

SSB 5669 - S AMD 49

By Senators Padden, Kohl-Welles

PULLED 03/04/2013

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 9.68A.090 and 2006 c 139 s 1 are each amended to read
4 as follows:

5 (1) Except as provided in subsection (2) of this section, a person
6 who communicates with a minor for immoral purposes, or a person who
7 communicates with someone the person believes to be a minor for immoral
8 purposes, is guilty of a gross misdemeanor.

9 (2) A person who communicates with a minor for immoral purposes is
10 guilty of a class C felony punishable according to chapter 9A.20 RCW if
11 the person has previously been convicted under this section or of a
12 felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of
13 any other felony sexual offense in this or any other state or if the
14 person communicates with a minor or with someone the person believes to
15 be a minor for immoral purposes, including the purchase or sale of
16 commercial sex acts and sex trafficking, through the sending of an
17 electronic communication.

18 (3) For the purposes of this section, "electronic communication"
19 has the same meaning as defined in RCW 9.61.260.

20 **Sec. 2.** RCW 9.68A.100 and 2010 c 289 s 13 are each amended to read
21 as follows:

22 (1) A person is guilty of commercial sexual abuse of a minor if:

23 (a) He or she pays a fee to a minor or a third person as
24 compensation for a minor having engaged in sexual conduct with him or
25 her;

26 (b) He or she pays or agrees to pay a fee to a minor or a third
27 person pursuant to an understanding that in return therefore such minor
28 will engage in sexual conduct with him or her; or

1 (c) He or she solicits, offers, or requests to engage in sexual
2 conduct with a minor in return for a fee.

3 (2) Commercial sexual abuse of a minor is a class B felony
4 punishable under chapter 9A.20 RCW.

5 (3) In addition to any other penalty provided under chapter 9A.20
6 RCW, a person guilty of commercial sexual abuse of a minor is subject
7 to the provisions under RCW 9A.88.130 and 9A.88.140.

8 (4) Consent of a minor to the sexual conduct does not constitute a
9 defense to any offense listed in this section.

10 (5) For purposes of this section, "sexual conduct" means sexual
11 intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

12 **Sec. 3.** RCW 9.68A.101 and 2012 c 144 s 1 are each amended to read
13 as follows:

14 (1) A person is guilty of promoting commercial sexual abuse of a
15 minor if he or she knowingly advances commercial sexual abuse or a
16 sexually explicit act of a minor or profits from a minor engaged in
17 sexual conduct or a sexually explicit act.

18 (2) Promoting commercial sexual abuse of a minor is a class A
19 felony.

20 (3) For the purposes of this section:

21 (a) A person "advances commercial sexual abuse of a minor" if,
22 acting other than as a minor receiving compensation for personally
23 rendered sexual conduct or as a person engaged in commercial sexual
24 abuse of a minor, he or she causes or aids a person to commit or engage
25 in commercial sexual abuse of a minor, procures or solicits customers
26 for commercial sexual abuse of a minor, provides persons or premises
27 for the purposes of engaging in commercial sexual abuse of a minor,
28 operates or assists in the operation of a house or enterprise for the
29 purposes of engaging in commercial sexual abuse of a minor, or engages
30 in any other conduct designed to institute, aid, cause, assist, or
31 facilitate an act or enterprise of commercial sexual abuse of a minor.

32 (b) A person "profits from commercial sexual abuse of a minor" if,
33 acting other than as a minor receiving compensation for personally
34 rendered sexual conduct, he or she accepts or receives money or other
35 property pursuant to an agreement or understanding with any person
36 whereby he or she participates or will participate in the proceeds of
37 commercial sexual abuse of a minor.

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

7 (d) A "sexually explicit act" is a public, private, or live
8 photographed, recorded, or videotaped act or show intended to arouse or
9 satisfy the sexual desires or appeal to the prurient interests of
10 patrons and for which something of value is given or received.

11 (e) A "patron" is a person who pays or agrees to pay a fee to
12 another person as compensation for a sexually explicit act of a minor
13 or who solicits or requests a sexually explicit act of a minor in
14 return for a fee.

15 (4) Consent of a minor to the sexually explicit act or sexual
16 conduct does not constitute a defense to any offense listed in this
17 section.

18 (5) For purposes of this section, "sexual conduct" means sexual
19 intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

20 **Sec. 4.** RCW 9.68A.102 and 2007 c 368 s 5 are each amended to read
21 as follows:

22 (1) A person commits the offense of promoting travel for commercial
23 sexual abuse of a minor if he or she knowingly sells or offers to sell
24 travel services that include or facilitate travel for the purpose of
25 engaging in what would be commercial sexual abuse of a minor or
26 promoting commercial sexual abuse of a minor, if occurring in this
27 state.

28 (2) Promoting travel for commercial sexual abuse of a minor is a
29 class C felony.

30 (3) Consent of a minor to the travel for commercial sexual abuse,
31 or the sexually explicit act or sexual conduct itself, does not
32 constitute a defense to any offense listed in this section.

