
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 35 **Hearing Date:** March 26, 2019
Author: Chang
Version: February 14, 2019
Urgency: No **Fiscal:** Yes
Consultant: JK

Subject: *Human Trafficking: California ACTS Task Force*

HISTORY

Source: Coalition to Abolish Slavery and Human Trafficking (CAST)

Prior Legislation: AB 2216 (Patterson & Santiago), 2018, failed passage in Assembly Appropriations
AB 1684 (Stone), Ch. 63, Stats. 2016
AB 22 (Lieber), Ch. 240, Stats. 2005
SB 180 (Kuehl), Ch. 239, Stats. 2005
AB 2049 (Aroner), 2002, failed passage in Senate Appropriations
SB 627 (Johnston), 1999, Vetoed

Support: California Alliance of Child and Family Services; California Catholic Conference; California District Attorneys Association; California Massage Therapy Council; California Public Defenders Association; California State Sheriffs' Association; Dignity Health; National Council of Jewish Women California; Riverside Sheriffs' Association

Opposition: California Attorneys for Criminal Justice

PURPOSE

The purpose of this bill is to re-establish the California Alliance to Combat Trafficking and Slavery (California ACTS) Task Force. The task force will collect data on the nature and extent of human trafficking to provide recommendation to the Governor, the Attorney General, the Office of Emergency Services, and the Legislature.

Existing law makes a person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services guilty of the crime of human trafficking and subject to imprisonment and a specified fine. (Pen. Code § 236.1.)

Existing law states that the Attorney General shall give priority to matters involving organized crime, gang activities, drug trafficking, human trafficking, and cases involving a high degree of risk to the witness. (Pen. Code § 14023.)

Existing law establishes that cases involving minor victims of human trafficking shall be provided with assistance from the local county Victim Witness Assistance Center, if the minor so desires. However, this section does not require local agency's to operate a Victim Witness Assistance Center (Pen. Code § 236.13 (a).)

Existing law establishes in the State Treasury the Human Trafficking Victims Assistance Fund. Moneys in the fund shall only be expended to support programs for victims of human trafficking. (Gov. Code § 8590.7 (a).)

Existing law establishes that grant awards must be based on the following:

- 1) The capability of the qualified nonprofit organization to provide comprehensive services. (Gov. Code § 8590.7 (b)(A).)
- 2) The stated goals and objectives of the qualified nonprofit organization. (Gov. Code § 8590.7 (b)(B).)
- 3) The number of people to be served and the needs of the community. (Gov. Code § 8590.7 (b)(C).)
- 4) Evidence of community support. (Gov. Code § 8590.7 (b)(D).)
- 5) Other criteria the office deems appropriate that is consistent with the requirements of this paragraph. (Gov. Code § 8590.7 (b)(E).)

Existing law states that the Department of Fair Employment and Housing can receive, investigate, and prosecute claims that are brought under the state's Trafficking Victims Protection Act on behalf of victims of human trafficking. (Gov. Code § 12930 (f)(1)(2)(3).)

Existing law establishes that the Department of Fair Employment and Housing must report to the Governor and to the Legislature about its activities and recommendations. (Gov. Code § 12930 (k).)

This bill re-establishes the California Alliance to Combat Trafficking and Slavery (California ACTS) Task Force.

This bill requires California ACTS to collect and organize data on the nature and extent of trafficking of persons in California, and prepare and deliver a report to the Office of Emergency Services (OES) and the Legislature by March 31, 2021 that details recommendations for all of the following:

- 1) The cost of a prevalence study that addresses types of trafficking and the dynamics of who is being trafficked.
- 2) The best entity to conduct such a study for California.
- 3) How often such a study should be conducted.

This bill requires California ACTS to examine collaborative models between governmental and nongovernmental organizations for protecting victims of trafficking.

This bill requires California ACTS to measure and evaluate the progress of the state in preventing trafficking, providing assistance to victims, and prosecuting.

This bill requires California ACTS to report collected information to OES and the Legislature by December 31, 2020. The report shall detail recommendations for:

- 1) The cost of a study evaluating the service providers funded by OES.
- 2) How often the study should be conducted.
- 3) Recommendations to the Office of Emergency Services on standard outcomes and performance indicators to best evaluate the effectiveness of human trafficking programs and services, as well as public education and outreach efforts.

This bill requires California ACTS to identify available federal, state, and local programs that provide services to victims of trafficking.

This bill requires California ACTS to evaluate approaches to increase public awareness of trafficking.

