

Since 2011, Shared Hope has laid the foundation for transformational policy, practice, and cultural change by supporting state legislators and stakeholders to identify gaps in the fabric of laws needed to address child sex trafficking. The Report Cards on Child & Youth Sex Trafficking build upon the progress already made, challenging states to take the next step in the fight against sex trafficking by focusing on the area where the largest gaps remain—victim protections. This report provides a thorough review of California’s laws related to both criminalization and victim protections while providing recommendations for addressing gaps in the law.



ISSUE 1: Criminal Provisions

Policy Goal 1.1 The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.

Cal. Penal Code § 236.1 (Human trafficking defined; punishment) does not apply to buyers of commercial sex with minors. Although Cal. Penal Code § 236.1(c) applies to those who cause or persuade a minor to engage in commercial sex, the offender must do so “with the intent to effect or maintain a violation of Section 266 [Procurement], 266h [Pimping], 266i [Pandering], 266j [Procurement of child under age 16 for lewd or lascivious acts], 267 [Abduction of minor for prostitution], 311.1 [Sent or brought into state for sale or distribution; possessing, preparing, publishing, producing, developing, or printing within state; matter depicting sexual conduct by minor], 311.2 [Sending or bringing into state for sale or distribution; printing, exhibiting, distributing, exchanging, or possession within state; matter depicting sexual conduct by minor], 311.3 [Sexual exploitation of a child], 311.4 [Employment or use of minor to perform prohibited acts], 311.5 [Advertising or promoting sale or distribution; solicitation], 311.6 [Participation in, or production or presentation of, obscene live conduct in public place], or 518 [Definition – Extortion]” This list of predicate crimes does not include the statute most applicable to buyers, Cal. Penal Code § 647 (Disorderly conduct; restrictions on probation).

1.1.1 Recommendation: Amend Cal. Penal Code § 236.1(c) (Human trafficking defined; punishment) to make the statute applicable to the actions of buyers of commercial sex with minors.

Policy Goal 1.2 Commercial sexual exploitation of children (CSEC) laws specifically criminalize purchasing or soliciting commercial sex with any minor under 18.

California law criminalizes both purchasing and soliciting commercial sex with a minor. Specifically, Cal. Penal Code § 647(b)(3) (Disorderly conduct; restrictions on probation) criminalizes,

An individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with another person who is a minor in exchange for the individual providing compensation, money, or anything of value to the minor. An individual agrees to engage in an act of prostitution when, with specific intent to engage, the individual manifests an acceptance of an offer or solicitation by someone who is a minor to

so engage, regardless of whether the offer or solicitation was made by a minor who also possessed the specific intent to engage in an act of prostitution.¹

Policy Goal 1.3 Commercial sexual exploitation of children (CSEC) laws apply to traffickers and protect all minors under 18.

California's CSEC laws address an array of trafficker conduct. Pursuant to Cal. Penal Code § 266 (Procurement),

A person who inveigles or entices a person under 18 years of age into a house of ill fame, or of assignation, or elsewhere, for the purpose of prostitution, or to have illicit carnal connection with another person, and a person who aids or assists in that inveiglement or enticement, and a person who, by any false pretenses, false representation, or other fraudulent means, procures a person to have illicit carnal connection with another person, is punishable by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment.

Further, Cal. Penal Code § 266i(a) (Pandering) criminalizes a person who acts as follows:

- (1) Procures another person for the purpose of prostitution.
- (2) By promises, threats, violence, or by any device or scheme, causes, induces, persuades, or encourages another person to become a prostitute.
- (3) Procures for another person a place as an inmate in a house of prostitution or as an inmate of any place in which prostitution is encouraged or allowed within this state.
- (4) By promises, threats, violence, or by any device or scheme, causes, induces, persuades, or encourages an inmate of a house of prostitution, or any other place in which prostitution is encouraged or allowed, to remain therein as an inmate.
- (5) By fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procures another person for the purpose of prostitution, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into this state or leave this state for the purpose of prostitution.
- (6) Receives or gives, or agrees to receive or give, any money or thing of value for procuring, or attempting to procure, another person for the purpose of prostitution, or to come into this state or leave this state for the purpose of prostitution.

Cal. Penal Code § 266h (Pimping) applies to

[A]ny person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits or receives compensation for soliciting the person, when the prostitute is a minor

Lastly, Cal. Penal Code § 267 (Abduction of minor for prostitution) states,

¹ Notably, Cal. Penal Code § 647(b)(4) states,

A manifestation of acceptance of an offer or solicitation to engage in an act of prostitution does not constitute a violation of this subdivision unless some act, in addition to the manifestation of acceptance, is done within this state in furtherance of the commission of the act of prostitution by the person manifesting an acceptance of an offer or solicitation to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

Every person who takes away any other person under the age of 18 years from the father, mother, guardian, or other person having the legal charge of the other person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the state prison, and a fine not exceeding two thousand dollars (\$2,000).

Policy Goal 1.4 Mistake of age is not an available defense under sex trafficking and commercial sexual exploitation of children (CSEC) laws.

California law prohibits a mistake of age defense in prosecutions for child sex trafficking but not CSEC. Pursuant to Cal. Penal Code § 236.1(f) (Human trafficking defined; punishment), “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.”

Conversely, Cal. Penal Code § 647(l)(1) (Disorderly conduct; punishment for violation) allows for a mistake of age defense in prosecutions under that section, stating,

If a crime is committed in violation of subdivision (b) and the person who was solicited was a minor at the time of the offense, and if the defendant knew or should have known that the person who was solicited was a minor at the time of the offense, the violation is punishable by imprisonment in a county jail for not less than two days and not more than one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both that fine and imprisonment.

- 1.4.1 Recommendation: Amend state law to prohibit a mistake of age defense in CSEC cases.

Policy Goal 1.5 Use of a law enforcement decoy is not an available defense in child sex trafficking cases.

Although the trafficking law does not expressly prohibit an offender from raising a defense based on the use of a law enforcement decoy posing as a minor, California’s criminal attempt statutes could provide prosecutors with an alternative avenue to prosecute those cases. Pursuant to Cal. Penal Code § 21a (Elements of attempt) states, “An attempt to commit a crime consists of two elements: a specific intent to commit the crime, and a direct but ineffectual act done toward its commission.” Accordingly, an offender could be found guilty of attempting to commit a child sex trafficking offense if the offender had the specific intent to commit the trafficking offense and acted on that intent even though their action couldn’t produce the intended result since an actual minor was not involved.

Policy Goal 1.6 The trafficking law expressly allows for business entity liability and establishes a business-specific penalty scheme.

California’s trafficking law does not expressly allow for business entity liability.

- 1.6.1 Recommendation: Amend state law to ensure business entities can be held liable under state trafficking laws and establish a business-specific penalty scheme.

Policy Goal 1.7 State law mandates that financial penalties are levied on sex trafficking and CSEC offenders and are directed to a victim services fund.

Those convicted of human trafficking face substantial fines and asset forfeiture, both of which are directed toward victim services; however, fines imposed on CSEC offenders are not directed into a victim services fund nor is asset forfeiture specifically authorized upon conviction of those offenses.

Regarding fines, offenders convicted of human trafficking under Cal. Penal Code § 236.1 (Human trafficking defined; punishment) face fines up to \$500,000. Cal. Penal Code § 236.1(c). Further, Cal. Penal Code § 236.4(a) (Additional punishment) permits the court to order an additional fine up to \$1,000,000.² Both fines are to be deposited into the Victim-Witness Assistance Fund, which provides grants for victim services; specifically, Cal. Penal Code § 236.4(d) (Additional punishment) states,

Every fine imposed and collected pursuant to [Section 236.1](#) and this section shall be deposited in the Victim-Witness Assistance Fund, to be administered by the California Emergency Management Agency (Cal EMA), to fund grants for services for victims of human trafficking. Seventy percent of the fines collected and deposited shall be granted to public agencies and nonprofit corporations that provide shelter, counseling, or other direct services for trafficked victims. Thirty percent of the fines collected and deposited shall be granted to law enforcement and prosecution agencies in the jurisdiction in which the charges were filed to fund human trafficking prevention, witness protection, and rescue operations.

Regarding asset forfeiture, the Red Light Abatement Law, codified at Cal. Penal Code § 11225–11235, provides for the sale of property used in connection with human trafficking and prostitution offenses; however, forfeiture of property used during the commission of a CSEC offense is not expressly provided for. Pursuant to Cal. Penal Code § 11225(a), (b),

- (a)
 - (1) Every building or place used for the purpose of . . . lewdness, assignation, or prostitution, and every building or place in or upon which acts of . . . lewdness, assignation, or prostitution, are held or occur, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.
 -
- (b)
 - (1) Notwithstanding any other law, every building or place used for the purpose of human trafficking, and every building or place in or upon which acts of human trafficking are held or occur, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.
 - (2) For purposes of this subdivision, human trafficking is defined in Section 236.1.

Cal. Penal Code § 11230 (d) directs a percentage of forfeited assets to the Victim-Witness Assistance Fund, stating,

- (a)

² Cal. Penal Code § 236.4(a) (Additional punishment) states,

Upon the conviction of a person of a violation of [Section 236.1](#) [Human trafficking defined; punishment], the court may, in addition to any other penalty, fine, or restitution imposed, order the defendant to pay an additional fine not to exceed one million dollars (\$1,000,000). In setting the amount of the fine, the court shall consider any relevant factors, including, but not limited to, the seriousness and gravity of the offense, the circumstances and duration of its commission, the amount of economic gain the defendant derived as a result of the crime, and the extent to which the victim suffered losses as a result of the crime.

(1) If the existence of a nuisance is established in an action as provided in this article, an order of abatement shall be entered as a part of the judgment in the case, directing the removal from the building or place of all fixtures, musical instruments and movable property used in conducting, maintaining, aiding, or abetting the nuisance, and directing the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and that it be kept closed for a period of one year, unless sooner released

.....

(d) In cases involving human trafficking, one-half of the civil penalties collected pursuant to this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation by the Legislature to the California Emergency Management Agency to fund grants for human trafficking victim services and prevention programs provided by community-based organizations. The community-based organizations shall have trained human trafficking caseworkers, as defined by Section 1038.2 of the Evidence Code. The other one-half of the civil penalties shall be paid to the city in which judgment was entered, if the action was brought by a city attorney or city prosecutor. If the action was brought by a district attorney, the one-half of the civil penalty shall, instead, be paid to the treasurer of the county in which judgment was entered.

- 1.7.1 Recommendation: Amend state law to direct a percentage of financial penalties levied on CSEC offenders into a victim services fund.



ISSUE 2: Identification of & Response to Victims

Policy Goal 2.1 The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.

To be identified as a trafficking victim under the criminal code, a child must be exploited by a trafficker; however, California law expands the definition of victim for purposes of accessing services through the Commercially Sexually Exploited Children Program.