33 (4) For purposes of this section, "travel services" has the same
34 meaning as defined in RCW 19.138.021.

35 **Sec. 5.** RCW 9.68A.103 and 2007 c 368 s 7 are each amended to read
36 as follows:

1 (1) A person is guilty of permitting commercial sexual abuse of a
2 minor if, having possession or control of premises which he or she
3 knows are being used for the purpose of commercial sexual abuse of a
4 minor, he or she fails without lawful excuse to make reasonable effort
5 to halt or abate such use and to make a reasonable effort to notify law
6 enforcement of such use.

7 (2) Permitting commercial sexual abuse of a minor is a gross
8 misdemeanor.

9 (3) Consent of a minor to the sexually explicit act or sexual
10 conduct does not constitute a defense to any offense listed in this
11 section.

12 **Sec. 6.** RCW 9A.40.100 and 2012 c 144 s 2 and 2012 c 134 s 1 are
13 each reenacted and amended to read as follows:

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

15 (i) Such person:

16 (A) Recruits, harbors, transports, transfers, provides, obtains,
17 buys, purchases, or receives by any means another person knowing, or in
18 reckless disregard of the fact, that force, fraud, or coercion as
19 defined in RCW 9A.36.070 will be used to cause the person to engage in
20 forced labor, involuntary servitude, a sexually explicit act, or a
21 commercial sex act, or that the person has not attained the age of
22 eighteen years and is caused to engage in a sexually explicit act or a
23 commercial sex act; or

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

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

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

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

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

31 (D) Result in a death.

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

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

35 (i) Recruits, harbors, transports, transfers, provides, obtains,
36 buys, purchases, or receives by any means another person knowing, or in
37 reckless disregard of the fact, that force, fraud, or coercion as

1 defined in RCW 9A.36.070 will be used to cause the person to engage in
2 forced labor, involuntary servitude, a sexually explicit act, or a
3 commercial sex act, or that the person has not attained the age of
4 eighteen years and is caused to engaged in a sexually explicit act or
5 a commercial sex act; or

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

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

10 (3)(a) A person who is either convicted or given a deferred
11 sentence or a deferred prosecution or who has entered into a statutory
12 or nonstatutory diversion agreement as a result of an arrest for a
13 violation of a trafficking crime shall be assessed a ((three)) ten
14 thousand dollar fee.

15 (b) The court shall not reduce, waive, or suspend payment of all or
16 part of the fee assessed in this section unless it finds, on the
17 record, that the offender does not have the ability to pay the fee in
18 which case it may reduce the fee by an amount up to two-thirds of the
19 maximum allowable fee.

20 (c) Fees assessed under this section shall be collected by the
21 clerk of the court and remitted to the treasurer of the county where
22 the offense occurred for deposit in the county general fund, except in
23 cases in which the offense occurred in a city or town that provides for
24 its own law enforcement, in which case these amounts shall be remitted
25 to the treasurer of the city or town for deposit in the general fund of
26 the city or town. Revenue from the fees must be used for local efforts
27 to reduce the commercial sale of sex including, but not limited to,
28 increasing enforcement of commercial sex laws.

29 (i) At least fifty percent of the revenue from fees imposed under
30 this section must be spent on prevention, including education programs
31 for offenders, such as john school, and rehabilitative services, such
32 as mental health and substance abuse counseling, parenting skills,
33 training, housing relief, education, vocational training, drop-in
34 centers, and employment counseling.

35 (ii) Revenues from these fees are not subject to the distribution
36 requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or
37 35.20.220.

1 (4) If the victim of any offense identified in this section is a
2 minor, force, fraud, or coercion are not necessary elements of an
3 offense and consent to the sexually explicit act or commercial sex act
4 does not constitute a defense.

5 (5) For purposes of this section((7)):

6 (a) "Commercial sex act" means any act of sexual contact or sexual
7 intercourse, both as defined in chapter 9A.44 RCW, for which something
8 of value is given or received by any person; and

9 (b) "Sexually explicit act" means a public, private, or live
10 photographed, recorded, or videotaped act or show intended to arouse or
11 satisfy the sexual desires or appeal to the prurient interests of
12 patrons for which something of value is given or received.

13 **Sec. 7.** RCW 9A.44.020 and 1975 1st ex.s. c 14 s 2 are each amended
14 to read as follows:

15 (1) In order to convict a person of any crime defined in this
16 chapter it shall not be necessary that the testimony of the alleged
17 victim be corroborated.

18 (2) Evidence of the victim's past sexual behavior including but not
19 limited to the victim's marital history, divorce history, or general
20 reputation for promiscuity, nonchastity, or sexual mores contrary to
21 community standards is inadmissible on the issue of credibility and is
22 inadmissible to prove the victim's consent except as provided in
23 subsection (3) of this section, but when the perpetrator and the victim
24 have engaged in sexual intercourse with each other in the past, and
25 when the past behavior is material to the issue of consent, evidence
26 concerning the past behavior between the perpetrator and the victim may
27 be admissible on the issue of consent to the offense.

