

HOUSE BILL REPORT

ESSB 5669

As Passed House:
April 16, 2013

Title: An act relating to trafficking.

Brief Description: Concerning trafficking.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Padden, Kohl-Welles, Smith, Hargrove, Pearson, Darneille, Bailey, Nelson, Becker, Benton, Brown, Baumgartner, Conway, Roach and Holmquist Newbry).

Brief History:

Committee Activity:

Public Safety: 3/12/13, 4/2/13 [DP].

Floor Activity:

Passed House: 4/16/13, 96-0.

Brief Summary of Engrossed Substitute Bill

- Expands the definition of Trafficking to:
 - include acting with reckless disregard, as opposed to knowledge, that a person will be forced into labor or a sex act; and
 - include trafficking of a minor, even if force, fraud, or coercion is not shown.
- Increases the additional fee related to a prosecution for Trafficking from \$3,000 to \$10,000.
- Increases the age of a child allowed to testify out-of-court from 10 to 14 and allows out-of-court testimony describing Trafficking or an offense related to the sexual exploitation of a minor.
- Clarifies that consent of a minor is not a defense to Commercial Sexual Abuse of a Minor; Promoting Commercial Sexual Abuse of a Minor; Promoting Travel for Commercial Sexual Abuse of a Minor; Permitting Commercial Sexual Abuse of a Minor; or Trafficking (if the victim is under age 18).
- Includes Trafficking, Promoting Travel for Commercial Sexual Abuse of a Minor, and Permitting Commercial Sexual Abuse of a Minor as criminal profiteering offenses.

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.

- Includes a parental conviction for Trafficking or Promoting Commercial Sexual Abuse of a Minor as an aggravating circumstance for a petition to terminate a parent-child relationship, if the victim is the child, the other parent, or another child.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass. Signed by 10 members: Representatives Goodman, Chair; Roberts, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Holy, Moscoso, Pettigrew, Ross and Takko.

Staff: Sarah Koster (786-7303).

Background:

Communication with a Minor for Immoral Purposes.

Communication with a Minor for Immoral Purposes is a gross misdemeanor. However, it is a class C felony if the person had previously been convicted of Communication with a Minor for Immoral Purposes or of a felony sex offense or if the offense is committed by the sending of an electronic communication.

Trafficking.

A person commits the offense of Trafficking if he or she recruits, harbors, transports, transfers, provides, obtains, or receives 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.

The offenses of Trafficking in the first or second degree require knowledge 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.

An additional fee of \$3,000 will be assessed against a person who is either convicted or given a deferred sentence or prosecution or who has entered into a diversion agreement as the result of an arrest for a violation of a trafficking crime.

Consent as a Defense to Certain Sex Offenses Against a Minor.

The possible use of consent of the minor as a defense is not currently addressed for the crimes of Commercial Sexual Abuse of a Minor, Promoting Commercial Sexual Abuse of a Minor, Promoting Travel for the Commercial Sexual Abuse of a Minor, Permitting Commercial Sexual Abuse of a Minor, or Trafficking in the first and second degree.

Evidence of Victim's Past Sexual History.

In a prosecution for the crime of Rape, evidence of a victim's past sexual behavior is inadmissible to attack the credibility of the victim. Such evidence is admissible on the issue of consent if certain procedures are followed.

Out-of-Courtroom Testimony.

Defendants in criminal trials have a federal and state constitutional right to confront their accusers. However, courts have held that some considerations of public policy can limit the right to confrontation. A child under the age of 10 may testify outside the presence of the defendant and jury via closed-circuit television if the testimony will describe an act of physical abuse or sexual contact against the child witness or another child, or describe a violent offense against or by someone known by the child.

Criminal Profiteering Act.

The state Criminal Profiteering Act (Act) provides civil penalties and remedies for a variety of criminal activities. "Profiteering" is defined to include the commission, or attempted commission, for financial gain, of any one of a number of crimes, including child selling or buying, sexual exploitation of children, and promoting prostitution. The Act provides that a pattern of Criminal Profiteering activity means engaging in at least three acts of Criminal Profiteering within a five-year period. An injured person, the Attorney General, or the county prosecuting attorney may file an action to prevent or restrain a pattern of Criminal Profiteering and recover up to three times actual damages as well as the costs of suit. A civil penalty of up to \$200,000 may also be awarded.

Each of the following may be subject to forfeiture as such:

- property used to commit the offenses;
- property acquired or maintained by profits from the offenses;
- property acquired or maintained by profits used to commit the offenses; and
- proceeds from the offenses.

