

# HOUSE BILL REPORT

## ESB 6257

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**As Reported by House Committee On:**  
Public Safety & Emergency Preparedness

**Title:** An act relating to a sexually explicit act.

**Brief Description:** Addressing a sexually explicit act.

**Sponsors:** Senators Roach, Conway, Swecker, Fraser, Pflug, Kohl-Welles, Eide, Delvin, Stevens, Padden, Regala, Chase, Tom, Kastama, Haugen, Litzow, Brown, Kline, Shin, Nelson and Keiser.

**Brief History:**

**Committee Activity:**

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

**Brief Summary of Engrossed Bill  
(As Amended by Committee)**

- Expands the offense of Promoting Commercial Sexual Abuse of a Minor to include advancing or profiting from a sexually explicit act of a minor.
- Includes individuals forced, defrauded, or coerced into performing a sexually explicit act under the definition of Trafficking.
- Defines "sexually explicit act" as a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons.

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### HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

**Majority Report:** Do pass as amended. 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:**

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*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.*

Promoting Commercial Sexual Abuse of a Minor.

A person is guilty of Promoting Commercial Sexual Abuse of a Minor if he or she knowingly advances Commercial Sexual Abuse of a Minor or profits from a minor engaged in sexual conduct, meaning sexual intercourse or sexual contact.

"Advancing Commercial Sexual Abuse of a Minor" is defined as causing or aiding a person to commit or engage in Commercial Sexual Abuse of a Minor, procuring or soliciting customers for Commercial Sexual Abuse of a Minor, providing persons or premises for the purposes of engaging in Commercial Sexual Abuse of a Minor, operating or assisting in the operation of a house or enterprise for the purposes of engaging in Commercial Sexual Abuse of a Minor, or engaging in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of Commercial Sexual Abuse of a Minor.

Promoting Commercial Sexual Abuse of a Minor is a class A felony.

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 the acts described above and the acts:
  - (a) involve committing or attempting to commit kidnapping;
  - (b) involve a finding of sexual motivation under RCW 9.94A.835;
  - (c) involve the illegal harvesting or sale of human organs; or
  - (d) result in a death.

Trafficking in the first degree is a class A felony.

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

1. recruits, harbors, transports, transfers, provides, obtains, or receives 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 the acts described above.

Trafficking in the second degree is a class A felony.

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**Summary of Amended Bill:**

"Sexually explicit act" is defined as a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons and for which something of value is given or received.

### Promoting Commercial Sexual Abuse of a Minor.

A person is guilty of Promoting Commercial Sexual Abuse of a Minor if he or she knowingly advances commercial sexual abuse of a minor or a sexually explicit act or profits from a minor engaged in sexual conduct or a sexually explicit act.

A person "advances a sexually explicit act of a minor" if he or she causes or aids a sexually explicit act of a minor, procures or solicits customers for a sexually explicit act of a minor, provides persons or premises for the purposes of a sexually explicit act of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate a sexually explicit act of a minor.

A "patron" is a person who pays or agrees to pay a fee to another person as compensation for a sexually explicit act of a minor or who solicits or requests a sexually explicit act of a minor in return for a fee.

### 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, a sexually explicit act, or a commercial sex act; or
2. benefits financially or by receiving anything of value from participation in a venture that has engaged in the acts described above and the acts:
  - (a) involve committing or attempting to commit kidnapping;
  - (b) involve a finding of sexual motivation;
  - (c) involve the illegal harvesting or sale of human organs; or
  - (d) result in a death.

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

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

### **Amended Bill Compared to Engrossed Bill:**

The amended bill clarifies that "sexually explicit act" refers only to an act for which something of value is given or received, a commercial act; and adds definitions for "patron" and "advances a sexually explicit act of a minor."

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** 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 helps us close a loophole. It adds to the current law an act which can be commercial, but is not sexual abuse. In Honduras, most people do not have cars, so someone can drive up, grab a child, and drive away, while knowing they may never see that child again. The United States is fortunate in comparison, but our children are still at risk. Public education is important to inform children what can happen to them. This happens to real people. Children do not always have the ability to reason out that they are being exploited. This 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. All trafficking victims should be treated equally and Trafficking codes must be made comprehensive. Human trafficking is a human rights issue. Sexual performances are tied to these issues because, as Dr. Boyer has said, "pornography is prostitution in pictures."

(In support with concerns) These bills will shut down commercial Trafficking while respecting constitutional rights. There is language ambiguity as to whether "commercial" applies to a "sexually explicit act" as well as "sexual abuse." The concern is that situations in schools may be swept in, in which a child who sends a sexually explicit text and the children who receive the text or school administrators may be caught up under this bill.

(Opposed) None.

**Persons Testifying:** (In support) Senator Roach, 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; Rose Gunderson, Washington Engage; Craig Engelking and Jim Pugel, City of Seattle Police Department; Chris Johnson, Office of the Attorney General; and Seth Dawson, Youth Care and Child Advocacy Centers.

(In support with concerns) Shankar Narayan, American Civil Liberties Union of Washington.

**Persons Signed In To Testify But Not Testifying:** None.