Pursuant to Cal. Welf. & Inst. Code § 16524.8(a)(1), (b) (County interagency protocol), “Each county electing to receive funds from the Commercially Sexually Exploited Children Program . . . shall develop an interagency protocol to be utilized in serving sexually exploited children,” which shall “address the provision of services to children who have been sexually exploited and are within the definition of Section 300 [Persons subject to jurisdiction of juvenile court]” Importantly, Cal. Welf. & Inst. Code § 300(b)(2) (Persons subject to jurisdiction of juvenile court) defines “commercially sexually exploited children” to include both those identified as trafficking victims under Cal. Penal Code § 236.1 (Human trafficking defined; punishment) as well as children who perform a sexual act in exchange for food, shelter, or money. Cal. Welf. & Inst. Code § 300(b)(2) states,

A child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

....
(b)

....
(2) The Legislature finds and declares that a child who is sexually trafficked, as described in Section 236.1 [Human trafficking defined; punishment] of the Penal Code, or who receives food or shelter in exchange for, or who is paid to perform, sexual acts described in Section 236.1 or 11165.1 [“Sexual abuse”; “sexual assault”; “sexual exploitation”; “commercial sexual exploitation”] of the Penal Code, and whose parent or guardian failed to, or was unable to, protect the child, is within the description of this subdivision, and that this finding is declaratory of existing law. These children shall be known as commercially sexually exploited children.

Accordingly, this definition is broad enough to allow for a service response in cases involving a child who is exploited by a buyer without trafficker-involvement.

As noted, however, this conflicts with the criminal code’s definition of trafficking victim, which requires third party control. Specifically, Cal. Penal Code § 236.1 (Human trafficking defined; punishment) does not apply to buyers of commercial sex with minors.³ Accordingly, third party control is required to establish the crime of child sex trafficking, thereby excluding commercially sexually exploited children who are not under the control of a trafficker from the criminal code’s definition of child sex trafficking victim.

³ See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under Cal. Penal. Code § 236.1.

- 2.1.1 Recommendation: Amend state law to remove third party control requirements that narrow the definition of child sex trafficking victim within the criminal code.⁴

Policy Goal 2.2 State law provides policy guidance to facilitate access to services and assistance for trafficked foreign national children.

California law provides policy guidance to facilitate responses to foreign national child sex trafficking victims. Pursuant to Cal. Welf. & Inst. Code § 13650(a)(6) (Legislative findings and declarations),

The Legislature finds and declares all of the following:

....

(6) The state-funded Trafficking and Crime Victim Assistance Program⁵ (TCVAP) provides critical benefits and services to noncitizen victims of human trafficking, domestic violence, and other serious crimes. TCVAP benefits and services mirror those that are available to refugees after initial resettlement. These vulnerable noncitizens would benefit from initial case management services.

Policy Goal 2.3 State law mandates child welfare agencies to conduct trauma-informed CSEC screening for children at risk of sex trafficking.

California law does not require child welfare to conduct trauma-informed CSEC screening of system-involved children and youth who are at risk of sex trafficking.

- 2.3.1 Recommendation: Statutorily require child welfare to screen system-involved children and youth at risk of sex trafficking for experiences of commercial sexual exploitation.

Policy Goal 2.4 State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking.

California law does not require juvenile justice agencies to conduct trauma-informed CSEC screening of children and youth who are at risk of sex trafficking.

- 2.4.1 Recommendation: Statutorily require juvenile justice agencies to screen children and youth who are at risk of sex trafficking for experiences of commercial sexual exploitation.

Policy Goal 2.5 State law prohibits the criminalization of minors under 18 for prostitution offenses.

California law prohibits the criminalization of all minors for prostitution offenses, extending protections to preclude arresting, charging, detaining, prosecuting, and adjudicating children for engagement in commercial sex. Cal. Penal Code § 647(b)(5) (Disorderly conduct; Punishment for violation.) states,

⁴ See generally Shared Hope Int'l, *Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims*, JuST Response Policy Paper (August 2015), http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf (discussing need to include all commercially sexually exploited children within sex trafficking definitions and the corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether the victim is under control of a third party).

⁵ For more information on the Trafficking and Crime Victim Assistance Program, visit <https://www.cdss.ca.gov/tcvap>.

Notwithstanding paragraphs (1) and (3), inclusive, this subdivision does not apply to a child under 18 years of age who is alleged to have engaged in conduct to receive money or other consideration that would, if committed by an adult, violate this subdivision. A commercially sexually exploited child under this paragraph may be adjudged a dependent child of the court pursuant to paragraph (2) of subdivision (b) of Section 300 of the Welfare and Institutions Code and may be taken into temporary custody pursuant to subdivision (a) of Section 305 of the Welfare and Institutions Code,⁶ if the conditions allowing temporary custody without a warrant are met.

Similarly, Cal. Penal Code § 653.22(a)(1), (2) (Loitering with intent to commit prostitution; determination of intent) extends non-criminalization protections to other prostitution offenses, stating,

- (1) Except as provided in paragraph (2), it is unlawful for any person to loiter in any public place with the intent to commit prostitution. This intent is evidenced by acting in any manner and under circumstances that openly demonstrate the purpose of inducing, enticing, or soliciting prostitution, or procuring another to commit prostitution.
- (2) Notwithstanding paragraph (1), this subdivision does not apply to a child under 18 years of age who is alleged to have engaged in conduct that would, if committed by an adult, violate this subdivision. A commercially exploited child under this paragraph may be adjudged a dependent child of the court pursuant to paragraph (2) of subdivision (b) of Section 300 of the Welfare and Institutions Code and may be taken into temporary custody pursuant to subdivision (a) of Section 305 of the Welfare and Institutions Code, if the conditions allowing temporary custody without warrant are met.

Consequently, state law provides protections to prevent minors from being criminalized for prostitution and prostitution-related offenses.

Policy Goal 2.6 State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.

Although California law does not prohibit the criminalization of child sex trafficking victims for status offenses or for misdemeanors or non-violent felonies committed as a result of their trafficking victimization, an affirmative defense may be available. Specifically, Cal. Penal Code § 236.23 (Human trafficking; affirmative defense; burden and standard) states,

- (a) In addition to any other affirmative defense, it is a defense to a charge of a crime that the person was coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and had a reasonable fear of harm. This defense does not apply to a serious felony . . . or a violent felony . . . or a violation of [Section 236.1](#) [Human trafficking defined; punishment].
- (b) A defendant asserting the affirmative defense specified in subdivision (a) has the burden of establishing the affirmative defense by a preponderance of the evidence.
. . . .
- (e) If the defendant prevails on the affirmative defense provided under subdivision (a), the defendant is entitled to all of the following relief:

⁶ Cal. Wel. & Inst. Code § 305(a) states,

- Any peace officer may, without a warrant, take into temporary custody a minor:
- (a) When the officer has reasonable cause for believing that the minor is a person described in Section 300, and, in addition, that the minor has an immediate need for medical care, or the minor is in immediate danger of physical or sexual abuse, or the physical environment or the fact that the child is left unattended poses an immediate threat to the child's health and safety.

- (1)
 - (A) The court shall order that all records in the case be sealed
 - (B) Records that have been sealed pursuant to this paragraph may be accessed, inspected, or utilized by law enforcement for subsequent investigatory purposes involving persons other than the defendant.
- (2) The person shall be released from all penalties and disabilities resulting from the charge, and all actions and proceedings by law enforcement personnel, courts, or other government employees that led to the charge shall be deemed not to have occurred.
- (3)
 - (A) The person may in all circumstances state that he or she has never been arrested for, or charged with, the crime that is the subject of the charge or conviction, including without limitation in response to questions on employment, housing, financial aid, or loan applications.
 - (B) The person may not be denied rights or benefits, including, without limitation, employment, housing, financial aid, welfare, or a loan or other financial accommodation, based on the arrest or charge or his or her failure or refusal to disclose the existence of or information concerning those events.
 - (C) The person may not be thereafter charged or convicted of perjury or otherwise of giving a false statement by reason of having failed to disclose or acknowledge the existence of the charge, or any arrest, indictment, trial, or other proceedings related thereto.
- (f) If, in a proceeding pursuant to Section 602 [Persons subject to jurisdiction of juvenile court and to adjudication as ward for violation of law or ordinance defining crime] of the Welfare and Institutions Code, the juvenile court finds that the offense on which the proceeding is based was committed as a direct result of the minor being a human trafficking victim, and the affirmative defense established in subdivision (a) is established by a preponderance of the evidence, the court shall dismiss the proceeding and order the relief prescribed in Section 786 [Dismissal of petition if satisfactory completion of specified program of supervision or term of probation; sealing of record; inspection of sealed record; enforcement of victim restitution orders] of the Welfare and Institutions Code.

2.6.1 Recommendation: Amend state law to prohibit the criminalization of child sex trafficking victims for status offenses, and misdemeanors and non-violent felonies committed as a result of their trafficking victimization.

Policy Goal 2.7 State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

California law does not prohibit the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization; however, an affirmative defense may be available for certain prostitution-related offenses. Specifically, Cal. Penal Code § 236.23 (Human trafficking; affirmative defense; burden and standard) states,

- (a) In addition to any other affirmative defense, it is a defense to a charge of a crime that the person was coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and had a reasonable fear of harm. This defense does not apply to a serious felony . . . or a violent felony . . . or a violation of [Section 236.1](#) [Human trafficking defined; punishment].
- (b) A defendant asserting the affirmative defense specified in subdivision (a) has the burden of establishing the affirmative defense by a preponderance of the evidence.
-
- (e) If the defendant prevails on the affirmative defense provided under subdivision (a), the defendant is entitled to all of the following relief:
 - (1)

(A) The court shall order that all records in the case be sealed

(B) Records that have been sealed pursuant to this paragraph may be accessed, inspected, or utilized by law enforcement for subsequent investigatory purposes involving persons other than the defendant.

(2) The person shall be released from all penalties and disabilities resulting from the charge, and all actions and proceedings by law enforcement personnel, courts, or other government employees that led to the charge shall be deemed not to have occurred.

(3)

(A) The person may in all circumstances state that he or she has never been arrested for, or charged with, the crime that is the subject of the charge or conviction, including without limitation in response to questions on employment, housing, financial aid, or loan applications.

(B) The person may not be denied rights or benefits, including, without limitation, employment, housing, financial aid, welfare, or a loan or other financial accommodation, based on the arrest or charge or his or her failure or refusal to disclose the existence of or information concerning those events.

(C) The person may not be thereafter charged or convicted of perjury or otherwise of giving a false statement by reason of having failed to disclose or acknowledge the existence of the charge, or any arrest, indictment, trial, or other proceedings related thereto.

(f) If, in a proceeding pursuant to Section 602 [Persons subject to jurisdiction of juvenile court and to adjudication as ward for violation of law or ordinance defining crime] of the Welfare and Institutions Code, the juvenile court finds that the offense on which the proceeding is based was committed as a direct result of the minor being a human trafficking victim, and the affirmative defense established in subdivision (a) is established by a preponderance of the evidence, the court shall dismiss the proceeding and order the relief prescribed in Section 786 [Dismissal of petition if satisfactory completion of specified program of supervision or term of probation; sealing of record; inspection of sealed record; enforcement of victim restitution orders] of the Welfare and Institutions Code.

