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**SUBSTITUTE SENATE BILL 5546**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

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

READ FIRST TIME 02/21/11.

1 AN ACT Relating to the crime of human trafficking; and amending RCW  
2 9A.40.100, 9A.40.010, 9.95.062, and 10.64.025.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 9A.40.100 and 2003 c 267 s 1 are each amended to read  
5 as follows:

6 (1)(a) A person is guilty of trafficking in the first degree when:

7 (i) Such person:

8 (A) Recruits, harbors, transports, transfers, provides, ~~((or))~~  
9 obtains, or receives by any means another person knowing that force,  
10 fraud, or coercion as defined in RCW 9A.36.070 will be used to cause  
11 the person to engage in forced labor ~~((or))~~, involuntary servitude, or  
12 a commercial sex act; or

13 (B) Benefits financially or by receiving anything of value from  
14 participation in a venture that has engaged in acts set forth in  
15 (a)(i)(A) of this subsection; and

16 (ii) The acts or venture set forth in (a)(i) of this subsection:

17 (A) Involve committing or attempting to commit kidnapping;

18 (B) Involve a finding of sexual motivation under RCW 9.94A.835;

19 ~~((or))~~

1 (C) Involve the illegal harvesting or sale of human organs; or

2 (D) Result in a death.

3 (b) Trafficking in the first degree is a class A felony.

4 (2)(a) A person is guilty of trafficking in the second degree when  
5 such person:

6 (i) Recruits, harbors, transports, transfers, provides, ~~((or))~~  
7 obtains, or receives by any means another person knowing that force,  
8 fraud, or coercion as defined in RCW 9A.36.070 will be used to cause  
9 the person to engage in forced labor ~~((or))~~, involuntary servitude, or  
10 a commercial sex act; or

11 (ii) Benefits financially or by receiving anything of value from  
12 participation in a venture that has engaged in acts set forth in (a)(i)  
13 of this subsection.

14 (b) Trafficking in the second degree is a class A felony.

15 **Sec. 2.** RCW 9A.40.010 and 1975 1st ex.s. c 260 s 9A.40.010 are  
16 each amended to read as follows:

17 The following definitions apply in this chapter:

18 (1) "Restrain" means to restrict a person's movements without  
19 consent and without legal authority in a manner which interferes  
20 substantially with his or her liberty. Restraint is "without consent"  
21 if it is accomplished by (a) physical force, intimidation, or  
22 deception, or (b) any means including acquiescence of the victim, if he  
23 or she is a child less than sixteen years old or an incompetent person  
24 and if the parent, guardian, or other person or institution having  
25 lawful control or custody of him or her has not acquiesced.

26 (2) "Abduct" means to restrain a person by either (a) secreting or  
27 holding him or her in a place where he or she is not likely to be  
28 found, or (b) using or threatening to use deadly force.

29 (3) "Commercial sex act" means any act of sexual contact or sexual  
30 intercourse for which something of value is given or received.

31 (4) "Forced labor" means knowingly providing or obtaining labor or  
32 services of a person by: (a) Threats of serious harm to, or physical  
33 restraint against, that person or another person; or (b) means of any  
34 scheme, plan, or pattern intended to cause the person to believe that,  
35 if the person did not perform such labor or services, that person or  
36 another person would suffer serious harm or physical restraint.

1       (5) "Involuntary servitude" means a condition of servitude in which  
2 the victim was forced to work by the use or threat of physical  
3 restraint or physical injury, or by the use of threat of coercion  
4 through law or legal process. For the purposes of this subsection,  
5 "coercion" has the same meaning as provided in RCW 9A.36.070.

6       (6) "Relative" means an ancestor, descendant, or sibling, including  
7 a relative of the same degree through marriage or adoption, or a  
8 spouse.

9       (7) "Serious harm" means any harm, whether physical or nonphysical,  
10 including psychological, financial, or reputational harm, that is  
11 sufficiently serious, under all the surrounding circumstances, to  
12 compel a reasonable person of the same background and in the same  
13 circumstances to perform or to continue performing labor, services, or  
14 a commercial sex act in order to avoid incurring that harm.