28 (3) In any prosecution for the crime of rape, trafficking pursuant
29 to RCW 9A.40.100, or any of the offenses in chapter 9.68A RCW, or for
30 an attempt to commit, or an assault with an intent to commit any such
31 crime evidence of the victim's past sexual behavior including but not
32 limited to the victim's marital behavior, divorce history, or general
33 reputation for promiscuity, nonchastity, or sexual mores contrary to
34 community standards is not admissible if offered to attack the
35 credibility of the victim and is admissible on the issue of consent,
36 except where prohibited in the underlying criminal offense, only
37 pursuant to the following procedure:

1 (a) A written pretrial motion shall be made by the defendant to the
2 court and prosecutor stating that the defense has an offer of proof of
3 the relevancy of evidence of the past sexual behavior of the victim
4 proposed to be presented and its relevancy on the issue of the consent
5 of the victim.

6 (b) The written motion shall be accompanied by an affidavit or
7 affidavits in which the offer of proof shall be stated.

8 (c) If the court finds that the offer of proof is sufficient, the
9 court shall order a hearing out of the presence of the jury, if any,
10 and the hearing shall be closed except to the necessary witnesses, the
11 defendant, counsel, and those who have a direct interest in the case or
12 in the work of the court.

13 (d) At the conclusion of the hearing, if the court finds that the
14 evidence proposed to be offered by the defendant regarding the past
15 sexual behavior of the victim is relevant to the issue of the victim's
16 consent; is not inadmissible because its probative value is
17 substantially outweighed by the probability that its admission will
18 create a substantial danger of undue prejudice; and that its exclusion
19 would result in denial of substantial justice to the defendant; the
20 court shall make an order stating what evidence may be introduced by
21 the defendant, which order may include the nature of the questions to
22 be permitted. The defendant may then offer evidence pursuant to the
23 order of the court.

24 (4) Nothing in this section shall be construed to prohibit cross-
25 examination of the victim on the issue of past sexual behavior when the
26 prosecution presents evidence in its case in chief tending to prove the
27 nature of the victim's past sexual behavior, but the court may require
28 a hearing pursuant to subsection (3) of this section concerning such
29 evidence.

30 **Sec. 8.** RCW 9A.44.128 and 2012 c 134 s 2 are each amended to read
31 as follows:

32 For the purposes of RCW 9A.44.130 through 9A.44.145, 10.01.200,
33 43.43.540, 70.48.470, and 72.09.330, the following definitions apply:

34 (1) "Business day" means any day other than Saturday, Sunday, or a
35 legal local, state, or federal holiday.

36 (2) "Conviction" means any adult conviction or juvenile
37 adjudication for a sex offense or kidnapping offense.

1 (3) "Disqualifying offense" means a conviction for: Any offense
2 that is a felony; a sex offense as defined in this section; a crime
3 against children or persons as defined in RCW 43.43.830(~~(+5)~~) (7) and
4 9.94A.411(2)(a); an offense with a domestic violence designation as
5 provided in RCW 10.99.020; permitting the commercial sexual abuse of a
6 minor as defined in RCW 9.68A.103; or any violation of chapter 9A.88
7 RCW.

8 (4) "Employed" or "carries on a vocation" means employment that is
9 full time or part time for a period of time exceeding fourteen days, or
10 for an aggregate period of time exceeding thirty days during any
11 calendar year. A person is employed or carries on a vocation whether
12 the person's employment is financially compensated, volunteered, or for
13 the purpose of government or educational benefit.

14 (5) "Fixed residence" means a building that a person lawfully and
15 habitually uses as living quarters a majority of the week. Uses as
16 living quarters means to conduct activities consistent with the common
17 understanding of residing, such as sleeping; eating; keeping personal
18 belongings; receiving mail; and paying utilities, rent, or mortgage.
19 A nonpermanent structure including, but not limited to, a motor home,
20 travel trailer, camper, or boat may qualify as a residence provided it
21 is lawfully and habitually used as living quarters a majority of the
22 week, primarily kept at one location with a physical address, and the
23 location it is kept at is either owned or rented by the person or used
24 by the person with the permission of the owner or renter. A shelter
25 program may qualify as a residence provided it is a shelter program
26 designed to provide temporary living accommodations for the homeless,
27 provides an offender with a personally assigned living space, and the
28 offender is permitted to store belongings in the living space.

29 (6) "In the community" means residing outside of confinement or
30 incarceration for a disqualifying offense.

31 (7) "Institution of higher education" means any public or private
32 institution dedicated to postsecondary education, including any
33 college, university, community college, trade, or professional school.

34 (8) "Kidnapping offense" means:

35 (a) The crimes of kidnapping in the first degree, kidnapping in the
36 second degree, and unlawful imprisonment, as defined in chapter 9A.40
37 RCW, where the victim is a minor and the offender is not the minor's
38 parent;

1 (b) Any offense that is, under chapter 9A.28 RCW, a criminal
2 attempt, criminal solicitation, or criminal conspiracy to commit an
3 offense that is classified as a kidnapping offense under this
4 subsection; and

5 (c) Any federal or out-of-state conviction for: An offense for
6 which the person would be required to register as a kidnapping offender
7 if residing in the state of conviction; or, if not required to register
8 in the state of conviction, an offense that under the laws of this
9 state would be classified as a kidnapping offense under this
10 subsection.

