

Date of Hearing: June 27, 2023
Consultant: Elizabeth Potter

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 236 (Jones) – As Amended April 11, 2023

SUMMARY: Establishes within the Office of Emergency Services (OES) a pilot program to fund up to 11 district attorney offices to employ vertical prosecution for human trafficking crimes. Specifically, **this bill:**

- 1) Creates the Human Trafficking Prevention Vertical Prosecution Program within the OES and directs the Director of Emergency Services award funds for up to 11 district attorney offices for vertical prosecution of human trafficking crimes.
- 2) States that each county selected for funding must meet the following minimum requirements:
 - a) Employ a vertical prosecution methodology for human trafficking crimes;
 - b) Dedicate at least half the working time of one deputy district attorney and one district attorney investigator solely to the investigation and prosecution of human trafficking;
 - c) Provide annual data on the number of human trafficking cases filed, convictions obtained, and sentences imposed for human trafficking offenses in that county;
 - d) Enter into an agreement with an OES-funded human trafficking advocacy agency to ensure victims and witnesses of human trafficking receive appropriate services; and,
 - e) Mandate that district attorney offices shall use grant funds to supplement and not supplant existing financial resources.
- 3) States that the OES must use a competitive process in selecting grantees and may establish selection criteria which, at minimum, requires prospective grantees demonstrate an ability to comply with the requirements of the program and provide an estimate of human trafficking crimes occurring in their county.
- 4) Requires OES, on or before January 1, 2026, to submit to the Legislature and Governor's office a report describing which counties were funded, the number of human trafficking cases filed by each county, the number of convictions obtained by each county, and the sentences imposed in each county.
- 5) Defines human trafficking as a violation of either California's human trafficking statute, or the solicitation of a minor statute.
- 6) States that not more than 10% of funds appropriated for this program shall be retained by the office of administrative costs, including technical assistance, training, and the cost of

producing the report required.

- 7) Sunsets the program on January 1, 2029.

EXISTING LAW:

- 1) Establishes the OES within the office of the Governor. (Gov. Code, § 8585, subd. (a).)
- 2) Vests the OES with all the duties and powers of the Office of Homeland Security. (Gov. Code, § 8585, subd. (b).)
- 3) States that a person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, intent to commit a specified commercial sex offense, or causes, induces, or persuades a minor to engage in a commercial sex act, is guilty of human trafficking. (Pen. Code, § 236.1.)
- 4) States that a person who deprives or violates the personal liberty of another with the intent to commit specified crimes including pimping, pandering, or child pornography, 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 \$500,000. (Pen. Code, § 236.1, subd. (b).)
- 5) Provides that any person who solicits a minor for an act of prostitution is guilty of disorderly conduct. (Pen. Code, § 647 subd. (1).)
- 6) Establishes a vertical prosecution program for spousal abuse within the Department of Justice (DOJ) and finds that “the concept of vertical prosecution, in which a specially trained deputy district attorney, deputy city attorney, or prosecution unit is assigned to a case after arraignment and continuing to its completion, is a proven way of demonstrably increasing the likelihood of convicting spousal abusers and ensuring appropriate sentences for those offenders.” (Pen. Code, §§ 273.8 *et seq.*)
- 7) Establishes a vertical prosecution program for repeat sex offenders within the OES and finds that “the concept of vertical prosecution, in which a specially trained deputy district attorney, deputy city attorney, or prosecution unit is assigned to a case after arraignment and continuing to its completion, is a proven way of demonstrably increasing the likelihood of convicting repeat sex offenders and ensuring appropriate sentences for those offenders.” (Pen. Code, §§ 999i *et seq.*)
- 8) Establishes a vertical prosecution program for child abuse within the OES and finds that “the concept of vertical prosecution, in which a specially trained deputy district attorney, deputy city attorney, or prosecution unit is assigned to a case after arraignment and continuing to its completion, is a proven way of demonstrably increasing the likelihood of convicting child abusers and ensuring appropriate sentences for those offenders.” (Pen. Code, §§ 999q *et seq.*)
- 9) Establishes a vertical prosecution pilot program for hate crimes within the DOJ. (Pen. Code, § 422.94.)
- 10) Establishes a vertical prosecution program within the OES for major narcotic vendors. (Pen. Code, §§ 13880 *et seq.*)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, “SB 236 requires the Office of Emergency Services to provide up to 11 county District Attorneys with funding for the development or maintenance of vertical prosecution teams responsible for the handling of human trafficking cases. Human trafficking is a modern form of slavery that exploits thousands of individuals each year within the United States. Vertical prosecution involves the use of specialized attorneys who follow the whole case, from inception to conclusion, instead of the standard practice of different attorneys handling individual stages of the case. The implementation of vertical prosecution has been highly successful and has contributed to increased conviction rates. Additionally, these programs ease strain on victims, as they are able to develop and maintain a relationship with a single prosecutor throughout the process as opposed to repeatedly redeveloping their relationship with a new attorney at each step of the way. This program will help get criminals off our streets and compassionately deliver justice to the victims that so deeply deserve it.”
- 2) **Human Trafficking:** According to the DOJ, human trafficking, also known as modern-day slavery, is a crime involving the coercion or compelling of a person to provide labor or services, or to engage in commercial sex acts. The coercion can be physical or psychological, and may involve the use of violence, threats, lies, or debt bondage. It is among the world’s fastest growing criminal enterprises and is estimated to be a \$150 billion-a-year worldwide industry. The International Labor Organization estimates that there are approximately 24.9 million human trafficking victims globally at any given time. (DOJ. *What is Human Trafficking?* <<https://oag.ca.gov/human-trafficking/what-is#top>> [as of Jun. 13, 2023]; DOJ. *Human Trafficking.* <<https://oag.ca.gov/human-trafficking>> [as of Jun. 13, 2023].)

