

California State Report State Ratings 2014

The Polaris annual state ratings process tracks the presence or absence of 10 categories of state statutes that Polaris believes are critical to a comprehensive anti-trafficking legal framework. It is important to note that these 10 categories are not exhaustive of all the important legislation that helps combat human trafficking in a given state. Moreover, the ratings do not assess the effectiveness or implementation of these laws, nor the anti-trafficking efforts of task forces, law enforcement, prosecutors, judges, service providers, and advocates in the state. The purpose of the annual state ratings process is to document laws on the books, to motivate legislators and policy advocates, and to focus the attention of states on the statutes that still need to be enacted in order to achieve a strong anti-trafficking legal framework.

Rating: Tier One (green)

Total Points: 9

Credited Categories: 1 Sex Trafficking; 2 Labor Trafficking; 3(a) Asset Forfeiture; 3(b) Investigative Tools; 4(a) Training for Law Enforcement; 5 No Requirement of Force, Fraud, or Coercion for Minor Victims of Sex Trafficking; 6 Posting of a Hotline; 8 Victim Assistance; 9 Civil Remedy.

Categories Still Needed: 4(b) Human Trafficking Task Force; 7 Safe Harbor for Minors; and 10 Vacating Convictions

Category By Category Break-Down:

Category 1: Sex Trafficking Statute

PEN § 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 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, 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.

Category 2: Labor Trafficking Statute

Yes. See PEN § 236.1.



Category 3(a): Asset Forfeiture

PEN §236.3.

Upon conviction of a violation of Section 236.1, if real property is used to facilitate the commission of the offense, the procedures for determining whether the property constitutes a nuisance and the remedies imposed therefore as provided in Article 2 (commencing with Section 11225) of Chapter 3 of Title 1 of Part 4 shall apply.

Category 3(b): Investigative Tools

PEN §186.2.

(a) "Criminal profiteering activity" means any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged as a crime under any of the following sections:

(28) Human trafficking, as defined in Section 236.1.

(b)

(1) "Pattern of criminal profiteering activity" means engaging in at least two incidents of criminal profiteering, as defined by this chapter, that meet the following requirements:

(A) Have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics.

(B) Are not isolated events.

(C) Were committed as a criminal activity of organized crime.

(2) Acts that would constitute a "pattern of criminal profiteering activity" may not be used by a prosecuting agency to seek the remedies provided by this chapter unless the underlying offense occurred after the effective date of this chapter and the prior act occurred within 10 years, excluding any period of imprisonment, of the commission of the underlying offense. A prior act may not be used by a prosecuting agency to seek remedies provided by this chapter if a prosecution for that act resulted in an acquittal.

(c) "Prosecuting agency" means the Attorney General or the district attorney of any county.

(d) "Organized crime" means crime that is of a conspiratorial nature and that is either of an organized nature and seeks to supply illegal goods and services such as narcotics, prostitution, loan-sharking, gambling, and pornography, or that, through planning and coordination of individual efforts, seeks to conduct the illegal activities of arson for profit, hijacking, insurance fraud, smuggling, operating vehicle theft rings, fraud against the beverage container recycling program, or systematically encumbering the assets of a business for the purpose of defrauding creditors. "Organized crime" also means crime committed by a criminal street gang, as defined in subdivision (f) of Section 186.22. "Organized crime" also means false or fraudulent activities, schemes, or artifices, as described in Section 14107 of the Welfare and Institutions Code, and the theft of personal identifying information, as defined in Section 530.5.

(e) "Underlying offense" means an offense enumerated in subdivision (a) for which the defendant is being prosecuted.

Category 4(a): Training for Law Enforcement

PEN § 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 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 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.

PEN § 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 person suspected of violating subdivision (a) or (b) of Section 647, or a victim of a crime of domestic violence or rape, the peace officer shall consider whether the following indicators of human trafficking are present:

(a) Signs of trauma, fatigue, injury, or other evidence of poor care.

