

# SENATE BILL REPORT

## SB 5669

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As of February 14, 2013

**Title:** An act relating to trafficking.

**Brief Description:** Concerning trafficking.

**Sponsors:** Senators Padden, Kohl-Welles, Smith, Hargrove, Pearson, Darneille, Bailey, Nelson, Becker, Benton, Brown, Baumgartner, Conway, Roach and Holmquist Newbry.

**Brief History:**

**Committee Activity:** Law & Justice: 2/13/13.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Aldo Melchiori (786-7439)

**Background:** Communication with a minor for immoral purposes is a gross misdemeanor. However, it is a class C felony if the offense is committed by the sending of an electronic communication.

The possible use of consent of the minor as a defense is not currently addressed for the crimes of commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, promoting travel for the commercial sexual abuse of a minor, permitting commercial sexual abuse of a minor, trafficking in the first and second degree, or indecent liberties.

The offenses of trafficking in the first or second degree require knowledge 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.

Offenders convicted of sex offenses or kidnapping or have been found not guilty by reason of insanity must register with the sheriff in the county in which they reside. The duration of the duty to register varies depending upon the felony classification of the crime. Failure to register when required is a sex offense upon the second conviction.

In a criminal proceeding, the court may order that a child under the age of ten may testify in a room outside the presence of the defendant and the jury while one-way closed-circuit television equipment simultaneously projects the child's testimony so the defendant and the jury can watch and hear the child testify in cases involving certain crimes against children.

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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.*

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

The state Criminal Profiteering Act provides civil penalties and remedies for a variety of criminal activities. Profiteering is defined to include the commission, or attempted commission, for financial gain, of any one of a number of crimes, including child selling or buying, sexual exploitation of children, and promoting prostitution. The act provides that a pattern of criminal profiteering activity means engaging in at least three acts of criminal profiteering within a five-year period. An injured person, the Attorney General, or the county prosecuting attorney may file an action to prevent or restrain a pattern of criminal profiteering and recover up to three times actual damages as well as the costs of suit. A civil penalty of up to \$200,000 may also be awarded. Each of the following may be subject to forfeiture:

- property used to commit the offenses;
- property acquired or maintained by profits from the offenses;
- property acquired or maintained by profits used to commit the offenses; and
- proceeds from the offenses.

A person is guilty of patronizing a prostitute if the person pays or agrees to pay a fee as compensation for sexual conduct. Patronizing a prostitute is a misdemeanor.

In proceedings for termination of a parent-child relationship, reasonable efforts to unify the family are not required if the court finds, by clear, cogent, and convincing evidence that aggravating circumstances exist. Conviction of the parent, when a child is born of the offense, of a sex offense or incest is an aggravating circumstance.

**Summary of Bill:** Communication with a minor for immoral purposes is a class C felony if the person communicates with a minor for immoral purposes, including the purchase or sale of commercial sex acts and sex trafficking, by the sending of an electronic communication. Consent of the minor is not a defense for the crimes of commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, promoting travel for the commercial sexual abuse of a minor, permitting commercial sexual abuse of a minor, trafficking in the first and second degree, or indecent liberties.

The offenses of trafficking in the first or second degree require actions with knowledge, or in reckless disregard of the fact, that force, fraud, or coercion will be used to cause the person to engage in forced labor, involuntary servitude, a sexually explicit act, a commercial sex act, or that the person was under 18 years of age and caused to engage in a commercial sex act. Force, fraud, or coercion are not elements of the offense if the victim of the offense is a minor. Evidence of a victim's past sexual behavior is not admissible if offered to attack the victim's credibility in trafficking and sexual exploitation of children cases.

Trafficking, commercial sexual abuse of a minor, and promoting travel for commercial sexual abuse of a minor are defined as sex offenses for the purposes of requiring registration as a sex offender. If a person patronizes a prostitute who is a minor, the offense must be

prosecuted as commercial sexual abuse of a minor or indecent liberties – both class B felonies.

In a criminal proceeding, the court may order that a child under the age of 14 may testify in a room outside the presence of the defendant and the jury. The types of trials in which this testimony may be used is expanded to include trafficking and sexual exploitation of a minor.

Trafficking, promoting travel for the commercial sexual abuse of a minor, and permitting commercial sexual abuse of a minor are added as offenses that can lead to a criminal profiteering action.

In proceedings for the termination of a parent-child relationship in determining whether reasonable efforts are required to unify the family, it is considered an aggravating circumstance if the parent has been convicted, when a child has been born of the offense, of a sex offense or incest, with sexual motivation.

**Appropriation:** None.

**Fiscal Note:** Requested on February 12, 2013.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill takes effect on August 1, 2013.

**Staff Summary of Public Testimony:** PRO: It has been found that children from all types of home environments and socioeconomic backgrounds are vulnerable to traffickers. Americans are unaware of the prevalence of sex trafficking here in our own country, of our own citizens. It is clear that the solution must come at the state level. Force, fraud, or coercion should not be a required element of proof in sex trafficking cases because the victims' age is their vulnerability. Without ending demand, we can never end sex trafficking. Girls are being chosen, stalked, manipulated, threatened, tortured, raped, and beaten every day in the state of Washington. This provides important tools for the prosecution of sex traffickers. The aggressive protection of minors is necessary. Most adult prostitutes started when they were minors. For gangs, sex trafficking is safer and more profitable than drugs. Victims are often very apprehensive about facing the traffickers in court. Criminals take pregnant victims to clinics to get abortions without parental consent. Defenses that blame the child for the offense must be eliminated. This bill strengthens the state's ability to prosecute crimes and restore the dignity of the victims of sexual exploitation.

CON: The change in section 10 of the bill to allow teenagers up to 14 years of age to testify outside the presence of the defendant goes too far. Everyone has a right to face their accuser. Our present law is modeled after Maryland law and this change may face a constitutional challenge.

**Persons Testifying:** PRO: Linda Smith, Shared Hope International; Detective Joel Banks, Officer Andy Conner, King County Sheriffs Office Genesis Project; Dr. Greg Romine, Marie, Brianna, citizens; Peggy O'Ban, Tim Heffer, The Justice and Mercy Foundation; Lonnie Johns-Brown, WA Coalition of Sexual Assault Programs.

CON: Thomas Weaver, WA Assn. of Criminal Defense Lawyers, WA Defenders Assn.