

AMENDED IN SENATE AUGUST 16, 2011

AMENDED IN SENATE JULY 12, 2011

AMENDED IN SENATE JUNE 27, 2011

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 90

Introduced by Assembly Member Swanson
(Coauthors: Assembly Members Blumenfield, Dickinson, Gorell,
Halderman, Jeffries, Ma, and Portantino)
(Coauthors: Senators Fuller and Lieu)

January 6, 2011

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, *as specified*.

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.

- 1 (3) Child pornography or exploitation, as defined in subdivision
2 (b) of Section 311.2, or Section 311.3 or 311.4, which may be
3 prosecuted as a felony.
- 4 (4) Felonious assault, as defined in Section 245.
- 5 (5) Embezzlement, as defined in Sections 424 and 503.
- 6 (6) Extortion, as defined in Section 518.
- 7 (7) Forgery, as defined in Section 470.
- 8 (8) Gambling, as defined in Sections 337a to 337f, inclusive,
9 and Section 337i, except the activities of a person who participates
10 solely as an individual bettor.
- 11 (9) Kidnapping, as defined in Section 207.
- 12 (10) Mayhem, as defined in Section 203.
- 13 (11) Murder, as defined in Section 187.
- 14 (12) Pimping and pandering, as defined in Section 266.
- 15 (13) Receiving stolen property, as defined in Section 496.
- 16 (14) Robbery, as defined in Section 211.
- 17 (15) Solicitation of crimes, as defined in Section 653f.
- 18 (16) Grand theft, as defined in Section 487.
- 19 (17) Trafficking in controlled substances, as defined in Sections
20 11351, 11352, and 11353 of the Health and Safety Code.
- 21 (18) Violation of the laws governing corporate securities, as
22 defined in Section 25541 of the Corporations Code.
- 23 (19) Any of the offenses contained in Chapter 7.5 (commencing
24 with Section 311) of Title 9, relating to obscene matter, or in
25 Chapter 7.6 (commencing with Section 313) of Title 9, relating to
26 harmful matter that may be prosecuted as a felony.
- 27 (20) Presentation of a false or fraudulent claim, as defined in
28 Section 550.
- 29 (21) False or fraudulent activities, schemes, or artifices, as
30 described in Section 14107 of the Welfare and Institutions Code.
- 31 (22) Money laundering, as defined in Section 186.10.
- 32 (23) Offenses relating to the counterfeit of a registered mark,
33 as specified in Section 350.
- 34 (24) Offenses relating to the unauthorized access to computers,
35 computer systems, and computer data, as specified in Section 502.
- 36 (25) Conspiracy to commit any of the crimes listed above, as
37 defined in Section 182.
- 38 (26) Subdivision (a) of Section 186.22, or a felony subject to
39 enhancement as specified in subdivision (b) of Section 186.22.

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

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

8 (29) Any crime in which the perpetrator induces, encourages,
9 or persuades a person under 18 years of age to engage in a
10 commercial sex act. For purposes of this paragraph, a commercial
11 sex act means any sexual conduct on account of which anything
12 of value is given or received by any person.

13 (30) Any crime in which the perpetrator, through force, fear,
14 coercion, deceit, violence, duress, menace, or threat of unlawful
15 injury to the victim or to another person, causes a person under 18
16 years of age to engage in a commercial sex act. For purposes of
17 this paragraph, a commercial sex act means any sexual conduct
18 on account of which anything of value is given or received by any
19 person.

20 (31) Theft of personal identifying information, as defined in
21 Section 530.5.

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

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

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

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

32 (B) Are not isolated events.

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

34 (2) Acts that would constitute a "pattern of criminal profiteering
35 activity" may not be used by a prosecuting agency to seek the
36 remedies provided by this chapter unless the underlying offense
37 occurred after the effective date of this chapter and the prior act
38 occurred within 10 years, excluding any period of imprisonment,
39 of the commission of the underlying offense. A prior act may not

1 be used by a prosecuting agency to seek remedies provided by this
2 chapter if a prosecution for that act resulted in an acquittal.