(b) The person is withdrawn, afraid to talk, or his or her communication is censored by another person.

(c) The person does not have freedom of movement.

(d) The person lives and works in one place.

(e) The person owes a debt to his or her employer.

(f) Security measures are used to control who has contact with the person.

(g) The person does not have control over his or her own government-issued identification or over his or her worker immigration documents.

Category 4(b): Human Trafficking Task Force

None.

Category 5: No Requirement of Force, Fraud, or Coercion for Sex Trafficking of Minors

Yes, See § 236.1(c) of the Penal Code.



Category 6: Posting of a Human Trafficking Hotline

CIV § 52.6. Specified businesses to post notice related to slavery and human trafficking; Development of model notice; Manner of notice; Failure to comply

(a) Each of the following businesses and other establishments shall, upon the availability of the model notice described in subdivision (d), post a notice that complies with the requirements of this section in a conspicuous place near the public entrance of the establishment or in another conspicuous location in clear view of the public and employees where similar notices are customarily posted:

- (1) On-sale general public premises licensees under the Alcoholic Beverage Control Act (Division 9 (commencing with Section 23000) of the Business and Professions Code).
- (2) Adult or sexually oriented businesses, as defined in subdivision (a) of Section 318.5 of the Penal Code.
- (3) Primary airports, as defined in Section 47102(16) of Title 49 of the United States Code.
- (4) Intercity passenger rail or light rail stations.
- (5) Bus stations.
- (6) Truck stops. For purposes of this section, "truck stop" means a privately owned and operated facility that provides food, fuel, shower or other sanitary facilities, and lawful overnight truck parking.
- (7) Emergency rooms within general acute care hospitals.
- (8) Urgent care centers.
- (9) Farm labor contractors, as defined in subdivision (b) of Section 1682 of the Labor Code.
- (10) Privately operated job recruitment centers.
- (11) Roadside rest areas.
- (12) Businesses or establishments that offer massage or bodywork services for compensation and are not described in paragraph (1) of subdivision (b) of Section 4612 of the Business and Professions Code.

(b) The notice to be posted pursuant to subdivision (a) shall be at least eight and one-half inches by 11 inches in size, written in a 16-point font, and shall state the following:

"If you or someone you know is being forced to engage in any activity and cannot leave—whether it is commercial sex, housework, farm work, construction, factory, retail, or restaurant work, or any other activity—call the National Human Trafficking Resource Center at 1-888-373-7888 or the California Coalition to Abolish Slavery and Trafficking (CAST) at 1-888-KEY-2-FRE(EDOM) or 1-888-539-2373 to access help and services. Victims of slavery and human trafficking are protected under United States and California law. The hotlines are:

Available 24 hours a day, 7 days a week.

Toll-free.

Operated by nonprofit, nongovernmental organizations.

Anonymous and confidential.

Accessible in more than 160 languages.

Able to provide help, referral to services, training, and general information."

(c) The notice to be posted pursuant to subdivision (a) shall be printed in English, Spanish, and in one other language that is the most widely spoken language in the county where the establishment is located and for which translation is mandated by the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.), as applicable. This section does not require a business or other establishment in a county where a language other than English or Spanish is the most widely



spoken language to print the notice in more than one language in addition to English and Spanish.

(d) On or before April 1, 2013, the Department of Justice shall develop a model notice that complies with the requirements of this section and make the model notice available for download on the department's Internet Web site.

(e) A business or establishment that fails to comply with the requirements of this section is liable for a civil penalty of five hundred dollars (\$500) for a first offense and one thousand dollars (\$1,000) for each subsequent offense. A government entity identified in Section 17204 of the Business and Professions Code may bring an action to impose a civil penalty pursuant to this subdivision against a business or establishment if a local or state agency with authority to regulate that business or establishment has satisfied both of the following:

(1) Provided the business or establishment with reasonable notice of noncompliance, which informs the business or establishment that it is subject to a civil penalty if it does not correct the violation within 30 days from the date the notice is sent to the business or establishment.

