

HOUSE BILL REPORT

ESB 6255

As Passed House:
March 1, 2012

Title: An act relating to victims of human trafficking and promoting prostitution.

Brief Description: Concerning victims of human trafficking and promoting prostitution.

Sponsors: Senators Fraser, Kline, Eide, Kohl-Welles, Shin, Litzow, Chase, Stevens, Pflug, Regala, Nelson, Keiser, Roach, Conway, Holmquist Newbry and Frockt.

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 2/15/12, 2/21/12 [DP].

Floor Activity:

Passed House: 3/1/12, 96-0.

Brief Summary of Engrossed Bill

- Creates an affirmative defense to prosecution for Prostitution if the person committed the offense as a result of being a victim of Trafficking or Promoting Prostitution in the first degree.
- Allows a person to vacate their record of conviction for Prostitution if he or she committed the offense as a result of being a victim of Trafficking or Promoting Prostitution in the first degree, unless he or she has pending criminal charges, any more recent convictions, or previously vacated a Prostitution conviction.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: Do pass. Signed by 11 members: Representatives Hurst, Chair; Ladenburg, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton, Armstrong, Goodman, Hope, Kirby, Moscoso and Ross.

Staff: Sarah Koster (786-7303).

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.

Trafficking.

A person is guilty of Trafficking in the first degree when he or she:

1. recruits, harbors, transports, transfers, provides, obtains, or receives by any means another person knowing that force, fraud, or coercion will be used to cause the person to engage in forced labor, involuntary servitude, or a commercial sex act; or
2. benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth above and the acts or venture:
 - involve committing or attempting to commit kidnapping;
 - involve a finding of sexual motivation;
 - involve the illegal harvesting or sale of human organs; or
 - result in a death.

A person is guilty of Trafficking in the second degree if he or she:

1. recruits, harbors, transports, transfers, provides, obtains, or receives by any means another person knowing that force, fraud, or coercion will be used to cause the person to engage in forced labor, involuntary servitude, or a commercial sex act; or
2. benefits financially or by receiving anything of value from participation in a venture that has engaged in trafficking in the first degree.

Promoting Prostitution in the First Degree.

A person is guilty of Promoting Prostitution in the first degree if he or she knowingly advances prostitution by compelling a person by threat or force to engage in prostitution or profits from prostitution which results from such threat or force.

Trafficking Victims Protection Act of 2000.

The federal Trafficking Victims Protection Act of 2000 (Act) provides protective measures for victims of trafficking and makes human trafficking a federal crime with severe penalties. The Act defines Sex Trafficking as the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. Additionally, the Act describes severe forms of Trafficking in Persons to mean either: (1) Sex Trafficking, in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not reached 18 years of age; or (2) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Vacating Record of Convictions.

Under current law, a person convicted of a misdemeanor or gross misdemeanor who has completed all the terms of his or her sentence may apply to vacate his or her record of conviction. The court may vacate the conviction unless:

- there are criminal charges pending against the applicant;
- the offense was a violent offense;
- the offense was Driving Under the Influence, Actual Physical Control Under the Influence, or Operating a Railroad While Intoxicated;

- the offense was a violation of chapter 9.68 RCW (obscenity and pornography), chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44 RCW (sex offenses);
- the offense was a domestic violence offense or involved one family member or household member against another, and: (1) the applicant did not notify the prosecuting attorney's office of the vacation petition, (2) the applicant had a previous conviction for domestic violence, (3) the applicant lied under penalty of perjury about a prior domestic violence conviction, or (4) less than five years has elapsed since the person completed the terms of the original conditions of the sentence;
- (for offenses other than those listed immediately above) less than three years has passed since the person completed the terms of the sentence;
- the applicant has been convicted of a new crime in this state since the date of conviction;
- the applicant has ever had another record of conviction vacated; or
- the applicant has or has had a domestic violence protection order, a no contact order, an anti-harassment order, or a civil restraining order in the past five years.

Summary of Bill:

Affirmative Defense.

It is an affirmative defense to a prosecution for Prostitution that the actor committed the offense as a result of being a victim of Trafficking, Promoting Prostitution in the first degree, or Trafficking in Persons under the Act. Documentation that the actor is named as a current victim in an information or the investigative records upon which a conviction is obtained for Trafficking, Promoting Prostitution in the first degree, or Trafficking in Persons under the Act creates a presumption that the actor is eligible for the defense.

Vacating Record of Conviction.

A person convicted of Prostitution who committed the offense as a result of being a victim of Trafficking, Promoting Prostitution in the first degree, or Trafficking in Persons under the Act, may apply to the sentencing court to vacate his or her record of conviction. The record may not be vacated if:

- there are criminal charges pending against the applicant;
- the applicant has been convicted of another crime since the date of conviction; or
- the applicant has ever had the record of another Prostitution conviction vacated.

Appropriation: None.

Fiscal Note: Available on original bill.

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

Staff Summary of Public Testimony:

(In support) This bill is part of a package of 10 bills with bipartisan support. The 2012 legislative session is the tenth anniversary of Washington's anti-trafficking legislation. Washington has led the way for the country on this issue. Human trafficking, especially sex

trafficking, is a great scourge of our time, together with drug trafficking and arms trafficking. This bill is about victims and helping them get on with their lives by removing the conviction from their records. Girls who experience this abuse should not have to carry this conviction around with them as they apply for jobs and try to regain their lives. If the Legislature really wants to prevent human trafficking, it must go beyond prosecution. Low wages make individuals vulnerable to exploitation. Victims must be considered first and should be included as stakeholders. The victims must not be harmed by this legislation.

(In support with concerns) Trafficking is modern slavery. Trafficking codes must be comprehensive and equal relief should be available for all forms of trafficking victims. The language is not clear and can be read to require that the victim be named in a current prosecution to have the affirmative defense available. People do not want to have to go to court for this. Why is promoting sexual abuse of a minor not included in the affirmative defense?

(Opposed) None.

Persons Testifying: (In support) Senator Fraser, prime sponsor; Senator Kohl-Welles; Velma Veloria and Sutapa Basu, University of Washington Women's Center; Emma Catague, Asian and Pacific Islander Women and Family Safety Center; and Nacole Svendgard.

(In support with concerns) Rose Gunderson, Washington Engage.

Persons Signed In To Testify But Not Testifying: None.