

ASSEMBLY BILL

No. 2513

Introduced by Assembly Member Williams

February 19, 2016

An act to amend Sections 236.1, 236.7, 236.8, 236.10, and 236.11 of the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

AB 2513, as introduced, Williams. Human trafficking: aggravating factors.

Existing law, as amended by the Californians Against Sexual Exploitation (CASE) Act, an initiative measure enacted by the approval of Proposition 35 at the November 6, 2012, statewide general election, proscribes the crime of human trafficking. A person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, or to effect or maintain a violation of various felony or misdemeanor offenses, including offenses relating to prostitution, child pornography, as specified, or extortion, as defined, is guilty of human trafficking. 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 various felony or misdemeanor offenses, is also guilty of human trafficking.

This bill would authorize the court to consider and take into account as an aggravating factor for purposes of determining the sentence to be imposed the fact that the defendant recruited, enticed, or obtained the victim from a shelter or placement that is designed to serve runaway youth, foster children, homeless persons, or victims of human trafficking

or domestic violence. The bill would also make technical and nonsubstantive conforming changes.

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

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~~A 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~~A person who deprives or violates the personal liberty
9 of another with the intent to effect or maintain a violation of
10 Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4,
11 311.5, 311.6, or 518 is guilty of human trafficking and shall be
12 punished by imprisonment in the state prison for 8, 14, or 20 years
13 and a fine of not more than five hundred thousand dollars
14 (\$500,000).

15 (c) ~~Any~~A person who causes, induces, or persuades, or attempts
16 to cause, induce, or persuade, a person who is a minor at the time
17 of commission of the offense to engage in a commercial sex act,
18 with the intent to effect or maintain a violation of Section 266,
19 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or
20 518 is guilty of human trafficking. A violation of this subdivision
21 is punishable by imprisonment in the state prison as follows:

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

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

28 (d) In determining whether a minor was caused, induced, or
29 persuaded to engage in a commercial sex act, the totality of the
30 circumstances, including the age of the victim, his or her
31 relationship to the trafficker or agents of the trafficker, and any
32 handicap or disability of the victim, shall be considered.

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

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

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

11 *(h) The court may consider and take into account as an*
12 *aggravating factor, for purposes of determining the sentence to*
13 *be imposed, the fact that the defendant recruited, enticed, or*
14 *obtained the victim from a shelter or placement that is designed*
15 *to serve runaway youth, foster children, homeless persons, or*
16 *victims of human trafficking or domestic violence.*

17 ~~(h)~~

18 (i) For purposes of this chapter, the following definitions apply:

19 (1) “Coercion” includes any scheme, plan, or pattern intended
20 to cause a person to believe that failure to perform an act would
21 result in serious harm to or physical restraint against any person;
22 the abuse or threatened abuse of the legal process; debt bondage;
23 or providing and facilitating the possession of any controlled
24 substance to a person with the intent to impair the person’s
25 judgment.

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

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

35 (4) “Duress” includes a direct or implied threat of force,
36 violence, danger, hardship, or retribution sufficient to cause a
37 reasonable person to acquiesce in or perform an act which he or
38 she would otherwise not have submitted to or performed; a direct
39 or implied threat to destroy, conceal, remove, confiscate, or possess
40 any actual or purported passport or immigration document of the

1 victim; or knowingly destroying, concealing, removing,
2 confiscating, or possessing any actual or purported passport or
3 immigration document of the victim.

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

8 (6) “Great bodily injury” means a significant or substantial
9 physical injury.

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

11 (8) “Serious harm” includes any harm, whether physical or
12 nonphysical, including psychological, financial, or reputational
13 harm, that is sufficiently serious, under all the surrounding
14 circumstances, to compel a reasonable person of the same
15 background and in the same circumstances to perform or to
16 continue performing labor, services, or commercial sexual acts in
17 order to avoid incurring that harm.

18 (i)

19 (j) The total circumstances, including the age of the victim, the
20 relationship between the victim and the trafficker or agents of the
21 trafficker, and any handicap or disability of the victim, shall be
22 factors to consider in determining the presence of “deprivation or
23 violation of the personal liberty of another,” “duress,” and
24 “coercion” as described in this section.

