

AMENDED IN SENATE JUNE 27, 2011

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 Blumenfield, Dickinson, Gorell,**  
**Halderman, Jeffries, Ma, and Portantino)**  
*(Coauthors: Senators Fuller and Lieu)*

January 6, 2011

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~~An act to amend Section 236.1 of the Penal Code, relating to human trafficking.~~ *An act to amend Sections 186.2 and 186.8 of the Penal Code, relating to human trafficking.*

LEGISLATIVE COUNSEL'S DIGEST

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

*Existing law, the California Control of Profits of Organized Crime Act, provides the procedure for the forfeiture of property and proceeds acquired through 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, including human trafficking.*

*This bill would include within the definition of criminal profiteering activity any crime in which the perpetrator induces, encourages, or persuades, or causes through force, fear, coercion, deceit, violence, duress, menace, or threat of unlawful injury to the victim or to another person, a person under 18 years of age to engage in a commercial sex act.*

*Under existing law, 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.*

*This bill would include the proceeds from any case in which the perpetrator induces, encourages, or persuades, or causes through force, fear, coercion, deceit, violence, duress, menace, or threat of unlawful injury to the victim or to another person, a person under 18 years of age to engage in a commercial sex act, to 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.*

~~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 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 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:

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

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

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

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

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

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

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

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

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

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

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

24         (12) Pimping and pandering, as defined in Section 266.

25         (13) Receiving stolen property, as defined in Section 496.

26         (14) Robbery, as defined in Section 211.

27         (15) Solicitation of crimes, as defined in Section 653f.

28         (16) Grand theft, as defined in Section 487.

29         (17) Trafficking in controlled substances, as defined in Sections  
30 11351, 11352, and 11353 of the Health and Safety Code.

31         (18) Violation of the laws governing corporate securities, as  
32 defined in Section 25541 of the Corporations Code.

33         (19) Any of the offenses contained in Chapter 7.5 (commencing  
34 with Section 311) of Title 9, relating to obscene matter, or in  
35 Chapter 7.6 (commencing with Section 313) of Title 9, relating to  
36 harmful matter that may be prosecuted as a felony.

37         (20) Presentation of a false or fraudulent claim, as defined in  
38 Section 550.

- 1 (21) False or fraudulent activities, schemes, or artifices, as  
2 described in Section 14107 of the Welfare and Institutions Code.
- 3 (22) Money laundering, as defined in Section 186.10.
- 4 (23) Offenses relating to the counterfeit of a registered mark,  
5 as specified in Section 350.
- 6 (24) Offenses relating to the unauthorized access to computers,  
7 computer systems, and computer data, as specified in Section 502.
- 8 (25) Conspiracy to commit any of the crimes listed above, as  
9 defined in Section 182.
- 10 (26) Subdivision (a) of Section 186.22, or a felony subject to  
11 enhancement as specified in subdivision (b) of Section 186.22.
- 12 (27) Any offenses related to fraud or theft against the state's  
13 beverage container recycling program, including, but not limited  
14 to, those offenses specified in this subdivision and those criminal  
15 offenses specified in the California Beverage Container Recycling  
16 and Litter Reduction Act, commencing at Section 14500 of the  
17 Public Resources Code.
- 18 (28) Human trafficking, as defined in Section 236.1.
- 19 (29) *Any crime in which the perpetrator induces, encourages,*  
20 *or persuades a person under 18 years of age to engage in a*  
21 *commercial sex act. For purposes of this paragraph, a commercial*  
22 *sex act means any sexual conduct in which anything of value is*  
23 *given or received by any person, as defined in Section 236.1.*
- 24 (30) *Any crime in which the perpetrator, through force, fear,*  
25 *coercion, deceit, violence, duress, menace, or threat of unlawful*  
26 *injury to the victim or to another person, causes a person under*  
27 *18 years of age to engage in a commercial sex act. For purposes*  
28 *of this paragraph, a commercial sex act means any sexual conduct*  
29 *in which anything of value is given or received by any person, as*  
30 *defined in Section 236.1.*
- 31 ~~(29)~~
- 32 (31) Theft of personal identifying information, as defined in  
33 Section 530.5.
- 34 ~~(30)~~
- 35 (32) Offenses involving the theft of a motor vehicle, as specified  
36 in Section 10851 of the Vehicle Code.
- 37 ~~(31)~~
- 38 (33) Abduction or procurement by fraudulent inducement for  
39 prostitution, as defined in Section 266a.

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

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

7 (B) Are not isolated events.

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

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

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

19 (d) “Organized crime” means crime that is of a conspiratorial  
20 nature and that is either of an organized nature and seeks to supply  
21 illegal goods and services such as narcotics, prostitution,  
22 loan-sharking, gambling, and pornography, or that, through  
23 planning and coordination of individual efforts, seeks to conduct  
24 the illegal activities of arson for profit, hijacking, insurance fraud,  
25 smuggling, operating vehicle theft rings, fraud against the beverage  
26 container recycling program, or systematically encumbering the  
27 assets of a business for the purpose of defrauding creditors.  
28 “Organized crime” also means crime committed by a criminal  
29 street gang, as defined in subdivision (f) of Section 186.22.  
30 “Organized crime” also means false or fraudulent activities,  
31 schemes, or artifices, as described in Section 14107 of the Welfare  
32 and Institutions Code, and the theft of personal identifying  
33 information, as defined in Section 530.5.

