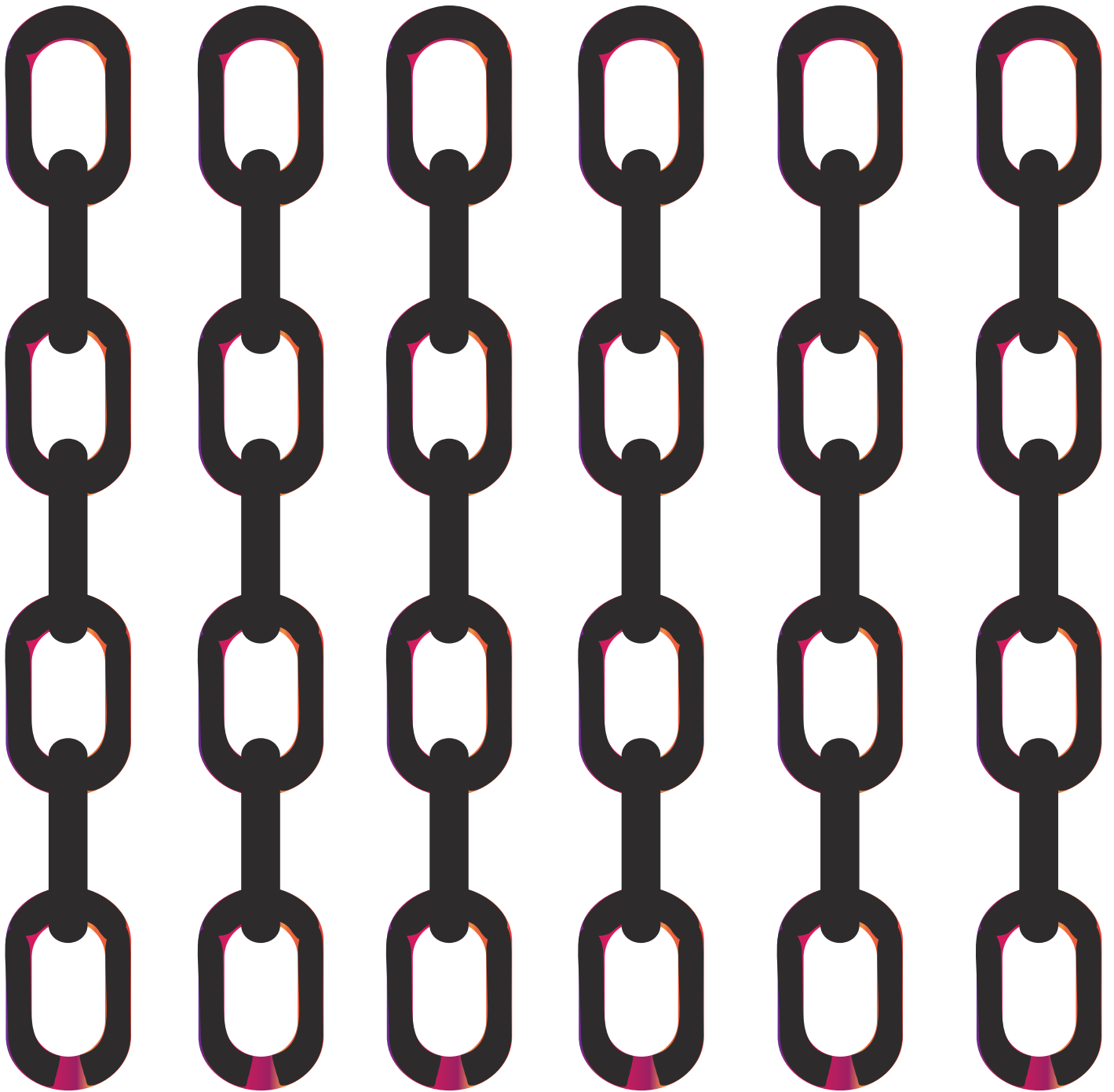


WHAT IS HUMAN TRAFFICKING?



EXPLORING THE SCOPE AND IMPACT OF THE CALIFORNIANS AGAINST SEXUAL EXPLOITATION (C.A.S.E.) ACT

A report by the San Francisco Human Rights Commission
Adopted May 28, 2015



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I. EXECUTIVE SUMMARY

On November 6, 2012, California voters passed Proposition 35 (“Californians Against Sexual Exploitation Act,” or “CASE Act,” or “Act”) into law by an overwhelming majority. The initiative called for tougher sentencing and higher criminal fines for persons convicted of human trafficking in California, particularly for those convicted of sex trafficking.

The purpose of this report is to present an analysis of the CASE Act and its impact on communities affected by human trafficking and anti-trafficking legislation. Although anti-trafficking legislation is based on a legitimate concern to prevent a real harm, increased protections can carry with them over broad prosecution and law enforcement. The report examines the major changes in California’s human trafficking law created by the CASE Act. While this report includes the perspectives of both those in favor and opposed to the CASE Act, it spends more time exploring the concerns of those opposed to the Act, so that their concerns are taken into account when enforcing the law. The report evaluates the impact of the Act on specific communities including immigrants, youth, sex workers, and laborers in certain industries. The report also examines how enforcement of the CASE Act may potentially affect individuals and communities differently based on race, class, gender, age, sexual orientation, gender identity and other social classifications, which are all interconnected. This report captures the fears and concerns raised at the time of the passing of the CASE ACT. The report does not assess the extent to which the fears and concerns raised have manifested since the implementation of the CASE Act. A subsequent report is needed to research the impact of the enforcement of the CASE Act in San Francisco and in other jurisdictions.

Since the passing of the Act, San Francisco formed the Mayor’s Task Force on Anti-Human Trafficking. The Task Force, through its committees, has sought to address some of the concerns raised in this report, including the impact of enforcement of anti-trafficking laws on children, monolingual immigrants, and sex workers.¹ The crime of human trafficking can take many forms and impacts a broad range of communities. Thus, trafficking victims have a variety of needs, and services must be tailored to meet different community interests. This report aims to further a collaborative approach that takes into consideration the needs of trafficking victims and other communities impacted by human trafficking and its enforcement by making recommendations that impact service providers, law enforcement, and policy makers. Recommendations address the following issues: (1) supporting legislative and policy reforms concerning anti-trafficking enforcement; (2) issues concerning youth; (3) barriers to services and protections for immigrants; and (4) concerns of persons involved in the sex trade.

¹ City and County of San Francisco Department on the Status of Women, “Mayor’s Task Force on Anti-Human Trafficking: First Year Highlights” (2013) <http://sfgov.org/dosw/node/1761>. Second year highlights to be published.

II. INTRODUCTION

A. Methodology

This report is the product of partnership between UC Hastings College of the Law (“Hastings”) and the San Francisco Human Rights Commission (“HRC”). During the Spring 2013 semester, two Hastings law students worked with Human Rights Commission staff to conduct research on the CASE Act and its potential human rights impact. The research for this project was conducted primarily through a series of in-depth interviews with community organizations and local government actors. The students and HRC staff met with the following individuals/organizations:

- **Alameda County District Attorney’s Office** – Sharmin Bock, Attorney with prosecutorial experience with human trafficking, proponent/co-author of the CASE Act
- **American Civil Liberties Union** – Linda Lye, Staff Attorney, working on litigation challenging internet identifier provision of the CASE Act
- **Asian Pacific Islander Legal Outreach (APILO)** – Cindy Liou, Staff Attorney, direct legal services to human trafficking victims
- **Bet Tzedek Legal Services** – Kevin Kish, Director Employment Rights Division, represents human trafficking victims in civil litigation
- **John Vanek** – former police lieutenant with San Jose and human trafficking task force member, anti-trafficking expert and Proposition 35 opponent
- **Loyola Law School** – Kathleen Kim, professor of law, human trafficking expert and co-author of AB 22
- **RTI International and UC Berkeley, School of Social Welfare** – Alix Lutnick, researcher and doctoral graduate, wrote dissertation on Domestic Minor Sex Trafficking Victims. Her book on this topic will be published by Columbia University Press the beginning of 2016
- **Saint James Infirmary** – Naomi Akers, Executive Director, direct client services to sex workers
- **San Francisco Department on the Status of Women** – Minouche Kandel, Director of Women’s Policy
- **San Francisco District Attorney’s Office** – Marshall Khine, former head of the Sexual Assault Unit, prosecutor of sexual exploitation crimes
- **San Francisco Public Defender’s Office** – Elizabeth Hilton, Staff Attorney, misdemeanor division representing defendants with prostitution cases
- **Standing Against Global Exploitation (SAGE)** – Ellyn Bell, Executive Director, and Donna Sinar, Staff, direct client services to human trafficking victims
- **Supervisor David Campos Office** – Stephany Ashley and Nate Albee, legislative aides, representatives for effected communities

Interviews were conducted with a variety of service providers and experts because in the process of getting Proposition 35 passed, there had been opposition from

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some of these individuals. Moreover, many victims' rights advocates felt they had been left out of the political debate on Proposition 35 and that certain groups were not represented in the development of the CASE Act. For example, the campaign for Proposition 35 focused on human trafficking as an issue of sex trafficking only, leaving out concerns about other types of labor trafficking. Additionally, Proposition 35 focuses on heightening criminal penalties. Many victims' advocates felt that this approach drew away from what should have been the main focus of legislation—how to provide better services for victims. Some of the opposition to Proposition 35 was heard in online blogs and op-eds; however, due to limited time and funding, these victims' advocates felt they were unable to challenge the campaign for Proposition 35 in any significant form.

In addition to the interviews, Hastings students and HRC staff participated in several meetings and forums, including a presentation by the San Francisco District Attorney's Office and Police Department on the CASE Act, a conference call hosted by Black Women for Wellness and Coalition to Abolish Slavery and Trafficking to discuss the Act, and a meeting hosted by SAGE Project on alternative approaches to addressing sex trafficking.

After gaining a thorough understanding of the CASE Act and human trafficking through the interviews and meetings, Hastings students and the Human Rights Commission invited impacted communities and decision makers to a roundtable discussion about the CASE Act. The purpose of the discussion was to make sure that victims' rights groups and other impacted communities could voice their concerns about the CASE Act and to hear some of their questions about how the Act would be implemented locally. Present at the meeting were sex worker advocates, trafficking victim advocates, transgender rights advocates, attorneys from the SF Public Defender's office and District Attorney's office, an attorney from the Alameda County District Attorney's office, legislative aides from a San Francisco Board of Supervisor's office, and Human Rights Commission staff. The meeting allowed these various advocacy groups and decision makers to discuss their views of the CASE Act and the impact it would have on the local community; many of these concerns are presented in the sections below. Participants also offered policy recommendations, which were incorporated into this report.