25 SEC. 2. Section 236.7 of the Penal Code is amended to read:

26 236.7. (a) ~~Any~~ *An* interest in a vehicle, boat, airplane, money,
27 negotiable instruments, securities, real property, or other thing of
28 value that was put to substantial use for the purpose of facilitating
29 the crime of human trafficking that involves a commercial sex act,
30 as defined in paragraph (2) of subdivision ~~(g)~~ (i) of Section 236.1,
31 ~~where in which~~ the victim was less than 18 years of age at the time
32 of the commission of the crime, may be seized and ordered
33 forfeited by the court upon the conviction of a person guilty of
34 human trafficking that involves a commercial sex act ~~where in~~
35 *which* the victim is an individual under 18 years of age, pursuant
36 to Section 236.1.

37 (b) In any case in which a defendant is convicted of human
38 trafficking pursuant to Section 236.1 and an allegation is found to
39 be true that the victim was a person under 18 years of age and the
40 crime involved a commercial sex act, as defined in paragraph (2)

1 of subdivision ~~(g)~~ (i) of Section 236.1, the following assets shall
2 be subject to forfeiture upon proof of the provisions of subdivision
3 (d) of Section 236.9:

4 (1) ~~Any~~ A property interest, whether tangible or intangible,
5 acquired through human trafficking that involves a commercial
6 sex act ~~where~~ *in which* the victim was less than 18 years of age at
7 the time of the commission of the crime.

8 (2) All proceeds from human trafficking that involves a
9 commercial sex act where the victim was less than 18 years of age
10 at the time of the commission of the crime, which property shall
11 include all things of value that may have been received in exchange
12 for the proceeds immediately derived from the act.

13 (c) If a prosecuting agency petitions for forfeiture of an interest
14 under subdivision (a) or (b), the process prescribed in Sections
15 236.8 to 236.12, inclusive, shall apply, but no local or state
16 prosecuting agency shall be required to petition for forfeiture in
17 any case.

18 (d) Real property that is used as a family residence or for other
19 lawful purposes, or that is owned by two or more persons, one of
20 whom had no knowledge of its unlawful use, shall not be subject
21 to forfeiture.

22 (e) An interest in a vehicle that may be lawfully driven with a
23 class C, class M1, or class M2 license, as prescribed in Section
24 12804.9 of the Vehicle Code, may not be forfeited under this
25 section if there is a community property interest in the vehicle by
26 a person other than the defendant and the vehicle is the sole vehicle
27 of this type available to the defendant's immediate family.

28 (f) Real property subject to forfeiture may not be seized, absent
29 exigent circumstances, without notice to the interested parties and
30 a hearing to determine that seizure is necessary to preserve the
31 property pending the outcome of the proceedings. At the hearing,
32 the prosecution shall bear the burden of establishing that probable
33 cause exists for the forfeiture of the property and that seizure is
34 necessary to preserve the property pending the outcome of the
35 forfeiture proceedings. The court may issue a seizure order pursuant
36 to this section if it finds that seizure is warranted or a pendente lite
37 order pursuant to Section 236.10 if it finds that the status quo or
38 value of the property can be preserved without seizure.

39 (g) For purposes of this section, no allegation or proof of a
40 pattern of criminal profiteering activity is required.

1 SEC. 3. Section 236.8 of the Penal Code is amended to read:

2 236.8. (a) If the prosecuting agency, in conjunction with the
3 criminal proceeding, files a petition of forfeiture with the superior
4 court of the county in which the defendant has been charged with
5 human trafficking that involves a commercial sex act, as defined
6 in paragraph (2) of subdivision ~~(g)~~ (i) of Section 236.1, where the
7 victim was less than 18 years of age at the time of the commission
8 of the crime, the prosecuting agency shall make service of process
9 of a notice regarding that petition upon every individual who may
10 have a property interest in the alleged proceeds or instruments.
11 The notice shall state that any interested party may file a verified
12 claim with the superior court stating the amount of their claimed
13 interest and an affirmation or denial of the prosecuting agency's
14 allegation. If the notice cannot be given by registered mail or
15 personal delivery, the notice shall be published for at least three
16 successive weeks in a newspaper of general circulation in the
17 county where the property is located. If the property alleged to be
18 subject to forfeiture is real property, the prosecuting agency shall,
19 at the time of filing the petition of forfeiture, record a lis pendens
20 with the county recorder in each county in which the real property
21 is situated that specifically identifies the real property alleged to
22 be subject to forfeiture. The judgment of forfeiture shall not affect
23 the interest in real property of a third party that was acquired prior
24 to the recording of the lis pendens.

25 (b) All notices shall set forth the time within which a claim of
26 interest in the property seized is required to be filed pursuant to
27 Section 236.9.

