

Assembly Bill No. 17

Passed the Assembly September 2, 2009

Chief Clerk of the Assembly

Passed the Senate August 31, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 186.2, 186.8, 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, 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.

Under the California Control of Profits of Organized Crime Act, in all cases where property is forfeited and, if necessary, sold by the Department of General Services or a local governmental entity, the money forfeited or the proceeds of sale are required to be distributed by the state or local governmental entity in accordance with certain procedures, including to the general fund of the state or local governmental entity, whichever prosecutes.

The bill would specify that in any case involving human trafficking of minors for purposes of prostitution or lewd conduct, or in any case involving abduction or procurement by fraudulent inducement for prostitution, in lieu of the distribution procedure described above, the proceeds shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs. The bill would also require 50% of the funds deposited in the Victim-Witness Assistance Fund pursuant to this new requirement to be granted to community-based organizations that serve minor victims of human trafficking.

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. 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 California Emergency Management Agency for grants to child exploitation and child sexual abuse victim counseling centers and prevention programs.

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. The 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.

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

SECTION 1. Section 186.2 of the Penal Code is amended to read:

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

(a) “Criminal profiteering activity” means any act committed or attempted or any threat made for financial gain or advantage,

which act or threat may be charged as a crime under any of the following sections:

- (1) Arson, as defined in Section 451.
- (2) Bribery, as defined in Sections 67, 67.5, and 68.
- (3) Child pornography or exploitation, as defined in subdivision (b) of Section 311.2, or Section 311.3 or 311.4, which may be prosecuted as a felony.
- (4) Felonious assault, as defined in Section 245.
- (5) Embezzlement, as defined in Sections 424 and 503.
- (6) Extortion, as defined in Section 518.
- (7) Forgery, as defined in Section 470.
- (8) Gambling, as defined in Sections 337a to 337f, inclusive, and Section 337i, except the activities of a person who participates solely as an individual bettor.
- (9) Kidnapping, as defined in Section 207.
- (10) Mayhem, as defined in Section 203.
- (11) Murder, as defined in Section 187.
- (12) Pimping and pandering, as defined in Section 266.
- (13) Receiving stolen property, as defined in Section 496.
- (14) Robbery, as defined in Section 211.
- (15) Solicitation of crimes, as defined in Section 653f.
- (16) Grand theft, as defined in Section 487.
- (17) Trafficking in controlled substances, as defined in Sections 11351, 11352, and 11353 of the Health and Safety Code.
- (18) Violation of the laws governing corporate securities, as defined in Section 25541 of the Corporations Code.
- (19) Any of the offenses contained in Chapter 7.5 (commencing with Section 311) of Title 9, relating to obscene matter, or in Chapter 7.6 (commencing with Section 313) of Title 9, relating to harmful matter that may be prosecuted as a felony.
- (20) Presentation of a false or fraudulent claim, as defined in Section 550.
- (21) False or fraudulent activities, schemes, or artifices, as described in Section 14107 of the Welfare and Institutions Code.
- (22) Money laundering, as defined in Section 186.10.
- (23) Offenses relating to the counterfeit of a registered mark, as specified in Section 350.
- (24) Offenses relating to the unauthorized access to computers, computer systems, and computer data, as specified in Section 502.

(25) Conspiracy to commit any of the crimes listed above, as defined in Section 182.

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

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

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

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

(30) Offenses involving the theft of a motor vehicle, as specified in Section 10851 of the Vehicle Code.

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

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

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

(B) Are not isolated events.

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

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

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

(d) "Organized crime" means crime that is of a conspiratorial nature and that is either of an organized nature and seeks to supply illegal goods and services such as narcotics, prostitution, loan-sharking, gambling, and pornography, or that, through planning and coordination of individual efforts, seeks to conduct

the illegal activities of arson for profit, hijacking, insurance fraud, smuggling, operating vehicle theft rings, fraud against the beverage container recycling program, or systematically encumbering the assets of a business for the purpose of defrauding creditors. “Organized crime” also means crime committed by a criminal street gang, as defined in subdivision (f) of Section 186.22. “Organized crime” also means false or fraudulent activities, schemes, or artifices, as described in Section 14107 of the Welfare and Institutions Code, and the theft of personal identifying information, as defined in Section 530.5.

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

SEC. 2. Section 186.8 of the Penal Code is amended to read:

186.8. Notwithstanding that no response or claim has been filed pursuant to Section 186.5, in all cases where property is forfeited pursuant to this chapter and, if necessary, sold by the Department of General Services or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows:

(a) To the bona fide or innocent purchaser, conditional sales vendor, or holder of a valid lien, mortgage, or security interest, if any, up to the amount of his or her interest in the property or proceeds, when the court declaring the forfeiture orders a distribution to that person. The court shall endeavor to discover all those lienholders and protect their interests and may, at its discretion, order the proceeds placed in escrow for up to an additional 60 days to ensure that all valid claims are received and processed.

