sought
15 or the person authorized to claim the privilege, or both, to
16 disclose the information in chambers out of the presence and
17 hearing of all persons except the person authorized to claim the
18 privilege and those other persons that the person authorized to
19 claim the privilege consents to have present.

20 (c) If the judge determines that the information is privileged
21 and shall not be disclosed, neither he nor she nor any other
22 person may disclose, without the consent of a person authorized
23 to permit disclosure, any information disclosed in the course of
24 the proceedings in chambers. If the court determines that
25 information shall be disclosed, the court shall so order and
26 inform the defendant in the criminal action. If the court finds
27 there is a reasonable likelihood that any information is subject to
28 disclosure pursuant to the balancing test provided in this section,
29 the procedure specified in paragraphs (1), (2), and (3) of Section
30 1035.4 shall be followed.

31 1038.2. (a) As used in this article, “victim” means any
32 person who is a “trafficking victim” as defined in Section 236.1.

33 (b) As used in this article, “human trafficking caseworker”
34 means any of the following:

35 (1) A person who is employed by any organization providing
36 the programs specified in Section 18294 of the Welfare and
37 Institutions Code, whether financially compensated or not, for
38 the purpose of rendering advice or assistance to victims of human
39 trafficking, who has received specialized training in the

1 counseling of human trafficking victims, and who meets one of
2 the following requirements:

3 (A) Has a master’s degree in counseling or a related field; or
4 has one year of counseling experience, at least six months of
5 which is in the counseling of human trafficking victims.

6 (B) Has at least 40 hours of training as specified in this
7 paragraph and is supervised by an individual who qualifies as a
8 counselor under subparagraph (A), or is a psychotherapist, as
9 defined in Section 1010. The training, supervised by a person
10 qualified under subparagraph (A), shall include, but need not be
11 limited to, the following areas: history of human trafficking, civil
12 and criminal law as it relates to human trafficking, societal
13 attitudes towards human trafficking, peer counseling techniques,
14 housing, public assistance and other financial resources available
15 to meet the financial needs of human trafficking victims, and
16 referral services available to human trafficking victims. A portion
17 of this training must include an explanation of privileged
18 communication.

19 (2) A person who is employed by any organization providing
20 the programs specified in Section 13835.2 of the Penal Code,
21 whether financially compensated or not, for the purpose of
22 counseling and assisting human trafficking victims, and who
23 meets one of the following requirements:

24 (A) Is a psychotherapist as defined in Section 1010, has a
25 master’s degree in counseling or a related field, or has one year
26 of counseling experience, at least six months of which is in rape
27 assault counseling.

28 (B) Has the minimum training for human trafficking
29 counseling required by guidelines established by the employing
30 agency pursuant to subdivision (c) of Section 13835.10 of the
31 Penal Code, and is supervised by an individual who qualifies as a
32 counselor under subparagraph (A). The training, supervised by a
33 person qualified under subparagraph (A), shall include, but not
34 be limited to, law, victimology, counseling techniques, client and
35 system advocacy, and referral services. A portion of this training
36 must include an explanation of privileged communication.

37 (c) As used in this article, “confidential communication”
38 means information transmitted between the victim and the
39 caseworker in the course of their relationship and in confidence
40 by a means which, so far as the victim is aware, discloses the

1 information to no third persons other than those who are present
2 to further the interests of the victim in the consultation or those to
3 whom disclosures are reasonably necessary for the transmission
4 of the information or an accomplishment of the purposes for
5 which the human trafficking counselor is consulted. It includes
6 all information regarding the facts and circumstances involving
7 all incidences of human trafficking.

8 (d) As used in this article, “holder of the privilege” means the
9 victim when he or she has no guardian or conservator, or a
10 guardian or conservator of the victim when the victim has a
11 guardian or conservator.

12 SEC. 5. Section 13956 of the Government Code is amended
13 to read:

14 13956. Notwithstanding Section 13955, a person shall not be
15 eligible for compensation under the following conditions:

16 (a) An application shall be denied if the board finds that the
17 victim or, where compensation is sought by or on behalf of a
18 derivative victim, either the victim or derivative victim,
19 knowingly and willingly participated in the commission of the
20 crime that resulted in the pecuniary loss for which compensation
21 is being sought pursuant to this chapter. However, this
22 subdivision shall not apply if the injury or death occurred as a
23 direct result of a crime committed in violation of Section 261,
24 262, or 273.5 of, or a crime of unlawful sexual intercourse with a
25 minor committed in violation of subdivision (d) of Section 261.5
26 of, the Penal Code.

27 (b) (1) An application shall be denied if the board finds that
28 the victim or, where compensation is sought by, or on behalf of,
29 a derivative victim, either the victim or derivative victim failed to
30 cooperate reasonably with a law enforcement agency in the
31 apprehension and conviction of a criminal committing the crime.
32 However, in determining whether cooperation has been
33 reasonable, the board shall consider the victim’s or derivative
34 victim’s age, physical condition, and psychological state, cultural
35 or linguistic barriers, any compelling health and safety concerns,
36 including, but not limited to, a reasonable fear of retaliation or
37 harm that would jeopardize the well-being of the victim or the
38 victim’s family or the derivative victim or the derivative victim’s
39 family, and giving due consideration to the degree of cooperation

1 of which the victim or derivative victim is capable in light of the
2 presence of any of these factors.

3 (2) An application for a claim based on domestic violence may
4 not be denied solely because no police report was made by the
5 victim. The board shall adopt guidelines that allow the board to
6 consider and approve applications for assistance based on
7 domestic violence relying upon evidence other than a police
8 report to establish that a domestic violence crime has occurred.
9 Factors evidencing that a domestic violence crime has occurred
10 may include, but are not limited to, medical records documenting
11 injuries consistent with allegations of domestic violence, mental
12 health records, or the fact that the victim has obtained a
13 temporary or permanent restraining order, or all of these.

14 (3) An application for a claim based on human trafficking as
15 defined in Section 236.1 of the Penal Code may not be denied
16 solely because no police report was made by the victim. The
17 board shall adopt guidelines that allow the board to consider and
18 approve applications for assistance based on human trafficking
19 relying upon evidence other than a police report to establish that
20 a human trafficking crime as defined in Section 236.1 has
21 occurred. That evidence may include any reliable corroborating
22 information approved by the board, including, but not limited to,
23 the following:

24 (A) A Law Enforcement Agency Endorsement issued pursuant
25 to Section 236.2 of the Penal Code.

26 (B) A human trafficking caseworker as identified in Section
27 1038.2 of the Evidence Code, has attested by affidavit that the
28 individual was a victim of human trafficking.

29 (c) An application for compensation may be denied, in whole
30 or in part, if the board finds that denial is appropriate because of
31 the nature of the victim's or other applicant's involvement in the
32 events leading to the crime or the involvement of the persons
33 whose injury or death gives rise to the application. In the case of
34 a minor, the board shall consider the minor's age, physical
35 condition, and psychological state, as well as any compelling
36 health and safety concerns, in determining whether the minor's
37 application should be denied pursuant to this section. The
38 application of a derivative victim of domestic violence under the
39 age of 18 years of age or a derivative victim of trafficking under

1 18 years of age may not be denied on the basis of the denial of
2 the victim's application under this subdivision.

3 (d) (1) Notwithstanding Section 13955, no person who is
4 convicted of a felony may be granted compensation until that
5 person has been discharged from probation or has been released
6 from a correctional institution and has been discharged from
7 parole, if any. In no case shall compensation be granted to an
8 applicant pursuant to this chapter during any period of time the
9 applicant is held in a correctional institution.

10 (2) A person who has been convicted of a felony may apply
11 for compensation pursuant to this chapter at any time, but the
12 award of that compensation may not be considered until the
13 applicant meets the requirements for compensation set forth in
14 paragraph (1).

15 (3) Applications of victims who are not felons shall receive
16 priority in the award of compensation over an application
17 submitted by a felon who has met the requirements for
18 compensation set forth in paragraph (1).

19 SEC. 6. Section 186.2 of the Penal Code is amended to read:

20 186.2. For purposes of this chapter, the following definitions
21 apply:

22 (a) "Criminal profiteering activity" means any act committed
23 or attempted or any threat made for financial gain or advantage,
24 which act or threat may be charged as a crime under any of the
25 following sections:

26 (1) Arson, as defined in Section 451.

