

HOUSE BILL REPORT

HB 1112

As Reported by House Committee On: Public Safety

Title: An act relating to vacating convictions arising from offenses committed as a result of being a victim of trafficking, promoting prostitution, or promoting commercial sexual abuse of a minor.

Brief Description: Vacating convictions arising from offenses committed as a result of being a victim of trafficking, promoting prostitution, or promoting commercial sexual abuse of a minor.

Sponsors: Representatives Orwall, Goodman, Ryu, Frame, Stanford, Ormsby, Jinkins, Hudgins, Macri, Tarleton, Pollet, Farrell, Kagi and Bergquist.

Brief History:

Committee Activity:

Public Safety: 1/16/17, 2/2/17 [DPS].

Brief Summary of Substitute Bill

- Allows a qualifying victim to vacate a Prostitution conviction even if he or she has committed other crimes since the date of conviction, as long as those crimes were the result of being a victim of a trafficking or a prostitution-related offense.
- Specifies a qualifying victim may not vacate a Prostitution conviction until four years after the conviction.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Appleton, Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

Minority Report: Do not pass. Signed by 2 members: Representatives Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member.

Staff: Kelly Leonard (786-7147).

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.

Background:

Vacating a Conviction.

In certain circumstances authorized in statute, a person's record of conviction may be vacated by a sentencing judge. The judge may vacate a conviction by permitting the applicant to withdraw his or her guilty plea and enter a not guilty plea, or set aside the guilty verdict and dismiss the information, indictment, complaint or citation against the applicant, and vacate the judgment and sentence. Once the court vacates a record of conviction, the offense is no longer included in the person's criminal history.

Vacation for a Prostitution Conviction.

A person convicted of Prostitution may have the record of his or her conviction vacated if he or she can prove, by a preponderance of the evidence, each element of one of the following offenses, and that the prostitution conviction was a result of being a victim of one of the following crimes:

1. *Trafficking.* A person recruited, harbored, transported, provided, obtained, bought, purchased, or received the applicant, either knowingly or in reckless disregard that force, fraud, or coercion would be used to cause the applicant to engage in a sexually explicit act or that the applicant was under 18 years old and would be caused to engage in a sexually explicit act.
2. *Promoting Prostitution in the First Degree.* A person knowingly compelled the applicant by threat or force to engage in prostitution, or a person knowingly compelled an applicant with a mental incapacity or developmental disability that renders him or her incapable of consent, to engage in prostitution.
3. *Promoting Commercial Sexual Abuse of a Minor.* A person knowingly advanced commercial sexual abuse or a sexually explicit act of the applicant when he or she was under 18 years old.
4. *Trafficking in Persons Under the Trafficking Victims Protection Act of 2000.* The applicant was induced by force, fraud, or coercion to engage in a commercial sex act, or the applicant was induced to engage in a commercial sex act when he or she was under 18 years old.

The applicant may not have the record of conviction for Prostitution vacated if:

- there are any pending criminal charges, excluding prostitution charges, against the applicant in any state or federal court; or
- the applicant has been convicted of another crime, except prostitution, in any state or federal court since the date of conviction.

Summary of Substitute Bill:

A qualifying victim convicted of Prostitution may vacate the record of his or her Prostitution conviction even if he or she has been convicted of another crime since the date of the prostitution conviction. The person must prove by a preponderance of the evidence that he or she committed the other crime as a result of being a victim of:

- Trafficking;
- Promoting Prostitution in the first degree;

- Promoting Commercial Sexual Abuse of a Minor; or
- Trafficking in persons under the Trafficking Victims Protection Act of 2000.

Other requirements relating to vacating a Prostitution conviction are modified. A victim may only vacate a Prostitution conviction if:

- four years have passed since the date of the Prostitution conviction; and
- he or she does not have pending Prostitution charges in any court.

A person applies to vacate a Prostitution conviction by submitting a signed affidavit with a motion to vacate to the court.

Substitute Bill Compared to Original Bill:

The substitute bill creates a four-year waiting period from the date of the last Prostitution conviction before a victim of trafficking or other offense may vacate a Prostitution offense. The substitute bill specifies that a victim may not vacate a Prostitution offense if he or she has Prostitution charges pending in any court.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) In 2014 the Legislature passed a law allowing trafficking victims to vacate Prostitution convictions when they could prove those convictions were the result of being trafficked. However, no one has been successful in vacating their records under the law. Most of these victims have other misdemeanor charges related to the trafficking, which currently bar them from going through the vacation process.

Many of these crimes were the result of coercion or necessity. For example, traffickers often force victims to hold their drugs. Victims may steal food or condoms. Victims may also be forced into lying to law enforcement. All of these convictions are the direct result of being trafficked. Traffickers are known to threaten and commit violent acts against victims and their families.

A Prostitution conviction can create significant barriers for victims to move on with their lives. It can make it difficult to find housing or employment, and some victims report being denied insurance. These practices particularly affect persons of color and underrepresented communities. This is a serious problem.

Prostitution convictions have a profound and lifelong impact. For victims of trafficking, the Legislature should modify the standards to create some ability for them to move on with their lives. Victims should be given an opportunity to start over.

(Opposed) None.

Persons Testifying: Representative Orwall, prime sponsor; Jeri Moomaw, Washington Engage; Chantale Williams; Robert Beiser, Seattle Against Slavery; and Julia Anderson.

Persons Signed In To Testify But Not Testifying: None.