

Resolution 09-11-2013 (As Amended and Adopted)

Criminal Law: Sexual Exploitation of Minors

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend Penal Code section 236.1, to read as follows:

§ 236.1

- (a) Any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, is guilty of human trafficking and shall be punished by imprisonment in the state prison for 5, 8, or 12 years and a fine of not more than five hundred thousand dollars (\$500,000).
- (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 8, 14, or 20 years and a fine of not more than five hundred thousand dollars (\$500,000).
- (c) Any person who recruits, harbors, transports, provides, sells, purchases, obtains, causes, induces, or persuades, or attempts to recruit, harbor, transport, provide, sell, purchase, obtain, 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, 266e, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, ~~or~~ 518, or 647, subdivision (b), is guilty of human trafficking. A violation of this subdivision is punishable by imprisonment in the state prison as follows:
- (1) Five, 8, or 12 years and a fine of not more than five hundred thousand dollars (\$500,000).
- (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 totality of the circumstances, including the age of the victim, 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.

(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.

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

(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 providing and facilitating the possession of any controlled substance to a person with the intent to impair the person's judgment.

(2) "Commercial sex act" means 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 he or she 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 less than 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.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Women Lawyers of Sacramento

STATEMENT OF REASONS

The Problem: Existing law is limited in its application and fails to address a critical element, the “demand” of commercial sexual exploitation. While “pimps” can be prosecuted for human trafficking, existing law does not apply to “johns,” the persons who demand and purchase sex acts from minors. Moreover, under existing law, those individuals who aid the “pimp” in harboring or transporting a minor, would not be prosecuted for human trafficking. A failure to make the actions of the buyer a crime under a serious, specific criminal statute guarantees that the investigation and prosecution of these crimes will not rise in priority status, as they continue to be viewed as a mere “vice” crime or “quality of life” crime, rather than the rape and sexual abuse of a child which child sex trafficking actually is.”

This Solution : Amend the law to include any person who recruits, harbors, transports, provides, sells, purchases, or obtains a minor to engage in a commercial sex act, with the intent to effect or maintain a violation of one of the enumerated offenses, to be found guilty of human trafficking. Including the actions of the buyer of commercial sex acts performed by minors, and of any persons who aid in the commission of such offenses, addresses the “demand” element of human trafficking, which must be done in order to deter persons who contemplate sexually exploiting minors. This amendment will strengthen existing law and potentially have a significant impact on eradicating sex trafficking of minors in our state.

LEGISLATIVE HISTORY Not known

IMPACT STATEMENT This resolution does not now affect any other law, statute or rule.

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