

AMENDED IN SENATE JUNE 21, 2016

AMENDED IN ASSEMBLY APRIL 25, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 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, 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. make a person who is convicted of a violation of that prohibition subject to a penalty enhancement of one additional year in the state prison, to be served consecutive to any other term imposed by the court, if it is found that he or she 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. *By increasing the penalty for an existing crime, 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: ~~no~~-yes.
State-mandated local program: ~~no~~-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 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,

1 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518
2 is guilty of human trafficking. A violation of this subdivision is
3 punishable by imprisonment in the state prison as follows:

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

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

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

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

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

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

25 ~~(h) The court may consider and take into account as an~~
26 ~~aggravating factor, for purposes of determining the sentence to be~~
27 ~~imposed, the fact that the defendant recruited, enticed, or obtained~~
28 ~~the victim from a shelter or placement that is designed to serve~~
29 ~~runaway youth, foster children, homeless persons, or victims of~~
30 ~~human trafficking or domestic violence. The aggravating factor~~
31 ~~provided for in this subdivision shall only be considered if it is~~
32 ~~admitted by the defendant or found to be true by the trier of fact.~~

33 *(h) A person who is convicted of a violation of this section shall*
34 *be subject to a penalty enhancement of one additional year in the*
35 *state prison, which shall be served consecutive to any other term*
36 *imposed by the court, if it is found that he or she recruited, enticed,*
37 *or obtained the victim from a shelter or placement that is designed*
38 *to serve runaway youth, foster children, homeless persons, or*
39 *victims of human trafficking or domestic violence. The*
40 *enhancement provided for in this subdivision shall only be imposed*

1 *if it is admitted by the defendant or found to be true by the trier of*
2 *fact.*

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

4 (1) “Coercion” includes any scheme, plan, or pattern intended
5 to cause a person to believe that failure to perform an act would
6 result in serious harm to or physical restraint against any person;
7 the abuse or threatened abuse of the legal process; debt bondage;
8 or providing and facilitating the possession of any controlled
9 substance to a person with the intent to impair the person’s
10 judgment.

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

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

20 (4) “Duress” includes a direct or implied threat of force,
21 violence, danger, hardship, or retribution sufficient to cause a
22 reasonable person to acquiesce in or perform an act which he or
23 she would otherwise not have submitted to or performed; a direct
24 or implied threat to destroy, conceal, remove, confiscate, or possess
25 any actual or purported passport or immigration document of the
26 victim; or knowingly destroying, concealing, removing,
27 confiscating, or possessing any actual or purported passport or
28 immigration document of the victim.

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

33 (6) “Great bodily injury” means a significant or substantial
34 physical injury.

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

36 (8) “Serious harm” includes any harm, whether physical or
37 nonphysical, including psychological, financial, or reputational
38 harm, that is sufficiently serious, under all the surrounding
39 circumstances, to compel a reasonable person of the same
40 background and in the same circumstances to perform or to

1 continue performing labor, services, or commercial sexual acts in
2 order to avoid incurring that harm.

3 (j) The total circumstances, including the age of the victim, the
4 relationship between the victim and the trafficker or agents of the
5 trafficker, and any handicap or disability of the victim, shall be
6 factors to consider in determining the presence of “deprivation or
7 violation of the personal liberty of another,” “duress,” and
8 “coercion” as described in this section.

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

10 236.7. (a) An interest in a vehicle, boat, airplane, money,
11 negotiable instruments, securities, real property, or other thing of
12 value that was put to substantial use for the purpose of facilitating
13 the crime of human trafficking that involves a commercial sex act,
14 as defined in paragraph (2) of subdivision (i) of Section 236.1, in
15 which the victim was less than 18 years of age at the time of the
16 commission of the crime, may be seized and ordered forfeited by
17 the court upon the conviction of a person guilty of human
18 trafficking that involves a commercial sex act in which the victim
19 is an individual under 18 years of age, pursuant to Section 236.1.

20 (b) In any case in which a defendant is convicted of human
21 trafficking pursuant to Section 236.1 and an allegation is found to
22 be true that the victim was a person under 18 years of age and the
23 crime involved a commercial sex act, as defined in paragraph (2)
24 of subdivision (i) of Section 236.1, the following assets shall be
25 subject to forfeiture upon proof of the provisions of subdivision
26 (d) of Section 236.9:

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

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

36 (c) If a prosecuting agency petitions for forfeiture of an interest
37 under subdivision (a) or (b), the process prescribed in Sections
38 236.8 to 236.12, inclusive, shall apply, but no local or state
39 prosecuting agency shall be required to petition for forfeiture in
40 any case.

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

5 (e) An interest in a vehicle that may be lawfully driven with a
6 class C, class M1, or class M2 license, as prescribed in Section
7 12804.9 of the Vehicle Code, may not be forfeited under this
8 section if there is a community property interest in the vehicle by
9 a person other than the defendant and the vehicle is the sole vehicle
10 of this type available to the defendant's immediate family.

