

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2810

Introduced by Assembly Member Brownley

February 22, 2008

An act to amend Section ~~236.1~~ of 6254 of the Government Code, and to amend Section 293 of, to amend and renumber and add Section 236.2 of, and to add Sections 236.3 and 236.4 to, the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

AB 2810, as amended, Brownley. Human trafficking.

Existing law defines human trafficking as the deprivation of the personal liberty of another person with the intent to effect a specified sex crime or to obtain forced labor or services, as specified.

This bill would ~~make a technical, nonsubstantive change to that provision~~ require law enforcement to use due diligence to identify all victims of human trafficking, regardless of citizenship, and would provide specific indicators of human trafficking. This bill would also provide civil and criminal immunity for any victim of human trafficking if the act committed by the person was caused by or incident to the trafficking, as specified. This bill would also authorize a court to utilize closed circuit television for the testimony of a victim of human trafficking if certain conditions are found by the court to exist, as specified. This bill would also provide that a victim of human trafficking could request, and upon that request require, that his or her name not become a matter of public record, as specified.

Because this bill would impose additional duties on local officials, it would impose a state-mandated local program.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

- 1 SECTION 1. *The Legislature hereby finds and declares:*
- 2 (a) *Human trafficking, also called trafficking in persons, is*
- 3 *modern-day slavery that comes in many forms and is relatively*
- 4 *ignored despite its effects on the world in pandemic proportions.*
- 5 *Men, women, and children are trafficked into forced labor and*
- 6 *commercial sexual exploitation.*
- 7 (b) *According to the Trafficking in Persons Report (TIP report,*
- 8 *2005) published by the United States government’s Office to*
- 9 *Monitor and Combat Trafficking in Persons, approximately*
- 10 *600,000 to 800,000 persons are trafficked across international*
- 11 *borders each year with up to 12.3 million in bondage at any given*
- 12 *moment. The report also estimates that about 80 percent of these*
- 13 *persons are women and girls, and 50 percent are under 18 years*
- 14 *of age.*
- 15 (c) *Those numbers, however, do not include the millions of*
- 16 *people that are trafficked within their own national borders. When*
- 17 *the numbers of those being trafficked both internationally and*
- 18 *intranationally are combined, the number of victims can go up to*
- 19 *four million. Somewhere between 17,500 and 50,000 women and*
- 20 *children are trafficked into the United States annually, mainly for*
- 21 *the purposes of sexual exploitation.*
- 22 (d) *Sex trafficking is highly profitable and makes up to an excess*
- 23 *of 12 billion dollars annually.*
- 24 (e) *Trafficking into the United States is an acknowledged*
- 25 *problem, but often ignored is the fact that trafficking also occurs*
- 26 *domestically within the United States borders. Many girls are*
- 27 *trafficked into Mexico from other countries, including the United*

1 *States, where they are prepared for sex work in the United States.*
2 *When the victims are considered “ready,” they are smuggled*
3 *across the United States-Mexican border, where they can earn*
4 *their traffickers tens of thousands of dollars per week.*

5 *(f) One victim interviewed by Landesman in the New York Times*
6 *(2004) said she was born in the United States and sold to a*
7 *trafficker when she was four years old. She was transported to*
8 *different locations all over the United States and back and forth*
9 *across the United States-Mexican border. Her customers included*
10 *businessmen, police, and even a child psychologist.*

11 *(g) Experiences like those make it even more difficult for victims*
12 *to seek or find help; when a person is being exploited by those*
13 *who are supposed to help him or her, there is no one to whom he*
14 *or she can turn for safety.*

15 *(h) State and local governments must become actively involved*
16 *in combating trafficking. At this time, many perpetrators get off*
17 *with no or minimal penalties, which are less harsh than those*
18 *inflicted on drug offenders.*

19 *(i) Law enforcement personnel, social workers, and legal*
20 *personnel must be trained to understand trafficking in persons,*
21 *recognize victim profiles, and appreciate the special circumstances*
22 *and needs of victims. If the people in the community are trained*
23 *to recognize instances of trafficking and are better equipped to*
24 *rescue victims and prosecute traffickers, human trafficking could*
25 *be slowly reduced because each trafficker prosecuted could help*
26 *save thousands of future victims.*

27 *SEC. 2. Section 6254 of the Government Code is amended to*
28 *read:*

29 *6254. Except as provided in Sections 6254.7 and 6254.13,*
30 *nothing in this chapter shall be construed to require disclosure of*
31 *records that are any of the following:*

32 *(a) Preliminary drafts, notes, or interagency or intra-agency*
33 *memoranda that are not retained by the public agency in the*
34 *ordinary course of business, if the public interest in withholding*
35 *those records clearly outweighs the public interest in disclosure.*

36 *(b) Records pertaining to pending litigation to which the public*
37 *agency is a party, or to claims made pursuant to Division 3.6*
38 *(commencing with Section 810), until the pending litigation or*
39 *claim has been finally adjudicated or otherwise settled.*

