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CRIME SHOULDN'T PAY:
HOW CALIFORNIA SHOULD EXPAND AND
RESTRUCTURE ITS HUMAN TRAFFICKING ASSET
FORFEITURE LAWS

BENJAMIN THOMAS GREER*

[W]e acknowledge that forms of slavery still exist in the modern era, and we recommit ourselves to stopping the human traffickers who ply this horrific trade.¹

President Barack Obama, 2010

Security against defeat implies defensive tactics; ability to defeat the enemy means taking the offensive.²

Sun Tzu, *The Art of War*

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¹ Proclamation 8471—National Slavery and Human Trafficking Prevention Month, 2010, DAILY COMP. PRES. DOC., 2010 DCPD No. 4 (Jan. 4, 2010) [hereinafter *Proclamation 8471*].

² SUN TZU, *Tactical Dispositions*, in THE ART OF WAR 17 (2006).

Introduction

Human trafficking is a growing crime³ in both the number of victims and profits, but also in the national consciousness. Commercial Sexual Exploitation (CSE) human trafficking is commonly associated with the highest profit margins and lowest penal risks for criminal organizations to conduct.⁴ As trafficking awareness is heightened, perpetrators cleverly fine-tune their trade to stay ahead of law enforcement and statutory construction.

As adaptive and inventive as traffickers are in plying their trade, so should United States (U.S.) law enforcement and elected officials. State legislatures provide law enforcement with powerful tools to target and prevent crime. Many current tools available to law enforcement are not adequately crafted to prevent and deter the growth of human trafficking. Asset seizure and forfeiture laws were created to strip criminals of their operating tools and economic base.⁵ California's current forfeiture laws were primarily crafted to aid in the fight against illicit drug activity. Approximately \$25 million are removed from these enterprises annually via forfeiture proceedings.⁶

³ See Trafficking Victims Protection Act, 22 U.S.C. § 7101(b)(8) (2008). Congressional findings have concluded that “[t]rafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises” and “is the fastest growing source of profits for organized criminal enterprises worldwide.” *Id.*

⁴ See Donna Hughes, *The “Natasha” Trade: Transnational Sex Trafficking*, NAT’L INST. OF JUST. J. 8, 13 (2001) (citing Michael Platzer from the UNODC International Center for the Prevention of Crime [ICPC]).

⁵ See *Caplin & Drysdale v. United States*, 491 U.S. 617, 641 (1989); see also *People v. Superior Court (Clements)*, 200 Cal. App. 3d 491, 499 (Cal. App. 3d 1988).

⁶ *Publications*, CALIFORNIA DEPARTMENT OF THE ATTORNEY GENERAL (CDAG), <http://ag.ca.gov/publications/index.php#asset>, (last visited Jun. 2, 2015) (stating the year 2010 saw 3,344 completed cases forfeiting \$24,595,337; 2009 saw 4,514 completed cases forfeiting \$28,789,945; 2008 saw 4,490 completed cases forfeiting \$25,548,228; 2007 saw 4,062 completed cases forfeiting \$27,603,822; 2006 saw 3,877 completed cases forfeiting \$25,582,483; 2005 saw 3,685 completed cases forfeiting \$19,886,810; 2004 saw 3,512 completed cases forfeiting \$22,459,346; 2003 saw 3,345 completed cases forfeiting \$26,589,892; and 2002 saw 3,029 completed cases forfeiting \$25,565,686).

As human trafficking expands, U.S. policy makers must seek new and creative methods of dismantling trafficking networks.⁷ In 2012, California began expanding forfeiture laws in the fight against human trafficking; however, it was limited in its scope and application. Just as corporations search the world for jurisdictions that maintain lax or “business friendly” standards to maximize its profits—so too will human traffickers. As in business, the desired outcome is to generate the greatest amount of money while limiting the exposure of risk of loss.

Section I of this article will provide updated statistical data on human trafficking in California, demonstrating increased consciousness, heightened awareness and the ongoing search for effective tools. Sections II and III will highlight the important psychological and practical economic impact asset forfeiture laws have on crime. These sections will also provide a comprehensive review how forfeiture is currently implemented in the fight against human trafficking. Sections IV and V will argue why human trafficking crimes must be subjected to California’s civil asset forfeiture laws: how civil forfeiture reduces both the supply-side and demand-side of trafficked victims. It will also provide a concrete analytical framework upon which legislative changes could be made, extending the current asset forfeiture statute to fully encompass crimes of human trafficking.

⁷ Heather J. Clawson et al., *Prosecuting Human Trafficking Cases: Lessons Learned and Promising Practices*, NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE (NCJRS), at 27 (2008), <http://www.ncjrs.gov/pdffiles1/nij/grants/223972.pdf> (last visited Sept. 13, 2011). Thinking outside the box: It is important for prosecutors to be able to “use the tools in their toolbox” when prosecuting these cases. Sometimes this requires thinking outside the box. One prosecutor recognized that many victims are not present at the time of trial, so she used testimony from a preliminary hearing during the trial. Two prosecutors stated that they have used forfeiture statutes to prosecute those who finance the prostitution of girls and women taken against their will and forced into prostitution. They have been successful at seizing houses and cars from defendants.

I. Statistical Data on Human Trafficking in California

While California enjoys being one of the most populous states⁸ in the U.S. with one of the largest economies⁹, exploitative criminal elements view California as a valuable marketplace in which to traffic and sell their products. Since the enactment of the Trafficking Victims Protection Act in 2000, U.S. society's and law enforcement's awareness and understanding of human trafficking grew.¹⁰ Soon after, President Barack Obama proclaimed January 2010 National Slavery and Human Trafficking Prevention Month.¹¹ As such, policy makers must continue to develop their understanding of how trafficking manifests, the extent trafficking operations are occurring within its jurisdiction, and what policy makers can do to effectively fight to end this deplorable crime.

Human trafficking is an atrocity that destroys trafficked victims' lives, tears apart families, and attacks the fundamental nature of humanity: freedom. Human trafficking is classified and organized into three main categories: (1) Commercial Sexual Exploitation (CSE)¹²; (2) Forced Labor¹³; and (3) Domestic

⁸ *2010 Census Interactive Population Map*, U.S. CENSUS, <http://2010.census.gov/2010census/popmap> (last visited Sept. 9, 2011).

⁹ *California Economy Ranking in the World*, ECONPOST, <http://econpost.com/californiaeconomy/california-economy-ranking-among-world-economies> (last visited Sept. 9, 2011); *see also id.*

¹⁰ *See generally* Clawson, *supra* note 7.

¹¹ *Proclamation 8471*, *supra* note 1. "I urge all Americans to educate themselves about all forms of modern slavery and the signs and consequences of human trafficking. Together, we can and must end this most serious, ongoing criminal civil rights violation."

¹² *See Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement*, INTERNATIONAL LABOR ORGANIZATION [ILO] (2005), at 1, 25, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081999.pdf. (Commercial Sexual Exploitation "CSE" is a special sub-class of forced labor.) *See Id.* Because of its particularly heinous nature, it is commonly separated and listed as an enumerated "form" of trafficking.

¹³ *See generally id.* (Forced labor is a term that could encompass almost all actions; traditionally in relation to human trafficking forced labor refers to:

Servitude.¹⁴ Federal and state statutory definitions of human trafficking vary, however, there are common elemental threads. Human trafficking is generally defined as the recruitment, transportation or harboring of a person against their own will through the use of force, coercion, fraud or deception to be exploited for sex or labor purposes¹⁵. California has codified its definition in Penal Code 236.1.¹⁶

The clandestine nature of trafficking renders it difficult to collect accurate and reliable data.¹⁷ However, numerous U.S. government and non-government agencies are partnering up to improve on this process.¹⁸ The National Human Trafficking Resource Center (NHTRC) collects and disseminates statistical data gathered through its national toll free human trafficking hotline.¹⁹

Recent U.S. federal statistical analysis revealed that the largest concentrations of trafficked victims were located in California, Oklahoma, Texas and New York.²⁰ These statistics are

hotel/hospitality, peddling, restaurant work, sweatshop/garment, child/elderly care, and construction).

¹⁴ *Id.* at 45-46. While domestic servitude is a form of forced labor, it has traditionally been separated from other forms of forced labor such as mining and agricultural work. *Id.* at 49.

¹⁵ *Human Trafficking*, UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC), <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (last visited Feb. 7, 2017).

¹⁶ CAL. PEN. CODE § 236.1 (West 2015).

¹⁷ *The Goals*, UN.GIFT.HUB, <http://www.ungift.org/knowledgehub/en/about/goals.html> (last visited Sept. 11, 2011).

¹⁸ *See generally Trafficking in Persons (TIP) Report 2011*, U.S. DEPARTMENT OF STATE (Jun. 2011), <http://www.state.gov/g/tip/rls/tiprpt/2011/index.htm> [hereinafter *TIP Report*].

¹⁹ *Hotline Statistics*, POLARIS PROJECT, <http://www.polarisproject.org/resources/hotline-statistics> (last visited Sept. 2, 2011). The NHTRC is a program of Polaris Project, a non-profit, non-governmental organization working exclusively on the issue of human trafficking.

²⁰ *Report to Congress from Attorney General John Ashcroft on U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2003*, U.S. DEPARTMENT OF JUSTICE (2004), at 1, 9 <http://www.justice.gov/archive/ag/annualreports/tr2003/050104agreporittocongressvprav10.pdf>. (In the 2002 fiscal year, the Office of Refugee Resettlement issued letters to benefit offices in fourteen states, of which the largest concentrations were to Texas (31%), Florida

critical in demonstrating social and local awareness, call volume, and the presence of human trafficking or trafficking trends in a given state or region.²¹ California is especially vulnerable to international trafficking because of its long border with Mexico, numerous waterways and airports, and diverse economic needs from large agricultural, manufacturing and service industries.²² In 2011, the NHTRC hotline received 19,427 calls, of which approximately 10% originated from California.²³ The NHTRC identified 141 cases in California with a “high level of critical information” demonstrating “key indicators relevant to identifying a human trafficking situation.”²⁴

In 2012, the California Attorney General formed a new Human Trafficking Work Group.²⁵ The work group comprised of a comprehensive multidisciplinary cross-section of federal funded local law enforcement human trafficking task forces; Californian human trafficking victim services organizations; domestic violence and sexual assault service providers; immigrant rights groups; legal services providers; academia; and technology companies.²⁶ The Work Group discussed numerous pressing issues such as: how to

(19%), and California (14%). Note that these concentrations reflect where victims were living after victimization and do not necessarily reflect where they were victimized); Proximark, *A Serious Problem – Around the Globe and in the USA International*, MODERN DAY SLAVERY: SEX TRAFFICKING IN THE US (Jul. 5, 2010), <https://sextrafficking.wordpress.com/2010/07/05/a-serious-problem---around-the-globe-and-in-the-usa-international>.

²¹ POLARIS PROJECT, *supra* note 19.

²² *Fighting Human Trafficking*, STATE OF CALIFORNIA DEPARTMENT OF JUSTICE, <https://oag.ca.gov/human-trafficking/fighting> (last visited Apr. 17, 2017).

²³ *The State of Human Trafficking in California 2012*, CALIFORNIA ATTORNEY GENERAL’S OFFICE, at 1, 54, <http://oag.ca.gov/human-trafficking/2012> (last visited Dec. 21, 2012) [hereinafter *State of Human Trafficking in California*]; *Human Trafficking in California: Final Report of the California Alliance to Combat Trafficking and Slavery Task Force*, CALIFORNIA ATTORNEY GENERAL’S OFFICE, at 1, 54 (Oct. 2007), http://www.ag.ca.gov/publications/Human_Trafficking_Final_Report.pdf (last visited Jan. 31, 2011) [hereinafter *Human Trafficking in California Final Report*].

²⁴ *Id.* at 54.

²⁵ *Id.* at i-ii.

²⁶ *Id.* at 66-67.

collect and organize data on the current nature and extent of trafficking in California; law enforcement investigation and prosecution challenges; victim services issues and challenges; further legislative efforts; law enforcement and community training; and technology solutions and proposals.²⁷ The meetings culminated in an updated statewide report in which the Work Group made numerous findings and new recommendations relevant to innovative ways to investigate and prosecute trafficking.²⁸

California's multidisciplinary and thoughtful approach allows law enforcement, policy makers and practitioners to learn from past policies and practice, and apply a nuanced approach to the continued

²⁷ *Id.* at 47.

