

**ASSEMBLY BILL**

**No. 1791**

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**Introduced by Assembly Member Maienschein**

February 18, 2014

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An act to amend Sections 236.1 and 647 of the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

AB 1791, as introduced, Maienschein. Human trafficking.

Existing law makes it a crime to engage in specified forms of disorderly conduct, including soliciting or agreeing to engage in or engaging in any act of prostitution. Those crimes are punishable as misdemeanors.

Existing law, the Sex Offender Registration Act, requires persons who are convicted of specified sex offenses to register with local authorities while residing, located, attending school, or working in this state. The willful failure to register, as required, is a misdemeanor or a felony, depending upon the underlying offense. These provisions do not apply to defendants who are convicted of the provisions of disorderly conduct relating to prostitution.

Existing law provides that a person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation of specified crimes, including specified sex offenses and extortion, is guilty of human trafficking and subject to punishment by imprisonment in the state prison for 5, 8, or 12 years and a fine of not more than \$500,000, or, if the crime involved force, fear, fraud, or specified coercive acts, 15 years to life and a fine of not more than \$500,000. A person who is convicted

of one of these offenses is required to register as a sex offender pursuant to the Sex Offender Registration Act.

This bill would expand the scope of that crime, and the Sex Offender Registration Act, to apply to a person who recruits, harbors, transports, provides, sells, purchases, or obtains, or attempts to recruit, harbor, transport, provide, sell, purchase, or obtain, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation of one of the list of offenses specified under existing law. In addition, the bill would expand that list of offenses to include additional crimes relating to procuring prostitution, including the forms of disorderly conduct relating to prostitution that are currently punishable as misdemeanor offenses, thereby making those offenses punishable as felonies. Because the bill would impose additional costs on local law enforcement entities, the 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) Any person who deprives or violates the personal  
4 liberty of another with the intent to obtain forced labor or services,  
5 is guilty of human trafficking and shall be punished by  
6 imprisonment in the state prison for 5, 8, or 12 years and a fine of  
7 not more than five hundred thousand dollars (\$500,000).  
8 (b) Any person who deprives or violates the personal liberty of  
9 another with the intent to effect or maintain a violation of Section  
10 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5,  
11 311.6, or 518 is guilty of human trafficking and shall be punished  
12 by imprisonment in the state prison for 8, 14, or 20 years and a  
13 fine of not more than five hundred thousand dollars (\$500,000).  
14 (c) Any person who *recruits, harbors, transports, provides,*  
15 *sells, purchases, obtains,* causes, induces, or persuades, or attempts

1 to *recruit, harbor, transport, provide, sell, purchase, obtain, cause,*  
2 induce, or persuade, a person who is a minor at the time of  
3 commission of the offense to engage in a commercial sex act, with  
4 the intent to effect or maintain a violation of Section 266, *266e,*  
5 *266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or*  
6 *518, or subdivision (b) of Section 647,* is guilty of human  
7 trafficking. A violation of this subdivision is punishable by  
8 imprisonment in the state prison as follows:

9 (1) Five, 8, or 12 years and a fine of not more than five hundred  
10 thousand dollars (\$500,000).

11 (2) Fifteen years to life and a fine of not more than five hundred  
12 thousand dollars (\$500,000) when the offense involves force, fear,  
13 fraud, deceit, coercion, violence, duress, menace, or threat of  
14 unlawful injury to the victim or to another person.

15 (d) In determining whether a minor was *recruited, harbored,*  
16 *transported, provided, sold, purchased, obtained, caused, induced,*  
17 or persuaded to engage in a commercial sex act, the totality of the  
18 circumstances, including the age of the victim, his or her  
19 relationship to the trafficker or agents of the trafficker, and any  
20 handicap or disability of the victim, shall be considered.

21 (e) Consent by a victim of human trafficking who is a minor at  
22 the time of the commission of the offense is not a defense to a  
23 criminal prosecution under this section.

24 (f) Mistake of fact as to the age of a victim of human trafficking  
25 who is a minor at the time of the commission of the offense is not  
26 a defense to a criminal prosecution under this section.

