

PTA POSITION ON BALLOT MEASURES—November 2012 Election

PROPOSITION 35

Increases Criminal Penalties for Human Trafficking.

California State PTA has adopted a SUPPORT position on Proposition 35, an initiative statute that will appear on the November 2012 General Election Ballot. The California Attorney General has provided the following Title and Summary for Proposition 35:

Increases criminal penalties for human trafficking, including prison sentences up to 15-years-to-life and fines up to \$1,500,000. Fines collected to be used for victim services and law enforcement. Requires person convicted of trafficking to register as sex offender. Requires sex offenders to provide information regarding Internet access and identities they use in online activities. Prohibits evidence that victim engaged in sexual conduct from being used against victim in court proceedings. Requires human trafficking training for police officers. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: Potential one-time local government costs of up to a few million dollars on a statewide basis, and lesser additional costs incurred each year, due to the new mandatory training requirements for certain law enforcement officers. Minor increase to state and local governments on the costs of incarcerating and supervising human trafficking offenders. Unknown amount of additional revenue from new criminal fees, likely not to exceed the low millions of dollars annually, which would fund services for human trafficking victims.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact

Fiscal Impact: Costs of a few million dollars annually to state and local governments for addressing human trafficking offenses. Potential increased annual fine revenue of a similar amount, dedicated primarily for human trafficking victims.

BACKGROUND INFORMATION

The Legislative Analyst reports:

Federal Law. Federal law contains various provisions prohibiting human trafficking. The Federal Trafficking Victims Protection Act generally defines two types of human trafficking:

- **Sex Trafficking**—in which persons are recruited, transported, or obtained for a commercial sex act that is induced by force or fraud or in which the victim performing the act is under age 18. An example of sex trafficking is forcing a person into prostitution.

- **Labor Trafficking**—in which persons are recruited, transported, or obtained through the use of force or fraud to provide labor or other services. An example of this is forcing a foreign national to work for free by threatening deportation.

These laws are enforced by federal law enforcement agencies that may act independently or with state and local law enforcement agencies.

State Law. Existing state law contains similar criminal prohibitions against human trafficking. Specifically, state law defines human trafficking as violating the liberty of a person with the intent to either (1) commit certain felony crimes (such as prostitution) or (2) obtain forced labor or services. Human trafficking is punishable under state law by a prison sentence of up to five years or, if the victim is under the age of 18, by a state prison sentence of up to eight years. Offenders convicted of human trafficking crimes that result in great bodily injury to the victim can be punished with additional terms of up to six years. In recent years, there have been only a few people annually sent to state prison for human trafficking crimes. As of March 2012, there were 18 such offenders in state prison.

Under existing state law, most offenders who have been convicted of a sex crime (including some crimes involving human trafficking) are required to register as sex offenders with their local police or sheriff's departments.

Proposition 35 Increases Maximum Criminal Penalties for Human Trafficking		
	Current Law	Prop 35
Prison Sentences*		
Labor Trafficking	5 years	12 Years
Sex Trafficking of an Adult Forced	5 Years	20 Years
Sex Trafficking of a minor w/o Force	None**	12 Years
Sex Trafficking of a minor Forced	8 Years	Life Term
Sentence Enhancement*		
With Great Bodily Injury	6 Years	10 Years
Without Great Bodily Injury	None	5 Years per Prior Conviction
Fines	Up to \$100,000 for sex trafficking a minor	Up to \$1.5 million for all human trafficking offenses

*Actual penalty includes a range of years

** Activities considered under the measure as sex trafficking of minors without force are illegal under current law, but not defined as human trafficking. The penalties for these activities vary.

ARGUMENT FOR

Californians Against Sexual Exploitation (<http://www.caseact.org/>)

The sponsors of Proposition 35 note that “In California, many vulnerable women and young girls are held against their will and forced to sell their bodies. The victims are often girls as young as

12 who are sexually exploited for the financial gain of human traffickers. They are afraid for their lives and abused – sexually, physically, and mentally.”

