

SSB 5718 - H COMM AMD

By Committee on Public Safety & Emergency Preparedness

ADOPTED AND ENGROSSED 04/03/2007

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 9.68A.001 and 1984 c 262 s 1 are each amended to read
4 as follows:

5 The legislature finds that the prevention of sexual exploitation
6 and abuse of children constitutes a government objective of surpassing
7 importance. The care of children is a sacred trust and should not be
8 abused by those who seek commercial gain or personal gratification
9 based on the exploitation of children.

10 The legislature further finds that the protection of children from
11 sexual exploitation can be accomplished without infringing on a
12 constitutionally protected activity. The definition of "sexually
13 explicit conduct" and other operative definitions demarcate a line
14 between protected and prohibited conduct and should not inhibit
15 legitimate scientific, medical, or educational activities.

16 The legislature further finds that children engaged in sexual
17 conduct for financial compensation are frequently the victims of sexual
18 abuse. Approximately eighty to ninety percent of children engaged in
19 sexual activity for financial compensation have a history of sexual
20 abuse victimization. It is the intent of the legislature to encourage
21 these children to engage in prevention and intervention services and to
22 hold those who pay to engage in the sexual abuse of children
23 accountable for the trauma they inflict on children.

24 **Sec. 2.** RCW 9.68A.100 and 1999 c 327 s 4 are each amended to read
25 as follows:

26 (1) A person is guilty of (~~patronizing a juvenile prostitute~~)
27 commercial sexual abuse of a minor if (~~that person engages or agrees~~
28 ~~or offers~~):

1 (a) He or she pays a fee to a minor or a third person as
2 compensation for a minor having engaged in sexual conduct with him or
3 her;

4 (b) He or she pays or agrees to pay a fee to a minor or a third
5 person pursuant to an understanding that in return therefore such minor
6 will engage in sexual conduct with him or her; or

7 (c) He or she solicits, offers, or requests to engage in sexual
8 conduct with a minor in return for a fee(~~(, and is guilty of)~~).

9 (2) Commercial sexual abuse of a minor is a class C felony
10 punishable under chapter 9A.20 RCW.

11 (3) In addition to any other penalty provided under chapter 9A.20
12 RCW, a person guilty of (~~patronizing a juvenile prostitute~~)
13 commercial sexual abuse of a minor is subject to the provisions under
14 RCW 9A.88.130 and 9A.88.140.

15 (4) For purposes of this section, "sexual conduct" means sexual
16 intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

17 **Sec. 3.** RCW 9.68A.110 and 1992 c 178 s 1 are each amended to read
18 as follows:

19 (1) In a prosecution under RCW 9.68A.040, it is not a defense that
20 the defendant was involved in activities of law enforcement and
21 prosecution agencies in the investigation and prosecution of criminal
22 offenses. Law enforcement and prosecution agencies shall not employ
23 minors to aid in the investigation of a violation of RCW 9.68A.090 or
24 9.68A.100. This chapter does not apply to lawful conduct between
25 spouses.

26 (2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or
27 9.68A.080, it is not a defense that the defendant did not know the age
28 of the child depicted in the visual or printed matter: PROVIDED, That
29 it is a defense, which the defendant must prove by a preponderance of
30 the evidence, that at the time of the offense the defendant was not in
31 possession of any facts on the basis of which he or she should
32 reasonably have known that the person depicted was a minor.

33 (3) In a prosecution under RCW 9.68A.040 (~~(~~or~~)~~), 9.68A.090, section
34 4 of this act, or section 5 of this act, it is not a defense that the
35 defendant did not know the alleged victim's age: PROVIDED, That it is
36 a defense, which the defendant must prove by a preponderance of the
37 evidence, that at the time of the offense, the defendant made a

1 reasonable bona fide attempt to ascertain the true age of the minor by
2 requiring production of a driver's license, marriage license, birth
3 certificate, or other governmental or educational identification card
4 or paper and did not rely solely on the oral allegations or apparent
5 age of the minor.

6 (4) In a prosecution under RCW 9.68A.050, 9.68A.060, or 9.68A.070,
7 it shall be an affirmative defense that the defendant was a law
8 enforcement officer in the process of conducting an official
9 investigation of a sex-related crime against a minor, or that the
10 defendant was providing individual case treatment as a recognized
11 medical facility or as a psychiatrist or psychologist licensed under
12 Title 18 RCW.

13 (5) In a prosecution under RCW 9.68A.050, 9.68A.060, or 9.68A.070,
14 the state is not required to establish the identity of the alleged
15 victim.

16 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.68A RCW
17 to read as follows:

18 (1) A person is guilty of promoting commercial sexual abuse of a
19 minor if he or she knowingly advances commercial sexual abuse of a
20 minor or profits from a minor engaged in sexual conduct.

21 (2) Promoting commercial sexual abuse of a minor is a class B
22 felony.

23 (3) For the purposes of this section:

24 (a) A person "advances commercial sexual abuse of a minor" if,
25 acting other than as a minor receiving compensation for personally
26 rendered sexual conduct or as a person engaged in commercial sexual
27 abuse of a minor, he or she causes or aids a person to commit or engage
28 in commercial sexual abuse of a minor, procures or solicits customers
29 for commercial sexual abuse of a minor, provides persons or premises
30 for the purposes of engaging in commercial sexual abuse of a minor,
31 operates or assists in the operation of a house or enterprise for the
32 purposes of engaging in commercial sexual abuse of a minor, or engages
33 in any other conduct designed to institute, aid, cause, assist, or
34 facilitate an act or enterprise of commercial sexual abuse of a minor.