11 (f) Real property subject to forfeiture may not be seized, absent
12 exigent circumstances, without notice to the interested parties and
13 a hearing to determine that seizure is necessary to preserve the
14 property pending the outcome of the proceedings. At the hearing,
15 the prosecution shall bear the burden of establishing that probable
16 cause exists for the forfeiture of the property and that seizure is
17 necessary to preserve the property pending the outcome of the
18 forfeiture proceedings. The court may issue a seizure order pursuant
19 to this section if it finds that seizure is warranted or a pendente lite
20 order pursuant to Section 236.10 if it finds that the status quo or
21 value of the property can be preserved without seizure.

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

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

25 236.8. (a) If the prosecuting agency, in conjunction with the
26 criminal proceeding, files a petition of forfeiture with the superior
27 court of the county in which the defendant has been charged with
28 human trafficking that involves a commercial sex act, as defined
29 in paragraph (2) of subdivision (i) of Section 236.1, where the
30 victim was less than 18 years of age at the time of the commission
31 of the crime, the prosecuting agency shall make service of process
32 of a notice regarding that petition upon every individual who may
33 have a property interest in the alleged proceeds or instruments.
34 The notice shall state that any interested party may file a verified
35 claim with the superior court stating the amount of their claimed
36 interest and an affirmation or denial of the prosecuting agency's
37 allegation. If the notice cannot be given by registered mail or
38 personal delivery, the notice shall be published for at least three
39 successive weeks in a newspaper of general circulation in the
40 county where the property is located. If the property alleged to be

1 subject to forfeiture is real property, the prosecuting agency shall,
2 at the time of filing the petition of forfeiture, record a lis pendens
3 with the county recorder in each county in which the real property
4 is situated that specifically identifies the real property alleged to
5 be subject to forfeiture. The judgment of forfeiture shall not affect
6 the interest in real property of a third party that was acquired prior
7 to the recording of the lis pendens.

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

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

12 236.10. (a) Concurrent with or subsequent to the filing of the
13 petition, the prosecuting agency may move the superior court for,
14 and the superior court may issue, the following pendente lite orders
15 to preserve the status quo of the property alleged in the petition:

16 (1) An injunction to restrain anyone from transferring,
17 encumbering, hypothecating, or otherwise disposing of the
18 property.

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

27 (b) A preliminary injunction may not be granted or receiver
28 appointed without notice to the interested parties and a hearing to
29 determine that an order is necessary to preserve the property,
30 pending the outcome of the criminal proceedings, and that there
31 is probable cause to believe that the property alleged in the
32 forfeiture proceedings are proceeds, instruments, or property
33 interests forfeitable under the provisions of Section 236.7.
34 However, a temporary restraining order may issue pending that
35 hearing pursuant to the provisions of Section 527 of the Code of
36 Civil Procedure.

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

1 (d) The court shall, in making its orders, seek to protect the
2 interests of those who may be involved in the same enterprise as
3 the defendant, but who were not involved in human trafficking
4 that involves a commercial sex act, as defined in paragraph (2) of
5 subdivision (i) of Section 236.1, in which the victim was less than
6 18 years of age at the time of the commission of the crime.

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

8 236.11. (a) If the trier of fact at the forfeiture hearing finds
9 that the alleged property, instruments, or proceeds are forfeitable
10 pursuant to Section 236.7 and the defendant was engaged in human
11 trafficking that involves a commercial sex act, as defined in
12 paragraph (2) of subdivision (i) of Section 236.1, if the victim was
13 less than 18 years of age at the time of the commission of the crime,
14 the court shall declare that property or proceeds forfeited to the
15 state or local governmental entity, subject to distribution as
16 provided in Section 236.12. Property that is solely owned by a
17 bona fide purchaser for value shall not be subject to forfeiture.

18 (b) If the trier of fact at the forfeiture hearing finds that the
19 alleged property is forfeitable pursuant to Section 236.7 but does
20 not find that a person holding a valid lien, mortgage, security
21 interest, or interest under a conditional sales contract acquired that
22 interest with actual knowledge that the property was to be used
23 for a purpose for which forfeiture is permitted, and the amount
24 due to that person is less than the appraised value of the property,
25 that person may pay to the state or the local governmental entity
26 that initiated the forfeiture proceeding the amount of the registered
27 owner's equity, which shall be deemed to be the difference between
28 the appraised value and the amount of the lien, mortgage, security
29 interest, or interest under a conditional sales contract. Upon
30 payment, the state or local governmental entity shall relinquish all
31 claims to the property. If the holder of the interest elects not to pay
32 the state or local governmental entity, the property shall be deemed
33 forfeited to the state or local governmental entity and the ownership
34 certificate shall be forwarded. The appraised value shall be
35 determined as of the date judgment is entered either by agreement
36 between the legal owner and the governmental entity involved, or,
37 if they cannot agree, by a court-appointed appraiser for the county
38 in which the action is brought. A person holding a valid lien,
39 mortgage, security interest, or interest under a conditional sales
40 contract shall be paid the appraised value of his or her interest.

1 (c) If the amount due to a person holding a valid lien, mortgage,
2 security interest, or interest under a conditional sales contract is
3 less than the value of the property and the person elects not to
4 make payment to the governmental entity, the property shall be
5 sold at public auction by the Department of General Services or
6 by the local governmental entity. The seller shall provide notice
7 of the sale by one publication in a newspaper published and
8 circulated in the city, community, or locality where the sale is to
9 take place.

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

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