

HOUSE BILL REPORT

SSB 5718

As Reported by House Committee On:
Public Safety & Emergency Preparedness

Title: An act relating to penalties for engaging in the commercial sexual abuse of minors.

Brief Description: Imposing penalties for engaging in the commercial sexual abuse of minors.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Kohl-Welles, Hargrove, Regala, Stevens, Keiser and Rasmussen).

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 3/21/07 [DPA].

**Brief Summary of Substitute Bill
(As Amended by House Committee)**

- Creates the following new crimes: Commercial Sexual Abuse of a Minor, Promoting Commercial Sexual Abuse of a Minor, Permitting Commercial Sexual Abuse of a Minor, and Promoting Travel for Commercial Sexual Abuse of a Minor.
- Imposes a one year sentencing enhancement for Rape of a Child and Child Molestation when the perpetrator engaged, agreed, or offered to engage the victim in sexual conduct for a fee.
- Increases the fee collected in connection with prosecutions for Commercial Sexual Abuse of a Minor (Patronizing a Juvenile Prostitute) and increases and defines the circumstances under which a fee may be collected in connection with prosecutions for Indecent Exposure and certain prostitution-related offenses.
- Authorizes funds from the Prostitution Prevention and Intervention Services Account to be used for services, training, outreach, and education, in connection with Commercial Sexual Abuse of a Minor.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

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: Do pass as amended. Signed by 7 members: Representatives O'Brien, Chair; Hurst, Vice Chair; Pearson, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Ahern, Goodman and Lovick.

Staff: Jim Morishima (786-7191).

Background:

I. Offenses Relating to Prostitution

A. Patronizing a Juvenile Prostitute

A person is guilty of Patronizing a Juvenile Prostitute if he or she engages or agrees or offers to engage in sexual conduct with a minor in return for a fee. Patronizing a Juvenile Prostitute is a class C felony with a seriousness level of III.

B. Promoting Prostitution in the First Degree

A person is guilty of Promoting Prostitution in the first degree if he or she advances or profits from prostitution of a person less than 18 years old. Promoting Prostitution in the first degree is a class B felony with a seriousness level of VIII.

For purposes of Promoting Prostitution, a person "advances prostitution" if, acting other than as a prostitute or a customer of a prostitute, he or she:

- causes or aids a person to commit or engage in prostitution;
- procures or solicits customers for prostitution;
- provides persons or premises for prostitution purposes;
- operates or assists in the operation of a house of prostitution or a prostitution enterprise; or
- engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

For purposes of Promoting Prostitution, a person "profits from prostitution" if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of prostitution activity.

C. Permitting Prostitution

A person is guilty of Permitting Prostitution if, having possession or control of premises that he or she knows are being used for prostitution purposes, he or she fails without lawful excuse to make a reasonable effort to halt or abate such use. Permitting Prostitution is a misdemeanor.

D. Promoting Travel for Prostitution

A person is guilty of Promoting Travel for Prostitution if he or she knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in conduct that

would amount to Patronizing a Prostitute or Promoting Prostitution if occurring in Washington. Promoting Travel for Prostitution is an unranked class C felony.

Sellers of travel are prohibited from Promoting Travel for Prostitution.

E. Rape of a Child and Child Molestation

(1) Rape of a Child in the First Degree

A person is guilty of Rape of a Child in the first degree if he or she has sexual intercourse with a child under 12 and the perpetrator is at least 24 months older than the victim. Rape of a Child in the first degree is a class A felony with a seriousness level of XII. It is also a "two strikes" sex offense.

(2) Rape of a Child in the Second Degree

A person is guilty of Rape of a Child in the second degree if he or she has sexual intercourse with a child aged 12 or 13 and the perpetrator is at least 36 months older than the victim. Rape of a Child in the second degree is a class A felony with a seriousness level of XI. It is also a "two strikes" sex offense.

(3) Rape of a Child in the Third Degree

A person is guilty of Rape of a Child in the third degree if he or she has sexual intercourse with a child aged 14 or 15 and the perpetrator is at least 48 months older than the victim. Rape of a Child in the third degree is a class C felony with a seriousness level of VI.

(4) Child Molestation in the First Degree

A person is guilty of Child Molestation in the first degree if he or she has sexual contact with a child under 12 and the perpetrator is at least 36 months older than the victim. Child Molestation in the first degree is a class A felony with a seriousness level of X. It is also a "two strikes" sex offense.

(5) Child Molestation in the Second Degree

A person is guilty of Child Molestation in the second degree if he or she has sexual contact with a child aged 12 or 13 and the perpetrator is at least 36 months older than the victim. Child Molestation in the second degree is a class B felony with a seriousness level of VII.

