

SENATE BILL REPORT

SB 5813

As Passed Senate, March 8, 2017

Title: An act relating to crimes against minors.

Brief Description: Concerning crimes against minors.

Sponsors: Senator Padden.

Brief History:

Committee Activity: Law & Justice: 2/16/17 [DP].

Floor Activity:

Passed Senate: 3/08/17, 48-0.

Brief Summary of Bill

- Prohibits a trafficking perpetrator from asserting the defense that the age of the victim was unknown, or the perpetrator believed the victim was older, in adjudicating any trafficking crime that depends on the victim's age.
- Raises the felony class for two child sexual abuse imagery offenses from a Class C to a Class B felony.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

Staff: Melissa Burke-Cain (786-7755)

Background: Under current Washington law, a person who commits a sex offense against a child faces a higher penalty than a person who commits the same offense committed against an adult victim. A child is less able to understand adult behavior or to recognize risks and protect himself or herself from becoming a crime victim. When the seriousness of an offense depends on the victim's age, a perpetrator's mistake about the victim's age is not a defense to the crime. Trafficking crimes may be committed against adults or children and do not always involve sexually explicit or commercial sex acts, but may include other forms of labor

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trafficking or involuntary servitude. Trafficking of a child is a more serious offense than trafficking of an adult for the same reasons that a higher penalty applies to sex offenses against a child. Under current law, trafficking crimes that impose a higher penalty when the offense is committed against a child under the age of eighteen years old do not expressly preclude a perpetrator from asserting that he or she did not know the victim's age or believed the victim was over eighteen years of age.

Possession or dealing in sexual abuse imagery involving children are crimes under Washington state law. The Federal sexual abuse imagery crimes are stated differently than the equivalent Washington crimes. Federal law prohibits production, distribution, and possession of child pornography. The federal penalties for child pornography are generally more severe than Washington's Class C penalties for the crimes of possessing or dealing in depictions of minors in sexually explicit conduct.

Summary of Bill: A perpetrator cannot claim as a defense to the crime of trafficking involving a person under the age of eighteen years old that he or she did not know the victim's age or that he or she mistakenly believed the victim was over eighteen years of age. Possessing depictions of minors in sexually explicit conduct and dealing in depictions of minors in sexually explicit conduct are both Class B felonies.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Draft Bill: PRO: Washington state has a strong commitment to protecting trafficking victims; particularly child victims. Young trafficking victims experience horrific, often life-long physical and emotional harm. The harm to young trafficking victims is not mitigated by the perpetrator's mistaken belief that the victim is 18 years old or older. Nor is the harm mitigated because the perpetrator did not know the victim was under the age of 18. A buyer of services from a trafficked child should not be able to hide behind a claim that they did not know, or were mistaken about, the victim's age. Passing this bill strengthens Washington's commitment to protecting children who may be trafficking victims.

CON: Everyone deserves justice under the law. Section 4a of this bill removes any mens rea requirement for the trafficking crimes when the victim is under age. An accused is responsible for the crime even if he or she asks directly about a victim's age because he or she does not want to engage in activity with a minor. Any steps the defendant takes to make sure they are not engaging in trafficking involving an underage victim should be an affirmative defense. The law should have an intent element so that only a person who intends to have sex with a minor should be culpable. A person who has no intent to have sex with a minor, but may be duped or given false information about the victim's age, should not be culpable for trafficking with a minor.

Persons Testifying: PRO: Jo Lembo, Shared Hope International.

CON: Sheri Pewitt, Washington Defender Assn., Washington Assn. of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: No one.