

HOUSE BILL REPORT

HB 2076

As Reported by House Committee On:
Community Safety, Justice, & Reentry

Title: An act relating to addressing crimes involving human trafficking or sexual exploitation.

Brief Description: Addressing crimes involving human trafficking or sexual exploitation.

Sponsors: Representatives Orwall, Mosbrucker, Leavitt, Barnard, Graham, Rule, Cheney, Reeves and Hackney.

Brief History:

Committee Activity:

Community Safety, Justice, & Reentry: 1/16/24, 1/29/24 [DPS].

Brief Summary of Substitute Bill

- Modifies the crimes of Trafficking in the first and second degrees.
- Requires the Washington State Auditor to conduct a performance audit on fees collected for violations of trafficking crimes.
- Reestablishes the Commercially Sexually Exploited Children Statewide Coordinating Committee.

HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Simmons, Vice Chair; Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Davis, Farivar, Fosse, Graham and Ramos.

Staff: Michelle Rusk (786-7153).

Background:

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

Trafficking.

A person commits Trafficking in the second degree when he or she:

- recruits, harbors, transports, transfers, provides, obtains, or receives by any means another person, knowing or with reckless disregard that: (1) force, fraud, or coercion will be used to cause the person to engage in: (i) forced labor, (ii) involuntary servitude, (iii) a sexually explicit act, or (iv) a commercial sex act; or (2) the person has not reached the age of 18 years and is caused to engage in a sexually explicit act or a commercial sex act; or
- benefits financially or receives anything of value from participation in a venture that has engaged in the above acts.

The offense is Trafficking in the first degree if the foregoing acts involve kidnapping, sexual motivation, illegal harvesting or sale of human organs, or results in a death.

If the victim of any trafficking offense is a minor, it is not necessary to demonstrate force, fraud, or coercion, and consent to any sexual act is not a defense. Trafficking in the first or second degree is a class A felony, except first degree is a level XIV offense and second degree is a level XII offense.

Any person who is convicted, given a deferred sentence or prosecution, or has entered into a diversion agreement as a result of violating a trafficking crime must be assessed a \$10,000 fine. Fees collected must be remitted to the treasurer of the city, town, or county where the offense occurred for deposit in that municipality's general fund. Revenue from fees must be used for local efforts to reduce commercial sale of sex, including that at least 50 percent must be spent on prevention, including education programs for offenders, and rehabilitation services.

Commercially Sexually Exploited Children Statewide Coordinating Committee.

The Commercially Sexually Exploited Children Statewide Coordinating Committee (Committee) was established in 2013 to address the issue of children who are commercially sexually exploited, to examine the practices of local and regional entities involved in addressing sexually exploited children, and to make recommendations on statewide laws and practices. The Committee expired on June 30, 2023. Prior to expiration, the Committee met annually as convened by the Office of the Attorney General and reported its findings and recommendations annually to the Legislature.

Summary of Substitute Bill:

Crime of Trafficking.

The crimes of Trafficking in the first and second degrees are modified and new definitions are established for coercion, kidnapping, maintain, and sexual motivation.

A person commits the offense of Trafficking in the first degree when the person recruits,

entices, harbors, transports, isolates, solicits, provides, obtains, buys, purchases, maintains, or receives by any means another person and: (1) knows, or recklessly disregards 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 (2) such person knowingly, or in reckless disregard, causes a person under 18 years of age to engage in a sexually explicit act or commercial sex act, or benefits financially or by receiving anything of value from participation in a venture that has engaged in the foregoing acts, provided that it is not a defense that such person did not know, or recklessly disregarded, that the person was under 18 years of age or believed the other person was older; and the foregoing acts or venture involve:

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

A person commits the offense of Trafficking in the second degree when the person recruits, entices, harbors, transports, isolates, solicits, provides, obtains, buys, purchases, maintains, or receives by any means another person and:

- knows, or acts 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
- such person knowingly, or in reckless disregard, causes a person under 18 years of age to engage in a sexually explicit act or commercial sex act, or benefits financially or by receiving anything of value from participation in a venture that has engaged in the acts set forth above, provided that it is not a defense that such person did not know, or recklessly disregarded the fact, that the other person was under 18 years of age or believed the other person was older.

If the victim of these offenses is a minor, then force, fraud, or coercion are not necessary elements of the offense and consent to the sexually explicit act or commercial sex act does not constitute a defense.

Fees assessed for violating trafficking crimes must be collected by the clerk of the court and distributed as follows:

- 45 percent to the treasurer of the jurisdiction where the offense occurred, which must be spent on services for victims of trafficking crimes in that jurisdiction;
- 45 percent to the treasurer of the jurisdiction where the offense occurred, which must be spent on efforts to reduce the commercial sale of sex, prevention, and rehabilitative services; and
- 10 percent must be retained by the clerks of the courts for their official services.