27 (g) The Legislature finds that the definition of human trafficking  
28 in this section is equivalent to the federal definition of a severe  
29 form of trafficking found in Section ~~7102(8)~~ 7102(9) of Title 22  
30 of the United States Code.

31 (h) For purposes of this chapter, the following definitions apply:

32 (1) “Coercion” includes any scheme, plan, or pattern intended  
33 to cause a person to believe that failure to perform an act would  
34 result in serious harm to or physical restraint against any person;  
35 the abuse or threatened abuse of the legal process; debt bondage;  
36 or providing and facilitating the possession of any controlled  
37 substance to a person with the intent to impair the person’s  
38 judgment.

39 (2) “Commercial sex act” means sexual conduct on account of  
40 which anything of value is given or received by any person.

1 (3) “Deprivation or violation of the personal liberty of another”  
2 includes substantial and sustained restriction of another’s liberty  
3 accomplished through force, fear, fraud, deceit, coercion, violence,  
4 duress, menace, or threat of unlawful injury to the victim or to  
5 another person, under circumstances where the person receiving  
6 or apprehending the threat reasonably believes that it is likely that  
7 the person making the threat would carry it out.

8 (4) “Duress” includes a direct or implied threat of force,  
9 violence, danger, hardship, or retribution sufficient to cause a  
10 reasonable person to acquiesce in or perform an act which he or  
11 she would otherwise not have submitted to or performed; a direct  
12 or implied threat to destroy, conceal, remove, confiscate, or possess  
13 any actual or purported passport or immigration document of the  
14 victim; or knowingly destroying, concealing, removing,  
15 confiscating, or possessing any actual or purported passport or  
16 immigration document of the victim.

17 (5) “Forced labor or services” means labor or services that are  
18 performed or provided by a person and are obtained or maintained  
19 through force, fraud, duress, or coercion, or equivalent conduct  
20 that would reasonably overbear the will of the person.

21 (6) “Great bodily injury” means a significant or substantial  
22 physical injury.

23 (7) “Minor” means a person less than 18 years of age.

24 (8) “Serious harm” includes any harm, whether physical or  
25 nonphysical, including psychological, financial, or reputational  
26 harm, that is sufficiently serious, under all the surrounding  
27 circumstances, to compel a reasonable person of the same  
28 background and in the same circumstances to perform or to  
29 continue performing labor, services, or commercial sexual acts in  
30 order to avoid incurring that harm.

31 (i) The total circumstances, including the age of the victim, the  
32 relationship between the victim and the trafficker or agents of the  
33 trafficker, and any handicap or disability of the victim, shall be  
34 factors to consider in determining the presence of “deprivation or  
35 violation of the personal liberty of another,” “duress,” and  
36 “coercion” as described in this section.

37 SEC. 2. Section 647 of the Penal Code is amended to read:

38 647. Except as provided in *Section 236.1 and in* subdivision  
39 (l), every person who commits any of the following acts is guilty  
40 of disorderly conduct, a misdemeanor:

1 (a) Who solicits anyone to engage in or who engages in lewd  
2 or dissolute conduct in any public place or in any place open to  
3 the public or exposed to public view.

4 (b) Who solicits or who agrees to engage in or who engages in  
5 any act of prostitution. A person agrees to engage in an act of  
6 prostitution when, with specific intent to so engage, he or she  
7 manifests an acceptance of an offer or solicitation to so engage,  
8 regardless of whether the offer or solicitation was made by a person  
9 who also possessed the specific intent to engage in prostitution.  
10 No agreement to engage in an act of prostitution shall constitute  
11 a violation of this subdivision unless some act, in addition to the  
12 agreement, is done within this state in furtherance of the  
13 commission of an act of prostitution by the person agreeing to  
14 engage in that act. As used in this subdivision, “prostitution”  
15 includes any lewd act between persons for money or other  
16 consideration.

17 (c) Who accosts other persons in any public place or in any  
18 place open to the public for the purpose of begging or soliciting  
19 alms.

20 (d) Who loiters in or about any toilet open to the public for the  
21 purpose of engaging in or soliciting any lewd or lascivious or any  
22 unlawful act.