The U.S. is widely regarded as a destination country for human trafficking. At the federal level, it is estimated that 14,500 to 17,500 victims are trafficked into the U.S. annually. At the state level, California is one of the nation’s top destination states for human trafficking. Human trafficking victims do not necessarily fit into any one profile. (*Id.*) Victims of human trafficking include men, women, and children from diverse backgrounds in terms of race, color, national origin, religion, sexual orientation, socioeconomic status, and education level. (*Id.*) Many domestic victims of sex trafficking are runaway or homeless youth with backgrounds of sexual and physical abuse, poverty, or addiction; these vulnerabilities are often exploited by traffickers. (*Id.*) (DOJ. *What is Human Trafficking?* <<https://oag.ca.gov/human-trafficking/what-is#top>> [as of Jun. 13, 2023]; DOJ. *Human Trafficking.* <<https://oag.ca.gov/human-trafficking>> [as of Jun. 13, 2023].)

To help provide services to human trafficking victims in California, on April 26, 2022, OES announced \$20 million in grants for local partners. These grants were distributed to 31 community-based organizations for purposes such as survivor-centered counseling, outreach and referral programs, and reentry back into society. Funding also would be used to assist with cell phones, relocations expenses, court/legal fees, and medical care. (OES. *Cal OES Announces \$20 million in Grants to Protect and Empower Survivors of Human Trafficking.* (Apr. 26, 2022) <<https://news.caloes.ca.gov/human-trafficking-grant/>> [as of Jun. 13, 2023].)

- 3) **Vertical Prosecution:** Prosecutors generally prosecute offenses in two ways, horizontally or vertically. (Lori Mullins. *Prosecuting Cases Vertically: A More Victim-focused Approach*. (May 2015) <https://ggulawreview.com/wp-content/uploads/2015/04/mullins_digital_symposium.pdf> [as of Jun. 13, 2023] at p. 2.) Horizontal prosecution generally refers to a method in which a different prosecutor is in charge of a case depending on what stage of the legal process it is in. (*Ibid.*) For example, one prosecutor may charge a case, another may handle the case at arraignment, then pass it on to another prosecutor for a preliminary hearing, who may then pass it on to another prosecutor for the trial. (*Ibid.*) Vertical prosecution generally refers to a method where there is a designated prosecutor who handles a case from charging all the way through to sentencing or dismissal. (*Ibid.*)

Many large jurisdictions combine horizontal and vertical prosecution. (Cassia Spohn. “Specialized Units and Vertical Prosecution Approaches.” *The Oxford Handbook of Prosecutors and Prosecution*. (May 26, 2021) <<https://books.google.com/books?hl=en&lr=&id=uzoqEAAAQBAJ&oi=fnd&pg=PA259&dq=vertical+prosecution+&ots=PDMTnhbBqE&sig=TTjXqo96scfci3IIXdz6YKi6N80#v=onepage&q=vertical%20prosecution&f=false>> [as of Jun. 13, 2023] at p. 259.) They usually will prosecute routine misdemeanor and felony cases horizontally, and will select more severe or complex cases such as homicides, sex offenses, high-level drug trafficking offenses, or gang offenses, for vertical prosecution by specialized units. (*Ibid.*)

Advocates of vertical prosecution contend that cases involving sexual assault or gang violence have reluctant or fearful victims and face potentially complex and difficult evidentiary issues. (*Id.* at 260.) Furthermore, advocates contend that as a result of continuous contact with a case, the prosecutor will be more informed of the evidentiary issues, will have greater time to develop a comprehensive legal strategy, and will be able to develop familiarity with victims and witnesses leading to securing testimony needed for a conviction. (*Ibid.*) For example, a prosecutor in a specialized vertical unit may develop the enhanced skill needed to confront the fact that a sexual assault victim may not have reported the crime immediately or may have engaged in supposed “risky behavior” before an incident; the fact that a domestic violence victim may not show up to a court appearance, or, if they do, minimize the defendant’s behavior; and the fact that a victim or witness of gang violence may fear retaliation for testifying. (*Ibid.*) That said, these assumptions that drive the use of vertical prosecution and specialized units are largely untested as there is no research comparing the efficacy of vertical and horizontal prosecution and limited research examining specialized units. (*Id.* at 267.)

