

January 20, 2010

Hon. Edmund G. Brown Jr.
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Krystal Paris
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to human trafficking (A.G. File No. 09-0103).

Background

Federal Law. Federal law contains various criminal prohibitions against human trafficking. The Federal Trafficking Victims Protection Act generally defines two types of trafficking in persons: (1) *sex trafficking* in which a commercial sex act is induced by force or fraud, or in which the victim performing the act is under age 18, and (2) *labor trafficking* in which persons are recruited, transported, provided, or obtained for labor or services through the use of force or fraud. These federal laws are enforced by federal law enforcement agencies that may act independently or in conjunction with state and local law enforcement agencies.

State Law. Existing state law contains similar criminal prohibitions against trafficking in persons. Specifically, state law defines human trafficking as violating the liberty of a person with the intent to either (1) commit certain felony crimes (such as pandering or prostitution) or (2) obtain forced labor or services. Human trafficking is punishable under the state Penal Code by a state prison sanction of up to five years, or, if the victim is under the age of 18, by a state prison sanction of up to eight years. In addition, state law permits victims of human trafficking to file for damages from defendants in civil court. State law also requires that all funds derived from assets forfeited as the result of a sex trafficking conviction in which the victim is under age 18 be used to support programs for minor victims of human trafficking. Forfeited assets derived from other human trafficking convictions are generally retained by state and local governments for a variety of purposes.

Proposal

Expanded Definition of Human Trafficking. This measure proposes to amend the definition of human trafficking under state law by adding new crimes to the list of criminal violations that may be associated with human trafficking. For example, under the measure, violating the liberty of a person with the intent to distribute obscene matter would now be defined in statute as a form of human trafficking. In addition, the measure amends the definition of a sex trafficking crime involving minors such that, similar to federal law, it would no longer be necessary for the crime to involve force or coercion in order for it to be considered human trafficking.

More Severe Criminal Penalties for Human Trafficking. This measure increases the current criminal penalties for human trafficking under state law. Under the measure, most sex trafficking and labor trafficking crimes would generally be punishable by up to 16 years in state prison. Sex trafficking of minors that involved such actions as force or fraud would be punishable by up to a life term in prison. Moreover, offenders with previous convictions for human trafficking could receive an additional and consecutive five years in prison for each previous conviction. Offenders convicted of human trafficking which resulted in great bodily injury to the victim could be punished with an additional and consecutive term of up to ten years. The measure also permits criminal courts to impose new fines of up to \$500,000 for human trafficking, depending on the specific offense. In addition, the measure creates a new state crime for, among other actions, destroying or confiscating a person's government identification, including but not limited to a passport or immigration document, for the purposes of restricting the person's liberty of movement. This crime would be punishable by a state prison sanction of up to eight years, as well as a fine.

Additional Changes to Human Trafficking Laws. The measure increases the amount of damages that victims of human trafficking could potentially be awarded in civil court for, among other purposes, compensating them for any losses they suffered. It also increases the statute of limitations for filing such suits and allows human trafficking victims to be represented by a parent, guardian, or court appointee in the event the victim is unable to appear in court.

The measure also affects the trial of criminal cases involving charges of human trafficking. Specifically, the measure affects cases involving potential evidence that a victim of human trafficking was also liable for criminal sexual conduct. This measure does not allow such evidence to be used to prosecute a crime victim in such circumstances. It also makes evidence of sexual conduct by a victim inadmissible for the purposes of attacking the victim's credibility in court. In addition, this measure states that certain defenses to the criminal prosecution of human trafficking involving minors are invalid—for example, a claim that the minor consented to the illegal activities alleged in the case.

Programs for Human Trafficking Victims. The measure requires that funds derived from assets forfeited as a result of any human trafficking conviction—not only those involving the sex trafficking of minors—be used to support programs for victims of human trafficking. In addition, the measure provides that a penalty of up to \$100,000, in addition to the penalties discussed above, may be imposed on defendants convicted of human trafficking, with the proceeds used to support these same programs.

