

SENATE BILL REPORT

SB 5546

As Reported by Senate Committee On:
Judiciary, February 18, 2011

Title: An act relating to the crime of human trafficking.

Brief Description: Concerning the crime of human trafficking.

Sponsors: Senators Kohl-Welles, Delvin, Chase, Pflug, Fraser, Keiser, Rockefeller, Regala, Kline, Holmquist Newbry, King, Shin, White, Stevens, Roach and Conway.

Brief History:

Committee Activity: Judiciary: 2/11/11, 2/18/11 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5546 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Harper, Vice Chair; Pflug, Ranking Minority Member; Baxter, Carrell, Hargrove, Kohl-Welles, Regala and Roach.

Staff: Lidia Mori (786-7755)

Background: In 2000 the United States enacted the Trafficking Victims Protection Act; and, in 2003 Washington was the first state to pass a law criminalizing human trafficking.

According to the 10th annual trafficking in persons report produced by the United States Department of State, the United States is a source, transit, and destination country for men, women, and children subjected to trafficking in persons, specifically forced labor, debt bondage, and forced prostitution. Trafficking occurs primarily for labor and most commonly in domestic servitude, agriculture, manufacturing, janitorial services, hotel services, construction, health and elder care, hair and nail salons, and strip club dancing. Trafficking cases also involve passport confiscation, nonpayment or limited payment of wages, restriction of movement, isolation from the community, and physical and sexual abuse as means of keeping victims in compelled service. The 2008 report produced by the Washington State Task Force Against the Trafficking of Humans indicates that several factors make Washington prone to human trafficking. The factors cited are Washington's international border with Canada, an abundance of ports, vast rural areas, and a dependency on agricultural workers.

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.

A person commits the crime of trafficking when he or she recruits, harbors, transports, provides, or obtains another person knowing that force, fraud, or coercion will be used to cause that person to engage in forced labor or involuntary servitude. The crime is also committed when a person benefits financially or otherwise from participating in such acts. It is trafficking in the first degree if these acts include committing or attempting to commit kidnapping; involve a finding of sexual motivation; or result in a death. Trafficking in the first degree is a class A felony, ranked at seriousness level XIV for purposes of sentencing. Trafficking in the second degree is committed when a person recruits, harbors, transports, provides, or obtains another person knowing that force, fraud, or coercion will be used to cause that person to engage in forced labor or involuntary servitude. The crime is also committed when a person benefits financially or otherwise from participating in such acts. Trafficking in the second degree is a class A felony, ranked at seriousness level XII.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Substitute): A person commits the crime of trafficking when he or she recruits, harbors, transports, transfers, provides, obtains, or receives another person knowing that force, fraud, or coercion is used to cause that person to engage in forced labor, involuntary servitude, or a commercial sex act. The crime is also committed when a person benefits financially or otherwise from participating in the recruitment, harboring, transporting, transferring, providing, obtaining, or receiving another person knowing that force, fraud, or coercion is used to cause that person to engage in forced labor, involuntary servitude, or a commercial sex act. It is trafficking in the first degree if these acts include committing or attempting to commit kidnapping, involve a finding of sexual motivation, result in a death, or involve illegal harvesting and sale of human organs.

Trafficking in the second degree is committed when a person recruits, harbors, transports, transfers, provides, obtains, or receives another person knowing that force, fraud, or coercion is used to cause that person to engage in forced labor, involuntary servitude, or a commercial sex act. The crime is also committed when a person benefits financially or otherwise from participation in the above described illegal acts.

Forced labor is defined as 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. A definition is provided for involuntary servitude. It 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 of threat of coercion through law or legal process. Serious harm means any harm, whether physical or nonphysical, 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. A commercial sex act is defined as any act of sexual contact or sexual intercourse for which something of value is given or received. The offenses of human trafficking in the first or second degree and the offense of promoting commercial sexual abuse of a minor are added to the statutory provision, RCW 9.95.062, that

lists certain crimes for which a stay of judgment on appeal is not allowed. Human trafficking in the first or second degree and promoting commercial sexual abuse of a minor are added to the statutory provision, RCW 10.64.025, which lists the offenses for which a defendant is required to be automatically remanded into custody upon conviction while awaiting sentencing.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Substitute as Passed Committee):

- Commercial sex act is defined as any act of sexual contact or sexual intercourse for which something of value is given or received.
- The offenses of human trafficking in the first or second degree and the offense of promoting commercial sexual abuse of a minor are added to the statutory provision, RCW 9.95.062, that lists certain crimes for which a stay of judgment on appeal is not allowed.
- Human trafficking in the first or second degree and promoting commercial sexual abuse of a minor are added to the statutory provision, RCW 10.64.025, which lists the offenses for which a defendant is required to be automatically remanded into custody upon conviction while awaiting sentencing.
- The word deception is removed from the definitions of human trafficking in the first degree and human trafficking in the second degree.
- The definition of involuntary servitude includes a reference to the definition of coercion in RCW 9A.36.070.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute as Heard in Committee:
PRO: In 2002 when Representative Valoria introduced a bill creating an anti-trafficking task force, people didn't know what trafficking was and didn't believe it was happening in Washington. In the mid-90's, we started seeing people dead or seriously maimed in containers brought into the port of Seattle. They were being smuggled into the country. Starting in 1995, there were at least three incidents involving mail order brides, two were murdered and one was held in bondage and threatened with deportation. If it hadn't been for the foresight of Representative Valoria and others in the Asian Pacific Islander community, we wouldn't be where we are today, but more still needs to be done. Tazings, beatings, strangulations, rapes as a form of punishment, and the level of violence and coercion against these women is significant. This bill will give us some tools to help with prosecution. The definitions provided will make things clear to the defense, to the judge, and to the prosecution.

Between 1977 and February of 1982, I was a sex slave. I was forced to write a bad check, my captors called the police who arrested me, and my captors bonded me out. Every time I

refused something, they threatened to call the authorities. They threatened to harm my sister and my grandmother. They gave me no money, I couldn't get a hotel room. I was a minor. Anything we can do to prosecute people who trade these children or enjoy them, should definitely occur. The sexual exploitation is the worst thing. Anything we can do to combat the stain and tragedy of human slavery is imperative.

For consistency, it's good this bill includes the federal definitions for commercial sex act and serious harm. Threats of harm to the loved ones of the victims is the most common form of coercion. Deception is also at the core of the ability of the trafficker to recruit and lure the victim.

CON: The definition of commercial sex act is too broad. Deception isn't defined and would lead to costly litigation. Serious harm definition is too broad and the term sufficiently serious is extremely vague. It would be more prudent to let the current statute be used by prosecutors and let it wind its way through the courts and be interpreted.

OTHER: There needs to be some work done on the definitions in this bill; so we can have a statute that is clear and understood by all, so justice is brought for these victims.

Persons Testifying: PRO: Senator Kohl-Welles, prime sponsor; Sean O'Donnell, King County Prosecuting Attorneys Office; Tim Heffer, Darly Abbott, The Justice and Mercy Foundation; Seth Goldstein, Temple Beth Hatfiloh; Rose Gunderson, WATE, Gael Tarleton, Port of Seattle; Sister Susan Francois, Intercommunity Peace and Justice Center.

CON: Catherine Chaney, WA Criminal Defense Lawyers, WA Defender Assn.

OTHER: Lonnie Johns Brown, WA Coalition of Sexual Assault Programs.