15       **Sec. 3.** RCW 9.95.062 and 1996 c 275 s 9 are each amended to read  
16 as follows:

17       (1) Notwithstanding CrR 3.2 or RAP 7.2, an appeal by a defendant in  
18 a criminal action shall not stay the execution of the judgment of  
19 conviction, if the court determines by a preponderance of the evidence  
20 that:

21       (a) The defendant is likely to flee or to pose a danger to the  
22 safety of any other person or the community if the judgment is stayed;  
23 or

24       (b) The delay resulting from the stay will unduly diminish the  
25 deterrent effect of the punishment; or

26       (c) A stay of the judgment will cause unreasonable trauma to the  
27 victims of the crime or their families; or

28       (d) The defendant has not undertaken to the extent of the  
29 defendant's financial ability to pay the financial obligations under  
30 the judgment or has not posted an adequate performance bond to assure  
31 payment.

32       (2) An appeal by a defendant convicted of one of the following  
33 offenses shall not stay execution of the judgment of conviction: Rape  
34 in the first or second degree (RCW 9A.44.040 and 9A.44.050); rape of a  
35 child in the first, second, or third degree (RCW 9A.44.073, 9A.44.076,  
36 and 9A.44.079); child molestation in the first, second, or third degree  
37 (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual misconduct with a

1 minor in the first or second degree (RCW 9A.44.093 and 9A.44.096);  
2 indecent liberties (RCW 9A.44.100); incest (RCW 9A.64.020); luring (RCW  
3 9A.40.090); human trafficking in the first or second degree (RCW  
4 9A.40.100); promoting commercial sexual abuse of a minor (RCW  
5 9.68A.101); any class A or B felony that is a sexually motivated  
6 offense as defined in RCW 9.94A.030; a felony violation of RCW  
7 9.68A.090; or any offense that is, under chapter 9A.28 RCW, a criminal  
8 attempt, solicitation, or conspiracy to commit one of those offenses.

9 (3) In case the defendant has been convicted of a felony, and has  
10 been unable to obtain release pending the appeal by posting an appeal  
11 bond, cash, adequate security, release on personal recognizance, or any  
12 other conditions imposed by the court, the time the defendant has been  
13 imprisoned pending the appeal shall be deducted from the term for which  
14 the defendant was sentenced, if the judgment is affirmed.

15 **Sec. 4.** RCW 10.64.025 and 1996 c 275 s 10 are each amended to read  
16 as follows:

17 (1) A defendant who has been found guilty of a felony and is  
18 awaiting sentencing shall be detained unless the court finds by clear  
19 and convincing evidence that the defendant is not likely to flee or to  
20 pose a danger to the safety of any other person or the community if  
21 released. Any bail bond that was posted on behalf of a defendant  
22 shall, upon the defendant's conviction, be exonerated.

23 (2) A defendant who has been found guilty of one of the following  
24 offenses shall be detained pending sentencing: Rape in the first or  
25 second degree (RCW 9A.44.040 and 9A.44.050); rape of a child in the  
26 first, second, or third degree (RCW 9A.44.073, 9A.44.076, and  
27 9A.44.079); child molestation in the first, second, or third degree  
28 (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual misconduct with a  
29 minor in the first or second degree (RCW 9A.44.093 and 9A.44.096);  
30 indecent liberties (RCW 9A.44.100); incest (RCW 9A.64.020); luring (RCW  
31 9A.40.090); human trafficking in the first or second degree (RCW  
32 9A.40.100); promoting commercial sexual abuse of a minor (RCW  
33 9.68A.101); any class A or B felony that is a sexually motivated  
34 offense as defined in RCW 9.94A.030; a felony violation of RCW  
35 9.68A.090; or any offense that is, under chapter 9A.28 RCW, a criminal

1 attempt, solicitation, or conspiracy to commit one of those offenses.

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