11 (9) "Lacks a fixed residence" means the person does not have a
12 living situation that meets the definition of a fixed residence and
13 includes, but is not limited to, a shelter program designed to provide
14 temporary living accommodations for the homeless, an outdoor sleeping
15 location, or locations where the person does not have permission to
16 stay.

17 (10) "Sex offense" means:

18 (a) Any offense defined as a sex offense by RCW 9.94A.030;

19 (b) Any violation under RCW 9A.44.096 (sexual misconduct with a
20 minor in the second degree);

21 (c) Any violation under RCW 9A.40.100(1)(a)(ii)(B) (trafficking);

22 (d) Any violation under RCW 9.68A.090 (communication with a minor
23 for immoral purposes);

24 ~~((d))~~ (e) A violation under RCW 9A.88.070 (promoting prostitution
25 in the first degree) or RCW 9A.88.080 (promoting prostitution in the
26 second degree) if the person has a prior conviction for one of these
27 offenses;

28 ~~((e))~~ (f) Any gross misdemeanor that is, under chapter 9A.28 RCW,
29 a criminal attempt, criminal solicitation, or criminal conspiracy to
30 commit an offense that is classified as a sex offense under RCW
31 9.94A.030 or this subsection;

32 ~~((f))~~ (g) Any out-of-state conviction for an offense for which
33 the person would be required to register as a sex offender while
34 residing in the state of conviction; or, if not required to register in
35 the state of conviction, an offense that under the laws of this state
36 would be classified as a sex offense under this subsection;

37 ~~((g))~~ (h) Any federal conviction classified as a sex offense
38 under 42 U.S.C. Sec. 16911 (SORNA);

1 (~~(h)~~) (i) Any military conviction for a sex offense. This
2 includes sex offenses under the uniform code of military justice, as
3 specified by the United States secretary of defense;

4 (~~(i)~~) (j) Any conviction in a foreign country for a sex offense
5 if it was obtained with sufficient safeguards for fundamental fairness
6 and due process for the accused under guidelines or regulations
7 established pursuant to 42 U.S.C. Sec. 16912.

8 (11) "School" means a public or private school regulated under
9 Title 28A RCW or chapter 72.40 RCW.

10 (12) "Student" means a person who is enrolled, on a full-time or
11 part-time basis, in any school or institution of higher education.

12 **Sec. 9.** RCW 9A.44.150 and 2005 c 455 s 1 are each amended to read
13 as follows:

14 (1) On motion of the prosecuting attorney in a criminal proceeding,
15 the court may order that a child under the age of (~~(ten)~~) fourteen may
16 testify in a room outside the presence of the defendant and the jury
17 while one-way closed-circuit television equipment simultaneously
18 projects the child's testimony into another room so the defendant and
19 the jury can watch and hear the child testify if:

20 (a) The testimony will:

21 (i) Describe an act or attempted act of sexual contact performed
22 with or on the child witness by another person or with or on a child
23 other than the child witness by another person;

24 (ii) Describe an act or attempted act of physical abuse against the
25 child witness by another person or against a child other than the child
26 witness by another person; (~~(or)~~)

27 (iii) Describe a violation of RCW 9A.40.100 (trafficking) or any
28 offense identified in chapter 9.68A RCW (sexual exploitation of
29 children); or

30 (iv) Describe a violent offense as defined by RCW 9.94A.030
31 committed against a person known by or familiar to the child witness or
32 by a person known by or familiar to the child witness;

33 (b) The testimony is taken during the criminal proceeding;

34 (c) The court finds by substantial evidence, in a hearing conducted
35 outside the presence of the jury, that requiring the child witness to
36 testify in the presence of the defendant will cause the child to suffer

1 serious emotional or mental distress that will prevent the child from
2 reasonably communicating at the trial. If the defendant is excluded
3 from the presence of the child, the jury must also be excluded;

4 (d) As provided in (~~subsection (1)~~)(a) and (b) of this
5 subsection, the court may allow a child witness to testify in the
6 presence of the defendant but outside the presence of the jury, via
7 closed-circuit television, if the court finds, upon motion and hearing
8 outside the presence of the jury, that the child will suffer serious
9 emotional distress that will prevent the child from reasonably
10 communicating at the trial in front of the jury, or, that although the
11 child may be able to reasonably communicate at trial in front of the
12 jury, the child will suffer serious emotional or mental distress from
13 testifying in front of the jury. If the child is able to communicate
14 in front of the defendant but not the jury the defendant will remain in
15 the room with the child while the jury is excluded from the room;

16 (e) The court finds that the prosecutor has made all reasonable
17 efforts to prepare the child witness for testifying, including
18 informing the child or the child's parent or guardian about community
19 counseling services, giving court tours, and explaining the trial
20 process. If the prosecutor fails to demonstrate that preparations were
21 implemented or the prosecutor in good faith attempted to implement
22 them, the court shall deny the motion;