Audit Requirement.

The State Auditor must conduct a performance audit of the collection and use of mandatory fees assessed for trafficking violations. The audit must determine whether jurisdictions are:

- assessing fees consistent with statutory requirements;
- using fee revenue to fund local efforts to reduce the commercial sale of sex; and
- using at least 50 percent of fee revenue on prevention and rehabilitative services.

If fees are not being assessed and used as required, the auditor must make recommendations for corrective action. The State Auditor may conduct an audit at a sample of jurisdictions as needed, and must complete these audits and publish a report with its findings no later than December 31, 2025.

Commercially Sexually Exploited Children Statewide Coordinating Committee.

Subject to the availability of funds appropriated, the Commercially Sexually Exploited Children Statewide Coordinating Committee (Committee) is established. The Committee is established to facilitate a statewide coordinated response to the commercial sexual exploitation of children, youth, and young adults 24 years old and younger by relying on the voices of those with lived experience, qualitative and quantitative data, and the collective expertise of youth-serving professionals and youth policy experts, and with the goal of increasing support, protections, and resource identification in areas of prevention and intervention.

The Committee is convened by the Office of the Attorney General (AGO) and must meet at least annually. The Department of Commerce (Commerce) will assist the AGO with the Committee agenda planning and administrative and clerical support.

The Committee membership includes: members of the Legislature, a representative of the Governor's Office, state agency leaders, subject matter experts in intervention and prevention, a survivor of human trafficking, and representatives from law enforcement, the courts, service providers, the office of crime victims advocacy, regional task forces on commercially sexually exploited children, and advocacy organizations.

The duties of the Committee include, but are not limited to: overseeing and reviewing the implementation of the Washington State Model Protocol for Commercially Sexually Exploited Children; receiving reports and data from local and regional entities regarding the incidence of commercially sexually exploited children in their areas; reviewing recommendations from local and regional entities regarding policy changes that would improve the effectiveness of local response practices; making recommendations regarding data collection, policy changes, and strategic local investments to address the commercial sexual exploitation of children; reviewing prior legislation to understand enforcement and implementation barriers; and compiling data on the number of juveniles believed to be victims of sexual exploitation and taken into custody as provided by law.

The Committee expires on June 30, 2030, and must annually report its findings to the appropriate committees of the Legislature and to any other known statewide committees addressing trafficking or the commercial sex trade.

Substitute Bill Compared to Original Bill:

The substitute bill does the following:

- expands the definition of "coercion" used to describe a manner of committing the offense of Trafficking in the first or second degrees;
- modifies how fees assessed for violations of Trafficking in the first or second degrees are distributed and for what purposes;
- requires the State Auditor to conduct a performance audit instead of an accountability and financial audit on fees collected for violations of trafficking crimes, and permits the State Auditor to conduct an audit at a sample of jurisdictions as needed; and
- modifies the purpose, committee membership, and duties of the Commercially Sexually Exploited Children Statement Coordinating Committee.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 30, 2024.

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) There are sadly reports of increased numbers of trafficking post pandemic: around 500-700 youth in our state are trafficked annually. This bill is before you because the King County Prosecuting Attorney's Office (KCPAO) reached out expressing that they are having a hard time prosecuting trafficking crimes. The existing statute criminalizing trafficking is cumbersome, long, and hard to utilize, causing judges and law enforcement to struggle using it. Less than 10 individuals in Oregon and Washington have been prosecuted in the last decade. The KCPAO points to the definition of "coercion" and other language that, if added or modified, would help them more successfully document how a person is exploited and pushed into trafficking. Expanding the definition of "coercion" reflects what is being seen in case and investigations. This bill gives prosecutors what they need to go after traffickers. The second part of this bill gives the Commercially Sexually Exploited Children Committee (Committee) a restart. The Committee really ties to our local efforts and is a good way to know what is going on in all the regions of our state. The third part of the bill has to do with fines and fees assessed for violating trafficking crimes. There is confusion about what is going on with the fees collected and whether they are being collected. It would be helpful to have the audit expanded to include other criminal statutes dealing with these issues. This money needs to go to victims and law enforcement.

(Opposed) None.

(Other) The State Auditor's office is "other" only because of the audit requirement that

might create an unfunded mandate and costs for local governments. When audits are done the local governments are billed. A better way is to use a performance audit, which would likely result in no fiscal note.

Persons Testifying: (In support) Representative Tina Orwall, prime sponsor; Barbara Mack; Jean Hill, Washington State Catholic Conference; and Benjamin Gauen.

(Other) Scott Nelson, Washington State Auditor; and Nicholas Oakley, Center for Children and Youth Justice.

Persons Signed In To Testify But Not Testifying: None.