(6) Child Molestation in the Third Degree

A person is guilty of Child Molestation in the third degree if he or she has sexual contact with a child aged 14 or 15 and the perpetrator is at least 48 months older than the victim. Child Molestation in the third degree is a class C felony with a seriousness level of V.

II. Ignorance of Age

In prosecutions for Sexual Exploitation of a Minor and Communication with a Minor for Immoral Purposes, it is not a defense that the defendant did not know the victim's age.

However, the defendant may raise an affirmative defense, which he or she must prove by a preponderance of the evidence, that the defendant made a reasonable, bona fide attempt to ascertain the true age of the victim by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper and did not rely solely on the oral allegations or apparent age of the minor.

III. The Prostitution Prevention and Intervention Services Account

A person convicted, or given a deferred sentence or prosecution, as a result of an arrest for committing: Promoting Prostitution in the first or second degree, Patronizing a Juvenile Prostitute, Patronizing a Prostitute, Indecent Exposure, Prostitution, or Permitting Prostitution, (or similar county or municipal ordinance) is assessed a fee. The fee is \$300 for Promoting Prostitution in the first and second degrees, \$250 for Patronizing a Juvenile Prostitute, \$150 for Patronizing a Prostitute, and \$50 for Indecent Exposure, Prostitution, and Permitting Prostitution.

The fees are deposited into the Prostitution Prevention and Intervention Account, which funds the Prostitution Prevention and Intervention Services Grant Program (Program). The Program provides funding for programs that provide effective prostitution prevention and intervention services, including counseling, parenting, housing relief, education, and vocational training.

Summary of Amended Bill:

I. Offenses Relating to Prostitution

A. Commercial Sexual Abuse of a Minor

Patronizing a Juvenile Prostitute is renamed Commercial Sexual Abuse of a Minor. A person is guilty of Commercial Sexual Abuse of a Minor if he or she:

- pays or agrees to pay a fee to a minor or a third person as compensation for a minor having engaged in sexual conduct (i.e., sexual intercourse or sexual contact) with him or her;
- pays or agrees to pay a fee to a minor or a third person pursuant to an understanding that the minor will engage in sexual conduct with him or her in return for the fee; or
- 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 C felony with a seriousness level of III.

B. Promoting Commercial Sexual Abuse of a Minor

A new crime, Promoting Commercial Sexual Abuse of a Minor, is created. A person is guilty of Promoting Commercial Sexual Abuse of a Minor if he or she knowingly advances Commercial Sexual Abuse of a Minor or profits from a minor engaged in sexual conduct.

Promoting Commercial Sexual Abuse of a Minor is a class B felony with a seriousness level of VIII.

For purposes of Promoting Sexual Abuse of a Minor, a person "advances Commercial Sexual Abuse of a Minor" if, acting other than as a minor or as a person engaged in Commercial Sexual Abuse of a Minor, he or she:

- causes or aids a person to commit or engage in Commercial Sexual Abuse of a Minor;
- procures or solicits customers for Commercial Sexual Abuse of a Minor;
- provides persons or premises for the purpose of engaging in Commercial Sexual Abuse of a Minor;
- operates or assists in the operation of a house or enterprise for the purposes of engaging in Commercial Sexual Abuse of a Minor; or
- engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of Commercial Sexual Abuse of a Minor.

For purposes of Promoting Sexual Abuse of a Minor, a person "profits from Commercial Sexual Abuse of a Minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or will participate in the proceeds of Commercial Sexual Abuse of a Minor.

C. Permitting Commercial Sexual Abuse of a Minor

A new crime, Permitting Commercial Sexual Abuse of a Minor, is created. A person is guilty of Permitting Commercial Sexual Abuse of a Minor if, having possession or control of premises that he or she knows are being used for the purpose of Commercial Sexual Abuse of a Minor, he or she fails without lawful excuse to make reasonable effort to halt or abate such use and to make a reasonable effort to notify law enforcement of such use.

Permitting Commercial Sexual Abuse of a Minor is a gross misdemeanor.

D. Promoting Travel for Commercial Sexual Abuse of a Minor

A new crime, Promoting Travel for Commercial Sexual Abuse of a Minor, is created. A person is guilty of Promoting Travel for Commercial Sexual Abuse of a Minor if he or she knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in conduct that would amount to Commercial Sexual Abuse of a Minor or Promoting Commercial Sexual Abuse of a Minor if occurring in Washington.

Promoting Travel for Commercial Sexual Abuse of a Minor is an unranked class C felony.