(2) Verified that the violation was not corrected within the 30-day period described in paragraph (1).

Category 7: Safe Harbor

* Recognition for efforts, but no credit awarded.

WIC § 18259. Sexually exploited minors pilot project; provisions

(a) The County of Alameda, contingent upon local funding, may establish a pilot project consistent with this chapter to develop a comprehensive, replicative, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors who have been arrested or detained by local law enforcement for a violation of subdivision (a) or (b) of Section 647 or subdivision (a) of Section 653.22 of the Penal Code.

(b) The District Attorney of the County of Alameda, in collaboration with county and community-based agencies, may develop, as a component of the pilot project described in this chapter, protocols for identifying and assessing minors, upon arrest or detention by law enforcement, who may be victims of commercial sexual exploitation.

(c) The District Attorney of the County of Alameda, in collaboration with county and community-based agencies that serve commercially sexually exploited minors, may develop, as a component of the pilot project described in this chapter, a diversion program reflecting the best practices to address the needs and requirements of arrested or detained minors who have been determined to be victims of commercial sexual exploitation.

(d) The District Attorney of the County of Alameda, in collaboration with county and community-based agencies, may form, as a component of the pilot project described in this chapter, a multidisciplinary team including, but not limited to, city police departments, the county sheriff's department, the public defender's office, the probation department, child protection services, and community-based organizations that work with or advocate for commercially sexually exploited minors, to do both of the following:

(1) Develop a training curriculum reflecting the best practices for identifying and assessing minors who may be victims of commercial sexual exploitation.

(2) Offer and provide this training curriculum through multidisciplinary teams to law enforcement, child protective services, and others who are required to respond to arrested or detained minors who may be victims of commercial sexual exploitation.



WIC § 18259.7. Establishment of pilot project; authorization; protocols; diversion program; multidisciplinary team; report to Legislature

(a) The County of Los Angeles, contingent upon local funding, may establish a pilot project consistent with this chapter to develop a comprehensive, replicative, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors who have been arrested or detained by local law enforcement for a violation of subdivision (a) or (b) of Section 647 or subdivision (a) of Section 653.22 of the Penal Code.

(b) The District Attorney of the County of Los Angeles, in collaboration with county and community-based agencies, may develop, as a component of the pilot project described in this chapter, protocols for identifying and assessing minors, upon arrest or detention by law enforcement, who may be victims of commercial sexual exploitation.

(c) The District Attorney of the County of Los Angeles, in collaboration with county and community-based agencies that serve commercially sexually exploited minors, may develop, as a component of the pilot project described in this chapter, a diversion program reflecting the best practices to address the needs and requirements of arrested or detained minors who have been determined to be victims of commercial sexual exploitation.

(d) The District Attorney of the County of Los Angeles, in collaboration with county and community-based agencies, may form, as a component of the pilot project described in this chapter, a multidisciplinary team including, but not limited to, city police departments, the county sheriff's department, the public defender's office, the probation department, child protective services, and community-based organizations that work with or advocate for commercially sexually exploited minors, to do both of the following:

(1) Develop a training curriculum reflecting the best practices for identifying and assessing minors who may be victims of commercial sexual exploitation.

(2) Offer and provide this training curriculum through multidisciplinary teams to law enforcement, child protective services, and others who are required to respond to arrested or detained minors who may be victims of commercial sexual exploitation.

(e) The District Attorney for the County of Los Angeles shall, on or before April 1, 2013, submit a report to the Legislature that summarizes the activities performed by the district attorney pursuant to this section, so that the Legislature may determine whether the pilot project should be extended or expanded to other counties prior to the repeal of this chapter pursuant to Section 18259.10. The report shall, at a minimum, include the number of sexually exploited minors, if any, diverted by the program authorized in subdivision (c), and a summary of the types of services and alternate treatments provided to those minors. This report shall be contingent upon local funding, and shall be required only if the County of Los Angeles establishes a pilot project and the district attorney performs any of the activities of the pilot project authorized by this chapter. The report shall not include any information that would reveal the identity of a specific sexually exploited minor.