27 (2) Bribery, as defined in Sections 67, 67.5, and 68.

28 (3) Child pornography or exploitation, as defined in
29 subdivision (b) of Section 311.2, or Section 311.3 or 311.4,
30 which may be prosecuted as a felony.

31 (4) Felonious assault, as defined in Section 245.

32 (5) Embezzlement, as defined in Sections 424 and 503.

33 (6) Extortion, as defined in Section 518.

34 (7) Forgery, as defined in Section 470.

35 (8) Gambling, as defined in Sections 337a to 337f, inclusive,
36 and Section 337i, except the activities of a person who
37 participates solely as an individual bettor.

38 (9) Kidnapping, as defined in Section 207.

39 (10) Mayhem, as defined in Section 203.

40 (11) Murder, as defined in Section 187.

- 1 (12) Pimping and pandering, as defined in Section 266.
- 2 (13) Receiving stolen property, as defined in Section 496.
- 3 (14) Robbery, as defined in Section 211.
- 4 (15) Solicitation of crimes, as defined in Section 653f.
- 5 (16) Grand theft, as defined in Section 487.
- 6 (17) Trafficking in controlled substances, as defined in
- 7 Sections 11351, 11352, and 11353 of the Health and Safety
- 8 Code.
- 9 (18) Violation of the laws governing corporate securities, as
- 10 defined in Section 25541 of the Corporations Code.
- 11 (19) Any of the offenses contained in Chapter 7.5
- 12 (commencing with Section 311) of Title 9, relating to obscene
- 13 matter, or in Chapter 7.6 (commencing with Section 313) of Title
- 14 9, relating to harmful matter that may be prosecuted as a felony.
- 15 (20) Presentation of a false or fraudulent claim, as defined in
- 16 Section 550.
- 17 (21) False or fraudulent activities, schemes, or artifices, as
- 18 described in Section 14107 of the Welfare and Institutions Code.
- 19 (22) Money laundering, as defined in Section 186.10.
- 20 (23) Offenses relating to the counterfeit of a registered mark,
- 21 as specified in Section 350.
- 22 (24) Offenses relating to the unauthorized access to
- 23 computers, computer systems, and computer data, as specified in
- 24 Section 502.
- 25 (25) Conspiracy to commit any of the crimes listed above, as
- 26 defined in Section 182.
- 27 (26) Subdivision (a) of Section 186.22, or a felony subject to
- 28 enhancement as specified in subdivision (b) of Section 186.22.
- 29 (27) Any offenses related to fraud or theft against the state’s
- 30 beverage container recycling program, including, but not limited
- 31 to, those offenses specified in this subdivision and those criminal
- 32 offenses specified in the California Beverage Container
- 33 Recycling and Litter Reduction Act, commencing at Section
- 34 14500 of the Public Resources Code.
- 35 (28) Human trafficking, as defined in Section 236.1.
- 36 (b) “Pattern of criminal profiteering activity” means engaging
- 37 in at least two incidents of criminal profiteering, as defined by
- 38 this act, that meet the following requirements:

1 (1) Have the same or a similar purpose, result, principals,
2 victims, or methods of commission, or are otherwise interrelated
3 by distinguishing characteristics.

4 (2) Are not isolated events.

5 (3) Were committed as a criminal activity of organized crime.

6 Acts that would constitute a “pattern of criminal profiteering
7 activity” may not be used by a prosecuting agency to seek the
8 remedies provided by this chapter unless the underlying offense
9 occurred after the effective date of this chapter and the prior act
10 occurred within 10 years, excluding any period of imprisonment,
11 of the commission of the underlying offense. A prior act may not
12 be used by a prosecuting agency to seek remedies provided by
13 this chapter if a prosecution for that act resulted in an acquittal.

14 (c) “Prosecuting agency” means the Attorney General or the
15 district attorney of any county.

16 (d) “Organized crime” means crime that is of a conspiratorial
17 nature and that is either of an organized nature and seeks to
18 supply illegal goods and services such as narcotics, prostitution,
19 loan-sharking, gambling, and pornography, or that, through
20 planning and coordination of individual efforts, seeks to conduct
21 the illegal activities of arson for profit, hijacking, insurance
22 fraud, smuggling, operating vehicle theft rings, fraud against the
23 beverage container recycling program, or systematically
24 encumbering the assets of a business for the purpose of
25 defrauding creditors. “Organized crime” also means crime
26 committed by a criminal street gang, as defined in subdivision (f)
27 of Section 186.22. “Organized crime” also means false or
28 fraudulent activities, schemes, or artifices, as described in
29 Section 14107 of the Welfare and Institutions Code.

30 (e) “Underlying offense” means an offense enumerated in
31 subdivision (a) for which the defendant is being prosecuted.

32 SEC. 6.5. Section 186.2 of the Penal Code is amended to
33 read:

34 186.2. For purposes of this chapter, the following definitions
35 apply:

36 (a) “Criminal profiteering activity” means any act committed
37 or attempted or any threat made for financial gain or advantage,
38 which act or threat may be charged as a crime under any of the
39 following sections:

40 (1) Arson, as defined in Section 451.

- 1 (2) Bribery, as defined in Sections 67, 67.5, and 68.
- 2 (3) Child pornography or exploitation, as defined in
- 3 subdivision (b) of Section 311.2, or Section 311.3 or 311.4,
- 4 which may be prosecuted as a felony.
- 5 (4) Felonious assault, as defined in Section 245.
- 6 (5) Embezzlement, as defined in Sections 424 and 503.
- 7 (6) Extortion, as defined in Section 518.
- 8 (7) Forgery, as defined in Section 470.
- 9 (8) Gambling, as defined in Sections 337a to 337f, inclusive,
- 10 and Section 337i, except the activities of a person who
- 11 participates solely as an individual bettor.
- 12 (9) Kidnapping, as defined in Section 207.
- 13 (10) Mayhem, as defined in Section 203.
- 14 (11) Murder, as defined in Section 187.
- 15 (12) Pimping and pandering, as defined in Section 266.
- 16 (13) Receiving stolen property, as defined in Section 496.
- 17 (14) Robbery, as defined in Section 211.
- 18 (15) Solicitation of crimes, as defined in Section 653f.
- 19 (16) Grand theft, as defined in Section 487.
- 20 (17) Trafficking in controlled substances, as defined in
- 21 Sections 11351, 11352, and 11353 of the Health and Safety
- 22 Code.
- 23 (18) Violation of the laws governing corporate securities, as
- 24 defined in Section 25541 of the Corporations Code.
- 25 (19) Any of the offenses contained in Chapter 7.5
- 26 (commencing with Section 311) of Title 9, relating to obscene
- 27 matter, or in Chapter 7.6 (commencing with Section 313) of Title
- 28 9, relating to harmful matter that may be prosecuted as a felony.
- 29 (20) Presentation of a false or fraudulent claim, as defined in
- 30 Section 550.
- 31 (21) False or fraudulent activities, schemes, or artifices, as
- 32 described in Section 14107 of the Welfare and Institutions Code.
- 33 (22) Money laundering, as defined in Section 186.10.
- 34 (23) Offenses relating to the counterfeit of a registered mark,
- 35 as specified in Section 350.
- 36 (24) Offenses relating to the unauthorized access to
- 37 computers, computer systems, and computer data, as specified in
- 38 Section 502.
- 39 (25) Conspiracy to commit any of the crimes listed above, as
- 40 defined in Section 182.

1 (26) Subdivision (a) of Section 186.22, or a felony subject to
2 enhancement as specified in subdivision (b) of Section 186.22.

3 (27) Any offenses related to fraud or theft against the state’s
4 beverage container recycling program, including, but not limited
5 to, those offenses specified in this subdivision and those criminal
6 offenses specified in the California Beverage Container
7 Recycling and Litter Reduction Act, commencing at Section
8 14500 of the Public Resources Code.

9 (28) Human trafficking, as defined in Section 236.1.

10 (29) Theft of personal identifying information, as defined in
11 Section 530.5.

