
**Public Safety & Emergency Preparedness
Committee**

ESB 6255

Brief Description: Concerning victims of human trafficking and promoting prostitution.

Sponsors: Senators Fraser, Kline, Eide, Kohl-Welles, Shin, Litzow, Chase, Stevens, Pflug, Regala, Nelson, Keiser, Roach, Conway, Holmquist Newbry and Frockt.

Brief Summary of Engrossed Bill

- Creates an affirmative defense to prosecution for Prostitution if the person committed the offense as a result of being a victim of Trafficking or Promoting Prostitution in the first degree.
- Allows a person to vacate their record of conviction for Prostitution if he or she committed the offense as a result of being a victim of Trafficking or Promoting Prostitution in the first degree, unless he or she has pending criminal charges, any more recent convictions, or previously vacated a Prostitution conviction.

Hearing Date: 2/15/12

Staff: Sarah Koster (786-7303).

Background:

Trafficking.

A person is guilty of Trafficking in the first degree when he or she:

- (i) recruits, harbors, transports, transfers, provides, obtains, or receives by any means another person knowing that force, fraud, or coercion will be used to cause the person to engage in forced labor, involuntary servitude, or a commercial sex act; or

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(ii) benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth above and the acts or venture:

- involve committing or attempting to commit kidnapping;
- involve a finding of sexual motivation;
- involve the illegal harvesting or sale of human organs; or
- result in a death.

A person is guilty of Trafficking in the second degree if he or she:

(i) recruits, harbors, transports, transfers, provides, obtains, or receives by any means another person knowing that force, fraud, or coercion will be used to cause the person to engage in forced labor, involuntary servitude, or a commercial sex act; or

(ii) benefits financially or by receiving anything of value from participation in a venture that has engaged in trafficking in the first degree.

Promoting Prostitution in the First Degree.

A person is guilty of Promoting Prostitution in the first degree if he or she knowingly advances prostitution by compelling a person by threat or force to engage in prostitution or profits from prostitution which results from such threat or force.

Trafficking Victims Protection Act of 2000.

The federal Trafficking Victims Protection Act of 2000 (Act) provides protective measures for victims of trafficking and makes human trafficking a federal crime with severe penalties. The Act defines Sex Trafficking as the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. Additionally, the Act describes severe forms of Trafficking in Persons to mean either: (1) Sex Trafficking, in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not reached 18 years of age; or (2) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Vacating Record of Convictions.

Under current law, a person convicted of a misdemeanor or gross misdemeanor who has completed all the terms of his or her sentence may apply to vacate his or her record of conviction. The court may vacate the conviction unless:

- a. there are criminal charges pending against the applicant;
- b. the offense was a violent offense;
- c. the offense was driving under the influence, actual physical control under the influence, or operating a railroad while intoxicated;
- d. the offense was a violation of chapter 9.68 RCW (obscenity and pornography), chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44 RCW (sex offenses);
- e. the offense was a domestic violence offense or involved one family member or household member against another, and
 - i. the applicant did not notify the prosecuting attorney's office of the vacation petition;

- ii. the applicant had a previous conviction for domestic violence;
 - iii. the applicant lied under penalty of perjury about a prior domestic violence conviction; or
 - iv. less than five years has elapsed since the person completed the terms of the original conditions of the sentence;
- f. (for offenses other than those listed immediately above) less than three years has passed since the person completed the terms of the sentence;
 - g. the applicant has been convicted of a new crime in this state since the date of conviction;
 - h. the applicant has ever had another record of conviction vacated; or
 - i. the applicant has or has had a domestic violence protection order, no contact order, an anti-harassment order or a civil restraining order in the past five years.

Summary of Bill:

Affirmative Defense.

It is an affirmative defense to a prosecution for Prostitution that the actor committed the offense as a result of being a victim of Trafficking, Promoting Prostitution in the first degree, or Trafficking in Persons under the Act. Documentation that the actor is named as a current victim in an information or the investigative records upon which a conviction is obtained for Trafficking, Promoting Prostitution in the first degree, or Trafficking in Persons under the Act creates a presumption that the actor is eligible for the defense.

Vacating Record of Conviction.

A person convicted of Prostitution who committed the offense as a result of being a victim of trafficking, Promoting Prostitution in the first degree, or trafficking in persons, under the Act, may apply to the sentencing court to vacate his or her record of conviction. The record may not be vacated if:

- there are criminal charges pending against the applicant;
- the applicant has been convicted of another crime since the date of conviction; or
- the applicant has ever had the record of another Prostitution conviction vacated.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.