- 1 (c) Personnel, medical, or similar files, the disclosure of which
- 2 would constitute an unwarranted invasion of personal privacy.
- 3 (d) Contained in or related to any of the following:
- 4 (1) Applications filed with any state agency responsible for the
- 5 regulation or supervision of the issuance of securities or of financial
- 6 institutions, including, but not limited to, banks, savings and loan
- 7 associations, industrial loan companies, credit unions, and
- 8 insurance companies.
- 9 (2) Examination, operating, or condition reports prepared by,
- 10 on behalf of, or for the use of, any state agency referred to in
- 11 paragraph (1).
- 12 (3) Preliminary drafts, notes, or interagency or intra-agency
- 13 communications prepared by, on behalf of, or for the use of, any
- 14 state agency referred to in paragraph (1).
- 15 (4) Information received in confidence by any state agency
- 16 referred to in paragraph (1).
- 17 (e) Geological and geophysical data, plant production data, and
- 18 similar information relating to utility systems development, or
- 19 market or crop reports, that are obtained in confidence from any
- 20 person.
- 21 (f) Records of complaints to, or investigations conducted by,
- 22 or records of intelligence information or security procedures of,
- 23 the office of the Attorney General and the Department of Justice,
- 24 and any state or local police agency, or any investigatory or security
- 25 files compiled by any other state or local police agency, or any
- 26 investigatory or security files compiled by any other state or local
- 27 agency for correctional, law enforcement, or licensing purposes.
- 28 However, state and local law enforcement agencies shall disclose
- 29 the names and addresses of persons involved in, or witnesses other
- 30 than confidential informants to, the incident, the description of
- 31 any property involved, the date, time, and location of the incident,
- 32 all diagrams, statements of the parties involved in the incident, the
- 33 statements of all witnesses, other than confidential informants, to
- 34 the victims of an incident, or an authorized representative thereof,
- 35 an insurance carrier against which a claim has been or might be
- 36 made, and any person suffering bodily injury or property damage
- 37 or loss, as the result of the incident caused by arson, burglary, fire,
- 38 explosion, larceny, robbery, carjacking, vandalism, vehicle theft,
- 39 or a crime as defined by subdivision (b) of Section 13951, unless
- 40 the disclosure would endanger the safety of a witness or other

1 person involved in the investigation, or unless disclosure would
2 endanger the successful completion of the investigation or a related
3 investigation. However, nothing in this division shall require the
4 disclosure of that portion of those investigative files that reflects
5 the analysis or conclusions of the investigating officer.

6 Customer lists provided to a state or local police agency by an
7 alarm or security company at the request of the agency shall be
8 construed to be records subject to this subdivision.

9 Notwithstanding any other provision of this subdivision, state
10 and local law enforcement agencies shall make public the following
11 information, except to the extent that disclosure of a particular
12 item of information would endanger the safety of a person involved
13 in an investigation or would endanger the successful completion
14 of the investigation or a related investigation:

15 (1) The full name and occupation of every individual arrested
16 by the agency, the individual's physical description including date
17 of birth, color of eyes and hair, sex, height and weight, the time
18 and date of arrest, the time and date of booking, the location of
19 the arrest, the factual circumstances surrounding the arrest, the
20 amount of bail set, the time and manner of release or the location
21 where the individual is currently being held, and all charges the
22 individual is being held upon, including any outstanding warrants
23 from other jurisdictions and parole or probation holds.

24 (2) Subject to the restrictions imposed by Section 841.5 of the
25 Penal Code, the time, substance, and location of all complaints or
26 requests for assistance received by the agency and the time and
27 nature of the response thereto, including, to the extent the
28 information regarding crimes alleged or committed or any other
29 incident investigated is recorded, the time, date, and location of
30 occurrence, the time and date of the report, the name and age of
31 the victim, the factual circumstances surrounding the crime or
32 incident, and a general description of any injuries, property, or
33 weapons involved. The name of a victim of any crime defined by
34 Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a,
35 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285,
36 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the
37 Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83
38 of the November 7, 2006, statewide general election), 288.5, 288.7,
39 289, 422.6, 422.7, 422.75, 646.9 or 647.6 of the Penal Code may
40 be withheld at the victim's request, or at the request of the victim's

1 parent or guardian if the victim is a minor. When a person is the
2 victim of more than one crime, information disclosing that the
3 person is a victim of a crime defined in any of the sections of the
4 Penal Code set forth in this subdivision may be deleted at the
5 request of the victim, or the victim's parent or guardian if the
6 victim is a minor, in making the report of the crime, or of any
7 crime or incident accompanying the crime, available to the public
8 in compliance with the requirements of this paragraph.