Notably, Cal. Penal Code § 236.23(a) specifically precludes assertion of the affirmative defense in cases where a trafficking victim is charged with a trafficking offense.

2.7.1 Recommendation: Amend state law to prohibit the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

Policy Goal 2.8 State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

California law does not provide child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

2.8.1 Recommendation: Amend state law to provide child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

Policy Goal 2.9 Juvenile court jurisdiction aligns with international human rights standards.

California law provides age-appropriate juvenile court responses for some minors accused of engaging in juvenile or criminal conduct. State statute extends juvenile court jurisdiction to all minors under 18 years of age, prohibits direct file, and requires the court to consider the effect of childhood trauma in making a transfer determination. However, the minimum age for juvenile court jurisdiction is 12 years of age for most crimes and non-existent for other, more serious offenses.

	Minimum Age for Juvenile Court Jurisdiction	Maximum Age for Charging a Minor in Juvenile Court	Automatic Transfers or Direct File	Discretionary Transfers	Requirement for Court to Consider Trauma or Past Victimization
Summary	12 for most offenses; no minimum age for certain serious offenses.	17	No.	Yes. Minors 14+ years old charged with certain offenses may be transferred to criminal court.	Yes.
Relevant Statute(s)	Cal. Welf. & Inst. Code § 602(a), (b) (Persons subject to jurisdiction of juvenile court and to adjudication as ward for violation of law or ordinance defining crime)	Cal. Welf. & Inst. Code § 602(a) (Persons subject to jurisdiction of juvenile court and to adjudication as ward for violation of law or ordinance defining crime)	Cal. Welf. & Inst. Code § 707 (Decision whether to transfer minor to court of criminal jurisdiction; investigation and submission of report; criteria)	Cal. Welf. & Inst. Code § 707(a)(2) (Decision whether to transfer minor to court of criminal jurisdiction; investigation and submission of report; criteria)	Cal. Welf. & Inst. Code § 707(a)(3)(A)(ii), (C) (Decision whether to transfer minor to court of criminal jurisdiction; investigation and submission of report; criteria)

2.9.1 Recommendation: Amend state law to raise the minimum age of juvenile court jurisdiction to at least 13 years of age, regardless of the offense.

Policy Goal 2.10 State law defines child abuse to include child sex trafficking for purposes of accessing child welfare services.

California law defines “sexual abuse” under the Child Abuse and Neglect Reporting Act to include child sex trafficking and permits a child who has been subjected to child sex trafficking to be adjudged dependent under Chapter 2, Article 6 of Cal. Welf. & Inst. Code, which governs the juvenile court’s jurisdiction over dependent children.

Pursuant to Cal. Penal Code § 11165.6 (Child abuse or neglect), “As used in this article, the term ‘child abuse or neglect’ includes . . . sexual abuse as defined in Section 11165.1 [“Sexual abuse”; “sexual assault”; “sexual exploitation”; “commercial sexual exploitation”],” which states,

As used in this article, “sexual abuse” means sexual assault or sexual exploitation as defined by the following:

....

(c) “Sexual exploitation” refers to any of the following:

....

(2) A person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or a person responsible for a child’s welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution . . . For the purpose of this section, “person responsible for a child’s welfare” means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

....

- (d) “Commercial sexual exploitation” refers to either of the following:
 - (1) The sexual trafficking of a child, as described in subdivision (c) of Section 236.1.
 - (2) The provision of food, shelter, or payment to a child in exchange for the performance of any sexual act described in this section or subdivision (c) of Section 236.1.

Additionally, pursuant to Cal. Welf. & Inst. Code § 300(b), (d) (Persons subject to jurisdiction of juvenile court),

A child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

.....

(b)

.....

(2) The Legislature finds and declares that a child who is sexually trafficked, as described in Section 236.1 of the Penal Code, or who receives food or shelter in exchange for, or who is paid to perform, sexual acts described in Section 236.1 or 11165.1 of the Penal Code, and whose parent or guardian failed to, or was unable to, protect the child, is within the description of this subdivision, and that this finding is declaratory of existing law. These children shall be known as commercially sexually exploited children.

.....

(d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by the child’s parent or guardian or a member of the child’s household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.

Policy Goal 2.11 State law clearly defines child welfare’s role in responding to non-familial child sex trafficking through an alternative specialized response that does not hinge on caregiver fault.

California’s child welfare code does not allow for a child welfare response in non-familial child sex trafficking cases without requiring caregiver fault and does not provide for a specialized response to child sex trafficking reports. While child sex trafficking victims may be adjudged dependent under Cal. Welf. & Inst. Code § 300(b)(2) or (d) (Persons subject to jurisdiction of juvenile court),⁷ the court’s jurisdiction is limited to circumstances where a “parent or guardian failed to, or was unable to, protect the child” or where “the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.” Additionally, no alternative response is provided for children reported to child welfare due to trafficking victimization perpetrated by a non-familial trafficker.

2.11.1 Recommendation: Amend state law to provide an alternative specialized response to child sex trafficking reports that does not hinge on caregiver fault and sets out a trafficking-specific response protocol for non-familial child sex trafficking cases

⁷ See *supra* Policy Goal 2.10 for the substantive provisions of Cal. Welf. & Inst. Code § 300(b)(2) or (d).



ISSUE 3: Continuum of Care

Policy Goal 3.1 State law provides child sex trafficking victims with access to specialized services through a non-punitive system.

California law provides child sex trafficking victims with access to specialized services through the Commercially Sexually Exploited Children Program⁸ administered by the State Department of Social Services under Cal. Welf. & Inst. Code § 16524.7 (Commercially Sexually Exploited Children Program established; Allocation of funding; Case planning) to the extent that the child's respective county has opted into the program. Under Cal. Welf. & Inst. Code § 16524.7(d)(2),

(A) The county shall submit a plan to the department . . . [that] include[s] documentation indicating the county's collaboration with county partner agencies, education entities, and children-focused entities, which shall include the formation of a multidisciplinary team to serve children pursuant to this chapter.

(B) A multidisciplinary team serving a child pursuant to this chapter shall include, but is not limited to, appropriate staff from the county child welfare, probation, mental health, substance abuse disorder, and public health departments. Staff from a local provider of services to this population, local education agencies, and local law enforcement, and survivors of commercial sexual exploitation and trafficking may be included on the team.

Pursuant to Cal. Welf. & Inst. Code § 16524.8(a) (County interagency protocol),

(1) Each county electing to receive funds from the Commercially Sexually Exploited Children Program pursuant to this chapter shall develop an interagency protocol to be utilized in serving sexually exploited children. The county protocol shall be developed by a team led by a representative of the county human services department and shall include representatives from each of the following agencies:

(A) The county probation department.

(B) The county mental health department.

(C) The county public health department.

(D) The juvenile court in the county.

(E) The county office of education.

(F) The county sheriff's department.

(2) The team may include, but shall not be limited to, representatives from local education agencies, local law enforcement, survivors or sexual exploitation, and other providers as necessary.

Pursuant to Cal. Welf. & Inst. Code § 16524.7(a)(4),

⁸ A legislative finding listed within Cal. Welf. & Inst. Code § 300(b)(2) (Persons subject to the jurisdiction of the juvenile court) states,

The Legislature finds and declares that a child who is sexually trafficked, as described in Section 236.1 of the Penal Code, or who receives food or shelter in exchange for, or who is paid to perform, sexual acts described in Section 236.1 or 11165.1 of the Penal Code, and whose parent or guardian failed to, or was unable to, protect the child, is within the description of this subdivision, and that this finding is declaratory of existing law. These children shall be known as commercially sexually exploited children.

Funds provided to the counties electing to participate in the program shall be used for prevention activities, which includes training county workers, intervention activities, and services to children who are victims, or at risk of becoming victims, of commercial sexual exploitation. These activities and services may include, but are not limited to, all of the following:

- (A) Educating foster children to help recognize and help avoid commercial sexual exploitation. Counties may target educational activities to foster children who are at higher risk of commercial sexual exploitation.
- (B) Engaging survivors of commercial sexual exploitation to do all of the following:
 - (i) Provide support to county staff who serve children who are victims of commercial sexual exploitation.
 - (ii) Participate in activities that may include education, training, and technical assistance.
 - (iii) Serve as advocates for and perform outreach and support to children who are victims of commercial sexual exploitation.
- (C) Consulting and coordinating with homeless youth shelters and other service providers who work with children who are disproportionately at risk of, or involved in, commercial sexual exploitation, including, but not limited to, lesbian, gay, bisexual, and transgender youth organizations, regarding outreach and support to children who are victims of commercial sexual exploitation.
- (D) Hiring county staff trained and specialized to work with children who are victims of commercial sexual exploitation to support victims and their caregivers, and to provide case management to support interagency and cross-departmental response.
- (E) Providing supplemental foster care rates for placement of child victims of commercial sexual exploitation

Under Cal. Welf. & Inst. Code § 16524.7(a)(2),

Funds allocated pursuant to this section shall be utilized to cover expenditures related to the costs of implementing the program, prevention and intervention services, and training related to children who are, or may become, victims of commercial sexual exploitation.

As noted above, however, counties must opt into the Commercially Sexually Exploited Children Program, leaving some commercially sexually exploited youth without access to these specialized services.

In the limited circumstance where a child is removed from the care of their parent or guardian and placed in a short-term residential therapeutic program, specialized services may be available under Cal. Welf. & Inst. Code § 11462.01(b)(4)(A) (Contract for short-term residential therapeutic program), which states, “Subject to the requirements of this subdivision, a short-term residential therapeutic program may have a specialized program to serve a child, including, but not limited to, the following: (A) A commercially sexually exploited child.”

- 3.1.1 Recommendation: Strengthen existing law to require statewide access to specialized services through a non-punitive system.

Policy Goal 3.2 State law provides for a survivor-centered multi-disciplinary team response to child sex trafficking cases.

California law requires counties that opt into the Commercially Sexually Exploited Children Program to establish a multidisciplinary team response to commercially sexually exploited children. Pursuant to Cal. Welf. & Inst. Code § 16524.7(d)(2) (Commercially Sexually Exploited Children Program established; Allocation of funding; Case planning),

- (A) The county shall submit a plan to the department . . . [that] include[s] documentation indicating the county’s collaboration with county partner agencies, education entities, and children-focused entities, which shall include the formation of a multidisciplinary team to serve children pursuant to this chapter.

(B) A multidisciplinary team serving a child pursuant to this chapter shall include, but is not limited to, appropriate staff from the county child welfare, probation, mental health, substance abuse disorder, and public health departments. Staff from a local provider of services to this population, local education agencies, and local law enforcement, and survivors of commercial sexual exploitation and trafficking may be included on the team.

