

HOUSE BILL REPORT

ESSB 6476

As Reported by House Committee On:
Human Services

Title: An act relating to sex crimes involving minors.

Brief Description: Revising provisions relating to sex crimes involving minors.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Stevens, Hargrove, Fraser, Swecker, Delvin, Brandland, Holmquist, Becker, Parlette, Carrell, Hewitt, Schoesler, King, Roach and Kohl-Welles).

Brief History:

Committee Activity:

Human Services: 2/18/10, 2/22/10 [DPA].

**Brief Summary of Engrossed Substitute Bill
(As Amended by House)**

- Increases the felony class of the offense of Commercial Sexual Abuse of a Minor to a class B and that of Promoting Sexual Abuse of a Minor to a class A; also increases the seriousness level for these offenses on the grid for the standard sentence range.
- Increases the fine for a person who is convicted of, given a deferred sentence or deferred prosecution for, or who has entered into a diversion agreement for an offense relating to the Commercial Sexual Abuse of a Minor from \$550 to \$5,000.
- Upon a first arrest for an offense related to the Commercial Sexual Abuse of a Minor, law enforcement may impound a vehicle if the vehicle was used in the commission of a crime and the person arrested is the owner or the vehicle is a rental car.
- Requires the prosecutor to file a diversion for a juvenile's first prostitution-related offense, even if the juvenile has other criminal history.
- Repeals the expiration date of the county pilot program which provides wraparound services for juveniles diverted for prostitution-related offenses.
- Requires the Department of Social and Health Services to connect a juvenile who has been diverted for a prostitution-related offense to services for

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children who have been sexually assaulted if the child is referred to the department.

- A person identified as a minor in an offense regarding the Commercial Sexual Abuse of a Minor is considered a victim for the purpose of receiving benefits under the Victim Compensation Benefits Program.
- Requires secure or semi-secure crisis residential centers to have on staff, or otherwise have access to, a person trained to work with the needs of sexually exploited children as a condition of licensing.
- Requires the Criminal Justice Training Commission, in consultation with the Washington Association of Sheriffs and Police Chiefs to develop a model policy regarding procedures relating to a minor who is sexually exploited or a victim of an offense under the Commercial Sexual Abuse of a Minor statutes.

HOUSE COMMITTEE ON HUMAN SERVICES

Majority Report: Do pass as amended. Signed by 8 members: Representatives Dickerson, Chair; Orwall, Vice Chair; Dammeier, Ranking Minority Member; Darneille, Green, Herrera, O'Brien and Walsh.

Staff: Linda Merelle (786-7092).

Background:

Offenses Regarding Commercial Sexual Abuse of a Minor.

The crime of Sexual Abuse of a Minor is a class C felony. The crime of Promoting Commercial Sexual Abuse of a Minor is a class B felony. Persons convicted of Sexual Abuse of a Minor or who receive a deferred sentence or deferred prosecution or who have entered into a statutory or non-statutory diversion agreement must be assessed a \$550 fee.

Impound of Vehicles.

Upon an arrest for a suspected violation of the following offenses, the arresting officer may impound the vehicle if the vehicle was used in the commission of the offense, the person arrested is the owner of the vehicle or the vehicle is a rental car, and if the person arrested has a prior conviction for one of the listed offenses or the offense occurred in an area designated by local government:

- Patronizing a Prostitute;
- Promoting Prostitution in the 1st degree;
- Promoting Prostitution in the 2nd degree;
- Promoting Travel for Prostitution;
- Commercial Sexual Abuse of a Minor;
- Promoting Commercial Sexual Abuse of a Minor; or
- Promoting Travel for Commercial Sexual Abuse of a Minor.

Once a vehicle is impounded, the owner must pay a fine of \$500 to the impounding agency, among other fees, to redeem his or her vehicle.

Juvenile Diversions for Prostitution-Related Offenses.

When a prosecutor receives a complaint that a juvenile has committed a crime, and there is sufficient evidence that the juvenile did commit the offense, the prosecutor may either file an information in juvenile court or divert the case depending on the type and level of crime alleged to have been committed.

A juvenile alleged to have committed Prostitution or Prostitution Loitering may be diverted. If the offense is not the first prostitution-related offense, the juvenile may still be diverted if the county in which the offense occurred has a program that provides safe and stable housing, comprehensive on-site case management, integrated mental health and chemical dependency services, education and employment training, and referrals to specialized services. This provision was enacted during the 2008 session pursuant to House Bill 1505, which is scheduled to expire June 30, 2011.

Children in Need of Services.

A child in need of services (CHINS) is a juvenile who: (1) is beyond the control of his or her parents; (2) has been reported to the police as absent without consent for at least 24 hours on two or more occasions and (a) has exhibited a serious substance abuse problem, or (b) has exhibited behaviors that create a serious risk of harm to the health, safety, or welfare of the child or any other person; or (3) is in need of necessary services or services designed to maintain or reunify the family. When a juvenile meets the CHINS definition, a CHINS petition can be filed with the court seeking services and assistance from the Department of Social and Health Services (DSHS).

Crime Victim Compensation Benefits.

Crime victims are not entitled to crime victim compensation benefits when the injury for which benefits are sought was (1) the result of consent, provocation or incitement by the victim, unless the injury resulting from a criminal act caused the victim's death; (2) sustained while the crime victim was engaged in the attempt to commit or in the commission of a felony; or (3) sustained while the victim was confined in a jail or correctional facility operated by the DSHS.