9 (3) Subject to the restrictions of Section 841.5 of the Penal Code
10 and this subdivision, the current address of every individual
11 arrested by the agency and the current address of the victim of a
12 crime, where the requester declares under penalty of perjury that
13 the request is made for a scholarly, journalistic, political, or
14 governmental purpose, or that the request is made for investigation
15 purposes by a licensed private investigator as described in Chapter
16 11.3 (commencing with Section 7512) of Division 3 of the Business
17 and Professions Code. However, the address of the victim of any
18 crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1,
19 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a,
20 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by
21 Chapter 337 of the Statutes of 2006), 288.3 (as added by Section
22 6 of Proposition 83 of the November 7, 2006, statewide general
23 election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6
24 of the Penal Code shall remain confidential. Address information
25 obtained pursuant to this paragraph may not be used directly or
26 indirectly, or furnished to another, to sell a product or service to
27 any individual or group of individuals, and the requester shall
28 execute a declaration to that effect under penalty of perjury.
29 Nothing in this paragraph shall be construed to prohibit or limit a
30 scholarly, journalistic, political, or government use of address
31 information obtained pursuant to this paragraph.

32 (g) Test questions, scoring keys, and other examination data
33 used to administer a licensing examination, examination for
34 employment, or academic examination, except as provided for in
35 Chapter 3 (commencing with Section 99150) of Part 65 of Division
36 14 of Title 3 of the Education Code.

37 (h) The contents of real estate appraisals or engineering or
38 feasibility estimates and evaluations made for or by the state or
39 local agency relative to the acquisition of property, or to
40 prospective public supply and construction contracts, until all of

1 the property has been acquired or all of the contract agreement
2 obtained. However, the law of eminent domain shall not be affected
3 by this provision.

4 (i) Information required from any taxpayer in connection with
5 the collection of local taxes that is received in confidence and the
6 disclosure of the information to other persons would result in unfair
7 competitive disadvantage to the person supplying the information.

8 (j) Library circulation records kept for the purpose of identifying
9 the borrower of items available in libraries, and library and museum
10 materials made or acquired and presented solely for reference or
11 exhibition purposes. The exemption in this subdivision shall not
12 apply to records of fines imposed on the borrowers.

13 (k) Records, the disclosure of which is exempted or prohibited
14 pursuant to federal or state law, including, but not limited to,
15 provisions of the Evidence Code relating to privilege.

16 (l) Correspondence of and to the Governor or employees of the
17 Governor's office or in the custody of or maintained by the
18 Governor's Legal Affairs Secretary. However, public records shall
19 not be transferred to the custody of the Governor's Legal Affairs
20 Secretary to evade the disclosure provisions of this chapter.

21 (m) In the custody of or maintained by the Legislative Counsel,
22 except those records in the public database maintained by the
23 Legislative Counsel that are described in Section 10248.

24 (n) Statements of personal worth or personal financial data
25 required by a licensing agency and filed by an applicant with the
26 licensing agency to establish his or her personal qualification for
27 the license, certificate, or permit applied for.

28 (o) Financial data contained in applications for financing under
29 Division 27 (commencing with Section 44500) of the Health and
30 Safety Code, where an authorized officer of the California Pollution
31 Control Financing Authority determines that disclosure of the
32 financial data would be competitively injurious to the applicant
33 and the data is required in order to obtain guarantees from the
34 United States Small Business Administration. The California
35 Pollution Control Financing Authority shall adopt rules for review
36 of individual requests for confidentiality under this section and for
37 making available to the public those portions of an application that
38 are subject to disclosure under this chapter.

39 (p) Records of state agencies related to activities governed by
40 Chapter 10.3 (commencing with Section 3512), Chapter 10.5

1 (commencing with Section 3525), and Chapter 12 (commencing
2 with Section 3560) of Division 4, that reveal a state agency's
3 deliberative processes, impressions, evaluations, opinions,
4 recommendations, meeting minutes, research, work products,
5 theories, or strategy, or that provide instruction, advice, or training
6 to employees who do not have full collective bargaining and
7 representation rights under these chapters. Nothing in this
8 subdivision shall be construed to limit the disclosure duties of a
9 state agency with respect to any other records relating to the
10 activities governed by the employee relations acts referred to in
11 this subdivision.

12 (q) Records of state agencies related to activities governed by
13 Article 2.6 (commencing with Section 14081), Article 2.8
14 (commencing with Section 14087.5), and Article 2.91
15 (commencing with Section 14089) of Chapter 7 of Part 3 of
16 Division 9 of the Welfare and Institutions Code, that reveal the
17 special negotiator's deliberative processes, discussions,
18 communications, or any other portion of the negotiations with
19 providers of health care services, impressions, opinions,
20 recommendations, meeting minutes, research, work product,
21 theories, or strategy, or that provide instruction, advice, or training
22 to employees.

23 Except for the portion of a contract containing the rates of
24 payment, contracts for inpatient services entered into pursuant to
25 these articles, on or after April 1, 1984, shall be open to inspection
26 one year after they are fully executed. If a contract for inpatient
27 services that is entered into prior to April 1, 1984, is amended on
28 or after April 1, 1984, the amendment, except for any portion
29 containing the rates of payment, shall be open to inspection one
30 year after it is fully executed. If the California Medical Assistance
31 Commission enters into contracts with health care providers for
32 other than inpatient hospital services, those contracts shall be open
33 to inspection one year after they are fully executed.

