



CALIFORNIA AGAINST SLAVERY

it's time for justice.

December 20, 2009

Office of the Attorney General
ATTN: Ms. Krystal Paris, Initiative Coordinator
1300 I Street
Sacramento, CA 95814

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RECEIVED

DEC 22 2009

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: Request for Title and Summary for Proposed Initiative

Dear Ms. Paris:

Pursuant to Article II, Section 10(d) of the California Constitution, I am submitting the attached proposed statewide ballot measure to your office and request that you prepare a title and summary of the measure as provided by law. Included with this submission are the required proponent affidavit pursuant to California Elections Code Section 9608, my registered voter address, suggested title and summary and a check in the amount of \$200.

Anyone interested in finding out more about the initiative can visit our website at www.CaliforniaAgainstSlavery.org or e-mail info@CaliforniaAgainstSlavery.org.

Thank you.

Regards,

Daphne Phung

Enclosure

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

(Here set forth the title and summary prepared by the Attorney General. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)

TO THE HONORABLE SECRETARY OF STATE OF CALIFORNIA

We, the undersigned, registered, qualified voters of California, residents of Alameda County (or City and County), hereby propose amendments to the Civil Code, Evidence Code, and Penal Code of California, relating to human trafficking, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or otherwise provided by law. The proposed statutory amendments (full title and text of measure) read as follows:

An act to amend Section 52.5 of the Civil Code, to add Section 1161 to the Evidence Code, and to amend Section 13519.14 of, to amend Section 186.8 of, to amend and renumber Sections 236.1, 236.2, and 236.5 of, and to add Chapter 10 (commencing with Section 250) to Title 8 of Part 1 of the Penal Code relating to human trafficking.

SEC 1. Section 52.5 of the Civil Code is amended to read:

52.5. (a) A victim of human trafficking, as defined in Section ~~236.1~~ 252 of the Penal Code, may bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. A prevailing plaintiff may also be awarded attorney's fees and costs.

(b) In addition to the remedies specified herein, in any action under subdivision (a), the plaintiff may be awarded up to three times his or her actual damages or ~~ten thousand dollars (\$10,000)~~ two hundred thousand dollars (\$200,000), whichever is greater. In addition, punitive damages may also be awarded upon proof of the defendant's malice, oppression, fraud, or duress in committing the act of human trafficking.

(c) An action brought pursuant to this section shall be commenced within ~~five years of the date on which the trafficking victim was freed from the trafficking situation~~ 10 years of the date on which the victim of human trafficking was freed from the trafficking situation or the defendant's criminal conviction became final, whichever is later, or if the victim was a minor when the act of human trafficking against the victim occurred, within ~~eight~~ 15 years after the date the plaintiff attains the age of majority.

(d) If a person entitled to sue is under a disability at the time the cause of action accrues, so that it is impossible or impracticable for him or her to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability will toll the running of the statute of limitation for this action.

(1) Disability includes being a minor, insanity, imprisonment, or other incapacity or incompetence.

(2) The statute of limitations shall not run against an incompetent or minor plaintiff simply because a guardian ad litem has been appointed. A guardian ad litem's failure to bring a plaintiff's action within the applicable limitation period will not prejudice the plaintiff's right to do so after his or her disability ceases.

(3) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant inducing the plaintiff to delay the filing of the action, or due to threats made by the defendant causing duress upon the plaintiff

(4) The suspension of the statute of limitations due to disability, lack of knowledge, or estoppel applies to all other related claims arising out of the trafficking situation.

(5) The running of the statute of limitations is postponed during the pendency of any criminal proceedings against the victim.

(e) The running of the statute of limitations may be suspended where a person entitled to sue could not have reasonably discovered the cause of action due to circumstances resulting from the trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.

(f) A prevailing plaintiff may also be awarded reasonable attorney's fees and litigation costs including, but not limited to, expert witness fees and expenses as part of the costs.

(g) Any restitution paid by the defendant to the victim shall be credited against any judgment, award, or settlement obtained pursuant to this section. Any judgment, award, or settlement obtained pursuant to an action under this section shall be subject to the provisions of Section 13963 of the Government Code.

(h) Any civil action filed under this section shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim. As used in this section, a "criminal action" includes investigation and prosecution, and is pending until a final adjudication in the trial court, or dismissal.

(i) The parents, guardians or court appointee of a victim of human trafficking may represent the victim, and exercise his or her rights, in the event the victim is deceased or otherwise unable to represent his or her own interest in court.

