
**Public Safety & Emergency Preparedness
Committee**

SSB 5546

Brief Description: Concerning the crime of human trafficking.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Kohl-Welles, Delvin, Chase, Pflug, Fraser, Keiser, Rockefeller, Regala, Kline, Holmquist Newbry, King, Shin, White, Stevens, Roach and Conway).

Brief Summary of Substitute Bill

- Expands the definition of Trafficking in the second degree to include when a person "transfers" or "receives" 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, or a "commercial sex act."
- Expands the definition of Trafficking in the first degree to include when a person violates Trafficking in the second degree and his or her criminal act involves the illegal harvesting or sale of human organs.
- Defines "commercial sex act," "forced labor," "involuntary servitude," and "serious harm" for purposes of the Trafficking Act.
- Adds the offenses of human Trafficking in the first and second degree and Promoting Commercial Sexual Abuse of a Minor to the list of crimes for which a defendant is required to be automatically remanded into custody upon conviction pending sentencing.

Hearing Date: 3/16/11

Staff: Yvonne Walker (786-7841).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Trafficking Act was enacted in 2003 by Substitute House Bill 1175 (chapter 267 of the laws of 2003).

Trafficking Defined. A person is guilty of Trafficking in the second degree, whether he or she benefitted financially or received anything of value, when the perpetrator recruits, harbors, transports, provides, or obtains 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 XII, class A felony offense. The presumptive standard sentence range is 93 to 123 months for a person convicted of a seriousness level XII offense.

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 involves a finding of sexual motivation. Trafficking in the first degree is a seriousness level XIV, class A felony offense. The presumptive standard sentence range is 123 to 220 months for a person convicted of a seriousness level XIV offense.

Stay of Judgment. An appeal by a defendant in a criminal case does not stay the sentence unless the court finds by a preponderance of the evidence that the defendant is unlikely to flee or to pose a danger to the community. In addition, in order to grant a stay, the court must also find:

1. that the delay resulting from the stay will not unduly diminish the deterrent effect of the punishment;
2. that the stay will not cause unreasonable trauma to the victims of the crime; and
3. that the defendant, to the extent of his or her financial ability, has undertaken to pay the financial obligations imposed by the judgment or has posted an adequate performance bond.

Defendants who are convicted of one of several offenses, such as specified sex offenses, must be detained following conviction while pending sentencing. In addition, if the defendant files an appeal of one of those convictions, the court may not stay execution of the judgment.

Summary of Bill:

Trafficking Defined. The definition of Trafficking in the second degree is expanded to include when a person "transfers" or "receives" 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, or a "commercial sex act."

The definition of Trafficking in the first degree is expanded to include when a person violates Trafficking in the second degree and his or her criminal act involves the illegal harvesting or sale of human organs.

A "commercial sex act" means any act of sexual contact or sexual intercourse for which something of value is given or received.

"Forced labor" means knowingly providing or obtaining labor or services of a person by: (1) threats of serious harm to, or physical restraint against, that person or another person; or (2) means of any scheme, plan, or pattern intended to cause the person to believe that, if the person

did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.

"Involuntary servitude" means a condition of servitude in which the victim was forced to work by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or legal process.

"Serious harm" means any harm, whether physical or non-physical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor, services, or a commercial sex act in order to avoid incurring that harm.

Stay of Judgment. The offenses of human Trafficking in the first and second degree and Promoting Commercial Sexual Abuse of a Minor are added to the list of crimes for which a stay of judgment on appeal is not allowed.

The offenses of human Trafficking in the first and second degree and Promoting Commercial Sexual Abuse of a Minor are also added to the list of crimes for which a defendant is required to be automatically remanded into custody upon conviction pending sentencing.

Appropriation: None.

Fiscal Note: Available.

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