²⁸ See generally *Human Trafficking in California Final Report*, *supra* note 23. From mid-2010 to mid-2012, California's nine regional human trafficking task forces identified 1,277 victims, initiated 2,552 investigations, and arrested 1,798 individuals. In the same two-year period, California's task forces provided training to 25,591 law enforcement personnel, prosecutors, victim service providers, and other first responders. Several non-governmental organizations have also trained judicial officers, airport personnel, social service providers, pro bono attorneys, and retail businesses, among others. The variety of individuals who have been trained underscores the pervasiveness of human trafficking and the important role that governmental and non-governmental actors play in detecting trafficking and assisting victims. 72% of human trafficking victims whose country of origin was identified by California's task forces are American. The public perception is that human trafficking victims are from other countries, but data from California's task forces indicate that the vast majority are Americans. Labor trafficking is under-reported and under-investigated as compared to sex trafficking. 56% of victims who received services through California's task forces were sex trafficking victims. Yet, data from other sources indicate that labor trafficking is 3.5 times as prevalent as sex trafficking worldwide. Local and transnational gangs are increasingly trafficking in human beings because it is a low-risk and high, renewable profit crime. It is critical for federal, state, and local law enforcement and labor regulators to collaborate across jurisdictions to disrupt and dismantle these increasingly sophisticated, organized criminal networks. A vertical prosecution model run outside routine vice operations can help law enforcement better protect victims and improve prosecutions. Fostering expertise about human trafficking within a law enforcement agency and handling these cases outside routine vice operations can prevent erroneously viewing trafficking victims as perpetrators. Traffickers are reaching more victims and customers by recruiting and advertising online. They use online advertising and internet-enabled cell phones to access a larger client base and create a greater sense of anonymity. Law enforcement needs the training and tools to investigate trafficking online.

fight to combat human trafficking. As California reaches the second generation of data collection and policy effectiveness analysis, policy makers should continue to expand on tools available to law enforcement to effectively respond to these trafficking crimes.

II. Asset Forfeiture is a Well Established and Effective Legal Principle/Tool Designed to Fight Crime

Asset forfeiture is the taking of illegally used or obtained property without just compensation to the owner by a governmental agency.²⁹ Forfeiture is not a new legal concept.³⁰ Congress enacted the first civil forfeiture statute in 1789 for redress of ships in custom violations.³¹ The Act was most famously expanded in 1978 to include the forfeiture of all money used in, or acquired from, the sale

²⁹ *United States v. Eight Rhodesian Statues*, 449 F.Supp. 193, 195 (C.D. Cal. 1978).

³⁰ “If an ox gore a man or a woman, that they die: then the ox shall surely be stoned, and his flesh shall not be eaten; but the owner of the ox shall be quit” *Exodus 21:28* (King James); OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* 1, 8 (1881) (quoting Aeschines “[W]e banish beyond our borders sticks and stones and steal, voiceless and mindless things, if they chance to kill a man; and if a man commits suicide, bury the hand that struck the blow afar from the body; 1 *THE CIVIL LAW*, 1, 69 (S.P. Scott, A.M. ed. & trans., 1932): “If a quadruped causes injury to one, let the owner tender him the estimated amount of the damage; and if he is unwilling to accept it, the owner shall . . . surrender the animal that caused the injury.” See also Jean Weld, *Forfeiture Laws and Procedures in the United States of America*, UNITED NATIONS ASIA AND FAR EAST INSTITUTE, www.unafei.or.jp/english/pdf/RS_No83/No83_06VE_Weld1.pdf (last visited Sept. 7, 2016). The closest to an “all crimes” approach to forfeiture of proceeds in the United States is 18 U.S.C. § 981(a)(1)(C) which authorizes the forfeiture of the proceeds of over 200 state and federal offences. Most of these are subject to forfeiture because they are “specified unlawful activities” (SUAs) within the definition of 18 U.S.C. § 1956(c)(7). All of the UN Convention required crimes are included, such as terrorist financing, money laundering, arms smuggling, drug crimes, most varieties of fraud (except tax fraud), corruption, human trafficking, smuggling, counterfeiting, securities violations, violent crimes, and environmental crimes. Others are linked through cross-referencing the RICO law (18 U.S.C. § 1961) to state crimes such as gambling, arson, kidnapping, murder, obscenity and nearly all types of theft.” (emphasis added).

³¹ Act of July 31, 1789, §§ 12, 36; 1 Stat. 39, 47.

of illicit drugs³² and again in 1984 to include affected real property.³³ There are four main theories of forfeiture liability. Property is subject to forfeiture if it is considered (1) contraband,³⁴ (2) the proceeds of criminal activity;³⁵ (3) used to facilitate criminal activity/instrumentality;³⁶ or (4) nuisance which is reasonably connected to a criminal enterprise.³⁷

The first category of demarcation is “contraband.” Contraband is property that is illegal to possess because the U.S. legislature determines that it serves no lawful purpose.³⁸ No one has a legal right to possess or own any interest in contraband and any interest of ownership is extinguishes by operation of law.³⁹ Second, “proceed forfeiture,” is likely one of the more powerful tools in a prosecutor’s utility belt. This theory of liability forfeits property that is traceable directly or indirectly to the underlying illegal activity.⁴⁰ It includes all interest, dividends, income, or property derived from the original illegal transaction⁴¹ including any appreciation in value of the property.⁴² Tracing of proceeds is given wide latitude, as there is no requirement to trace the proceeds to a particular criminal transaction, rather it is sufficient to connect it only to the criminal

³² 21 U.S.C. § 881(a)(6) (West 2015).

³³ 21 U.S.C. § 853 (West 2015).

³⁴ See *Chavez v. Superior Court (Orange County)*, 123 Cal. App. 4th 104, 109 (Cal. App. 4th 2004).

³⁵ See *United States v. One 1980 Rolls Royce*, 905 F.2d 89, 91 (5th Cir. 1990).

³⁶ See *United States v. Bajakajian*, 524 U.S. 321, 333 (1998).

³⁷ Crimes that have been declared nuisance under state law and contain forfeiture provisions include prostitution (CAL. VEH. CODE § 22659.5 (West 2016)), drive by shooting and criminal street gangs (CAL. PENAL CODE § 246.1 (West 2016)), repeat offender driving under the influence or vehicular manslaughter (CAL. VEH. CODE § 23596 (West 2016)), and possession of illegal firearms and deadly weapons (CAL. PENAL CODE § 12029 (West 2016)).

³⁸ See *Chavez*, 123 Cal. App. 4th at 109.

³⁹ *Id.*

⁴⁰ See *United States v. One 1980 Rolls Royce*, 905 F.2d 89, 91.

⁴¹ *Id.*

⁴² *United States v. Hawkey*, 148 F. 3d 920, 928 (1998); *United States v. Real Estate Located at 116 Villa Rella Drive*, 675 F.Supp. 645, 646 (1987).

offense in general.⁴³ No matter how many times the property changes form, it remains subject to forfeiture if properly traced.⁴⁴ However, the U.S. government is required to demonstrate a nexus between the property to be forfeited and the criminal violation.⁴⁵

The third form, “facilitation or instrumentality” forfeiture, applies to property that was used to commit the criminal act.⁴⁶ If conducted with a nuanced and knowledgeable approach, applying this form of forfeiture could prove to be the most beneficial method of combating the target offense. Facilitation or instrumentality forfeiture are often used as synonyms, even though both words are not. Instrumentality best refers to the actual means by which the offense was committed and limits forfeiture to the property and that property alone.⁴⁷ Where facilitation forfeiture extends the focus to property that is *intended* to be used in the unlawful activity.⁴⁸ Case law varies as to the strength of connection needs to be demonstrated⁴⁹, but at a minimum, a clear nexus needs to be shown.⁵⁰ The final form is “nuisance forfeiture”, which is based on the theory that the property is related to some sort of criminal activity

⁴³ *United States v. Four Million, Two Hundred Fifty-Five Thousand*, 762 F.2d 895, 902-903 (1985); *People v. \$497,590 U.S. Currency*, 58 Cal. App. 4th 145, 154 (Cal. App. 4th 1997).

⁴⁴ *See United States v. \$33,000 United States Currency*, 640 F. Supp. 898, 900 (D.MD. 1986).

⁴⁵ *United States v. \$33,000 United States Currency*, 640 F. Supp. 898, 900.

⁴⁶ *CIVIL FORFEITURE OF CRIMINAL PROPERTY: LEGAL MEASURES FOR TARGETING THE PROCEEDS OF CRIME* 35 (Simon N.M. Young ed., 2009).

⁴⁷ *United States v. Bajakajian* 524 U.S. 321, 333.

⁴⁸ CAL. HEALTH & SAFETY CODE § 11470(f) (West 2015).

⁴⁹ *United States v. Daccarett*, 6 F.3d 37, 55-56 (2d Cir. 1993) (holding that only a “nexus” is required; *but see United States v. One 1986 Ford Pickup*, 56 F.3d 1181, 1187 (9th Cir. 1995) (holding that a “substantial connection” is required).

⁵⁰ *See People v. \$47,050*, 17 Cal. App. 4th 1319, 1324 (Cal. App. 4th 1993); *People v. 6344 Skyway, Paradise, Cal.*, 71 Cal. App. 4th 1026, 1033-1034 (Cal. App. 4th 1999).

that is declared dangerous or injurious to the public good.⁵¹ Also, the government forfeiture is an act of abetment.⁵²

California forfeiture laws are designed to be remedial in nature by removing criminals' tools and profits.⁵³ The current California statutory forfeiture scheme is broad in scope, targeting more traditional crimes like the illicit drug trade, but extends to dog fighting and the use of illegal fishing nets.⁵⁴ While there are four

⁵¹ Mary M. Cheh, *Civil Remedies to Control Crime: Legal Issues and Constitutional Challenges*, 9 CRIME PREVENTION STUDIES 44, 50 (1998).

⁵² Crimes that have been declared nuisance under state law and contain forfeiture provisions include prostitution (CAL. VEH. CODE § 22659.5 (West 2016)), drive by shooting and criminal street gangs (CAL. PENAL CODE § 246.1 (West 2016)), repeat offender driving under the influence or vehicular manslaughter (CAL. VEH. CODE § 23596 (West 2016)), and possession of illegal firearms and deadly weapons (CAL. PENAL CODE § 12029 (West 2016)).

⁵³ CAL. HEALTH & SAFETY CODE § 11468(j) (West 2015).

⁵⁴ The sale, manufacture, or transpiration of narcotics (CAL. HEALTH & SAFETY CODE 11469 et seq. (West 2016)), Criminal Forfeiture for enumerated crimes (CAL. PENAL CODE § 186.2); Aggravated White-Collar Enhancement (CAL. PENAL CODE § 186.11); Motor Vehicle as a Nuisance (CAL. VEH. CODE §§ 23596 and 22660); Firearm/Criminal Street gang (CAL. PENAL CODE § 246.1); Computer forfeiture (CAL. PENAL CODE § 502.91); Obscene material (CAL. PENAL CODE §§ 312 and 312.3 (West 2016)); Firearms related to domestic violence (CAL. PENAL CODE § 12028.5 (West 2016)), mental disorder (CAL. WEL. & INST. CODE § 8102 (West 2016)), and gang members (CAL. PENAL CODE § 186.22a (West 2016)); Illegal Fishing nets (CAL. FISH & GAME CODE § 8630 (West 2016)); diseased fish (CAL. FISH & GAME CODE § 6302 (West 2016)); fish and game unlawfully taken (CAL. FISH & GAME CODE § 12159 (West 2016)); proceeds from taking endangered or protected animals (CAL. FISH & GAME CODE § 12159.5 (West 2016)); fighting animals (CAL. PENAL CODE § 599aa (West 2016)); Animal cruelty and neglect (CAL. PENAL CODE §§ 597(f)(1) and 597.1(k) (West 2016)); illegal lotteries (CAL. PENAL CODE § 325 (West 2016)); illegal gambling machines and devices (CAL. PENAL CODE §§ 335(a), 330.3, and 330.4); and counterfeit currency (CAL. PENAL CODE §§ 350, 480, 527 (West 2016)). CAL. HEALTH & SAFETY CODE § 11469 et seq. (West 2016); CAL. PENAL CODE § 186.2 (West 2016); CAL. PENAL CODE § 186.11 (West 2016); CAL. VEH. CODE § 23596 and 22660 (West 2016); CAL. PENAL CODE § 246.1 (West 2016); CAL. PENAL CODE § 502.91 (West 2016); CAL. PENAL CODE §§ 312 and 312.3 (West 2016); CAL. PENAL CODE § 12028.5 (West 2016); CAL. WEL. & INST. CODE § 8102 (West 2016); CAL. PENAL CODE § 186.22a (West 2016); CAL. FISH & GAME CODE § 8630 (West 2016); CAL. FISH & GAME CODE § 6302 (West 2016); CAL. FISH & GAME CODE § 12159 (2016); CAL. FISH & GAME CODE § 12159.5 (West 2016); CAL. PENAL CODE § 599aa (West

differing categories of property, there are two legal categories of forfeiture, criminal and civil; each with very different procedures and associated burdens of proof.