SEC. 2. Section 1161 is added to the Evidence Code, to read:

1161. (a) Evidence that a victim of human trafficking, as defined in Section 252 of the Penal Code, has engaged in any sexual activity as a result of being a victim of human trafficking is inadmissible to prove the victim's criminal liability for any conduct related to that activity.

(b) Evidence of sexual conduct on the part of any victim of human trafficking, as defined in Section 252 of the Penal Code, is inadmissible to attack the credibility or impeach the character of the victim in any civil or criminal proceeding.

SEC. 3. Section 186.8 of the Penal Code is amended to read:

186.8. Notwithstanding that no response or claim has been filed pursuant to Section 186.5, in all cases where property is forfeited pursuant to this chapter and, if necessary, sold by the Department of General Services or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows:

(a) To the bona fide or innocent purchaser, conditional sales vendor, or holder of a valid lien, mortgage, or security interest, if any, up to the amount of his or her interest in the property or proceeds, when the court declaring the forfeiture orders a distribution to that person. The court shall endeavor to discover all those lien holders and protect their interests and may, at its discretion, order the proceeds placed in escrow for up to an additional 60 days to ensure that all valid claims are received and processed.

(b) To the Department of General Services or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized under this chapter.

(c) To the general fund of the state or local governmental entity, whichever prosecutes.

(d) In any case involving a violation of subdivision (b) of Section 311.2, or Section 311.3 or 311.4, in lieu of the distribution of the proceeds provided for by subdivisions (b) and (c), the proceeds shall be deposited in the county children's trust fund, established pursuant to Section 18966 of the Welfare and Institutions Code, of the county that filed the petition of forfeiture. If the county does not have a children's trust fund, the funds shall be deposited in the State Children's Trust Fund, established pursuant to Section 18969 of the Welfare and Institutions Code.

(e) In any case involving crimes against the state beverage container recycling program, in lieu of the distribution of proceeds provided in subdivision (c), the proceeds shall be deposited in the penalty account established pursuant to subdivision (d) of Section 14580 of the Public Resources Code, except that a portion of the proceeds equivalent to the cost of prosecution in the case shall be distributed to the local prosecuting entity that filed the petition of forfeiture.

(f) In any case involving a violation of Section 252b or Section 266a ~~human trafficking of minors for purposes of prostitution or lewd conduct, or in any case involving a violation of Section 266a~~ in which the victim is a minor under 18 years of age, in lieu of the distribution provided for in subdivision (c), the proceeds shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs under Section 13837. At least fifty percent of the funds deposited in the Victim-Witness Assistance Fund pursuant to this subdivision shall be granted to community-based organizations that serve minor victims of human trafficking.

(g) Except as provided in subdivision (f), in any case involving a violation of Section 252, in lieu of the distribution of proceeds provided in subdivision (c), the proceeds shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund services for victims of human trafficking. At least fifty percent of the funds deposited in the Victim-Witness Assistance Fund pursuant to this subdivision shall be granted to community-based organizations that serve victims of human trafficking.

SEC. 4. Section 236.1 of the Penal Code is amended and renumbered to read:

~~236.1.~~

252. (a) Any person who deprives or violates the personal liberty of another with the intent to effect or maintain a ~~felony~~ violation of Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, ~~or 518~~, 647(b), or 653.22, or to obtain forced labor or services, is guilty of human trafficking.

(b) Any person who causes, induces, or persuades, or attempts to cause, induce, or persuade a minor to engage in a commercial sex act, with the intent to effect or maintain a violation of Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 518, 647(b), or 653.22, is guilty of human trafficking.

(c) ~~(b)~~ Except as provided in subdivision ~~(e)~~ (d), a violation of this section is punishable by imprisonment in the state prison for ~~three, four, or five~~ six, twelve, or sixteen years and a fine of not more than three hundred thousand dollars (\$300,000).

(d) A violation of subdivision (b) is punishable by imprisonment in the state prison as follows:

(1) Five, eight, or eleven years and a fine of not more than three hundred thousand dollars (\$300,000); or

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

(e) A violation of this section where the victim of the trafficking was under 18 years of age at the time of the commission of the offense is punishable by imprisonment in the state prison for ~~four, six, or eight~~ years.

(d) (1) For purposes of this section, unlawful deprivation or violation of the personal liberty of another includes substantial and sustained restriction of another's liberty accomplished through fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out.

~~(2) Duress includes knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or immigration document of the victim.~~

~~(e) For purposes of this section, "forced labor or services" means labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, or coercion, or equivalent conduct that would reasonably overbear the will of the person.~~

(e) In determining whether a minor was caused, induced, or persuaded to engage in a commercial sex act, the total circumstances, including the age of the victim and his or her relationship to the trafficker or agents of the trafficker, shall be considered.

