

HOUSE BILL REPORT

SHB 1292

As Passed Legislature

Title: An act relating to vacating prostitution convictions.

Brief Description: Vacating prostitution convictions.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Orwall, Goodman, Roberts, Appleton, Green, Hope, Kochmar, Moscoso, Jinkins, Upthegrove and Ryu).

Brief History:

Committee Activity:

Public Safety: 1/31/13, 2/7/13, 2/13/13 [DPS].

Floor Activity:

Passed House: 2/25/13, 91-1.

Passed House: 2/3/14, 94-1.

Senate Amended.

Passed Senate: 3/4/14, 49-0.

House Concurred.

Passed House: 3/10/14, 94-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Allows a victim of Trafficking, Promoting Prostitution in the first degree, or Commercial Sex Abuse of a Minor to vacate the record of a related prostitution conviction regardless of whether:
 - he or she has pending criminal charges for prostitution;
 - he or she has a subsequent conviction for prostitution; or
 - he or she has had the record of another prostitution conviction vacated.
- Establishes that a victim must demonstrate eligibility by a preponderance of the evidence.

HOUSE COMMITTEE ON PUBLIC SAFETY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Roberts, Vice Chair; Hayes, Assistant Ranking Minority Member; Appleton, Holy, Hope, Moscoso, Ross and Takko.

Minority Report: Do not pass. Signed by 1 member: Representative Klippert, Ranking Minority Member.

Staff: Sarah Koster (786-7303).

Background:

Vacation of Records.

A person convicted of Prostitution who committed the offense as the result of being a victim of Trafficking or Promoting Prostitution in the first degree may apply to the sentencing court for vacation of the record of conviction, except that the record cannot be cleared if: (1) there are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court; (2) the applicant has been convicted of a new crime in this state, another state, or federal court since the date of conviction; or (3) the applicant has ever had the record of another prostitution conviction vacated.

If the offender meets these tests, the court may clear the record of conviction by permitting the applicant to withdraw the applicant's plea of guilty and to enter a plea of not guilty; or, if the applicant has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.

Trafficking in the First and Second Degrees.

A person is guilty of Trafficking in the first degree when such person:

- recruits, harbors, transports, transfers, provides, obtains, or receives by any means another person knowing that force, fraud, or coercion will be used to cause the person to engage in forced labor, involuntary servitude, a sexually explicit act, or a commercial sex act; or
- benefits financially or by receiving anything of value from participation in a venture that has engaged in acts described above; and

the acts or venture:

- involve committing or attempting to commit kidnapping;
- involve a finding of sexual motivation;
- involve the illegal harvesting or sale of human organs; or
- result in a death.

Trafficking in the first degree is a class A felony.

A person is guilty of Trafficking in the second degree when such person:

- recruits, harbors, transports, transfers, provides, obtains, or receives by any means another person knowing that force, fraud, or coercion will be used to cause the person to engage in forced labor, involuntary servitude, a sexually explicit act, or a commercial sex act; or

- benefits financially or by receiving anything of value from participation in a venture that has engaged in the acts described above.

Trafficking in the second degree is a class A felony.

Promoting Prostitution in the First Degree.

A person is guilty of Promoting Prostitution in the first degree if he or she knowingly advances prostitution:

- by compelling a person by threat or force to engage in prostitution or profits from prostitution which results from such threat or force; or
- by compelling a person with a mental incapacity or developmental disability that renders the person incapable of consent to engage in prostitution or profits from prostitution that results from such compulsion.

Promoting Prostitution in the first degree is a class B felony.

Commercial Sexual Abuse of a Minor.

A person is guilty of Commercial Sexual Abuse of a Minor if:

- he or she pays a fee to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her;
- he or she pays or agrees to pay a fee to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or
- he or she solicits, offers, or requests to engage in sexual conduct with a minor in return for a fee.

Commercial Sexual Abuse of a Minor is a class B felony.

Summary of Substitute Bill:

A person convicted of Prostitution and who committed the offense as the result of being a victim of Trafficking, Promoting Prostitution in the first degree, or Commercial Sexual Abuse of a Minor may apply for a vacation of the criminal records and may have the record vacated regardless if he or she has had the record of another Prostitution conviction vacated, has pending criminal charges for Prostitution, or has had the record of another Prostitution conviction vacated.

The applicant must show by a preponderance of the evidence that the elements of the particular crime the applicant is alleged to be a victim of are met and that the particular prostitution record of conviction sought to be vacated resulted from those criminal acts.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) As to vacation of convictions, the women have to prove that they were victims of the highest order of trafficking. The Seattle Police Department has no doubt that these girls are victims and no qualms about allowing them to clear their records. This is talked about being a victimless crime, but that is untrue, this is very much a victim crime. It is modern slavery in the United States. Statistics show that 95 percent of prostitution is pimp-controlled and being compelled to commit crimes, not limited to prostitution, for their pimps is always part of that.

(Opposed) None.

Persons Testifying: Representative Orwall, prime sponsor; James Graddon, City of SeaTac Police Department; and Julie Snider, Genesis Project Seattle.

Persons Signed In To Testify But Not Testifying: None.