AMENDED IN SENATE AUGUST 8, 2012

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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 2466

Introduced by Assembly Member Blumenfield
(Coauthors: Senators Anderson, Calderon, and Hancock)

February 24, 2012

An act to add Section 236.6 to the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

AB 2466, as amended, Blumenfield. Human trafficking: seizure of assets.

Existing law makes it a felony, generally known as human trafficking, to deprive or violate the personal liberty of another with the intent to effect or maintain a felony violation of, among other crimes, pimping, pandering, and abducting a minor for the purpose of prostitution. Under existing law, the crime of human trafficking is punishable by a fine not to exceed $1,000 or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. Existing law requires the court to order a person who is convicted of a crime to pay a restitution fine, as prescribed, and restitution to the victim or victims for the full amount of economic loss, unless the court finds compelling

and extraordinary reasons for not doing so and states them on the record. Additionally, under existing law, real property used to facilitate the commission of human trafficking may be determined to be a nuisance and remedies may be imposed against that property.

This bill would authorize the prosecuting agency, at the same time as the filing of a complaint or indictment charging human trafficking, to file a petition for protective relief necessary to preserve property or assets that could be used to pay for remedies relating to human trafficking, including, but not limited to, restitution and fines. The bill would specify the process by which a preliminary injunction, temporary restraining order, or sale of property or assets may be ordered and the process for distribution of the assets if the defendant is convicted.

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

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

SECTION 1. Section 236.6 is added to the Penal Code, to read:

236.6. (a) To prevent dissipation or secreting of assets or property, the prosecuting agency may, at the same time as or subsequent to the filing of a complaint or indictment charging human trafficking under Section 236.1, file a petition with the criminal division of the superior court of the county in which the accusatory pleading was filed, seeking a temporary restraining order, preliminary injunction, the appointment of a receiver, or any other protective relief necessary to preserve the property or assets. The filing of the petition shall start a proceeding that shall be pendent to the criminal proceeding and maintained solely to effect the remedies available for this crime, including, but not limited to, payment of restitution and payment of fines. The proceeding shall not be subject to or governed by the provisions of the Civil Discovery Act as set forth in Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. The petition shall allege that the defendant has been charged with human trafficking under Section 236.1 and shall identify that criminal proceeding and the assets and property to be affected by an order issued pursuant to this section.

(b) The prosecuting agency shall, by personal service or registered mail, provide notice of the petition to every person who may have an interest in the property specified in the petition.

Additionally, the notice shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property affected by the order is located. The notice shall state that any interested person may file a verified claim with the superior court stating the nature and amount of his or her claimed interest. The notice shall set forth the time within which a claim of interest in the protected property shall be filed.

(c) If the property to be preserved is real property, the prosecuting agency shall record, at the time of filing the petition, a lis pendens in each county in which the real property is situated that specifically identifies the property by legal description, the name of the owner of record, as shown on the latest equalized assessment roll, and the assessor's parcel number.

(d) If the property to be preserved consists of assets under the control of a banking or financial institution, the prosecuting agency, at the time of filing the petition, may obtain an order from the court directing the banking or financial institution to immediately disclose the account numbers and value of the assets of the accused held by the banking or financial institution. The prosecuting agency shall file a supplemental petition, specifically identifying which banking or financial institution accounts shall be subject to a temporary restraining order, preliminary injunction, or other protective remedy.

(e) A person claiming an interest in the protected property or assets may, at any time within 30 days from the date of the first publication of the notice of the petition, or within 30 days after receipt of actual notice, whichever is later, file with the superior court of the county in which the action is pending a verified claim stating the nature and amount of his or her interest in the property or assets. A verified copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate.

(f) Concurrent with or subsequent to the filing of the petition, the prosecuting agency may move the superior court for, and the superior court may issue, any of the following pendente lite orders to preserve the status quo of the property or assets alleged in the petition:

(1) An injunction to restrain any person from transferring, encumbering, hypothecating, or otherwise disposing of the property or assets.