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

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

(h) (f) The Legislature finds that the definition of human trafficking in this section and Section 251 is equivalent to the federal definition of a severe form of trafficking found in Section 7102(8) of Title 22 of the United States Code.

SEC. 5. Section 236.2 of the Penal Code is amended and renumbered to read:

~~236.2.~~

257. Law enforcement agencies shall use due diligence to identify all victims of human trafficking, regardless of the citizenship of the person. When a peace officer comes into contact with a person who has been deprived of his or her personal liberty, a minor who has engaged in commercial sex, a person suspected of violating subdivision (a) or (b) of Section 647, or a victim

of a crime of domestic violence or ~~rape~~ sexual assault, the peace officer shall consider whether the following indicators of human trafficking are present:

- (a) Signs of trauma, fatigue, injury, or other evidence of poor care.
- (b) The person is withdrawn, afraid to talk, or his or her communication is censored by another person.
- (c) The person does not have freedom of movement.
- (d) The person lives and works in one place.
- (e) The person owes a debt to his or her employer.
- (f) Security measures are used to control who has contact with the person.
- (g) The person does not have control over his or her own government-issued identification or over his or her worker immigration documents.

SEC. 6. Section 236.5 of the Penal Code is amended and renumbered to read:

~~236.5.~~

258. (a) Within 15 business days of the first encounter with a victim of human trafficking, as defined by Section ~~236.4~~ 252, law enforcement agencies shall provide brief letters that satisfy the following Law Enforcement Agency (LEA) endorsement regulations as found in paragraph (1) of subdivision (f) of Section 214.11 of Title 8 of the Code of Federal Regulations.

(b) The LEA endorsement must be submitted on Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, of Form 1-914. The LEA endorsement must be filled out completely in accordance with the instructions contained on the form and must attach the results of any name or database inquiry performed. In order to provide persuasive

evidence, the LEA endorsement must contain a description of the victimization upon which the application is based, including the dates the trafficking in persons and victimization occurred, and be signed by a supervising official responsible for the investigation or prosecution of trafficking in persons. The LEA endorsement must address whether the victim had been recruited, harbored, transported, provided, or obtained specifically for either labor or services, or for the purposes of a commercial sex act.

(c) Where state law enforcement agencies find the grant of a LEA endorsement to be inappropriate for a victim of trafficking in persons, the agency shall within 15 days provide the victim with a letter explaining the grounds of the denial of the LEA. The victim may submit additional evidence to the law enforcement agency, which must reconsider the denial of the LEA within one week of the receipt of additional evidence.

SEC. 7. Chapter 10 (commencing with Section 250) is added to Title 8 of Part 1 of the Penal Code, to read:

CHAPTER 10. HUMAN TRAFFICKING

250. The People of the State of California hereby find and declare the following:

(a) Every person possesses an inherent dignity. Human trafficking is a crime against human dignity and a deprivation of basic human and civil rights. Human trafficking is a contemporary manifestation of slavery. Allowing any form of slavery to exist severely impacts our society and our communities.

(b) Human trafficking is a multi-billion dollar, worldwide industry. It is a sophisticated form of organized crime that is expected to surpass the illicit trade in weapons and narcotics.

(c) Tens of thousands of foreign nationals are trafficked into the United States from many countries each year for commercial sex and forced labor and services. California is a major receiving state for trafficked persons because of its international borders, vibrant economy, and metropolitan regions.

(d) Human trafficking is no less serious when international borders are not crossed. The exploitation of United States citizens and residents is an equally serious form of human trafficking. Upwards of 300,000 children are at risk of becoming victims of commercial sexual exploitation each year.

(e) Labeling domestic minor sex trafficking as prostitution, pimping, or pandering, fails to recognize the abusive nature of this crime and perpetuates the epidemic scope of the problem. Describing a minor victim of sex trafficking as a “prostitute” suggests an element of choice and fails to accurately reflect the true dynamic of exploitation. Labeling a child a “prostitute” also interjects the issue of consent, an issue that is irrelevant because minors are legally incapable of consenting to sexual activity. Because children are often deceived into commercial sexual activity, or are controlled through physical force, psychological pressure or the use of controlled substance, concepts such as consent or choice are meaningless. Whether or not force is used, or the children realize they are being exploited, domestic minor sex trafficking is child abuse and modern day slavery.

(f) The purpose of this chapter is to combat the crime of human trafficking, to ensure just and effective punishment of people who promote or engage in the crime of human trafficking, to recognize trafficked individuals as victims and not criminals, and to protect the rights of human trafficking victims.

