

SENATE BILL REPORT

SB 5272

As of February 14, 2017

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: Senators Saldaña, Hasegawa, Ranker, Chase, Hunt, Darneille, Wellman, Keiser, Cleveland, Takko and Kuderer.

Brief History:

Committee Activity: Law & Justice: 2/14/17.

Brief Summary of Bill

- Allows a victim of Trafficking, Promoting Prostitution in the first degree or Commercial Sex Abuse of a Minor to vacate the record of a related prostitution conviction, even if the person has been convicted of another crime since the date of the conviction, if the person can prove by a preponderance of evidence that the other conviction was also a result of Trafficking, Promoting Prostitution in the first degree or Commercial Sex Abuse of a Minor.
- Allows a person to prove the elements needed for vacation of a prostitution conviction through the submission of a signed affidavit.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Shani Bauer (786-7468)

Background: Vacation of Records. A person convicted of Prostitution who committed the offense as the result of being a victim of Trafficking, Promoting Prostitution in the first degree, or Commercial Sexual Abuse of a Minor may apply to the sentencing court for vacation of the record of conviction, however the record cannot be cleared if: (1) there are any criminal charges against the applicant pending in any court of this state or another state,

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or in any federal court, for any crime other than prostitution; or (2) the applicant has been convicted of a new crime in this state, another state, or federal court since the date of conviction, other than the crime of prostitution.

The applicant must show by a preponderance of the evidence that the elements of the particular crime the applicant is alleged to be a victim of are met, and that the particular prostitution record of conviction sought to be vacated resulted from those criminal acts.

If the offender meets these tests, the court may clear the record of conviction by permitting the applicant to withdraw the applicant's plea of guilty and to enter a plea of not guilty; or, if the applicant has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.

Trafficking in First and Second Degrees. A person is guilty of Trafficking in the first degree when such person:

- recruits, harbors, transports, transfers, provides, obtains, or receives by any means 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; or
- benefits financially or by receiving anything of value from participation in a venture that has engaged in acts described above and the acts or venture involve kidnapping, a finding of sexual motivation, illegal harvesting or sale of human organs, or result in death.

Trafficking in the first degree is a Class A felony.

A person is guilty of Trafficking in the second degree when such person:

- recruits, harbors, transports, transfers, provides, obtains, or receives by any means 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; or
- benefits financially or by receiving anything of value from participation in a venture that has engaged in the acts described above.

Trafficking in the second degree is a Class A felony.

Promoting Prostitution in First Degree. A person is guilty of Promoting Prostitution in the first degree if he or she knowingly advances prostitution:

- by compelling a person by threat or force to engage in prostitution or profits from prostitution which results from such threat or force; or
- by compelling a person with a mental incapacity or developmental disability that renders the person incapable of consent to engage in prostitution or profits from prostitution that results from such compulsion.

Promoting Prostitution in the first degree is a Class B felony.

Commercial Sexual Abuse of a Minor. A person is guilty of Commercial Sexual Abuse of a Minor if:

- he or she pays a fee to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her;
- he or she pays or agrees to pay a fee to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or
- he or she 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 B felony.

Summary of Bill: A person who has been convicted of another crime since the date of a prostitution conviction and who would otherwise qualify for vacation of the conviction, may still be cleared of the prostitution conviction if the person proves by a preponderance of the evidence that they also committed the other crime as a result of being a victim of Trafficking, Promoting Prostitution in the first degree or Promoting Commercial Sexual Abuse of a Minor.

When submitting a motion to vacate a conviction to the court, the applicant must submit a signed affidavit that proves by a preponderance of the evidence that the elements of the particular crime the applicant is alleged to be a victim of are met and that the particular prostitution record of conviction sought to be vacated resulted from those criminal acts.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill deals with the real issue of human trafficking for sex and labor. Washington has been a leader in addressing rights for trafficking victims. This legislation builds on past work to make sure that those who have been victims can live a life that is free from the past and gives them a clean record so they can access jobs and housing. The threshold under the current law is unclear and too high. Sex trafficking is a complex crime. The trafficker is often abusive and will get the victim to engage in theft or a variety of other crimes. Victims experience numerous barriers as a result of the criminal history including employment, housing, job training, education, and insurance. Some victims have a job but are living in a car due to the inability to obtain housing. The ability to vacate these convictions is a key component in fighting trafficking. It removes barriers, making an exit from prostitution possible. This is a tangible way to help survivors restore their lives.

The bill should be amended to clarify that it also applies to convictions in juvenile court. The court process is difficult to navigate, traumatizing, and requires victims to relive their past. The Legislature passed this law with the intent of removing convictions for trafficking

survivors, however, no victims currently qualify under the terms of the law. Only two individuals have tried and both were ultimately unsuccessful in getting the conviction vacated.

Persons Testifying: PRO: Senator Rebecca Saldana, Prime Sponsor; Tiffany Webster, Real Escape from the Sex Trade; Jo Lembo, Shared Hope International; Heidi Sargent, City of Seattle Assistant Attorney; Noel Gomez, Organization for Prostitution Survivors; Robert Beiser, Seattle Against Slavery; Jeri Moomaw, WA Engage; Nicole Daniels, Innovations HTC; Julia Anderson, Survivor Operative Solutions.

Persons Signed In To Testify But Not Testifying: PRO: Tammy Combs, TCCAT.