B. Terminology

Throughout this report we refer to different communities' perspectives on human trafficking and the CASE Act. We grouped these different perspectives together under several titles, specifically "trafficking victims' advocates," "sex worker advocates," "proponents of the CASE Act," and "the anti-trafficking movement." These terms were derived from the individuals and organizations that we spoke with who used these terms when discussing their work. We also came across these terms in the literature that we reviewed on human trafficking. Although these groups are generally discussed as separate entities, there is often overlap between these groups and perspectives. For example, some people identify as both

trafficking victims' advocates and sex worker advocates. It is also important to note that while we use the terms "trafficking victims" and "victims' advocates," many organizations and individuals, specifically direct service providers, express hesitancy with using the term "victim" when people may not identify as victims. For example, many youth who trade sex see themselves more as survivors than as victims. Some advocates express concern that using the term victim deprives individuals of the agency they have in deciding to work in a specific field or the agency necessary to make decisions about their own treatment or the services that they need. Thus, there is more nuance to the perspectives included than can be described under a particular label or group.

C. The Legislative History of Human Trafficking in the U.S.

Although the term human trafficking and the laws making trafficking a named crime are relatively new, the trafficking of persons has existed in the United States for centuries. The crime of trafficking is typically defined broadly as controlling a person through force, fraud, or psychological or physical coercion to use the person for forced labor or sexual exploitation.² Thus, anti-trafficking legislation criminalizes the deprivation of a person's liberty in both legal and illegal labor settings. The anti-trafficking movement has used the term "modern-day slavery" to highlight the fact that despite the abolition of slavery in the United States in 1865, exploitative labor conditions, and coercion into them, have continued to exist in the United States in many sectors, including the agricultural industry, the manufacturing industry, in-home care services, domestic services, and the sex industry.³

While human trafficking encompasses many types of forced labor, the anti-trafficking movement in the United States has focused heavily on sexual exploitation, specifically the sexual exploitation of women and girls. Federal legislation targeting interstate prostitution was first approved in 1910, when Congress passed the Mann Act, also known as the White Slave Traffic Act. The Mann Act made it illegal to transport women or girls across state lines for the purposes of sexual activity or prostitution. Notably, the Mann Act does not consider whether the woman consented in the act, and thus was used to criminalize many types of consensual sexual activity.⁴ Further, the Act has faced criticism for being used historically

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² AOC Briefing: Human Trafficking Cases in California's Courts: Successful Practices in the Emerging Field of Human Trafficking (December 2012).

³ Polaris Project, "Labor Trafficking in the U.S." (<http://www.polarisproject.org/human-trafficking/labor-trafficking-in-the-us>).

⁴ Geneva Brown, "Little Girl Lost: Las Vegas Metro Police Vice Division and the Use of Material Witness Holds Against Teenaged Prostitutes," p. 12 (2008).

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as a tool to target African-American men and immigrant men who had sexual relationships with white women.⁵

The Mann Act is unusual because most laws involving prostitution and pimping are state laws, since these crimes are within the States' purview to regulate. The passage of the Victims of Trafficking and Violence Protection Act (commonly known as the "Trafficking Victims Protection Act," or "TVPA") in 2000 once again made the crime of sex trafficking an issue of national concern. The stated purpose of the TVPA is to "combat trafficking in persons, a contemporary manifestation of slavery whose victims are primarily women and children."⁶ Congress has now reauthorized the TVPA several times and states across the country have also enacted their own anti-trafficking laws.

In 2005, the California legislature passed the California Trafficking Victims Protection Act (AB 22). AB 22 made trafficking a crime in California and defined human trafficking as, "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, 267, 311.4, or 518, or to obtain forced labor or services."⁷ Labor attorneys and activists focusing on the prevention of human slavery in all forms initiated the act.

In 2012, Californians passed the Californians Against Sexual Exploitation Act (the CASE Act) as an initiative on the November ballot.⁸ To address the issues of sexual exploitation, the CASE Act amends AB 22 to increase and redefine human trafficking in California. The Act passed by about 80%—the largest passage rate for an initiative in California. Prosecutorial attorneys and sexual victims advocates designed the Act to both increase criminal penalties for traffickers and place special emphasis on sex trafficking. Legislation like the CASE Act is part of a growing trend and exhibits a divide in the human trafficking debate.⁹ Some anti-trafficking advocates argue that criminalization functions as protection for victims and links them to services. Other anti-trafficking advocates state that this model instead pushes many human trafficking victims further underground. For these advocates, services and opportunities for victims need to be the focus because of the discriminatory enforcement patterns of law enforcement.

⁵David J. Langum, "Crossing over the Line: Legislating Morality and the Mann Act," (1994).

⁶ Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7102 (October 28, 2000), as amended.

⁷ See Appendix A for the full text of the listed penal codes.

⁸ Proposition 35 was placed on the ballot even though California State Senators had been addressing trafficking and were working on additional anti-trafficking legislation at the time. It is very rare for an initiative to be introduced when the issue is already being addressed by the State.

⁹ Emi Koyama, "Youth in the Sex Trade: How Understanding Push & Pull Factors Can Better Inform Public Policy," p. 4-12 (2011).

D. California's Approach to Human Trafficking

i. CASE Act compared to AB 22

Conviction. Under AB22, to convict someone of human trafficking the prosecutor must establish that the person (1) had the intent of a predicate crime OR wished to obtain forced labor *and* the person (2) deprived or violated the personal liberty of another. The following sections will discuss what the predicate crimes are, what constitutes forced labor, and how deprivation or violation of personal liberty is defined.

Predicate Crimes. Before the CASE Act there were six primary felonies that could be used as predicate crimes for human trafficking. The original six predicate crimes¹⁰ are CPC §§ 266, 266h, 266i, 267, 311.4, and 518. The original six predicate crimes are all sex-related charges, except for one, CPC § 518, which relates to an extortion offense.

The CASE Act retained the original six predicate sex and extortion-related crimes but also added six new sex-related predicate offenses. The additional six predicate crimes are listed as CPC §§ 266j, 311.1, 311.2, 311.3, 311.5, and 311.6.

Original Six Predicate Crimes

1. **CPC § 266** relates to enticing a single female minor for prostitution or sex. However, this law was made in 1872, has archaic language, and is rarely used.
2. **CPC § 266h** is most commonly referred to as pimping and, along with § 266i, is the most commonly used.
3. **CPC § 266i** defines pandering as encouraging someone to prostitute.
4. **CPC § 267** makes it illegal to kidnap a minor for the purposes of sex trade.
5. **CPC § 311.4** outlines the various ways that the creation of child pornography is illegal.
6. **CPC § 518** defines extortion.

Additional Six Predicate Crimes

1. **CPC § 266j** makes it illegal to aid a minor under 16 years old to trade sex.
2. **CPC § 311.1** relates to the sale of child pornography
3. **CPC § 311.2** creates a fine enhancement for persons previously convicted for the sale of child pornography.
4. **CPC § 311.3** relates to duplicates or exchanges of child pornography.
5. **CPC § 311.5** outlaws advertising or promoting child pornography.
6. **CPC § 311.6** relates to showing obscene material in a public space.

Forced Labor. Before the CASE Act, it was required to show that the person was guilty of one of the aforementioned six predicate crimes OR that the person obtained forced labor. The CASE Act has not modified this aspect of CPC § 236. This section functions as a catch-all for anyone that obtains forced labor or services through violating or depriving the personal liberty of another.

Deprives or Violates the Personal Liberty of Another. After you have established that the person is guilty of one of the predicate crimes

ted penal codes.

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or that they obtained forced labor, you must then show that one of the following are present: *fraud, deceit, coercion, violence, duress, menace, threat, force, or fear*. If the trafficked person is under 18 years old AND was used in furtherance of one of the predicate sex or extortion crimes, then coercion is implied.

Sentencing Structures. Before the CASE Act, human trafficking was divided into two categories based on the age of the victim for purposes of sentencing. The sentencing structure was the same regardless of whether the victim was trafficked into sex work or into other labor.

Pre CASE Act

CPC § 236.1(b): Human Trafficking of *adults* is punishable by imprisonment in the state prison for ***three, four, or five years***.

CPC § 236.1(c): Human Trafficking of *children* is punishable by imprisonment in the state prison for ***four, six, or eight years***.

The CASE Act has changed the sentencing structure to create four categories: Human trafficking for forced labor or services; human sex trafficking of adults; influencing a minor to engage in a commercial sex act; and the previous category with the addition of *fraud, deceit, coercion, violence, duress, menace, threat, force, or fear*.

Sentencing Enhancements. In addition to creating higher sentencing structures, the CASE Act forms additional enhancements for persons convicted of a section 236.1 violation. California Penal Code section 236.4 (b) states that if the convicted person inflicted a *great bodily injury* (GBI), then they are subject to an additional and consecutive term of ***five, seven, or ten years***. Further, California Penal Code section 236.4 (c) states that if the convicted person has a *236.1 prior conviction*, then they are subject to an additional and consecutive term of ***five years for each additional conviction on charges separately brought and tried***.

Fines. Before the CASE Act, fines were not a part of the criminal proceedings. However, the CASE Act in section 236.4(a) has created a fine of up to five hundred thousand dollars for any 236.1 conviction. The court may, at its

Post CASE Act

CPC § 236.1(a): Human Trafficking of *adults* for *forced labor or services* is punishable by imprisonment in the state prison for ***five, eight, or twelve years*** and a fine of not more than ***\$500,000***.

CPC § 236.1(b): Human Trafficking of *adults* for *a predicate crime related to sex trade* is punishable by imprisonment in the state prison for ***eight, fourteen, or twenty years*** and a fine of not more than ***\$500,000***.

CPC § 236.1(c)(1): *Attempting to cause, induce, or persuade, or actually causing, inducing, or persuading a minor in a predicate crime related to sex trade* is punishable by imprisonment in the state prison for ***five, eight, or twelve years*** and a fine of not more than ***\$500,000***.

CPC § 236.1(c)(2): Human Trafficking of *minors* for *a predicate crime related to sex trade* is punishable by imprisonment in the state prison for ***fifteen years to life*** and a fine of not more than ***\$500,000***.

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discretion, augment the fine by up to an additional one million dollars. In applying the additional fine, the court may consider the seriousness and gravity of the offense and the circumstances and duration of its commission, the amount of economic gain the defendant derived as a result of the crime, and the extent to which the victim suffered losses as a result of the crime. The court may also consider any other information it views as relevant.

