

AMENDED IN ASSEMBLY JUNE 2, 2009

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 22, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 17

Introduced by Assembly Member Swanson

December 1, 2008

An act to amend Sections 186.2, 266k, and 13837 of the Penal Code, relating to human trafficking, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 17, as amended, Swanson. Human trafficking.

Existing law, the California Control of Profits of Organized Crime Act, provides the procedure for the forfeiture of property acquired through a pattern of criminal profiteering activity and for the forfeiture of the proceeds of a pattern of criminal profiteering activity, as specified, and requires the prosecution to file a petition for forfeiture in conjunction with certain criminal charges. Under existing law, criminal profiteering activity is defined to include specified crimes.

This bill would include abduction or procurement by fraudulent inducement for prostitution within the definition of criminal profiteering activity, as specified.

Existing law authorizes the sentencing court to impose an additional fine of up to \$5,000 on any person convicted of pimping, pandering, or procurement of a child under 16 years of age, as specified.

This bill would increase the maximum amount of additional authorized fine to \$20,000 for any person convicted of procurement of a child under 16 years of age, as specified. The bill would also authorize the court to order a defendant convicted of abducting a person under 18 years of age for the purpose of prostitution to pay an additional fine of \$20,000.

Existing law provides that every fine imposed and collected for a person convicted of pimping, pandering, or procurement of a child under 16 years of age be deposited in the Victim-Witness Assistance Fund to be available for appropriation to the ~~Office of Emergency Services~~ *California Emergency Management Agency* for grants to child exploitation and child sexual abuse victim counseling centers and prevention programs.

This bill would require that 50% of those fines collected and deposited in the Victim-Witness Assistance Fund pursuant to these provisions, including the fine authorized in the bill for abducting a minor for the purpose of prostitution, be granted to community-based organizations that serve minor victims of human trafficking.

Because this bill would increase the penalty for an existing crime, 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 no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

- 1 SECTION 1. Section 186.2 of the Penal Code is amended to
- 2 read:
- 3 186.2. For purposes of this chapter, the following definitions
- 4 apply:
- 5 (a) "Criminal profiteering activity" means any act committed
- 6 or attempted or any threat made for financial gain or advantage,
- 7 which act or threat may be charged as a crime under any of the
- 8 following sections:

- 1 (1) Arson, as defined in Section 451.
- 2 (2) Bribery, as defined in Sections 67, 67.5, and 68.
- 3 (3) Child pornography or exploitation, as defined in subdivision
- 4 (b) of Section 311.2, or Section 311.3 or 311.4, which may be
- 5 prosecuted as a felony.
- 6 (4) Felonious assault, as defined in Section 245.
- 7 (5) Embezzlement, as defined in Sections 424 and 503.
- 8 (6) Extortion, as defined in Section 518.
- 9 (7) Forgery, as defined in Section 470.
- 10 (8) Gambling, as defined in Sections 337a to 337f, inclusive,
- 11 and Section 337i, except the activities of a person who participates
- 12 solely as an individual bettor.
- 13 (9) Kidnapping, as defined in Section 207.
- 14 (10) Mayhem, as defined in Section 203.
- 15 (11) Murder, as defined in Section 187.
- 16 (12) Pimping and pandering, as defined in Section 266.
- 17 (13) Receiving stolen property, as defined in Section 496.
- 18 (14) Robbery, as defined in Section 211.
- 19 (15) Solicitation of crimes, as defined in Section 653f.
- 20 (16) Grand theft, as defined in Section 487.
- 21 (17) Trafficking in controlled substances, as defined in Sections
- 22 11351, 11352, and 11353 of the Health and Safety 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 (commencing
- 26 with Section 311) of Title 9, relating to obscene matter, or in
- 27 Chapter 7.6 (commencing with Section 313) of Title 9, relating to
- 28 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 computers,
- 37 computer systems, and computer data, as specified in Section 502.
- 38 (25) Conspiracy to commit any of the crimes listed above, as
- 39 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 Recycling
7 and Litter Reduction Act, commencing at Section 14500 of the
8 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 (30) Offenses involving the theft of a motor vehicle, as specified
13 in Section 10851 of the Vehicle Code.

14 (31) Abduction or procurement by fraudulent inducement for
15 prostitution, as defined in Section 266a.