A. California Criminal Forfeiture

California Penal Code section 186.11 is California's preeminent criminal forfeiture statute. Section 186.11 subjects property to forfeiture if the defendant is convicted of the associated criminal offense⁵⁵, proven beyond a reasonable doubt.⁵⁶ Since criminal actions are based on *in personam*⁵⁷ jurisdiction, the court does not obtain jurisdiction over the property at the onset and the right to possession remains with the lawful owner until post-conviction.⁵⁸ Because the government cannot take possession until significant time has passed, the risk of owner obfuscation, selling, encumbering⁵⁹ or destruction/diminution in value of the property is a substantial concern. If these concerns are proven, the government may seek a restraining order to protect its potential interest.⁶⁰

2016); CAL. PENAL CODE §§ 597(f)(1) and 597.1(k) (West 2016); CAL. PENAL CODE § 325 (West 2016); CAL. PENAL CODE § 335(a), 330.3, and 330.4 (2016); CAL. PENAL CODE §§ 350, 480, 527 (West 2016).

⁵⁵ CAL. PENAL CODE § 186.2 (West 2015).

⁵⁶ *Id.* at § 185.5(d)

⁵⁷ *In personam*, BLACK'S LAW DICTIONARY (9th ed. 2009).

⁵⁸ People holding a valid lien, mortgage, or security interest in the property can seek a hearing to protect their equity. CAL. PENAL CODE § 186.7(b) (West 2016).

⁵⁹ See *Caplin & Drysdale v. United States*, 491 U.S. 617, 626 (1989); see generally *People v. Superior Court (Clements)*, 200 Cal. App. 3d 491 (Cal. App. 3d 1988); *United States v. Monsanto*, 491 U.S. 600, 603 (1989) (holding a defendant is not entitled to compensate counsel with funds or property which represents the "proceeds" of drug trafficking.); CAL. PENAL CODE § 1275; see *United States v. \$250,000 in U.S. Currency*, 808 F.2d 895, 900 (1st Cir. 1987) (holding money probably derived from illegal drug transactions is entitled to forfeiture and cannot be used to secure bail).

⁶⁰ CAL. PENAL CODE § 186.6(a)(1) (West 2015).

B. California Civil Forfeiture

Civil forfeiture is an *in rem*⁶¹ based action against the property in question, where the court will decide the government's right to the property as against the world.⁶² While this concept appears odd, its construction requires a party to come forward to defend the legitimacy of the item. If no one steps forward to defend the item, the State would prevail on a default basis. Since it is a civil action, a lower burden of proof (i.e. preponderance of the evidence)⁶³ is sufficient to warrant a claim⁶⁴ and no criminal arrest or conviction is required.⁶⁵ This lower standard of proof greatly increases the success of forfeiture and liquidation.

The most widely used California civil asset forfeiture statute is the narcotic asset forfeiture provision found at California Health and Safety Code section 11469 *et seq.* Its purpose is to strip narcotic dealers of their criminal tools, fracturing their economic foundation.⁶⁶ California's forfeiture program has completed over 35,000 cases,⁶⁷ seizing over \$230 million dollars between 2002 - 2010.⁶⁸ The approximate annual proceeds are \$25 million.⁶⁹ Proceeds are statutorily distributed between the prosecuting law enforcement agency, victim services and the State's General Fund.⁷⁰ 1% is given to private nonprofit organizations composed of local prosecutors for the exclusive purpose of providing a statewide program of education and training for prosecutors and law enforcement in the ethics and proper use of state asset seizure and

⁶¹ *In rem*, BLACK'S LAW DICTIONARY (9th ed. 2009).

⁶² *See Van Oster v. Kansas*, 272 U.S. 465, 467 (1926).

⁶³ *Preponderance*, BLACK'S LAW DICTIONARY (9th ed. 2009).

⁶⁴ CAL. PENAL CODE § 502.01(b) (West 2015); *People v. \$47,050*, 17 Cal. App. 4th 1319, 1323 (Cal. App. 4th 1993).

⁶⁵ CAL VEH. CODE § 14607.6(e)(5) (West 2015).

⁶⁶ *Caplin & Drysdale v. United States*, 491 U.S. 617 (1989); *People v. Superior Court (Clements)*, 200 Cal. App. 3d 491 (1988).

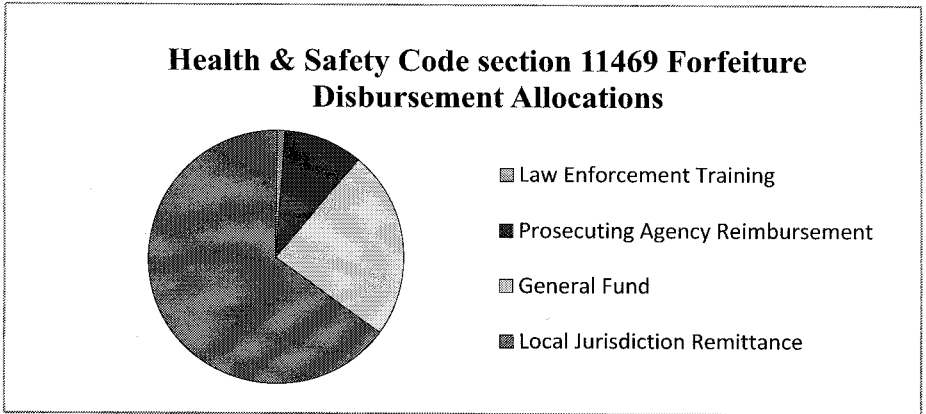
⁶⁷ *Publications*, *supra* note 6.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ CAL. HEALTH & SAFETY CODE § 11469 *et seq.* (West 2015).

forfeiture laws⁷¹; 10% to the prosecutorial agency that processes the forfeiture action⁷²; 24% to the State General Fund; 65% to the state and/or local law enforcement agencies that participated in the seizure, distributed so as to reflect the proportionate contribution of each agency.⁷³



1. People v. Real Property located at 25651 Minoa Dr., Mission Viejo, California

In January of 1989, the limits of California's narcotics civil asset forfeiture laws were tested.⁷⁴ Based on information supplied by an informant, police obtained a search warrant for Keen's house.⁷⁵ They found one half-ounce of cocaine in Keen's pocket and approximately twenty-seven ounces, in individualized packets, in three different locations throughout the house⁷⁶ and found \$3,800 secreted behind a false wall in the home.⁷⁷ During the search Keen

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *People v. Real Property Located at 25651 Minoa Dr., Mission Viejo, Cali., 2 Cal. App. 4th 787 (Cal. App. 4th Dist. 1992) [hereinafter *Real Property*].*

⁷⁵ *Id.* at 791.

⁷⁶ *Id.*

⁷⁷ *Id.*

told the officers he had conducted all his narcotics business at his desk in the spare bedroom, which he used as an office.⁷⁸

In July of 1989, the prosecution filed a "Petition for Forfeiture" of the entire residence.⁷⁹ The petition alleged based on the indicated facts Keen's entire real property interest was subject to forfeiture.⁸⁰ The following day Keen pleaded guilty to possession of cocaine for sale.⁸¹ While Keen objected to the forfeiture petition,⁸² the trial court issued the seizure order.⁸³ In that order Judge Carter stated: "I am satisfied that there is probable cause to believe that said proceeds/property is subject to seizure and forfeiture. . . ."⁸⁴ The prosecution's forfeiture request was based solely of a declaration by the investigating officer.⁸⁵

The most important part of the declaration was the officer's recitation that Keen had said he conducted his cocaine business from a desk at his house for the past two years.⁸⁶ The officer stated, "Keen told me that the desk is where he conducted business and once he weighed out the amount of cocaine to be sold, he would make a line from that for the customer to do [i.e., to ingest] while he watched."⁸⁷ While Keen had earned approximately \$2,000 a month from legitimate businesses and a stipulation that the monthly mortgage payments on the residence was only \$1,200⁸⁸, the court ordered all proceeds from the sale of the residence to be forfeited.⁸⁹ The court went into great detail to explain the limits and application of

⁷⁸ *Id.*

⁷⁹ *Real Property, supra* note 74, at 791.

⁸⁰ *Id.*

⁸¹ *Real Property, supra* note 74, at 791-792.

⁸² *Id.* at 792.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Real Property, supra* note 74, at 791.

⁸⁷ *Id.* at 792-793.

⁸⁸ *Id.* at 793.

⁸⁹ *Id.*

California's civil asset forfeiture laws. The court also stressed legislature's preference for the civil form of forfeiture.⁹⁰

Forfeiture law must also be examined in its entirety to see if its effect is so punitive as to negate the civil label given to it. In *Kennedy v. Mendoza-Martinez*,⁹¹ the high court developed a list of relevant factors to be considered:

Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of *scienter*, whether its operation will promote the traditional aims of punishment-retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned⁹²

Applying these factors the court noted a conviction is not a prerequisite to forfeiture, therefore there is no need to examine the question of *scienter* in the forfeiture action.⁹³ The forfeiture in the Keen case is completely unconnected to any criminal conviction as there was not one. There is a separate procedure for *criminal* forfeitures in California, evidencing the Legislature's recognition of the difference between the two types of forfeitures based on separate standards of proof.⁹⁴ In civil forfeiture proceedings the State gets the benefit of a reduced standard of proof⁹⁵ and faces no impediment

⁹⁰ *Id.* at 796 (citing (§§ 11488.4, 11488.5(e); *People v. Washington*, 220 Cal. App. 3d 912, 917 (Cal. App. 3d 1990)).

⁹¹ *Real Property*, *supra* note 74, at 796 (citing *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963)).

⁹² *Real Property*, *supra* note 74, at 796.

⁹³ *Id.*

⁹⁴ *Id.* at 796-797 (citing CAL. PEN. CODE, § 186.2 *et seq.*)

⁹⁵ *Id.* at 797 (citing *People v. Washington*, 220 Cal. App. 3d at 917).

from the ex post facto provisions of the state or federal Constitutions.⁹⁶ With these benefits, however, come the inevitable burdens common to most civil proceedings: discovery battles, depositions, seemingly endless motions, and so forth.⁹⁷ The court gave great weight to the evidence of Keen's admission to the arresting officer he had conducted his cocaine business out of his house for the preceding two years.⁹⁸ This admission, which Keen never denied making, made it nearly impossible to conclude Keen's property was not "related to" a qualifying crime under the statute prohibiting the maintenance of a place for selling controlled substances.⁹⁹

The court did acknowledge a single act, or isolated crime, without further corroborating evidence, does not fulfill the requirement of "continuous activity" necessary to find that a person maintained a place for selling controlled substances.¹⁰⁰ However, the court felt compelled to resolve whether the statute requires the other extreme end of the range of possibilities.¹⁰¹ The defendant claimed the sole justification for maintaining the residence must be the illegal activity, and that this illegality must be an "unbroken, coherent whole" of the activity at the residence.¹⁰² They cited no authority for this proposition, and failed to consider the obvious consequences of such an interpretation.¹⁰³ If the house were exclusively used for narcotics purposes, it would not qualify as a residence at all.¹⁰⁴ Keen used it as a residence as well as his drug distribution center and argued the state should not be permitted to confiscate it.¹⁰⁵

The court held a single, isolated instance of criminal conduct does not reflect the requisite "continuity in the pursuit of [the

⁹⁶ *Id.*

⁹⁷ *Real Property*, *supra* note 74, at 797-798.

⁹⁸ *Id.* at 798.

⁹⁹ *Real Property*, *supra* note 74, at 798.

¹⁰⁰ *Id.* at 798

¹⁰¹ *Id.* at 798-799.

¹⁰² *Id.*

¹⁰³ *Id.* at 799.

¹⁰⁴ *Real Property*, *supra* note 74, at 799.

¹⁰⁵ *Id.*

criminal] objective”¹⁰⁶ circumstances surrounding and one criminal instance may fill the void.¹⁰⁷ The quantity of hidden cocaine, the quantity of hidden currency derived from previous sales of cocaine, Keen’s statements that he sold cocaine in quantities of no larger than one-sixteenth ounce and that he had conducted his narcotics business at his office desk inside the residence for the last two years, were all circumstances reasonably relied upon to conclude the residence was used to aid an ongoing business of narcotics sales.¹⁰⁸ Even though Keen also used it as a residence, the house had multiple purposes¹⁰⁹; one of those purposes was illegal.¹¹⁰

The Keen Court’s analysis gives us the perfect backdrop for how we can analyze civil forfeiture as applied to a case of human trafficking. If a state were to have an aggressive anti-human trafficking civil forfeiture statute similar in structure to that of California Health and Safety Code section 11488.4, trafficking cases where you have a single instance of sexual exploitation in residential premises where the trafficker maintained a centralized area (like a desk with a computer) from where he directed and controlled his criminal enterprise, under the Keen analysis would be grounds for forfeiture of the residence. This very simplistic and minimal fact pattern is extremely common in sexual exploitation cases.¹¹¹

III. Current Asset Forfeiture Implementation Helping to Combat Trafficking

A. Current Forfeiture Legislation in the United States

¹⁰⁶ *Id.* (citing *People v. Roeschlaub*, 21 Cal. App. 3d 874, 878 (Cal. App. 3d 1971); *People v. Horn*, 187 Cal. App. 2d 68, 72 (Cal. App. 2d 1960); *People v. Holland*, 158 Cal. App. 2d 583, 588 (Cal. App. 2d 1958)).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Real Property*, *supra* note 74, at 800.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 787.