Law Enforcement. Law enforcement officers are required to use their due diligence to identify all victims of human trafficking, regardless of the person's citizenship. They are required to consider whether the following indicators 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.

Under the previous definitions, police officers were required to make this assessment when they came into contact with a person that had been deprived of his or her personal liberty, a person suspected of violating CPC § 647 subsection (a) lewd conduct or (b) prostitution, or a victim of a crime of domestic violence or rape. Under the CASE Act, police officers are now required to extend this assessment to a minor who has engaged in a commercial sex act, and the language was changed from rape to sexual assault.

In addition to adding protections for minors, the CASE Act also amends CPC § 13519 (e). Previously, peace officer participation was voluntary in a course of instruction stressing the following: understanding the dynamics and manifestations of human trafficking, identifying and communicating with victims, providing documentation that

satisfy the federally mandated Law Enforcement Agency, collaborating with federal law enforcement officials, employing therapeutically appropriate investigative techniques, informing victims of the availability of civil and immigration remedies and community resources, and protecting victims. The CASE Act has amended this so that police officers assigned to field or investigative duties are mandated to

Sex Offender Registry

CPC § 290: Persons convicted of a CPC § 236.1 (b) and (c) are required to register as sex offenders.

CPC § 290.014: Registered sex offenders must register changes to Internet account within 24 hours.

CPC § 290.015(a)(4): Registered sex offenders must list all *Internet identifiers* that they use.

CPC § 290.015(a)(5): Registered sex offenders must list all *Internet service providers* that they use.

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attend a minimum of two hours of training within six months of being assigned to that position field or investigative duties.

Sex Offender Registry. The CASE Act also made additions to the sex offender registry through CPC § 236.1(b-c). It required human traffickers of persons in the commercial sex industry to register. It also required sex offenders to register all Internet identifiers (screen names, game characters, etc.) and service providers (Verizon, Comcast, etc.). They were required to register changes within 24 hours. The internet registration requirement was found unconstitutional. See Section III. A. (iii) below for more information.

Evidence Code. The CASE Act has added CPC section 1161 to prevent showing in court that the victim has a previous history or past involvement with sex work for the purposes of showing criminal liability. Additionally, the CASE Act makes it inadmissible to show a victim's previous sexual history in order to attack their character or impeach them as a witness.

i. CASE Act compared to Federal Law

The TVPA makes it illegal for a person to commit:

Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion; or

In which the person induced to perform such an act has **not attained 18 years of age**; or

The recruitment, harboring, transportation provision, or obtaining of a person for **labor or services**, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Definitions. The Trafficking Victims Protection Act of 2000 ("TVPA") defines human trafficking on the federal level. The TVPA breaks down trafficking into three categories: sex trafficking of adults, sex trafficking of minors, and labor trafficking. The definitions of trafficking under the CASE Act are more similar to the TVPA than they were under AB 22. The CASE Act has the same three categories, except it also adds the category of a human trafficker who uses force, fraud, or coercion of a minor to commit a commercial sex act.

Sentencing. The TVPA has three different tiers for sentencing: up to 20 years, 10 years to life, and 15 years to life. It divides the sentencing structures into forced labor/services, sex trafficking of a minor aged 14 to 18 without force, and all other sex trafficking.

The CASE Act has three different sentencing structures as well: 5-8-12 years, 8-14-20 years, or 15 years to life. It divides the sentencing structures into four categories: forced labor/services, sex trafficking of an adult with force, sex trafficking of a minor without force, and sex trafficking of a minor with force.

Sentence Enhancements and Fines. The TVPA does not create additional sentencing enhancements or outline what fines should be applied.

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Force, Fraud, and Coercion. While the Federal regulations provide three ways a person may obtain forced labor, the CASE Act contains an additional six. The TVPA states that human trafficking occurs where there is *force, fraud, or coercion*. The CASE Act includes these three as well as including *deceit, violence, duress, menace, threat, or fear*.

<u>SENTENCING STRUCTURES</u>	CASE Act	TVPA
Forced labor/services	5-8-12	Up to 20
Sex trafficking of adult, forced	8-14-20	15 to life
Sex trafficking of a minor		
Under age 14, without force	5-8-12	15 to life
Age 14 to 18, without force	5-8-12	10 to life
Under age 14, forced	15 to life	15 to life
Age 14 to 18, forced	15 to life	15 to life

It is important to note that unlike most voter-approved initiatives, the CASE Act explicitly states that it can be amended by the legislature. Thus, additional amendments to the CASE Act are not limited by California voters' approval through the initiative process.

III. ISSUES OF CONCERN

A. Human Rights Impact on Specific Communities

The enforcement of the CASE Act may affect individuals and communities differently based on race, class, gender, age, sexual orientation, gender identity and other social classifications, which are all interconnected. While the analysis below separates the issues in regards to different community and social groups, persons can be affected by the totality of these concerns and these concerns intersect in various ways.

i. Workers in industries with inadequate employee protections

Workers in various industries throughout the United States potentially face unfair or exploitative labor conditions. Certain industries, however, are able to avoid liability for their mistreatment of workers because they are not subject to the same employer restrictions as other industries under the federal and state labor laws. The culture and practices of certain industries may also contribute to the exploitation and trafficking of workers within that sector with little accountability. For example, domestic workers (including nannies, housekeepers, and caregivers) were not historically protected under the California or Federal Labor Code. It was not until September of 2013 that the Obama administration announced new rules extending the Fair Labor Standards Act to include home health workers.¹¹ In California, Governor Jerry Brown vetoed the California Domestic Workers Bill twice, despite his staunch commitment to anti-trafficking. It took seven years and two vetoes before the bill was finally signed into law in September of 2013.¹² The bill's anti-labor trafficking advocates argued that this law will have a much bigger impact on countering human trafficking than the CASE Act.

Other federal labor laws continue to exclude both domestic workers and farm workers. The National Labor Relations Act (NLRA) which protects an employee's "right to self organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing" explicitly excludes both farm workers and domestic workers.¹³ Advocates for farm and domestic workers rights see a direct link between poor labor protections and trafficking.¹⁴ They argue

¹¹ Amy B. Dean, *How Domestic Workers Won Their Rights: Five Big Lessons*, YES! Magazine (Oct. 9, 2013), <http://www.yesmagazine.org/people-power/how-domestic-workers-won-their-rights-five-big-lessons>.

¹² See <http://www.domesticworkers.org/campaigns>.

¹³ National Labor Relations Act, 29 U.S.C. § 152, see also Bon Appétit Management Company Foundation, *Inventory of Farmworker Issues and Protections in the United States* (Mar. 2011), at ii, http://www.ufw.org/pdf/farmworkerinventory_0401_2011.pdf.

¹⁴ Juan F. Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 Ohio St. L.J. 95, 97 (2011).

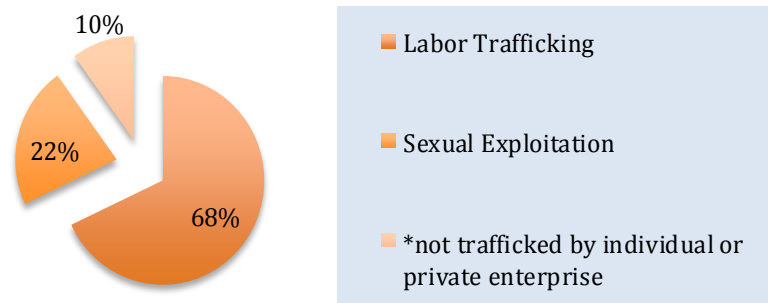
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that slavery does not exist in labor environments that offer adequate worker protections, including collective bargaining and other federally protected rights.¹⁵

In its 2014 concluding observations, the United Nations' Human Rights Committee criticized the U.S. for its de-emphasis of labor trafficking and expressed concern at the "insufficient identification and investigation of cases of trafficking for labour purposes and note[d] with concern that certain categories of workers, such as farm workers and domestic workers, are explicitly...more vulnerable to trafficking."¹⁶

Although the CASE Act maintains that human trafficking is a crime for coerced or forced labor in any job sector, the Act emphasizes sex trafficking as a more egregious offense by increasing sentences considerably for those convicted of sex trafficking. Thus, the CASE Act may create an incentive for law enforcement and prosecutors to focus their attention on sex trafficking and away from other types of labor trafficking. Moreover the message sent by the CASE Act is that sex trafficking is an epidemic that requires the leverage of significant state resources in order to prevent it from spreading. However, many service providers and victims' advocates state that sex trafficking is actually less common than other types of human trafficking. According to the International Labor Organization study in 2012, labor trafficking constituted 68% of trafficking compared with forced sexual exploitation, which constituted 22% of the total of trafficking.¹⁷

Type of Human Trafficking Experienced



¹⁵ Id.

¹⁶ United Nations International Covenant on Civil and Political Rights, "Concluding observations on the fourth periodic report of the United States of America", CCPR/ C/USA/CO/4 (Apr. 24, 2014), available at

http://www.ushrnetwork.org/sites/ushrnetwork.org/files/iccpr_concluding_obs_2014.pdf

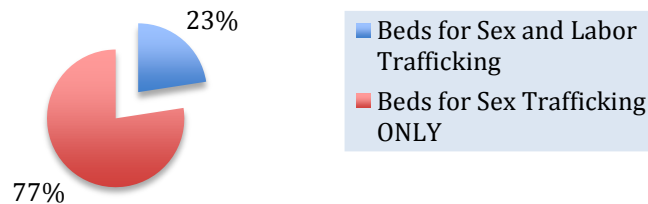
¹⁷ Sheldon X. Zhang, Ph.D. *Looking for a Hidden Population: Trafficking of Migrant Laborers in San Diego County*. November 2012. p. 29.

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However, sex trafficking dominates most of the human trafficking conversations. As a consequence, services are largely focused on sex trafficking instead of the more widely occurring labor trafficking. One example of this is the access to beds for labor trafficking victims compared to sexually trafficked victims.¹⁸

By making the same distinctions between sex trafficking and labor trafficking, the CASE Act arguably diminishes the seriousness of labor trafficking and draws resources and political attention away from the most common type of trafficking victim. Where the maximum sentence for labor trafficking is 12 years, the maximum sentence for sex trafficking is life imprisonment.