35 (b) A person "profits from commercial sexual abuse of a minor" if,
36 acting other than as a minor receiving compensation for personally
37 rendered sexual conduct, he or she accepts or receives money or other

1 property pursuant to an agreement or understanding with any person
2 whereby he or she participates or will participate in the proceeds of
3 commercial sexual abuse of a minor.

4 (4) For purposes of this section, "sexual conduct" means sexual
5 intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

6 NEW SECTION. **Sec. 5.** A new section is added to chapter 9.68A RCW
7 to read as follows:

8 (1) A person commits the offense of promoting travel for commercial
9 sexual abuse of a minor if he or she knowingly sells or offers to sell
10 travel services that include or facilitate travel for the purpose of
11 engaging in what would be commercial sexual abuse of a minor or
12 promoting commercial sexual abuse of a minor, if occurring in this
13 state.

14 (2) Promoting travel for commercial sexual abuse of a minor is a
15 class C felony.

16 (3) For purposes of this section, "travel services" has the same
17 meaning as defined in RCW 19.138.021.

18 **Sec. 6.** RCW 19.138.340 and 2006 c 250 s 3 are each amended to read
19 as follows:

20 (1) No seller of travel shall engage in any of the following:

21 (a) Promoting travel for prostitution or promoting travel for
22 commercial sexual abuse of a minor;

23 (b) Selling, advertising, or otherwise offering to sell travel
24 services or facilitate travel:

25 (i) For the purposes of engaging in a commercial sex act;

26 (ii) That consists of tourism packages or activities using and
27 offering sexual acts as an enticement for tourism; or

28 (iii) That provides, purports to provide access to, or facilitates
29 the availability of sex escorts or sexual services.

30 (2) For the purposes of this section:

31 (a) "Commercial sex act" means any sexual contact, as defined in
32 chapter 9A.44 RCW, for which anything of value is given to or received
33 by any person.

34 (b) "Sexual act" means any sexual contact as defined in chapter
35 9A.44 RCW.

1 NEW SECTION. **Sec. 7.** A new section is added to chapter 9.68A RCW
2 to read as follows:

3 (1) A person is guilty of permitting commercial sexual abuse of a
4 minor if, having possession or control of premises which he or she
5 knows are being used for the purpose of commercial sexual abuse of a
6 minor, he or she fails without lawful excuse to make reasonable effort
7 to halt or abate such use and to make a reasonable effort to notify law
8 enforcement of such use.

9 (2) Permitting commercial sexual abuse of a minor is a gross
10 misdemeanor.

11 **Sec. 8.** RCW 9A.88.140 and 1999 c 327 s 3 are each amended to read
12 as follows:

13 (1) Upon an arrest for a suspected violation of patronizing a
14 prostitute or (~~patronizing a juvenile prostitute~~) commercial sexual
15 abuse of a minor, the arresting law enforcement officer may impound the
16 person's vehicle if (a) the motor vehicle was used in the commission of
17 the crime; (b) the person arrested is the owner of the vehicle; and (c)
18 the person arrested has previously been convicted of patronizing a
19 prostitute, under RCW 9A.88.110, or (~~patronizing a juvenile~~
20 ~~prostitute~~) commercial sexual abuse of a minor, under RCW 9.68A.100.

21 (2) Impoundments performed under this section shall be in
22 accordance with chapter 46.55 RCW.

23 **Sec. 9.** RCW 9.94A.533 and 2006 c 339 s 301 and 2006 c 123 s 1 are
24 each reenacted and amended to read as follows:

25 (1) The provisions of this section apply to the standard sentence
26 ranges determined by RCW 9.94A.510 or 9.94A.517.

27 (2) For persons convicted of the anticipatory offenses of criminal
28 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
29 standard sentence range is determined by locating the sentencing grid
30 sentence range defined by the appropriate offender score and the
31 seriousness level of the completed crime, and multiplying the range by
32 seventy-five percent.

33 (3) The following additional times shall be added to the standard
34 sentence range for felony crimes committed after July 23, 1995, if the
35 offender or an accomplice was armed with a firearm as defined in RCW
36 9.41.010 and the offender is being sentenced for one of the crimes

1 listed in this subsection as eligible for any firearm enhancements
2 based on the classification of the completed felony crime. If the
3 offender is being sentenced for more than one offense, the firearm
4 enhancement or enhancements must be added to the total period of
5 confinement for all offenses, regardless of which underlying offense is
6 subject to a firearm enhancement. If the offender or an accomplice was
7 armed with a firearm as defined in RCW 9.41.010 and the offender is
8 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
9 commit one of the crimes listed in this subsection as eligible for any
10 firearm enhancements, the following additional times shall be added to
11 the standard sentence range determined under subsection (2) of this
12 section based on the felony crime of conviction as classified under RCW
13 9A.28.020:

14 (a) Five years for any felony defined under any law as a class A
15 felony or with a statutory maximum sentence of at least twenty years,
16 or both, and not covered under (f) of this subsection;

17 (b) Three years for any felony defined under any law as a class B
18 felony or with a statutory maximum sentence of ten years, or both, and
19 not covered under (f) of this subsection;

20 (c) Eighteen months for any felony defined under any law as a class
21 C felony or with a statutory maximum sentence of five years, or both,
22 and not covered under (f) of this subsection;

23 (d) If the offender is being sentenced for any firearm enhancements
24 under (a), (b), and/or (c) of this subsection and the offender has
25 previously been sentenced for any deadly weapon enhancements after July
26 23, 1995, under (a), (b), and/or (c) of this subsection or subsection
27 (4)(a), (b), and/or (c) of this section, or both, all firearm
28 enhancements under this subsection shall be twice the amount of the
29 enhancement listed;