251. For purposes of this chapter, the following definitions apply:

(a) The “deprivation or violation of the personal liberty of another” includes substantial and sustained restriction of another’s liberty accomplished through force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out. The total circumstances, including the age of the victim and his or her relationship to the trafficker or agents of the trafficker, are factors to consider in determining the existence of a deprivation or violation of personal liberty.

(b) “Duress” includes a direct or implied threat of force, violence, danger, hardship or retribution sufficient to cause a reasonable person to acquiesce in or perform an act which one would otherwise not have submitted to or performed; a direct or implied threat to destroy, conceal, remove, confiscate, or possess any actual or purported passport or immigration document of the victim; or knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or immigration document of the victim. The total circumstances, including the age of the victim and his or her relationship to the trafficker or agents of the trafficker, are factors to consider in determining the existence of duress.

(c) “Coercion” includes any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; the abuse or threatened abuse of the legal process; debt bondage; or the provision and facilitation of any controlled substance to a person with the intent to impair said person’s judgment. The total circumstances, including the age of the victim and his or her relationship to the trafficker or agents of the trafficker, are factors to consider in determining the existence of coercion.

(d) "Serious harm" includes any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor, services, or commercial sexual activity in order to avoid incurring that harm.

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

(f) "Minor" means a person under 18 years of age.

253. Upon the conviction of any person for a violation of Section 252, the court may, in addition to any other penalty, fine, or restitution imposed, order the defendant to pay an additional fine not to exceed one hundred thousand dollars (\$100,000). In setting the amount of the fine, the court shall consider any relevant factors including, but not limited to, the seriousness and gravity of the offense and the circumstances of its commission, whether the defendant derived any economic gain as a result of the crime, and the extent to which the victim suffered losses as a result of the crime. Every fine imposed and collected under this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund services for victims of human trafficking. At least fifty percent of the fines collected and deposited in the Victim-Witness Assistance Fund shall be granted to community-based organizations that serve victims of human trafficking.

254. Any person who knowingly destroys, conceals, removes, confiscates, or possesses, or who attempts to destroy, conceal, remove, confiscate, or possess, any other person's actual or purported passport, immigration document, or any other actual or purported government

identification document, for the purpose of preventing, restricting, or attempting to prevent or restrict, without lawful authority, the other person's liberty of movement, is guilty of a felony, punishable by imprisonment in the state prison for three, six, or eight years and a fine of not more than two hundred thousand dollars (\$200,000).

255. (a) Any person who inflicts great bodily injury on a victim in the commission or attempted commission of a violation of Section 252 shall be punished by an additional and consecutive term of imprisonment in the state prison for five, seven, or ten years.

(b) As used in this section, the definition of "great bodily injury" is the same as that specified in Section 12022.7.

256. Any person who has previously been convicted of a violation of any crime specified in Section 252 shall receive an additional and consecutive term of imprisonment in the state prison for five years for each additional conviction on charges separately brought and tried.

SEC. 8. Section 13519.14 of the Penal Code is amended to read:

13519.14. (a) The commission shall implement by January 1, 2007, a course or courses of instruction for the training of law enforcement officers in California in the handling of human trafficking complaints and also shall develop guidelines for law enforcement response to human trafficking. The course or courses of instruction and the guidelines shall stress the dynamics and manifestations of human trafficking, identifying and communicating with victims, providing documentation that satisfy the ~~law enforcement agency~~ Law Enforcement Agency (LEA) endorsement (~~LEA~~) required by federal law, collaboration with federal law enforcement officials, therapeutically appropriate investigative techniques, the availability of civil and immigration remedies and community resources, and protection of the victim. Where

appropriate, the training presenters shall include human trafficking experts with experience in the delivery of direct services to victims of human trafficking. Completion of the course may be satisfied by telecommunication, video training tape, or other instruction.

(b) As used in this section, "law enforcement officer" means any officer or employee of a local police department or sheriff's office, and any peace officer of the Department of the California Highway Patrol, as defined by subdivision (a) of Section 830.2.

(c) The course of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of human trafficking.

(d) The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways human trafficking training may be included as a part of ongoing programs.

(e) ~~Participation in the course or courses specified in this section by peace officers or the agencies employing them is voluntary~~ Every law enforcement officer who is assigned field or investigative duties shall complete a minimum of two hours of training in the course or courses of instruction pertaining to the handling of human trafficking complaints as described in subdivision (a) by July 1, 2012 or within 6 months of being assigned to that position, whichever is later.

SEC. 9. This act may be amended by a statute passed in each house of the Legislature by rollcall vote entered in the journal, a two-thirds majority of the membership of the house concurring.