While a number of state forfeiture statutes exist, they are neither uniform nor universal. A review of state statutes reveals that only twenty-four states, including the District of Columbia, have either a criminal or civil forfeiture statute, which could reasonably apply to some form of trafficking.¹¹² Under the judicial axiom, statutes imposing forfeiture are generally disfavored and will be strictly construed to prevent over-breadth of application,¹¹³ and a poorly drafted statute may fail to have its desired effect. To ensure proper application, human trafficking ought to be an enumerated predicate. Of the stated twenty-four states, only fourteen expressly specify trafficking as proper grounds to apply forfeiture.¹¹⁴ Many of these fourteen are limited in the scope of the subject property or

¹¹² Alabama [ALA. CODE §13A-6-156 (2017)]; California [CAL. PENAL CODE §186.11 (2016)]; Connecticut [CONN. GEN. STAT. §54-36p (2016)]; Delaware [DEL. CODE ANN. tit. 11 §9101 (2017)]; District of Columbia [D.C. CODE §22-1838 (2017)]; Florida [FLA. STAT. ANN. § 775.082(7) (2016)]; Georgia [GA. CODE ANN. §§16-6-13.2, 16-6-13.3 (2017)]; Illinois [720 ILL. COMP. STAT. ANN. 5/10-9 (2016)]; Louisiana [LA. STAT. ANN. §§14:46.2 (2017), 14:46.3]; Maine [ME. STAT. ANN. tit. 15 § 5821 (2017)]; Michigan [MICH. COMP LAWS. SERV. §600.4702 (2016)]; Minnesota [MINN. STAT. ANN. §609.5315 (2017)]; Missouri [MO. REV. STAT. ANN. § 513.607 (2017)]; Nevada [NEV. REV. STAT. ANN. § 201.351 (2016)]; New Hampshire [N.H. REV. STAT. ANN. § 633:8 (2017)]; New Jersey [N.J. STAT. ANN. §2C:64-1 (2017)]; New York [N.Y. C.P.L.R. §1311 (McKinney 2017)]; North Carolina [N.C. GEN. STAT. ANN. § 14-2.3 (2016)]; Oklahoma [OKLA. STAT. tit. 22 §1405 (2017)]; Oregon [OR. REV. STAT. ANN. §§ 131.553, 131.558, 131.561 (2016)]; Pennsylvania [18 PA. CONS. STAT. AND CONS. STAT. ANN. § 3021 (2016)]; Rhode Island [11 R.I. GEN. LAWS § 67-5 (2016)]; Virginia [VA. CODE. ANN. § 19.2-386.16 (2016)]; and Washington [WASH. REV. CODE. ANN. §§ 9A.88.140, 43.63A.740 (2016)].

¹¹³ *People v. Superior Court (Plascencia)*, 103 Cal. App. 4th 409, 418 (Cal. App. 4th 2002).

¹¹⁴ Alabama [ALA. CODE § 13A-6-156 (2017)]; California [CAL. PENAL CODE § 186.11 (2016)]; Connecticut [CONN. GEN. STAT. § 54-36p (2016)]; District of Columbia [D.C. CODE § 22-1838 (2017)]; Illinois [720 ILL. COMP. STAT. ANN. 5/10-9 (2016)]; Louisiana [LA. STAT. ANN. §§ 14:46.2, 14:46.3 (2016)]; Maine [ME. REV. STAT. ANN. tit. 15 § 5821 (2017)]; Minnesota [MINN. STAT. ANN. §609.5315 (2017)]; New Hampshire [N.H. REV. STAT. ANN. § 633:8 (2017)]; North Carolina [N.C. GEN. STAT. ANN. § 14-2.3 (2016)]; Oklahoma [OKLA. STAT. tit. 22 § 1405 (2017)]; Oregon [OR. REV. STAT. ANN. §§ 131.553, 131.558, 131.561 (2016)]; and Pennsylvania [18 PA. CONS. STAT. ANN. § 3021 (2016)]; Rhode Island [11 R.I. GEN. LAWS § 67-5 (2016)].

predicate criminal activity. For instance, Georgia, Nevada, Virginia, and Washington's criminal forfeiture statutes would only be subject to limited property forfeiture to motor vehicles or proceeds gained in the commission of the narrow crime of pimping or pandering.¹¹⁵

While these statutes have the potential application where a CSE victim was present, the statute is primarily focused on inhibiting the end transaction of the trade rather than the continual act of trafficking. If the defendant was charged under the state's trafficking statute, forfeiture may not apply at all.

Other states like Alabama, North Carolina, and Rhode Island expressly include trafficking as a forfeit eligible offense, but they limit the subject property to proceeds, which could be reasonably traced to the act¹¹⁶ – completely ignoring the tools and instruments used in the commission. While seizing the proceeds is an important component of a comprehensive forfeiture structure, limiting forfeiture to proceeds exclusively should be seen as a half measure, doing little to significantly disrupt the fundamental structure and the business of trafficking.

Like California's trafficking forfeiture provision¹¹⁷, Oklahoma incorporates trafficking as a predicate for their state Racketeer-Influenced and Corrupt Organizations (RICO) statute.¹¹⁸ Racketeering application suffers from the same fundamental design defect. In order to apply a RICO based crime to an activity, the state must show a "*pattern*" of criminal action.¹¹⁹ This requirement

¹¹⁵ Georgia [GA. CODE ANN. § 16-6-13.2, GA. CODE ANN. § 16-6-13.3]; Nevada [NEV. REV. STAT. ANN. § 201.351 (2016)]; Virginia [VA. CODE ANN. § 19.2-386.16 (2016)]; and Washington [WASH. REV. CODE ANN. §§ 9A.88.140, 43.63A.740 (2016)].

¹¹⁶ Alabama [ALA. CODE § 13A-6-156 (2017)]; North Carolina [N.C. GEN. STAT. ANN. § 14-2.3 (2016)]; Rhode Island [11 R.I. GEN. LAWS § 67-5 (2016)].

¹¹⁷ CAL. PENAL CODE § 186.11 (2015).

¹¹⁸ OKLA. STAT. ANN. tit. 22 § 1402 (2017).

¹¹⁹ OKLA. STAT. ANN. tit. 22 § 1402 (2015) ("Pattern of racketeering activity" means two or more occasions of conduct: a. that include each of the following: (1) constitute racketeering activity, (2) are related to the affairs of the enterprise, (3) are not isolated, and (4) are not so closely related to each other and connected in point of time and place that they constitute a single event, and b. where each of the following is present: (1) at least one of the occasions of conduct occurred after

provides the defendant immunity or exemption from their first act of trafficking.¹²⁰ Put another way, the traffickers gets “*one free slave*” before they would be subject to racketeering liability and criminal forfeiture.¹²¹

B. International Forfeiture Efforts

Human trafficking is not solely a U.S. phenomenon. Traffickers look for a market whenever and wherever they find it. Very few countries have aggressive asset forfeiture statutes applicable to human trafficking crimes. One country that has been on the forefront is Canada. In its 2010-2011 Evaluation of the Integrated Proceeds of Crime Initiative - Final Report, Public Safety Canada focused on “identifying, assessing, seizing, restraining and dealing with the forfeiture of illicit wealth accumulated through criminal activities.”¹²² Canada’s Criminal Code Section 462.3 allows for a broad interpretation of criminal proceeds. It states:

Proceeds of crime means any property, benefit or advantage, within or outside Canada, obtained or derived directly or indirectly as a result of (a) the commission in Canada of a designated offence, or (b) an act or omission anywhere that, if it had occurred in

November 1, 1988, (2) the last of the occasions of conduct occurred within three (3) years, excluding any period of imprisonment served by any person engaging in the conduct, of a prior occasion of conduct, and (3) for the purposes of Section 1403 of this title each of the occasions of conduct constituted a felony pursuant to the laws of this state.”)

¹²⁰ CAL. PENAL CODE § 186.2 (2016).

¹²¹ The focus of this analysis is on forfeiture liability. While the defendant may not be subject to forfeiture liability on their first trafficking offense, they may be criminally culpable under a state trafficking statute [§§ 21-748] or other lesser-included crimes.

¹²² *2010-2011 Evaluation of the Integrated Proceeds of Crime Initiative - Final Report*, PUBLIC SAFETY CANADA, <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/vltn-ntgrtd-prcds-crm-2010-11/index-en.aspx#a1> (last visited Sept. 2, 2011).

Canada, would have constituted a designated offence.¹²³

The Integrated Proceeds of Crime Initiative (IPOC) goals were fivefold:

(1) reducing the capacity of, and increasing the costs to, targeted organized criminals and crime groups through the removal of their assets; (2) reducing the capacity of, and increasing the cost to, targeted organized criminals and crime groups through the prosecution of organized crime figures; (3) making proceeds of crime investigations more intensified, efficient and effective; (4) making prosecutions more intense, efficient and effective; and (5) increasing knowledge and understanding of proceeds of crime issues and tools.¹²⁴

Based on these objectives, the Royal Canadian Mounted Police (RCMP) developed this mandate:

To be intelligence led while maximizing the integrated approach in order to identify, seize, restrain, and forfeit illicit and unreported wealth accumulated by the highest level of organized criminals and crime groups identified by Divisional, Provincial and National priorities, thereby removing the financial incentive for engaging in criminal activities.¹²⁵

¹²³ Canada Criminal Code, R.S.C. 1985, c C-46.

¹²⁴ PUBLIC SAFETY CANADA, *supra* note 122, at 2.

¹²⁵ *Id.*

In early 2011, the RCMP arrested a West Vancouver woman accused of trafficking a 21-year-old woman from Africa.¹²⁶ The defendant, Ladha, allegedly promised the victim a work visa and a job in a hair salon.¹²⁷ Instead the woman was forced to work around the clock without pay as a virtual slave in Ladha's home¹²⁸ and was fed table scraps.¹²⁹ The victim was working eighteen to twenty-two hours a day¹³⁰ seven days a week.¹³¹ While these instances are rare in Vancouver,¹³² on August 25, 2011, the British Columbia Director of Civil Forfeiture filed an action to have the home forfeited.¹³³ In the civil claim, the home is described as an "instrument of unlawful activity."¹³⁴ The home has an estimated value of \$3.1 million.¹³⁵

IV. California's Second Attempt: 2012's Assembly Bill 2466 and Senate Bill 1133

While both the California¹³⁶ and United States¹³⁷ constitutions explicitly prohibit slavery and involuntary servitude, the deprivation of personal liberties continues to occur. Recognizing that lucrative profits drive the proliferation of human trafficking, a

¹²⁶ *Human Trafficking arrest made in Vancouver*, CBC NEWS CANADA (Aug. 4, 2011), <http://www.cbc.ca/news/canada/british-columbia/story/2011/08/04/bc-human-trafficking-arrest.html>.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Slavery Charges Issued Against B.C. Women*, CBC NEWS CANADA, (May 16, 2011), <http://www.cbc.ca/news/canada/british-columbia/story/2011/05/16/bc-human-slavery-charge.html>.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *B.C. Sues for House in Human Trafficking Case*, CBC NEWS CANADA (Aug. 16, 2011), <http://www.cbc.ca/news/canada/british-columbia/story/2011/08/26/bc-human-trafficking.html>.

¹³⁴ CBC NEWS CANADA, *supra* note 133.

¹³⁵ *Id.*

¹³⁶ CAL. CONST. art. I, § 6 (2015).

¹³⁷ U.S. CONST. amend. XIII, § 2 (2015).

crime that deprives individuals of their most basic human rights,¹³⁸ in 2012, the California Legislature and the Attorney General began to address systematic failures in California's statutory structure. While Assembly Bill 2466 (AB 2466) and Senate Bill 1133 (SB 1133) were designed to complement the overall asset forfeiture laws and target the profitability of human trafficking, they remain less than comprehensive in their scope and coverage.¹³⁹

The International Labor Organization estimates that human trafficking generates at least \$32 billion annually.¹⁴⁰ Due in part to their vulnerability, children, especially young girls and women, comprise a disproportionate segment of trafficked victims, particularly for sexual exploitation.¹⁴¹ "Human trafficking crimes involving minors are reprehensible and convicted perpetrators should not be able to keep the financial rewards from trafficking."¹⁴² Between 2009 and 2010, 195,644 children ran away from home in California, and it is estimated that one third of those children will be lured or recruited into pornography or prostitution.¹⁴³ "The commercial sexual exploitation of children is big business. Sadly, today there is no better return on money than selling a child for

¹³⁸ Attorney General Kamala D. Harris Announces Bills to Combat Human Trafficking Signed into Law, CALIFORNIA ATTORNEY GENERAL OFFICE (Sept. 24, 2012), <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-announces-bills-combat-human-trafficking-signed> [hereinafter *Bills to Combat Human Trafficking*].

