

SENATE BILL REPORT

ESSB 5631

As Passed Senate, March 10, 2003

Title: An act relating to trafficking in persons.

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 History:

Committee Activity: Judiciary: 2/14/03, 2/20/03 [DPS].

Passed Senate: 3/10/03, 48-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5631 be substituted therefor, and the substitute bill do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Hargrove, Haugen, Johnson, Kline, Roach and Thibaudeau.

Staff: Aldo Melchiori (786-7439)

Background: Trafficking in persons, also known as "human trafficking," is a form of modern-day slavery. Traffickers often prey on individuals who are poor, frequently unemployed or underemployed, and who may lack access to social safety nets, predominantly women and children. Victims are often lured with false promises of good jobs and better lives, and then forced to work under brutal and inhuman conditions. Many victims suffer extreme physical and mental abuse, including rape, sexual exploitation, torture, beatings, starvation, death threats, and threats to family members. Human trafficking is a major source of profit for organized crime syndicates, along with trafficking in drugs and guns. The U.S. Department of Justice estimates that approximately 50,000 victims are trafficked into the United States annually.

The Thirteenth Amendment to the U.S. Constitution outlaws slavery and involuntary servitude. The Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. No. 106-386, effective October 28, 2000, supplemented existing federal laws that apply to human trafficking. It also established new tools and resources to combat trafficking in persons, and required an array of services and protections for victims. Under the VTVPA, federal felony criminal offenses that may apply to trafficking in persons include slavery and peonage, sex trafficking in children and adults, and the unlawful confiscation of a victim's documents. In addition to the severe forms of trafficking listed in the VTVPA, there are other existing federal statutes that may be applicable in particular cases. These include the crimes of (1) human smuggling, (2) kidnapping, (3) transportation for prostitution or any criminal sexual activity, and (4) importation of aliens for unlawful activities, including

prostitution, organized crime and racketeering, fraud and false statements, money laundering, and visa fraud.

Summary of Bill: A person commits the crime of trafficking in the first degree when (1) the offender knows that force, fraud, or coercion will be used to cause another person to engage in forced labor or involuntary servitude; (2) the offender recruits, harbors, transports, provides, or obtains the victim, or benefits from participating in these activities; and (3) the prohibited act involves kidnapping, a finding of sexual motivation, or results in death. Trafficking in the first degree is a class A felony ranked at level XIV on the sentencing grid (123 to 220 months for a first offense).

A person commits the crime of trafficking in the second degree when (1) the offender knows that force, fraud, or coercion will be used to cause another person to engage in forced labor or involuntary servitude; and (2) the offender recruits, harbors, transports, provides, or obtains the victim, or benefits from participating in these activities. Trafficking in the second degree is a class A felony ranked at level X on the sentencing grid (51 to 68 months for a first offense).

Commission of either offense can result in an exceptional sentence if committed against a minor. Since both offenses are class A felonies, they are: (1) "most serious offenses" and are therefor "strikes" under the persistent offender statute, and (2) "violent offenses" scored as two points if there are subsequent violent offenses. Additionally, any single act of trafficking in the first or second degree, or the anticipatory offense, is criminal profiteering. A person who sustains an injury by an act of criminal profiteering may file an action for damages and the costs of suit. A prosecuting attorney or the Attorney General may also file an action for damages and costs on behalf of the victim or the state. The court may also order the forfeiture of all property or proceeds gained or used by the offender during the offense. Proceeds of the forfeiture are first applied to restitution for the victim with any remainder going into the public safety and education account to promote crime victim's compensation.

Appropriation: None.

Fiscal Note: Requested on February 5, 2003.

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

Testimony For: These crimes are motivated by greed. Trafficking in human beings is the third largest profit-making crime in the United States, right behind firearms and illegal drugs. These victims should be valued as human beings, not chattel. Our country was founded on freedom and personal dignity for all.

Testimony Against: The crimes are ranked too high on the sentencing grid. Making these offenses strikes will lead to increased litigation.

Testified: PRO: Senator Thibaudeau, prime sponsor; Monica Ghosh, UW Women's Center; Suzanne Brown, Washington Coalition of Sexual Assault Programs; Rani Hong, Shared Hope International; Grace Huang, Washington State Coalition Against Domestic Violence. CON: Leslie Tolein, WACDL, Washington Defenders Assoc.