This bill would fund 11 district attorney offices to address human trafficking offenses in their respective counties by establishing vertical prosecution units for such offenses as has been done for hate crimes, child abuse, domestic abuse, and repeat sex offenders. In addition, this bill would require a report to the Legislature on the effectiveness of vertical prosecution in human trafficking cases.

- 4) **Argument in Support:** According to *The California District Attorney’s Association*, “Human trafficking remains a lucrative criminal enterprise. The ability to sell a human body multiple times distinguishes it from the sale of other contraband, such as weapons and narcotics. Those who traffic in human flesh know very that they can inflict physical and mental terror upon their victims, making the crime difficult to prosecute. The traffickers also

move their enterprise across various jurisdictions seeking to avoid detection.

“The best way to attack these traffickers is through vertical prosecution units, supported by victim advocacy. Vertical units can better coordinate with other jurisdictions to track, apprehend, and prosecute offenders. Specially trained prosecution staff can focus on preventing and overcoming the physical and mental manipulation of trafficking victims. SB 236 encourages the continued use of the vertical prosecution model and helps to hold offenders accountable while also providing valuable victim services to the vulnerable victims of human trafficking.”

- 5) **Argument in Opposition:** According to *According to the San Francisco Public Defender’s Office*, “For 100 years, the San Francisco Public Defender’s Office has provided dedicated and passionate legal representation to people who are charged with a crime and unable to afford an attorney. Our mission is to protect and defend the rights of our clients through effective, vigorous, compassionate, and creative legal advocacy.

“The San Francisco Public Defender’s Office remains sympathetic to community members who survive human trafficking and the devastation that experience entails. Indeed, many of our clients have been trafficked, harmed, and abused before being funneled into our criminal legal system. However, we do not agree with the approach of SB 236.

“First, district attorneys can use existing resources to employ a vertical prosecution methodology. According to the [California Legislative Analyst’s Office](#), district attorneys receive nearly \$1 billion more in funding than public defenders. District attorneys should be motivated on their own to employ what they deem as victim-centered methods, and should not be awarded additional funding for doing so.

“Secondly, this bill ignores the “abuse-to-prison” pipeline, which is a recurring pattern in which trafficked individuals, particularly youth of color, are arrested on suspicion of prostitution or charged as traffickers themselves.

The abuse-to-prison pipeline disproportionately affects girls of color, who are subject to gender and racial bias. But in virtually all cases, police, prosecutors and judges fail or refuse to consider — and prohibit juries from considering — the full context of abuse behind girls’ actions. And sometimes, in a perverse form of paternalism, authorities lock survivors up, citing a dearth of safe alternatives — as if detention is safe for young people who have endured sexual trauma.

“Lastly, we can all agree on the goal of ending human trafficking. We support giving survivors the support and resources necessary to leave abusive and coercive relationships and situations. To do so, we must invest in community-based resources and services — beds in appropriate facilities, mental health counselors and treatment — so that survivors of human trafficking have a place to heal and are not incarcerated.” (citations omitted)

6) **Related Legislation:**

- a) AB 1602 (Alvarez), would add to the definition of disorderly conduct the attempt to engage in the crime of soliciting prostitution, the attempt to agree to engage in

prostitution, or the attempt to engage in prostitution and requires the punishment for a victim of human trafficking to be an education class on the dangers of human trafficking and a referral to human trafficking support services. AB 1602 is pending hearing in this committee

- b) AB 1739 (Sanchez), is substantially similar to this bill. AB 1739 was held in the Assembly Committee on Appropriations.

7) Prior Legislation:

- a) AB 178 (Budget Act) Chapter 45, Statutes of 2022, established within the Board of State and Community Corrections a grant program for the vertical prosecution of organized retail theft.
- b) AB 557 (Muratsuchi) Chapter 853, Statutes of 2022, established a vertical prosecution pilot program within the DOJ for the purpose of prosecuting hate crimes until July 1, 2029.
- c) AB 959 (Melendez), of the 2019-2020 Legislative Session, was substantially similar to this bill. AB 959 was held in the Assembly Appropriations Committee.
- d) AB 2124 (Rubio), of the 2017-2018 Legislative Session, was substantially similar to this bill. AB 2124 was held in the Senate Appropriations Committee.
- e) AB 229 (Baker), of the 2017-2018 Legislative Session, was substantially similar to this bill. AB 229 was held in Senate Appropriations Committee.
- f) AB 2202 (Baker), of the 2015-2016 Legislative Session, was substantially similar to this bill. AB 2202 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
City of San Marcos
Peace Officers Research Association of California (PORAC)
San Diegans Against Crime
San Diego County District Attorney's Office
San Diego Deputy District Attorneys Association

Oppose

San Francisco Public Defender

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