Parental Convictions and Termination of a Parent-Child Relationship.

In proceedings for termination of a parent-child relationship, reasonable efforts to unify the family are not required if the court finds, by clear, cogent, and convincing evidence that aggravating circumstances exist. Aggravating circumstances include, but are not limited to, conviction of the parent for an enumerated offense against the child, another child, or the other parent.

Summary of Bill:

Communication with a Minor for Immoral Purposes.

Communication with a Minor for Immoral Purposes is a class C felony if the person communicates with a minor for immoral purposes, including the purchase or sale of commercial sex acts and sex trafficking, by the sending of an electronic communication.

Consent as a Defense to Certain Sex Offenses Against a Minor.

Consent of the minor is not a defense for the crimes of Commercial Sexual Abuse of a Minor, Promoting Commercial Sexual Abuse of a Minor, Promoting Travel for the Commercial Sexual Abuse of a Minor, Permitting Commercial Sexual Abuse of a Minor, or Trafficking in the first and second degree (when the victim is a minor).

Evidence of Victim's Past Sexual History.

In a prosecution for the crime of Rape, Trafficking, or an offense related to Commercial Sexual Abuse of a Minor, evidence of a victim's past sexual behavior is inadmissible to attack

the credibility of the victim. Such evidence is admissible on the issue of consent if certain procedures are followed, except where prohibited in the underlying criminal offense.

Trafficking.

A person commits the offense of Trafficking if he or she recruits, harbors, transports, transfers, provides, obtains, buys, purchases, or receives another person knowing or in reckless disregard of the fact 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 that the received person is under age 18 and is caused to engage in a sexually explicit act or commercial sex act.

If the victim is a minor, force, fraud, or coercion are not necessary elements of the offense of Trafficking.

Trafficking with a finding of sexual motivation is defined as a sex offense for the purposes of requiring registration as a sex offender.

An additional fee of \$10,000 will be assessed against a person who is either convicted or given a deferred sentence or prosecution or who has entered into a diversion agreement as the result of an arrest for a violation of Trafficking.

Out-of-Courtroom Testimony.

A child under the age of 14 may testify outside the presence of the defendant and jury via closed-circuit television if the testimony will describe an act of physical abuse or sexual contact against the child witness or another child; a violent offense against or by someone known by the child; or a violation of Trafficking or an offense related to the sexual exploitation of children.

Criminal Profiteering Act.

Trafficking, Promoting Travel for the Commercial Sexual Abuse of a Minor, and Permitting Commercial Sexual Abuse of a Minor are added as offenses that can lead to a Criminal Profiteering action.

Parental Convictions and Termination of a Parent-Child Relationship.

In proceedings for the termination of a parent-child relationship when the court is determining whether reasonable efforts are required to unify the family, it is considered an aggravating circumstance if the parent has been convicted of Trafficking or Promoting Commercial Sexual Abuse of a Minor when the victim of the crime is the child, the child's other parent, a sibling of the child, or another child.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on August 1, 2013.

Staff Summary of Public Testimony:

(In support) This bill was a bipartisan effort, created with the assistance of Shared Hope International, the Office of the Attorney General, and the Washington Association of Prosecuting Attorneys. Washington has one of the worst problems with Trafficking because of its ports and its border with Canada, so it is important that our laws be as strong as we can constitutionally make them. This bill provides important tools for the prosecution of sex trafficking and strengthens the state's ability to prosecute crimes and restore the victims of sex trafficking. This legislation could prevent more victims. Washington should serve as a model for other states' laws. Making it easier to prosecute pimps and abusers would help victims and allow victims to avoid having to face their abusers is crucial for prosecution. A pimp should be prosecuted to the fullest extent of the law because it is not his first time offending. Girls are being threatened, tortured, raped, and beaten every day in the State of Washington.

Strengthening current law gives additional tools to law enforcement and prosecutors to combat minor domestic sex trafficking and allows Washington to provide a safe place for children to grow up. Had elements of this bill been in place, trafficking victims who were not protected from adults they trusted could have been more easily protected and those adults prosecuted. Many are left with physical, emotional, and spiritual scars that they will carry for the rest of their lives. Passing this bill will continue the great work of making Washington a safe place for children.

(Opposed) None.

Persons Testifying: Senator Padden, prime sponsor; Marie and Brianna, Shared Hope International; and Tim Heffer, Justice & Mercy Foundation.

Persons Signed In To Testify But Not Testifying: None.