¹³⁹ Scott Davidson Dyle, *Beginning to Seize the Instrumentalities of Human Trafficking: Chapter 514 Allows Criminal Forfeiture of Property Used to Facilitate the Sex Trafficking of Minors*, 44 MCGEORGE L. REV. 573, 579 (2013).

¹⁴⁰ *ILO Action Against Trafficking in Human Beings*, INTERNATIONAL LABOUR OFFICE [ILO], (2008), at 1, 1 http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090356.pdf.

¹⁴¹ *Human Trafficking in California*, *supra* note 23 (describing how up to fifty percent of foreign human trafficking victims are minors and how women and children are apparently more susceptible to sexual exploitation).

¹⁴² *Bills to Combat Human Trafficking*, *supra* note 138.

¹⁴³ S. FLOOR ANALYSIS OF SB 1133, SOUTH COMMITTEE ON PUBLIC SAFETY (2008), at 8 (Cal. 2012) [hereinafter *S. Floor Analysis*].

sex.”¹⁴⁴ Senate Bill 1133 was designed to curb the sex trafficking of children and help the victims by seizing the instrumentalities used during the trafficking and providing monetary support for them.¹⁴⁵ Senator Mark Leno, author of SB 1133, specifically intended this legislation to address the statutory framework failings.¹⁴⁶ “Proceeds from [property seized that was used during the commission of human trafficking] would rightfully be used to help victims begin to repair their lives.”¹⁴⁷

A. Legislative Backdrop

In 2005, California passed the California Trafficking Victims Protection Act (CTVPA).¹⁴⁸ Through the CTVPA, California made it felonious to engage in or help facilitate the trafficking of persons within its jurisdiction.¹⁴⁹ Additionally, the legislation added human trafficking to the list of offenses subject to forfeiture of profits or assets acquired through a pattern of criminal profiteering.¹⁵⁰ While the CTVPA added human trafficking as a predicate crime, the

¹⁴⁴ S. COMM. ON PUB. SAFETY, *Assemb. COMM. ON APPROPRIATIONS FLOOR ANALYSIS OF SB 1133*, at 2 (Cal. 2012) [hereinafter *Appropriations Floor Analysis*].

¹⁴⁵ *See id.* at 2 (“[Chapter 514] . . . give[s] prosecutors a powerful tool to ensure criminals convicted of sex-trafficking minors are not able to retain financial benefits from their participation in this horrendous crime. [Chapter 514] allows for forfeiture for one instance of sex trafficking, rather than requiring a pattern, and it expands the property subject to forfeiture.”).

¹⁴⁶ *Attorney General Kamala D. Harris’ Bill to Combat Human Trafficking Unanimously Passes out of State Senate*, CALIFORNIA ATTORNEY GENERAL OFFICE (May 29, 2012), <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-bill-combat-human-trafficking-unanimously> [hereinafter *Bill Passes to Combat Human Trafficking*].

¹⁴⁷ *Id.*

¹⁴⁸ 2005 CAL. ADV. LEGIS. SERV. 240 (2016).

¹⁴⁹ CAL. PENAL CODE § 236.1(a) (West 2016) (“Any person who deprives or violates the personal liberty of another with the intent to effect or maintain a felony violation of Section 266, 266h, 266i, 267, 311.4, or 518, or to obtain forced labor or services, is guilty of human trafficking.”).

¹⁵⁰ *Id.* at § 186.2(a)(28) (2016) (“Criminal profiteering is defined as “any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged” under specified provisions.”).

California Control of Profits of Organized Crime Act provides the process through which ill-gotten profits or assets acquired may be forfeited.¹⁵¹ The California Legislature stated that forfeiture of assets and property acquired through criminal profiteering is “an effective means of punishing and deterring criminal activities of organized crime.”¹⁵² However, a prosecuting agency is limited to the seizure of assets and profits acquired during the commission of a crime subject to forfeiture after demonstrating “beyond a reasonable doubt that the defendant was engaged in a *pattern* of criminal profiteering activity.”¹⁵³ Thus, the prosecuting agency must also prove the criminal defendant engaged in at least two incidents of criminal profiteering.¹⁵⁴

The prosecuting agency may seize all proceeds and tangible or intangible property interests “acquired through a pattern of criminal profiteering activity.”¹⁵⁵ Proceeds from property forfeited during a human-trafficking-of-minors case are deposited in the Victim-Witness Assistance Fund and appropriated to child sexual abuse and exploitation counseling centers and prevention programs.¹⁵⁶

B. Senate Bill 1133 and Assembly Bill 2466

SB 1133 was designed to work in tandem with AB 2466.¹⁵⁷ It expanded the types of property subject to forfeiture when

¹⁵¹ CAL. PENAL CODE § 186 – 186.8 (West 2016).

¹⁵² *Id.* at § 186.1 (West 2016).

¹⁵³ *Id.* § 186.5(d).

¹⁵⁴ *See id.* at § 186.2 (West 2016) (stating that a pattern of criminal profiteering requires at least two specified incidents of criminal profiteering).

¹⁵⁵ *Id.* at § 186.3(a)-(b) (West 2016).

¹⁵⁶ CAL. PENAL CODE § 186.8(f) (West Supp. 2012). The Victim-Witness Assistance Fund was established to finance local assistance centers for witnesses and victims of crimes from the proceeds of property seized from specified crimes. *Id.* §§ 13835–13835.4.

¹⁵⁷ *See California’s Response to Human Trafficking*, CALIFORNIA ATTORNEY GENERAL OFFICE, at 1, 41 <https://oag.ca.gov/sites/all/files/agweb/pdfs/ht/chapter2.pdf> (last visited Feb. 7, 2017).

substantially used to facilitate sex trafficking of minors.¹⁵⁸ As a result, SB 1133 permits the forfeiture of “[a]ny interest in a vehicle, boat, airplane, money, negotiable instruments, securities, real property, or other thing of value . . .”¹⁵⁹ along with all proceeds garnered from such an act.¹⁶⁰ However, certain types of real property¹⁶¹ and vehicles¹⁶² were excluded. The general fund of the local or state entity, which prosecuted the case, along with the Victim-Witness Assistance Fund, will share in the proceeds.¹⁶³ SB 1133 also better details the process by which the prosecuting agency may file a petition of forfeiture,¹⁶⁴ describes the processes by which forfeiture proceeding is to be heard,¹⁶⁵ how innocent interests of in

¹⁵⁸ CAL. PENAL CODE § 236.7 (West 2016) (expanding the types of property forfeitable when substantially used to “[facilitate] the crime of human trafficking that involves a commercial sex act . . . where the victim was less than 18 years of age at the time of the commission of the crime . . .”).

¹⁵⁹ *Id.* at § 236.7(a).

¹⁶⁰ *Id.* at § 236.7(b)(2).

¹⁶¹ *See id.* at § 236.7(d) (stating that “real property that is used a family residence, other lawful purposes, or is owned by two or more persons” and at least one of the owners did not know of its unlawful use, cannot be forfeited).

¹⁶² *See id.* at § 236.7(e) (stating that a vehicle that cannot lawfully be driven with a class C, M1, or M2 license is not subject to forfeiture when a person other than the defendant has a community property interest in the vehicle and is the only vehicle of this type available to the defendant’s immediate family).

¹⁶³ CAL. PENAL CODE § 236.12(c)(1)–(2) (West 2016).

¹⁶⁴ CAL. PENAL CODE § 236.8(2)(c). A prosecuting agency has the option to file a forfeiture petition, but it must be done in conjunction with the criminal proceeding. *Id.* § 236.8(a). Notice of the forfeiture must be served upon every person with a property interest and the notice must state that the person may state a claim for their interest in the property and may dispute the prosecutor’s claim. *Id.* If notice cannot be served by mail or personal delivery, it must be in a newspaper for three consecutive weeks in the county where the property is located. *Id.* If the property to be forfeited is real property, the prosecutor must record a *lis pendens* with the county recorder where the property is located. *Id.* The forfeiture judgment may not affect the “interest in real property of a third party that was acquired prior to the recording of the *lis pendens*.” *Id.*

¹⁶⁵ CAL. PENAL CODE § 236.9 (West 2016). Any person with an interest in the property has 30 days from when receiving notice, or when notice is published, to file a claim, in the court hearing the case, stating his or her interest in the property. *Id.* § 236.9(a). A copy of the claim must be given to the prosecuting agency. *Id.* If a person, either the defendant or third person, does not file a claim in that time

status property are to be preserved,¹⁶⁶ and how a governmental entity may attach their interest in the forfeitable property.¹⁶⁷

C. Statutory Shortcomings Remain

The Legislature recognized the failings with the existing forfeiture statute. Without increasing the types of property subject to

period, a default judgment will be issued. *Id.* § 236.9(b)(1)–(2). A forfeiture proceeding must be heard in the court where the criminal proceeding will be heard and if the defendant is found guilty, the forfeiture proceeding will be heard afterwards by same jury or a new jury if the court so chooses, unless waived by all parties. *Id.* § 236.9(c)(1)–(2). The prosecuting agency has the burden to prove the necessary elements beyond a reasonable doubt. *Id.* § 236.9(d). The property will not be released to the governmental agency if the trier of fact finds that property was not used for a purpose for which forfeiture is permitted. *Id.* § 236.9(e). Additionally, even if the property was used for a purpose for which forfeiture is permitted, the property will be released to an unknowing third party who has an interest in the property. *Id.*

¹⁶⁶ CAL. PENAL CODE § 236.10(A) (West 2016); A prosecuting agency may file a pendent elite order to preserve the status of the property, either concurrently or subsequently to filing the forfeiture petition. *Id.* § 236.10(a). The order may take the form of an injunction preventing disposing of the property or appointing a receiver to take possession and maintain the property. *Id.* § 236.10(a)(1)–(2). No preliminary injunction may be granted without interested parties receiving notice and a hearing to determine if such an order is necessary, but a temporary restraining order may be issued pending the hearing. *Id.* § 236.10(b). A court may order a surety bond to preserve the interested parties' property interests. *Id.* § 236.10(c).

¹⁶⁷ If the trier of fact finds the property was used for a forfeitable purpose, the property shall be forfeited to the governmental agency prosecuting the case. CAL. PENAL CODE § 236.11(a) (West 2016). However, no property that is owned by a bona fide purchaser of value is forfeitable. *Id.* If an unknowing third party has an interest in property, and the amount due to them is less than the appraised value, the party can pay the governmental agency the difference and take possession of the property. *Id.* § 236.11(b). If the third party does not wish to take possession of the property, after the property is valued, the government shall reimburse the value of the party's lost interest. *Id.* If the party with an interest less the property's value does not take possession, the property shall be sold at auction. *Id.* § 236.11(c). However, a county may dispose of real property the way set forth in California Government Code section 25538.5. *Id.* § 236.11(d).

forfeiture¹⁶⁸ and removing the RICO “pattern” requirement,¹⁶⁹ the limited applicable scope¹⁷⁰ of these bills greatly limits the impact and effectiveness they will have on combating trafficking.

1. SB 1133 Will Aid the Fight Against Human Trafficking in California

Through the leadership of the California Attorney General, the Legislature came to understand it was time to make it easier for prosecutors to seize and forfeit property used to facilitate the sex trafficking of children.¹⁷¹ The Legislature had already permitted the forfeiture of any property interest acquired and all proceeds from the sex trafficking of minors.¹⁷² SB 1133 expanded the scope of forfeitable property to include certain instrumentalities substantially used to facilitate the sex trafficking of a minor.¹⁷³ This is a key component to comprehensive coverage because forfeiture of the instrumentalities used during the crime will critically reduce the perpetrator’s ability to commit additional trafficking offenses.¹⁷⁴ SB 1133 “aims to deprive convicted criminals of the financial resources and assets that would allow them to continue luring young people into the sex trade.”¹⁷⁵

¹⁶⁸ See CAL. PENAL CODE § 236.7(d)–(e) (West 2016) (limiting the types of real property and vehicles that are subject to forfeiture).

¹⁶⁹ See *S. Floor Analysis*, *supra* note 143, at 3.

¹⁷⁰ See CAL. PENAL CODE § 236.7(a) (West 2016) (stating that this statute only applies when a person is convicted of “human trafficking that involves a commercial sex act where the victim is an individual under the age of [eighteen]”).

¹⁷¹ *Appropriations Floor Analysis*, *supra* note 144.

¹⁷² CAL. PENAL CODE § 186.3 (West 1999). (provides what types of property interests are subject to forfeiture during the commission of a criminal profiteering activity). Human trafficking is a criminal profiteering activity. CAL. PENAL CODE § 186.2(a)(28) (West Supp. 2012).

¹⁷³ *S. Floor Analysis*, *supra* note 143, at 10.

