

HOUSE BILL REPORT

SHB 1826

As Passed House:

March 14, 2003

Title: An act relating to trafficking in persons.

Brief Description: Including trafficking in persons in the criminal profiteering law.

Sponsors: By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Veloria, McMahan, O'Brien, Kenney, Boldt, Mielke, Santos, Hudgins, Upthegrove, Simpson and Conway).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/25/03, 2/28/03 [DPS].

Floor Activity:

Passed House: 3/14/03, 94-0.

Brief Summary of Substitute Bill

- Includes trafficking in the definition of criminal profiteering in the Criminal Profiteering Act.
- Subjects a person convicted of a pattern of trafficking crimes to civil penalties.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Lovick and Pearson.

Staff: Yvonne Walker (786-7841).

Background:

In 1970 Congress enacted the Racketeering Influenced and Corrupt Organizations (RICO) Act to combat organized crime. Later in 1985 Washington's Legislature passed the Criminal Profiteering Act (formerly called the Racketeering Act) which is similar in many ways to the federal RICO Act. It created several new felonies for engaging in

certain acts and patterns of activity that constitute organized crime and criminal profiteering.

"Criminal profiteering" includes the commission, for financial gain, of any one of a number of crimes listed in the statute. Among the crimes which may constitute profiteering are: Violent felonies and felonies associated with gambling; drugs; pornography; prostitution; extortion; and securities fraud. The crime of "trafficking" is not included in the definition of criminal profiteering.

A "pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering within a five-year period. To constitute a "pattern" the three acts must have the same or similar intent, results, accomplices, principals, victims or methods of commission, or otherwise be interrelated by distinguishing characteristics including a nexus to the same enterprise.

In addition to its criminal penalties, the Criminal Profiteering Act provides the following three civil remedies: (a) monetary penalties; (b) injunctive remedies; and (c) forfeiture. Monetary penalties include the actual damages payable to the victim, resulting from an act of criminal profiteering or of leading organized crime. The court has the discretion to triple those damages. The court may also order the defendant to pay a civil fine of up to \$250,000 and the costs and expenses of the litigation. Injunctive remedies may include court orders restricting the defendant's future activities or investments.

Forfeiture penalties include forfeiting:

- (i) Any property or other interest acquired or maintained by a person in violation of the statutes on leading organized crime to the extent of the investment of funds and any appreciation or income attributable to the investment;
- (ii) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of the statutes on leading organized crime; and
- (iii) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used to facilitate commission of the offense.

Initiation of civil proceedings must commence within three years of discovery of the pattern of criminal profiteering activity or after the pattern should reasonably have been discovered.

Trafficking. The definition of trafficking varies, but it can generally be defined as any act that involves the recruitment or transportation of a person within or across national borders, for work or services, by means of violence or threat of violence, debt bondage, deception or other coercion. A person may be trafficked for a number of reasons

including forced prostitution, exploitative domestic service in private homes, and indentured servitude in sweatshops.

Washington has statutes that punish a person for certain prostitution types of offenses. However, unlike federal law, it does not currently have a criminal statute specifically prohibiting the trafficking of persons. Federal statute governing trafficking crimes contains laws prohibiting these types of offenses which are generally punishable by a fine and up to 20 years of incarceration. If death results from the violation of a trafficking offense, or if the violation includes kidnapping, aggravated sexual abuse, or a victim under the age of 14 years old at the time of the offense was involved, then the punishment can increase to life imprisonment.

Substitute House Bill (SHB) 1175 which is a bill before the 2003 Legislature, defines and creates two degrees of trafficking. Under that bill, a person is guilty of trafficking in the second degree (a seriousness level XII, class A felony offense), despite whether he or she benefitted financially or received anything of value when the perpetrator knowingly, recruited, harbored, transported, provided, or obtained by any means, another person, knowing that force, fraud, or coercion would be used to cause the victim to engage in forced labor or involuntary servitude. A person is guilty of trafficking in the first degree (a seriousness level XIV, class A felony offense), if in the process of violating trafficking in the second degree, his or her criminal act results in a death, involves kidnapping or an attempt to commit kidnapping, or the offense involves a finding of sexual motivation.

Summary of Substitute Bill:

The definition of criminal profiteering in the Criminal Profiteering Act is expanded to include the crime of trafficking as defined in SHB 1175 which is currently before the 2003 Legislature.

Among other enumerated crimes "criminal profiteering" includes the commission, for financial gain, of trafficking. A person convicted of a pattern of trafficking activity will, in addition to criminal penalties, be subject to the same civil remedies as listed in the Criminal Profiteering Act which includes: (a) monetary penalties; (b) injunctive remedies; and (c) forfeiture.

Initiation of civil proceedings must commence within three years of discovery of the pattern of criminal profiteering activity or after the pattern should reasonably have been discovered, or three years after the final disposition of any criminal charges relating to the trafficking offense, whichever is later.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Trafficking is a problem that is increasing at an alarming extent in this country. Trafficking of humans should not be tolerated in this country. The House of Representatives has already passed SHB 1175 which creates in state statute the criminal penalties for trafficking. This bill gets at perpetrators of trafficking another way, through their pocketbooks. The majority of trafficking offenders are primarily trafficking for financial gain and the monetary penalties and forfeitures in this bill are great tools for penalizing these such perpetrators.

Testimony Against: Most trafficking crimes are prosecuted at the federal level because they usually involve global organizations. However most offenders involved in trafficking crimes are beyond the reach of this state and usually the federal government as well. The people that will probably be prosecuted in this state are what some defense attorneys call the "mules," the ones who are probably not making large amounts of money from this crime.

The crime of criminal profiteering has been historically used for people that commit profiteering for financial gain. Several provisions of this bill would penalize a trafficking offender "whether or not" he or she benefitted financially from the crime. Those specific provisions should be eliminated from the bill and the crime of profiteering should be limited to human trafficking for financial gain only. (These provisions of the bill have been eliminated in the substitute version of the bill.)

Testified: (In support) Representative McMahan, co-sponsor; and Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs.

(Opposed) Amanda Lee, Washington Association of Criminal Defense Lawyers.