34 Three years after a contract or amendment is open to inspection
35 under this subdivision, the portion of the contract or amendment
36 containing the rates of payment shall be open to inspection.

37 Notwithstanding any other provision of law, the entire contract
38 or amendment shall be open to inspection by the Joint Legislative
39 Audit Committee and the Legislative Analyst's Office. The
40 committee and that office shall maintain the confidentiality of the

1 contracts and amendments until the time a contract or amendment
2 is fully open to inspection by the public.

3 (r) Records of Native American graves, cemeteries, and sacred
4 places and records of Native American places, features, and objects
5 described in Sections 5097.9 and 5097.993 of the Public Resources
6 Code maintained by, or in the possession of, the Native American
7 Heritage Commission, another state agency, or a local agency.

8 (s) A final accreditation report of the Joint Commission on
9 Accreditation of Hospitals that has been transmitted to the State
10 Department of Health Care Services pursuant to subdivision (b)
11 of Section 1282 of the Health and Safety Code.

12 (t) Records of a local hospital district, formed pursuant to
13 Division 23 (commencing with Section 32000) of the Health and
14 Safety Code, or the records of a municipal hospital, formed
15 pursuant to Article 7 (commencing with Section 37600) or Article
16 8 (commencing with Section 37650) of Chapter 5 of Part 2 of
17 Division 3 of Title 4 of this code, that relate to any contract with
18 an insurer or nonprofit hospital service plan for inpatient or
19 outpatient services for alternative rates pursuant to Section 10133
20 of the Insurance Code. However, the record shall be open to
21 inspection within one year after the contract is fully executed.

22 (u) (1) Information contained in applications for licenses to
23 carry firearms issued pursuant to Section 12050 of the Penal Code
24 by the sheriff of a county or the chief or other head of a municipal
25 police department that indicates when or where the applicant is
26 vulnerable to attack or that concerns the applicant's medical or
27 psychological history or that of members of his or her family.

28 (2) The home address and telephone number of peace officers,
29 judges, court commissioners, and magistrates that are set forth in
30 applications for licenses to carry firearms issued pursuant to
31 Section 12050 of the Penal Code by the sheriff of a county or the
32 chief or other head of a municipal police department.

33 (3) The home address and telephone number of peace officers,
34 judges, court commissioners, and magistrates that are set forth in
35 licenses to carry firearms issued pursuant to Section 12050 of the
36 Penal Code by the sheriff of a county or the chief or other head of
37 a municipal police department.

38 (v) (1) Records of the Managed Risk Medical Insurance Board
39 related to activities governed by Part 6.3 (commencing with Section
40 12695) and Part 6.5 (commencing with Section 12700) of Division

1 2 of the Insurance Code, and that reveal the deliberative processes,
2 discussions, communications, or any other portion of the
3 negotiations with entities contracting or seeking to contract with
4 the board, or the impressions, opinions, recommendations, meeting
5 minutes, research, work product, theories, or strategy of the board
6 or its staff, or records that provide instructions, advice, or training
7 to employees.

8 (2) (A) Except for the portion of a contract that contains the
9 rates of payment, contracts for health coverage entered into
10 pursuant to Part 6.3 (commencing with Section 12695) or Part 6.5
11 (commencing with Section 12700) of Division 2 of the Insurance
12 Code, on or after July 1, 1991, shall be open to inspection one year
13 after their effective dates.

14 (B) If a contract that is entered into prior to July 1, 1991, is
15 amended on or after July 1, 1991, the amendment, except for any
16 portion containing the rates of payment, shall be open to inspection
17 one year after the amendment has been fully executed.

18 (3) Three years after a contract or amendment is open to
19 inspection pursuant to this subdivision, the portion of the contract
20 or amendment containing the rates of payment shall be open to
21 inspection.

22 (4) Notwithstanding any other provision of law, the entire
23 contract or amendments to a contract shall be open to inspection
24 by the Joint Legislative Audit Committee. The committee shall
25 maintain the confidentiality of the contracts and amendments
26 thereto, until the contract or amendments to a contract is open to
27 inspection pursuant to paragraph (3).

28 (w) (1) Records of the Managed Risk Medical Insurance Board
29 related to activities governed by Chapter 8 (commencing with
30 Section 10700) of Part 2 of Division 2 of the Insurance Code, and
31 that reveal the deliberative processes, discussions, communications,
32 or any other portion of the negotiations with health plans, or the
33 impressions, opinions, recommendations, meeting minutes,
34 research, work product, theories, or strategy of the board or its
35 staff, or records that provide instructions, advice, or training to
36 employees.