12 (b) “Pattern of criminal profiteering activity” means engaging
13 in at least two incidents of criminal profiteering, as defined by
14 this act, that meet the following requirements:

15 (1) Have the same or a similar purpose, result, principals,
16 victims, or methods of commission, or are otherwise interrelated
17 by distinguishing characteristics.

18 (2) Are not isolated events.

19 (3) Were committed as a criminal activity of organized crime.

20 Acts that would constitute a “pattern of criminal profiteering
21 activity” may not be used by a prosecuting agency to seek the
22 remedies provided by this chapter unless the underlying offense
23 occurred after the effective date of this chapter and the prior act
24 occurred within 10 years, excluding any period of imprisonment,
25 of the commission of the underlying offense. A prior act may not
26 be used by a prosecuting agency to seek remedies provided by
27 this chapter if a prosecution for that act resulted in an acquittal.

28 (c) “Prosecuting agency” means the Attorney General or the
29 district attorney of any county.

30 (d) “Organized crime” means crime that is of a conspiratorial
31 nature and that is either of an organized nature and seeks to
32 supply illegal goods and services such as narcotics, prostitution,
33 loan-sharking, gambling, and pornography, or that, through
34 planning and coordination of individual efforts, seeks to conduct
35 the illegal activities of arson for profit, hijacking, insurance
36 fraud, smuggling, operating vehicle theft rings, fraud against the
37 beverage container recycling program, or systematically
38 encumbering the assets of a business for the purpose of
39 defrauding creditors. “Organized crime” also means crime
40 committed by a criminal street gang, as defined in subdivision (f)

1 of Section 186.22. “Organized crime” also means false or
2 fraudulent activities, schemes, or artifices, as described in
3 Section 14107 of the Welfare and Institutions Code, and the theft
4 of person identifying information, as defined in Section 530.5.

5 (e) “Underlying offense” means an offense enumerated in
6 subdivision (a) for which the defendant is being prosecuted.

7 SEC. 7. Section 236.1 is added to the Penal Code, to read:

8 236.1. (a) Any person who deprives or violates the personal
9 liberty of another with the intent to effect or maintain a felony
10 violation of Section 266, 266h, 266i, 267, 311.4, or 518, or to
11 obtain forced labor or services, is guilty of human trafficking.

12 (b) Except as provided in subdivision (c), a violation of this
13 section is punishable by imprisonment in the state prison for
14 three, four, or five years.

15 (c) A violation of this section where the victim of the
16 trafficking was under 18 years of age at the time of the
17 commission of the offense is punishable by imprisonment in the
18 state prison for four, six, or eight years.

19 (d) (1) For purposes of this section, unlawful deprivation or
20 violation of the personal liberty of another includes substantial
21 and sustained restriction of another’s liberty accomplished
22 through fraud, deceit, coercion, violence, duress, menace, or
23 threat of unlawful injury to the victim or to another person, under
24 circumstances where the person receiving or apprehending the
25 threat reasonably believes that it is likely that the person making
26 the threat would carry it out.

27 (2) Duress includes knowingly destroying, concealing,
28 removing, confiscating, or possessing any actual or purported
29 passport or immigration document of the victim.

30 (e) For purposes of this section, “forced labor or services”
31 means labor or services that are performed or provided by a
32 person and are obtained or maintained through force, fraud, or
33 coercion, or equivalent conduct that would reasonably overbear
34 the will of the person.

35 (f) The Legislature finds that the definition of human
36 trafficking in this section is equivalent to the federal definition of
37 a severe form of trafficking found in Section 7102(8) of Title 22
38 of the United States Code.

39 SEC. 8. Section 236.2 is added to the Penal Code, to read:

1 236.2. (a) Within 15 business days of the first encounter of a
2 victim of human trafficking, victim pursuant to Section 236.1,
3 law enforcement agencies shall provide brief letters that satisfy
4 the following Law Enforcement Agency Endorsement (LEA)
5 regulations as found in Section 214.11 (f)(1) of Chapter 8 of the
6 Code of Federal Regulations.

7 (b) The LEA must be submitted on Supplement B, Declaration
8 of Law Enforcement Officer for Victim of Trafficking in
9 Persons, of Form I-914. The LEA endorsement must be filled out
10 completely in accordance with the instructions contained on the
11 form and must attach the results of any name or database inquiry
12 performed. In order to provide persuasive evidence, the LEA
13 endorsement must contain a description of the victimization upon
14 which the application is based, including the dates the trafficking
15 in persons and victimization occurred, and be signed by a
16 supervising official responsible for the investigation or
17 prosecution of trafficking in persons. The LEA endorsement
18 must address whether the victim had been recruited, harbored,
19 transported, provided, or obtained specifically for either labor or
20 services, or for the purposes of a commercial sex act.

21 (c) Where state law enforcement agencies find the grant of a
22 LEA endorsement to be inappropriate for a victim of trafficking
23 in persons, the agency shall within 15 days provide the victim
24 with a letter explaining the grounds of the denial of the LEA. The
25 victim may submit additional evidence to the law enforcement
26 agency, which must reconsider the denial of the LEA within one
27 week of the receipt of additional evidence.

28 SEC. 9. Section 273.7 of the Penal Code is amended to read:

29 273.7. (a) Any person who maliciously publishes,
30 disseminates, or otherwise discloses the location of any
31 trafficking shelter or domestic violence shelter or any place
32 designated as a trafficking shelter or domestic violence shelter,
33 without the authorization of that trafficking shelter or domestic
34 violence shelter, is guilty of a misdemeanor.

35 (b) (1) For purposes of this section, “domestic violence
36 shelter” means a confidential location which provides emergency
37 housing on a 24-hour basis for victims of sexual assault, spousal
38 abuse, or both, and their families.

39 (2) For purposes of this section, “trafficking shelter” means a
40 confidential location which provides emergency housing on a

1 24-hour basis for victims of human trafficking, including any
2 person who is a victim under Section 236.1.

3 (3) Sexual assault, spousal abuse, or both, includes but is not
4 limited to, those crimes described in Sections 240, 242, 243.4,
5 261, 261.5, 262, 264.1, 266, 266a, 266b, 266c, 266f, 273.5,
6 273.6, 285, 288, and 289.

7 (c) Nothing in this section shall apply to confidential
8 communications between an attorney and his or her client.

9 SEC. 10. Section 1202.4 of the Penal Code is amended to
10 read:

11 1202.4. (a) (1) It is the intent of the Legislature that a victim
12 of crime who incurs any economic loss as a result of the
13 commission of a crime shall receive restitution directly from any
14 defendant convicted of that crime.

15 (2) Upon a person being convicted of any crime in the State of
16 California, the court shall order the defendant to pay a fine in the
17 form of a penalty assessment in accordance with Section 1464.

18 (3) The court, in addition to any other penalty provided or
19 imposed under the law, shall order the defendant to pay both of
20 the following:

21 (A) A restitution fine in accordance with subdivision (b).

22 (B) Restitution to the victim or victims, if any, in accordance
23 with subdivision (f), which shall be enforceable as if the order
24 were a civil judgment.

25 (b) In every case where a person is convicted of a crime, the
26 court shall impose a separate and additional restitution fine,
27 unless it finds compelling and extraordinary reasons for not
28 doing so, and states those reasons on the record.

29 (1) The restitution fine shall be set at the discretion of the
30 court and commensurate with the seriousness of the offense, but
31 shall not be less than two hundred dollars (\$200), and not more
32 than ten thousand dollars (\$10,000), if the person is convicted of
33 a felony, and shall not be less than one hundred dollars (\$100),
34 and not more than one thousand dollars (\$1,000), if the person is
35 convicted of a misdemeanor.

36 (2) In setting a felony restitution fine, the court may determine
37 the amount of the fine as the product of two hundred dollars
38 (\$200) multiplied by the number of years of imprisonment the
39 defendant is ordered to serve, multiplied by the number of felony
40 counts of which the defendant is convicted.

1 (c) The court shall impose the restitution fine unless it finds
2 compelling and extraordinary reasons for not doing so, and states
3 those reasons on the record. A defendant's inability to pay shall
4 not be considered a compelling and extraordinary reason not to
5 impose a restitution fine. Inability to pay may be considered only
6 in increasing the amount of the restitution fine in excess of the
7 two hundred-dollar (\$200) or one hundred-dollar (\$100)
8 minimum.