30 (e) Notwithstanding any other provision of law, all firearm
31 enhancements under this section are mandatory, shall be served in total
32 confinement, and shall run consecutively to all other sentencing
33 provisions, including other firearm or deadly weapon enhancements, for
34 all offenses sentenced under this chapter. However, whether or not a
35 mandatory minimum term has expired, an offender serving a sentence
36 under this subsection may be granted an extraordinary medical placement
37 when authorized under RCW 9.94A.728(4);

1 (f) The firearm enhancements in this section shall apply to all
2 felony crimes except the following: Possession of a machine gun,
3 possessing a stolen firearm, drive-by shooting, theft of a firearm,
4 unlawful possession of a firearm in the first and second degree, and
5 use of a machine gun in a felony;

6 (g) If the standard sentence range under this section exceeds the
7 statutory maximum sentence for the offense, the statutory maximum
8 sentence shall be the presumptive sentence unless the offender is a
9 persistent offender. If the addition of a firearm enhancement
10 increases the sentence so that it would exceed the statutory maximum
11 for the offense, the portion of the sentence representing the
12 enhancement may not be reduced.

13 (4) The following additional times shall be added to the standard
14 sentence range for felony crimes committed after July 23, 1995, if the
15 offender or an accomplice was armed with a deadly weapon other than a
16 firearm as defined in RCW 9.41.010 and the offender is being sentenced
17 for one of the crimes listed in this subsection as eligible for any
18 deadly weapon enhancements based on the classification of the completed
19 felony crime. If the offender is being sentenced for more than one
20 offense, the deadly weapon enhancement or enhancements must be added to
21 the total period of confinement for all offenses, regardless of which
22 underlying offense is subject to a deadly weapon enhancement. If the
23 offender or an accomplice was armed with a deadly weapon other than a
24 firearm as defined in RCW 9.41.010 and the offender is being sentenced
25 for an anticipatory offense under chapter 9A.28 RCW to commit one of
26 the crimes listed in this subsection as eligible for any deadly weapon
27 enhancements, the following additional times shall be added to the
28 standard sentence range determined under subsection (2) of this section
29 based on the felony crime of conviction as classified under RCW
30 9A.28.020:

31 (a) Two years for any felony defined under any law as a class A
32 felony or with a statutory maximum sentence of at least twenty years,
33 or both, and not covered under (f) of this subsection;

34 (b) One year for any felony defined under any law as a class B
35 felony or with a statutory maximum sentence of ten years, or both, and
36 not covered under (f) of this subsection;

37 (c) Six months for any felony defined under any law as a class C

1 felony or with a statutory maximum sentence of five years, or both, and
2 not covered under (f) of this subsection;

3 (d) If the offender is being sentenced under (a), (b), and/or (c)
4 of this subsection for any deadly weapon enhancements and the offender
5 has previously been sentenced for any deadly weapon enhancements after
6 July 23, 1995, under (a), (b), and/or (c) of this subsection or
7 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
8 weapon enhancements under this subsection shall be twice the amount of
9 the enhancement listed;

10 (e) Notwithstanding any other provision of law, all deadly weapon
11 enhancements under this section are mandatory, shall be served in total
12 confinement, and shall run consecutively to all other sentencing
13 provisions, including other firearm or deadly weapon enhancements, for
14 all offenses sentenced under this chapter. However, whether or not a
15 mandatory minimum term has expired, an offender serving a sentence
16 under this subsection may be granted an extraordinary medical placement
17 when authorized under RCW 9.94A.728(4);

18 (f) The deadly weapon enhancements in this section shall apply to
19 all felony crimes except the following: Possession of a machine gun,
20 possessing a stolen firearm, drive-by shooting, theft of a firearm,
21 unlawful possession of a firearm in the first and second degree, and
22 use of a machine gun in a felony;

23 (g) If the standard sentence range under this section exceeds the
24 statutory maximum sentence for the offense, the statutory maximum
25 sentence shall be the presumptive sentence unless the offender is a
26 persistent offender. If the addition of a deadly weapon enhancement
27 increases the sentence so that it would exceed the statutory maximum
28 for the offense, the portion of the sentence representing the
29 enhancement may not be reduced.

30 (5) The following additional times shall be added to the standard
31 sentence range if the offender or an accomplice committed the offense
32 while in a county jail or state correctional facility and the offender
33 is being sentenced for one of the crimes listed in this subsection. If
34 the offender or an accomplice committed one of the crimes listed in
35 this subsection while in a county jail or state correctional facility,
36 and the offender is being sentenced for an anticipatory offense under
37 chapter 9A.28 RCW to commit one of the crimes listed in this

1 subsection, the following additional times shall be added to the
2 standard sentence range determined under subsection (2) of this
3 section:

4 (a) Eighteen months for offenses committed under RCW 69.50.401(2)
5 (a) or (b) or 69.50.410;

6 (b) Fifteen months for offenses committed under RCW 69.50.401(2)
7 (c), (d), or (e);

8 (c) Twelve months for offenses committed under RCW 69.50.4013.

9 For the purposes of this subsection, all of the real property of a
10 state correctional facility or county jail shall be deemed to be part
11 of that facility or county jail.

12 (6) An additional twenty-four months shall be added to the standard
13 sentence range for any ranked offense involving a violation of chapter
14 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
15 9.94A.605. All enhancements under this subsection shall run
16 consecutively to all other sentencing provisions, for all offenses
17 sentenced under this chapter.

18 (7) An additional two years shall be added to the standard sentence
19 range for vehicular homicide committed while under the influence of
20 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
21 prior offense as defined in RCW 46.61.5055.

