

December 6, 2011

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Dawn McFarland
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed a proposed statutory initiative related to human trafficking (A.G. File No. 11-0059).

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.

Under existing state law, most offenders convicted of sex crimes (including some crimes involving human trafficking) are required to register as sex offenders with the local law enforcement agency where they reside for the remainder of their lives.

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, labor trafficking crimes would be punishable by up to 12 years in state prison and sex trafficking would be punishable by up to 20 years in 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. In addition, the measure permits criminal courts to impose new fines of up to \$500,000 for human trafficking, depending on the specific offense. The measure also permits the courts to impose an additional fine of up to \$1 million. The measure states that courts shall consider a variety of factors in setting this additional fine, including the seriousness and gravity of the offense and the extent to which the victim suffered losses as a result of the crime.

Programs for Human Trafficking Victims. The measure requires that funds collected from the above fines be deposited in the Victim-Witness Assistance Fund to support services for victims of human trafficking. Specifically, 70 percent of funds shall be allocated to public agencies and nonprofit organizations that provide direct services to such victims. The measure requires that the remaining 30 percent be provided to law enforcement and prosecution agencies—in the jurisdiction where the charges were filed—for trafficking prevention and rescue operations.

Changes Affecting Criminal Trials. 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 or mistaken age of the victim.

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, 2014 or within six months of the officer being assigned to the position.

Expanded Requirements for Sex Offender Registration. This measure states that sex offenders who are required under current law to register with local law enforcement agencies must provide at the time of registration any internet identifiers and service providers they used. Such identifiers include e-mail addresses, user names, screen names, or other personal identifiers

for internet communication and activity. If a registrant changes his or her internet service account or changes or adds an internet identifier, the individual must notify law enforcement within 24 hours of such changes.

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 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.

Minor Increase in State and Local Correctional Costs. The measure would result in additional state and local correctional costs by increasing the criminal penalties for human trafficking, as well as by possibly increasing the number of human trafficking arrests, prosecutions, and convictions. However, given that, as of October 2011, only 16 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.

Increased Fine Revenue for Victim Services. The new criminal fines established by this measure would likely result in an unknown amount of additional revenue, likely not to exceed the low millions of dollars annually, depending on the number of individuals convicted of human trafficking and the level of fines imposed by the courts. However, the measure requires that all these revenues be dedicated to services for victims of human trafficking and human trafficking prevention and prosecution.

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 major fiscal effects we have identified are summarized below:

- Potential one-time local government costs of up to a few million dollars on a statewide basis, and lesser additional costs incurred each year, due to the new mandatory training requirements for certain law enforcement officers.
- Minor increase to state and local governments on the costs of incarcerating and supervising human trafficking offenders.
- Unknown amount of additional revenue from new criminal fees, likely not to exceed the low millions of dollars annually, which would fund services for human trafficking victims.

Sincerely,

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Legislative Analyst

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