Beds Available for Human Trafficking Victims



The drafters of AB 22 included labor trafficking and commercial sex trafficking in the same category. They recognized that criminalizing sex trafficking received more political support than criminalizing other forms of human trafficking. They tried to leverage that support to provide more protections to people who were being trafficked outside the commercial sex industry. Some felt that the general public viewed labor trafficking as an issue related to immigration or non-nationals and were, therefore, less sympathetic. The stricter regulation of sex trafficking, while still having a connotation with foreign workers, drew more support because it was related to sexual exploitation. It is believed by some that if you divide the terms, more focus is placed on sexual exploitation. This acts to the detriment of the victims of labor trafficking, as they can potentially be ignored or given less attention. This is demonstrated in the mandated two-hour police training on human trafficking. The training mentions labor trafficking in passing, but the content focuses solely on sex trafficking.¹⁹

¹⁸ Polaris Project, Shelter Beds for Human Trafficking Survivors in the United States <https://na4.salesforce.com/sfc/p/300000006E4S9liF7eeqnpIT97HRFH4FvCSI5v4=>

¹⁹ Alexandra Lutnick, conversation with author regarding the "Human Trafficking: Identity and Response" video produced in 2014 by the California Commission on Police Officer Standard Training, March 16, 2015.

ii. Undocumented immigrants

Undocumented immigrants are particularly at risk of being trafficked due to barriers to employment, housing, social services, and legal protections. Because undocumented immigrants often have limited financial resources and are barred from many types of employment, they are more likely to be coerced or forced into labor or services—both legal and illegal. Yet undocumented immigrants are often hesitant to contact the police or other legal authorities to report the abuses they are facing for fear of deportation. Trafficking victims can apply for Trafficking Visas (T-Visas) to gain legal status allowing them to stay in the U.S. and gain many of the protections and benefits that they previously lacked. However, obtaining a T-Visa also requires evidence of cooperation with law enforcement, which can put the victim at risk of being retaliated against by their trafficker.²⁰ Some argue that victim cooperation with law enforcement is an essential tool in the larger objective of ending and preventing human trafficking. Others argue that mandating continued cooperation creates an unnecessary barrier to victims coming forward and is counterproductive to the larger objective of preventing trafficking. They argue that the law does not “ensure victims’ rights to assistance but rather conditions assistance to certain victims on their willingness to cooperate with law enforcement in their prosecution of their traffickers.”²¹ This runs counter to a human rights approach that prioritizes victim rights over successful prosecution.

As discussed above, a number of victims’ advocates are concerned that the CASE Act diverts attention and resources away from trafficking victims, unless the victim is specifically trafficked into the sex industry. Victims’ advocates have said that the increased penalties for sex trafficking as compared with labor trafficking will result in the neglect of victims of labor trafficking. These victims’ advocates have expressed concern that the Case Act’s de-emphasis of labor trafficking will result in some victims receiving services while others are jailed and forced to return home with potentially fatal consequences.

In addition, sex traffickers fit the preconceived image of a “criminal” more than labor traffickers. Conversely, cisgender woman and girls in the sex industry are perceived as “victims” more than undocumented immigrants in other industries who are perceived as “illegal.” Unlike sex trafficking, labor trafficking is “perpetrated by business operators, homeowners, and farm owners who are mostly ordinary members of the community. Their otherwise ordinary presence in the community makes it difficult to provoke moral outrage. To complicate the matter further, the most likely victims of forced labor are ‘illegal’ in the country and often regarded by law enforcement as criminals rather than victims in an illicit trade.”²²

²⁰ Ambika Kandasamy, “U.S. Visas Help Trafficking Victims, If Applicants Can Vault Legal Hurdles.” San Francisco Public Press (February 21, 2012)

²¹ Jonathan Todres, “Human Rights, Labor, and the Prevention of Trafficking,” 60 UCLA L. Rev. DISC. 142 (2013), p. 150.

²² Zhang *supra* note 16, p. 89.

iii. Persons working in the sex industry

The CASE Act poses special concerns for persons working in the sex industry. One issue is the criminalization of collaborative sex workers. Collaborative sex workers are sex workers who use each other for financial and psychological support, safety referrals, and advice on handling difficult situations. When sex workers work alone, they often need the physical protection and the referral structure of a third-party, such as a pimp.²³ This could lead to exploitation by that third party. To avoid this exploitation, some sex workers collaborate with each other, instead of working under a third party. The CASE Act potentially creates a disincentive for collaboration and thus makes some sex workers more likely to be exploited by a third party. For example, two sex workers could provide referrals to each other for clients that they know are reliable and trustworthy. These cooperatives may be viewed as encouraging someone to prostitute and could meet the requirements of a predicate crime of pandering, CPC § 266i. Additionally, if they trade money with each other for these referrals, they may trigger a predicate crime of pimping. Sex cooperatives are used by both youth and adults in the sex industry and can help sex workers reduce their risk of harm, for example sexually transmitted diseases.²⁴

Given the loose contours of what constitutes coercion, in a number of scenarios, one of these collaborative sex workers may be considered a human trafficker. For example, if the workers live together and one worker owes the other worker rent money, it may be argued under the CASE Act that coercion is present under the debt bondage CPC § 236.1(h)(1) provision. Additionally, if it can be proven that the sex workers often drink together or used controlled substances such as marijuana, it could be argued that an intent to impair the said person's judgment CPC § 236.1(h)(1) is present and that the sex worker in question is actually a human trafficker.

Another issue sex workers face is fair and equitable treatment by law enforcement officials such as police officers. Because many forms of sex work are illegal, large numbers of sex workers do not think of the police as a resource they can turn to for protection from violence, threats, or other abuse. The CASE Act may further alienate sex workers from law enforcement with concerns of being charged as a "co-conspirator."

Though these examples highlight some of the overly broad language of the CASE Act (e.g. definitions of "pandering" and "coercion"), it is important to note that the decision to press charges lies in the prosecutor's discretion and the ability to convict lies in the jury's hands. So while the language of the CASE Act may allow for

²³ A pimp is defined by the two crimes of pimping (§ 266h) and pandering (§ 266i) listed on the first page of Appendix A.

²⁴ See Cohan, D., Lutnick, A., Davidson, P., et al. "Sex Worker Health: San Francisco Style." *Sexually Transmitted Infections* 82.5 (Oct. 2006): 418–422. *PMC*. Web., available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2563853/>.

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these situations to develop, it does not necessarily mean that these situations will occur or that if they do they will result in conviction.

Some human rights advocates have expressed concerns that the CASE Act further promotes prosecution as the primary tool for combatting trafficking. They argue that victims bear the brunt of raids intended to target traffickers. According to the report “Clearing the Slate: Seeking Effective Remedies for Criminalized Trafficking Victims,” the policing of prostitution in the U.S. through raids and arrests both deters identifying victims of trafficking and undermines efforts to prosecute traffickers.²⁵ As a result of these raids and arrests, trafficking victims can develop a fear of law enforcement, making them more likely to go underground instead of turning to law enforcement for help. As explained in the report, “Instead of identifying victims and providing them protection and necessary support and services, raids often result in jail time and release right back into the hands of their traffickers.”²⁶ Moreover, the report states that trafficking victims often face police mistreatment, harassment, and discrimination during the raids and arrests for prostitution, resulting in further victimization that can lead to “severe mental anguish, trauma, and feelings of fear, helplessness, and uncertainty.”²⁷

Trafficked victims are left with a criminal record, and “[d]espite having been forced to engage in criminal acts by their traffickers, they are arrested, detained, and prosecuted, and then burdened with the stigma and collateral harms of a criminal record.”²⁸ In addition, to prostitution related charges, “[v]ictims of trafficking are at risk of arrest for vagrancy, trespass, disorderly conduct, crimes against nature, larceny, and drug and immigration offenses.”²⁹

To rectify the criminalization of trafficked victims, several states have passed vacatur laws to expunge records resulting from being a victim of trafficking. California’s Assembly Bill 1585, effective January 1, 2015, allows a defendant “who has been convicted of solicitation or prostitution to have that conviction set aside if the defendant can prove he or she was a victim of human trafficking.”³⁰ Assemblyman Luis Alejo (D-Watsonville), the author of the bill, commented that “This bill would make a major difference for victims of human trafficking...[f]ar too often these victims are denied jobs because of their conviction records. This bill gives victims of trafficking a better chance at employment opportunities and consequently a better life.”³¹

²⁵ International Women’s Human Rights Clinic at the City University of New York (CUNY) School of Law, *Clearing the Slate: Seeking Effective Remedies for Criminalized Trafficking Victims*, pp. 13-21 (2014).

²⁶ *Id.* at 40.

²⁷ *Id.*

²⁸ *Id.* at 38.

²⁹ *Id.* at 15.

³⁰ Allison Gatlin, *Bill targeting human trafficking goes to governor*, *The Salinas Californian* (Aug. 30, 2014), <http://www.thecalifornian.com/story/news/local/2014/08/28/bill-targeting-human-trafficking-goes-governor/14765035/>.

³¹ *Id.*

iv. Minors

In contrast to federal anti-trafficking law, the CASE Act leaves unchanged California Penal Code § 647(b) which has no minimum age for prostitution and allows for the arrest and prosecution of minors.³² This creates the anomaly that despite the trafficking laws' presumption that youth involved in the sex trade entered because of force or coercion and are therefore victims, youth can still be prosecuted for prostitution. Youth involved in sex trafficking could be labeled as either a victim or, if convicted, a criminal, depending on whom they encounter in law enforcement.

Further, the CASE Act fails to make any distinction between children and adolescents. Therefore, a nine-year-old child is treated the same as a seventeen-year-old adolescent. Additionally, the Act does not offer any additional protection for minors who are trafficked for labor other than commercial sex. This perpetuates the idea that enforced labor is less egregious than enforced sexual labor despite situations where this may not be the case. For example, the agriculture industry is especially harmful to children. More than half of children who died from work-related injuries in 2010 worked in crop production.³³ According to Human Rights Watch, "Children are also exposed to pesticides, some directly, others through drift and residue. In addition to acute poisoning, long-term pesticide exposure is associated with cancer, brain damage, and reproductive problems. With their bodies still developing children are especially at risk."³⁴

With respect to exploitation in the sex industry, the effects of these classifications on youth are varied. For example, youth who have been living on the streets often have distrust of the police because of legislation that criminalize behavior associated with homelessness. If these youth encounter police officers, they are more likely to act defiantly. Police officers are less likely to recognize a youth as a human trafficking victim if they feel that the youth is not exhibiting signs of exploitation.³⁵ Therefore, if a sexually exploited youth does not cooperate with a police officer, they are less likely to be labeled as a victim and more likely to be labeled as a prostitute. This creates a further divide between at-risk youth and law enforcement. Under the CASE Act, police officers assigned to field or investigative duties received mandated two-hour training. The training is designed to discuss the often hostile, combative demeanor of young victims of trafficking and formulate strategies to identify and work with the youth in spite of such challenges.