22 (8)(a) The following additional times shall be added to the
23 standard sentence range for felony crimes committed on or after July 1,
24 2006, if the offense was committed with sexual motivation, as that term
25 is defined in RCW 9.94A.030. If the offender is being sentenced for
26 more than one offense, the sexual motivation enhancement must be added
27 to the total period of total confinement for all offenses, regardless
28 of which underlying offense is subject to a sexual motivation
29 enhancement. If the offender committed the offense with sexual
30 motivation and the offender is being sentenced for an anticipatory
31 offense under chapter 9A.28 RCW, the following additional times shall
32 be added to the standard sentence range determined under subsection (2)
33 of this section based on the felony crime of conviction as classified
34 under RCW 9A.28.020:

35 (i) Two years for any felony defined under the law as a class A
36 felony or with a statutory maximum sentence of at least twenty years,
37 or both;

1 (ii) Eighteen months for any felony defined under any law as a
2 class B felony or with a statutory maximum sentence of ten years, or
3 both;

4 (iii) One year for any felony defined under any law as a class C
5 felony or with a statutory maximum sentence of five years, or both;

6 (iv) If the offender is being sentenced for any sexual motivation
7 enhancements under (i), (ii), and/or (iii) of this subsection and the
8 offender has previously been sentenced for any sexual motivation
9 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of
10 this subsection, all sexual motivation enhancements under this
11 subsection shall be twice the amount of the enhancement listed;

12 (b) Notwithstanding any other provision of law, all sexual
13 motivation enhancements under this subsection are mandatory, shall be
14 served in total confinement, and shall run consecutively to all other
15 sentencing provisions, including other sexual motivation enhancements,
16 for all offenses sentenced under this chapter. However, whether or not
17 a mandatory minimum term has expired, an offender serving a sentence
18 under this subsection may be granted an extraordinary medical placement
19 when authorized under RCW 9.94A.728(4);

20 (c) The sexual motivation enhancements in this subsection apply to
21 all felony crimes;

22 (d) If the standard sentence range under this subsection exceeds
23 the statutory maximum sentence for the offense, the statutory maximum
24 sentence shall be the presumptive sentence unless the offender is a
25 persistent offender. If the addition of a sexual motivation
26 enhancement increases the sentence so that it would exceed the
27 statutory maximum for the offense, the portion of the sentence
28 representing the enhancement may not be reduced;

29 (e) The portion of the total confinement sentence which the
30 offender must serve under this subsection shall be calculated before
31 any earned early release time is credited to the offender;

32 (f) Nothing in this subsection prevents a sentencing court from
33 imposing a sentence outside the standard sentence range pursuant to RCW
34 9.94A.535.

35 (9) An additional one-year enhancement shall be added to the
36 standard sentence range for the felony crimes of RCW 9A.44.073,
37 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
38 or after the effective date of this act, if the offender engaged,

1 agreed, or offered to engage the victim in the sexual conduct in return
2 for a fee. If the offender is being sentenced for more than one
3 offense, the one-year enhancement must be added to the total period of
4 total confinement for all offenses, regardless of which underlying
5 offense is subject to the enhancement. If the offender is being
6 sentenced for an anticipatory offense for the felony crimes of RCW
7 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089,
8 and the offender attempted, solicited another, or conspired to engage,
9 agree, or offer to engage the victim in sexual conduct in return for a
10 fee, an additional one-year enhancement shall be added to the standard
11 sentence range determined under subsection (2) of this section. For
12 purposes of this subsection, "sexual conduct" means sexual intercourse
13 or sexual contact, both as defined in chapter 9A.44 RCW.

14 NEW SECTION. Sec. 10. A new section is added to chapter 9.94A RCW
15 to read as follows:

16 (1) In a prosecution for a violation of RCW 9A.44.073, 9A.44.076,
17 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, or an anticipatory
18 offense for a violation of RCW 9A.44.073, 9A.44.076, 9A.44.079,
19 9A.44.083, 9A.44.086, or 9A.44.089, committed on or after the effective
20 date of this act, the prosecuting attorney may file a special
21 allegation that the defendant engaged, agreed, offered, attempted,
22 solicited another, or conspired to engage the victim in the sexual
23 conduct in return for a fee, when sufficient admissible evidence
24 exists, which, when considered with the most plausible, reasonably
25 foreseeable defense that could be raised under the evidence, would
26 justify a finding by a reasonable and objective fact-finder that the
27 defendant engaged, agreed, offered, attempted, solicited another, or
28 conspired to engage the victim in the sexual conduct in return for a
29 fee.

30 (2) Once a special allegation has been made under this section, the
31 state has the burden to prove beyond a reasonable doubt that the
32 defendant engaged, agreed, offered, attempted, solicited another, or
33 conspired to engage the victim in the sexual conduct in return for a
34 fee. If a jury is had, the jury shall, if it finds the defendant
35 guilty, also find a special verdict as to whether the defendant
36 engaged, agreed, offered, attempted, solicited another, or conspired to
37 engage the victim in the sexual conduct in exchange for a fee. If no

1 jury is had, the court shall make a finding of fact as to whether the
2 defendant engaged, agreed, offered, attempted, solicited another, or
3 conspired to engage the victim in the sexual conduct in exchange for a
4 fee.

5 (3) For purposes of this section, "sexual conduct" means sexual
6 intercourse or sexual contact as defined in chapter 9A.44 RCW.

7 **Sec. 11.** RCW 9.68A.105 and 1995 c 353 s 12 are each amended to
8 read as follows:

9 (1)(a) In addition to penalties set forth in RCW 9.68A.100, a
10 person who is either convicted or given a deferred sentence or a
11 deferred prosecution or who has entered into a statutory or
12 nonstatutory diversion agreement as a result of an arrest for violating
13 RCW 9.68A.100 or a comparable county or municipal ordinance shall be
14 assessed a (~~two~~) five hundred fifty dollar fee.