16 (b) (1) "Pattern of criminal profiteering activity" means
17 engaging in at least two incidents of criminal profiteering, as
18 defined by this chapter, that meet the following requirements:

19 (A) Have the same or a similar purpose, result, principals,
20 victims, or methods of commission, or are otherwise interrelated
21 by distinguishing characteristics.

22 (B) Are not isolated events.

23 (C) Were committed as a criminal activity of organized crime.

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

32 (c) "Prosecuting agency" means the Attorney General or the
33 district attorney of any county.

34 (d) "Organized crime" means crime that is of a conspiratorial
35 nature and that is either of an organized nature and seeks to supply
36 illegal goods and services such as narcotics, prostitution,
37 loan-sharking, gambling, and pornography, or that, through
38 planning and coordination of individual efforts, seeks to conduct
39 the illegal activities of arson for profit, hijacking, insurance fraud,
40 smuggling, operating vehicle theft rings, fraud against the beverage

1 container recycling program, or systematically encumbering the
2 assets of a business for the purpose of defrauding creditors.
3 “Organized crime” also means crime committed by a criminal
4 street gang, as defined in subdivision (f) of Section 186.22.
5 “Organized crime” also means false or fraudulent activities,
6 schemes, or artifices, as described in Section 14107 of the Welfare
7 and Institutions Code, and the theft of personal identifying
8 information, as defined in Section 530.5.

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

11 SEC. 2. Section 266k of the Penal Code is amended to read:

12 266k. (a) Upon the conviction of any person for a violation
13 of Section 266h or 266i, the court may, in addition to any other
14 penalty or fine imposed, order the defendant to pay an additional
15 fine not to exceed five thousand dollars (\$5,000). In setting the
16 amount of the fine, the court shall consider any relevant factors
17 including, but not limited to, the seriousness and gravity of the
18 offense and the circumstances of its commission, whether the
19 defendant derived any economic gain as the result of the crime,
20 and the extent to which the victim suffered losses as a result of the
21 crime. Every fine imposed and collected under this section shall
22 be deposited in the Victim-Witness Assistance Fund to be available
23 for appropriation to fund child sexual exploitation and child sexual
24 abuse victim counseling centers and prevention programs under
25 Section 13837.

26 (b) Upon the conviction of any person for a violation of Section
27 266j or 267, the court may, in addition to any other penalty or fine
28 imposed, order the defendant to pay an additional fine not to exceed
29 twenty thousand dollars (\$20,000).

30 (c) Fifty percent of the fines collected pursuant to subdivision
31 (b) and deposited in the Victim-Witness Assistance Fund pursuant
32 to subdivision (a) shall be granted to community-based
33 organizations that serve minor victims of human trafficking.

34 (d) If the court orders a fine to be imposed pursuant to this
35 section, the actual administrative cost of collecting that fine, not
36 to exceed 2 percent of the total amount paid, may be paid into the
37 general fund of the county treasury for the use and benefit of the
38 county.

39 SEC. 3. Section 13837 of the Penal Code is amended to read:

1 13837. (a) The ~~OES~~ *California Emergency Management*
2 *Agency (Cal EMA)* shall provide grants to proposed and existing
3 child sexual exploitation and child sexual abuse victim counseling
4 centers and prevention programs, including programs for minor
5 victims of human trafficking. Grant recipients shall provide
6 appropriate in-person counseling and referral services during
7 normal business hours, and maintain other standards or services
8 which shall be determined to be appropriate by the advisory
9 committee established pursuant to Section 13836 as grant
10 conditions. The advisory committee shall identify the criteria to
11 be utilized in awarding the grants provided by this chapter before
12 any funds are allocated.

13 In order to be eligible for funding pursuant to this chapter, the
14 centers shall demonstrate an ability to receive and make use of
15 any funds available from governmental, voluntary, philanthropic,
16 or other sources which may be used to augment any state funds
17 appropriated for purposes of this chapter. Each center receiving
18 funds pursuant to this chapter shall make every attempt to qualify
19 for any available federal funding.

20 State funds provided to establish centers shall be utilized when
21 possible, as determined by the advisory committee, to expand the
22 program and shall not be expended to reduce fiscal support from
23 other public or private sources. The centers shall maintain quarterly
24 and final fiscal reports in a form to be prescribed by the
25 administering agency. In granting funds, the advisory committee
26 shall give priority to centers which are operated in close proximity
27 to medical treatment facilities.