Further, where available, commercially sexually exploited children may have access to a multi-disciplinary response through family justice centers. Specifically, Cal. Penal Code § 13750(c) (Establishment of family justice center by city, county, city and county, or community-based nonprofit organization) states,

[F]amily justice centers shall be defined as multiagency, multidisciplinary service centers where public and private agencies assign staff members on a full-time or part-time basis in order to provide services to victims of domestic violence, sexual assault, elder or dependent adult abuse, or human trafficking from one location in order to reduce the number of times victims must tell their story, reduce the number of places victims must go for help, and increase access to services and support for victims and their children. Staff members at a family justice center may be comprised of, but are not limited to, the following:

- (1) Law enforcement personnel.
- (2) Medical personnel.
- (3) District attorneys and city attorneys.
- (4) Victim-witness program personnel.
- (5) Domestic violence shelter service staff.
- (6) Community-based rape crisis, domestic violence, and human trafficking advocates.
- (7) Social service agency staff members.
- (8) Child welfare agency social workers.
- (9) County health department staff.
- (10) City or county welfare and public assistance workers.
- (11) Nonprofit agency counseling professionals.
- (12) Civil legal service providers.
- (13) Supervised volunteers from partner agencies.
- (14) Other professionals providing services.

Pursuant to Cal. Penal Code § 13750(e), “Victims of crime shall not be denied services on the grounds of criminal history. No criminal history search shall be conducted of a victim at a family justice center without the victim's written consent unless the criminal history search is pursuant to an active criminal investigation.” In addition, receiving services through a family justice center may not be preconditioned on cooperation with the criminal justice system. Cal. Penal Code § 13750(f) states, “Victims of crime shall not be required to participate in the criminal justice system or cooperate with law enforcement in order to receive counseling, medical care, or other services at a family justice center.”

Cal. Penal Code § 13750(g)(1) requires family justice centers to collaborate with many agencies for service provision,

Each family justice center shall consult with community-based domestic violence, sexual assault, elder or dependent adult abuse, and human trafficking agencies in partnership with survivors of violence and abuse and their advocates in the operations process of the family justice center, and shall establish procedures for the ongoing input, feedback, and evaluation of the family justice center by survivors of violence and abuse and community-based crime victim service providers and advocates.

Lastly, Cal. Welf. & Inst. Code § 18259(a)–(c) (Program for treatment of commercially sexually exploited minors) permits the County of Alameda 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” certain prostitution-related offenses “or who have been adjudged a dependent of the juvenile court” The program may include protocols for identifying and accessing minors, for reporting to child welfare, and for developing a diversion program.

- 3.2.1 Recommendation: Strengthen existing law to require a statewide multi-disciplinary team response to child sex trafficking victims.

Policy Goal 3.3 State law requires the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.

California law does not provide access to specialized services for identified sex trafficked children and youth in the juvenile justice system.

- 3.3.1 Recommendation: Statutorily require the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.

Policy Goal 3.4 State law extends foster care services to older foster youth.

California law extends foster care services to youth under 21 years of age. However, these services are not extended to youth under 23 years of age as permitted under federal law.⁹ Pursuant to Cal. Welf. & Inst. Code § 11403 (a) (Payment of aid after 18th birthday; Conditions; Responsibilities of county; Duties of department; Extension of benefits),

It is the intent of the Legislature to exercise the option afforded states under Section 475(8) (42 U.S.C. Sec. 675(8)), and Section 473(a)(4)(42 U.S.C. Sec. 673(a)(4)) of the federal Social Security Act, as contained in the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351), to receive federal financial participation for nonminor dependents of the juvenile court who satisfy the conditions of subdivision (b), consistent with their transitional independent living case plan. Nonminor dependents are eligible to receive support until they reach 21 years of age, consistent with their transitional independent living case plan and as described in Section 10103.5¹⁰

⁹ For more information, see Shared Hope Int'l, *Issue Brief 3.4: Continuum of Care*, https://sharedhope.org/wp-content/uploads/2020/12/SH_Issue-Brief-3.4_2020.pdf (discussing federal laws that allow for funded foster care services to be extended to youth under 23 years of age).

¹⁰ Cal. Welf. & Inst. Code § 11403(b) (Payment of aid after 18th birthday; Conditions; Responsibilities of county; Duties of department; Extension of benefits) sets out the benefits that may be provided to transition age foster youth as follows:

A nonminor dependent receiving aid pursuant to this chapter, who satisfies the age criteria set forth in subdivision (a), shall meet the legal authority for placement and care by being under a foster care placement order by the juvenile court, or the voluntary reentry agreement as set forth in subdivision (z) of Section 11400, and is otherwise eligible for AFDC-FC payments pursuant to Section 11401. A nonminor who satisfies the age criteria set forth in subdivision (a), and who is otherwise eligible, shall continue to receive CalWORKs payments pursuant to Section 11253, Approved Relative Caregiver Funding Program benefits pursuant to Section 11461.3, or, as a nonminor former dependent or ward, aid pursuant to Kin-GAP under Article 4.5 (commencing with Section 11360) or Article 4.7 (commencing with Section 11385) or adoption assistance payments, as specified in Chapter 2.1 (commencing with Section 16115) of Part 4. A nonminor former dependent child or ward of the juvenile court who is receiving AFDC-FC benefits pursuant to Section 11405 and who satisfies the criteria set forth in subdivision (a) is eligible to continue to receive aid as long as the nonminor is otherwise eligible for AFDC-FC benefits under this subdivision. This subdivision applies when one or more of the following conditions exist:

- (1) The nonminor is completing secondary education or a program leading to an equivalent credential.
- (2) The nonminor is enrolled in an institution that provides postsecondary or vocational education.

- 3.4.1 Recommendation: Strengthen existing law to better support transition age youth by extending transitional foster care services to youth under 23 years of age.

Policy Goal 3.5 State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.

The California state legislature made appropriations during the 2019-2020 and 2021-2022 legislative sessions to support the development of grants to fund services for human trafficking victims, including survivors of child sex trafficking.

2021-2022 Appropriations				
Bill	Recipient	Amount	Intended Purpose	Term
SB 129 (Budget Act of 2021)	Office of Emergency Services	\$20,000,000	To provide grants for services for human trafficking victims.	FY 2021-2022 (Non-recurring)
2021-2022 Legislative Session				July 1-June 30
SB 85 (Budget Act of 2020)	Office of Emergency Services	\$10,000,000	To provide grants related to services for victims of human trafficking.	FY 2021-2022
2021-2022 Legislative Session				July 1 st -June 30 th

2019-2020 Appropriations				
Bill	Recipient	Amount	Intended Purpose	Term

- (3) The nonminor is participating in a program or activity designed to promote, or remove barriers to employment.
- (4) The nonminor is employed for at least 80 hours per month.
- (5) The nonminor is incapable of doing any of the activities described in paragraphs (1) to (4), inclusive, due to a medical condition, and that incapability is supported by regularly updated information in the case plan of the nonminor. The requirement to update the case plan under this section does not apply to nonminor former dependents or wards in receipt of Kin-GAP program or Adoption Assistance Program payments.

AB 74 (Budget Act of 2019)	Office of Emergency Services	\$10,000,000	To provide grants for services for human trafficking victims.	FY 2020-2021 (Non-recurring)
2019-2020 Legislative Session				July 1 st -June 30 th

Policy Goal 3.6 State funding is appropriated to support child-serving agencies with providing specialized services and a continuum of care for sex trafficked children.

The California state legislature made appropriations during the 2021-2022 legislative session to fund the development and provision of specialized services through state child serving agencies, specifically through the Commercially Sexually Exploited Children Program.¹¹

¹¹ Cal. Welf. & Inst. Code § 16524.7 (Commercially Sexually Exploited Children Program established; Allocation of funding; Case planning) [Welfare & Insts. Code, Div. 9 Pub. Soc. Servs., Pt. 4 Servs. for the Care of Children, Ch. 5.2 Commercially Sexually Exploited Children Program] states,

- (a)
- (1) There is hereby established the Commercially Sexually Exploited Children Program. This program shall be administered by the State Department of Social Services.
 - (2) The department, in consultation with the County Welfare Directors Association of California, shall develop an allocation methodology to distribute funding for the program. Funds allocated pursuant to this section shall be utilized to cover expenditures related to the costs of implementing the program, prevention and intervention services, and training related to children who are, or may become, victims of commercial sexual exploitation.
 - (3)
 - (A) Funds shall be provided to counties that elect to participate in the program for the provision of training to county children’s services workers to identify, intervene, and provide case management services to children who are victims of commercial sexual exploitation and trafficking, as applicable, and to foster caregivers for the prevention and identification of potential victims.
 - (B) The department shall contract to provide training for county workers and foster caregivers. Training shall be selected and contracted for in consultation with the County Welfare Directors Association, county children’s services representatives, and other stakeholders. The department shall consult and collaborate with the California Community Colleges Chancellor’s Office to provide training for foster parents of licensed foster family homes.
 - (4) Funds provided to the counties electing to participate in the program shall be used for prevention activities, which includes training county workers, intervention activities, and services to children who are victims, or at risk of becoming victims, of commercial sexual exploitation. These activities and services may include, but are not limited to, all of the following:
 - (A) Educating foster children to help recognize and help avoid commercial sexual exploitation. Counties may target educational activities to foster children who are at higher risk of commercial sexual exploitation.
 - (B) Engaging survivors of commercial sexual exploitation to do all of the following:
 - (i) Provide support to county staff who serve children who are victims of commercial sexual exploitation.
 - (ii) Participate in activities that may include education, training, and technical assistance.
 - (iii) Serve as advocates for and perform outreach and support to children who are victims of commercial sexual exploitation.

2021-2022 Appropriations				
Bill	Recipient	Amount	Intended Purpose	Term
SB 129/AB 128	State Department of Social Services	Unspecified	To fund the Commercially Sexually Exploited Children Program.	FY 2021-2022 (Non-recurring)
2021 Legislative Session				July 1 st -June 30 th

(C) Consulting and coordinating with homeless youth shelters and other service providers who work with children who are disproportionately at risk of, or involved in, commercial sexual exploitation, including, but not limited to, lesbian, gay, bisexual, and transgender youth organizations, regarding outreach and support to children who are victims of commercial sexual exploitation.

(D) Hiring county staff trained and specialized to work with children who are victims of commercial sexual exploitation to support victims and their caregivers, and to provide case management to support interagency and cross-departmental response.

(E) Providing supplemental foster care rates for placement of child victims of commercial sexual exploitation adjudged to be within the definition of Section 300, to foster homes, relatives, foster family agency certified homes, or other specialized placements for the increased care and supervision needs of the victim in accordance with Section 11460.

(b) Funds allocated for the program shall not supplant funds for existing programs.

(c)

(1) In order to ensure timely access to services to which commercially sexually exploited children are entitled as dependents in foster care, in participating counties, county agency representatives from mental health, probation, public health, and substance abuse disorders shall participate in the case planning and assist in linking commercially sexually exploited children to services that serve children who are in the child welfare system and that are identified in the child's case plan and may include other stakeholders as determined by the county.

(2) The entities described in paragraph (1) shall provide input to the child welfare services agency regarding the services and supports needed for these children to support treatment needs and aid in their recovery and may assist in linking these children to services that are consistent with their county plans submitted to the department pursuant to subdivision (d).

(d)

(1) A county electing to receive funding from the Commercially Sexually Exploited Children Program pursuant to this chapter shall submit a plan describing how the county intends to utilize the funds allocated pursuant to paragraph (4) of subdivision (a).