³² Trafficking Victims Reauthorization Act of 2013. <https://www.congress.gov/bill/113th-congress/house-bill/898/text>

³³ Zama Coursen-Neff, "Child Farmworkers in the United States: A 'Worst Form of Child Labor,'" Brown Human Rights Report, (November 17, 2011), at <http://www.hrw.org/news/2011/11/17/child-farmworkers-united-states-worst-form-child-labor>.

³⁴ *Id.*

³⁵ See Stephanie Halter, "Factors That Influence Police Conceptualizations of Girls Involved in Prostitution in Six Cities: Child Sexual Exploitation Victims or Delinquents?" (April 20, 2015) available at <http://cmx.sagepub.com/content/15/2/152>

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Additionally, the bright line age restriction of eighteen could potentially affect young adults working cooperatively while engaging in survival sex. For example, if a sex worker who is eighteen-years-old aids a seventeen-year-old friend in sex trade, the eighteen-year-old may be convicted of trafficking because no force, fraud, or coercion is necessary to establish trafficking when there is a minor involved. The age restriction could also be a deterrent for people to aid youth that are involved in sex trade, as they may be labeled as human traffickers. Additionally, youth that are under eighteen could also be labeled as traffickers; however, the difference between juvenile and adult court would prevent the same punishments and requirements. To address this issue, youth advocates urge the adoption of policies that decriminalize youth involved in the sex industry.³⁶ Proponents of the CASE Act argue that law enforcement intervention through an arrest provides the necessary tool to force youth to leave an exploitative situation. Others argue that the fear, trauma, and stigma associated with an arrest and potential conviction make this approach counterproductive. Currently, San Francisco is engaging the child welfare system as the primary system to connect with commercially sexually exploited youth. Youth are provided with resources without being criminalized.³⁷

Laws which criminalize children under 18 involved in prostitution run counter to international human rights standards. The Committee on the Rights of the Child, which oversees the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, criticized the U.S. for laws that allow for children to be “legally arrested, detained, and prosecuted for prostitution.”³⁸ It called on the U.S. government to “[L]egally and effectively decriminalize the involvement of children in prostitution ensuring that no state law on prostitution allows for the arrest and detention of prostituted minors”³⁹ and to “pass safe-harbour laws in all states...to ensure that prostituted children are “protected and not arrested or detained.”⁴⁰

Moreover, the Human Rights Committee enforcing the International Covenant on Civil and Political Rights called on the US to “take all appropriate measures to prevent the criminalization of victims of sex trafficking, including child victims, insofar as they have been compelled to engage in unlawful activities.”⁴¹

³⁶ See Illinois’ Safe Children Act for an example of a decriminalized approach

<http://g.virbcdn.com/f/files/98/FileItem-147964-ILSafeChildrenActSummaryNov2010FINAL.pdf>

³⁷ Conversation with Minouche Kandel, Commission on the Status of Women, April 21, 2015.

³⁸ International Women’s Human Rights Clinic at the City University of New York (CUNY) School of Law, *Clearing the Slate: Seeking Effective Remedies for Criminalized Trafficking Victims*, p. 39 (2014); Committee on the Rights of the Child, *Concluding Observations: United States*, ¶ 34(b).

³⁹ Committee on the Rights of the Child, *Concluding Observations: United States*, ¶ 34(b); see also International Women’s Human Rights Clinic at the City University of New York (CUNY) School of Law, *Clearing the Slate: Seeking Effective Remedies for Criminalized Trafficking Victims*, p. 39 (2014).

⁴⁰ Committee on the Rights of the Child, *Concluding Observations: United States*, ¶ 34(c); International Women’s Human Rights Clinic at the City University of New York (CUNY) School of Law, *Clearing the Slate: Seeking Effective Remedies for Criminalized Trafficking Victims*, p. 39 (2014).

⁴¹ See International Covenant on Civil and Political Rights, *supra* note 15.

v. Intersectionality

Race. The criminal justice system has been widely criticized for its racial disparities. The CASE Act takes a criminal justice approach to combatting human trafficking. Historically, this approach in other areas of law has impacted communities of color more than white communities. Black Women for Wellness advanced this argument during the Proposition 35 debate. Their voter guide provided the following analysis:

"Black Women for Wellness fully understands the devastating impact that human trafficking has on our families and our communities. However proposition 35 is not the answer. This measure seeks to increase sentences for human traffickers and sex offenders, however because of the broad definitions of this law, many young black and brown women and men are at risk for unnecessarily being targeted. How? Because of the loose definitions of trafficking, under this proposition, an 18 year old who takes his/her partner out for dinner and a movie and then engages in sex could be seen as a trafficker. In addition, it could punish anyone who associates with minor sex workers, even if their only intent was to buy him/her food or give him/her a ride to the store. Yes the odds of this seem rare, but knowing many communities of color relationships with law enforcement, it's not much of a reach to imagine a California in which this happens if Prop 35 passes. Furthermore, this law punishes all people prosecuted as sex offenders to have their Internet usage monitored for life. Yes this even includes the 18 year old we mentioned above. Black Women for Wellness wants to address trafficking, however not at the expensive of young people of color."

Racial stereotypes can also be seen in the mandated two- hour police training on human trafficking. The training video portrays all traffickers as men or women of color.⁴² This reinforces racial disparities already present in the criminal justice system. Thus, the combination of a vague law and police and prosecutorial discretion may have a disproportionate and significant impact on communities of color.

Poverty. Impoverished communities are at higher risk of becoming trafficking victims because they lack access to legal representation, housing, and employment. The CASE Act does not address these issues in its prevention plan for human trafficking and ignores the special issues these communities face. Lack of access to resources is one of the prominent "push factors" which creates conditions that leave little to no meaningful choice for people to leave trafficking situations.

⁴² See Lutnick, *supra* note 18.

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Gender. Human Trafficking is often viewed as an issue related to women. Concepts of women as victims as well as sexual objects play into this framing. The CASE Act makes no reference to gender in its language, but the concepts of gender in our society will affect the Act's consequences on women and men differently. Gender becomes a short cut for whether someone is a victim or a criminal.⁴³ Girls and women are often presumed to lack any agency or choice and are more likely to be labeled as victims. Conversely, boys and men are often presumed to have agency or choice but are also less likely to be labeled as a victim.

LGBTQ. A disproportionate number of LGBTQ youth are homeless. Seven different studies of homeless youth in the U.S. have concluded that approximately 20 percent of homeless youth are LGBTQ. This is disproportionately high when compared to the 10 percent of LGBTQ youth in the general population.⁴⁴ It has been reported that anywhere from one-quarter to one-third of homeless youth engage in survival sex.⁴⁵ Yet the mandated two-hour police training on human trafficking does not address how to interact appropriately with transgender youth or cisgender boys.⁴⁶ Further, LGBT youth are often overcharged with sex offenses.⁴⁷

The confluence of racism, transphobia, poverty, homelessness, and immigration status make transgender women of color especially vulnerable to exploitation.⁴⁸ Additionally, police often falsely identify transgender individuals as prostitutes.⁴⁹ Because of the harassment many transgender people experience from police officers, there is a high level of distrust in the transgender community towards law enforcement. For this reason, transgender individuals have a higher risk of being trafficked without recourse.

⁴³For more on police practices and its impact on persons in sex trade see United States Department of Justice, Law Enforcement Response to Human Trafficking and the Implications for Victims: Current Practices and Lessons Learned, (2006)

⁴⁴ National Alliance to End Homelessness, "LGBT Homeless Fact Sheet.",

⁴⁵ The National Gay and Lesbian Task Force, "Lesbian, Gay, Bisexual, and Transgendered Youth: An Epidemic of Homelessness," p. 55-56 (2006).

⁴⁶ See Lutnick, *supra* note 18.

⁴⁷ Equity Project, "Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts," p. 61-63 (2012).

⁴⁸ Emily Crockett, "Why It Might Not Be a Bad Thing if the Senate's Human Trafficking Bill Dies (Updated)" RH Reality Check, (March 17, 2015) at

<http://rhrealitycheck.org/article/2015/03/17/might-bad-thing-senates-human-trafficking-bill-dies/>

⁴⁹ Emi Koyama, "Erasure of Transgender Youth in the Sex Trade: How Transgender Community, Sex Workers' Movement, and Anti-Trafficking Movement Fail Transgender Youth," (2011).

B. Sex Registry and Evidence Code

Sex registry. The CASE Act made several modifications to the California sex registry requirements. It required human traffickers of persons in the commercial sex industry to register as sex offenders. It also required sex offenders to register all Internet identifiers and service providers. In addition, the CASE Act made the registry retroactive for persons convicted of a CPC § 236.1 violation after July 1, 1944. However, since § 236.1 was recently redefined by the CASE Act and § 236.1 violations were not present in 1944, it was unclear how this would affect persons with previous violations.

Proponents of the CASE Act's new registration requirements stated that the recidivist nature of sexual crime warranted the restrictions in order to protect the public interest. They stated that the information was vital to enforcing the CASE Act in the arena of Internet crime.

The American Civil Liberties Union of Northern California (ACLU) and the Electronic Frontier Foundation (EFF) brought a successful challenge to Internet requirements of the CASE Act.⁵⁰ The ACLU and EFF claimed that it was an unconstitutional infringement on free speech. It created issues in regards to the person's privacy to banking information and other important documents. The ACLU also claimed that the regulations were unjustly ambiguous. For example, the use of public Internet (i.e. in a library or a café) made it difficult to adhere to the requirements of registering an "internet service provider".

Evidence Code. Victims' advocates appreciate the changes to the Evidence Code in that it reflects sensitivity to the victim and an appropriate protection of information that could taint the jury's image of them. However, some sex worker advocates feel that the change could have an unintentional adverse consequence when sex workers are charged as "co-conspirators" of trafficking. In these instances, the accused "co-conspirator" would not be able to bring up that he or she worked together with the victim in a collaborative sex work relationship. This concerns advocates because it undermines collaborative sex work, which studies have shown may reduce harm for the sex worker.⁵¹

⁵⁰*Doe v. Harris*, 9th Circuit Court of Appeals, Case No. 13-15267, (November 18, 2014) published online <http://cdn.ca9.uscourts.gov/datastore/opinions/2014/11/18/13-15263.pdf>.

⁵¹ See Cohan, D., Lutnick, A., Davidson, P., et al. "Sex Worker Health: San Francisco Style." *Sexually Transmitted Infections* 82.5 (Oct. 2006): 418–422. *PMC*. Web., available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2563853/>.