9 (d) In setting the amount of the fine pursuant to subdivision
10 (b) in excess of the two hundred-dollar (\$200) or one
11 hundred-dollar (\$100) minimum, the court shall consider any
12 relevant factors including, but not limited to, the defendant's
13 inability to pay, the seriousness and gravity of the offense and the
14 circumstances of its commission, any economic gain derived by
15 the defendant as a result of the crime, the extent to which any
16 other person suffered any losses as a result of the crime, and the
17 number of victims involved in the crime. Those losses may
18 include pecuniary losses to the victim or his or her dependents as
19 well as intangible losses, such as psychological harm caused by
20 the crime. Consideration of a defendant's inability to pay may
21 include his or her future earning capacity. A defendant shall bear
22 the burden of demonstrating his or her inability to pay. Express
23 findings by the court as to the factors bearing on the amount of
24 the fine shall not be required. A separate hearing for the fine shall
25 not be required.

26 (e) The restitution fine shall not be subject to penalty
27 assessments as provided in Section 1464, and shall be deposited
28 in the Restitution Fund in the State Treasury.

29 (f) Except as provided in subdivision (q), in every case in
30 which a victim has suffered economic loss as a result of the
31 defendant's conduct, the court shall require that the defendant
32 make restitution to the victim or victims in an amount established
33 by court order, based on the amount of loss claimed by the victim
34 or victims or any other showing to the court. If the amount of
35 loss cannot be ascertained at the time of sentencing, the
36 restitution order shall include a provision that the amount shall be
37 determined at the direction of the court. The court shall order full
38 restitution unless it finds compelling and extraordinary reasons
39 for not doing so, and states them on the record.

1 (1) The defendant has the right to a hearing before a judge to
2 dispute the determination of the amount of restitution. The court
3 may modify the amount, on its own motion or on the motion of
4 the district attorney, the victim or victims, or the defendant. If a
5 motion is made for modification of a restitution order, the victim
6 shall be notified of that motion at least 10 days prior to the
7 proceeding held to decide the motion.

8 (2) Determination of the amount of restitution ordered
9 pursuant to this subdivision shall not be affected by the
10 indemnification or subrogation rights of any third party.
11 Restitution ordered pursuant to this subdivision shall be ordered
12 to be deposited to the Restitution Fund to the extent that the
13 victim, as defined in subdivision (k), has received assistance
14 from the Victim Compensation Program pursuant to Chapter 5
15 (commencing with Section 13950) of Part 4 of Division 3 of Title
16 2 of the Government Code.

17 (3) To the extent possible, the restitution order shall be
18 prepared by the sentencing court, shall identify each victim and
19 each loss to which it pertains, and shall be of a dollar amount that
20 is sufficient to fully reimburse the victim or victims for every
21 determined economic loss incurred as the result of the
22 defendant's criminal conduct, including, but not limited to, all of
23 the following:

24 (A) Full or partial payment for the value of stolen or damaged
25 property. The value of stolen or damaged property shall be the
26 replacement cost of like property, or the actual cost of repairing
27 the property when repair is possible.

28 (B) Medical expenses.

29 (C) Mental health counseling expenses.

30 (D) Wages or profits lost due to injury incurred by the victim,
31 and if the victim is a minor, wages or profits lost by the minor's
32 parent, parents, guardian, or guardians, while caring for the
33 injured minor. Lost wages shall include any commission income
34 as well as any base wages. Commission income shall be
35 established by evidence of commission income during the
36 12-month period prior to the date of the crime for which
37 restitution is being ordered, unless good cause for a shorter time
38 period is shown.

39 (E) Wages or profits lost by the victim, and if the victim is a
40 minor, wages or profits lost by the minor's parent, parents,

1 guardian, or guardians, due to time spent as a witness or in
2 assisting the police or prosecution. Lost wages shall include any
3 commission income as well as any base wages. Commission
4 income shall be established by evidence of commission income
5 during the 12-month period prior to the date of the crime for
6 which restitution is being ordered, unless good cause for a shorter
7 time period is shown.

8 (F) Noneconomic losses, including, but not limited to,
9 psychological harm, for felony violations of Section 288.

10 (G) Interest, at the rate of 10 percent per annum, that accrues
11 as of the date of sentencing or loss, as determined by the court.

12 (H) Actual and reasonable attorney's fees and other costs of
13 collection accrued by a private entity on behalf of the victim.

14 (I) Expenses incurred by an adult victim in relocating away
15 from the defendant, including, but not limited to, deposits for
16 utilities and telephone service, deposits for rental housing,
17 temporary lodging and food expenses, clothing, and personal
18 items. Expenses incurred pursuant to this section shall be verified
19 by law enforcement to be necessary for the personal safety of the
20 victim or by a mental health treatment provider to be necessary
21 for the emotional well-being of the victim.

22 (J) Expenses to install or increase residential security incurred
23 related to a crime, as defined in subdivision (c) of Section 667.5,
24 including, but not limited to, a home security device or system,
25 or replacing or increasing the number of locks.

26 (K) Expenses to retrofit a residence or vehicle, or both, to
27 make the residence accessible to or the vehicle operational by the
28 victim, if the victim is permanently disabled, whether the
29 disability is partial or total, as a direct result of the crime.

30 (4) (A) If, as a result of the defendant's conduct, the
31 Restitution Fund has provided assistance to or on behalf of a
32 victim or derivative victim pursuant to Chapter 5 (commencing
33 with Section 13950) of Part 4 of Division 3 of Title 2 of the
34 Government Code, the amount of assistance provided shall be
35 presumed to be a direct result of the defendant's criminal conduct
36 and shall be included in the amount of the restitution ordered.

37 (B) The amount of assistance provided by the Restitution Fund
38 shall be established by copies of bills submitted to the California
39 Victim Compensation and Government Claims Board reflecting
40 the amount paid by the board and whether the services for which

1 payment was made were for medical or dental expenses, funeral
2 or burial expenses, mental health counseling, wage or support
3 losses, or rehabilitation. Certified copies of these bills provided
4 by the board and redacted to protect the privacy and safety of the
5 victim or any legal privilege, together with a statement made
6 under penalty of perjury by the custodian of records that those
7 bills were submitted to and were paid by the board, shall be
8 sufficient to meet this requirement.

9 (C) If the defendant offers evidence to rebut the presumption
10 established by this paragraph, the court may release additional
11 information contained in the records of the board to the
12 defendant only after reviewing that information in camera and
13 finding that the information is necessary for the defendant to
14 dispute the amount of the restitution order.

15 (5) Except as provided in paragraph (6), in any case in which
16 an order may be entered pursuant to this subdivision, the
17 defendant shall prepare and file a disclosure identifying all
18 assets, income, and liabilities in which the defendant held or
19 controlled a present or future interest as of the date of the
20 defendant's arrest for the crime for which restitution may be
21 ordered. The financial disclosure statements shall be made
22 available to the victim and the board pursuant to Section 1214.
23 The disclosure shall be signed by the defendant upon a form
24 approved or adopted by the Judicial Council for the purpose of
25 facilitating the disclosure. Any defendant who willfully states as
26 true any material matter that he or she knows to be false on the
27 disclosure required by this subdivision is guilty of a
28 misdemeanor, unless this conduct is punishable as perjury or
29 another provision of law provides for a greater penalty.

30 (6) A defendant who fails to file the financial disclosure
31 required in paragraph (5), but who has filed a financial affidavit
32 or financial information pursuant to subdivision (c) of Section
33 987, shall be deemed to have waived the confidentiality of that
34 affidavit or financial information as to a victim in whose favor
35 the order of restitution is entered pursuant to subdivision (f). The
36 affidavit or information shall serve in lieu of the financial
37 disclosure required in paragraph (5), and paragraphs (7) to (10),
38 inclusive, shall not apply.

39 (7) Except as provided in paragraph (6), the defendant shall
40 file the disclosure with the clerk of the court no later than the

1 date set for the defendant's sentencing, unless otherwise directed
2 by the court. The disclosure may be inspected or copied as
3 provided by subdivision (b), (c), or (d) of Section 1203.05.