15 (b) The court may not suspend payment of all or part of the fee
16 unless it finds that the person does not have the ability to pay.

17 (c) When a minor has been adjudicated a juvenile offender or has
18 entered into a statutory or nonstatutory diversion agreement for an
19 offense which, if committed by an adult, would constitute a violation
20 of RCW 9.68A.100 or a comparable county or municipal ordinance, the
21 court shall assess the fee under (a) of this subsection. The court may
22 not suspend payment of all or part of the fee unless it finds that the
23 minor does not have the ability to pay the fee.

24 (2) The fee assessed under subsection (1) of this section shall be
25 collected by the clerk of the court and distributed each month to the
26 state treasurer for deposit in the prostitution prevention and
27 intervention account under RCW 43.63A.740 for the purpose of funding
28 prostitution prevention and intervention activities.

29 (3) For the purposes of this section:

30 (a) "Statutory or nonstatutory diversion agreement" means an
31 agreement under RCW 13.40.080 or any written agreement between a person
32 accused of an offense listed in subsection (1) of this section and a
33 court, county or city prosecutor, or designee thereof, whereby the
34 person agrees to fulfill certain conditions in lieu of prosecution.

35 (b) "Deferred sentence" means a sentence that will not be carried
36 out if the defendant meets certain requirements, such as complying with
37 the conditions of probation.

1 **Sec. 12.** RCW 9A.88.120 and 1995 c 353 s 13 are each amended to
2 read as follows:

3 (1)(a) In addition to penalties set forth in RCW 9A.88.010,
4 9A.88.030, and 9A.88.090, a person who is either convicted or given a
5 deferred sentence or a deferred prosecution or who has entered into a
6 statutory or nonstatutory diversion agreement as a result of an arrest
7 for violating RCW 9A.88.010, 9A.88.030, 9A.88.090, or comparable county
8 or municipal ordinances shall be assessed a fifty dollar fee.

9 (b) In addition to penalties set forth in RCW 9A.88.110, a person
10 who is either convicted or given a deferred sentence or a deferred
11 prosecution or who has entered into a statutory or nonstatutory
12 diversion agreement as a result of an arrest for violating RCW
13 9A.88.110 or a comparable county or municipal ordinance shall be
14 assessed a one hundred fifty dollar fee.

15 (c) In addition to penalties set forth in RCW 9A.88.070 and
16 9A.88.080, a person who is either convicted or given a deferred
17 sentence or a deferred prosecution or who has entered into a statutory
18 or nonstatutory diversion agreement as a result of an arrest for
19 violating RCW 9A.88.070, 9A.88.080, or comparable county or municipal
20 ordinances shall be assessed a three hundred dollar fee.

21 (2) The court may not suspend payment of all or part of the fee
22 unless it finds that the person does not have the ability to pay.

23 (3) When a minor has been adjudicated a juvenile offender or has
24 entered into a statutory or nonstatutory diversion agreement for an
25 offense which, if committed by an adult, would constitute a violation
26 under this chapter or comparable county or municipal ordinances, the
27 court shall assess the fee as specified under subsection (1) of this
28 section. The court may not suspend payment of all or part of the fee
29 unless it finds that the minor does not have the ability to pay the
30 fee.

31 (4) Any fee assessed under this section shall be collected by the
32 clerk of the court and distributed each month to the state treasurer
33 for deposit in the prostitution prevention and intervention account
34 under RCW 43.63A.740 for the purpose of funding prostitution prevention
35 and intervention activities.

36 (5) For the purposes of this section:

37 (a) "Statutory or nonstatutory diversion agreement" means an
38 agreement under RCW 13.40.080 or any written agreement between a person

1 accused of an offense listed in subsection (1) of this section and a
2 court, county, or city prosecutor, or designee thereof, whereby the
3 person agrees to fulfill certain conditions in lieu of prosecution.

4 (b) "Deferred sentence" means a sentence that will not be carried
5 out if the defendant meets certain requirements, such as complying with
6 the conditions of probation.

7 **Sec. 13.** RCW 9A.88.070 and 1975 1st ex.s. c 260 s 9A.88.070 are
8 each amended to read as follows:

9 (1) A person is guilty of promoting prostitution in the first
10 degree if he or she knowingly((+

11 ~~(a))~~ advances prostitution by compelling a person by threat or
12 force to engage in prostitution or profits from prostitution which
13 results from such threat or force((+~~or~~

14 ~~(b) Advances or profits from prostitution of a person less than~~
15 ~~eighteen years old)).~~

16 (2) Promoting prostitution in the first degree is a class B felony.

17 **Sec. 14.** RCW 9.94A.515 and 2006 c 277 s 6, 2006 c 228 s 9, 2006 c
18 191 s 2, 2006 c 139 s 2, 2006 c 128 s 3, and 2006 c 73 s 12 are each
19 reenacted and amended to read as follows:

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TABLE 2	
CRIMES INCLUDED WITHIN	
EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1)) Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050) Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))