Summary of Amended Bill:

Referral for Treatment.

Within available funding, when a juvenile who has been diverted for the offenses of Prostitution or Prostitution Loitering is referred to the DSHS, the DSHS must connect that child with the following services: treatment for children who have been sexually assaulted and early identification and referral to treatment of child victims of sexual abuse or assault.

Crime Victim Compensation Benefits and Status as Victim.

A person who is identified as the minor in offenses regarding Commercial Sexual Abuse of a Minor is considered a victim of a criminal act for the purpose of the right to receive benefits under the Crime Victim's Compensation Program, even if the minor is also charged with prostitution.

Juveniles arrested for Prostitution or Prostitution Loitering are presumed (1) to meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in Section 7105 of Title 22 of the United States Code; and (2) to be a victim of Commercial Sexual Abuse of a Minor.

Juvenile Diversions.

Irrespective of criminal history, the prosecutor must divert an offense for Prostitution or Prostitution Loitering if it is the offender's first offense of this kind. After June 30, 2011, the wraparound program for treatment of juveniles for prostitution related offenses is no longer authorized in statute. If a juvenile has subsequent prostitution-related offenses, the prosecutor must follow the statutory requirements regarding filing an information if the evidence of the offense is sufficient.

Secure Crisis Residential Centers.

A secure or semi-secure crisis residential center must have on staff, or otherwise have access to, a person who has been trained to work with the needs of sexually exploited children in order to be licensed or continue to be licensed.

Seriousness Level of Offenses.

Promoting Sexual Abuse of a Minor is increased to a class A felony, up from a class B felony. The seriousness level for this offense is increased from Level VIII to Level XII. At Level VIII, the standard sentence range is 21 - 27 months if the offender score is 0. At Level XII, the standard sentence range is 93 - 123 months if the offender score is 0.

Commercial Sexual Abuse of a Minor is increased to a class B felony from a class C felony. The seriousness level for this offense is increased from Level III to Level VIII. The standard sentence range for an offender score of 0 increases from 1 - 3 months to 21 - 27 months.

A person either convicted, given a deferred sentence or deferred prosecution, or who has entered into a diversion agreement for a commercial sexual abuse offense is assessed a \$5,000 fine, an increase from \$550. The court may not suspend payment of all or part of the fee unless it finds that the person does not have the ability to pay. The \$5,000 fee applies to juveniles who are adjudicated under these provisions as well.

Vehicle Impoundment.

Upon arrest for first offenses of Commercial Sexual Abuse of a Minor, Promoting Commercial Sexual Abuse of a Minor, or Promoting Travel for Commercial Sexual Abuse, regardless of whether the offense occurred in an area designated by law enforcement, the vehicle of the person may be impounded upon arrest if the vehicle was used in the commission of the crime and the person arrested is the owner of the vehicle or the vehicle is a rental car.

The fine for retrieving an impounded vehicle for these offenses is increased from \$500 to \$2,500 in addition to other applicable.

Model Policy for Sexually Exploited Children.

The Criminal Justice Training Commission (Commission), in consultation with the Washington Association of Sheriffs and Police Chiefs, is required to develop a model policy on law enforcement implementation of procedures relating to a minor who is a sexually exploited child or who is a victim of offenses related to Commercial Sexual Abuse of a Minor. The model policy must be developed by December 1, 2010. The Commission must develop a curriculum based upon the model policy by January 1, 2011.

Amended Bill Compared to Engrossed Substitute Bill:

The provision which included sexually-exploited children within the category of children in need of services has been removed.

The provision which required that 50 percent of the moneys in the Prostitution Prevention and Intervention Account be used for secure and semi-secure crisis residential centers has been removed.

The expiration date for the statute allowing discretionary diversions to county programs that provide wraparound services for juveniles charged with prosecution-related offenses has been repealed.

Appropriation: None.

Fiscal Note: Available on original bill.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except section 5, relating to mandatory diversions for first time juvenile prostitution-related offenses, which takes effect July 1, 2011.

Staff Summary of Public Testimony:

(In support) In Washington, we are one of the worst in the nation for selling children to prostitution. These kids are often in the street because they have run away or been kicked out of their homes. They are often moved out of the state or out of the country. When a juvenile gets into a situation involving prostitution, they need protection. With a diversion, they can

get services without costing the state any money. Juvenile prostitution is one of the worst domestic violence cases you can think of. This conclusion came about because the girls were being seriously assaulted. The majority of the girls who get involved in prostitution start out as runaways. In the beginning they are manipulated and that keeps them in prostitution. The police arrest juveniles involved in prostitution because we do not have a lot of alternatives. The biggest problem is that the police do not have a place to take these girls.

(Opposed) The amended bill does less than the original bill which allowed a juvenile who had a first prostitution-related offense to be referred to Children in Need of Services. The second offense should be a mandatory diversion, and subsequent offenses should be eligible for discretionary diversions.

Persons Testifying: (In support) Senator Stevens, prime sponsor; Linda Matson, Shared Hope International; Mark Boldt, Clark County; and Ryan Larsen, Lakewood Police Department.

(Opposed) C. Wesley Richards, Washington Defenders Association and Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.