4 (8) In its discretion, the court may relieve the defendant of the
5 duty under paragraph (7) of filing with the clerk by requiring that
6 the defendant's disclosure be submitted as an attachment to, and
7 be available to, those authorized to receive the following:

8 (A) Any report submitted pursuant to subparagraph (C) of
9 paragraph (2) of subdivision (b) of Section 1203 or subdivision
10 (g) of Section 1203.

11 (B) Any stipulation submitted pursuant to paragraph (4) of
12 subdivision (b) of Section 1203.

13 (C) Any report by the probation officer, or any information
14 submitted by the defendant applying for a conditional sentence
15 pursuant to subdivision (d) of Section 1203.

16 (9) The court may consider a defendant's unreasonable failure
17 to make a complete disclosure pursuant to paragraph (5) as any
18 of the following:

19 (A) A circumstance in aggravation of the crime in imposing a
20 term under subdivision (b) of Section 1170.

21 (B) A factor indicating that the interests of justice would not
22 be served by admitting the defendant to probation under Section
23 1203.

24 (C) A factor indicating that the interests of justice would not
25 be served by conditionally sentencing the defendant under
26 Section 1203.

27 (D) A factor indicating that the interests of justice would not
28 be served by imposing less than the maximum fine and sentence
29 fixed by law for the case.

30 (10) A defendant's failure or refusal to make the required
31 disclosure pursuant to paragraph (5) shall not delay entry of an
32 order of restitution or pronouncement of sentence. In appropriate
33 cases, the court may do any of the following:

34 (A) Require the defendant to be examined by the district
35 attorney pursuant to subdivision (h).

36 (B) If sentencing the defendant under Section 1170, provide
37 that the victim shall receive a copy of the portion of the probation
38 report filed pursuant to Section 1203.10 concerning the
39 defendant's employment, occupation, finances, and liabilities.

1 (C) If sentencing the defendant under Section 1203, set a date
2 and place for submission of the disclosure required by paragraph
3 (5) as a condition of probation or suspended sentence.

4 (11) If a defendant has any remaining unpaid balance on a
5 restitution order or fine 120 days prior to his or her scheduled
6 release from probation or 120 days prior to his or her completion
7 of a conditional sentence, the defendant shall prepare and file a
8 new and updated financial disclosure identifying all assets,
9 income, and liabilities in which the defendant holds or controls or
10 has held or controlled a present or future interest during the
11 defendant's period of probation or conditional sentence. The
12 financial disclosure shall be made available to the victim and the
13 board pursuant to Section 1214. The disclosure shall be signed
14 and prepared by the defendant on the same form as described in
15 paragraph (5). Any defendant who willfully states as true any
16 material matter that he or she knows to be false on the disclosure
17 required by this subdivision is guilty of a misdemeanor, unless
18 this conduct is punishable as perjury or another provision of law
19 provides for a greater penalty. The financial disclosure required
20 by this paragraph shall be filed with the clerk of the court no later
21 than 90 days prior to the defendant's scheduled release from
22 probation or completion of the defendant's conditional sentence.

23 (g) The court shall order full restitution unless it finds
24 compelling and extraordinary reasons for not doing so, and states
25 those reasons on the record. A defendant's inability to pay shall
26 not be considered a compelling and extraordinary reason not to
27 impose a restitution order, nor shall inability to pay be a
28 consideration in determining the amount of a restitution order.

29 (h) The district attorney may request an order of examination
30 pursuant to the procedures specified in Article 2 (commencing
31 with Section 708.110) of Chapter 6 of Division 2 of Title 9 of
32 Part 2 of the Code of Civil Procedure, in order to determine the
33 defendant's financial assets for purposes of collecting on the
34 restitution order.

35 (i) A restitution order imposed pursuant to subdivision (f) shall
36 be enforceable as if the order were a civil judgment.

37 (j) The making of a restitution order pursuant to subdivision
38 (f) shall not affect the right of a victim to recovery from the
39 Restitution Fund as otherwise provided by law, except to the
40 extent that restitution is actually collected pursuant to the order.

1 Restitution collected pursuant to this subdivision shall be
2 credited to any other judgments for the same losses obtained
3 against the defendant arising out of the crime for which the
4 defendant was convicted.

5 (k) For purposes of this section, “victim” shall include all of
6 the following:

7 (1) The immediate surviving family of the actual victim.

8 (2) Any corporation, business trust, estate, trust, partnership,
9 association, joint venture, government, governmental
10 subdivision, agency, or instrumentality, or any other legal or
11 commercial entity when that entity is a direct victim of a crime.

12 (3) Any person who has sustained economic loss as the result
13 of a crime and who satisfies any of the following conditions:

14 (A) At the time of the crime was the parent, grandparent,
15 sibling, spouse, child, or grandchild of the victim.

16 (B) At the time of the crime was living in the household of the
17 victim.

18 (C) At the time of the crime was a person who had previously
19 lived in the household of the victim for a period of not less than
20 two years in a relationship substantially similar to a relationship
21 listed in subparagraph (A).

22 (D) Is another family member of the victim, including, but not
23 limited to, the victim’s fiancé or fiancée, and who witnessed the
24 crime.

25 (E) Is the primary caretaker of a minor victim.

26 (4) Any person who is eligible to receive assistance from the
27 Restitution Fund pursuant to Chapter 5 (commencing with
28 Section 13950) of Part 4 of Division 3 of Title 2 of the
29 Government Code.

30 (l) At its discretion, the board of supervisors of any county
31 may impose a fee to cover the actual administrative cost of
32 collecting the restitution fine, not to exceed 10 percent of the
33 amount ordered to be paid, to be added to the restitution fine and
34 included in the order of the court, the proceeds of which shall be
35 deposited in the general fund of the county.

36 (m) In every case in which the defendant is granted probation,
37 the court shall make the payment of restitution fines and orders
38 imposed pursuant to this section a condition of probation. Any
39 portion of a restitution order that remains unsatisfied after a
40 defendant is no longer on probation shall continue to be

1 enforceable by a victim pursuant to Section 1214 until the
2 obligation is satisfied.

3 (n) If the court finds and states on the record compelling and
4 extraordinary reasons why a restitution fine or full restitution
5 order should not be required, the court shall order, as a condition
6 of probation, that the defendant perform specified community
7 service, unless it finds and states on the record compelling and
8 extraordinary reasons not to require community service in
9 addition to the finding that restitution should not be required.
10 Upon revocation of probation, the court shall impose restitution
11 pursuant to this section.

12 (o) The provisions of Section 13963 of the Government Code
13 shall apply to restitution imposed pursuant to this section.

14 (p) The court clerk shall notify the California Victim
15 Compensation and Government Claims Board within 90 days of
16 an order of restitution being imposed if the defendant is ordered
17 to pay restitution to the board due to the victim receiving
18 compensation from the Restitution Fund. Notification shall be
19 accomplished by mailing a copy of the court order to the board,
20 which may be done periodically by bulk mail or electronic mail.

21 (q) Upon conviction for a violation of Section 236.1, the court
22 shall, in addition to any other penalty or restitution, order the
23 defendant to pay restitution to the victim in any case in which a
24 victim has suffered economic loss as a result of the defendant's
25 conduct. The court shall require that the defendant make
26 restitution to the victim or victims in a amount established by
27 court order, based on the amount of loss claimed by the victim or
28 victims or any other showing to the court. In determining
29 restitution pursuant to this section, the court shall base its order
30 upon the greater of the following the gross value of the victim's
31 labor or services based upon the comparable value of similar
32 services in the labor market in which the offense occurred, or the
33 value of the victim's labor as guaranteed under California law, or
34 the actual income derived by the defendant from the victim's
35 labor or services or any other appropriate means to provide
36 reparations to the victim.

37 SEC. 10.5. Section 1202.4 of the Penal Code is amended to
38 read:

39 1202.4. (a) (1) It is the intent of the Legislature that a victim
40 of crime who incurs any economic loss as a result of the

1 commission of a crime shall receive restitution directly from any
2 defendant convicted of that crime.

3 (2) Upon a person being convicted of any crime in the State of
4 California, the court shall order the defendant to pay a fine in the
5 form of a penalty assessment in accordance with Section 1464.

6 (3) The court, in addition to any other penalty provided or
7 imposed under the law, shall order the defendant to pay both of
8 the following:

9 (A) A restitution fine in accordance with subdivision (b).

