

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 90**

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**Introduced by Assembly Member Swanson**  
*(Coauthors: Assembly Members Blumenfeld, Dickinson, Gorell,  
Halderman, Jeffries, and Portantino)*

January 6, 2011

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An act to amend Section 236.1 of the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

AB 90, as amended, Swanson. Human trafficking: minors.

Existing law provides that any person who deprives or violates the personal liberty of another with the intent to effect or maintain certain felonies, or to obtain forced labor or services, is guilty of human trafficking.

This bill would additionally provide that a person who deprives or violates another person's liberty with the intent to effect or maintain the felony of making available to another person a person under 16 years of age for the purpose of any lewd or lascivious act, or the felony of the procurement of minors in the preparation of material depicting sexual conduct by a minor, is guilty of human trafficking.

This bill would also expand the scope of the offense of human trafficking to provide that any person who causes, induces, encourages, or persuades a person under 18 years of age to engage in a commercial sex act, as defined, with the intent to effect or maintain specified felonies, ~~or who obtains forced labor or services from a minor,~~ is guilty of human trafficking.

By expanding the scope of an existing crime, this bill 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.

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

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

1 SECTION 1. Section 236.1 of the Penal Code is amended to  
2 read:

3 236.1. (a) (1) Except as provided in paragraph (2), any person  
4 who deprives or violates the personal liberty of another with the  
5 intent to effect or maintain a felony violation of Section 266, 266h,  
6 266i, 266j, 267, 311.3, 311.4, or 518, or to obtain forced labor or  
7 services, is guilty of human trafficking.

8 (2) Any person who causes, induces, encourages, or persuades  
9 a person under 18 years of age to engage in a commercial sex act  
10 with the intent to effect or maintain a felony violation of Section  
11 266, 266h, 266i, 266j, 267, 311.3, 311.4, or 518, ~~or who obtains~~  
12 ~~forced labor or services from a minor~~, is guilty of human  
13 trafficking.

14 (3) For purposes of this section, “commercial sex act” means  
15 any sexual conduct on account of which anything of value is given  
16 or received by any person.

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

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

24 (d) (1) For purposes of this section, unlawful deprivation or  
25 violation of the personal liberty of another includes substantial  
26 and sustained restriction of another’s liberty accomplished through  
27 fraud, deceit, coercion, violence, duress, menace, or threat of  
28 unlawful injury to the victim or to another person, under

1 circumstances where the person receiving or apprehending the  
2 threat reasonably believes that it is likely that the person making  
3 the threat would carry it out.

4 (2) Duress includes knowingly destroying, concealing,  
5 removing, confiscating, or possessing any actual or purported  
6 passport or immigration document of the victim.

7 (e) For purposes of this section, “forced labor or services” means  
8 labor or services that are performed or provided by a person and  
9 are obtained or maintained through force, fraud, or coercion, or  
10 equivalent conduct that would reasonably overbear the will of the  
11 person.

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

16 (g) In addition to the penalty specified in subdivision (c), any  
17 person who commits human trafficking involving a commercial  
18 sex act where the victim of the human trafficking was under 18  
19 years of age at the time of the commission of the offense shall be  
20 punished by a fine of not more than one hundred thousand dollars  
21 (\$100,000).

22 (h) Every fine imposed and collected pursuant to this section  
23 shall be deposited in the Victim-Witness Assistance Fund to be  
24 available for appropriation to fund services for victims of human  
25 trafficking. At least 50 percent of the fines collected and deposited  
26 pursuant to this section shall be granted to community-based  
27 organizations that serve victims of human trafficking.

28 SEC. 2. No reimbursement is required by this act pursuant to  
29 Section 6 of Article XIII B of the California Constitution because  
30 the only costs that may be incurred by a local agency or school  
31 district will be incurred because this act creates a new crime or  
32 infraction, eliminates a crime or infraction, or changes the penalty  
33 for a crime or infraction, within the meaning of Section 17556 of  
34 the Government Code, or changes the definition of a crime within  
35 the meaning of Section 6 of Article XIII B of the California  
36 Constitution.

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