23 (f) The court balances the strength of the state's case without the
24 testimony of the child witness against the defendant's constitutional
25 rights and the degree of infringement of the closed-circuit television
26 procedure on those rights;

27 (g) The court finds that no less restrictive method of obtaining
28 the testimony exists that can adequately protect the child witness from
29 the serious emotional or mental distress;

30 (h) When the court allows the child witness to testify outside the
31 presence of the defendant, the defendant can communicate constantly
32 with the defense attorney by electronic transmission and be granted
33 reasonable court recesses during the child's testimony for person-to-
34 person consultation with the defense attorney;

35 (i) The court can communicate with the attorneys by an audio system
36 so that the court can rule on objections and otherwise control the
37 proceedings;

1 (j) All parties in the room with the child witness are on camera
2 and can be viewed by all other parties. If viewing all participants is
3 not possible, the court shall describe for the viewers the location of
4 the prosecutor, defense attorney, and other participants in relation to
5 the child;

6 (k) The court finds that the television equipment is capable of
7 making an accurate reproduction and the operator of the equipment is
8 competent to operate the equipment; and

9 (l) The court imposes reasonable guidelines upon the parties for
10 conducting the filming to avoid trauma to the child witness or abuse of
11 the procedure for tactical advantage.

12 The prosecutor, defense attorney, and a neutral and trained
13 victim's advocate, if any, shall always be in the room where the child
14 witness is testifying. The court in the court's discretion depending
15 on the circumstances and whether the jury or defendant or both are
16 excluded from the room where the child is testifying, may remain or may
17 not remain in the room with the child.

18 (2) During the hearing conducted under subsection (1) of this
19 section to determine whether the child witness may testify outside the
20 presence of the defendant and/or the jury, the court may conduct the
21 observation and examination of the child outside the presence of the
22 defendant if:

23 (a) The prosecutor alleges and the court concurs that the child
24 witness will be unable to testify in front of the defendant or will
25 suffer severe emotional or mental distress if forced to testify in
26 front of the defendant;

27 (b) The defendant can observe and hear the child witness by closed-
28 circuit television;

29 (c) The defendant can communicate constantly with the defense
30 attorney during the examination of the child witness by electronic
31 transmission and be granted reasonable court recesses during the
32 child's examination for person-to-person consultation with the defense
33 attorney; and

34 (d) The court finds the closed-circuit television is capable of
35 making an accurate reproduction and the operator of the equipment is
36 competent to operate the equipment. Whenever possible, all the parties
37 in the room with the child witness shall be on camera so that the
38 viewers can see all the parties. If viewing all participants is not

1 possible, then the court shall describe for the viewers the location of
2 the prosecutor, defense attorney, and other participants in relation to
3 the child.

4 (3) The court shall make particularized findings on the record
5 articulating the factors upon which the court based its decision to
6 allow the child witness to testify via closed-circuit television
7 pursuant to this section. The factors the court may consider include,
8 but are not limited to, a consideration of the child's age, physical
9 health, emotional stability, expressions by the child of fear of
10 testifying in open court or in front of the defendant, the relationship
11 of the defendant to the child, and the court's observations of the
12 child's inability to reasonably communicate in front of the defendant
13 or in open court. The court's findings shall identify the impact the
14 factors have upon the child's ability to testify in front of the jury
15 or the defendant or both and the specific nature of the emotional or
16 mental trauma the child would suffer. The court shall determine
17 whether the source of the trauma is the presence of the defendant, the
18 jury, or both, and shall limit the use of the closed-circuit television
19 accordingly.

20 (4) This section does not apply if the defendant is an attorney pro
21 se unless the defendant has a court-appointed attorney assisting the
22 defendant in the defense.

23 (5) This section may not preclude the presence of both the child
24 witness and the defendant in the courtroom together for purposes of
25 establishing or challenging the identification of the defendant when
26 identification is a legitimate issue in the proceeding.

27 (6) The Washington supreme court may adopt rules of procedure
28 regarding closed-circuit television procedures.

29 (7) All recorded tapes of testimony produced by closed-circuit
30 television equipment shall be subject to any protective order of the
31 court for the purpose of protecting the privacy of the child witness.

32 (8) Nothing in this section creates a right of the child witness to
33 a closed-circuit television procedure in lieu of testifying in open
34 court.

35 (9) The state shall bear the costs of the closed-circuit television
36 procedure.

37 (10) A child witness may or may not be a victim in the proceeding.

1 (11) Nothing in this section precludes the court, under other
2 circumstances arising under subsection (1)(a) of this section, from
3 allowing a child to testify outside the presence of the defendant and
4 the jury so long as the testimony is presented in accordance with the
5 standards and procedures required in this section.