28 (b) (1) It is the intent of the Legislature that a goal or purpose
29 of the ~~OES~~ *Cal EMA* shall be to ensure that all victims of sexual
30 assault and rape receive comprehensive, quality services, and to
31 decrease the incidence of sexual assault through school and
32 community education and prevention programs.

33 (2) The ~~OES~~ *Cal EMA* and the advisory committee established
34 pursuant to Section 13836 shall collaboratively administer sexual
35 assault/rape crisis center victim services programs and provide
36 grants to proposed and existing sexual assault services programs
37 (SASPs) operating local rape victim centers and prevention
38 programs. All SASPs shall provide the services in subparagraphs
39 (A) to (G), inclusive, and to the extent federal funding is made
40 available, shall also provide the service described in subparagraph

1 (H). The ~~OES~~ *Cal EMA* shall provide financial and technical
2 assistance to SASPs in implementing the following services:

3 (A) Crisis intervention, 24 hours per day, seven days per week.

4 (B) Followup counseling services.

5 (C) In-person counseling, including group counseling.

6 (D) Accompaniment services.

7 (E) Advocacy services.

8 (F) Information and referrals to victims and the general public.

9 (G) Community education presentations.

10 (H) Rape prevention presentations and self-defense programs.

11 (3) The funding process for distributing grant awards to SASPs
12 shall be administered as follows:

13 (A) The ~~OES~~ *Cal EMA* and the advisory committee established
14 pursuant to Section 13836 shall collaboratively adopt each of the
15 following:

16 (i) The process and standards for determining whether to grant,
17 renew, or deny funding to any SASP applying or reapplying for
18 funding under the terms of the program.

19 (ii) For SASPs applying for grants under the RFP process
20 described in subparagraph (B), a system for grading grant
21 applications in relation to the standards established pursuant to
22 clause (i), and an appeal process for applications that are denied.
23 A description of this grading system and appeal process shall be
24 provided to all SASPs as part of the application required under the
25 RFP process.

26 (iii) For SASPs reapplying for funding under the RFA process
27 described in subparagraph (D), a system for grading the
28 performance of SASPs in relation to the standards established
29 pursuant to clause (i), and an appeal process for decisions to deny
30 or reduce funding. A description of this grading system and appeal
31 process shall be provided to all SASPs receiving grants under this
32 program.

33 (B) Grants for centers that have previously not been funded or
34 were not funded in the previous cycle shall be awarded as a result
35 of a competitive request for proposal (RFP) process. The RFP
36 process shall comply with all applicable state and federal statutes
37 for sexual assault/rape crisis center funding, and to the extent
38 possible, the response to the RFP shall not exceed 25 narrative
39 pages, excluding attachments.

(C) Grants shall be awarded to SASPs that propose to maintain services previously granted funding pursuant to this section, to expand existing services or create new services, or to establish new sexual assault/rape crisis centers in underserved or unserved areas. Each grant shall be awarded for a three-year term.

(D) SASPs reapplying for grants shall not be subject to a competitive bidding grant process, but shall be subject to a request for application (RFA) process. The RFA process for a SASP reapplying for grant funds shall consist in part of an assessment of the past performance history of the SASP in relation to the standards established pursuant to subparagraph (A). The RFA process shall comply with all applicable state and federal statutes for sexual assault/rape crisis center funding, and to the extent possible, the response to the RFA shall not exceed 10 narrative pages, excluding attachments.

(E) Any SASP funded through this program in the previous grant cycle shall be funded upon reapplication, unless its past performance history fails to meet the standards established pursuant to clause (i) of subparagraph (A).

(F) The ~~OES~~ *Cal EMA* shall conduct a minimum of one site visit every three years for each agency funded to provide sexual assault/rape crisis centers. The purpose of the site visit shall be to conduct a performance assessment of, and provide subsequent technical assistance for, each center visited. The performance assessment shall include, but need not be limited to, a review of all of the following:

(i) Progress in meeting program goals and objectives.

(ii) Agency organization and facilities.

(iii) Personnel policies, files, and training.

(iv) Recordkeeping, budgeting, and expenditures.

(v) Documentation, data collection, and client confidentiality.

(G) After each site visit conducted pursuant to subparagraph (F), the ~~OES~~ *Cal EMA* shall provide a written report to the SASP summarizing the performance of the SASP, any deficiencies noted, any corrective action needed, and a deadline for corrective action to be completed. The ~~OES~~ *Cal EMA* shall also develop a corrective action plan for verifying the completion of any corrective action required. The ~~OES~~ *Cal EMA* shall submit its written report to the SASP no more than 60 days after the site visit. No grant under the RFA process shall be denied if the SASP did not receive a site

1 visit during the previous three years, unless the ~~OES~~ *Cal EMA* is
2 aware of criminal violations relative to the administration of grant
3 funding.