C. Funding

i. Civil v. Criminal Remedies

Current law. In addition to changing sentencing structures and penalties, the CASE Act also increased criminal fines for persons convicted of human trafficking under CPC § 236.1. The CASE Act amended CPC §236.1 to add a maximum fine of \$500,000, and § 236.4(a) stated that the court may add an additional \$1,000,000 fine. Proponents of the CASE Act stated that increased fines are representative of the severity of the crime of trafficking. Drafters argued that increased fines would act as a deterrent to prevent people from trafficking if they know that they would risk losing all of their profits if criminally convicted. Moreover, drafters of the CASE Act explained that the increased fines are necessary because traffickers make so much profit off of their victims that the original maximum fine of \$100,000 was inadequate.

The fines collected are also meant to help victim service providers and to help fund law enforcement efforts to prevent human trafficking by depositing all fines into the Victim-Witness Assistance Fund.⁵² Seventy percent of the funds deposited will be used for grants for public agencies and nonprofit organizations that serve trafficking victims.⁵³ The remaining thirty percent will go to law enforcement and prosecution agencies.⁵⁴

Damages under California Civil Code Section 52.5. One concern expressed by some victims' advocates is that collecting such large criminal fines will make it impossible for victims to recover damages through civil litigation.⁵⁵ Under California Civil Code § 52.5, a victim of human trafficking can bring a civil suit against their trafficker to recover damages. This Civil Code section was enacted in conjunction with adding § 236.1 to the California Penal Code in 2005 as part of the California Trafficking Victims Protection Act (AB 22). Because civil cases have a lower standard of proof than criminal cases, § 52.5 provides a means for victims to be compensated, even if there is not a successful criminal conviction. However, if traffickers must pay \$1,500,000 in criminal fines, advocates are concerned that there will be nothing left for victims to recover.⁵⁶

Concerns about adequacy of restitution. § 52.5 enables trafficking victims to recover "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."⁵⁷ In addition, a plaintiff can also

⁵² Californians Against Sexual Exploitation Act, Section 8.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Kathleen Kim, Cindy Liou, and Kevin Kish, "Don't Undermine Victims' Rights in Fighting Sex Trafficking." (October 18, 2012).

⁵⁶ Ben Greer, "Unintended Consequences of Increasing Statutory Fines." (September 26, 2012).

⁵⁷ Cal. Civ. Code § 52.5 (a). (West).

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recover three times his or her actual damages or \$10,000—whichever is greater.⁵⁸ Conversely, victims are able to recover only a few thousand dollars under criminal restitution. Moreover, obtaining restitution requires a criminal conviction, which is often difficult to obtain in trafficking cases. Even if a conviction is achieved and restitution is paid, advocates have expressed concern that the restitution amount is often woefully inadequate to compensate the victim for his or her injuries and any lost wages.

Concerns about adequacy of California Victim Compensation Program. Trafficking victims' advocates, inclusive of sex worker advocates, have also expressed dissatisfaction with one of the current means of compensating victims of human trafficking—the California Victim Compensation Program (CalVCP). Under the CalVCP, victims are not eligible for funding if they are considered to have participated in the crime.⁵⁹ Trafficking victims and sex worker advocates state that some counties have interpreted this regulation to exclude from eligibility anyone arrested for prostitution, even if that person was later found to be a victim of human trafficking. Moreover, victims must cooperate with law enforcement during the investigation and prosecution of the crime in order to be eligible for CalVCP funds.⁶⁰ While the CASE Act did not impact this requirement, some advocates expressed concern that requiring the victim to cooperate with law enforcement may preclude victims who are much in need of assistance from receiving aid for fear that they may be harmed by the trafficker or someone connected to the trafficker. They advocate that services should not be predicated on someone's cooperation with prosecutorial efforts. Proponents of the CASE Act point out that ensuring victim cooperation in these cases is an important means to ending and preventing human trafficking and advocate for providing victim protection through other means such as confidential, safe shelter facilities. However, the United Nations Special Rapporteur on trafficking warns that an overemphasis on prosecution of trafficking can lead survivors to being viewed as “instruments” of a criminal investigation, rather than as holders of rights.⁶¹

ii. Funding to Service Providers

The CASE Act states that 70% of the funding from criminal fines collected under the Act will go towards grants for services to victims of human trafficking. The Act does not give any specific criteria as to who these service providers will be or how they will be chosen. Many victims' advocates are concerned that funds from the

⁵⁸Cal. Civ. Code § 52.5 (b). (West).

⁵⁹ Victim Compensation and Government Claims Board, Cal VCP.

<http://www.vcgcb.ca.gov/victims/eligibility.aspx>

⁶⁰ Id.

⁶¹ Joy Ngozi Ezelio, Special Rapporteur on trafficking in persons, especially women and children, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, ¶ 61, U.N. Doc. A/HRC/17/35 (Apr. 13, 2011); International Women's Human Rights Clinic at the City University of New York (CUNY) School of Law, *Clearing the Slate: Seeking Effective Remedies for Criminalized Trafficking Victims*, p. 13 (2014).

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criminal fines collected under the CASE Act will be used to support organizations that are not best suited to assist trafficking victims. For example, advocates are concerned that money will go to organizations whose philosophies or religious beliefs might not be shared by the client and that they may not employ harm reduction strategies that offer victims services in a non-judgmental space.

iii. Funding to Law Enforcement Agencies

As discussed in the introduction, the CASE Act requires that California's police officers undergo two hours of training on how to address human trafficking. These mandatory trainings can be an opportunity for police departments to educate their staff on the complexities of trafficking and how to carefully navigate the difficult territory of determining who is a trafficking victim. However, concerns have been raised that a two-hour training may not be adequate to address an issue as complex as human trafficking. Moreover, some victims' advocates have concerns that trainings will exclude the voices and concerns of impacted communities, and thus will not be effective in combating trafficking or meeting the needs of trafficking victims.

IV. POLICY RECOMENDATIONS

A. Local Recommendations

The Human Rights Commission recommends that lawmakers and anti-trafficking agencies should:

1. Create an advisory committee to allow for ongoing discussion between the community and law enforcement. Community members should be comprised of immigration, labor, sex worker, criminal justice reform, LGBT, trafficking victim advocates, and youth advocates. The advisory committee should include the San Francisco Police Department, the San Francisco District Attorney, and the San Francisco Public Defender. The purpose of the advisory committee is to (1) discuss strategies regarding the enforcement of anti-trafficking laws; (2) minimize unintended human rights consequences of the enforcing anti-trafficking laws; (3) develop future anti-trafficking measures and messaging that reflect the needs of all these communities; and (4) document best practices for other jurisdictions. In lieu of creating an advisory committee, the Mayor's Task Force on Anti-Human Trafficking may also be expanded to perform this function.
2. Conduct an evaluation of the mandated training. Based on the findings from that evaluation, encourage additional training beyond the two-hour minimum mandated by the CASE Act for all officers who may encounter human trafficking victims. Social workers and community service providers who work with trafficking victims should be consulted in developing these trainings. Training should include mock undercover operations training wherein the participants are given feedback about their performance after the mock session. In addition, the training should include specific emphasis on labor trafficking investigations, since these represent the vast majority of human trafficking, are usually harder to detect, and are currently not being pursued as frequently as sex trafficking crimes. The training should be reviewed for race bias and for inclusion of best practices in working with all youth (including cisgender boys and transgender youth) and youth who are homeless.
3. Advocate for more 24-hour drop-in centers, housing options, and on-site education and employment opportunities for homeless youth to ensure that youth have adequate resources that reduce their vulnerability to exploitation. Increase funding to create affordable housing, shelter, and services for homeless and low-income transitional aged youth.
4. Encourage service providers and law enforcement to: (1) adopt a harm reduction model to provide persons involved in the sex industry with a non-judgmental environment that reduces the risks of harms associate with sex work; (2) utilize social workers who are trained to work with human trafficking victims to do a screening when law enforcement encounters anyone who has engaged in a commercial sex act; and (3) adopt a policy that officers should not use sexual

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contact to establish a prostitution or human trafficking offense and conduct trainings to ensure the policy is followed.

B. State-wide Recommendations

The Human Rights Commission recommends that lawmakers and anti-trafficking agencies should:

5. In keeping with federal law and international standards, encourage intervention strategies for youth who are involved in the sex industry that do not criminalize youth.
6. Encourage the California Victim Compensation Program to modify their policies and regulations to ensure that human trafficking victims receive funding even if they were initially arrested or convicted of a crime.
7. Promote an amendment of the CASE Act to reserve the collection of criminal fines associated with a conviction of human trafficking until the trafficking victim has collected civil damages so long as the victim files a civil suit within the statutory limit.
8. Promote programs and services for families and youth to prevent youth from becoming homeless, such as: (1) increasing CalWORKs grant levels and associated supportive services for families in California; (2) providing youth transitioning out of the foster care system with increased supportive services, mentorship programs, and housing options; (3) increase funding to service providers that work with foster care youth.
9. Expand California vacatur law to provide for the removal of a range of criminal convictions that stem from the trafficking situation. Likewise, until youth are no longer criminalized, allow an affirmative defense whereby young people who have been charged with prostitution can get their cases dismissed based on the fact that they are considered trafficking victims.

C. Federal Recommendations

The Human Rights Commission recommends that lawmakers and anti-trafficking agencies should:

10. Support comprehensive immigration reform to make immigrants less vulnerable to exploitative labor conditions. Encourage legislation and policies that allow immigrant trafficking victims to report trafficking without fear of being deported.

V. CONCLUSION

The CASE Act, while designed with the intention of protecting victims, may actually make it harder for some victims to find justice. Additionally, the CASE Act's language potentially applies to situations that we do not traditionally label as "human trafficking." This impacts various communities with distinct as well as intersecting repercussions. It is the responsibility of policy decision makers, law enforcement agencies, public defenders, and district attorneys to ensure that the CASE Act is not allowed to have an overly broad impact on these vulnerable communities. Further, social service providers, community members, and government agencies, need to advocate for these vulnerable communities to have access to housing, employment, education, and health care in order to prevent exploitation. To achieve this, support structures and treatment facilities need to be available so that people that want to leave sex work or other illegal markets have options. In the future, legislation should also focus on the rights of the victims, rather than primarily the criminalization of the perpetrators.

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Original six predicate crimes:

CPC § 266

Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of 18 years, into any house of ill fame, or of assignation, or elsewhere, for the purpose of prostitution, or to have illicit carnal connection with any man; and every person who aids or assists in such inveiglement or enticement; and every person who, by any false pretenses, false representation, or other fraudulent means, procures any female to have illicit carnal connection with any man, is punishable by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both such fine and imprisonment.