Human trafficking is said to be one of the fastest growing criminal enterprises in the world – and it is taking place right here in our own backyard. Three cities in California – San Francisco, Los Angeles, and San Diego – are recognized by the FBI as high intensity child sex trafficking areas. In addition, a recent national study by a victims’ rights group gave California an “F” grade for its weak laws dealing with child sex trafficking.

Proposition 35, a partnership of California Against Slavery and the Safer California Foundation, will protect children in California by:

- Increasing prison terms for human traffickers.
- Requiring convicted sex traffickers to register as sex offenders.
- Requiring all registered sex offenders to disclose their internet accounts.
- Requiring criminal fines from convicted human traffickers to pay for services to help victims.

Proposition 35 has also been endorsed by organizations representing over 90,000 rank and file California Peace Officers, advocates for the protection of children, including Marc Klaas and the KlaasKids Foundation, and victims who survived sexual exploitation when they were children.

ARGUMENT AGAINST

Erotic Service Provider Legal, Educational and Research Project (<http://esplerp.org/>)

Opponents argue that “...California will be writing another blank check to the proponents of the Proposition 35. This short-sighted ballot measure relies on a broad definition of pimping. This includes; parents, children, roommates, domestic partners, and landlords of prostitutes to be labeled as sex offenders. The real goal is to gain access to asset forfeiture to benefit the endorsing law enforcement agencies and non-profits. Proposition 35 has no oversight or accountability. This will open the door to corrupt practiced (sic) we've seen before in drug enforcement.

Opponents also argue that “If passed, the state will likely be required to defend this statute in court as it will likely face legal challenges due to several questionable and possibly unconstitutional provisions including the following: possibly unconstitutionally vague definition of "human trafficking" including the "intent to distribute obscene matter", possibly unconstitutionally "cruel and unusual" punishments including excessive prison terms and fines, possibly unconstitutionally inhibiting a defendant's right to introduce evidence in defense trials.”

RATIONALE FOR PTA SUPPORT OF PROPOSITION 35

Both National PTA and California State PTA have adopted resolutions against child trafficking and the sexual exploitation of children. In addition, Proposition 35 is consistent with numerous PTA policies and positions beginning with the core purpose of PTA to “... secure adequate laws for the care and protection of children and youth.”

The California Attorney General reports that

“Human trafficking is slavery, and unlike the slavery of the past, this modern form of slavery is a hidden crime. It involves controlling a person through force, fraud or coercion to exploit the victim for forced labor, sexual exploitation, or both, and often involves keeping the victims in inhumane conditions. Human trafficking strips people, especially women and children, of their freedom and violates our nation’s promise that every person in the United States is guaranteed basic human rights.

Human trafficking is an estimated \$32 billion industry, the world’s second largest criminal enterprise after the drug trade. Victims of trafficking are lured by would-be employers out of their homes with promises of higher pay and a better life. They work for little or no pay and live under guarded and inhumane conditions—victims are frequently prohibited from even leaving their work sites. These traffickers also threaten victims with deportation, imprisonment, or harm to family members if they attempt to escape or report their lives of servitude to law enforcement or other agencies. Human trafficking can cross international borders, as well as occur entirely within the United States.

As a diverse cultural center and popular destination for immigrants with multiple international borders, California is one of the largest sites of human trafficking in the United States.

The National Report on Domestic Minor Sex Trafficking: America’s Prostituted Children reports that

- The average entry age of American minors into the sex trade is 12-14 years old; and
- Many victims are runaway girls who have already suffered sexual abuse as children.

The FBI ranks Los Angeles, San Francisco, and San Diego as three of the FBI’s 13 highest child sex trafficking areas in the nation.

CONCLUSION

California State PTA believes that Proposition 35 will increase protections for children by increasing sanctions on human traffickers and generating resources to assist victims of trafficking with their recovery from the trauma and reintegration into their communities.