This bill requires California ACTS to analyze existing state criminal statutes for their adequacy in addressing trafficking. If the statutes are inadequate, then California ACTS will recommend revisions or enact new statutes.

This bill requires California ACTS to consult with governmental and nongovernmental organizations in developing recommendations to strengthen state and local efforts to prevent trafficking, and prosecute traffickers, including specifically addressing the issues of forced criminality.

This bill states that the task force shall be chaired by a designee of the Attorney General and the Department of Justice shall provide staff and support.

This bill states that the task force shall be comprised of the following representatives or their designees:

- 1) The Attorney General.
- 2) The Secretary of Labor and Workforce Development.
- 3) The Director of Social Services.
- 4) The Director of Health Care Services.
- 5) The Chair of Judicial Council.
- 6) The Chair of the Commission on the Status of Women and Girls.
- 7) One representative of the California District Attorneys Association.
- 8) One representative of the California Public Defenders Association.
- 9) Two representatives of local law enforcement, one selected by the California State Sheriffs' Association, and one selected by the California Police Chiefs Association.
- 10) One representative of the California Coalition Against Sexual Assault, appointed by the Governor.
- 11) One representative of the California Partnership to End Domestic Violence, appointed by the Governor.
- 12) One university researcher, appointed by the Governor.
- 13) One mental health professional, appointed by the Governor.
- 14) One representative of an organization that provides services to the homeless in southern California appointed by the Speaker of the Assembly,
- 15) One representative that advocates for immigrant workers' rights appointed by the Speaker of the Assembly.

- 16) One representative of an organization that serves victims of human trafficking in southern California appointed by the Speaker of the Assembly.
- 17) One representative of an organization that provides services to the homeless in northern California appointed by the Senate Rules Committee,
- 18) One representative that provides legal immigration services to low-income individuals appointed by the Senate Rules Committee, and
- 19) One representative of an organization that serves victims of human trafficking in northern California appointed by the Senate Rules Committee.
- 20) The Governor shall appoint **three** survivors of human trafficking.
- 21) The Governor shall appoint **three** representatives of human trafficking service providers that are currently funded under the Human Trafficking Victim Assistance (HV) Program through the Office of Emergency Services: one from an organization that serves victims of trafficking in northern California, one that serves victims of trafficking in central California, and one that serves victims of trafficking in southern California.

This bill requires, whenever possible, members of the task force have prior experience providing services to trafficked persons or have knowledge of human trafficking issues.

This bill states that members of the task force serve under the respective appointing authority; therefore, reimbursement of necessary expenses are provided by their appointing authority or agency.

This bill states that the task force shall meet at least once every two months. Subcommittees may be formed and meet as necessary. All meetings shall be open to the public. The first meeting of the task force shall be held no later than March 1, 2020.

This bill states that the task force shall report its findings and recommendations to the Governor, the Attorney General, and the Legislature on or before July 1, 2021. At the request of any member, the report may include minority findings and recommendations.

This bill states that “trafficking” means all acts involved in the recruitment, abductions, transport, harboring, transfer, sale, receipt of persons, within national or across international borders, through force, coercion, fraud or deception, to place persons in situations of slavery or slavery-like conditions, forced labor or services, including forced prostitution or sexual services, domestic servitude, bonded sweatshop labor, or other debt bondage.

This bill states that this title shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2022, deletes or extends that date.

COMMENTS

1. Need for This Bill

According to the author of this bill:

The crime of human trafficking is prevalent in California. According to the National Human Trafficking Resource Center, during the period 2012-2018, California has consistently ranked at the top of its hotline calls. In 2017, the hotline received nearly 4,000 calls from California, resulting in just over 1,300

human trafficking cases reported. That number represents a nearly 265% increase in reported cases since 2012.

California is particularly vulnerable to human trafficking because of factors such as a large runaway and homeless youth populations, proximity to international borders, the number of ports and airports, a substantial immigrant population, and the fifth largest economy in the world.

The scourge of human trafficking impacts all races, ethnicities, gender and age. It cuts at the very fiber of civil society and challenges the resources of law enforcement, the courts, and social service providers to respond to the needs of these vulnerable populations.

In 2004, California enacted its first anti-trafficking law, which established the California Alliance to Combat Trafficking and Slavery (CA ACTS) Task Force. Its 2005 report laid the groundwork for a coordinated, collaborative response to ending sex and laboring trafficking in California, providing help and hope to its many victims.