(b) To the Department of General Services or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized under this chapter.

(c) To the general fund of the state or local governmental entity, whichever prosecutes.

(d) In any case involving a violation of subdivision (b) of Section 311.2, or Section 311.3 or 311.4, in lieu of the distribution of the proceeds provided for by subdivisions (b) and (c), the proceeds shall be deposited in the county children’s trust fund, established pursuant to Section 18966 of the Welfare and

Institutions Code, of the county that filed the petition of forfeiture. If the county does not have a children's trust fund, the funds shall be deposited in the State Children's Trust Fund, established pursuant to Section 18969 of the Welfare and Institutions Code.

(e) In any case involving crimes against the state beverage container recycling program, in lieu of the distribution of proceeds provided in subdivision (c), the proceeds shall be deposited in the penalty account established pursuant to subdivision (d) of Section 14580 of the Public Resources Code, except that a portion of the proceeds equivalent to the cost of prosecution in the case shall be distributed to the local prosecuting entity that filed the petition of forfeiture.

(f) In any case involving human trafficking of minors for purposes of prostitution or lewd conduct, or in any case involving a violation of Section 266a in which the victim is a minor, in lieu of the distribution provided for in subdivision (c), the proceeds shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs under Section 13837. Fifty percent of the funds deposited in the Victim-Witness Assistance Fund pursuant to this subdivision shall be granted to community-based organizations that serve minor victims of human trafficking.

SEC. 3. Section 266k of the Penal Code is amended to read:

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

(b) Upon the conviction of any person for a violation of Section 266j or 267, the court may, in addition to any other penalty or fine

imposed, order the defendant to pay an additional fine not to exceed twenty thousand dollars (\$20,000).

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

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

SEC. 4. Section 13837 of the Penal Code is amended to read:

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

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

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

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

(2) The Cal EMA and the advisory committee established pursuant to Section 13836 shall collaboratively administer sexual assault/rape crisis center victim services programs and provide grants to proposed and existing sexual assault services programs (SASPs) operating local rape victim centers and prevention programs. All SASPs shall provide the services in subparagraphs (A) to (G), inclusive, and to the extent federal funding is made available, shall also provide the service described in subparagraph (H). The Cal EMA shall provide financial and technical assistance to SASPs in implementing the following services:

- (A) Crisis intervention, 24 hours per day, seven days per week.
- (B) Followup counseling services.
- (C) In-person counseling, including group counseling.
- (D) Accompaniment services.
- (E) Advocacy services.
- (F) Information and referrals to victims and the general public.
- (G) Community education presentations.
- (H) Rape prevention presentations and self-defense programs.

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

(A) The Cal EMA and the advisory committee established pursuant to Section 13836 shall collaboratively adopt each of the following:

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

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

(iii) For SASPs reapplying for funding under the RFA process described in subparagraph (D), a system for grading the

performance of SASPs in relation to the standards established pursuant to clause (i), and an appeal process for decisions to deny or reduce funding. A description of this grading system and appeal process shall be provided to all SASPs receiving grants under this program.

(B) Grants for centers that have previously not been funded or were not funded in the previous cycle shall be awarded as a result of a competitive request for proposal (RFP) process. The RFP 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 RFP shall not exceed 25 narrative 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 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 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 Cal EMA shall also develop a corrective action plan for verifying the completion of any corrective action required. The 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 visit during the previous three years, unless the Cal EMA is aware of criminal violations relative to the administration of grant funding.

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

(I) If a SASP applies or reapplies for funding pursuant to this section and that funding is denied or reduced, the decision to deny or reduce funding shall be provided in writing to the SASP, along with a written explanation of the reasons for the reduction or denial made in accordance with the grading system for the RFP or RFA process. Except as otherwise provided, any appeal of the decision to deny or reduce funding shall be made in accordance with the appeal process established by the Cal EMA. The appeal process shall allow a SASP a minimum of 30 days to appeal after a decision

to deny or reduce funding. All pending appeals shall be resolved before final funding decisions are reached.

(J) It is the intent of the Legislature that priority for additional funds that become available shall be given to currently funded, new, or previously unfunded SASPs for expansion of services. However, the Cal EMA may determine when expansion is needed to accommodate underserved or unserved areas. If supplemental funding is unavailable, the Cal EMA shall have the authority to lower the base level of grants to all currently funded SASPs in order to provide funding for currently funded, new, or previously unfunded SASPs that will provide services in underserved or unserved areas. However, to the extent reasonable, funding reductions shall be reduced proportionately among all currently funded SASPs. After the amount of funding reductions has been determined, SASPs that are currently funded and those applying for funding shall be notified of changes in the available level of funding prior to the next application process. Funding reductions made under this paragraph shall not be subject to appeal.

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

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

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

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

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

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

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

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect minors in California from current and ongoing crimes involving sexual exploitation, it is necessary that this act take effect immediately.

Approved _____, 2009

Governor