10 (B) Restitution to the victim or victims, if any, in accordance
11 with subdivision (f), which shall be enforceable as if the order
12 were a civil judgment.

13 (b) In every case where a person is convicted of a crime, the
14 court shall impose a separate and additional restitution fine,
15 unless it finds compelling and extraordinary reasons for not
16 doing so, and states those reasons on the record.

17 (1) The restitution fine shall be set at the discretion of the
18 court and commensurate with the seriousness of the offense, but
19 shall not be less than two hundred dollars (\$200), and not more
20 than ten thousand dollars (\$10,000), if the person is convicted of
21 a felony, and shall not be less than one hundred dollars (\$100),
22 and not more than one thousand dollars (\$1,000), if the person is
23 convicted of a misdemeanor.

24 (2) In setting a felony restitution fine, the court may determine
25 the amount of the fine as the product of two hundred dollars
26 (\$200) multiplied by the number of years of imprisonment the
27 defendant is ordered to serve, multiplied by the number of felony
28 counts of which the defendant is convicted.

29 (c) The court shall impose the restitution fine unless it finds
30 compelling and extraordinary reasons for not doing so, and states
31 those reasons on the record. A defendant's inability to pay shall
32 not be considered a compelling and extraordinary reason not to
33 impose a restitution fine. Inability to pay may be considered only
34 in increasing the amount of the restitution fine in excess of the
35 two hundred-dollar (\$200) or one hundred-dollar (\$100)
36 minimum. The court may specify that funds confiscated at the
37 time of the defendant's arrest, except for funds confiscated
38 pursuant to Section 11469 of the Health and Safety Code, be
39 applied to the restitution fine if the funds are not exempt for
40 spousal or child support or subject to any other legal exemption.

1 (d) In setting the amount of the fine pursuant to subdivision
2 (b) in excess of the two hundred-dollar (\$200) or one
3 hundred-dollar (\$100) minimum, the court shall consider any
4 relevant factors including, but not limited to, the defendant's
5 inability to pay, the seriousness and gravity of the offense and the
6 circumstances of its commission, any economic gain derived by
7 the defendant as a result of the crime, the extent to which any
8 other person suffered any losses as a result of the crime, and the
9 number of victims involved in the crime. Those losses may
10 include pecuniary losses to the victim or his or her dependents as
11 well as intangible losses, such as psychological harm caused by
12 the crime. Consideration of a defendant's inability to pay may
13 include his or her future earning capacity. A defendant shall bear
14 the burden of demonstrating his or her inability to pay. Express
15 findings by the court as to the factors bearing on the amount of
16 the fine shall not be required. A separate hearing for the fine shall
17 not be required.

18 (e) The restitution fine shall not be subject to penalty
19 assessments as provided in Section 1464, and shall be deposited
20 in the Restitution Fund in the State Treasury.

21 (f) Except as provided in subdivision (q), in every case in
22 which a victim has suffered economic loss as a result of the
23 defendant's conduct, the court shall require that the defendant
24 make restitution to the victim or victims in an amount established
25 by court order, based on the amount of loss claimed by the victim
26 or victims or any other showing to the court. If the amount of
27 loss cannot be ascertained at the time of sentencing, the
28 restitution order shall include a provision that the amount shall be
29 determined at the direction of the court. The court shall order full
30 restitution unless it finds compelling and extraordinary reasons
31 for not doing so, and states them on the record. The court may
32 specify that funds confiscated at the time of the defendant's
33 arrest, except for funds confiscated pursuant to Section 11469 of
34 the Health and Safety Code, be applied to the restitution order if
35 the funds are not exempt for spousal or child support or subject
36 to any other legal exemption.

37 (1) The defendant has the right to a hearing before a judge to
38 dispute the determination of the amount of restitution. The court
39 may modify the amount, on its own motion or on the motion of
40 the district attorney, the victim or victims, or the defendant. If a

1 motion is made for modification of a restitution order, the victim
2 shall be notified of that motion at least 10 days prior to the
3 proceeding held to decide the motion.

4 (2) Determination of the amount of restitution ordered
5 pursuant to this subdivision shall not be affected by the
6 indemnification or subrogation rights of any third party.
7 Restitution ordered pursuant to this subdivision shall be ordered
8 to be deposited to the Restitution Fund to the extent that the
9 victim, as defined in subdivision (k), has received assistance
10 from the Victim Compensation Program pursuant to Chapter 5
11 (commencing with Section 13950) of Part 4 of Division 3 of Title
12 2 of the Government Code.

13 (3) To the extent possible, the restitution order shall be
14 prepared by the sentencing court, shall identify each victim and
15 each loss to which it pertains, and shall be of a dollar amount that
16 is sufficient to fully reimburse the victim or victims for every
17 determined economic loss incurred as the result of the
18 defendant's criminal conduct, including, but not limited to, all of
19 the following:

20 (A) Full or partial payment for the value of stolen or damaged
21 property. The value of stolen or damaged property shall be the
22 replacement cost of like property, or the actual cost of repairing
23 the property when repair is possible.

24 (B) Medical expenses.

25 (C) Mental health counseling expenses.

26 (D) Wages or profits lost due to injury incurred by the victim,
27 and if the victim is a minor, wages or profits lost by the minor's
28 parent, parents, guardian, or guardians, while caring for the
29 injured minor. Lost wages shall include any commission income
30 as well as any base wages. Commission income shall be
31 established by evidence of commission income during the
32 12-month period prior to the date of the crime for which
33 restitution is being ordered, unless good cause for a shorter time
34 period is shown.

35 (E) Wages or profits lost by the victim, and if the victim is a
36 minor, wages or profits lost by the minor's parent, parents,
37 guardian, or guardians, due to time spent as a witness or in
38 assisting the police or prosecution. Lost wages shall include any
39 commission income as well as any base wages. Commission
40 income shall be established by evidence of commission income

1 during the 12-month period prior to the date of the crime for
2 which restitution is being ordered, unless good cause for a shorter
3 time period is shown.

4 (F) Noneconomic losses, including, but not limited to,
5 psychological harm, for felony violations of Section 288.

6 (G) Interest, at the rate of 10 percent per annum, that accrues
7 as of the date of sentencing or loss, as determined by the court.

8 (H) Actual and reasonable attorney's fees and other costs of
9 collection accrued by a private entity on behalf of the victim.

10 (I) Expenses incurred by an adult victim in relocating away
11 from the defendant, including, but not limited to, deposits for
12 utilities and telephone service, deposits for rental housing,
13 temporary lodging and food expenses, clothing, and personal
14 items. Expenses incurred pursuant to this section shall be verified
15 by law enforcement to be necessary for the personal safety of the
16 victim or by a mental health treatment provider to be necessary
17 for the emotional well-being of the victim.

18 (J) Expenses to install or increase residential security incurred
19 related to a crime, as defined in subdivision (c) of Section 667.5,
20 including, but not limited to, a home security device or system,
21 or replacing or increasing the number of locks.

22 (K) Expenses to retrofit a residence or vehicle, or both, to
23 make the residence accessible to or the vehicle operational by the
24 victim, if the victim is permanently disabled, whether the
25 disability is partial or total, as a direct result of the crime.

26 (4) (A) If, as a result of the defendant's conduct, the
27 Restitution Fund has provided assistance to or on behalf of a
28 victim or derivative victim pursuant to Chapter 5 (commencing
29 with Section 13950) of Part 4 of Division 3 of Title 2 of the
30 Government Code, the amount of assistance provided shall be
31 presumed to be a direct result of the defendant's criminal conduct
32 and shall be included in the amount of the restitution ordered.

33 (B) The amount of assistance provided by the Restitution Fund
34 shall be established by copies of bills submitted to the California
35 Victim Compensation and Government Claims Board reflecting
36 the amount paid by the board and whether the services for which
37 payment was made were for medical or dental expenses, funeral
38 or burial expenses, mental health counseling, wage or support
39 losses, or rehabilitation. Certified copies of these bills provided
40 by the board and redacted to protect the privacy and safety of the

1 victim or any legal privilege, together with a statement made
2 under penalty of perjury by the custodian of records that those
3 bills were submitted to and were paid by the board, shall be
4 sufficient to meet this requirement.