(2)

(A) The county shall submit a plan to the department pursuant to a process developed by the department, in consultation with the County Welfare Directors Association. The plan shall include documentation indicating the county's collaboration with county partner agencies, educational entities, and children-focused entities, which shall include the formation of a multidisciplinary team to serve children pursuant to this chapter.

(B) A multidisciplinary team serving a child pursuant to this chapter shall include, but is not limited to, appropriate staff from the county child welfare, probation, mental health, substance abuse disorder, and public health departments. Staff from a local provider of services to this population, local education agencies, and local law enforcement, and survivors of commercial sexual exploitation and trafficking may be included on the team.



ISSUE 4: Access to Justice for Trafficking Survivors

Policy Goal 4.1 State law allows trafficking victims to seek emergency civil orders of protection.

While civil orders of protection exist under California law, this protection is not expressly available to victims of child sex trafficking and CSEC.

- 4.1.1 Recommendation: Amend state law to expressly allowing victims of trafficking and CSEC to obtain ex parte civil orders of protection against their exploiters.

Policy Goal 4.2 Ineligibility factors for crime victims' compensation do not prevent victims of child sex trafficking and commercial sexual exploitation of children (CSEC) from accessing compensation.

California's crime victims' compensation laws exempt victims of child sex trafficking, but not CSEC, from some, but not all, ineligibility factors, leaving some commercially sexually exploited children without access to an award.

For purposes of accessing crime victims' compensation, Cal Gov Code § 13951(g) (Definitions) defines "victim" as "an individual who sustains injury or death as a direct result of a crime as specified in subdivision (e) of Section 13955 [Eligibility requirements]."¹² To the extent that a commercially sexually exploited child suffers pecuniary loss and physical injury, emotional injury and a threat of physical injury, or only emotional injury from a specified crime, including human trafficking, the child may be eligible to receive crime victims' compensation. Cal. Gov't Code § 13955(f), (g) (Eligibility requirements).

However, filing deadlines may still prevent a commercially sexually exploited child from accessing crime victims' compensation. Cal. Gov't Code § 13953(a) (Time period for filing application) requires an application for victim compensation to be filed within the following time periods:¹³

Within seven years of the date of the crime, seven years after the victim attains 21 years of age, or seven years of the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered that an injury or death had been sustained as a direct result of crime, whichever is later.

Commercially sexually exploited children may also face barriers to compensation based on their actions leading up to their exploitation. Cal. Gov't Code § 13956(a)(1) (Non-eligible persons; eligibility of certain classes of victims; eligibility of victims of certain crimes) states,

¹² Cal. Gov't Code § 13955(e) states that "(1) Except as provided in paragraph (2), the injury or death was a direct result of a crime. (2) Notwithstanding paragraph (1), no act involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death constitutes a crime for the purposes of this chapter"

¹³ Cal. Gov't Code § 13953(b) allows for an extension to be granted for good cause. In determining whether good cause exists, Cal. Gov't Code § 13953 allows for consideration of the following factors:

- (1) Whether the victim or derivative victim incurs emotional harm or a pecuniary loss while testifying during the prosecution or in the punishment of the person accused or convicted of the crime.
- (2) Whether the victim or derivative victim incurs emotional harm or a pecuniary loss when the person convicted of the crime is scheduled for a parole hearing or released from incarceration.

An application may be denied, in whole or in part, if the board finds that denial is appropriate because of the nature of the victim's or other applicant's involvement in the events leading to the crime, or the involvement of the person whose injury or death gives rise to the application.

(1) Factors that may be considered in determining whether the victim or derivative victim was involved in the events leading to the qualifying crime include, but are not limited to:

(A) The victim or derivative victim initiated the qualifying crime, or provoked or aggravated the suspect into initiating the qualifying crime.

(B) The qualifying crime was a reasonably foreseeable consequence of the conduct of the victim or derivative victim.

(C) The victim or derivative victim was committing a crime that could be charged as a felony and reasonably lead to him or her being victimized

In addition, Cal. Gov't Code § 13956(c)(1) states that "In no case shall compensation be granted to an applicant pursuant to this chapter . . . while an applicant is required to register as a sex offender pursuant to Section 290 of the Penal Code [Sex offender registration act; persons required to register]." Accordingly, commercially sexually exploited children may be delayed in receiving an award if convicted of an offense arising from their victimization that required registration as a sex offender.

Notably, California law carves out exceptions to other ineligibility factors. Because those exceptions are offense-specific, however, only victims of trafficking, not CSEC, will be protected. Under Cal. Gov't Code § 13956(b)(4),

An application for a claim based on human trafficking as defined in Section 236.1 of the Penal Code shall not be denied solely because no police report was made by the victim. The board shall adopt guidelines that allow the board to consider and approve applications for assistance based on human trafficking relying upon evidence other than a police report to establish that a human trafficking crime as defined in Section 236.1 of the Penal Code has occurred. That evidence may include any reliable corroborating information approved by the board, including, but not limited to, the following:

(A) A Law Enforcement Agency Endorsement issued pursuant to Section 236.2 of the Penal Code.

(B) A human trafficking caseworker, as identified in Section 1038.2 of the Evidence Code, has attested by affidavit that the individual was a victim of human trafficking.

Further, Cal. Gov't Code § 13956(b)(1) provides a partial exception to cooperation requirements, stating,

An application shall be denied if the board finds that the victim or, if compensation is sought by, or on behalf of, a derivative victim, either the victim or derivative victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime Lack of cooperation shall . . . not be found solely because a victim of . . . human trafficking delayed reporting the qualifying crime.

However, trafficking victims could still be ineligible for crime victims' compensation if their failure to cooperate stems from conduct other than a delay in reporting the crime.

4.2.1 Recommendation: Amend state law to exempt victims of child sex trafficking and CSEC from ineligibility factors for crime victims' compensation.

Policy Goal 4.3 Sex trafficked children and youth may vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.

California law allows sex trafficked children and youth to vacate delinquency adjudications and criminal convictions but only for certain offenses arising from trafficking victimization. Pursuant to Cal. Penal Code § 236.14(a), (g), (j)–

(l) (Petition for vacatur relief of arrest for or conviction of nonviolent offense committed while victim of human trafficking),

(a) If a person was arrested for or convicted of any nonviolent offense committed while he or she was a victim of human trafficking,¹⁴ including, but not limited to, prostitution as described in subdivision (b) of Section 647, the person may petition the court for vacatur relief of his or her convictions and arrests under this section. The petitioner shall establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of human trafficking.

....

(g) After considering the totality of the evidence presented, the court may vacate¹⁵ the conviction and expunge the arrests and issue an order if it finds all of the following:

- (1) That the petitioner was a victim of human trafficking at the time the nonviolent crime was committed.
- (2) The commission of the crime was a direct result of being a victim of human trafficking.
- (3) The victim is engaged in a good faith effort to distance himself or herself from the human trafficking scheme.
- (4) It is in the best interest of the petitioner and in the interests of justice.

....

(j) A person who was arrested as, or found to be, a person described in Section 602 of the Welfare and Institutions Code [Persons subject to jurisdiction of juvenile court and to adjudication as ward for violation of law or ordinance defining crime] because he or she committed a nonviolent offense while he or she was a victim of human trafficking, including, but not limited to, prostitution, as described in subdivision (b) of Section 647 [Disorderly conduct; Punishment for violation], may petition the court for relief under this section. If the petitioner establishes that the arrest or adjudication was the direct result of being a victim of human trafficking the petitioner is entitled to a rebuttable presumption that the requirements for relief have been met.

(l) A petition pursuant to this section shall be made and heard within a reasonable time after the person has ceased to be a victim of human trafficking, or within a reasonable time after the petitioner has sought services for being a victim of human trafficking, whichever occurs later, subject to reasonable concerns for the safety of the petitioner, family members of the petitioner, or other victims of human trafficking who may be jeopardized by the bringing of the application or for other reasons consistent with the purposes of this section.

As noted above, however, vacatur is limited to nonviolent offenses, which fails to recognize the array of crimes trafficking victims may be induced to commit and leaves many survivors without any avenue for relief.

¹⁴ Cal. Penal Code § 236.14(t)(3) defines “victim of human trafficking” as “the victim of a crime described in subdivisions (a), (b), and (c) of Section 236.1 [Human trafficking defined; punishment].”

¹⁵ Cal. Penal Code § 236.14(t)(2) defines “vacate” as follows:

“Vacate” means that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed pursuant to this section. The court shall provide the petitioner with a copy of the orders described in subdivisions (a), (j), and (k), as applicable, and inform the petitioner that he or she may thereafter state that he or she was not arrested for the charge, or adjudicated or convicted of the charge, that was vacated.

- 4.3.1 Recommendation: Amend state law to allow sex trafficked children and youth to vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.

Policy Goal 4.4 State law mandates restitution for child sex trafficking and commercial sexual exploitation of children (CSEC) offenses.

California law requires an offender convicted of a child sex trafficking or CSEC to pay restitution. Pursuant to Cal. Penal Code § 1202.4(q) (Restitution; amount; hearing and court order; financial disclosure),

Upon conviction for a violation of Section 236.1 [Human trafficking defined; punishment], the court shall, in addition to any other penalty or restitution, order the defendant to pay restitution to the victim in a case in which a victim has suffered economic loss as a result of the defendant's conduct. The court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or another showing to the court. In determining restitution pursuant to this section, the court shall base its order upon the greater of the following: the gross value of the victim's labor or services based upon the comparable value of similar services in the labor market in which the offense occurred, or the value of the victim's labor as guaranteed under California law, or the actual income derived by the defendant from the victim's labor or services or any other appropriate means to provide reparations to the victim.

Restitution is available more generally to victims of other crimes pursuant to Cal. Penal Code § 1202.4(f), which provides,

[I]n every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court

. . . .

(3) To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following:

- (A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.
- (B) Medical expenses.
- (C) Mental health counseling expenses.
- (D) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor. Lost wages shall include commission income as well as base wages
- (E) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution. Lost wages shall include commission income as well as base wages
- (F) Noneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288 [Lewd or lascivious acts involving children], 288.5 [Continuous sexual abuse of a child], or 288.7 [Sexual acts with child 10 years old or younger; punishment; felony].
- (G) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court.
- (H) Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.

. . . .

(L) Expenses for a period of time reasonably necessary to make the victim whole, for the costs to monitor the credit report of, and for the costs to repair the credit of, a victim of identity theft, as defined in Section 530.5.

EXTRA CREDIT



California law mandates restitution for victims of child labor trafficking under Cal. Penal Code § 1202.4(q), which requires offenders convicted of a violation of Cal. Penal Code § 236.1 (Human trafficking defined; punishment) to pay victim restitution.

Policy Goal 4.5 State law provides child sex trafficking victims with a trafficking-specific civil remedy.

California law allows victims of child sex trafficking to pursue civil remedies against their exploiters. Cal. Civ. Code § 52.5(a)–(f) (Action by victim of human trafficking) states,

- (a) A victim of human trafficking, as defined in Section 236.1 [Human trafficking defined; punishment] 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 in this section, in an 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 be awarded upon proof of the defendant’s malice, oppression, fraud, or duress in committing the act of human trafficking.
-
- (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.