¹⁷⁴ *Id.*

¹⁷⁵ *Bill Passes to Combat Human Trafficking*, *supra* note 146.

SB 1133 also aids the fight against sex trafficking of minors by removing the critical requirement of “patterned” activity.¹⁷⁶ Under the RICO statute, a pattern of criminal profiteering was required,¹⁷⁷ and if the prosecutor could not establish such pattern, “relatively little money or property would be forfeited as the proceeds or profits of human trafficking.”¹⁷⁸ Additionally, SB 1133 makes it easier to increase the amount of proceeds available from forfeiture because the instrumentalities of the sex trafficking of minors are forfeitable “even where the prosecutor cannot trace a defendant’s assets to trafficking profits.”¹⁷⁹

SB 1133 will not simply increase the types of forfeitable property used to facilitate the sex trafficking of children.¹⁸⁰ By providing half of the proceeds from forfeited instrumentalities of the sex trafficking of minors to victim-oriented, community-based organizations,¹⁸¹ SB 1133 proponents believe that more victims will report crimes¹⁸² and greater services will be provided.¹⁸³ A major hurdle to combating trafficking and providing victims the help they need is cultivating an environment where victims feel secure enough to help law enforcement by consistently reporting the crime.¹⁸⁴ The Legislature attempted to address this issue.¹⁸⁵

Previous forfeiture laws provided funding for victim services by earmarking proceeds of the sex trafficking of minors to be

¹⁷⁶ CAL. PENAL CODE § 236.7(g) (West 2015)

¹⁷⁷ CAL. PENAL CODE. § 186.5(d) (West 1999 & Supp. 2012).

¹⁷⁸ *S. Floor Analysis*, *supra* note 143, at 10.

¹⁷⁹ *Id.*

¹⁸⁰ *See* CAL. PENAL CODE § 236.7(a) (West 2016) (allowing the forfeiture of specific types of property substantially used in facilitating the human trafficking of a minor that involves a commercial sex act).

¹⁸¹ *See id.* at § 236.12(c)(2) (stating that fifty percent of the proceeds from the sale of forfeited property shall go to community-based organizations that aid victims of human trafficking).

¹⁸² *State of Human Trafficking in California*, *supra* note 23; *see also* HUMAN Trafficking in California Final Report, *supra* note 23 at 45.

¹⁸³ *Id.*

¹⁸⁴ *Human Trafficking in California Final Report*, *supra* note 23, at 44.

¹⁸⁵ *See* CAL. PENAL CODE § 186.8(f) (West 1999 & Supp. 2012) (providing funding for the Victim-Witness Assistance Fund).

entirely distributed to the Victim-Witness Assistance Fund.¹⁸⁶ Specifically, fifty percent of the proceeds had to be given to community-based organizations that aid minor victims of human trafficking.¹⁸⁷ However, victims would only receive aid from the Victim-Witness Assistance Fund-funded service providers post-trafficking conviction.¹⁸⁸ Unfortunately, “investigating and prosecuting human trafficking cases are costly”¹⁸⁹ and under previous sentencing structures may have been diverted to alternate penal code sections that were more advantageous. SB 1133 altered the distribution of the forfeited proceeds,¹⁹⁰ providing financial relief by distributing fifty percent of proceeds from the sale of forfeited property to that governmental agency’s general fund.¹⁹¹

Even though the amount of funds per conviction distributed to the Victim-Witness Assistance Fund appears to be cut in half, there will likely be a net increase in overall revenue to the Fund¹⁹² due to the increase of forfeitable property – e.g., the instrumentalities

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *See Id.* at § 186.3 (“[I]n any case in which a person is alleged to have been engaged in a pattern of criminal profiteering activity, upon a conviction of the underlying offense, the assets listed in subdivisions (b) and (c) shall be subject to forfeiture upon proof of the provisions of subdivision (d) of Section 186.5.”); *see also* CAL. PENAL CODE § 236.7(a) (West 2016) (stating that certain property interests may be seized and forfeited “upon the conviction of a person guilty of human trafficking that involves a commercial sex act where the victim is an individual under 18 years of age, pursuant to Section 236.1).

¹⁸⁹ *S. Floor Analysis, supra* note 143, at 10.

¹⁹⁰ *Compare* CAL. PENAL CODE § 236.12(c)(1)–(2) (stating that fifty percent of the proceeds from the sale of forfeited property shall go to the local or state prosecuting agency and fifty percent shall be allotted to community-based organizations that aid victims of human trafficking), *with* CAL. PENAL CODE § 186.8(f) (West 2012) (“[I]n any case involving human trafficking of minors for purposes of prostitution . . . the proceeds shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs under Section 13837. Fifty percent of the funds deposited in the Victim-Witness Assistance Fund pursuant to this subdivision shall be granted to community-based organizations that serve minor victims of human trafficking.”).

¹⁹¹ *S. Floor Analysis, supra* note 143, at 10.

¹⁹² APPROPRIATIONS FLOOR ANALYSIS, *supra* note 144 at 3.

of the crime in addition to the proceeds from the crime.¹⁹³ As fifty percent of the proceeds forfeited are deposited into the general fund of the governmental entity prosecuting the case,¹⁹⁴ there is a clear incentive to investigate and prosecute more human trafficking cases.¹⁹⁵ By sharing the proceeds, the hope is that local law enforcement will continue to establish, fund or expand human trafficking task forces, generating more cases to be investigated and prosecuted.¹⁹⁶

2. Limited Scope of SB 1133

The scope of forfeitable instrumentalities in SB 1133 is, however, limited.¹⁹⁷ Real property is not subject to forfeiture if it is used as a family residence, is owned by two or more persons and at least one of those persons did not know, or have reason to know about the illegal use, or if the real property is being used for other lawful purposes.¹⁹⁸ This limitation exists even if the real property is substantially used to facilitate the sex trafficking of a minor.¹⁹⁹ While an expansive application of asset forfeiture laws could have a crippling effect on the entire practice of human trafficking,²⁰⁰ SB

¹⁹³ *Id.*

¹⁹⁴ CAL. PENAL CODE § 236.12(c)(1) (West 2016).

¹⁹⁵ *S. Floor Analysis*, *supra* note 143, at 10–11 (stating that part of the justification to allowing for distribution of forfeiture proceeds to government entities is to help the investigation and prosecution of cases).

¹⁹⁶ *State of Human Trafficking in California*, *supra* note 23; *Human Trafficking in California Final Report*, *supra* note 23 at 47 (stating that a major barrier to the successful investigation and prosecution of human trafficking is a lack of funding).

¹⁹⁷ See CAL. PENAL CODE § 236.7(d)–(e) (West 2016) (limiting the types of real property and vehicles that are subject to forfeiture).

¹⁹⁸ CAL. PENAL CODE § 236.7(d) (Persons holding a valid lien, mortgage, or security interest in the property are entitled to a hearing to protect their equity in the property.). See CAL. PENAL CODE § 196.7(b).

¹⁹⁹ CAL. PENAL CODE § 236.7(d) (Persons holding a valid lien, mortgage, or security interest in the property are entitled to a hearing to protect their equity in the property.). See CAL. PENAL CODE § 196.7(b).

²⁰⁰ *Bills to Combat Human Trafficking*, *supra* note 139.

1133 applies *only* to the sex trafficking of minors.²⁰¹ Human trafficking involves all forms of forced labor, such as “domestic servitude, agriculture, manufacturing, janitorial services, [and] hotel services.”²⁰² SB 1133 fails to cover these alternate forms of exploitation. By focusing on a small but politically enticing segment of trafficking, significant amounts of ill-gotten and misused property will escape forfeiture, failing to fully achieve the behavior modification described above.²⁰³

V. The Crime of Trafficking in Persons Should Be Subject to California's Civil Asset Forfeiture Liability

Understanding its role as a major market destination for traffickers,²⁰⁴ the State of California maintains a track record of continually updating their criminal and civil codes, building in flexibilities, which help confront trafficking within its borders.²⁰⁵ In an October 2007 report titled, *Human Trafficking in California: Final Report of the California Alliance to Combat Trafficking and Slavery Task Force*, a California panel cited the hurdle funding posed to the detection/prosecution of traffickers and availability of victim services.²⁰⁶ One of its specific recommendations was, “The legislature should identify potential funding sources (i.e. *asset*

²⁰¹ See CAL. PENAL CODE § 236.7(a) (West 2016) (stating that this statute only applies when a person is convicted of “human trafficking that involves a commercial sex act where the victim is an individual under the age of [eighteen]”).

²⁰² Alison Siskin & Liana Sun Wyler, *Trafficking in Persons: U.S. Policy and Issues for Congress*, CONGRESSIONAL RESEARCH SERVICE (Feb. 19, 2013), at 20, <https://fas.org/sgp/crs/row/RL34317.pdf>.

²⁰³ CAL. PENAL CODE § 236.7(d)–(e) (enacted by Chapter 514) (limiting the types of real property and vehicles that are subject to forfeiture).

²⁰⁴ DAVID TULLER, ET AL., *FREEDOM DENIED: FORCED LABOR IN CALIFORNIA* 6, (2005),

<http://escholarship.org/uc/item/1q46h64w>. (last visited Sept. 9, 2011).

²⁰⁵ Benjamin T. Greer, *What is the Monetary Value of Slave Labor?: Restitution Based on a Traditional Fair Market Value Valuation Basis may not Fully Compensate Human Labor Trafficking Victims*, 31 N. ILL. U. L. REV. 553 (2011).

²⁰⁶ *Human Trafficking in California Final Report*, *supra* note 23, at 5-6, 9.

forfeiture funds, fines and penalties, assessments, the general fund, etc.) for non-governmental victim service organizations to provide legal and social services for human trafficking victims.”²⁰⁷ California’s civil asset forfeiture law was passed in 1994 and has been used tens of thousands of times to fight the sale of illicit drugs. This code section should be updated and expanded to help the fight against trafficking.

Economic penalties associated with human trafficking must rise to the level where they outweigh the potential benefits of the crime.²⁰⁸ As compared to trafficking in narcotics, human trafficking is less of an economic risk to the criminal enterprise. Whether it is transportation and sale of another to make money, or the purchase and enslavement of another to save money – the motivating force is monetary, as should the focus of the state’s response be.

By revising the civil asset forfeiture code to include Penal Code 236.1 (Human Trafficking), it would provide two significant key effects on its practice in California; first is deterrence. Applying civil forfeiture to trafficking crimes would provide a clear and unambiguous message to criminals – California will not tolerate any form of trafficking within its jurisdictional reach and the state will affirmatively and proactively go after the tools of your trade. Second, forfeited proceeds could be a dedicated and become a reliable revenue source to help fund local law enforcement’s efforts against trafficking as well as helping to fund victims services state-wide. With state and local budgets increasingly under pressure, additional sources of revenue will help mitigate cuts and continue to ensure that there are well trained and professional officers continuing to help combat this crime.²⁰⁹

²⁰⁷ *Id.* at 6 (emphasis added).

²⁰⁸ Siddharth Kara, *Twenty-First-Century Slaves: Combating Global Sex Trafficking*, 2 SOLUTIONS J. 27, 27-30 (2011), available at <http://thesolutionsjournal.org/node/896> (calling for a “significantly increase of the financial penalties associated with sex-slave crimes, including asset forfeiture and victim compensation”).

²⁰⁹ CAL. HEALTH & SAFETY CODE § 11469(b) (West 2016) (stating “No prosecutor’s or sworn law enforcement officer’s employment or salary shall be made to depend upon the level of seizures or forfeitures he or she achieves.”)

A. Asset Forfeiture is a Multi-Faceted Tool that Effectively Reduces the Supply Side and the Demand Side of the Human Trafficking Transaction

It is naïve to think of those who would enslave and traffic another as irrational actors. Unfortunately, these individuals are not much different than most lawful businesses; they are rational economic agents, with highly sophisticated business models and will scrutinize the current business climate to maximize their profits.²¹⁰ The International Labor Organization (ILO) has ranked human trafficking as the third largest criminal industry in the world generating in estimates of \$32 billion per year; commercial sexual exploitation accounting for approximately \$7 billion.²¹¹ The United States government projected that somewhere between 18,000 to 20,000 victims are trafficked into the states each year, and it is estimated that there are between 30,000-50,000 sex slaves in captivity in the U.S.²¹² A law designed to have a deterrent effect must not only focus on deterring the individual, but must also be designed in such a way that it provides flexibility to deter and restrain the marketplace as a whole.²¹³

A deterrence-based approach could be divided into two broad categories: special deterrence (“a goal of a specific conviction and sentence *to dissuade the offender* from committing crimes in the future”)²¹⁴ or general deterrence (“a goal ... or a specific conviction

²¹⁰ *TIP Report*, *supra* note 18; *see also* Kara, *supra* note 208, at 27.