1 XII Assault 1 (RCW 9A.36.011)
2 Assault of a Child 1 (RCW 9A.36.120)
3 Malicious placement of an imitation
4 device 1 (RCW 70.74.272(1)(a))
5 Rape 1 (RCW 9A.44.040)
6 Rape of a Child 1 (RCW 9A.44.073)
7 Trafficking 2 (RCW 9A.40.100(2))
8 XI Manslaughter 1 (RCW 9A.32.060)
9 Rape 2 (RCW 9A.44.050)
10 Rape of a Child 2 (RCW 9A.44.076)
11 X Child Molestation 1 (RCW 9A.44.083)
12 Indecent Liberties (with forcible
13 compulsion) (RCW
14 9A.44.100(1)(a))
15 Kidnapping 1 (RCW 9A.40.020)
16 Leading Organized Crime (RCW
17 9A.82.060(1)(a))
18 Malicious explosion 3 (RCW
19 70.74.280(3))
20 Sexually Violent Predator Escape
21 (RCW 9A.76.115)
22 IX Abandonment of Dependent Person 1
23 (RCW 9A.42.060)
24 Assault of a Child 2 (RCW 9A.36.130)
25 Criminal Mistreatment 1 (RCW
26 9A.42.020)
27 Explosive devices prohibited (RCW
28 70.74.180)
29 Hit and Run--Death (RCW
30 46.52.020(4)(a))
31 Homicide by Watercraft, by being
32 under the influence of intoxicating
33 liquor or any drug (RCW
34 79A.60.050)
35 Inciting Criminal Profiteering (RCW
36 9A.82.060(1)(b))

1 Malicious placement of an explosive 2
2 (RCW 70.74.270(2))
3 Robbery 1 (RCW 9A.56.200)
4 Sexual Exploitation (RCW 9.68A.040)
5 Vehicular Homicide, by being under
6 the influence of intoxicating liquor
7 or any drug (RCW 46.61.520)
8 VIII Arson 1 (RCW 9A.48.020)
9 Homicide by Watercraft, by the
10 operation of any vessel in a
11 reckless manner (RCW
12 79A.60.050)
13 Manslaughter 2 (RCW 9A.32.070)
14 Promoting Commercial Sexual Abuse
15 of a Minor (section 4 of this act)
16 Promoting Prostitution 1 (RCW
17 9A.88.070)
18 Theft of Ammonia (RCW 69.55.010)
19 Vehicular Homicide, by the operation
20 of any vehicle in a reckless manner
21 (RCW 46.61.520)
22 VII Burglary 1 (RCW 9A.52.020)
23 Child Molestation 2 (RCW 9A.44.086)
24 Civil Disorder Training (RCW
25 9A.48.120)
26 Dealing in depictions of minor engaged
27 in sexually explicit conduct (RCW
28 9.68A.050)
29 Drive-by Shooting (RCW 9A.36.045)
30 Homicide by Watercraft, by disregard
31 for the safety of others (RCW
32 79A.60.050)
33 Indecent Liberties (without forcible
34 compulsion) (RCW 9A.44.100(1)
35 (b) and (c))
36 Introducing Contraband 1 (RCW
37 9A.76.140)

1 Malicious placement of an explosive 3
2 (RCW 70.74.270(3))
3 Negligently Causing Death By Use of a
4 Signal Preemption Device (RCW
5 46.37.675)
6 Sending, bringing into state depictions
7 of minor engaged in sexually
8 explicit conduct (RCW 9.68A.060)
9 Unlawful Possession of a Firearm in
10 the first degree (RCW 9.41.040(1))
11 Use of a Machine Gun in Commission
12 of a Felony (RCW 9.41.225)
13 Vehicular Homicide, by disregard for
14 the safety of others (RCW
15 46.61.520)
16 VI Bail Jumping with Murder 1 (RCW
17 9A.76.170(3)(a))
18 Bribery (RCW 9A.68.010)
19 Incest 1 (RCW 9A.64.020(1))
20 Intimidating a Judge (RCW 9A.72.160)
21 Intimidating a Juror/Witness (RCW
22 9A.72.110, 9A.72.130)
23 Malicious placement of an imitation
24 device 2 (RCW 70.74.272(1)(b))
25 Possession of Depictions of a Minor
26 Engaged in Sexually Explicit
27 Conduct (RCW 9.68A.070)
28 Rape of a Child 3 (RCW 9A.44.079)
29 Theft of a Firearm (RCW 9A.56.300)
30 Unlawful Storage of Ammonia (RCW
31 69.55.020)
32 V Abandonment of Dependent Person 2
33 (RCW 9A.42.070)
34 Advancing money or property for
35 extortionate extension of credit
36 (RCW 9A.82.030)

1 Bail Jumping with class A Felony
2 (RCW 9A.76.170(3)(b))
3 Child Molestation 3 (RCW 9A.44.089)
4 Criminal Mistreatment 2 (RCW
5 9A.42.030)
6 Custodial Sexual Misconduct 1 (RCW
7 9A.44.160)
8 Domestic Violence Court Order
9 Violation (RCW 10.99.040,
10 10.99.050, 26.09.300, 26.10.220,
11 26.26.138, 26.50.110, 26.52.070,
12 or 74.34.145)
13 Driving While Under the Influence
14 (RCW 46.61.502(6))
15 Extortion 1 (RCW 9A.56.120)
16 Extortionate Extension of Credit (RCW
17 9A.82.020)
18 Extortionate Means to Collect
19 Extensions of Credit (RCW
20 9A.82.040)
21 Incest 2 (RCW 9A.64.020(2))
22 Kidnapping 2 (RCW 9A.40.030)
23 Perjury 1 (RCW 9A.72.020)
24 Persistent prison misbehavior (RCW
25 9.94.070)
26 Physical Control of a Vehicle While
27 Under the Influence (RCW
28 46.61.504(6))
29 Possession of a Stolen Firearm (RCW
30 9A.56.310)
31 Rape 3 (RCW 9A.44.060)
32 Rendering Criminal Assistance 1
33 (RCW 9A.76.070)
34 Sexual Misconduct with a Minor 1
35 (RCW 9A.44.093)
36 Sexually Violating Human Remains
37 (RCW 9A.44.105)