4 (H) SASPs receiving written reports of deficiencies or orders
5 for corrective action after a site visit shall be given no less than
6 six months' time to take corrective action before the deficiencies
7 or failure to correct may be considered in the next RFA process.
8 However, the ~~OES~~ *Cal EMA* shall have the discretion to reduce
9 the time to take corrective action in cases where the deficiencies
10 present a significant health or safety risk or when other severe
11 circumstances are found to exist. If corrective action is deemed
12 necessary, and a SASP fails to comply, or if other deficiencies
13 exist that, in the judgment of the ~~OES~~ *Cal EMA*, cannot be
14 corrected, the ~~OES~~ *Cal EMA* shall determine, using its grading
15 system, whether continued funding for the SASP should be reduced
16 or denied altogether. If a SASP has been determined to be deficient,
17 the ~~OES~~ *Cal EMA* may, at any point during the SASP's funding
18 cycle following the expiration of the period for corrective action,
19 deny or reduce any further funding.

20 (I) If a SASP applies or reapplies for funding pursuant to this
21 section and that funding is denied or reduced, the decision to deny
22 or reduce funding shall be provided in writing to the SASP, along
23 with a written explanation of the reasons for the reduction or denial
24 made in accordance with the grading system for the RFP or RFA
25 process. Except as otherwise provided, any appeal of the decision
26 to deny or reduce funding shall be made in accordance with the
27 appeal process established by the ~~OES~~ *Cal EMA*. The appeal
28 process shall allow a SASP a minimum of 30 days to appeal after
29 a decision to deny or reduce funding. All pending appeals shall be
30 resolved before final funding decisions are reached.

31 (J) It is the intent of the Legislature that priority for additional
32 funds that become available shall be given to currently funded,
33 new, or previously unfunded SASPs for expansion of services.
34 However, the ~~OES~~ *Cal EMA* may determine when expansion is
35 needed to accommodate underserved or unserved areas. If
36 supplemental funding is unavailable, the ~~OES~~ *Cal EMA* shall have
37 the authority to lower the base level of grants to all currently funded
38 SASPs in order to provide funding for currently funded, new, or
39 previously unfunded SASPs that will provide services in
40 underserved or unserved areas. However, to the extent reasonable,

1 funding reductions shall be reduced proportionately among all
2 currently funded SASPs. After the amount of funding reductions
3 has been determined, SASPs that are currently funded and those
4 applying for funding shall be notified of changes in the available
5 level of funding prior to the next application process. Funding
6 reductions made under this paragraph shall not be subject to appeal.

7 (K) Notwithstanding any other provision of this section, the
8 ~~ÖES~~ Cal EMA may reduce funding to a SASP funded pursuant to
9 this section if federal funding support is reduced. Funding
10 reductions as a result of a reduction in federal funding shall not
11 be subject to appeal.

12 (L) Nothing in this section shall be construed to supersede any
13 function or duty required by federal acts, rules, regulations, or
14 guidelines for the distribution of federal grants.

15 (M) As a condition of receiving funding pursuant to this section,
16 a SASP shall do each of the following:

17 (i) Demonstrate an ability to receive and make use of any funds
18 available from governmental, voluntary, philanthropic, or other
19 sources that may be used to augment any state funds appropriated
20 for purposes of this chapter.

21 (ii) Make every attempt to qualify for any available federal
22 funding.

23 (N) For the purposes of this paragraph, “sexual assault” means
24 an act or attempt made punishable by Section 220, 261, 261.5,
25 262, 264.1, 266c, 285, 286, 288, 288a, or 647.6.

26 (O) For the purposes of this paragraph, “sexual assault service
27 program” or “SASP” means an agency operating a sexual
28 assault/rape crisis center.

29 SEC. 4. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.

38 SEC. 5. *This act is an urgency statute necessary for the*
39 *immediate preservation of the public peace, health, or safety within*

1 *the meaning of Article IV of the Constitution and shall go into*
2 *immediate effect. The facts constituting the necessity are:*
3 *In order to protect minors in California from current and*
4 *ongoing crimes involving sexual exploitation, it is necessary that*
5 *this act take effect immediately.*

O