Sellers of travel are prohibited from Promoting Travel for Commercial Sexual Abuse of a Minor.

E. Rape of a Child and Child Molestation

In a prosecution for Rape of a Child in the first, second, or third degree, Child Molestation in the first, second, or third degree, or an anticipatory offense related to Rape of a Child or Child Molestation, the prosecutor may file a special allegation that the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the victim in sexual conduct for a fee. The prosecutor has the burden of proving the allegation to the jury (or to the judge, if

there is no jury). If the allegation is proved, an additional 12 months will be added to the standard range for the offense.

II. Ignorance of Age

In prosecutions for Promoting Commercial Sexual Abuse of a Minor and Promoting Travel for Commercial Sexual Abuse of a Minor, it is not a defense that the defendant did not know the victim's age. However, the defendant may raise an affirmative defense, which he or she must prove by a preponderance of the evidence, that the defendant made a reasonable, bona fide attempt to ascertain the true age of the victim by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper and did not rely solely on the oral allegations or apparent age of the minor.

III. The Prostitution Prevention and Intervention Services Account

A person who has entered into a statutory or non-statutory diversion agreement (in addition to a person convicted or given a deferred sentence or prosecution) as a result of an arrest for committing Promoting Prostitution in the first or second degree, Commercial Sexual Abuse of a Minor, Patronizing a Prostitute, Indecent Exposure, Prostitution, or Permitting Prostitution, (or similar county or municipal ordinance) is assessed a fee.

"Statutory or non-statutory diversion agreement" is defined as a written agreement between a person and a court, county, or city prosecutor, or designee thereof, where the person agrees to fulfill certain conditions in lieu of prosecution. "Deferred sentence" is defined as sentence that will not be carried out if the defendant meets certain requirements, such as complying with the conditions of probation.

The amount of the fee levied with respect to Commercial Sexual Abuse of a Minor is increased from \$250 to \$550.

If funds are specifically appropriated to the Prostitution and Intervention Services Account for the purpose, the Department of Community, Trade and Economic Development must:

- prioritize the funds to provide minors who have a history of engaging in sexual conduct for a fee, or are the victims of Commercial Sexual Abuse of a Minor, with residential treatment services, counseling services, educational or vocational training services, and health care services; and
- prioritize the funds for law enforcement training and community outreach and education for minors who have a history of engaging in sexual conduct for a fee, or are the victims of Commercial Sexual Abuse of a Minor, including awareness training and the availability of services under the Family Reconciliation Act.

Amended Bill Compared to Substitute Bill:

The amended bill creates a process that allows the prosecutor to file a special allegation that the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the victim in sexual conduct for a fee in prosecutions for Rape of a Child, Child Molestation, or anticipatory offenses related to Rape of a Child or Child Molestation. The amended bill

clarifies, for purposes of the 12-month enhancement, that "anticipatory offense" includes an attempt, a conspiracy, or a solicitation. The amended bill removes language indicating that the 12-month enhancement will be added for anticipatory offenses "based on the felony crime of conviction as classified under RCW 9A.28.020" (the sentencing enhancements in the original bill do not depend on the classification of the crime). The amended bill makes a technical correction by changing the date upon which the 12-month enhancements take effect from July 1, 2007, to the effective date of the act (July 22, 2007). The amended bill defines "sexual conduct" for purposes of Promoting Commercial Sexual Abuse of a Minor (the original bill only defined the term for Commercial Sexual Abuse of a Minor).

Appropriation: None.

Fiscal Note: Available. New substitute fiscal note requested on March 20, 2007.

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

Staff Summary of Public Testimony:

(In support) This bill focuses on a long-ignored problem. Child prostitutes are currently treated as offenders, not as victims. Persons who patronize prostitutes are not charged with Rape of a Child, but are instead charged with Patronizing a Juvenile Prostitute. Child prostitutes are likely to have been victims of childhood sexual abuse and face a variety of risks, including assaults, disease, mental health issues, substance abuse, educational deficits, and homelessness. Similar to people who are trafficked for sexual purposes, juvenile prostitutes often start out as runaways and are then exploited by pimps who control them with drugs. This bill increases access to services for juvenile prostitutes and punishes people who patronize juvenile prostitutes. The bill also increases funding for services by fining people who exploit prostitutes; people who exploit prostitutes should have no trouble paying the increased fines.

(Opposed) None.

Persons Testifying: Senator Kohl-Welles, prime sponsor; and Dave Johnson, Washington Coalition of Crime Victims Advocates.

Persons Signed In To Testify But Not Testifying: None.