5 (C) If the defendant offers evidence to rebut the presumption
6 established by this paragraph, the court may release additional
7 information contained in the records of the board to the
8 defendant only after reviewing that information in camera and
9 finding that the information is necessary for the defendant to
10 dispute the amount of the restitution order.

11 (5) Except as provided in paragraph (6), in any case in which
12 an order may be entered pursuant to this subdivision, the
13 defendant shall prepare and file a disclosure identifying all
14 assets, income, and liabilities in which the defendant held or
15 controlled a present or future interest as of the date of the
16 defendant's arrest for the crime for which restitution may be
17 ordered. The financial disclosure statements shall be made
18 available to the victim and the board pursuant to Section 1214.
19 The disclosure shall be signed by the defendant upon a form
20 approved or adopted by the Judicial Council for the purpose of
21 facilitating the disclosure. Any defendant who willfully states as
22 true any material matter that he or she knows to be false on the
23 disclosure required by this subdivision is guilty of a
24 misdemeanor, unless this conduct is punishable as perjury or
25 another provision of law provides for a greater penalty.

26 (6) A defendant who fails to file the financial disclosure
27 required in paragraph (5), but who has filed a financial affidavit
28 or financial information pursuant to subdivision (c) of Section
29 987, shall be deemed to have waived the confidentiality of that
30 affidavit or financial information as to a victim in whose favor
31 the order of restitution is entered pursuant to subdivision (f). The
32 affidavit or information shall serve in lieu of the financial
33 disclosure required in paragraph (5), and paragraphs (7) to (10),
34 inclusive, shall not apply.

35 (7) Except as provided in paragraph (6), the defendant shall
36 file the disclosure with the clerk of the court no later than the
37 date set for the defendant's sentencing, unless otherwise directed
38 by the court. The disclosure may be inspected or copied as
39 provided by subdivision (b), (c), or (d) of Section 1203.05.

1 (8) In its discretion, the court may relieve the defendant of the
2 duty under paragraph (7) of filing with the clerk by requiring that
3 the defendant's disclosure be submitted as an attachment to, and
4 be available to, those authorized to receive the following:

5 (A) Any report submitted pursuant to subparagraph (C) of
6 paragraph (2) of subdivision (b) of Section 1203 or subdivision
7 (g) of Section 1203.

8 (B) Any stipulation submitted pursuant to paragraph (4) of
9 subdivision (b) of Section 1203.

10 (C) Any report by the probation officer, or any information
11 submitted by the defendant applying for a conditional sentence
12 pursuant to subdivision (d) of Section 1203.

13 (9) The court may consider a defendant's unreasonable failure
14 to make a complete disclosure pursuant to paragraph (5) as any
15 of the following:

16 (A) A circumstance in aggravation of the crime in imposing a
17 term under subdivision (b) of Section 1170.

18 (B) A factor indicating that the interests of justice would not
19 be served by admitting the defendant to probation under Section
20 1203.

21 (C) A factor indicating that the interests of justice would not
22 be served by conditionally sentencing the defendant under
23 Section 1203.

24 (D) A factor indicating that the interests of justice would not
25 be served by imposing less than the maximum fine and sentence
26 fixed by law for the case.

27 (10) A defendant's failure or refusal to make the required
28 disclosure pursuant to paragraph (5) shall not delay entry of an
29 order of restitution or pronouncement of sentence. In appropriate
30 cases, the court may do any of the following:

31 (A) Require the defendant to be examined by the district
32 attorney pursuant to subdivision (h).

33 (B) If sentencing the defendant under Section 1170, provide
34 that the victim shall receive a copy of the portion of the probation
35 report filed pursuant to Section 1203.10 concerning the
36 defendant's employment, occupation, finances, and liabilities.

37 (C) If sentencing the defendant under Section 1203, set a date
38 and place for submission of the disclosure required by paragraph
39 (5) as a condition of probation or suspended sentence.

1 (11) If a defendant has any remaining unpaid balance on a
2 restitution order or fine 120 days prior to his or her scheduled
3 release from probation or 120 days prior to his or her completion
4 of a conditional sentence, the defendant shall prepare and file a
5 new and updated financial disclosure identifying all assets,
6 income, and liabilities in which the defendant holds or controls or
7 has held or controlled a present or future interest during the
8 defendant's period of probation or conditional sentence. The
9 financial disclosure shall be made available to the victim and the
10 board pursuant to Section 1214. The disclosure shall be signed
11 and prepared by the defendant on the same form as described in
12 paragraph (5). Any defendant who willfully states as true any
13 material matter that he or she knows to be false on the disclosure
14 required by this subdivision is guilty of a misdemeanor, unless
15 this conduct is punishable as perjury or another provision of law
16 provides for a greater penalty. The financial disclosure required
17 by this paragraph shall be filed with the clerk of the court no later
18 than 90 days prior to the defendant's scheduled release from
19 probation or completion of the defendant's conditional sentence.

20 (g) The court shall order full restitution unless it finds
21 compelling and extraordinary reasons for not doing so, and states
22 those reasons on the record. A defendant's inability to pay shall
23 not be considered a compelling and extraordinary reason not to
24 impose a restitution order, nor shall inability to pay be a
25 consideration in determining the amount of a restitution order.

26 (h) The district attorney may request an order of examination
27 pursuant to the procedures specified in Article 2 (commencing
28 with Section 708.110) of Chapter 6 of Division 2 of Title 9 of
29 Part 2 of the Code of Civil Procedure, in order to determine the
30 defendant's financial assets for purposes of collecting on the
31 restitution order.

32 (i) A restitution order imposed pursuant to subdivision (f) shall
33 be enforceable as if the order were a civil judgment.

34 (j) The making of a restitution order pursuant to subdivision
35 (f) shall not affect the right of a victim to recovery from the
36 Restitution Fund as otherwise provided by law, except to the
37 extent that restitution is actually collected pursuant to the order.
38 Restitution collected pursuant to this subdivision shall be
39 credited to any other judgments for the same losses obtained

1 against the defendant arising out of the crime for which the
2 defendant was convicted.

3 (k) For purposes of this section, “victim” shall include all of
4 the following:

5 (1) The immediate surviving family of the actual victim.

6 (2) Any corporation, business trust, estate, trust, partnership,
7 association, joint venture, government, governmental
8 subdivision, agency, or instrumentality, or any other legal or
9 commercial entity when that entity is a direct victim of a crime.

10 (3) Any person who has sustained economic loss as the result
11 of a crime and who satisfies any of the following conditions:

12 (A) At the time of the crime was the parent, grandparent,
13 sibling, spouse, child, or grandchild of the victim.

14 (B) At the time of the crime was living in the household of the
15 victim.

16 (C) At the time of the crime was a person who had previously
17 lived in the household of the victim for a period of not less than
18 two years in a relationship substantially similar to a relationship
19 listed in subparagraph (A).

20 (D) Is another family member of the victim, including, but not
21 limited to, the victim’s fiancé or fiancée, and who witnessed the
22 crime.

23 (E) Is the primary caretaker of a minor victim.

24 (4) Any person who is eligible to receive assistance from the
25 Restitution Fund pursuant to Chapter 5 (commencing with
26 Section 13950) of Part 4 of Division 3 of Title 2 of the
27 Government Code.

28 (l) At its discretion, the board of supervisors of any county
29 may impose a fee to cover the actual administrative cost of
30 collecting the restitution fine, not to exceed 10 percent of the
31 amount ordered to be paid, to be added to the restitution fine and
32 included in the order of the court, the proceeds of which shall be
33 deposited in the general fund of the county.

34 (m) In every case in which the defendant is granted probation,
35 the court shall make the payment of restitution fines and orders
36 imposed pursuant to this section a condition of probation. Any
37 portion of a restitution order that remains unsatisfied after a
38 defendant is no longer on probation shall continue to be
39 enforceable by a victim pursuant to Section 1214 until the
40 obligation is satisfied.

1 (n) If the court finds and states on the record compelling and
2 extraordinary reasons why a restitution fine or full restitution
3 order should not be required, the court shall order, as a condition
4 of probation, that the defendant perform specified community
5 service, unless it finds and states on the record compelling and
6 extraordinary reasons not to require community service in
7 addition to the finding that restitution should not be required.
8 Upon revocation of probation, the court shall impose restitution
9 pursuant to this section.