6 **Sec. 10.** RCW 9A.82.010 and 2012 c 139 s 1 are each amended to read
7 as follows:

8 Unless the context requires the contrary, the definitions in this
9 section apply throughout this chapter.

10 (1)(a) "Beneficial interest" means:

11 (i) The interest of a person as a beneficiary under a trust
12 established under Title 11 RCW in which the trustee for the trust holds
13 legal or record title to real property;

14 (ii) The interest of a person as a beneficiary under any other
15 trust arrangement under which a trustee holds legal or record title to
16 real property for the benefit of the beneficiary; or

17 (iii) The interest of a person under any other form of express
18 fiduciary arrangement under which one person holds legal or record
19 title to real property for the benefit of the other person.

20 (b) "Beneficial interest" does not include the interest of a
21 stockholder in a corporation or the interest of a partner in a general
22 partnership or limited partnership.

23 (c) A beneficial interest is considered to be located where the
24 real property owned by the trustee is located.

25 (2) "Control" means the possession of a sufficient interest to
26 permit substantial direction over the affairs of an enterprise.

27 (3) "Creditor" means a person making an extension of credit or a
28 person claiming by, under, or through a person making an extension of
29 credit.

30 (4) "Criminal profiteering" means any act, including any
31 anticipatory or completed offense, committed for financial gain, that
32 is chargeable or indictable under the laws of the state in which the
33 act occurred and, if the act occurred in a state other than this state,
34 would be chargeable or indictable under the laws of this state had the
35 act occurred in this state and punishable as a felony and by
36 imprisonment for more than one year, regardless of whether the act is
37 charged or indicted, as any of the following:

- 1 (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;
- 2 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;
- 3 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;
- 4 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;
- 5 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060,
6 9A.56.080, and 9A.56.083;
- 7 (f) Unlawful sale of subscription television services, as defined
8 in RCW 9A.56.230;
- 9 (g) Theft of telecommunication services or unlawful manufacture of
10 a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;
- 11 (h) Child selling or child buying, as defined in RCW 9A.64.030;
- 12 (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and
13 9A.68.050;
- 14 (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;
- 15 (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
- 16 (l) Unlawful production of payment instruments, unlawful possession
17 of payment instruments, unlawful possession of a personal
18 identification device, unlawful possession of fictitious
19 identification, or unlawful possession of instruments of financial
20 fraud, as defined in RCW 9A.56.320;
- 21 (m) Extortionate extension of credit, as defined in RCW 9A.82.020;
- 22 (n) Advancing money for use in an extortionate extension of credit,
23 as defined in RCW 9A.82.030;
- 24 (o) Collection of an extortionate extension of credit, as defined
25 in RCW 9A.82.040;
- 26 (p) Collection of an unlawful debt, as defined in RCW 9A.82.045;
- 27 (q) Delivery or manufacture of controlled substances or possession
28 with intent to deliver or manufacture controlled substances under
29 chapter 69.50 RCW;
- 30 (r) Trafficking in stolen property, as defined in RCW 9A.82.050;
- 31 (s) Leading organized crime, as defined in RCW 9A.82.060;
- 32 (t) Money laundering, as defined in RCW 9A.83.020;
- 33 (u) Obstructing criminal investigations or prosecutions in
34 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,
35 9A.76.070, or 9A.76.180;
- 36 (v) Fraud in the purchase or sale of securities, as defined in RCW
37 21.20.010;
- 38 (w) Promoting pornography, as defined in RCW 9.68.140;

1 (x) Sexual exploitation of children, as defined in RCW 9.68A.040,
2 9.68A.050, and 9.68A.060;
3 (y) Promoting prostitution, as defined in RCW 9A.88.070 and
4 9A.88.080;
5 (z) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
6 (aa) Assault, as defined in RCW 9A.36.011 and 9A.36.021;
7 (bb) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;
8 (cc) A pattern of equity skimming, as defined in RCW 61.34.020;
9 (dd) Commercial telephone solicitation in violation of RCW
10 19.158.040(1);
11 (ee) Trafficking in insurance claims, as defined in RCW 48.30A.015;
12 (ff) Unlawful practice of law, as defined in RCW 2.48.180;
13 (gg) Commercial bribery, as defined in RCW 9A.68.060;
14 (hh) Health care false claims, as defined in RCW 48.80.030;
15 (ii) Unlicensed practice of a profession or business, as defined in
16 RCW 18.130.190(7);
17 (jj) Improperly obtaining financial information, as defined in RCW
18 9.35.010;
19 (kk) Identity theft, as defined in RCW 9.35.020;
20 (ll) Unlawful shipment of cigarettes in violation of RCW
21 70.155.105(6) (a) or (b);
22 (mm) Unlawful shipment of cigarettes in violation of RCW
23 82.24.110(2);
24 (nn) Unauthorized sale or procurement of telephone records in
25 violation of RCW 9.26A.140;
26 (oo) Theft with the intent to resell, as defined in RCW 9A.56.340;
27 (pp) Organized retail theft, as defined in RCW 9A.56.350;
28 (qq) Mortgage fraud, as defined in RCW 19.144.080;
29 (rr) Commercial sexual abuse of a minor, as defined in RCW
30 9.68A.100; (~~or~~)
31 (ss) Promoting commercial sexual abuse of a minor, as defined in
32 RCW 9.68A.101; or
33 (tt) Trafficking, as defined in RCW 9A.40.100, promoting travel for
34 commercial sexual abuse of a minor, as defined in RCW 9.68A.102, and
35 permitting commercial sexual abuse of a minor, as defined in RCW
36 9.68A.103.
37 (5) "Dealer in property" means a person who buys and sells property
38 as a business.