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

5 (d) “Organized crime” means crime that is of a conspiratorial
6 nature and that is either of an organized nature and seeks to supply
7 illegal goods and services such as narcotics, prostitution,
8 loan-sharking, gambling, and pornography, or that, through
9 planning and coordination of individual efforts, seeks to conduct
10 the illegal activities of arson for profit, hijacking, insurance fraud,
11 smuggling, operating vehicle theft rings, fraud against the beverage
12 container recycling program, or systematically encumbering the
13 assets of a business for the purpose of defrauding creditors.
14 “Organized crime” also means crime committed by a criminal
15 street gang, as defined in subdivision (f) of Section 186.22.
16 “Organized crime” also means false or fraudulent activities,
17 schemes, or artifices, as described in Section 14107 of the Welfare
18 and Institutions Code, and the theft of personal identifying
19 information, as defined in Section 530.5.

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

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

23 186.8. Notwithstanding that no response or claim has been
24 filed pursuant to Section 186.5, in all cases where property is
25 forfeited pursuant to this chapter and, if necessary, sold by the
26 Department of General Services or local governmental entity, the
27 money forfeited or the proceeds of sale shall be distributed by the
28 state or local governmental entity as follows:

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

38 (b) To the Department of General Services or local governmental
39 entity for all expenditures made or incurred by it in connection
40 with the sale of the property, including expenditures for any

1 necessary repairs, storage, or transportation of any property seized
2 under this chapter.

3 (c) To the ~~general fund~~ *General Fund* of the state or a *general*
4 *fund of a* local governmental entity, whichever prosecutes.

5 (d) In any case involving a violation of subdivision (b) of
6 Section 311.2, or Section 311.3 or 311.4, in lieu of the distribution
7 of the proceeds provided for by subdivisions (b) and (c), the
8 proceeds shall be deposited in the county children's trust fund,
9 established pursuant to Section 18966 of the Welfare and
10 Institutions Code, of the county that filed the petition of forfeiture.
11 If the county does not have a children's trust fund, the funds shall
12 be deposited in the State Children's Trust Fund, established
13 pursuant to Section 18969 of the Welfare and Institutions Code.

14 (e) In any case involving crimes against the state beverage
15 container recycling program, in lieu of the distribution of proceeds
16 provided in subdivision (c), the proceeds shall be deposited in the
17 penalty account established pursuant to subdivision (d) of Section
18 14580 of the Public Resources Code, except that a portion of the
19 proceeds equivalent to the cost of prosecution in the case shall be
20 distributed to the local prosecuting entity that filed the petition of
21 forfeiture.

22 (f) In any case involving human trafficking of minors for
23 purposes of prostitution or lewd conduct; *or* in any case involving
24 a violation of Section 266a in which the victim is a minor, ~~or in~~
25 ~~any case described in paragraph (29) or (30) of subdivision (a) of~~
26 ~~Section 186.2~~; in lieu of the distribution provided for in subdivision
27 (c), the proceeds shall be deposited in the Victim-Witness
28 Assistance Fund to be available for appropriation to fund child
29 sexual exploitation and child sexual abuse victim counseling
30 centers and prevention programs under Section 13837. Fifty percent
31 of the funds deposited in the Victim-Witness Assistance Fund
32 pursuant to this subdivision shall be granted to community-based
33 organizations that serve minor victims of human trafficking.

34 (g) (1) *In any case described in paragraph (29) or (30) of*
35 *subdivision (a) of Section 186.2, in lieu of the distribution provided*
36 *for in subdivision (c), the proceeds shall be deposited in the*
37 *Victim-Witness Assistance Fund to be available for appropriation*
38 *to fund child sexual exploitation and child sexual abuse victim*
39 *counseling centers and prevention programs under Section 13837.*
40 *Fifty percent of the funds deposited in the Victim-Witness*

1 *Assistance Fund pursuant to this subdivision shall be granted to*
2 *community-based organizations that serve minor victims of human*
3 *trafficking.*

4 *(2) Notwithstanding paragraph (1), any proceeds specified in*
5 *paragraph (1) that would otherwise be distributed to the General*
6 *Fund of the state under subdivision (c) pursuant to a paragraph*
7 *in subdivision (a) of Section 186.2 other than paragraph (29) or*
8 *(30) of subdivision (a) of Section 186.2, shall, except as otherwise*
9 *required by law, continue to be distributed to the General Fund*
10 *of the state as specified in subdivision (c).*

11 SEC. 3. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.