Law Enforcement Training. This measure requires that all police officers and sheriff's deputies, as well as peace officers employed by the California Highway Patrol, who perform field or investigative work undergo at least two hours of training in the handling of human trafficking complaints. This training would have to be completed by July 1, 2012 or within six months of the officer being assigned to the position.

Fiscal Effects

Currently, human trafficking cases are often prosecuted under federal law, rather than California state law, even when California law enforcement agencies are involved in the investigation of the case. This is partly because these types of crimes often involve multiple jurisdictions and also because of the federal government's historical lead role in such cases. Therefore, it is unknown whether the expanded definition of human trafficking and other changes proposed in this measure would significantly increase the number of state human trafficking arrests and convictions or whether most such cases would continue to be handled primarily by federal law enforcement authorities. As a result, the potential fiscal effects of this measure on state and local governments that we discuss below are subject to considerable uncertainty.

Potential Increase in Local Law Enforcement Training Costs. As noted earlier, this measure requires that certain state and local law enforcement officers receive specific training on human trafficking. The state law enforcement officers specified in the measure already receive such training. Therefore, there would be no additional state costs for this training. The fiscal impact of this requirement on local agencies would partially depend on the unknown extent to which local officers are currently receiving such training, such as through the Commission on Peace Officer Standards and Training. Depending on how local law enforcement agencies choose to satisfy the measure's training requirements, counties and cities could collectively incur costs of up to a few million dollars on a one-time basis to train existing staff, and provide back-up staff to officers who are in training, with lesser additional costs incurred each year to train newly-hired officers.

Potential Fiscal Effects on State and Local Revenues. The measure could have various effects on state and local revenues. If more offenders are convicted of human trafficking under the state statutes, there could be an increase in state and local revenues (including to cities and counties) due to the new criminal fines established in the measure. However, the measure requires that some of these revenues be dedicated to programs that serve victims of human trafficking. In addition, the measure could change the way revenues from asset forfeitures related to human trafficking cases are distributed to require that they all be used instead to support programs serving victims of human trafficking. The net fiscal effect of all of these changes on state and local government revenues is unknown.

Potential Minor Increase in State and Local Correctional Costs. If the measure increases the number of human trafficking arrests, prosecutions, and convictions, it could result in a minor increase in costs for the state prison and parole systems, as well as for county jails and probation departments. This is because state and county governments would be responsible for supervising additional offenders subject to these provisions. However, given that, as of December 2009, only six individuals were reportedly being held in state prison for human trafficking, any increase in costs resulting from this measure is likely to be minimal compared to the overall cost of the state and county correctional systems.

Potential Minor Increase in Other State Program Costs. If the measure were to increase the number of human trafficking arrests and convictions, it could result in a minimal increase in costs for certain state health and social services programs. This is because the state provides certain temporary benefits to victims of human trafficking until they qualify to receive such benefits from the federal government. However, the current benefit costs for human trafficking victims are relatively small compared to the overall size of these programs. Any increase in health and social services costs from this measure is therefore likely to be minimal. In addition, an increase in the number of human trafficking cases could result in a minimal increase in costs for the state court system.

Summary of Fiscal Effects

It is unknown whether the measure would increase state human trafficking arrests and convictions given the current dominant federal role in these types of cases. Thus, the fiscal effects resulting from the measure are subject to significant uncertainty. The fiscal effects we have identified are summarized below:

- Potential increased local government costs of up to a few million dollars on a statewide basis due to the new mandatory training requirements for certain law enforcement officers.

- Unknown but probably minor net fiscal effects for state and local governments from a potential increase in human trafficking arrests and convictions. This would be a negligible percentage increase in state General Fund spending.

Sincerely,

Mac Taylor
Legislative Analyst

Ana J. Matosantos
Director of Finance