1 Stalking (RCW 9A.46.110)
2 Taking Motor Vehicle Without
3 Permission 1 (RCW 9A.56.070)
4 IV Arson 2 (RCW 9A.48.030)
5 Assault 2 (RCW 9A.36.021)
6 Assault 3 (of a Peace Officer with a
7 Projectile Stun Gun) (RCW
8 9A.36.031(1)(h))
9 Assault by Watercraft (RCW
10 79A.60.060)
11 Bribing a Witness/Bribe Received by
12 Witness (RCW 9A.72.090,
13 9A.72.100)
14 Cheating 1 (RCW 9.46.1961)
15 Commercial Bribery (RCW 9A.68.060)
16 Counterfeiting (RCW 9.16.035(4))
17 Endangerment with a Controlled
18 Substance (RCW 9A.42.100)
19 Escape 1 (RCW 9A.76.110)
20 Hit and Run--Injury (RCW
21 46.52.020(4)(b))
22 Hit and Run with Vessel--Injury
23 Accident (RCW 79A.60.200(3))
24 Identity Theft 1 (RCW 9.35.020(2))
25 Indecent Exposure to Person Under
26 Age Fourteen (subsequent sex
27 offense) (RCW 9A.88.010)
28 Influencing Outcome of Sporting Event
29 (RCW 9A.82.070)
30 Malicious Harassment (RCW
31 9A.36.080)
32 Residential Burglary (RCW
33 9A.52.025)
34 Robbery 2 (RCW 9A.56.210)
35 Theft of Livestock 1 (RCW 9A.56.080)
36 Threats to Bomb (RCW 9.61.160)

1 Trafficking in Stolen Property 1 (RCW
2 9A.82.050)
3 Unlawful factoring of a credit card or
4 payment card transaction (RCW
5 9A.56.290(4)(b))
6 Unlawful transaction of health
7 coverage as a health care service
8 contractor (RCW 48.44.016(3))
9 Unlawful transaction of health
10 coverage as a health maintenance
11 organization (RCW 48.46.033(3))
12 Unlawful transaction of insurance
13 business (RCW 48.15.023(3))
14 Unlicensed practice as an insurance
15 professional (RCW 48.17.063(3))
16 Use of Proceeds of Criminal
17 Profiteering (RCW 9A.82.080 (1)
18 and (2))
19 Vehicular Assault, by being under the
20 influence of intoxicating liquor or
21 any drug, or by the operation or
22 driving of a vehicle in a reckless
23 manner (RCW 46.61.522)
24 Willful Failure to Return from
25 Furlough (RCW 72.66.060)
26 III Animal Cruelty 1 (Sexual Conduct or
27 Contact) (RCW 16.52.205(3))
28 Assault 3 (Except Assault 3 of a Peace
29 Officer With a Projectile Stun
30 Gun) (RCW 9A.36.031 except
31 subsection (1)(h))
32 Assault of a Child 3 (RCW 9A.36.140)
33 Bail Jumping with class B or C Felony
34 (RCW 9A.76.170(3)(c))
35 Burglary 2 (RCW 9A.52.030)
36 Commercial Sexual Abuse of a Minor
37 (RCW 9.68A.100)

1 Communication with a Minor for
2 Immoral Purposes (RCW
3 9.68A.090)
4 Criminal Gang Intimidation (RCW
5 9A.46.120)
6 Custodial Assault (RCW 9A.36.100)
7 Cyberstalking (subsequent conviction
8 or threat of death) (RCW
9 9.61.260(3))
10 Escape 2 (RCW 9A.76.120)
11 Extortion 2 (RCW 9A.56.130)
12 Harassment (RCW 9A.46.020)
13 Intimidating a Public Servant (RCW
14 9A.76.180)
15 Introducing Contraband 2 (RCW
16 9A.76.150)
17 Malicious Injury to Railroad Property
18 (RCW 81.60.070)
19 Negligently Causing Substantial Bodily
20 Harm By Use of a Signal
21 Preemption Device (RCW
22 46.37.674)
23 Organized Retail Theft 1 (RCW
24 9A.56.350(2))
25 (~~Patronizing a Juvenile Prostitute~~
26 ~~(RCW 9.68A.100))~~)
27 Perjury 2 (RCW 9A.72.030)
28 Possession of Incendiary Device (RCW
29 9.40.120)
30 Possession of Machine Gun or Short-
31 Barreled Shotgun or Rifle (RCW
32 9.41.190)
33 Promoting Prostitution 2 (RCW
34 9A.88.080)
35 (~~Retail~~) Retail Theft with
36 Extenuating Circumstances 1
37 (RCW 9A.56.360(2))

1 Securities Act violation (RCW
2 21.20.400)
3 Tampering with a Witness (RCW
4 9A.72.120)
5 Telephone Harassment (subsequent
6 conviction or threat of death)
7 (RCW 9.61.230(2))
8 Theft of Livestock 2 (RCW 9A.56.083)
9 Theft with the Intent to Resell 1 (RCW
10 9A.56.340(2))
11 Trafficking in Stolen Property 2 (RCW
12 9A.82.055)
13 Unlawful Imprisonment (RCW
14 9A.40.040)
15 Unlawful possession of firearm in the
16 second degree (RCW 9.41.040(2))
17 Vehicular Assault, by the operation or
18 driving of a vehicle with disregard
19 for the safety of others (RCW
20 46.61.522)
21 Willful Failure to Return from Work
22 Release (RCW 72.65.070)
23 II Computer Trespass 1 (RCW
24 9A.52.110)
25 Counterfeiting (RCW 9.16.035(3))
26 Escape from Community Custody
27 (RCW 72.09.310)
28 Failure to Register as a Sex Offender
29 (second or subsequent offense)
30 (RCW 9A.44.130(10)(a))
31 Health Care False Claims (RCW
32 48.80.030)
33 Identity Theft 2 (RCW 9.35.020(3))
34 Improperly Obtaining Financial
35 Information (RCW 9.35.010)
36 Malicious Mischief 1 (RCW
37 9A.48.070)