23 (e) Who lodges in any building, structure, vehicle, or place,  
24 whether public or private, without the permission of the owner or  
25 person entitled to the possession or in control of it.

26 (f) Who is found in any public place under the influence of  
27 intoxicating liquor, any drug, controlled substance, toluene, or any  
28 combination of any intoxicating liquor, drug, controlled substance,  
29 or toluene, in a condition that he or she is unable to exercise care  
30 for his or her own safety or the safety of others, or by reason of  
31 his or her being under the influence of intoxicating liquor, any  
32 drug, controlled substance, toluene, or any combination of any  
33 intoxicating liquor, drug, or toluene, interferes with or obstructs  
34 or prevents the free use of any street, sidewalk, or other public  
35 way.

36 (g) When a person has violated subdivision (f), a peace officer,  
37 if he or she is reasonably able to do so, shall place the person, or  
38 cause him or her to be placed, in civil protective custody. The  
39 person shall be taken to a facility, designated pursuant to Section  
40 5170 of the Welfare and Institutions Code, for the 72-hour

1 treatment and evaluation of inebriates. A peace officer may place  
2 a person in civil protective custody with that kind and degree of  
3 force which would be lawful were he or she effecting an arrest for  
4 a misdemeanor without a warrant. A person who has been placed  
5 in civil protective custody shall not thereafter be subject to any  
6 criminal prosecution or juvenile court proceeding based on the  
7 facts giving rise to this placement. This subdivision shall not apply  
8 to the following persons:

9 (1) Any person who is under the influence of any drug, or under  
10 the combined influence of intoxicating liquor and any drug.

11 (2) Any person who a peace officer has probable cause to believe  
12 has committed any felony, or who has committed any misdemeanor  
13 in addition to subdivision (f).

14 (3) Any person who a peace officer in good faith believes will  
15 attempt escape or will be unreasonably difficult for medical  
16 personnel to control.

17 (h) Who loiters, prowls, or wanders upon the private property  
18 of another, at any time, without visible or lawful business with the  
19 owner or occupant. As used in this subdivision, “loiter” means to  
20 delay or linger without a lawful purpose for being on the property  
21 and for the purpose of committing a crime as opportunity may be  
22 discovered.

23 (i) Who, while loitering, prowling, or wandering upon the private  
24 property of another, at any time, peeks in the door or window of  
25 any inhabited building or structure, without visible or lawful  
26 business with the owner or occupant.

27 (j) (1) Any person who looks through a hole or opening, into,  
28 or otherwise views, by means of any instrumentality, including,  
29 but not limited to, a periscope, telescope, binoculars, camera,  
30 motion picture camera, camcorder, or mobile phone, the interior  
31 of a bedroom, bathroom, changing room, fitting room, dressing  
32 room, or tanning booth, or the interior of any other area in which  
33 the occupant has a reasonable expectation of privacy, with the  
34 intent to invade the privacy of a person or persons inside. This  
35 subdivision shall not apply to those areas of a private business  
36 used to count currency or other negotiable instruments.

37 (2) Any person who uses a concealed camcorder, motion picture  
38 camera, or photographic camera of any type, to secretly videotape,  
39 film, photograph, or record by electronic means, another,  
40 identifiable person under or through the clothing being worn by

1 that other person, for the purpose of viewing the body of, or the  
2 undergarments worn by, that other person, without the consent or  
3 knowledge of that other person, with the intent to arouse, appeal  
4 to, or gratify the lust, passions, or sexual desires of that person and  
5 invade the privacy of that other person, under circumstances in  
6 which the other person has a reasonable expectation of privacy.

7 (3) (A) Any person who uses a concealed camcorder, motion  
8 picture camera, or photographic camera of any type, to secretly  
9 videotape, film, photograph, or record by electronic means, another,  
10 identifiable person who may be in a state of full or partial undress,  
11 for the purpose of viewing the body of, or the undergarments worn  
12 by, that other person, without the consent or knowledge of that  
13 other person, in the interior of a bedroom, bathroom, changing  
14 room, fitting room, dressing room, or tanning booth, or the interior  
15 of any other area in which that other person has a reasonable  
16 expectation of privacy, with the intent to invade the privacy of that  
17 other person.