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

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

37 186.8. Notwithstanding that no response or claim has been  
38 filed pursuant to Section 186.5, in all cases where property is  
39 forfeited pursuant to this chapter and, if necessary, sold by the  
40 Department of General Services or local governmental entity, the

1 money forfeited or the proceeds of sale shall be distributed by the  
2 state or local governmental entity as follows:

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

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

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

19 (d) In any case involving a violation of subdivision (b) of  
20 Section 311.2, or Section 311.3 or 311.4, in lieu of the distribution  
21 of the proceeds provided for by subdivisions (b) and (c), the  
22 proceeds shall be deposited in the county children's trust fund,  
23 established pursuant to Section 18966 of the Welfare and  
24 Institutions Code, of the county that filed the petition of forfeiture.  
25 If the county does not have a children's trust fund, the funds shall  
26 be deposited in the State Children's Trust Fund, established  
27 pursuant to Section 18969 of the Welfare and Institutions Code.

28 (e) In any case involving crimes against the state beverage  
29 container recycling program, in lieu of the distribution of proceeds  
30 provided in subdivision (c), the proceeds shall be deposited in the  
31 penalty account established pursuant to subdivision (d) of Section  
32 14580 of the Public Resources Code, except that a portion of the  
33 proceeds equivalent to the cost of prosecution in the case shall be  
34 distributed to the local prosecuting entity that filed the petition of  
35 forfeiture.

36 (f) In any case involving human trafficking of minors for  
37 purposes of prostitution or lewd conduct, ~~or~~ in any case involving  
38 a violation of Section 266a in which the victim is a minor, *or in*  
39 *any case described in paragraph (29) or (30) of subdivision (a)*  
40 *of Section 186.2*, in lieu of the distribution provided for in

1 subdivision (c), the proceeds shall be deposited in the  
2 Victim-Witness Assistance Fund to be available for appropriation  
3 to fund child sexual exploitation and child sexual abuse victim  
4 counseling centers and prevention programs under Section 13837.  
5 Fifty percent of the funds deposited in the Victim-Witness  
6 Assistance Fund pursuant to this subdivision shall be granted to  
7 community-based organizations that serve minor victims of human  
8 trafficking.

9 ~~SECTION 1. Section 236.1 of the Penal Code is amended to~~  
10 ~~read:~~

11 ~~236.1. (a) (1) Except as provided in paragraph (2), any person~~  
12 ~~who deprives or violates the personal liberty of another with the~~  
13 ~~intent to effect or maintain a felony violation of Section 266, 266h,~~  
14 ~~266i, 266j, 267, 311.3, 311.4, or 518, or to obtain forced labor or~~  
15 ~~services, is guilty of human trafficking.~~

16 ~~(2) Any person who causes, induces, encourages, or persuades~~  
17 ~~a person under 18 years of age to engage in a commercial sex act~~  
18 ~~with the intent to effect or maintain a felony violation of Section~~  
19 ~~266, 266h, 266i, 266j, 267, 311.3, 311.4, or 518 is guilty of human~~  
20 ~~trafficking.~~

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

24 ~~(b) Except as provided in subdivision (e), a violation of this~~  
25 ~~section is punishable by imprisonment in the state prison for three,~~  
26 ~~four, or five years.~~

27 ~~(e) A violation of this section where the victim of the trafficking~~  
28 ~~was under 18 years of age at the time of the commission of the~~  
29 ~~offense is punishable by imprisonment in the state prison for four,~~  
30 ~~six, or eight years.~~

31 ~~(d) (1) For purposes of this section, unlawful deprivation or~~  
32 ~~violation of the personal liberty of another includes substantial~~  
33 ~~and sustained restriction of another’s liberty accomplished through~~  
34 ~~fraud, deceit, coercion, violence, duress, menace, or threat of~~  
35 ~~unlawful injury to the victim or to another person, under~~  
36 ~~circumstances where the person receiving or apprehending the~~  
37 ~~threat reasonably believes that it is likely that the person making~~  
38 ~~the threat would carry it out.~~

1     ~~(2) Duress includes knowingly destroying, concealing,~~  
2 ~~removing, confiscating, or possessing any actual or purported~~  
3 ~~passport or immigration document of the victim.~~

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

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

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

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

25     ~~SEC. 2.~~

26     ~~SEC. 3.~~ No reimbursement is required by this act pursuant to  
27 Section 6 of Article XIII B of the California Constitution because  
28 the only costs that may be incurred by a local agency or school  
29 district will be incurred because this act creates a new crime or  
30 infraction, eliminates a crime or infraction, or changes the penalty  
31 for a crime or infraction, within the meaning of Section 17556 of  
32 the Government Code, or changes the definition of a crime within  
33 the meaning of Section 6 of Article XIII B of the California  
34 Constitution.