

AMENDED IN ASSEMBLY APRIL 19, 2012

AMENDED IN ASSEMBLY MARCH 22, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1571

Introduced by Assembly Member Donnelly

*(Coauthors: Assembly Members Fletcher, Grove, Hagman, Miller,
and Olsen)*

(Coauthors: Senators Anderson, Dutton, Harman, Huff, and La Malfa)

February 1, 2012

An act to amend ~~Sections~~ *Section 236.1* of, and to add ~~Section 261.3~~ *to*, the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

AB 1571, as amended, Donnelly. Crimes: human trafficking.

Under existing law, a person who deprives or violates the personal liberty of another with intent to effect or maintain specified felonies, including pandering or extortion, or to obtain forced labor or services, is guilty of human trafficking. Under existing law, a person convicted of human trafficking is punished by imprisonment in a state prison for 3, 4, or 5 years, unless the victim is under 18 years of age in which case the term of imprisonment is 4, 6, or 8 years. Existing law requires a fine of \$100,000 when a person is convicted of human trafficking involving a commercial sex act and the victim is under 18 years of age.

This bill would make the crime of human trafficking, where the victim is an adult and the crime involves a commercial sex act, punishable by 10, 12, or 14 years in state prison and, where the victim is a minor and the crime involves a commercial sex act, punishable by 25 years to life in a state prison.

~~Existing law defines rape and unlawful sexual intercourse with a minor and prescribes penalties for these crimes.~~

~~This bill would require a person who commits one of these crimes while in the process of committing human trafficking or human smuggling, as defined, to be punished by an additional 10 years in state prison. The bill would also require all time to be served in state prison, including time for the underlying offense that would ordinarily be served in county jail. By~~

~~By creating a new crime and increasing duties for local prosecutors, 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) A person who deprives or violates the personal
4 liberty of another with the intent to effect or maintain a felony
5 violation of Section 266, 266h, 266i, 267, 311.4, or 518, or to
6 obtain forced labor or services, is guilty of human trafficking.

7 (b) (1) Except as provided in paragraph (2), (3), or (4), a
8 violation of this section is punishable by imprisonment in the state
9 prison for three, four, or five years.

10 (2) A violation of this section where the victim of the trafficking
11 was under 18 years of age at the time of the commission of the
12 offense, but where the crime did not involve a commercial sex act,
13 is punishable by imprisonment in the state prison for four, six, or
14 eight years.

15 (3) A violation of this section where the victim of the trafficking
16 was 18 years of age or older and where the human trafficking
17 involved a commercial sex act shall be punishable by imprisonment
18 in the state prison for 10, 12, or 14 years.

19 (4) A violation of this section where the victim of the trafficking
20 was under 18 years of age at the time of the commission of the

1 offense and the human trafficking involved a commercial sex act
2 shall be punishable by imprisonment in the state prison for 25
3 years to life.

4 (c) (1) For purposes of this section, unlawful deprivation or
5 violation of the personal liberty of another includes substantial
6 and sustained restriction of another’s liberty accomplished through
7 fraud, deceit, coercion, violence, duress, menace, or threat of
8 unlawful injury to the victim or to another person, under
9 circumstances where the person receiving or apprehending the
10 threat reasonably believes that it is likely that the person making
11 the threat would carry it out.

12 (2) Duress includes knowingly destroying, concealing,
13 removing, confiscating, or possessing an actual or purported
14 passport or immigration document of the victim.

15 (d) For purposes of this section, “forced labor or services” means
16 labor or services that are performed or provided by a person and
17 are obtained or maintained through force, fraud, or coercion, or
18 equivalent conduct that would reasonably overbear the will of the
19 person.

20 (e) The Legislature finds that the definition of human trafficking
21 in this section is equivalent to the federal definition of a severe
22 form of trafficking found in Section 7102(8) of Title 22 of the
23 United States Code.

24 (f) (1) In addition to the penalty specified in paragraph (4) of
25 subdivision (b), a person who commits human trafficking involving
26 a commercial sex act where the victim of the human trafficking
27 was under 18 years of age at the time of the commission of the
28 offense shall be punished by a fine of not more than one hundred
29 thousand dollars (\$100,000).

30 (2) As used in this section, “commercial sex act” means any
31 sexual conduct on account of which anything of value is given or
32 received by any person.

33 (g) Every fine imposed and collected pursuant to this section
34 shall be deposited in the Victim-Witness Assistance Fund to be
35 available for appropriation to fund services for victims of human
36 trafficking. At least 50 percent of the fines collected and deposited
37 pursuant to this section shall be granted to community-based
38 organizations that serve victims of human trafficking.

39 ~~SEC. 2.— Section 261.3 is added to the Penal Code, to read:~~

1 ~~261.3. (a) A person who commits a violation of Section 261~~
2 ~~or 261.5 while in the process of committing a violation of Section~~
3 ~~236.1, or while conducting a human smuggling operation shall be~~
4 ~~punished by 10 years in a state prison. This penalty shall be in~~
5 ~~addition to other penalties applied under law.~~

6 ~~(b) If the violation of Section 261.5 would otherwise be served~~
7 ~~in a county jail and if the enhancement provided in this section is~~
8 ~~imposed all time shall be served in state prison.~~

9 ~~(c) For purposes of this section, “human smuggling” means the~~
10 ~~importation of people into the country via the deliberate evasion~~
11 ~~of immigration laws. This includes bringing illegal aliens into the~~
12 ~~country, as well as the unlawful transportation and harboring of~~
13 ~~aliens already in the country illegally.~~

14 ~~SEC. 3.~~

15 ~~SEC. 2.~~ No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.