37 (2) Except for the portion of a contract that contains the rates
38 of payment, contracts for health coverage entered into pursuant to
39 Chapter 8 (commencing with Section 10700) of Part 2 of Division

1 2 of the Insurance Code, on or after January 1, 1993, shall be open
2 to inspection one year after they have been fully executed.

3 (3) Notwithstanding any other provision of law, the entire
4 contract or amendments to a contract shall be open to inspection
5 by the Joint Legislative Audit Committee. The committee shall
6 maintain the confidentiality of the contracts and amendments
7 thereto, until the contract or amendments to a contract is open to
8 inspection pursuant to paragraph (2).

9 (x) Financial data contained in applications for registration, or
10 registration renewal, as a service contractor filed with the Director
11 of Consumer Affairs pursuant to Chapter 20 (commencing with
12 Section 9800) of Division 3 of the Business and Professions Code,
13 for the purpose of establishing the service contractor's net worth,
14 or financial data regarding the funded accounts held in escrow for
15 service contracts held in force in this state by a service contractor.

16 (y) (1) Records of the Managed Risk Medical Insurance Board
17 related to activities governed by Part 6.2 (commencing with Section
18 12693) or Part 6.4 (commencing with Section 12699.50) of
19 Division 2 of the Insurance Code, and that reveal the deliberative
20 processes, discussions, communications, or any other portion of
21 the negotiations with entities contracting or seeking to contract
22 with the board, or the impressions, opinions, recommendations,
23 meeting minutes, research, work product, theories, or strategy of
24 the board or its staff, or records that provide instructions, advice,
25 or training to employees.

26 (2) (A) Except for the portion of a contract that contains the
27 rates of payment, contracts entered into pursuant to Part 6.2
28 (commencing with Section 12693) or Part 6.4 (commencing with
29 Section 12699.50) of Division 2 of the Insurance Code, on or after
30 January 1, 1998, shall be open to inspection one year after their
31 effective dates.

32 (B) If a contract entered into pursuant to Part 6.2 (commencing
33 with Section 12693) or Part 6.4 (commencing with Section
34 12699.50) of Division 2 of the Insurance Code is amended, the
35 amendment shall be open to inspection one year after the
36 amendment has been fully executed.

37 (3) Three years after a contract or amendment is open to
38 inspection pursuant to this subdivision, the portion of the contract
39 or amendment containing the rates of payment shall be open to
40 inspection.

1 (4) Notwithstanding any other provision of law, the entire
2 contract or amendments to a contract shall be open to inspection
3 by the Joint Legislative Audit Committee. The committee shall
4 maintain the confidentiality of the contracts and amendments
5 thereto until the contract or amendments to a contract are open to
6 inspection pursuant to paragraph (2) or (3).

7 (5) The exemption from disclosure provided pursuant to this
8 subdivision for the contracts, deliberative processes, discussions,
9 communications, negotiations, impressions, opinions,
10 recommendations, meeting minutes, research, work product,
11 theories, or strategy of the board or its staff shall also apply to the
12 contracts, deliberative processes, discussions, communications,
13 negotiations, impressions, opinions, recommendations, meeting
14 minutes, research, work product, theories, or strategy of applicants
15 pursuant to Part 6.4 (commencing with Section 12699.50) of
16 Division 2 of the Insurance Code.

17 (z) Records obtained pursuant to paragraph (2) of subdivision
18 (c) of Section 2891.1 of the Public Utilities Code.

19 (aa) A document prepared by or for a state or local agency that
20 assesses its vulnerability to terrorist attack or other criminal acts
21 intended to disrupt the public agency's operations and that is for
22 distribution or consideration in a closed session.

23 (ab) Critical infrastructure information, as defined in Section
24 131(3) of Title 6 of the United States Code, that is voluntarily
25 submitted to the California Office of Homeland Security for use
26 by that office, including the identity of the person who or entity
27 that voluntarily submitted the information. As used in this
28 subdivision, "voluntarily submitted" means submitted in the
29 absence of the office exercising any legal authority to compel
30 access to or submission of critical infrastructure information. This
31 subdivision shall not affect the status of information in the
32 possession of any other state or local governmental agency.

33 (ac) All information provided to the Secretary of State by a
34 person for the purpose of registration in the Advance Health Care
35 Directive Registry, except that those records shall be released at
36 the request of a health care provider, a public guardian, or the
37 registrant's legal representative.

38 Nothing in this section prevents any agency from opening its
39 records concerning the administration of the agency to public
40 inspection, unless disclosure is otherwise prohibited by law.

1 Nothing in this section prevents any health facility from
2 disclosing to a certified bargaining agent relevant financing
3 information pursuant to Section 8 of the National Labor Relations
4 Act (29 U.S.C. Sec. 158).