CPC § 266h

266h. (a) Except as provided in subdivision (b), any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits or receives compensation for soliciting for the person, is guilty of pimping, a felony, and shall be punishable by imprisonment in the state prison for three, four, or six years. (b) Any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits or receives compensation for soliciting for the person, when the prostitute is a minor, is guilty of pimping a minor, a felony, and shall be punishable as follows: (1) If the person engaged in prostitution is a minor 16 years of age or older, the offense is punishable by imprisonment in the state prison for three, four, or six years. (2) If the person engaged in prostitution is under 16 years of age, the offense is punishable by imprisonment in the state prison for three, six, or eight years.

CPC § 266i

266i. (a) Except as provided in subdivision (b), any person who does any of the following is guilty of pandering, a felony, and shall be punishable by imprisonment in the state prison for three, four, or six years: (1) Procures another person for the purpose of prostitution. (2) By promises, threats, violence, or by any device or scheme, causes, induces, persuades, or encourages another person to become a prostitute. (3) Procures for another person a place as an inmate in a house of prostitution or as an inmate of any place in which prostitution is encouraged or allowed within this state. (4) By promises, threats, violence, or by any device or scheme, causes, induces, persuades, or encourages an inmate of a house of prostitution, or any other place in which prostitution is encouraged or allowed, to remain therein as an inmate. (5) By fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procures another person for the purpose of prostitution, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into this state or leave this state for the purpose of prostitution. (6) Receives or gives, or agrees to receive or give, any money or thing of value for procuring, or attempting to procure, another person for the purpose of prostitution, or to come into this state or leave this state for the purpose of prostitution. (b) Any person who does any of the acts described in subdivision (a) with another person who is a minor is guilty of pandering, a felony, and shall be punishable as follows: (1) If the other person is a minor 16 years of age or older, the offense is punishable by imprisonment in the state prison for three, four, or six years. (2) If the other person is under 16 years of age, the offense is punishable by imprisonment in the state prison for three, six, or eight years.

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CPC § 267

Every person who takes away any other person under the age of 18 years from the father, mother, guardian, or other person having the legal charge of the other person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the state prison, and a fine not exceeding two thousand dollars (\$2,000).

CPC § 311.4

311.4. (a) Every person who, with knowledge that a person is a minor, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor, hires, employs, or uses the minor to do or assist in doing any of the acts described in Section 311.2, shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment, or by imprisonment in the state prison. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars (\$50,000). (b) Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, or a live performance involving, sexual conduct by a minor under the age of 18 years alone or with other persons or animals, for commercial purposes, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years. (c) Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, or a live performance involving, sexual conduct by a minor under the age of 18 years alone or with other persons or animals, is guilty of a felony. It is not necessary to prove commercial purposes in order to establish a violation of this subdivision. (d) (1) As used in subdivisions (b) and (c), "sexual conduct" means any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum by any object in a lewd or lascivious manner, exhibition of the genitals or pubic or rectal area for the purpose of sexual stimulation of the viewer, any lewd or lascivious sexual act as defined in Section 288, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals. An act is simulated when it gives the appearance of being sexual conduct. (2) As used in subdivisions (b) and (c), "matter" means any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, or any other computer-related equipment or computer-generated image that contains or incorporates in any manner, any film, filmstrip, photograph, negative, slide, photocopy, videotape, or video laser disc. (e) This section does not apply to a legally

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emancipated minor or to lawful conduct between spouses if one or both are under the age of 18. (f) In every prosecution under this section involving a minor under the age of 14 years at the time of the offense, the age of the victim shall be pled and proven for the purpose of the enhanced penalty provided in Section 647.6. Failure to plead and prove that the victim was under the age of 14 years at the time of the offense is not a bar to prosecution under this section if it is proven that the victim was under the age of 18 years at the time of the offense.

CPC § 518

Extortion is the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.

Additional Six Predicate Crimes after the CASE Act:

CPC § 266j

Any person who intentionally gives, transports, provides, or makes available, or who offers to give, transport, provide, or make available to another person, a child under the age of 16 for the purpose of any lewd or lascivious act as defined in Section 288, or who causes, induces, or persuades a child under the age of 16 to engage in such an act with another person, is guilty of a felony and shall be imprisoned in the state prison for a term of three, six, or eight years, and by a fine not to exceed fifteen thousand dollars (\$15,000).

CPC § 311.1

(a) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or to exhibit to, or to exchange with, others, or who offers to distribute, distributes, or exhibits to, or exchanges with, others, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, shall be punished either by imprisonment in the county jail for up to one year, by a fine not to exceed one thousand dollars (\$1,000), or by both the fine and imprisonment, or by imprisonment in the state prison, by a fine not to exceed ten thousand dollars (\$10,000), or by the fine and imprisonment. (b) This section does not apply to the activities of law enforcement and prosecuting agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses. (c) This section does not apply to matter which depicts a child under the age of 18, which child is legally emancipated, including lawful conduct between spouses when one or both are under the age of 18. (d) It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or perform related activities in providing telephone services.

CPC § 647

Except as provided in subdivision (l), every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor: (a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view. (b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the

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specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration. (c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms. (d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act. (e) Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it. (f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled substance, or toluene, in a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way. (g) When a person has violated subdivision (f), a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody. The person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force which would be lawful were he or she effecting an arrest for a misdemeanor without a warrant. No person who has been placed in civil protective custody shall thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to this placement. This subdivision shall not apply to the following persons: (1) Any person who is under the influence of any drug, or under the combined influence of intoxicating liquor and any drug. (2) Any person who a peace officer has probable cause to believe has committed any felony, or who has committed any misdemeanor in addition to subdivision (f). (3) Any person who a peace officer in good faith believes will attempt escape or will be unreasonably difficult for medical personnel to control. (h) Who loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant. As used in this subdivision, "loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered. (i) Who, while loitering, prowling, or wandering upon the private property of another, at any time, peeks in the door or window of any inhabited building or structure, without visible or lawful business with the owner or occupant. (j) (1) Any person who looks through a hole or opening, into, or otherwise views, by means of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, camera, motion picture camera, camcorder, or mobile phone, the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside. This subdivision shall not apply to those areas of a private business used to count currency or other negotiable instruments. (2) Any person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person under or through the clothing being worn by that other person, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy. (3) (A) Any person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the

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interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person. (B) Neither of the following is a defense to the crime specified in this paragraph: (i) The defendant was a cohabitant, landlord, tenant, cotenant, employer, employee, or business partner or associate of the victim, or an agent of any of these. (ii) The victim was not in a state of full or partial undress. (k) In any accusatory pleading charging a violation of subdivision (b), if the defendant has been once previously convicted of a violation of that subdivision, the previous conviction shall be charged in the accusatory pleading. If the previous conviction is found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or is admitted by the defendant, the defendant shall be imprisoned in a county jail for a period of not less than 45 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 45 days in a county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in a county jail for at least 45 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 45 days in confinement in a county jail. In any accusatory pleading charging a violation of subdivision (b), if the defendant has been previously convicted two or more times of a violation of that subdivision, each of these previous convictions shall be charged in the accusatory pleading. If two or more of these previous convictions are found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or are admitted by the defendant, the defendant shall be imprisoned in a county jail for a period of not less than 90 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 90 days in a county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in a county jail for at least 90 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 90 days in confinement in a county jail. In addition to any punishment prescribed by this section, a court may suspend, for not more than 30 days, the privilege of the person to operate a motor vehicle pursuant to Section 13201.5 of the Vehicle Code for any violation of subdivision (b) that was committed within 1,000 feet of a private residence and with the use of a vehicle. In lieu of the suspension, the court may order a person's privilege to operate a motor vehicle restricted, for not more than six months, to necessary travel to and from the person's place of employment or education. If driving a motor vehicle is necessary to perform the duties of the person's employment, the court may also allow the person to drive in that person's scope of employment. (l) (1) A second or subsequent violation of subdivision (j) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment. (2) If the victim of a violation of subdivision (j) was a minor at the time of the offense, the violation is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment.

CPC § 311.2

(a) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, or prints, with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any obscene matter is for a first offense, guilty of a misdemeanor. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars (\$50,000). (b) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-

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generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or to exhibit to, or to exchange with, others for commercial consideration, or who offers to distribute, distributes, or exhibits to, or exchanges with, others for commercial consideration, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony and shall be punished by imprisonment in the state prison for two, three, or six years, or by a fine not exceeding one hundred thousand dollars (\$100,000), in the absence of a finding that the defendant would be incapable of paying that fine, or by both that fine and imprisonment. (c) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or exhibit to, or to exchange with, a person 18 years of age or older, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person 18 years of age or older any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment, or by imprisonment in the state prison. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision. If a person has been previously convicted of a violation of this subdivision, he or she is guilty of a felony. (d) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or exhibit to, or to exchange with, a person under 18 years of age, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person under 18 years of age any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision. (e) Subdivisions (a) to (d), inclusive, do not apply to the activities of law enforcement and prosecuting agencies in the investigation and prosecution of criminal offenses, to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses. (f) This section does not apply to matter that depicts a legally emancipated child under the age of 18 years or to lawful conduct between spouses when one or both are under the age of 18 years. (g) It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or to perform related activities in providing telephone services.

CPC § 311.3

(a) A person is guilty of sexual exploitation of a child if he or she knowingly develops, duplicates, prints, or exchanges any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip that depicts a person under

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the age of 18 years engaged in an act of sexual conduct. (b) As used in this section, "sexual conduct" means any of the following: (1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals. (2) Penetration of the vagina or rectum by any object. (3) Masturbation for the purpose of sexual stimulation of the viewer. (4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer. (5) Exhibition of the genitals or the pubic or rectal area of any person for the purpose of sexual stimulation of the viewer. (6) Defecation or urination for the purpose of sexual stimulation of the viewer. (c) Subdivision (a) does not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses. (d) Every person who violates subdivision (a) shall be punished by a fine of not more than two thousand dollars (\$2,000) or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. If the person has been previously convicted of a violation of subdivision (a) or any section of this chapter, he or she shall be punished by imprisonment in the state prison. (e) The provisions of this section do not apply to an employee of a commercial film developer who is acting within the scope of his or her employment and in accordance with the instructions of his or her employer, provided that the employee has no financial interest in the commercial developer by which he or she is employed. (f) Subdivision (a) does not apply to matter that is unsolicited and is received without knowledge or consent through a facility, system, or network over which the person or entity has no control.