Category 8: Victim Assistance

WIC § 13283. Victims of trafficking, domestic violence, and other serious crimes; access to refugee cash assistance and employment social services; exemption from work requirements; use of state funds.

Notwithstanding any other provision of law, the department shall ensure that noncitizen victims of trafficking, domestic violence, and other serious crimes, as defined in subdivision (b) of Section 18945, have access to refugee cash assistance, and refugee employment social services set forth in this chapter, to the same extent as individuals who are admitted to the United States as refugees under Section 1157 of Title 8 of the United States Code.



These individuals shall be subject to the same work requirements and exemptions as other participants, provided that compliance with these requirements is authorized by law. An exemption from these requirements shall be available if physical or psychological trauma related to or arising from the victimization impedes their ability to comply. Assistance and services under this subdivision shall be paid from state funds to the extent federal funding is unavailable.

PEN § 236.5.

(a) Within 15 business days of the first encounter with a victim of human trafficking, as defined by Section 236.1, law enforcement agencies shall provide brief letters that satisfy the following Law Enforcement Agency (LEA) endorsement regulations as found in paragraph (1) of subdivision (f) of Section 214.11 of Title 8 of the Code of Federal Regulations.

(b) The LEA must be submitted on Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, of Form I-914. The LEA endorsement must be filled out completely in accordance with the instructions contained on the form and must attach the results of any name or database inquiry performed. In order to provide persuasive evidence, the LEA endorsement must contain a description of the victimization upon which the application is based, including the dates the trafficking in persons and victimization occurred, and be signed by a supervising official responsible for the investigation or prosecution of trafficking in persons. The LEA endorsement must address whether the victim had been recruited, harbored, transported, provided, or obtained specifically for either labor or services, or for the purposes of a commercial sex act.

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

Category 9: Civil Remedy

CIV § 52.5. Civil action for damages to victims of human trafficking

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

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

(c) An action brought pursuant to this section shall be commenced within five years of the date on which the trafficking victim was freed from the trafficking situation, or if the victim was a minor when the act of human trafficking against the victim occurred, within eight years after the date the plaintiff attains the age of majority.

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



- (1) Disability includes being a minor, insanity, imprisonment, or other incapacity or incompetence.
- (2) The statute of limitations shall not run against an incompetent or minor plaintiff simply because a guardian ad litem has been appointed. A guardian ad litem's failure to bring a plaintiff's action within the applicable limitation period will not prejudice the plaintiff's right to do so after his or her disability ceases.
- (3) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant inducing the plaintiff to delay the filing of the action, or due to threats made by the defendant causing duress upon the plaintiff.
- (4) The suspension of the statute of limitations due to disability, lack of knowledge, or estoppel applies to all other related claims arising out of the trafficking situation.
- (5) The running of the statute of limitations is postponed during the pendency of any criminal proceedings against the victim.
- (e) The running of the statute of limitations may be suspended where a person entitled to sue could not have reasonably discovered the cause of action due to circumstances resulting from the trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.
- (f) A prevailing plaintiff may also be awarded reasonable attorney's fees and litigation costs including, but not limited to, expert witness fees and expenses as part of the costs.
- (g) Any restitution paid by the defendant to the victim shall be credited against any judgment, award, or settlement obtained pursuant to this section. Any judgment, award, or settlement obtained pursuant to an action under this section shall be subject to the provisions of Section 13963 of the Government Code.
- (h) Any civil action filed under this section shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim. As used in this section, a "criminal action" includes investigation and prosecution, and is pending until a final adjudication in the trial court, or dismissal

Category 10: Vacating Convictions

None.

If you would like assistance in enacting laws to fill in the gaps, please contact the Polaris Policy Program at policy@polarisproject.org.