

HOUSE BILL REPORT

ESHB 1362

As Passed Legislature

Title: An act relating to vehicles used in prostitution-related offenses.

Brief Description: Concerning vehicles used in prostitution-related offenses.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Goodman, Rodne, Sullivan, Williams, Orwall, O'Brien, Kirby, Chase and Conway).

Brief History:

Committee Activity:

Judiciary: 1/28/09, 2/9/09 [DPS].

Floor Activity:

Passed House: 3/6/09, 91-4.

Senate Amended.

Passed Senate: 4/8/09, 47-0.

House Concurred.

Passed House: 4/18/09, 97-0.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Allows impoundment of vehicles used in prostitution-related offenses.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

Staff: Courtney Barnes (786-7194)

Background:

Prostitution-Related 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.

Patronizing a Prostitute: A person is guilty of patronizing a prostitute if he or she: (1) pays a fee, pursuant to a prior understanding, as compensation for another person having engaged the perpetrator in sexual conduct; (2) pays or agrees to pay another person pursuant to an understanding that the person will engage in sexual conduct with the perpetrator; or (3) solicits or requests another person to engage in sexual conduct with the perpetrator for a fee. Patronizing a prostitute is a misdemeanor.

Promoting Prostitution in the First Degree: A person is guilty of promoting prostitution in the first degree if he or she knowingly advances, or profits from, prostitution by compelling a person to engage in prostitution by threat or force. Promoting prostitution in the first degree is a class B felony.

Promoting Prostitution in the Second Degree: A person is guilty of promoting prostitution in the second degree if he or she knowingly profits from prostitution or advances prostitution. Promoting prostitution in the second degree is a class C felony.

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 patronizing a prostitute or promoting prostitution. Promoting travel for prostitution is a class C felony.

Commercial Sexual Abuse of a Minor (formerly Patronizing a Juvenile Prostitute): 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 having engaged in sexual conduct; pays or agrees to pay a fee pursuant to an understanding that the minor will engage in sexual conduct; 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.

Promoting Commercial Sexual Abuse of a Minor: 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.

Promoting Travel for Commercial Sexual Abuse of a Minor: 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. Promoting travel for commercial sexual abuse of a minor is class C felony.

Vehicle Impoundment.

Upon an arrest for a suspected violation of patronizing a prostitute or commercial sexual abuse of a minor, the arresting law enforcement officer may impound the person's vehicle if: (1) the vehicle was used in the commission of the crime; (2) the person arrested is the owner of the vehicle; and (3) the person arrested has previously been convicted of patronizing a prostitute or commercial sexual abuse of a minor.

The Prostitution Prevention and Intervention Account.

Persons convicted of promoting prostitution in the first or second degree, commercial sexual abuse of a minor, patronizing a prostitute, indecent exposure, prostitution, or permitting prostitution, are assessed a fee. The fee is 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 Engrossed Substitute Bill:

Vehicle Impoundment.

A local governing authority may designate areas within which vehicles are subject to impoundment when they are used to facilitate the following prostitution-related offenses: patronizing a prostitute, promoting prostitution in the first degree, promoting prostitution in the second degree, promoting travel for prostitution, commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, and promoting travel for commercial sexual abuse of a minor. The arresting law enforcement officer may impound the person's vehicle if: (1) the vehicle was used in the commission of the crime; and (2) the person arrested is the owner of the vehicle or the vehicle is a rental car. A prior conviction of a prostitution-related offense is a requirement for impoundment if the offense was committed in an undesignated area.

A prior conviction of a prostitution-related offense is not a requirement for impoundment if the offense was committed within a designated area. The designation must be based on evidence indicating that the area has a disproportionately higher number of arrests for prostitution-related offenses compared to other areas within the same jurisdiction of the local governing authority. The local governing authority must post signs at the boundaries of the designated areas to indicate that the area has been designated.

Prior to redeeming an impounded vehicle, the owner must pay all applicable impoundment, towing and storage fees, and a fine of \$500. The impounding agency collects the \$500 fine and issues a receipt to the owner of the vehicle. To redeem an impounded vehicle, the owner must provide the receipt to the towing company and pay all impoundment, towing, and storage fees. A towing company that relies on a forged receipt to release an impounded vehicle is not liable for any unpaid fine.