1 (6) "Debtor" means a person to whom an extension of credit is made
2 or a person who guarantees the repayment of an extension of credit or
3 in any manner undertakes to indemnify the creditor against loss
4 resulting from the failure of a person to whom an extension is made to
5 repay the same.

6 (7) "Documentary material" means any book, paper, document,
7 writing, drawing, graph, chart, photograph, phonograph record, magnetic
8 tape, computer printout, other data compilation from which information
9 can be obtained or from which information can be translated into usable
10 form, or other tangible item.

11 (8) "Enterprise" includes any individual, sole proprietorship,
12 partnership, corporation, business trust, or other profit or nonprofit
13 legal entity, and includes any union, association, or group of
14 individuals associated in fact although not a legal entity, and both
15 illicit and licit enterprises and governmental and nongovernmental
16 entities.

17 (9) "Extortionate extension of credit" means an extension of credit
18 with respect to which it is the understanding of the creditor and the
19 debtor at the time the extension is made that delay in making repayment
20 or failure to make repayment could result in the use of violence or
21 other criminal means to cause harm to the person, reputation, or
22 property of any person.

23 (10) "Extortionate means" means the use, or an express or implicit
24 threat of use, of violence or other criminal means to cause harm to the
25 person, reputation, or property of any person.

26 (11) "Financial institution" means any bank, trust company, savings
27 and loan association, savings bank, mutual savings bank, credit union,
28 or loan company under the jurisdiction of the state or an agency of the
29 United States.

30 (12) "Pattern of criminal profiteering activity" means engaging in
31 at least three acts of criminal profiteering, one of which occurred
32 after July 1, 1985, and the last of which occurred within five years,
33 excluding any period of imprisonment, after the commission of the
34 earliest act of criminal profiteering. In order to constitute a
35 pattern, the three acts must have the same or similar intent, results,
36 accomplices, principals, victims, or methods of commission, or be
37 otherwise interrelated by distinguishing characteristics including a
38 nexus to the same enterprise, and must not be isolated events.

1 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by
2 any person other than the attorney general or county prosecuting
3 attorney in which one or more acts of fraud in the purchase or sale of
4 securities are asserted as acts of criminal profiteering activity, it
5 is a condition to civil liability under RCW 9A.82.100 that the
6 defendant has been convicted in a criminal proceeding of fraud in the
7 purchase or sale of securities under RCW 21.20.400 or under the laws of
8 another state or of the United States requiring the same elements of
9 proof, but such conviction need not relate to any act or acts asserted
10 as acts of criminal profiteering activity in such civil action under
11 RCW 9A.82.100.

12 (13) "Real property" means any real property or interest in real
13 property, including but not limited to a land sale contract, lease, or
14 mortgage of real property.

15 (14) "Records" means any book, paper, writing, record, computer
16 program, or other material.

17 (15) "Repayment of an extension of credit" means the repayment,
18 satisfaction, or discharge in whole or in part of a debt or claim,
19 acknowledged or disputed, valid or invalid, resulting from or in
20 connection with that extension of credit.

21 (16) "Stolen property" means property that has been obtained by
22 theft, robbery, or extortion.

23 (17) "To collect an extension of credit" means to induce in any way
24 a person to make repayment thereof.

25 (18) "To extend credit" means to make or renew a loan or to enter
26 into an agreement, tacit or express, whereby the repayment or
27 satisfaction of a debt or claim, whether acknowledged or disputed,
28 valid or invalid, and however arising, may or shall be deferred.

29 (19) "Traffic" means to sell, transfer, distribute, dispense, or
30 otherwise dispose of stolen property to another person, or to buy,
31 receive, possess, or obtain control of stolen property, with intent to
32 sell, transfer, distribute, dispense, or otherwise dispose of the
33 property to another person.

34 (20)(a) "Trustee" means:

35 (i) A person acting as a trustee under a trust established under
36 Title 11 RCW in which the trustee holds legal or record title to real
37 property;

1 (ii) A person who holds legal or record title to real property in
2 which another person has a beneficial interest; or

3 (iii) A successor trustee to a person who is a trustee under (a)(i)
4 or (ii) of this subsection.

5 (b) "Trustee" does not mean a person appointed or acting as:

6 (i) A personal representative under Title 11 RCW;

7 (ii) A trustee of any testamentary trust;

8 (iii) A trustee of any indenture of trust under which a bond is
9 issued; or

10 (iv) A trustee under a deed of trust.

11 (21) "Unlawful debt" means any money or other thing of value
12 constituting principal or interest of a debt that is legally
13 unenforceable in the state in full or in part because the debt was
14 incurred or contracted:

15 (a) In violation of any one of the following:

16 (i) Chapter 67.16 RCW relating to horse racing;

17 (ii) Chapter 9.46 RCW relating to gambling;

18 (b) In a gambling activity in violation of federal law; or

19 (c) In connection with the business of lending money or a thing of
20 value at a rate that is at least twice the permitted rate under the
21 applicable state or federal law relating to usury.