Further, civil remedies are available to victims of CSEC pursuant to Cal. Civ. Code § 3345.1(c) (Commercial sexual exploitation of minor or nonminor dependent), which provides,

- (a) This section shall apply only in a civil action brought by, or on behalf of, or for the benefit of, a person who is a minor¹⁶ or nonminor dependent and is a victim of commercial sexual exploitation¹⁷ committed by a person who is over 18 years of age

¹⁶ Cal. Civ. Code § 3345.1(a) clarifies that, “[f]or purposes of this section, the age of the victim, the status of the victim as a minor or nonminor dependent, and the age of the defendant is determined at the time of the defendant’s act of commercial sexual exploitation of the victim.”

¹⁷ Cal. Civ. Code § 3345.1(g)(1) defines “commercial sexual exploitation” as follows:

[A]n act committed for the purpose of obtaining property, money, or anything else of value in exchange for, or as a result of, a sexual act of a minor or nonminor dependent, including, but not limited to, an act that would constitute a violation of any of the following:

....

(c) . . . [T]he court may award a civil penalty not exceeding fifty thousand dollars (\$50,000), and not less than ten thousand dollars (\$10,000), for each act of commercial sexual exploitation committed by the defendant upon making an affirmative finding in regard to one or more of the factors set forth in paragraphs (1) to (3),¹⁸ inclusive, of subdivision (b). This penalty may be imposed in addition to any other remedy available in law or in equity.

(d) Any penalty imposed pursuant to this section shall be paid to the victim of the act of sexual exploitation.

....

(g) As used in this section, the following terms have the following meanings:

(1) “Commercial sexual exploitation” means an act committed for the purpose of obtaining property, money, or anything else of value in exchange for, or as a result of, a sexual act of a minor or nonminor dependent, including, but not limited to, an act that would constitute a violation of any of the following:

(A) Sex trafficking of a minor in violation of subdivision (c) of [Section 236.1 of the Penal Code](#).

(B) Pimping of a minor in violation of [Section 266h of the Penal Code](#).

(C) Pandering of a minor in violation of subdivision (b) of [Section 266i of the Penal Code](#).

(D) Procurement of a child under 16 years of age for lewd and lascivious acts in violation of [Section 266j of the Penal Code](#).

(E) Solicitation of a child for a purpose that is either in violation of subparagraph (A) or pursuant to paragraph (3) of subdivision (b) of Section 647 of the Penal Code.

(F) An act of sexual exploitation described in subdivision (c) or (d) of Section 11165.1 of the Penal Code.

(2) “Nonminor dependent” has the same meaning as in subdivision (v) of Section 11400 of the Welfare and Institutions Code.

(A) Sex trafficking of a minor in violation of subdivision (c) of [Section 236.1 of the Penal Code](#).

(B) Pimping of a minor in violation of [Section 266h of the Penal Code](#).

(C) Pandering of a minor in violation of subdivision (b) of [Section 266i of the Penal Code](#).

(D) Procurement of a child under 16 years of age for lewd and lascivious acts in violation of [Section 266j of the Penal Code](#).

(E) Solicitation of a child for a purpose that is either in violation of subparagraph (A) or pursuant to paragraph (3) of subdivision (b) of Section 647 of the Penal Code.

(F) An act of sexual exploitation described in subdivision (c) or (d) of Section 11165.1 of the Penal Code.

¹⁸ Cal. Civ. Code § 3345.1(b) includes the following factors:

(1) Whether the defendant’s conduct was directed to more than one minor or nonminor dependent.

(2) Whether one or more minors or nonminor dependents suffered substantial physical, emotional, or economic damage resulting from the defendant’s conduct.

(3) Whether the defendant knew or reasonably should have known that the victim was a minor or nonminor dependent. It shall not be a defense to imposition of fines, penalties, or other remedies pursuant to this paragraph that the defendant was unaware of the victim’s age or status as a nonminor dependent at the time of the act.

EXTRA CREDIT



California law provides sex trafficked youth with a trafficking-specific civil remedy under Cal. Civ. Code § 52.5(a), which allows “[a] victim of human trafficking . . . [to] bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief.” This protection applies to victims of Cal. Penal Code § 236.1 (Human trafficking defined; punishment), including both minor and adult victims.



California law provides child labor trafficking victims with a trafficking-specific civil remedy under Cal. Civ. Code § 52.5(a), which allows “[a] victim of human trafficking . . . [to] bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief.” This protection applies to victims of Cal. Penal Code § 236.1 (Human trafficking defined; punishment), including both sex and labor trafficking victims.

Policy Goal 4.6 Statutes of limitation for criminal and civil actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.

Trafficking prosecutions involving force, fraud, or coercion may commence at any time; however, prosecutions for other trafficking conduct are subject to a statute of limitation as are civil actions. Pursuant to Cal. Penal Code § 799(a) (Offenses punishable by death or life imprisonment without parole; embezzlement of public money; certain felonies), “Prosecution for an offense punishable by death or by imprisonment in the state prison for life or for life without the possibility of parole, or for the embezzlement of public money, may be commenced at any time.” However, because only child sex trafficking offenses involving “force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or another person” are punishable by up to life imprisonment, the criminal statute of limitations would not be eliminated for all cases involving child sex trafficking. Cal. Penal Code §§ 236.1(c)(2); 799(a).

Otherwise, Cal. Penal Code § 800 (Offense punishable by imprisonment for eight years or more) provides,

Except as provided in Section 799, prosecution for an offense punishable by imprisonment in the state prison for eight years or more or by imprisonment pursuant to subdivision (h) of Section 1170 [Determinate sentencing; sentence recall; medical release] for eight years or more shall be commenced within six years after commission of the offense.

Lastly, under Cal. Penal Code § 801 (Offense punishable by imprisonment in state prison),

Except as provided in Sections 799 and 800, prosecution for an offense punishable by imprisonment in the state prison or pursuant to subdivision (h) of Section 1170 [Determinate sentencing; sentence recall; medical release] shall be commenced within three years after commission of the offense.

Regarding civil actions, Cal. Civ. Code § 52.5(c) (Action by victim of human trafficking) states,

An action brought pursuant to this section shall be commenced within seven 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 10 years after the date the plaintiff attains the age of majority.

Cal. Civ. Code § 52.5(d)–(e), (h) tolls the civil statute of limitation as follows:

(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, 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 limitations for this action.

(1) Disability includes being a minor, lacking legal capacity to make decisions, imprisonment, or other incapacity or incompetence.

(2) The statute of limitations shall not run against a plaintiff who is a minor or who lacks the legal competence to make decisions 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 bring an action after his or her disability ceases.

(3) A defendant is estopped from asserting 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 the plaintiff duress.

(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 criminal proceedings against the victim.

(e) The running of the statute of limitations may be suspended if 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.

....

(h) A 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.

4.6.1 Recommendation: Amend state law to eliminate criminal and civil statutes of limitation for all cases involving child sex trafficking and CSEC.



ISSUE 5: Tools for a Victim-Centered Criminal Justice Response

Policy Goal 5.1 State law provides a child sex trafficking-specific hearsay exception that applies to non-testimonial evidence to reduce reliance on victim testimony.

California law does not allow non-testimonial, out-of-court statements made by a commercially sexually exploited child to be admitted into evidence in lieu of, or for the purpose of corroborating, the child's testimony.

5.1.1 Recommendation: Statutorily provide a hearsay exception that applies to non-testimonial evidence in cases involving commercial sexual exploitation of children under 18 years of age.

Policy Goal 5.2 State law provides child sex trafficking victims with alternatives to live, in-court testimony regardless of the prosecuted offense.

California law allows for testimony by an alternative method, but limitations based on the victim's age and the offense charged exclude some commercially sexually exploited children from protection. Specifically, Cal. Penal Code § 1347.1(a) (Testimony of minor in criminal proceeding charging human trafficking violation) allows victims of human trafficking to testify by closed circuit television (CCTV), stating,

In any criminal proceeding in which a defendant is charged with a violation of Section 236.1 [Human trafficking defined; punishment], upon written notice by the prosecutor made at least three days prior to the date of the preliminary hearing or trial date on which the testimony of the minor is scheduled, or during the course of the proceeding on the court's own motion, may order that the testimony of a minor 15 years of age or younger at the time of the motion be taken by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant or defendants, and attorneys, and communicated to the courtroom by means of closed-circuit television,¹⁹ if the court makes all of the following findings:

(1) The minor's testimony will involve a recitation of the facts of an alleged offense of human trafficking, as defined in Section 236.1.

(2)

(A) The impact on the minor of one or more of the factors enumerated in clauses (i) to (v), inclusive, is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness unless closed-circuit testimony is used.

(i) Testimony by the minor in the presence of the defendant would result in the minor suffering serious emotional distress so that the minor would be unavailable as a witness.

(ii) The defendant used a deadly weapon in the commission of the offense.

¹⁹ Pursuant to Cal. Penal Code § 1347(b),

If the court orders the use of closed-circuit television, two-way closed-circuit television shall be used, except that if the impact on the minor of one or more of the factors enumerated in clauses (i) to (v), inclusive, of subparagraph (A) of paragraph (2) of subdivision (a), is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness even if two-way closed-circuit television is used, one-way closed-circuit television may be used

....

- (iii) The defendant threatened serious bodily injury to the minor or the minor’s family, threatened incarceration or deportation of the minor or a member of the minor’s family, threatened removal of the minor from the minor’s family, or threatened the dissolution of the minor’s family in order to prevent or dissuade the minor from attending or giving testimony at any trial or court proceeding, or to prevent the minor from reporting the alleged offense, or from assisting in criminal prosecution.
 - (iv) The defendant inflicted great bodily injury upon the minor in the commission of the offense.
 - (v) The defendant or his or her counsel behaved during the hearing or trial in a way that caused the minor to be unable to continue his or her testimony.
- (B) In making the determination required by this paragraph, the court shall consider the age of the minor, the relationship between the minor and the defendant or defendants, any handicap or disability of the minor, and the nature of the acts charged. The minor’s refusal to testify shall not alone constitute sufficient evidence that the special procedure described in this section is necessary to obtain the minor’s testimony.
- (3) The equipment available for use of closed-circuit television would accurately communicate the image and demeanor of the minor to the judge, jury, defendant or defendants, and attorneys.

Similarly, Cal. Penal Code § 1347(b) (Testimony of minor witness by closed circuit television)²⁰ permits a child who is under 14 years of age and the victim of a “sexual offense” to testify by CCTV; however, the term “sexual offense” is not defined. Accordingly, it is unclear whether the protection outlined in Cal. Penal Code § 1347(b) would apply to victims of commercial sexual exploitation.

Further, Cal. Penal Code § 1347.1 and Cal. Penal Code § 1347 only protect children under 16 and 14 years of age, respectively, leaving older minors at increased risk of re-traumatization from testifying.

- 5.2.1 Recommendation: Strengthen existing statutory protections to allow all commercially sexually exploited children to testify by an alternative method regardless of the child’s age and the offense charged.