5 *SEC. 3. Section 236.2 of the Penal Code is amended and*
6 *renumbered to read:*

7 ~~236.2~~

8 236.5. (a) Within 15 business days of the first encounter of
9 with a victim of human trafficking, ~~victim pursuant to as defined~~
10 by Section 236.1, law enforcement agencies shall provide brief
11 letters that satisfy the following Law Enforcement Agency
12 Endorsement (LEA) regulations as found in *paragraph (1) of*
13 *subdivision (f) of Section 214.11(f)(1) 214.11* of Chapter 8 of the
14 Code of Federal Regulations.

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

29 (c) Where state law enforcement agencies find the grant of a
30 LEA endorsement to be inappropriate for a victim of trafficking
31 in persons, the agency shall within 15 days provide the victim with
32 a letter explaining the grounds of the denial of the LEA. The victim
33 may submit additional evidence to the law enforcement agency,
34 which must reconsider the denial of the LEA within one week of
35 the receipt of additional evidence.

36 *SEC. 4. Section 236.2 is added to the Penal Code, to read:*

37 *236.2. Law enforcement agencies shall use due diligence to*
38 *identify all victims of human trafficking, regardless of the*
39 *citizenship of the person. When a peace officer comes into contact*
40 *with a person who has been deprived of his or her personal liberty,*

1 a person suspected of violating subdivision (a) or (b) of Section
2 647, or a victim of a crime of domestic violence or rape, the peace
3 officer shall determine whether the following indicators of human
4 trafficking are present:

5 (a) Signs of trauma, fatigue, injury, or other evidence of poor
6 care.

7 (b) The person is withdrawn, afraid to talk, or his or her
8 communication is censored by another person.

9 (c) The person does not have freedom of movement.

10 (d) The person lives and works in one place.

11 (e) The person owes a debt to his or her employer.

12 (f) Security measures are used to control who has contact with
13 the person.

14 (g) The person does not have control over his or her own
15 government issued identification or over his or her worker
16 immigration documents.

17 SEC. 5. Section 236.3 is added to the Penal Code, to read:

18 236.3. Any victim of human trafficking, as defined by Section
19 236.1, is immune from criminal and civil liability for any act
20 committed by the victim if the act was caused by or incident to the
21 trafficking.

22 SEC. 6. Section 236.4 is added to the Penal Code, to read:

23 236.4. (a) It is the intent of the Legislature in enacting this
24 section to provide the court with discretion to employ alternative
25 court procedures to protect the rights of victims of human
26 trafficking, the rights of the defendant, and the integrity of the
27 judicial process. In exercising its discretion, the court necessarily
28 will be required to balance the rights of the defendant or
29 defendants against the need to protect a victim of human trafficking
30 and to preserve the integrity of the court's truthfinding function.
31 This discretion is intended to be used selectively when the facts
32 and circumstances in the individual case present compelling
33 evidence of the need to use these alternative procedures.

34 (b) For purposes of this section, "victim" shall mean a person
35 whose personal liberty was deprived or violated in violation of
36 Section 236.1, human trafficking.

37 (c) Notwithstanding any other law, the court in any criminal
38 proceeding involving an allegation that the defendant violated
39 Section 236.1; upon written notice by the prosecutor made at least
40 three days prior to the date of the preliminary hearing or trial date

1 on which the testimony of a victim of human trafficking is
2 scheduled, or during the course of the proceeding on the court's
3 own motion, may order that the testimony of the victim at the time
4 of the motion be taken by contemporaneous examination and
5 cross-examination in another place and out of the presence of the
6 judge, jury, defendant or defendants, and attorneys, and
7 communicated to the courtroom by means of closed-circuit
8 television, if the court makes all of the following findings:

9 (1) The victim's testimony will involve a recitation of the facts
10 of any of the following:

11 (A) An alleged sexual offense committed on or with the victim.

12 (B) An alleged sexual offense committed by the victim as a result
13 of the human trafficking, as defined in Section 236.1.

14 (2) The impact on the victim of one or more of the factors
15 enumerated in subparagraphs (A) to (E), inclusive, is shown by
16 clear and convincing evidence to be so substantial as to make the
17 victim unavailable as a witness unless closed-circuit testimony is
18 used.

19 (A) Testimony by the victim in the presence of the defendant
20 would result in the victim suffering serious emotional distress so
21 that the victim would be unavailable as a witness.

22 (B) The defendant used a deadly weapon in the commission of
23 the offense.

24 (C) The defendant threatened serious bodily injury to the victim
25 or the victim's family, threatened incarceration or deportation of
26 the victim or a member of the victim's family, threatened removal
27 of the victim from the victim's family, or threatened the dissolution
28 of the victim's family in order to prevent or dissuade the victim
29 from attending or giving testimony at any trial or court proceeding,
30 or to prevent the victim from reporting the alleged human
31 trafficking or sexual offense, or from assisting in criminal
32 prosecution.

33 (D) The defendant inflicted great bodily injury upon the victim
34 in the commission of the offense.

35 (E) The defendant or his or her counsel behaved during the
36 hearing or trial in a way that caused the victim to be unable to
37 continue his or her testimony.