It has been a number of years since the California Alliance to Combat Trafficking and Slavery (CA ACTS) Task Force has convened and there is still a great deal of work to be done to protect victims and prevent human trafficking.

SB 35 supports on-going efforts to respond to and ultimately prevent human trafficking by (1) laying the groundwork for a prevalence study for California by directing the Task Force to assess the cost of such a study and recommend an entity to conduct the study, and the frequency with which the study should be done in the future; (2) Garnering a better understanding of the impact of California's human trafficking prevention efforts by engaging the Task Force to recommend the specifics of an evaluation of CAL OES-funded service providers; and (3) bringing into focus the issue of forced criminality, particularly in the areas of prostitution, drugs, theft and benefits fraud. The bill further directs the Task Force to recommend strategies to strengthen efforts to prevent trafficking, protect and assist victims, and prosecute traffickers.

2. Human Trafficking Generally

Human trafficking involves the recruitment, transportation or sale of people for forced labor. Through violence, threats and coercion, victims are forced to work in, among other things, the sex trade, domestic labor, factories, hotels and agriculture. California is leading the nation in reported human trafficking cases. From 2007-2018, the National Human Trafficking Hotline had 24,800 calls, identifying 7,816 human trafficking victims in California. (*California* (June 30, 2018) <<https://humantraffickinghotline.org/state/california>> [as of Mar. 12, 2019].)

- a) Trafficking Victims Protection Act of 2000 (22 USC Sections 7101 *et seq.*).

In October 2000, the Trafficking Victims Protection Act of 2000 (TVPA) was enacted and is comprehensive, addressing the various ways of combating trafficking, including prevention, protection and prosecution. The prevention measures include the authorization of educational and public awareness programs. Protection and assistance

for victims of trafficking include making housing, educational, health-care, job training and other federally funded social service programs available to assist victims in rebuilding their lives. Finally, the TVPA provides law enforcement with tools to strengthen the prosecution and punishment of traffickers, making human trafficking a federal crime.

b) Proposition 35, 2012

In 2012, Californians voted to pass Proposition 35, which modified many provisions of California's already tough human trafficking laws. Specifically, Proposition 35 increased criminal penalties for human trafficking offenses, including prison sentences up to 15-years-to-life and fines up to \$1.5 million. The proposition specified that the fines collected are to be used for victim services and law enforcement. In criminal trials, the proposition prohibits the use of evidence that a person was involved in criminal sexual conduct (such as prostitution) to prosecute that person for that crime if the conduct was a result of being a victim of human trafficking, and makes evidence of sexual conduct by a victim of human trafficking inadmissible for the purposes of attacking the victim's credibility or character in court. The proposition lowered the evidentiary requirements for showing of force in cases of minors. Proposition 35 also requires persons convicted of human trafficking to register as sex offenders.

3. History of California ACTS

In 2005, SB 180 (Kuehl), Chapter 239, Statutes of 2005, created the California Alliance to Combat Trafficking and Slavery (California ACTS) Task Force to evaluate programs available to victims of trafficking, address various criminal statutes addressing human trafficking, and report to the Legislature, the Governor, and the Attorney General. The final report was submitted in October 2007.¹ The task force provided recommendations on:

- 1) Identifying the Scope of Human Trafficking in California
- 2) Protecting and Assisting Victims of Human Trafficking
- 3) Investigating and Prosecuting Human Traffickers
- 4) Preventing Human Trafficking in California

4. Effect of this Bill

SB 35 re-establishes the California Alliance to Combat Trafficking and Slavery (California ACTS). This task force will consist of 28 members appointed by the Attorney General, the Governor, and the Legislature. The intent of this task force will be to collect and organize data on the nature and prevalence of human trafficking in California. From this data, the task force will then submit routine reports with recommendations to the Legislature, the Office of Emergency Services, the Governor, and the Attorney General. This bill will sunset on January 1, 2022.

¹ http://www.ag.ca.gov/publications/Human_Trafficking_Final_Report.pdf

5. Office of Emergency Services' (OES) Human Trafficking Grant Management

The Office of Emergency Services houses the grant management division, which administers funds for criminal justice, emergency management, victim services, and homeland security programs. Human Trafficking is specifically addressed through the Human Trafficking Victim Assistance Fund, which was created in 2015 through SB 84.

Each program requires applicants to meet certain requirements, including quarterly progress reports.