²¹¹ Marisa Nack, *The Next Step: The Future of New York State's Human Trafficking Law*, 18 J. L. & POL'Y 817, 822 (2010).

²¹² *See Assessment of U.S. Activities to Combat Trafficking Persons*, U.S. DEPARTMENT OF STATE (2003), <http://www.state.gov/documents/organization/23598.pdf>; *see* Peter Landesman, *The Girls Next Door*, N.Y. TIMES (Jan. 25, 2004), <http://www.nytimes.com/2004/01/25/magazine/the-girls-next-door.html>.

²¹³ Amanda Walker-Rodriguez, *The Crime Next Door: An Examination of the Sex Trafficking Epidemic in the United States and How Maryland is Addressing the Problem*, 41 U. BALT. L.F. 43 (2010) (commenting on the symbiotic nature of supply and demand side economics).

²¹⁴ *Special deterrence*, BLACK'S LAW DICTIONARY (9th ed. 2009).

... to discourage people from committing crimes”).²¹⁵ While the effectiveness of each form is a point of intense debate, it is a generally accepted axiom people decide whether to commit economic based crime by balancing the potential benefits gained against the potential costs (both penal and monetarily) of engaging in a given activity.²¹⁶ When traffickers encounter few barriers to a specific market or they see profits made by competing traffickers, they are likely to increase their activity to capture greater market share.²¹⁷ Because “the threat of punishment is clearly not enough”²¹⁸ to deter trafficking, effective legislative and law enforcement measures ought to include impactful and effective civil redress.

The primary focus of any business, legal or illegal, is profit margins. One of the best ways to affect the supply side of the trafficking market is to make the proposition more costly.²¹⁹ The demand for cheap labor and prostitution, coupled with an accessible supply of victims, helps drive the human trafficking trade.²²⁰ In order to have an effect on the demand side the crime must be made economically untenable, setting the potential cost so high that it would *significantly* outweigh any potential gain. It is imperative that there is a shock component associated in their risk/benefit

²¹⁵ *General deterrence*, BLACK’S LAW DICTIONARY (9th ed. 2009).

²¹⁶ Gary Becker, *The Economics of Crime*, FALL 1995 CROSS SECTIONS, 8–15 (1995); WAYNE R. LAFAVE, CRIMINAL LAW: HORNBOOK SERIES 1, 393 (5th ed. 2003) (addressing the deterrence theory of punishment).

²¹⁷ Elizabeth M. Wheaton et al., *Economics of Human Trafficking*, 48 INT’L MIGRATION 114, 118 (2010).

²¹⁸ Dagmar Oberlies, *The Role and Limitations of National Legislation Against Trafficking in Human Beings*, FRIEDRICH-EBERT-STIFTUNG (Sept. 22-23, 2003), at 5, <http://www.fes-korea.org/media/publications/Achives/Menschenhandel-2003.pdf> (last visited Apr. 11, 2017) (suggesting that governments should not only confiscate illegal profits, but should also aggressively target other traffickers’ assets).

²¹⁹ Kara, *supra* note 208.

²²⁰ *See generally* CAPTIVE DAUGHTERS, INT’L HUM. RTS L. INST. & DE PAUL U.C.L., DEMAND DYNAMICS: THE FORCES OF DEMAND IN GLOBAL SEX TRAFFICKING [CONFERENCE REPORT] (Morrison Torrey & Sara Dubin eds., 2003), http://www.law.depaul.edu/centers_institutes/ihrli/downloads/demand_dynamics.pdf [hereinafter *DEMAND DYNAMICS*].

analysis.²²¹ If the potential cost is too closely measured to the potential gain, a perpetrator's first reaction is to look for inventive ways to increase the asking price for the commodity or decrease structural and business overhead costs to offset potential liability. A trafficker can respond to a quantifiable increase in criminal or civil monetary fine by passing that cost on to the consumer, increasing the price charged. This is only plausible when an increase in price would not price the commodity out of the market. As prices increase, the demand, especially from the lower-end consumer, is likely to decrease.²²²

1. Supply Side Effect

Applying civil asset forfeiture to cases of human trafficking would give law enforcement a uniquely flexible tool to dismantle the underpinnings and disrupt these businesses. It inherently contains three characteristics traffickers would find difficult to quantify, and would frustrate the traffickers' attempts to pass on the increased cost.

First, the liability amount is non-preset. A properly designed forfeiture law would not give a designated or pre-formulated amount of liability; it would create liability for the entirety of the action. This would include not only the money received but all of the materials used to complete the crime. Thus any creative methods of transport a perpetrator may employ to avoid law enforcement or cost cutting measures by exploiting available technology would not necessarily reduce their potential asset liability.²²³ Currently Penal

²²¹ Siddharth Kara, *Designing More Effective Laws Against Human Trafficking*, 9 NW. J. INT'L HUM RTS., 123 (2011).

²²² United States v. Bagley (Indictment), No. 10-00244 (W.D. Mo. 2010) [hereinafter *Indictment*].

²²³ Each trafficker's method used to bring his or her victims to market are often unique and extremely convoluted and complex. These networks typically contain the perpetrators including recruiters, document forgers, transporters, safe house managers, knowing employers, pimps, and purchasers; as well as noncriminal businesses such as hotel and motel owners, bars, clubs, restaurant and magazine owners. These employers may be unaware of their role in trafficking,

Code Section 502.01, applicable to computer forfeitures, does not include human trafficking as a predicate.²²⁴ A trafficker may alter their methods of transporting victims from one location to another. Each instance is likely to have a very different potential maximum liability. This fluctuation in liability makes it very hard to calculate and in-turn pass on to the consumer, leaving the trafficker to price too high (pricing out customers) or price too low (reducing their profits). Also, if applied aggressively, the potential to forfeit tools used in the trafficking process not only implicates the cost of replacement, but creates a lag time factor to replace the infrastructure, tools, lost income and the reduction of future victims while rebuilding. All of these variables will fluctuate and are exponentially difficult for the trafficker to quantify.

Second, the potential increase cost of transportation infrastructure and other tool replacement would likely be of such a great expense, any attempt to pass that level of cost on to the consumer is likely to have significant downward pressure on the economic viability of their business. All commodities have a price at which they are no longer worth purchasing. A key factor driving modern day slavery is the enormous profit margins traffickers are able to extract. Historically assessed, the acquisition price of a slave today has significantly decreased, while the monetary value traffickers are able to collect from the end consumer has never been higher.

Whereas old-world slaves could be purchased for a global weighted average of \$12,000 or more in today's dollars and generated roughly 15 percent to 20 percent in annual return on investment, today's slaves sell for a global weighted average of \$400

but fail to act diligently because they have much to gain financially from the low cost labor and will likely suffer a very low risk of prosecution.

²²⁴ CAL. PENAL CODE § 502.01 lists numerous offenses which is a computer was used in the facilitation of the crime is subject to forfeiture. The criminal offenses include: Child Molestation (PENAL CODE §§ 288; 288.2); Indecent Exposure (PENAL CODE §§ 311.1; 311.2; 311.3; 311.4; 311.5; 311.10; 311.11); Criminal Threat (PENAL CODE §422); Fraud and Theft (PENAL CODE §§ 470; 470a; 472; 475; 476; 480; 483.5; 484g; 484e(a), (b), (d); 484f(a); 484i(b), (c)); and Computer Fraud (PENAL CODE §§ 502(c); 502.7; 502.8; 529; 529a; 530.5; 537e; 593d; 593e; 646.9).

and can generate anywhere from 200 percent to 500 percent or more in annual return on investment.²²⁵

Any method, which increases business related costs to the trafficker, will increase their asking price having the positive affect of reducing the number of trafficked victims in the market place. The added cost also would have an effect on the pool of potential traffickers. The higher the initial or ongoing investment, the fewer individuals will see it as a profitable enterprise.

Third, the cost of infrastructure and tool replacement for trafficking is likely to exceed what a legislature would find statutorily appropriate for a fine. While policy makers may be hesitant to enumerate large statutory fines, a broadly crafted forfeiture statute could reap millions of dollars annually. Where a \$3,000,000 statutory fine may not be politically palatable, forfeiture of a \$3 million home used as a front for a human trafficking brothel may be. While in the perpetration of a crime, an individual has voluntarily placed into jeopardy his assets and has placed its legitimate function in question, along with his property rights.²²⁶

2. Demand Side Effect

As governments continue to develop a nuanced understanding of trafficking, its character and causes, they are refining their approach to eradicate it. Up until 2007, the United Kingdom's (UK) plan of action against trafficking was centrally

²²⁵ *United States v. Bagley (Indictment)*, *supra* note 222.

²²⁶ See *Alexander v. United States*, 509 U.S. 544 (1993), rehearing denied, 510 U.S. 909; *Austin v. United States*, 509 U.S. 602 (1993) (The Eighth Amendment prohibition against excessive fines applies to both criminal and civil forfeitures. However, the United States Supreme Court did not establish a standard against which excessiveness was to be tested. In *United States v. Bajakajian*, the Supreme Court held that criminal forfeiture was unconstitutional is it violates the "gross disproportionality" test – where the court compared the amount of the forfeiture versus the gravity of the defendant's offense.).

focused on the supply side of the market.²²⁷ The UK is moving towards strategies tackling the demand side of the transactional equation, stating that a “more sophisticated approach and understanding of the demand factors” is needed.²²⁸ Enforcement tools that effectively address both sides of the market transaction, both supply and demand, are a rarity.²²⁹ Civil forfeiture is constructed in such a way that if applied judiciously and with a laser focus on the trade of humans, could have an enormous detrimental effect on the international slave trade.

a. The Additional Revenue Created From Asset Forfeitures Would Help Support the Victim-Centered Holistic Approach

Human trafficking generates an enormous amount of revenue. It is estimated that global profits from forced labor alone amounts to “\$44.3 billion every year, of which \$31.6 billion stem from trafficked victims. The largest profits – more than \$15 billion – are made from people trafficked and forced to work in industrialized countries.”²³⁰ Combating human trafficking is expensive and time-consuming. Trafficking in people has become a cheap and renewable form of revenue for all levels of criminal organizations, from drug cartels and organized crime to the local pimp on the street.

Tracking and infiltrating trafficking syndicates takes enormous law enforcement manpower and resources. Federal resources alone cannot keep up with the increased volume of human

²²⁷ *UK Action Plan on Tackling Human Trafficking*, U.N. GIFT (2009), http://www.ungift.org/doc/knowledgehub/resource-centre/Governments/Update_to_the_UK_Action_Plan_on_Tackling_Human_Trafficking_en_2009.pdf.

²²⁸ *Id.*

²²⁹ *TIP Report*, *supra* note 18, at 19, (calling for anti-trafficking actors to combat modern slavery from the demand side rather than focusing on arrests and prosecutions (the supply side) alone).

²³⁰ Patrick Belser, *Forced Labor and Human Trafficking: Estimating the Profits* (Working Paper No. 42), Declaration on Fundamental Principles and Rights at Work, ILO (2005), <http://digitalcommons.ilr.cornell.edu/forcedlabor/17/>.

trafficking cases.²³¹ It is imperative that states implement multifaceted approaches in funding and fighting trafficking.²³² An aggressive state forfeiture statute would help agencies target crime and maintain task force funding levels allowing them to continue to be effective and possibly become monetarily self-sufficient.

Asset forfeiture is a solution to one piece of the larger anti-trafficking puzzle. Designed to weaken the economic foundations of the illicit drug trade, asset forfeiture laws permit for the seizure (and potential forfeiture) of property connected with criminal action. After being forfeited the property is sold at auction with the proceeds being disbursed by statute.²³³ Though it is an essential and primarily an enforcement tool, asset forfeiture can potentially provide budget relief by helping to offset the expense of fighting the correlated crime. The additional revenue can help backstop and bolster departmental human trafficking task force budgets during periods of fiscal contraction. Forfeiture has the innate and unique ability to generate a significant and sustainable revenue source.²³⁴

Law enforcement agencies, state and local, are facing the monumental task of continuing programs that have been financially decimated. Administrators have been forced to develop creative budgeting strategies, such as seeking federal grants and partnering with community foundations have helped to slow program contraction. Specifically anti-drug and anti-gang task forces have been significantly reduced in size or eliminated.²³⁵ The 2012 California budget included a general fund reduction which reduced

²³¹ ABA CTR. FOR HUMAN RIGHTS, UNIFORM LAW COMMISSION PROJECT PROPOSAL: UNIFORM HUMAN TRAFFICKING LAW 2 (2010), *available at* [http://www.uniformlaws.org/shared/docs/Human%20Trafficking/PRHT_Final%20Report%20v%20\(5\)_Jul10.pdf](http://www.uniformlaws.org/shared/docs/Human%20Trafficking/PRHT_Final%20Report%20v%20(5)_Jul10.pdf).

²³² *Id.*

²³³ CAL. HEALTH & SAFETY CODE § 11469(g) (West 2015); CAL. PENAL CODE § 186.7(c) (West 2015).