38 In making the determination required by this section, the court
39 shall consider the age of the victim, the relationship between the
40 victim and the defendant or defendants, any handicap or disability

1 of the victim, and the nature of the acts charged. The victim's
2 refusal to testify shall not alone constitute sufficient evidence that
3 the special procedure described in this section is necessary to
4 obtain the victim's testimony.

5 (3) The equipment available for use of closed-circuit television
6 would accurately communicate the image and demeanor of the
7 victim to the judge, jury, defendant or defendants, and attorneys.

8 (d) If the court orders the use of closed-circuit television,
9 two-way closed-circuit television shall be used, except that if the
10 impact on the victim of one or more of the factors enumerated in
11 subparagraphs (A) to (E), inclusive, of paragraph (2) of subdivision
12 (b), is shown by clear and convincing evidence to be so substantial
13 as to make the victim unavailable as a witness even if two-way
14 closed-circuit television is used, one-way closed-circuit television
15 may be used. The prosecution shall give the defendant or
16 defendants at least 30 days' written notice of the prosecution's
17 intent to seek the use of one-way closed-circuit television, unless
18 good cause is shown to the court why this 30-day notice
19 requirement should not apply.

20 (e) (1) The hearing on a motion brought pursuant to this section
21 shall be conducted out of the presence of the jury.

22 (2) Notwithstanding Section 804 of the Evidence Code or any
23 other law, the court, in determining the merits of the motion, shall
24 not compel the victim to testify at the hearing; nor shall the court
25 deny the motion on the ground that the victim has not testified.

26 (3) In determining whether the impact on an individual victim
27 of one or more of the five factors enumerated in paragraph (2) of
28 subdivision (b) is so substantial that the victim is unavailable as
29 a witness unless two-way or one-way closed-circuit television is
30 used, the court may question the victim in chambers, or at some
31 other comfortable place other than the courtroom, on the record
32 for a reasonable period of time with the support person, the
33 prosecutor, and defense counsel present. The defendant or
34 defendants shall not be present. The court shall conduct the
35 questioning of the victim and shall not permit the prosecutor or
36 defense counsel to examine the victim. The prosecutor and defense
37 counsel shall be permitted to submit proposed questions to the
38 court prior to the session in chambers. Defense counsel shall be
39 afforded a reasonable opportunity to consult with the defendant
40 or defendants prior to the conclusion of the session in chambers.

1 (f) When the court orders the testimony of a victim to be taken
2 in another place outside of the courtroom, the court shall do all
3 of the following:

4 (1) Make a brief statement on the record, outside of the presence
5 of the jury, of the reasons in support of its order. While the
6 statement need not include traditional findings of fact, the reasons
7 shall be set forth with sufficient specificity to permit meaningful
8 review and to demonstrate that discretion was exercised in a
9 careful, reasonable, and equitable manner.

10 (2) Instruct the members of the jury that they are to draw no
11 inferences from the use of closed-circuit television as a means of
12 facilitating the testimony of the victim.

13 (3) Instruct respective counsel, outside of the presence of the
14 jury, that they are to make no comment during the course of the
15 trial on the use of closed-circuit television procedures.

16 (4) Instruct a support witness, outside of the presence of the
17 jury, that he or she is not to coach, cue, or in any way influence
18 or attempt to influence the testimony of the victim.

19 (5) Order that a complete record of the examination of the
20 victim, including the images and voices of all persons who in any
21 way participate in the examination, be made and preserved on
22 videotape in addition to being stenographically recorded. The
23 videotape shall be transmitted to the clerk of the court in which
24 the action is pending and shall be made available for viewing to
25 the prosecuting attorney, the defendant or defendants, and his or
26 her attorney during ordinary business hours. The videotape shall
27 be destroyed after five years have elapsed from the date of entry
28 of judgment. If an appeal is filed, the tape shall not be destroyed
29 until a final judgment on appeal has been ordered. Any videotape
30 that is taken pursuant to this section is subject to a protective order
31 of the court for the purpose of protecting the privacy of the witness.
32 This subdivision does not affect the provisions of subdivision (b)
33 of Section 868.7.

34 (g) When the court orders the testimony of a victim to be taken
35 in another place outside the courtroom, only the victim, a support
36 person, if designated pursuant to Section 868.5, a nonuniformed
37 bailiff, any technicians necessary to operate the closed-circuit
38 equipment, and, after consultation with the prosecution and the
39 defense, a representative appointed by the court, shall be physically
40 present for the testimony. A videotape shall record the image of

1 *the victim and his or her testimony, and a separate videotape shall*
2 *record the image of the support person, if designated.*

3 *(h) When the court orders the testimony of a victim to be taken*
4 *in another place outside the courtroom, the victim shall be brought*
5 *into the judge's chambers prior to the taking of his or her testimony*
6 *to meet for a reasonable period of time with the judge, the*
7 *prosecutor, and defense counsel. A support person for the victim*
8 *may also be present, if designated pursuant to Section 868.5. This*
9 *meeting shall be for the purpose of explaining the court process*
10 *to the victim and to allow the attorneys an opportunity to establish*
11 *rapport with the victim to facilitate later questioning by*
12 *closed-circuit television. No participant shall discuss the defendant*
13 *or defendants or any of the facts of the case with the victim during*
14 *this meeting.*