1 Organized Retail Theft 2 (RCW
2 9A.56.350(3))
3 Possession of Stolen Property 1 (RCW
4 9A.56.150)
5 (~~(Retail))~~ Retail Theft with
6 Extenuating Circumstances 2
7 (RCW 9A.56.360(3))
8 Theft 1 (RCW 9A.56.030)
9 Theft of Rental, Leased, or Lease-
10 purchased Property (valued at one
11 thousand five hundred dollars or
12 more) (RCW 9A.56.096(5)(a))
13 Theft with the Intent to Resell 2 (RCW
14 9A.56.340(3))
15 Trafficking in Insurance Claims (RCW
16 48.30A.015)
17 Unlawful factoring of a credit card or
18 payment card transaction (RCW
19 9A.56.290(4)(a))
20 Unlawful Practice of Law (RCW
21 2.48.180)
22 Unlicensed Practice of a Profession or
23 Business (RCW 18.130.190(7))
24 Voyeurism (RCW 9A.44.115)
25 I Attempting to Elude a Pursuing Police
26 Vehicle (RCW 46.61.024)
27 False Verification for Welfare (RCW
28 74.08.055)
29 Forgery (RCW 9A.60.020)
30 Fraudulent Creation or Revocation of a
31 Mental Health Advance Directive
32 (RCW 9A.60.060)
33 Malicious Mischief 2 (RCW
34 9A.48.080)
35 Mineral Trespass (RCW 78.44.330)
36 Possession of Stolen Property 2 (RCW
37 9A.56.160)

1 Reckless Burning 1 (RCW 9A.48.040)
2 Taking Motor Vehicle Without
3 Permission 2 (RCW 9A.56.075)
4 Theft 2 (RCW 9A.56.040)
5 Theft of Rental, Leased, or Lease-
6 purchased Property (valued at two
7 hundred fifty dollars or more but
8 less than one thousand five
9 hundred dollars) (RCW
10 9A.56.096(5)(b))
11 Transaction of insurance business
12 beyond the scope of licensure
13 (RCW 48.17.063(4))
14 Unlawful Issuance of Checks or Drafts
15 (RCW 9A.56.060)
16 Unlawful Possession of Fictitious
17 Identification (RCW 9A.56.320)
18 Unlawful Possession of Instruments of
19 Financial Fraud (RCW 9A.56.320)
20 Unlawful Possession of Payment
21 Instruments (RCW 9A.56.320)
22 Unlawful Possession of a Personal
23 Identification Device (RCW
24 9A.56.320)
25 Unlawful Production of Payment
26 Instruments (RCW 9A.56.320)
27 Unlawful Trafficking in Food Stamps
28 (RCW 9.91.142)
29 Unlawful Use of Food Stamps (RCW
30 9.91.144)
31 Vehicle Prowl 1 (RCW 9A.52.095)

32 NEW SECTION. **Sec. 15.** If funds are specifically appropriated to
33 the prostitution prevention and intervention account as provided in RCW
34 43.63A.720 for the purposes provided in this section, the department of
35 community, trade, and economic development shall prioritize such funds
36 to provide minors who have a history of engaging in sexual conduct for
37 a fee or are the victims of commercial sexual abuse of a minor with (1)

1 residential treatment and services; (2) counseling services including
2 mental health and substance abuse services and intensive case
3 management; (3) services to engage the minors in school or vocational
4 training; and (4) health care services.

5 NEW SECTION. **Sec. 16.** If funds are specifically appropriated to
6 the prostitution prevention and intervention account as provided in RCW
7 43.63A.720 for the purposes provided in this section, the department of
8 community, trade, and economic development shall prioritize such funds
9 for training of law enforcement and community outreach and education on
10 minors who have a history of engaging in sexual conduct for a fee or
11 are the victims of commercial sexual abuse of a minor, including
12 awareness training regarding the availability of services for minors
13 under chapter 13.32A RCW."

SSB 5718 - H COMM AMD

By Committee on Public Safety & Emergency Preparedness

ADOPTED AND ENGROSSED 04/03/2007

14 On page 1, line 2 of the title, after "minors;" strike the
15 remainder of the title and insert "amending RCW 9.68A.001, 9.68A.100,
16 9.68A.110, 19.138.340, 9A.88.140, 9.68A.105, 9A.88.120, and 9A.88.070;
17 reenacting and amending RCW 9.94A.533 and 9.94A.515; adding new
18 sections to chapter 9.68A RCW; adding a new section to chapter 9.94A
19 RCW; creating new sections; and prescribing penalties."

EFFECT: Creates a special verdict process for the purpose of
determining whether the defendant engaged, agreed, offered, attempted,
solicited another, or conspired to engage the victim in sexual conduct
in return for a fee in prosecutions for Rape of a Child in the first,
second, and third degrees, Child Molestation in the first, second, and
third degrees, and anticipatory crimes related to the offenses.
Requires the prosecution to prove the special verdict to a jury (or to
the court if no jury is had) beyond a reasonable doubt. Defines

"sexual conduct" for purposes of Promoting Commercial Sexual Abuse of a Minor. Clarifies, for purposes of the 12 month enhancement, that "anticipatory offense" includes attempt, conspiracy, and solicitation, instead of only attempt. Removes language indicating that the 12 month enhancement will be added for anticipatory offenses "based on the felony crime of conviction as classified under RCW 9A.28.020 (the sentencing enhancements in the underlying bill do not depend on the classification of the crime)." Makes a technical correction by changing the date upon which the 12 month enhancements take effect from July 1, 2007, to the effective date of the act (July 22, 2007).

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