22 **Sec. 11.** RCW 9A.88.110 and 1988 c 146 s 4 are each amended to read
23 as follows:

24 (1) A person is guilty of patronizing a prostitute if:

25 (a) Pursuant to a prior understanding, he or she pays a fee to
26 another person as compensation for such person or a third person having
27 engaged in sexual conduct with him or her; or

28 (b) He or she pays or agrees to pay a fee to another person
29 pursuant to an understanding that in return therefor such person will
30 engage in sexual conduct with him or her; or

31 (c) He or she solicits or requests another person to engage in
32 sexual conduct with him or her in return for a fee.

33 (2) For purposes of this section, "sexual conduct" has the meaning
34 given in RCW 9A.88.030.

35 (3) Patronizing a prostitute is a misdemeanor.

36 (4) If the person patronized for prostitution is a minor, the
37 offense may be prosecuted under RCW 9.68A.100 or 9A.44.100.

1 **Sec. 12.** RCW 13.34.132 and 2011 c 309 s 28 are each amended to
2 read as follows:

3 A court may order that a petition seeking termination of the parent
4 and child relationship be filed if the following requirements are met:

5 (1) The court has removed the child from his or her home pursuant
6 to RCW 13.34.130;

7 (2) Termination is recommended by the department or the supervising
8 agency;

9 (3) Termination is in the best interests of the child; and

10 (4) Because of the existence of aggravated circumstances,
11 reasonable efforts to unify the family are not required.
12 Notwithstanding the existence of aggravated circumstances, reasonable
13 efforts may be required if the court or department determines it is in
14 the best interests of the child. In determining whether aggravated
15 circumstances exist by clear, cogent, and convincing evidence, the
16 court shall consider one or more of the following:

17 (a) Conviction of the parent of rape of the child in the first,
18 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and
19 9A.44.079;

20 (b) Conviction of the parent of criminal mistreatment of the child
21 in the first or second degree as defined in RCW 9A.42.020 and
22 9A.42.030;

23 (c) Conviction of the parent of one of the following assault
24 crimes, when the child is the victim: Assault in the first or second
25 degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child
26 in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

27 (d) Conviction of the parent of murder, manslaughter, or homicide
28 by abuse of the child's other parent, sibling, or another child;

29 (e) Conviction of the parent of trafficking, or promoting
30 commercial sexual abuse of a minor when the victim of the crime is the
31 child, the child's other parent, a sibling of the child, or another
32 child.

33 (f) Conviction of the parent of attempting, soliciting, or
34 conspiring to commit a crime listed in (a), (b), (c), or (d) of this
35 subsection;

36 ((+f+)) (g) A finding by a court that a parent is a sexually
37 violent predator as defined in RCW 71.09.020;

1 ~~((g))~~ (h) Failure of the parent to complete available treatment
2 ordered under this chapter or the equivalent laws of another state,
3 where such failure has resulted in a prior termination of parental
4 rights to another child and the parent has failed to effect significant
5 change in the interim. In the case of a parent of an Indian child, as
6 defined in RCW 13.38.040, the court shall also consider tribal efforts
7 to assist the parent in completing treatment and make it possible for
8 the child to return home;

9 ~~((h))~~ (i) An infant under three years of age has been abandoned;
10 ~~((i))~~ (j) Conviction of the parent, when a child has been born of
11 the offense, of: (A) A sex offense under chapter 9A.44 RCW; or (B)
12 incest under RCW 9A.64.020.

13 NEW SECTION. **Sec. 13.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

17 NEW SECTION. **Sec. 14.** This act takes effect August 1, 2013."

SSB 5669 - S AMD
By Senators Padden, Kohl-Welles

PULLED 03/04/2013

18 On page 1, line 1 of the title, after "trafficking;" strike the
19 remainder of the title and insert "amending RCW 9.68A.090, 9.68A.100,
20 9.68A.101, 9.68A.102, 9.68A.103, 9A.44.020, 9A.44.128, 9A.44.150,
21 9A.82.010, 9A.88.110, and 13.34.132; reenacting and amending RCW
22 9A.40.100; prescribing penalties; and providing an effective date."

EFFECT: Adds references to "sexually explicit act" to conform
with definitions in other subsections. Amends definitions for

"commercial sex act" and "sexually explicit act" to conform to existing law. Authorizes, but does not require the prosecutor to charge commercial sexual abuse of a minor or indecent liberties when the person patronized for prostitution was a minor. Removes unintended language and includes language to allow the court to find aggravating circumstances sufficient to order termination of parental rights when the parent has been convicted of the crimes of trafficking or promoting commercial sexual abuse of a minor when the victim of the crime was the child, the child's other parent, a sibling of the child, or another child. Clarifies that trafficking is a sex offense only if there is a finding that the offense was committed with sexual motivation.

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