CPC § 311.5

Every person who writes, creates, or solicits the publication or distribution of advertising or other promotional material, or who in any manner promotes, the sale, distribution, or exhibition of matter represented or held out by him to be obscene, is guilty of a misdemeanor.

CPC § 311.6

Every person who knowingly engages or participates in, manages, produces, sponsors, presents or exhibits obscene live conduct to or before an assembly or audience consisting of at least one person or spectator in any public place or in any place exposed to public view, or in any place open to the public or to a segment thereof, whether or not an admission fee is charged, or whether or not attendance is conditioned upon the presentation of a membership card or other token, is guilty of a misdemeanor.

CALIFORNIANS AGAINST SEXUAL EXPLOITATION ACT (“CASE ACT”)

SEC. 1. Title.

This measure shall be known and may be cited as the “Californians Against Sexual Exploitation Act (“CASE Act”).”

SEC. 2. Findings and Declarations.

The people of the State of California find and declare:

1. Protecting every person in our state, particularly our children, from all forms of sexual exploitation is of paramount importance.
2. Human trafficking is a crime against human dignity and a grievous violation of basic human and civil rights. Human trafficking is modern slavery, manifested through the exploitation of another’s vulnerabilities.
3. Upwards of 300,000 American children are at risk of commercial sexual exploitation, according to a United States Department of Justice study. Most are enticed into the sex trade at the age of 12 to 14 years old, but some are trafficked as young as four years old. Because minors are legally incapable of consenting to sexual activity, these minors are victims of human trafficking whether or not force is used.
4. While the rise of the Internet has delivered great benefits to California, the predatory use of this technology by human traffickers and sex offenders has allowed such exploiters a new means to entice and prey on vulnerable individuals in our state.
5. We need stronger laws to combat the threats posed by human traffickers and online predators seeking to exploit women and children for sexual purposes.
6. We need to strengthen sex offender registration requirements to deter predators from using the internet to facilitate human trafficking and sexual exploitation.

SEC. 3. Purpose and Intent.

The people of the State of California declare their purpose and intent in enacting the Act to be as follows:

1. To combat the crime of human trafficking and ensure just and effective punishment of people who promote or engage in the crime of human trafficking.
2. To recognize trafficked individuals as victims and not criminals, and to protect the rights of trafficked victims.

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3. To strengthen laws regarding sexual exploitation, including sex offender registration requirements to allow law enforcement to track and prevent online sex offenses and human trafficking.

SEC. 4. Section 1161 is added to the Evidence Code, to read:

1161. (a) Evidence that a victim of human trafficking, as defined in Section 236.1 of the Penal Code, has engaged in any commercial sexual act 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 any sexual history or history of commercial sexual act of a victim of human trafficking, as defined in Section 236.1 of the Penal Code, is inadmissible to attack the credibility or impeach the character of the victim in any civil or criminal proceeding.

SEC. 5. The heading of Chapter 8 (commencing with Section 236) of Title 8 of Part 1 of the Penal Code is amended to read:

Chapter 8. FALSE IMPRISONMENT AND HUMAN TRAFFICKING

SEC. 6. Section 236.1 of the Penal Code is amended to read:

~~236.1. (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, 267, 311.4, or 518, or to obtain forced labor or services, is guilty of human trafficking and shall be punished by imprisonment in the state prison for five, eight, or twelve years and a fine of not more than five hundred thousand dollars (\$500,000).~~

~~(b) Except as provided in subdivision (c), a violation of this section is punishable by imprisonment in the state prison for three, four, or five years.~~

~~(c) 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.~~

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(b) Any person who deprives or violates the personal liberty of another 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, or 518 is guilty of human trafficking and shall be punished by imprisonment in the state prison for eight, fourteen, or twenty years and a fine of not more than five hundred thousand dollars (\$500,000).

(c) Any 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 Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518 is guilty of human trafficking. A violation of this subdivision is punishable by imprisonment in the state prison as follows:

(1) Five, eight, or twelve years and a fine of not more than five hundred thousand dollars (\$500,000); 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.

(d) 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, and any handicap or disability of the victim, shall be considered.

(e) 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.

(f) 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.

~~(f)(g)~~ The Legislature finds that the definition of human trafficking in this section 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.

~~(g)(1) In addition to the penalty specified in subdivision (e), any person who commits human trafficking involving a commercial sex act where the victim of the human trafficking was under 18 years of age at the time of the commission of the offense shall be punished by a fine of not more than one hundred thousand dollars (\$100,000).~~

~~(2) As used in this subdivision, "commercial sex act" means any sexual conduct on account of which anything of value is given or received by any person.~~

~~(h) Every fine imposed and collected pursuant to 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 50 percent of the fines collected and deposited pursuant to this section shall be granted to community-based organizations that serve victims of human trafficking.~~

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

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(1) “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.

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

(3) “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.

(4) “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.

(5) “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.

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

(7) “Minor” means a person under 18 years of age.

(8) “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 acts in order to avoid incurring that harm.

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

SEC. 7. Section 236.2 of the Penal Code is amended to read:

236.2. 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 a commercial sex act, 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:

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- (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. 8. Section 236.4 is added to the Penal Code, to read:

236.4. (a) Upon the conviction of any person of a violation of Section 236.1, 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 million dollars (\$1,000,000). 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 and duration of its commission, the amount of economic gain the defendant derived as a result of the crime, and the extent to which the victim suffered losses as a result of the crime.

(b) Any person who inflicts great bodily injury on a victim in the commission or attempted commission of a violation of Section 236.1 shall be punished by an additional and consecutive term of imprisonment in the state prison for five, seven, or ten years.

(c) Any person who has previously been convicted of a violation of any crime specified in Section 236.1 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.

(d) Every fine imposed and collected pursuant to Section 236.1 and this Section shall be deposited in the Victim-Witness Assistance Fund, to be administered by the California Emergency Management Agency (Cal EMA), to fund grants for services for victims of human trafficking. Seventy percent of the fines collected and deposited shall be granted to public agencies and nonprofit corporations that provide shelter, counseling, and/or other direct services for trafficked victims. Thirty percent of the fines collected and deposited shall be granted to law enforcement and prosecution agencies in the jurisdiction in which the charges were filed to fund human trafficking prevention, witness protection, and rescue operations.

SEC. 9. Section 290 of the Penal Code is amended to read:

290. (a) Sections 290 to ~~290.023~~290.024, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of

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California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.

(c) The following persons shall be required to register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, subdivision (b) and (c) of Section 236.1, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

SEC. 10. Section 290.012 of the Penal Code is amended to read:

290.012. (a) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subdivision (b) of Section 290. At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in paragraphs (1) to ~~(3)~~(5), inclusive of subdivision (a) of Section 290.015. The registering agency shall give the registrant a copy of the registration requirements from the Department of Justice form.

(b) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice. Every person who, as a sexually violent predator, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense to the penalties prescribed in subdivision (f) of Section 290.018.

(c) In addition, every person subject to the Act, while living as a transient in California, shall update his or her registration at least every 30 days, in accordance with Section 290.011.

(d) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates

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or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

SEC. 11. Section 290.014 of the Penal Code is amended to read:

290.014. (a) If any person who is required to register pursuant to the Act changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three working days of its receipt.

(b) If any person who is required to register pursuant to the Act adds or changes his or her account with an Internet service provider or adds or changes an Internet identifier, the person shall send written notice of the addition or change to the law enforcement agency or agencies with which he or she is currently registered within 24 hours. The law enforcement agency or agencies shall make this information available to the Department of Justice. Each person to whom this subdivision applies at the time this subdivision becomes effective shall immediately provide the information required by this subdivision.

SEC. 12. Section 290.015 of the Penal Code is amended to read:

290.015. (a) A person who is subject to the Act shall register, or reregister if he or she has previously registered, upon release from incarceration, placement, commitment, or release on probation pursuant to subdivision (b) of Section 290. This section shall not apply to a person who is incarcerated for less than 30 days if he or she has registered as required by the Act, he or she returns after incarceration to the last registered address, and the annual update of registration that is required to occur within five working days of his or her birthday, pursuant to subdivision (a) of Section 290.012, did not fall within that incarceration period. The registration shall consist of all of the following:

(1) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(2) The fingerprints and a current photograph of the person taken by the registering official.

(3) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(4) A list of any and all Internet identifiers established or used by the person.

(5) A list of any and all Internet service providers used by the person.

(6) A statement in writing signed by the person acknowledging that the person is required to register and update the information in paragraphs (4) and (5), as required by this chapter.

(4)(7) Notice to the person that, in addition to the requirements of the Act, he or she may have a duty to register in any other state where he or she may relocate.

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(5)(8) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the date he or she is allowed to register.

(b) Within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(c)(1) If a person fails to register in accordance with subdivision (a) after release, the district attorney in the jurisdiction where the person was to be paroled or to be on probation may request that a warrant be issued for the person's arrest and shall have the authority to prosecute that person pursuant to Section 290.018.

(2) If the person was not on parole or probation at the time of release, the district attorney in the following applicable jurisdiction shall have the authority to prosecute that person pursuant to Section 290.018:

(A) If the person was previously registered, in the jurisdiction in which the person last registered.

(B) If there is no prior registration, but the person indicated on the Department of Justice notice of sex offender registration requirement form where he or she expected to reside, in the jurisdiction where he or she expected to reside.

(C) If neither subparagraph (A) nor (B) applies, in the jurisdiction where the offense subjecting the person to registration pursuant to this Act was committed.

SEC. 13. Section 290.024 is added to the Penal Code, to read:

290.024. For purposes of this chapter, the following terms apply: (a) "Internet service provider" means any business, organization, or other entity providing directly to consumers a computer and communications facility through which a person may obtain access to the Internet. An Internet service provider does not include a business, organization, or other entity that provides only telecommunications services, cable services, or video services, or any system operated or services offered by a library or educational institution.

(b) "Internet identifier" means any electronic mail address, user name, screen name, or similar identifier used for the purpose of Internet forum discussions, Internet chat room discussions, instant messaging, social networking, or similar Internet communication.

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SEC. 14. 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, 2014 or within 6 months of being assigned to that position, whichever is later.

SEC. 15. Amendments.

This act may be amended by a statute in furtherance of its objectives passed in each house of the Legislature by rollcall vote entered in the journal, a majority of the membership of each house concurring.

SEC. 16. Severability.

If any of the provisions of this measure or the applicability of any provision of this measure to any person or circumstances shall be found to be unconstitutional or otherwise invalid, such finding shall not affect the remaining provisions or applications of this measure to other persons or circumstances, and to that extent the provisions of this measure are deemed to be severable.