²⁰ Cal. Penal Code § 1347(b) states in part,

[T]he court] . . . may order that the testimony of a minor 13 years of age or younger at the time of the motion be taken by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant or defendants, and attorneys, and communicated to the courtroom by means of closed-circuit television, if the court makes all of the following findings:

- (1) The minor’s testimony will involve a recitation of the facts of any of the following:

- (A) An alleged sexual offense committed on or with the minor.

. . . .

- (2) [It] shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness unless closed-circuit testimony is used

- (3) The equipment available for use of closed-circuit television would accurately communicate the image and demeanor of the minor to the judge, jury, defendant or defendants, and attorneys.

Policy Goal 5.3

Child sex trafficking victims have access to victim protections in the criminal justice system.

	Child sex trafficking victims have the right to a victim advocate	Child sex trafficking victims testifying against their exploiter are provided supports in the courtroom	Child sex trafficking victims’ identifying information is protected from disclosure in court records
Summary	Child sex trafficking victims are entitled to support from the Victim Witness Assistance Center, if they choose.	Victims of human trafficking and some CSEC offenses are entitled to have up to 2 support persons when they testify. If a minor witness does not, or is not able to, select a support person, the court may select a support person. The court may also control the mode of interrogation to protect witnesses under the age of 14 from undue harassment or embarrassment.	Identifying and locating information of human trafficking victims is protected from disclosure in public records.
Relevant Statute(s)	Cal. Penal Code § 236.13 (Assistance to minors from the Victim Witness Assistance Center)	Cal. Penal Code § 868.5(1) (Attendance of persons to support prosecuting witness in specified cases); Cal. Ed. Code § 44993(1), (2)(d)–(e) (Witness support person; Private investigator not permitted to contact witness); Cal. Evid. Code § 765(a) (Court to control mode of interrogation)	Cal. Penal Code § 293 (a), (e) (Disclosure of information regarding victim of sex offense or human trafficking)

Policy Goal 5.4

State law provides for privileged communications between caseworkers and child sex trafficking victims.

California law provides for a child sex trafficking-specific caseworker privilege that protects a child sex trafficking victim’s communications with their caseworker from being disclosed. Under Cal. Evid. Code § 1038(a) (Right to prevent disclosure of confidential communication between victim and caseworker; who may claim privilege; notice to victim),

A trafficking victim, whether or not a party to the action, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication,²¹ whether made orally, in writing, or

²¹ Cal. Evid. Code § 1038.2(a) (Definitions) defines “confidential communication” as follows:

[A]ll information, including, but not limited to, written and oral communication, transmitted between the victim and the human trafficking caseworker in the course of their relationship and in confidence by a means which, so far as the

otherwise conveyed, between the victim²² and a human trafficking caseworker²³ if the privilege is claimed by any of the following persons:

- (1) The holder of the privilege.
- (2) A person who is authorized to claim the privilege by the holder of the privilege.
- (3) The person who was the human trafficking caseworker at the time of the confidential communication or is presently the human trafficking caseworker for the victim.

However, that person may not claim the privilege if there is no holder of the privilege in existence or if the person is otherwise instructed by the court or by another person authorized to permit disclosure.

Cal. Evid. Code § 917(a) (Presumption that certain communications are confidential) creates a rebuttable presumption that communications made during the human trafficking caseworker-victim relationship were made in confidence, stating,

If a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of the . . . human trafficking caseworker-victim relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential.

victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the human trafficking caseworker is consulted and made with the victim's knowledge and consent. "Confidential communication" includes all information regarding the facts and circumstances relating to all incidences of human trafficking, as well as all information about the children of the victim and the relationship of the victim to the human trafficker.

²² Cal. Evid. Code § 1038.2(e) defines "victim" as "a person who consults a human trafficking caseworker for the purpose of securing advice or assistance concerning a mental, physical, emotional, or other condition related to their experience as a victim of human trafficking."

²³ Cal. Evid. Code § 1038.2(c) defines "human trafficking caseworker" as follows:

[A] person working for a human trafficking victim service organization, whether financially compensated or not, for the purpose of rendering advice or assistance to victims of human trafficking, who meets the requirements of paragraph (1) or (2) and who also meets the requirements of paragraph (3), if applicable:

- (1) Has an advanced degree or license, such as a master's degree in counseling, social work, or a related field and at least one year of experience in a caseworker role working directly with victims of human trafficking.
- (2) Has at least 40 hours of training as specified in this paragraph and is supervised by an individual who qualifies as a human trafficking caseworker under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but need not be limited to, the following areas:
 - (A) History of human trafficking.
 - (B) Civil and criminal law relating to human trafficking.
 - (C) Systems of oppression.
 - (D) Peer counseling techniques.
 - (E) Resources available to victims of human trafficking.
 - (F) Crisis intervention and counseling techniques.
 - (G) Role playing.
 - (H) Intersections of human trafficking and other crimes.
 - (I) Client and system advocacy.
 - (J) Referral services.
 - (K) Connecting to local, regional, and national human trafficking coalitions.
 - (L) Explaining privileged communications.
- (3) If the caseworker has been employed by a human trafficking service organization for a period of less than six months, that caseworker is supervised by another human trafficking caseworker who has at least one year of experience working with human trafficking victims.

However, Cal. Evid. Code § 1038.1(a) (When court may compel disclosure; ruling on claim of privilege) allows the court to compel disclosure “if the court determines that the probative value of the information outweighs the effect of disclosure of the information on the victim, the counseling relationship, and the counselling services.”

EXTRA CREDIT



California law prevents disclosure of confidential communications made between a sex trafficking victim and their caseworker under Cal. Evid. Code § 1038 regardless of the victim’s age.



California law prevents disclosure of confidential communications made between a child labor trafficking victim and their caseworker under Cal. Evid. Code § 1038, which applies broadly to all cases involving human trafficking, including both sex and labor trafficking.



ISSUE 6: Prevention & Training

Policy Goal 6.1 State law mandates statewide training for child welfare agencies on identification and response to child sex trafficking.

California law mandates statewide training for social workers on identification and response to child sex trafficking. Pursuant to Cal. Welf. & Inst. Code § 16501.35(a) (Required duties of social workers and probation officers; location of child missing from foster care),

On or before September 29, 2016, county child welfare agencies and probation departments shall implement policies and procedures that require social workers and probation officers to do all of the following:

- (1) Identify children receiving child welfare services, including dependents or wards in foster care, nonminor dependents, and youth receiving services pursuant to Section 677 of Title 42 [John H. Chafee Foster Care Program for Successful Transition to Adulthood] of the United States Code, who are, or are at risk of becoming, victims of commercial sexual exploitation.
-
- (4) Receive relevant training in the identification, documentation, and determination of appropriate services for any child or youth identified in paragraph (1).

Further, Cal. Health & Safety Code § 1562.01(h) (Licensed short-term residential treatment centers; certification; written plan of operation; review process) mandates trafficking-specific training for short-term residential therapeutic programs staff, stating,

The department shall adopt regulations to specify training requirements for staff who provide care and supervision to children or who have regular, direct contact with children in the course of their responsibilities. These requirements shall include both of the following:

- (1) Timeframes for completion of training, including the following:
 - (A) Training that shall be completed prior to unsupervised care of children.
 - (B) Training to be completed within the first 180 days of employment.
 - (C) Training to be completed annually.
- (2) Topics to be covered in the training shall include, but are not limited to, the following:
 - (I) Awareness and identification of commercial sexual exploitation and best practices for providing care and supervision to commercially sexually exploited children.

Policy Goal 6.2 State law mandates statewide training for juvenile justice agencies on identification and response to child sex trafficking.

California law mandates statewide training for probation officers on identification and response to child sex trafficking. Pursuant to Cal. Welf. & Inst. Code § 16501.35(a) (Required duties of social workers and probation officers; location of child missing from foster care),

On or before September 29, 2016, county child welfare agencies and probation departments shall implement policies and procedures that require social workers and probation officers to do all of the following:

(1) Identify children receiving child welfare services, including dependents or wards in foster care, nonminor dependents, and youth receiving services pursuant to Section 677 of Title 42 [John H. Chafee Foster Care Program for Successful Transition to Adulthood] of the United States Code, who are, or are at risk of becoming, victims of commercial sexual exploitation.

.....

(4) Receive relevant training in the identification, documentation, and determination of appropriate services for any child or youth identified in paragraph (1).

Policy Goal 6.3 State law mandates ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

California law mandates a one-time training on human trafficking for law enforcement officers; however, officers are not required to receive ongoing in-service training. Pursuant to Cal. Penal Code § 13519.14 (Training and guidelines for handling human trafficking complaints),

(a) The commission shall implement by January 1, 2007, a course or courses of instruction for the training of law enforcement officers²⁴ 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 (LEA) endorsement 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.

.....

(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) Every law enforcement officer who is assigned field or investigative duties shall complete a minimum of two hours of training in a course or courses of instruction pertaining to the handling of human trafficking complaints as described in subdivision (a) by July 1, 2014, or within six months of being assigned to that position, whichever is later.

Further, Cal. Penal Code § 13516.5 (Courses training peace officers on commercial sexual exploitation of children (CSEC) and victims of human trafficking) authorizes CSEC-specific training for law enforcement; however, officers are not statutorily mandated to receive such training. Cal. Penal Code § 13516.5 states,

(a) The commission shall develop and implement a course or courses of instruction for the training of peace officers in California on commercial sexual exploitation of children (CSEC) and victims of human trafficking that shall include, but not be limited to, the following topics and activities:

(1) The dynamics of commercial sexual exploitation of children.

(2) The impact of trauma on child development and manifestations of trauma in victims of commercial sexual exploitation.

²⁴ Cal. Penal Code § 13519.14(b) defines “law enforcement officer” as “any officer or employee of a local police department or sheriff’s office, and any peace officer of the Department of the California Highway Patrol”

- (3) Strategies to identify potential victims of commercial sexual exploitation, including indicators that a youth is being exploited.
 - (4) Mandatory reporting requirements related to commercial sexual exploitation.
 - (5) Appropriate interviewing, engagement, and intervention techniques that avoid retraumatizing the victim and promote collaboration with victim-serving agencies.
 - (6) Introduction to the purpose, scope, and use of specialized child victim interview resources.
 - (7) Local and state resources that are available to first responders.
 - (8) Perspectives of victims and their families.
 - (9) Issues of stigma.
 - (10) Any other critical topics identified by subject matter experts.
- (b) The course of instruction shall be equivalent to a course that the commission produces for officers as part of continuing professional training and shall include facilitated discussions and learning activities, including scenario training exercises.
- (c) The training described in subdivision (a) shall be developed with input from survivors of commercial sexual exploitation, the appropriate local and state agencies, and advocates that have expertise in CSEC and human trafficking. These shall include, but not be limited to, the California Child Welfare Council's CSEC Action Team, organizations that provide services specifically to sexually exploited children, and public agencies leading or participating in interagency responses to commercially sexually exploited children.