Under the Human Trafficking Victim Assistance Fund is the Human Trafficking Victim Assistance (HV) program, which provides aid to human trafficking victims' recovery and reintegration into society.² The Human Trafficking Advocate (HA) Program, funded by the Victims of Crime Act (VOCA) Victim Assistance Program, provides funding to Victim/Witness Assistance Centers with a demonstrated history of providing services to victims of human trafficking.³ And the unserved/Underserved Victim Advocacy and Outreach (UV) Program administers culturally appropriate direct victim services to unserved/underserved victims of crime and socially isolated populations, including victims of human trafficking.⁴

6. Size of the Task Force

The task force is made up of 26 members, appointed by different government officials. Considering the deadline for the first meeting set by the legislation, will it be difficult to appoint all the members and then find a time that works for everyone? What is the purpose of each member? Are some of the appointees too similar? And how will the task force efficiently and effectively make recommendations with so many interested parties?

7. Reporting

This bill requires the task force to present three reports to different combinations of audiences with different combinations of recommendations. The three dates are: December 31, 2020; March 31, 2021; July 1, 2021. However, the reason for multiple reports is unclear. Considering the requirement to meet every two months, some reports are only two meetings apart. What new information is the task force expected to gain within those two meetings? What are the differences in what the task force must report on? And what is the intentionality of the audiences of these reports?

8. Possible Immigration Concerns

The bill states, "The cost of a prevalence study for the state of California that addresses types of trafficking, including both sex and labor trafficking, and the dynamics of who is being trafficked, *including citizenship...*". This bill requires the collection of citizenship information. However, the bill is unclear as to who may gain access to this information. Some community organizations may have concerns about the collection of citizenship information.

² <https://www.caloes.ca.gov/GrantsManagementSite/Documents/HV18%20Program%20RFA.docx>

³ <https://www.caloes.ca.gov/GrantsManagementSite/Documents/HA%20RFP.pdf#search=human%20trafficking%20advocate%20program>

⁴ <https://www.caloes.ca.gov/GrantsManagementSite/Documents/2018-19%20UV%20RFA.pdf#search=unserved%2Funderserved%20victim%20advocacy%20and%20outreach>

9. Arguments in Support

According to the sponsor, Coalition to Abolish Slavery and Trafficking (CAST):

Cast is proud to sponsor SB 35, which under the leadership of the Attorney General, would direct the Task Force to lay the ground work for an evaluation of direct services funded by Cal OES and a first-ever prevalence study for California. There is no definitive data on the scope of sex and labor trafficking in California. In order to craft impactful policy responses and allocate resources to target the greatest needs, it is critical to understand exactly the scope and demographics of human trafficking. The Task Force would also examine the important issue of forced criminality in order to better understand the real consequences of being a trafficking victim and how resulting criminal records are a major barrier to becoming a contributing member of society.

The first Task Force report, published in 2005, laid the ground work for a coordinated, collaborative response to ending sex and labor trafficking in California. This Task Force, and its 2011 successor, brought together representatives from government and private sector agencies to examine legislative, policy, and civil and criminal justice strategies, as well as support for social services. Their published reports are a testament to our commitment to understanding the complexities of human trafficking, and to ensuring that victims have safe pathways and supportive services to escape, that traffickers are held accountable, and that together we one day put an end to this horrific crime here in California.

It is now time to reconvene the Task Force and add the voices of survivors, direct service providers and representatives of organizations serving the homeless to offer critical insights for developing outcomes and performance measures for existing programs; shaping policy; and recommending how resources should be allocated.

According to the California Massage Therapy Council:

Thus far, due to our unique platform and rigorous protocols, no California Massage Therapy Council (CAMTC) certificate holder has ever been identified as a victim or perpetrator of human trafficking. However, the fact that none of our certificate holders have been identified as traffic victims in no way means that they do not exist. I'm sure we can all agree with the Miami Herald headline from March 2 that stated: "Raiding massage parlors isn't hard. But proving human trafficking is".

These police raids underscored a harsh reality – that illicit spas featuring sexual services can sometimes be hubs of human trafficking, where women, often imported from overseas, are induced through fraud, fear or some other type of coercion to perform sexual acts for money. This is multi-billion dollar organized crime, based on abuse and violence and threats and manipulation.

10. Argument in Opposition

According to the California Attorneys for Criminal Justice:

SB 35 would establish a taskforce to collect data on human trafficking in California and organize efforts to protect victims of trafficking through the collaboration of government and nongovernmental organizations. We believe that this bill's purpose would be best served by also including a representative from CACJ in the taskforce. The taskforce lacks representation for private criminal defense lawyers. CACJ would fill this gap in representation.

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