

AMENDED IN ASSEMBLY APRIL 25, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2513**

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**Introduced by Assembly Member Williams**

February 19, 2016

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

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

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

27 (d) In determining whether a minor was caused, induced, or  
28 persuaded to engage in a commercial sex act, the totality of the  
29 circumstances, including the age of the victim, his or her  
30 relationship to the trafficker or agents of the trafficker, and any  
31 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 of Title 22 of the United  
10 States Code.

11 (h) The court may consider and take into account as an  
12 aggravating factor, for purposes of determining the sentence to be  
13 imposed, the fact that the defendant recruited, enticed, or obtained  
14 the victim from a shelter or placement that is designed to serve  
15 runaway youth, foster children, homeless persons, or victims of  
16 human trafficking or domestic violence. *The aggravating factor*  
17 *provided for in this subdivision shall only be considered if it is*  
18 *admitted by the defendant or found to be true by the trier of fact.*

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

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

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

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

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

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

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

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

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

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

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) 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 (i) of Section 236.1, in  
31 which the victim was less than 18 years of age at the time of the  
32 commission of the crime, may be seized and ordered forfeited by  
33 the court upon the conviction of a person guilty of human  
34 trafficking that involves a commercial sex act in which the victim  
35 is an individual under 18 years of age, pursuant to Section 236.1.

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

1 subject to forfeiture upon proof of the provisions of subdivision  
2 (d) of Section 236.9:

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

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

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

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

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

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

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

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

1     236.8. (a) If the prosecuting agency, in conjunction with the  
2 criminal proceeding, files a petition of forfeiture with the superior  
3 court of the county in which the defendant has been charged with  
4 human trafficking that involves a commercial sex act, as defined  
5 in paragraph (2) of subdivision (i) of Section 236.1, where the  
6 victim was less than 18 years of age at the time of the commission  
7 of the crime, the prosecuting agency shall make service of process  
8 of a notice regarding that petition upon every individual who may  
9 have a property interest in the alleged proceeds or instruments.  
10 The notice shall state that any interested party may file a verified  
11 claim with the superior court stating the amount of their claimed  
12 interest and an affirmation or denial of the prosecuting agency's  
13 allegation. If the notice cannot be given by registered mail or  
14 personal delivery, the notice shall be published for at least three  
15 successive weeks in a newspaper of general circulation in the  
16 county where the property is located. If the property alleged to be  
17 subject to forfeiture is real property, the prosecuting agency shall,  
18 at the time of filing the petition of forfeiture, record a lis pendens  
19 with the county recorder in each county in which the real property  
20 is situated that specifically identifies the real property alleged to  
21 be subject to forfeiture. The judgment of forfeiture shall not affect  
22 the interest in real property of a third party that was acquired prior  
23 to the recording of the lis pendens.

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

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

28     236.10. (a) Concurrent with or subsequent to the filing of the  
29 petition, the prosecuting agency may move the superior court for,  
30 and the superior court may issue, the following pendente lite orders  
31 to preserve the status quo of the property alleged in the petition:

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

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

1 of property or assets that are subject to the provisions of this  
2 section.

3 (b) A preliminary injunction may not be granted or receiver  
4 appointed without notice to the interested parties and a hearing to  
5 determine that an order is necessary to preserve the property,  
6 pending the outcome of the criminal proceedings, and that there  
7 is probable cause to believe that the property alleged in the  
8 forfeiture proceedings are proceeds, instruments, or property  
9 interests forfeitable under the provisions of Section 236.7.  
10 However, a temporary restraining order may issue pending that  
11 hearing pursuant to the provisions of Section 527 of the Code of  
12 Civil Procedure.

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

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

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

23 236.11. (a) If the trier of fact at the forfeiture hearing finds  
24 that the alleged property, instruments, or proceeds are forfeitable  
25 pursuant to Section 236.7 and the defendant was engaged in human  
26 trafficking that involves a commercial sex act, as defined in  
27 paragraph (2) of subdivision (i) of Section 236.1, if the victim was  
28 less than 18 years of age at the time of the commission of the crime,  
29 the court shall declare that property or proceeds forfeited to the  
30 state or local governmental entity, subject to distribution as  
31 provided in Section 236.12. Property that is solely owned by a  
32 bona fide purchaser for value shall not be subject to forfeiture.

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

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

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

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