(2) Appointment of a receiver to take possession of, care for, manage, and operate the assets and properties so that they may be maintained and preserved. The court may order that a receiver appointed pursuant to this section shall be compensated for all reasonable expenditures made or incurred by him or her in connection with the possession, care, management, and operation of property or assets that are subject to the provisions of this section.

(3) Requiring a bond or other undertaking, in lieu of other orders, of a value sufficient to ensure the satisfaction of restitution and fines imposed pursuant to Section 236.1.

(g) The following procedures shall be followed in processing the petition:

(1) No preliminary injunction shall be granted or receiver appointed without notice to the interested parties and a hearing to determine that the order is necessary to preserve the property or assets, pending the outcome of the criminal proceedings. However, a temporary restraining order may be issued pending that hearing pursuant to the provisions of Section 527 of the Code of Civil Procedure. The temporary restraining order may be based upon the sworn declaration of a peace officer with personal knowledge of the criminal investigation that establishes probable cause to believe that human trafficking has taken place and that the amount of restitution and fines established pursuant to subdivision (f) exceeds or equals the worth of the property or assets subject to the temporary restraining order. The declaration may include the hearsay statements of witnesses to establish the necessary facts. The temporary restraining order may be issued without notice upon a showing of good cause to the court.

(2) The defendant, or a person who has filed a verified claim, shall have the right to have the court conduct an order to show cause hearing within 10 days of the service of the request for a hearing upon the prosecuting agency, in order to determine whether the temporary restraining order should remain in effect, whether relief should be granted from a lis pendens recorded pursuant to subdivision (c), or whether an existing order should be modified in the interests of justice. Upon a showing of good cause, the hearing shall be held within two days of the service of the request for a hearing upon the prosecuting agency.

(3) In determining whether to issue a preliminary injunction or temporary restraining order in a proceeding brought by a prosecuting agency in conjunction with or subsequent to the filing of an allegation pursuant to this section, the court has the discretion to consider any matter that it deems reliable and appropriate, including hearsay statements, in order to reach a just and equitable decision. The court shall weigh the relative degree of certainty of the outcome on the merits and the consequences to each of the parties of granting the interim relief. If the prosecution is likely to prevail on the merits and the risk of the dissipation of assets outweighs the potential harm to the defendants and the interested parties, the court shall grant injunctive relief. The court shall give significant weight to the following factors:

(A) The public interest in preserving the property or assets pendente lite.

(B) The difficulty of preserving the property or assets pendente lite where the underlying alleged crimes involve human trafficking.

(C) The fact that the requested relief is being sought by a public prosecutor on behalf of alleged victims of human trafficking.

(D) The likelihood that substantial public harm has occurred where the human trafficking is alleged to have been committed.

(E) The significant public interest involved in compensating victims of human trafficking and paying court-imposed restitution and fines.

(4) The court, in making its orders, may consider a defendant's request for the release of a portion of the property affected by this section in order to pay reasonable legal fees in connection with the criminal proceeding, necessary and appropriate living expenses pending trial and sentencing, and for the purpose of posting bail. The court shall weigh the needs of the public to retain the property against the needs of the defendant to a portion of the property. The court shall consider the factors listed in paragraph (3) prior to making an order releasing property for these purposes.

(5) The court, in making its orders, shall seek to protect the interests of innocent third parties, including an innocent spouse, who were not involved in the commission of criminal activity.

(6) The orders shall be no more extensive than necessary to effect the remedies available for the crime. In determining the amount of property to be held, the court shall ascertain the amount

of fines that are assessed for a violation of this chapter and the amount of possible ~~of~~ restitution.

(7) A petition filed pursuant to this section is part of the criminal proceedings for purposes of appointment of counsel and shall be assigned to the criminal division of the superior court of the county in which the accusatory pleading was filed.

(8) Based upon a noticed motion brought by the receiver appointed pursuant to paragraph (2) of subdivision (f), the court may order an interlocutory sale of property named in the petition when the property is liable to perish, to waste, or to be significantly reduced in value, or when the expenses of maintaining the property are disproportionate to the value of the property. The proceeds of the interlocutory sale shall be deposited with the court or as directed by the court pending determination of the proceeding pursuant to this section.