A person is entitled to a full refund of the impoundment, towing and storage fees, and the \$500 fine if he or she substantially prevails in a proceeding to challenge the validity of an impoundment or is found not guilty of a prostitution-related offense at trial. Any refund is paid by the impounding authority upon proof of payment.

The Prostitution Prevention and Intervention Account.

The \$500 fine paid to the impounding agency must be deposited into the Prostitution Prevention and Intervention Account.

Required Release of Impounded Vehicles.

The general towing and impoundment chapter is amended to require an impounding agency to authorize the release of an impounded vehicle pursuant to an applicable state agency rule or local ordinance on the basis of the following: (1) economic or personal hardship to the spouse of the operator, taking into consideration public safety factors, including the operator's criminal history and driving record; or (2) if the owner was not the driver, the owner did not know that the driver's license was suspended or revoked, and the owner has not received a prior release.

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) Although prostitution has been brought indoors, there are some public order problems in certain areas. The Legislature should address this public order problem. Under current law, a vehicle can be impounded after an arrest related to prostitution on the second offense. The bill will allow impoundment on the first offense if the prostitution-related offense is committed within a designated zone. The bill will provide funding for the Prostitution Prevention and Intervention Account. Forfeiture is a new feature applicable when a person patronizes a child prostitute. Forfeiture and impoundment on the first offense only applies to the zones where there is data to support that there is a disproportionate public order issue. There is a process for the innocent vehicle owner or community property owner to prevent forfeiture.

The City of Kent strongly supports this bill. The bill gets at the economic underpinning of prostitution without using incarceration. There are three elements of prostitution: tanning parlors, internet-based, and street prostitution. Pacific Highway, which goes through the City of Kent, has a problem with street prostitution. This problem has been around for decades. The people who live near Pacific Highway deserve better. The bill will enable cities, like Kent, to change the status quo. Prostitution drags down the economic development of cities. The bill goes after the market by targeting those who patronize prostitutes. The bill will help cities present a united front. The bill will change the perception that prostitution is tolerated in certain areas. The bill is supported by the Washington Association of Sheriffs and Police Chiefs and the King County Chiefs Association. The King County sheriff supports the bill as does the police chief of the City of Seatac.

There are a number of youth who are sexually exploited on Pacific Highway. Prostitution is not a victimless time. It takes time and resources to get sexually exploited youth off the streets and for them to recover from the trauma of sexual abuse. The bill provides an additional deterrent from the customer side of prostitution.

(With concerns) There is concern with language in forfeiture sections of the bill that allows seizure without process. This language would allow a law enforcement officer to seize a conveyance if the officer has probable cause to believe that the conveyance is subject to forfeiture. This language violates the U.S. Constitution and the Washington Constitution. Warrantless seizures are unfavorable and may lead to constitutional challenges. This language also appears in the drug forfeiture statutes in the Revised Code of Washington, which was modeled after federal drug forfeiture statutes. The U.S. Congress has amended this language in the federal drug forfeiture statutes. The language of this bill should also be amended to remove the constitutional infirmity.

The Towing and Recovery Association of Washington and the Association of Registered Tow Truck Operators have technical concerns with the bill as drafted. With regard to the impoundment, the impoundment section of the bill should reference the chapter governing impoundments in the Revised Code of Washington. Additionally, the order for impound should clearly state that the impounded vehicle has a \$500 hold. The towing companies do not want to handle the \$500 administrative fee. The towing companies want an official document stating that the \$500 administrative fee has been paid before releasing a vehicle. The towing companies want clarification that a claimant who substantially prevails in a proceeding to challenge an impoundment may receive a refund from the impounding agency. If the intention is to impound a vehicle and hold it pending the outcome of the forfeiture proceeding, the vehicles should be towed to the police impound lot.

(Opposed) None.

Persons Testifying: (In support) Representative Goodman, prime sponsor; Doug Levy, cities of Kent and Federal Way; Steve Strachan, Kent Police Department; James Graddon, King County Sheriff's Department and City of SeaTac Police Department; and Katalin Hausback, Auburn Youth Services.

(With concerns) Robert Quillian, Washington Association of Criminal Defense Lawyers and the Washington Defenders Association; and Stu Halsan, Towing and Recovery Association of Washington.

Persons Signed In To Testify But Not Testifying: None.