15 *(i) When the court orders the testimony of a victim to be taken*
16 *in another place outside the courtroom, nothing in this section*
17 *prohibits the court from ordering the victim to be brought into the*
18 *courtroom for a limited purpose, including the identification of*
19 *the defendant or defendants as the court deems necessary.*

20 *(j) The examination shall be under oath, and the defendant or*
21 *defendants shall be able to see and hear the victim witness, and if*
22 *two-way closed-circuit television is used, the defendant's image*
23 *shall be transmitted live to the victim.*

24 *(k) Nothing in this section affects the disqualification of*
25 *witnesses pursuant to Section 701 of the Evidence Code.*

26 *(l) The cost of examination by contemporaneous closed-circuit*
27 *television ordered pursuant to this section shall be borne by the*
28 *court out of its existing budget.*

29 *(m) Nothing in this section shall be construed to prohibit a*
30 *defendant from being represented by counsel during any*
31 *closed-circuit testimony.*

32 *SEC. 7. Section 293 of the Penal Code is amended to read:*

33 293. (a) Any employee of a law enforcement agency who
34 personally receives a report from any person, alleging that the
35 person making the report has been the victim of a sex offense, or
36 was forced to commit an act of prostitution because he or she is
37 the victim of human trafficking, as defined in Section 236.1, shall
38 inform that person that his or her name will become a matter of
39 public record unless he or she requests that it not become a matter

1 of public record, pursuant to Section 6254 of the Government
2 Code.

3 (b) Any written report of an alleged sex offense shall indicate
4 that the alleged victim has been properly informed pursuant to
5 subdivision (a) and shall memorialize his or her response.

6 (c) No law enforcement agency shall disclose to any person,
7 except the prosecutor, parole officers of the Department of
8 Corrections and Rehabilitation, hearing officers of the parole
9 authority, probation officers of county probation departments, or
10 other persons or public agencies where authorized or required by
11 law, the address of a person who alleges to be the victim of a sex
12 offense *or who was forced to commit an act of prostitution because*
13 *he or she is the victim of human trafficking, as defined in Section*
14 *236.1.*

15 (d) No law enforcement agency shall disclose to any person,
16 except the prosecutor, parole officers of the Department of
17 Corrections and Rehabilitation, hearing officers of the parole
18 authority, probation offices of county probation departments, or
19 other persons or public agencies where authorized or required by
20 law, the name of a person who alleges to be the victim of a sex
21 offense *or who was forced to commit an act of prostitution because*
22 *he or she is the victim of human trafficking, as defined in Section*
23 *236.1*, if that person has elected to exercise his or her right pursuant
24 to this section and Section 6254 of the Government Code.

25 (e) For purposes of this section, sex offense means any crime
26 listed in paragraph (2) of subdivision (f) of Section 6254 of the
27 Government Code.

28 (f) Parole officers of the Department of Corrections and
29 Rehabilitation and hearing officers of the parole authority, and
30 probation officers of county probation departments, shall be entitled
31 to receive information pursuant to subdivisions (c) and (d) only if
32 the person to whom the information pertains alleges that he or she
33 is the victim of a sex offense *or was forced to commit an act of*
34 *prostitution because he or she is the victim of human trafficking,*
35 *as defined in Section 236.1*, the alleged perpetrator of which is a
36 parolee who is alleged to have committed the ~~sex~~ offense while
37 on parole, or in the case of a county probation officer, the person
38 who is alleged to have committed the ~~sex~~ offense is a probationer
39 or is under investigation by a county probation department pursuant
40 to Section 1203.

1 SEC. 8. *If the Commission on State Mandates determines that*
2 *this act contains costs mandated by the state, reimbursement to*
3 *local agencies and school districts for those costs shall be made*
4 *pursuant to Part 7 (commencing with Section 17500) of Division*
5 *4 of Title 2 of the Government Code.*

6 SECTION 1. ~~Section 236.1 of the Penal Code is amended to~~
7 ~~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 (e), a violation of this~~
13 ~~section is punishable by imprisonment in the state prison for three,~~
14 ~~four, or five years.~~

15 (c) ~~A violation of this section where the victim of the trafficking~~
16 ~~was under 18 years of age at the time of the commission of the~~
17 ~~offense is punishable by imprisonment in the state prison for four,~~
18 ~~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 through~~
22 ~~fraud, deceit, coercion, violence, duress, menace, or threat of~~
23 ~~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” means~~
31 ~~labor or services that are performed or provided by a person and~~
32 ~~are obtained or maintained through force, fraud, or coercion, or~~
33 ~~equivalent conduct that would reasonably overbear the will of the~~
34 ~~person.~~

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

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