10 (o) The provisions of Section 13963 of the Government Code
11 shall apply to restitution imposed pursuant to this section.

12 (p) The court clerk shall notify the California Victim
13 Compensation and Government Claims Board within 90 days of
14 an order of restitution being imposed if the defendant is ordered
15 to pay restitution to the board due to the victim receiving
16 compensation from the Restitution Fund. Notification shall be
17 accomplished by mailing a copy of the court order to the board,
18 which may be done periodically by bulk mail or electronic mail.

19 (q) Upon conviction for a violation of Section 236.1, the court
20 shall, in addition to any other penalty or restitution, order the
21 defendant to pay restitution to the victim in any case in which a
22 victim has suffered economic loss as a result of the defendant's
23 conduct. The court shall require that the defendant make
24 restitution to the victim or victims in an amount established by
25 court order, based on the amount of loss claimed by the victim or
26 victims or any other showing to the court. In determining
27 restitution pursuant to this section, the court shall base its order
28 upon the greater of the following: the gross value of the victim's
29 labor or services based upon the comparable value of similar
30 services in the labor market in which the offense occurred, or the
31 value of the victim's labor as guaranteed under California law, or
32 the actual income derived by the defendant from the victim's
33 labor or services or any other appropriate means to provide
34 reparations to the victim.

35 SEC. 11. Title 6.7 (commencing with Section 13990) is
36 added to Part 4 of the Penal Code, to read:

1 TITLE 6.7. CALIFORNIA ALLIANCE TO COMBAT
2 TRAFFICKING AND SLAVERY (CALIFORNIA ACTS)
3 TASK FORCE
4

5 13990. (a) There is hereby established the California
6 Alliance to Combat Trafficking and Slavery (California ACTS)
7 Task Force to do the following to the extent feasible:

8 (1) Collect and organize data on the nature and extent of
9 trafficking in persons in California.

10 (2) Examine collaborative models between government and
11 nongovernmental organizations for protecting victims of
12 trafficking.

13 (3) Measure and evaluate the progress of the state in
14 preventing trafficking, protecting and providing assistance to
15 victims of trafficking, and prosecuting persons engaged in
16 trafficking.

17 (4) Identify available federal, state, and local programs that
18 provide services to victims of trafficking that include, but are not
19 limited to, health care, human services, housing, education, legal
20 assistance, job training or preparation, interpreting services,
21 English-as-a-second-language classes, voluntary repatriation and
22 victim's compensation. Assess the need for additional services,
23 including but not limited to, shelter services for trafficking
24 victims.

25 (5) Evaluate approaches to increase public awareness of
26 trafficking.

27 (6) Analyze existing state criminal statutes for their adequacy
28 in addressing trafficking and, if the analysis determines that those
29 statutes are inadequate, recommend revisions to those statutes or
30 the enactment of new statutes that specifically define and address
31 trafficking.

32 (7) Consult with governmental and nongovernmental
33 organizations in developing recommendations to strengthen state
34 and local efforts to prevent trafficking, protect and assist victims
35 of trafficking, and prosecute traffickers.

36 (b) The task force shall be chaired by a designee of the
37 Attorney General. The Department of Justice shall provide staff
38 and support for the task force to the extent resources are
39 available.

- 1 (c) The members of the task force shall serve at the pleasure of
2 the respective appointing authority. Reimbursement of necessary
3 expenses may be provided at the discretion of the respective
4 appointing authority or agency participating in the task force.
5 The task force shall be comprised of the following
6 representatives or their designees:
- 7 (1) The Attorney General.
 - 8 (2) The Secretary of the Labor and Workforce Development
9 Agency.
 - 10 (3) The Director of the State Department of Social Services.
 - 11 (4) The Director of the State Department of Health Services.
 - 12 (5) Chairperson of the Judicial Council of California.
 - 13 (6) Chairperson of the State Commission on the Status of
14 Women.
 - 15 (7) One representative from the California District Attorneys
16 Association.
 - 17 (8) One representative from the California Public Defenders
18 Association.
 - 19 (9) Two representatives of local law enforcement, one selected
20 by the California State Sheriffs' Association and one selected by
21 the California Police Chiefs' Association.
 - 22 (10) One representative from the California Coalition Against
23 Sexual Assault, appointed by the Governor.
 - 24 (11) One representative from the California Partnership to End
25 Domestic Violence, appointed by the Governor.
 - 26 (12) The Governor shall appoint one university researcher and
27 one mental health professional.
 - 28 (13) The Speaker of the Assembly shall appoint one
29 representative from an organization that advocates for immigrant
30 workers' rights and one representative from an organization that
31 serves victims of human trafficking in southern California.
 - 32 (14) The Senate Rules Committee shall appoint one
33 representative from an organization that provides legal
34 immigration services to low-income individuals, and one
35 representative from an organization that serves victims of
36 trafficking in northern California.
 - 37 (15) The Governor shall appoint one survivor of human
38 trafficking.

1 (d) Whenever possible, members of the task force shall have
2 experience providing services to trafficked persons or have
3 knowledge of human trafficking issues.

4 (e) The task force shall meet at least once every two months.
5 Subcommittees may be formed and meet as necessary. All
6 meetings shall be open to the public. The first meeting of the task
7 force shall be held no later than March 1, 2006.

8 (f) On or before July 1, 2007, the task force shall report its
9 findings and recommendations to the Governor, the Attorney
10 General, and the Legislature. At the request of any member, the
11 report may include minority findings and recommendations.

12 (g) For the purposes of this section, “trafficking” means all
13 acts involved in the recruitment, abduction, transport, harboring,
14 transfer, sale or receipt of persons, within national or across
15 international borders, through force, coercion, fraud or deception,
16 to place persons in situations of slavery or slavery like
17 conditions, forced labor or services, such as forced prostitution or
18 sexual services, domestic servitude, bonded sweatshop labor, or
19 other debt bondage.

20 (h) This section is repealed as of January 1, 2008, unless a
21 later enacted statute, that becomes operative before January 1,
22 2008, deletes or extends that date.

23 SEC. 12. Section 14023 of the Penal Code is amended to
24 read:

25 14023. The Attorney General shall give priority to matters
26 involving organized crime, gang activities, drug trafficking,
27 human trafficking, and cases involving a high degree of risk to
28 the witness. Special regard shall also be given to the elderly, the
29 young, battered, victims of domestic violence, the infirm, the
30 handicapped, and victims of hate incidents.

31 SEC. 13. Nothing in this act shall be construed as prohibiting
32 or precluding prosecution under any other provision of law or to
33 prevent punishment pursuant to any other provision of law that
34 imposes a greater or more severe punishment than provided for
35 in this act.

36 SEC. 14. Section 6.5 of this bill incorporates amendments to
37 Section 186.2 of the Penal Code proposed by both this bill and
38 AB 988. It shall only become operative if (1) both bills are
39 enacted and become effective on or before January 1, 2006, (2)
40 each bill amends Section 186.2 of the Penal Code, and (3) this

1 bill is enacted after AB 988, in which case Section 6 of this bill
2 shall not become operative.

3 SEC. 15. Section 10.5 of this bill incorporates amendments to
4 Section 1202.4 of the Penal Code proposed by both this bill and
5 SB 972. It shall only become operative if (1) both bills are
6 enacted and become effective on or before January 1, 2006, (2)
7 each bill amends Section 1202.4 of the Penal Code, and (3) this
8 bill is enacted after SB 972, in which case Section 10 of this bill
9 shall not become operative.

10 SEC. 16. No reimbursement is required by this act pursuant
11 to Section 6 of Article XIII B of the California Constitution for
12 certain costs that may be incurred by a local agency or school
13 district because, in that regard, this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the
15 penalty for a crime or infraction, within the meaning of Section
16 17556 of the Government Code, or changes the definition of a
17 crime within the meaning of Section 6 of Article XIII B of the
18 California Constitution.

19 However, if the Commission on State Mandates determines
20 that this act contains other costs mandated by the state,
21 reimbursement to local agencies and school districts for those
22 costs shall be made pursuant to Part 7 (commencing with Section
23 17500) of Division 4 of Title 2 of the Government Code.