²³⁴ *See Publications, supra* note 6.

²³⁵ *California Law Enforcement Leaders Decry Public Safety Cuts in Proposed Budget*, CALIFORNIA ATTORNEY GENERAL OFFICE (Jun. 28, 2011), http://oag.ca.gov/news/press_release?id=2525&p=3&y=2011. *See also Budget Accord Hits Courts and Law Enforcement Hard*, *California Bar Journal* (Jun. 2011), <http://www.calbarjournal.com/July2011/TopHeadlines/TH6.aspx>.

the budget of the Division of Law Enforcement by \$71 million.²³⁶ According to the California Attorney General, “This could lead to the loss of several hundred special agents and other personnel, the dissolution of 55 statewide task forces – many of which coordinate responses to transnational gang and drug crime.... As a result, two entire law enforcement bureaus could be shut down, the Bureau of Investigations and Intelligence (BII) and the Bureau of Narcotic Enforcement (BNE).”²³⁷ Because human trafficking is often another revenue source for drug cartels funding²³⁸ or department cuts in drug task force would have an effect on trafficking prosecutions. The City of Irvine Police Chief and President of the California Police Chiefs’ Association, Dave Maggard, has been quoted as saying,

There were strong imperatives that ... exis[t] today ... for the restoration of the BNE (Bureau of Narcotic Enforcement) and still exist today for restoration of the BNE task forces: the Mexican drug cartels are steadily moving their operations into California; ... the Sinaloa Cartel is becoming firmly entrenched in California; FBI sources with whom we have spoken believe that a majority of the 200 reported abductions in California are attributable to Mexican drug cartels enforcing their business arrangements; and prosecutors are noting a disturbing diversification of the cartels where they are also engaged in human sex trafficking, as well as their more "traditional" methamphetamine trafficking. Local law enforcement relies on the ability of the BNE task force to combat the increasingly sophisticated crime families involved in drug trafficking and in human trafficking.²³⁹

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ See generally *State of Human Trafficking in California*, *supra* note 23; *Human Trafficking in California Final Report*, *supra* note 23.

²³⁹ *Id.*

In the City of San Jose alone, its 2011-2012 budget, “restructures and reduces the Special Investigations Unit, which includes ... the Human Trafficking Task Force,” eliminating 5 positions and assumes an ongoing reduction of \$862,000.²⁴⁰

Victim advocacy groups are working feverishly to draw attention to funding in the continued fight against trafficking, urging local law enforcement to adequately fund anti-trafficking task forces.²⁴¹

b. Practical Application of Civil Forfeiture to Human Trafficking Cases

There have been numerous cases where civil forfeiture could have been applied if such a statute would have been previously enacted. One of the more stark examples would be the case of *United States v. Bagley, et al.*²⁴² The following case will demonstrate how a comprehensive asset forfeiture statute could be applied to multiple forms of property used by traffickers in the subjugation of others. While the following case is explicit, it is not gratuitous. The facts included in this case summary are necessary to better understand the tools and instrumentalities traffickers use to advance their crime by coercing their victims and why these items should be confiscated from the trafficker by the state.

In 2011, six people were indicted by the State of Missouri and charged with sex trafficking. According to this superseding

²⁴⁰ *Proposed Budget Summary 2011-2012*, CITY OF SAN JOSE <http://www.sanjoseca.gov/budget/FY1112/03ProposedOperating/00.2011-2012ProposedBudgetSummary5-3-11.pdf> (last visited Sept. 19, 2011).

²⁴¹ Kristin R. Lauterbach, *Stop LAPD from Closing Human Trafficking & Prostitution Unit Due to Budget Cuts!*, CHANGE.ORG, <http://www.change.org/petitions/stop-lapd-from-closing-human-trafficking-prostitution-unit-due-to-budget-cuts> (last visited Sept. 19, 2011).

²⁴² This case has not been fully adjudicated, thus the facts are still open to debate, however the author believes they are likely to be true in light of the fact that co-defendants have plead guilty to many of the common facts. The intent and function of this fact pattern is to demonstrate the type and kind of mental and physical trauma sexually exploited trafficking victims may be exposed to.

indictment, the following events took place.²⁴³ Edward Bagley, Sr. (online moniker “Master Ed”), his wife Marilyn Bagley, Michael Stokes (online moniker “The Rodent”), Bradley Cook (online moniker “PutHer2GoodUse”), James Noel, and Dennis Henry lured a 16-year-old mentally handicapped girl (“F.V.”) to their home.²⁴⁴ F.V. was a runaway and had been homeless since 2002.²⁴⁵ The defendants promised to give her a “great life,” including helping her become a model and dancer.²⁴⁶

Reality was much different.²⁴⁷ Bagley regularly gave F.V. marijuana and ecstasy, showed her images of pornography and sadomasochistic activities, and sexually abused her.²⁴⁸ Bagley was not as interested in the “role play” aspect of bondage, dominance and sadomasochism, as he was focused on the “objectification” and “humiliation” of F.V.²⁴⁹ After F.V. turned eighteen years old, Bagley forced her to sign an illegal “sex slave contract” claiming it legally bound her to him as his slave for the rest of her life.²⁵⁰ When she became pregnant, Bagley personally aborted several pregnancies.²⁵¹

The Bagleys forced F.V. to work as a stripper and engaged in sexual intercourse and torture activities with her in order to groom and coerce her into becoming a sex slave.²⁵² Edward Bagley used every torture method imaginable including “waterboarding.”²⁵³ He beat, whipped, flogged, suffocated, choked, electrocuted, caned, skewered, mutilated, hung and caged F.V. in order to maintain her role as his sex slave.²⁵⁴ Bagley had F.V. tattooed to mark her as his

²⁴³ *Indictment*, *supra* note 222, at 1.

²⁴⁴ *Id.* at 8.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 9.

²⁴⁸ *Id.*

²⁴⁹ See also Plea Agreement, *United States v. Michael Stokes*, No. 10–00244–04 (W.D. Mo. 2010) [hereinafter *Plea Agreement*].

²⁵⁰ *Indictment*, *supra* note 222, at 9.

²⁵¹ *Id.* at 14.

²⁵² *Id.* at 6.

²⁵³ *Id.* at 12.

²⁵⁴ *Id.* at 7.

property including a bar code on her neck, a tribal tattoo on her back and the Chinese symbol for “slave” on her ankle.²⁵⁵ After he had broken her will, Bagley advertised on-line that F.V. was his slave and could be sexually tortured by others during live on-line sessions or in person.²⁵⁶ Stokes and Cook participated as customers who paid Bagley to sexually abuse and torture F.V.²⁵⁷ Bagley also forced F.V. to work as a stripper and kept approximately \$112,000 from her work.²⁵⁸ In 2007, F.V. appeared on the cover of Hustler magazine's *Taboo*.²⁵⁹ Bagley's photo also appeared in the magazine, and he boasted in its pages that F.V. was his sex slave.²⁶⁰

Between February 2004 and February 2009, Bagley tortured F.V. on live web casts.²⁶¹ Stokes gave Bagley steaks, cigarettes, coats, clothing, lighters, and cash, and paid \$1,000 for Bagley to transport F.V. to California in December 2006 for a photo shoot in which F.V. performed various deviant sexual acts.²⁶² Stokes also paid Bagley \$300 for a torture session and gave him money to build a home-made device to sexually torture F.V.²⁶³ In 2009, Bagley almost went too far. He tortured F.V. so horribly that she had a heart attack, requiring hospitalization.²⁶⁴ Mr. Bagley's trial is still pending.

If the court in *Bagley* had applied an aggressive human trafficking civil forfeiture statute similar to Pennsylvania²⁶⁵ and had applied it similarly to that of the *Real Property Located at 25651 Minoa Dr. Mission Viejo, California* Court, the outcome could have been much more financially severe for Mr. Bagley. With this very brief summary, an argument can be made for forfeiture under almost each theory of property forfeiture.

²⁵⁵ *Id.* at 9.

²⁵⁶ *Id.* at 7.

²⁵⁷ See *Plea Agreement*, *supra* note 249, at 3.

²⁵⁸ *Indictment*, *supra* note 222, at 19.

²⁵⁹ *Id.* at 1.

²⁶⁰ See *Plea Agreement*, *supra* note 249, at 3.

²⁶¹ See *Indictment*, *supra* note 222, at 7, 19.

²⁶² *Id.* at 18; see also *Plea Agreement*, *supra* note 249, at 3.

²⁶³ *Id.*

²⁶⁴ *Indictment*, *supra* note 222, at 19.

²⁶⁵ 18 PA. CONS. STAT. § 3004 (2016).

First, under a contraband theory, all photos and videos taken of F.V. while she was under the age of 18 could be classified as child pornography and subject to confiscation. Second, under a theory of proceeds of criminal activity, all monies that can be reasonably understood as derived from F.V. could be confiscated. From this brief summary, this would include all monies collected from F.V.'s stripping (the stated \$112,000), plus the value of the steaks, cigarettes, coats, clothing, lighters and \$1,000 Stokes gave Bagley to send F.V. to California as well as the \$300 Stokes gave Bagley for the online torture session.

The third theory of property forfeiture is the category could be used most aggressively to dismantle Bagley's criminal enterprise. Under a theory of tools or instrumentalities used to facilitate criminal activity, following the logic and holding in *25651 Minoa*, much of Mr. Bagley's property would have been deemed "related to" the criminal act and with an application of Pennsylvania's civil forfeiture code, he would have had most, if not all of his personal and real property seized. The people would have been able to easily establish that Mr. Bagley effectively used his trailer home and property to isolate the victim in a wooded area, used more than ten firearms to intimidate and extract compliance from F.V., and utilized computers, cameras and other technology to produce and disseminate F.V.'s torture.

An aggressive application of the tools and instrumentalities theory would also be grounds to seek forfeiture of the pen used by F.V. to sign the illegal and false sex slave contract. Finally, depending on additional facts, a theory of nuisance could be an alternative and independent legal ground for the confiscation of the Bagley's home being reasonably connected to a criminal enterprise.

Since *United States v. Bagley* is still an active case, criminal restitution has not been set; however, most restitution statutes only provide victim recovery for the fair market value of services rendered,²⁶⁶ which will likely be significantly less than the application of a comprehensive forfeiture statute.

²⁶⁶ See generally Greer, *supra* note 205.

VI. Conclusion

Criminal law is a reflection of a society's values and morals. Individuals who engage in the exploitation of others have chosen to live outside of the societal morals. When fighting human trafficking, the goal should not be to slow the enterprise, but to eradicate it. One would hope that appealing to one's shame and humanity would be enough to stop trafficking. Unfortunately, slavery is a practice that has occurred since the beginning of recorded history. In order to significantly impede this trade, there is a need to make the penalties, criminal and civil, so severe that no person would want to risk having to pay the price. Slavery is a crime in most every nation.²⁶⁷ Yet, slavery exists in almost every nation.²⁶⁸ When combating human trafficking, the question is not "*Is it illegal?*" but rather, "*Are your laws designed to be effective?*" Effective deterrents focus on the root causes and motivations of the target offense. An effectively designed anti-trafficking statutory scheme should be judged by its flexibility to adapt to each form of trafficking and convey an effective level of deterrence so as to suitably punish the perpetrators and discourage societal outliers.

All U.S. federal, state, and local governing bodies should take a discerning look at trafficking's root motivations: money and power. With this basic fundamental understanding revisions to statutory policy should target these motivations. While increasing prison sentences and fines could prove to be beneficial in holding the end perpetrator accountable, it provides hollow victories when addressing the organized and systematic sale of humans. By aggressively dismantling the infrastructure criminal organizations build to traffic people, it materially hampers their current enterprise and hinders their continued growth. A comprehensive asset forfeiture structure would provide a quick and effective response, realizing a tangible decline in the trafficking in persons. Forfeiture is a tool that fissures

²⁶⁷ See generally *Trafficking in Persons Report 2016*, U.S. DEPARTMENT OF STATE, <https://www.state.gov/documents/organization/258876.pdf> (last visited Feb. 7, 2017).

²⁶⁸ *Id.*

the underpinnings of a criminal enterprise. It is rudimentary to require a trafficker to forfeit illicit monetary gains, but what about the tools used to extract those gains? With a multi-faceted approach, asset forfeiture could be successfully applied to disrupt both sides of the trafficking transaction.

An adequately designed civil asset forfeiture law will allow the State to advance its goal of elevating the costs and risks associated with the crime of human trafficking to a level that a contemplative perpetrator will consider untenable. California took the national lead in combating human trafficking. California now finds itself in catch-up mode – looking for creative enforcement ideas. As a recognized hub for human trafficking, California must continue to adopt aggressive anti-trafficking policies that not only focus on the supply side of trafficking, but should also work hard to find tools that address the demand side of the crime. Making traffickers answer to civil asset forfeiture laws would once again place California as a pioneer in the fight to stop involuntary servitude.