18 (B) Neither of the following is a defense to the crime specified  
19 in this paragraph:

20 (i) The defendant was a cohabitant, landlord, tenant, cotenant,  
21 employer, employee, or business partner or associate of the victim,  
22 or an agent of any of these.

23 (ii) The victim was not in a state of full or partial undress.

24 (4) (A) Any person who photographs or records by any means  
25 the image of the intimate body part or parts of another identifiable  
26 person, under circumstances where the parties agree or understand  
27 that the image shall remain private, and the person subsequently  
28 distributes the image taken, with the intent to cause serious  
29 emotional distress, and the depicted person suffers serious  
30 emotional distress.

31 (B) As used in this paragraph, intimate body part means any  
32 portion of the genitals, and in the case of a female, also includes  
33 any portion of the breasts below the top of the areola, that is either  
34 uncovered or visible through less than fully opaque clothing.

35 (C) Nothing in this subdivision precludes punishment under  
36 any section of law providing for greater punishment.

37 (k) In any accusatory pleading charging a violation of  
38 subdivision (b), if the defendant has been once previously convicted  
39 of a violation of that subdivision, the previous conviction shall be  
40 charged in the accusatory pleading. If the previous conviction is

1 found to be true by the jury, upon a jury trial, or by the court, upon  
2 a court trial, or is admitted by the defendant, the defendant shall  
3 be imprisoned in a county jail for a period of not less than 45 days  
4 and shall not be eligible for release upon completion of sentence,  
5 on probation, on parole, on work furlough or work release, or on  
6 any other basis until he or she has served a period of not less than  
7 45 days in a county jail. In all cases in which probation is granted,  
8 the court shall require as a condition thereof that the person be  
9 confined in a county jail for at least 45 days. In no event does the  
10 court have the power to absolve a person who violates this  
11 subdivision from the obligation of spending at least 45 days in  
12 confinement in a county jail.

13 In any accusatory pleading charging a violation of subdivision  
14 (b), if the defendant has been previously convicted two or more  
15 times of a violation of that subdivision, each of these previous  
16 convictions shall be charged in the accusatory pleading. If two or  
17 more of these previous convictions are found to be true by the jury,  
18 upon a jury trial, or by the court, upon a court trial, or are admitted  
19 by the defendant, the defendant shall be imprisoned in a county  
20 jail for a period of not less than 90 days and shall not be eligible  
21 for release upon completion of sentence, on probation, on parole,  
22 on work furlough or work release, or on any other basis until he  
23 or she has served a period of not less than 90 days in a county jail.  
24 In all cases in which probation is granted, the court shall require  
25 as a condition thereof that the person be confined in a county jail  
26 for at least 90 days. In no event does the court have the power to  
27 absolve a person who violates this subdivision from the obligation  
28 of spending at least 90 days in confinement in a county jail.

29 In addition to any punishment prescribed by this section, a court  
30 may suspend, for not more than 30 days, the privilege of the person  
31 to operate a motor vehicle pursuant to Section 13201.5 of the  
32 Vehicle Code for any violation of subdivision (b) that was  
33 committed within 1,000 feet of a private residence and with the  
34 use of a vehicle. In lieu of the suspension, the court may order a  
35 person's privilege to operate a motor vehicle restricted, for not  
36 more than six months, to necessary travel to and from the person's  
37 place of employment or education. If driving a motor vehicle is  
38 necessary to perform the duties of the person's employment, the  
39 court may also allow the person to drive in that person's scope of  
40 employment.

1 (l) (1) A second or subsequent violation of subdivision (j) is  
2 punishable by imprisonment in a county jail not exceeding one  
3 year, or by a fine not exceeding two thousand dollars (\$2,000), or  
4 by both that fine and imprisonment.

5 (2) If the victim of a violation of subdivision (j) was a minor at  
6 the time of the offense, the violation is punishable by imprisonment  
7 in a county jail not exceeding one year, or by a fine not exceeding  
8 two thousand dollars (\$2,000), or by both that fine and  
9 imprisonment.

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