
**Criminal Justice & Corrections
Committee**

ESSB 5631

Brief Description: Making it a crime to traffic in persons.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Thibaudeau, Kohl-Welles, Brandland, Kline, Hargrove, Fraser, McAuliffe, Keiser, B. Sheldon and Winsley).

Brief Summary of Engrossed Substitute Bill

- Creates the crime of trafficking in the first degree, a seriousness level XIV, class A felony.
- Creates the crime of trafficking in the second degree, a seriousness level X, class A felony.
- Creates an aggravating factor if the victim involved in the trafficking offense was a minor at the time of the offense.
- 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.

Hearing Date: 3/21/03

Staff: Yvonne Walker (786-7841).

Background:

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.

The United Nations estimates that criminal groups make more than \$7 billion annually from trafficking human beings. Originally, Latin America and Asia were the main sources for the trafficking business. However, over the last decade or so, persons from Germany and Russia have added to the market economy of trafficking.

Washington has statutes that punishes a person for certain prostitution types of offenses. Unlike federal law, it does not 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.

The maximum sentence for all class A felonies under Washington's statute is life imprisonment and a \$50,000 fine.

Aggravating Factor. The standard sentencing range is presumed to be appropriate for the typical felony case. However, the law provides that in exceptional cases, a court has the discretion to depart from the standard range and may impose an exceptional sentence below the standard range (with a mitigating circumstance) or above the range (with an aggravating circumstance). The Sentencing Reform Act (SRA) provides a list of illustrative factors that a court may consider in deciding whether to impose an exceptional sentence outside of the standard range. Some of the illustrative aggravating factors provided by the SRA include: behavior that manifested into deliberate cruelty to a victim; vulnerability of a victim; sexual motivation on the part of the defendant; and an ongoing pattern of multiple incidents of abuse to a victim.

Criminal profiteering. 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.

Summary of Bill:

Two crimes relating to the trafficking of persons are created.

Trafficking. A person is guilty of trafficking in the second degree, 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. Trafficking in the second degree is a seriousness level X, class A felony offense. A first time offender with no criminal history would receive a presumptive sentence range of five years in prison.

A person is guilty of trafficking in the first degree 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. Trafficking in the first degree is a seriousness level XIV, class A felony offense. A first time offender with no criminal history would receive a presumptive sentence range of 14 years in prison.

Aggravating Factor. The list of illustrative aggravating factors in the SRA is expanded to include any trafficking crime that is committed where the victim involved in the trafficking offense was a minor at the time of the offense.

Criminal profiteering. The definition of criminal profiteering in the Criminal Profiteering Act is expanded to include the crime of trafficking.

Among other enumerated crimes "criminal profiteering" includes the commission of trafficking in persons, despite whether or not the person benefitted financially from the offense. 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: Requested on March 14, 2003.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed, except for Section 3 takes effect on July 1, 2004.