(9) The court may make any orders that are necessary to preserve the continuing viability of a lawful business enterprise that is affected by the issuance of a temporary restraining order or preliminary injunction issued pursuant to this section.

(10) In making its orders, the court shall seek to prevent the property or asset subject to a temporary restraining order or preliminary injunction from perishing, spoiling, going to waste, or otherwise being significantly reduced in value. Where the potential for diminution in value exists, the court shall appoint a receiver to dispose of or otherwise protect the value of the property or asset.

(11) A preservation order shall not be issued against an asset of a business that is not likely to be dissipated and that may be subject to levy or attachment to meet the purposes of this section.

(h) If the allegation of human trafficking is dismissed or found by the trier of fact to be untrue, a preliminary injunction or temporary restraining order issued pursuant to this section shall be dissolved. If a jury is the trier of fact, and the jury is unable to reach a unanimous verdict, the court shall have the discretion to continue or dissolve all or a portion of the preliminary injunction or temporary restraining order based upon the interests of justice. However, if the prosecuting agency elects not to retry the case, a preliminary injunction or temporary restraining order issued pursuant to this section shall be dissolved.

(i) (1) (A) If the defendant is convicted of human trafficking, the trial judge shall continue the preliminary injunction or temporary restraining order until the date of the criminal sentencing and shall make a finding at that time as to what portion, if any, of the property or assets subject to the preliminary injunction or temporary restraining order shall be levied upon to pay fines and restitution to victims of the crime. The order imposing fines and restitution may exceed the total worth of the property or assets subjected to the preliminary injunction or temporary restraining order. The court may order the immediate transfer of the property or assets to satisfy a restitution order issued pursuant to Section 1202.4 and a fine imposed pursuant to this chapter.

(B) If the execution of judgment is stayed pending an appeal of an order of the superior court pursuant to this section, the preliminary injunction or temporary restraining order shall be maintained in full force and effect during the pendency of the appellate period.

(2) The order imposing fines and restitution shall not affect the interest in real property of a third party that was acquired prior to the recording of the lis pendens, unless the property was obtained from the defendant other than as a bona fide purchaser for value. If any assets or property affected by this section are subject to a valid lien, mortgage, security interest, or interest under a conditional sales contract and the amount due to the holder of the lien, mortgage, interest, or contract is less than the appraised value of the property, that person may pay to the state or the local government that initiated the proceeding the amount of the difference between the appraised value of the property and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon that payment, the state or local entity shall relinquish all claims to the property. If the holder of the interest elects not to make that payment to the state or local governmental entity, the interest in the property shall be deemed transferred to the state or local governmental entity and any indicia of ownership of the property shall be confirmed in the state or local governmental entity. The appraised value shall be determined as of the date judgment is entered either by agreement between the holder of the lien, mortgage, security interest, or interest under a conditional sales contract and the governmental entity involved or, if they cannot agree, then by a court-appointed appraiser for

the county in which the action is brought. A person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract shall be paid the appraised value of his or her interest.

(3) In making its final order, the court shall seek to protect the legitimately acquired interests of innocent third ~~persons~~ *parties*, including an innocent spouse, who were not involved in the commission of criminal activity.

(j) In all cases where property is to be levied upon pursuant to this section, a receiver appointed by the court shall be empowered to liquidate all property or assets, which shall be distributed in the following order of priority:

(1) To the receiver, or court-appointed appraiser, for all reasonable expenditures made or incurred by him or her in connection with the sale of the property or liquidation of assets, including all reasonable expenditures for necessary repairs, storage, or transportation of property levied upon under this section.

(2) To a holder of a valid lien, mortgage, or security interest, up to the amount of his or her interest in the property or proceeds.

(3) To a victim as restitution for human trafficking that was alleged in the accusatory pleading and that was proven by the prosecution.

(4) For payment of a fine imposed. The proceeds obtained in payment of a fine shall be paid ~~to the treasurer of the county in which the judgment was entered or, if the action was undertaken by the Attorney General, to the Treasurer for deposit in the General Fund~~ *in the manner set forth in subdivision (h) of Section 236.1*.

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