28 SEC. 4. Section 236.10 of the Penal Code is amended to read:

29 236.10. (a) Concurrent with or subsequent to the filing of the
30 petition, the prosecuting agency may move the superior court for,
31 and the superior court may issue, the following pendente lite orders
32 to preserve the status quo of the property alleged in the petition:

33 (1) An injunction to restrain anyone from transferring,
34 encumbering, hypothecating, or otherwise disposing of the
35 property.

36 (2) Appointment of a receiver to take possession of, care for,
37 manage, and operate the assets and properties so that the property
38 may be maintained and preserved. The court may order that a
39 receiver appointed pursuant to this section be compensated for all
40 reasonable expenditures made or incurred by him or her in

1 connection with the possession, care, management, and operation
2 of property or assets that are subject to the provisions of this
3 section.

4 (b) ~~No~~ A preliminary injunction may *not* be granted or receiver
5 appointed without notice to the interested parties and a hearing to
6 determine that an order is necessary to preserve the property,
7 pending the outcome of the criminal proceedings, and that there
8 is probable cause to believe that the property alleged in the
9 forfeiture proceedings are proceeds, instruments, or property
10 interests forfeitable under the provisions of Section 236.7.
11 However, a temporary restraining order may issue pending that
12 hearing pursuant to the provisions of Section 527 of the Code of
13 Civil Procedure.

14 (c) Notwithstanding any other ~~provision of~~ law, the court in
15 granting these motions may order a surety bond or undertaking to
16 preserve the property interests of the interested parties.

17 (d) The court shall, in making its orders, seek to protect the
18 interests of those who may be involved in the same enterprise as
19 the defendant, but who were not involved in human trafficking
20 that involves a commercial sex act, as defined in paragraph (2) of
21 subdivision ~~(g)~~ (i) of Section 236.1, ~~where in which~~ the victim was
22 less than 18 years of age at the time of the commission of the crime.

23 SEC. 5. Section 236.11 of the Penal Code is amended to read:

24 236.11. (a) If the trier of fact at the forfeiture hearing finds
25 that the alleged property, instruments, or proceeds are forfeitable
26 pursuant to Section 236.7 and the defendant was engaged in human
27 trafficking that involves a commercial sex act, as defined in
28 paragraph (2) of subdivision ~~(g)~~ (i) of Section 236.1, ~~where if~~ the
29 victim was less than 18 years of age at the time of the commission
30 of the crime, the court shall declare that property or proceeds
31 forfeited to the state or local governmental entity, subject to
32 distribution as provided in Section 236.12. ~~No property~~ *Property*
33 *that is* solely owned by a bona fide purchaser for value shall *not*
34 be subject to forfeiture.

35 (b) If the trier of fact at the forfeiture hearing finds that the
36 alleged property is forfeitable pursuant to Section 236.7 but does
37 not find that a person holding a valid lien, mortgage, security
38 interest, or interest under a conditional sales contract acquired that
39 interest with actual knowledge that the property was to be used
40 for a purpose for which forfeiture is permitted, and the amount

1 due to that person is less than the appraised value of the property,
2 that person may pay to the state or the local governmental entity
3 that initiated the forfeiture proceeding the amount of the registered
4 owner's equity, which shall be deemed to be the difference between
5 the appraised value and the amount of the lien, mortgage, security
6 interest, or interest under a conditional sales contract. Upon
7 payment, the state or local governmental entity shall relinquish all
8 claims to the property. If the holder of the interest elects not to pay
9 the state or local governmental entity, the property shall be deemed
10 forfeited to the state or local governmental entity and the ownership
11 certificate shall be forwarded. The appraised value shall be
12 determined as of the date judgment is entered either by agreement
13 between the legal owner and the governmental entity involved, or,
14 if they cannot agree, by a court-appointed appraiser for the county
15 in which the action is brought. A person holding a valid lien,
16 mortgage, security interest, or interest under a conditional sales
17 contract shall be paid the appraised value of his or her interest.

18 (c) If the amount due to a person holding a valid lien, mortgage,
19 security interest, or interest under a conditional sales contract is
20 less than the value of the property and the person elects not to
21 make payment to the governmental entity, the property shall be
22 sold at public auction by the Department of General Services or
23 by the local governmental entity. The seller shall provide notice
24 of the sale by one publication in a newspaper published and
25 circulated in the city, community, or locality where the sale is to
26 take place.

27 (d) Notwithstanding subdivision (c), a county may dispose of
28 real property forfeited to the county pursuant to this chapter by
29 the process prescribed in Section 25538.5 of the Government Code.