6.3.1 Recommendation: Statutorily mandate ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

Policy Goal 6.4 State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

California law authorizes trafficking-specific training for district attorneys. Pursuant to Cal. Penal Code § 13836 (Training for district attorneys in investigation and prosecution of cases of sexual assault, child sexual exploitation, child sexual abuse, and sexual abuse involving victims with developmental disabilities; sex prosecution units),

The Office of Emergency Services shall establish an advisory committee which shall develop a course of training for district attorneys in the investigation and prosecution of sexual assault cases, child sexual exploitation cases, child sexual abuse cases, and sexual abuse cases involving victims with developmental disabilities, and shall approve grants awarded pursuant to Section 13837 [Grants to counseling centers and prevention programs; Eligibility; Use of funds; Reports; Legislative intent; Collaborative administration of SASP's by Cal OES and advisory committee; Funding process]. The courses shall include training in the unique emotional trauma experienced by victims of these crimes

Resultingly, resources and training regarding child sex trafficking may be available for use by district attorneys. However, California law does not statutorily require district attorneys to receive such training.

6.4.1 Recommendation: Statutorily mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

Policy Goal 6.5 State law mandates child sex trafficking training for school personnel.

California law authorizes trafficking-specific training for school personnel. Specifically, Cal. Ed. Code § 49380 (Creation of school safety plan to address threat of sexual abuse and sex trafficking; referral protocol for high-risk pupils and minors; in-service training) encourages school districts to create a school safety plan that addresses sex trafficking and to provide in-service training; it states,

- (a) A school district is encouraged to collaborate with outside consultants, including law enforcement, with expertise in sexual abuse and sex trafficking prevention education in order to create a school safety plan to address the threat of sexual abuse and sex trafficking.
- (b) A school district is encouraged to collaborate with law enforcement on a referral protocol for high-risk pupils and minors.
- (c) In-service training may be conducted periodically to enable school district personnel to learn about new developments in the understanding of sexual abuse and sex trafficking, and to receive instruction on current prevention efforts and methods. A school district is encouraged to include training on early identification of sexual abuse and sex trafficking of pupils and minors.

Further, Cal. Ed. Code § 51950(a), (f) (Provision of abuse and human trafficking prevention education by school district; right of parent or guardian to excuse child; resources on internet web site; intervention programs; continuation training) mandates trafficking-specific but only for purposes of carrying out sex education for students, stating,

(a) A school district may provide abuse, including sexual abuse, and human trafficking prevention education.²⁵

....

(f) As part of satisfying the requirements of Section 51934 [Comprehensive sexual health education and HIV prevention education; contents] that education be provided by instructors trained in the appropriate courses, as defined in Section 51931 [Definitions], continuation training shall be available and conducted periodically to enable school district personnel to learn about new developments in the understanding of abuse, including sexual abuse, and human trafficking, and to receive instruction on current prevention efforts and methods. A school district is encouraged to include training on early identification of abuse, including sexual abuse, and human trafficking of pupils and other minors.

Resultingly, resources and training regarding child sex trafficking may be, or become, available for use by school personnel. However, California law does not statutorily require school personnel to receive broad training on identifying and responding to child sex trafficking.

- 6.5.1 Recommendation: Statutorily mandate trafficking-specific prevention education training for school personnel.

Policy Goal 6.6 State law mandates child sex trafficking prevention education in schools.

Child sex trafficking prevention education is mandated for students in grades 7 to 12 and authorized for younger students. Pursuant to Cal. Ed. Code § 51934 (Comprehensive sexual health education and HIV prevention education; contents),

(a) Each school district shall ensure that all pupils in grades 7 to 12, inclusive, receive comprehensive sexual health education and HIV prevention education from instructors trained in the appropriate courses. Each pupil shall receive this instruction at least once in junior high or middle school and at least once in high school. This instruction shall include all of the following:

....

²⁵ Cal. Ed. Code § 51950(b) defines “abuse, including sexual abuse, and human trafficking prevention education” as “instruction on the prevalence and nature of abuse, including sexual abuse, and human trafficking, strategies to reduce risk, techniques to set healthy boundaries, and how to safely seek assistance.”

(10) Information about sexual harassment, sexual assault, sexual abuse, and human trafficking.

Information on human trafficking shall include both of the following:

- (A) Information on the prevalence, nature, and strategies to reduce the risk of human trafficking, techniques to set healthy boundaries, and how to safely seek assistance.
- (B) Information on how social media and mobile device applications are used for human trafficking.

.....

.....
(c) A school district may provide comprehensive sexual health education or HIV prevention education consisting of age-appropriate instruction earlier than grade 7 using instructors trained in the appropriate courses. A school district that elects to offer comprehensive sexual health education or HIV prevention education earlier than grade 7 may provide age appropriate and medically accurate information on any of the general topics contained in paragraphs (1) to (11), inclusive, of subdivision (a).

Further, Cal. Ed. Code § 51950(a)–(e) (Provision of abuse and human trafficking prevention education by school district; Right of parent or guardian to excuse child; Resources on Internet Web site; Intervention programs; Continuation training) authorizes human trafficking prevention education generally, stating,

(a) A school district may provide abuse, including sexual abuse, and human trafficking prevention education.²⁶

(c) A parent or guardian of a pupil shall have the right to excuse his or her child from all or part of abuse, including sexual abuse, and human trafficking prevention education, and assessments related to that education, consistent with Section 51938 [Sexual health and HIV prevention education; notice to parent or guardian; excuse of child from participation].

.....

(e) A school district is encouraged to collaborate with its county’s child welfare probation, mental health, public health, and sheriff’s departments, juvenile court, and office of education on intervention programs for pupils and other minors.

Lastly, Cal. Ed. Code § 49381 (Human trafficking prevention resources) provides,

(a) The governing board of a school district and the governing body of a charter school shall work with their schools that maintain any of grades 6 to 12, inclusive, to identify the most appropriate methods of informing parents and guardians of pupils in those grades of human trafficking prevention resources.

(b) The governing board of a school district and the governing body of a charter school shall implement the methods identified pursuant to subdivision (a) in their schools that maintain any of grades 6 to 12, inclusive, by January 1, 2020.

²⁶ Cal. Ed. Code § 51950(b) defines “abuse, including sexual abuse, and human trafficking prevention education” as “instruction on the prevalence and nature of abuse, including sexual abuse, and human trafficking, strategies to reduce risk, techniques to set healthy boundaries, and how to safely seek assistance.”

State Laws Addressing Child Sex Trafficking

1. Cal. Penal Code § 236.1(a)–(c) (Human trafficking defined; punishment) states,

(a) A 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) A person who deprives or violates the personal liberty of another with the intent to effect or maintain a violation of Section 266 [Procurement], 266h [Pimping], 266i [Pandering], 266j [Procurement of child under age 16 for lewd or lascivious acts], 267 [Abduction of minor for prostitution], 311.1 [Sent or brought into state for sale or distribution; possessing, preparing, publishing, producing, developing, or printing within state; matter depicting sexual conduct by minor], 311.2 [Sending or bringing into state for sale or distribution; printing, exhibiting, distributing, exchanging, or possession within state; matter depicting sexual conduct by minor], 311.3 [Sexual exploitation of a child], 311.4 [Employment or use of minor to perform prohibited acts], 311.5 [Advertising or promoting sale or distribution; solicitation], 311.6 [Participation in, or production or presentation of, obscene live conduct in public place], or 518 [Definition – Extortion] 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) A 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.

State Laws Addressing Commercial Sexual Exploitation of Children (CSEC)

1. Cal. Penal Code § 647 (Disorderly conduct; restrictions on probation) states,

Except as provided in paragraph (5) of subdivision (b) and subdivision (k), every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

.....

(1)

(1) If a crime is committed in violation of subdivision (b) and the person who was solicited was a minor at the time of the offense, and if the defendant knew or should have known that the person who was solicited was a minor at the time of the offense, the violation is punishable by imprisonment in a county jail for not less than two days and not more than one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both that fine and imprisonment.

(2) The court may, in unusual cases, when the interests of justice are best served, reduce or eliminate the mandatory two days of imprisonment in a county jail required by this subdivision. If the court reduces or eliminates the mandatory two days' imprisonment, the court shall specify the reason on the record.

The prohibited conduct in Cal. Penal Code § 647(b)(3), (4) includes:

(3) An individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with another person who is a minor in exchange for the individual providing compensation, money, or anything of value to the minor. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, the individual manifests an acceptance of an offer or solicitation by someone who is a minor to so engage, regardless of whether the offer or solicitation was made by a minor who also possessed the specific intent to engage in an act of prostitution.

(4) A manifestation of acceptance of an offer or solicitation to engage in an act of prostitution does not constitute a violation of this subdivision unless some act, in addition to the manifestation of acceptance, is done within this state in furtherance of the commission of the act of prostitution by the person manifesting an acceptance of an offer or solicitation to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

2. Cal. Penal Code § 266 (Procurement) states,

A person who inveigles or entices a person under 18 years of age into a house of ill fame, or of assignation, or elsewhere, for the purpose of prostitution, or to have illicit carnal connection with another person, and a person who aids or assists in that inveiglement or enticement, and a person who, by any false pretenses, false representation, or other fraudulent means, procures a person to have illicit carnal connection with another person, is punishable by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment.

3. Cal. Penal Code § 266h(b) (Pimping) states,

Any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits or receives compensation for soliciting for the person, when the prostitute is a minor, is guilty of pimping a minor, a felony, and shall be punishable as follows:

(1) If the person engaged in prostitution is a minor 16 years of age or older, the offense is punishable by imprisonment in the state prison for three, four, or six years.

(2) If the person engaged in prostitution is under 16 years of age, the offense is punishable by imprisonment in the state prison for three, six, or eight years.

4. Cal. Penal Code § 266i (Pandering) states,

(a) Except as provided in subdivision (b), any person who does any of the following is guilty of pandering, a felony, and shall be punishable by imprisonment in the state prison for three, four, or six years:

(1) Procures another person for the purpose of prostitution.

(2) By promises, threats, violence, or by any device or scheme, causes, induces, persuades, or encourages another person to become a prostitute.

(3) Procures for another person a place as an inmate in a house of prostitution or as an inmate of any place in which prostitution is encouraged or allowed within this state.

(4) By promises, threats, violence, or by any device or scheme, causes, induces, persuades, or encourages an inmate of a house of prostitution, or any other place in which prostitution is encouraged or allowed, to remain therein as an inmate.

(5) By fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procures another person for the purpose of prostitution, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into this state or leave this state for the purpose of prostitution.

(6) Receives or gives, or agrees to receive or give, any money or thing of value for procuring, or attempting to procure, another person for the purpose of prostitution, or to come into this state or leave this state for the purpose of prostitution.

(b) Any person who does any of the acts described in subdivision (a) with another person who is a minor is guilty of pandering, a felony, and shall be punishable as follows:

(1) If the other person is a minor 16 years of age or older, the offense is punishable by imprisonment in the state prison for three, four, or six years.

(2) If the other person is under 16 years of age, the offense is punishable by imprisonment in the state prison for three, six, or eight years.

5. Cal. Penal Code § 267 (Abduction of minor for prostitution) states,

Every person who takes away any other person under the age of 18 years from the father, mother, guardian, or other person having the legal charge of the other person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the state prison, and a fine not exceeding two thousand dollars (\$2,000).