

# SENATE BILL REPORT

## ESB 6255

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As Passed Senate, February 11, 2012

**Title:** An act relating to victims of human trafficking and promoting prostitution.

**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 History:**

**Committee Activity:** Judiciary: 1/27/12, 2/01/12 [DP].

Passed Senate: 2/11/12, 47-0.

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass.

Signed by Senators Kline, Chair; Harper, Vice Chair; Pflug, Ranking Minority Member; Hargrove, Kohl-Welles, Padden and Roach.

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

**Background:** A person is guilty of prostitution if such person engages, agrees, or offers to engage in sexual conduct with another person in return for a fee. Sexual conduct means sexual intercourse or sexual contact. Prostitution is a misdemeanor. Every person convicted of a misdemeanor or gross misdemeanor who has completed all terms of the sentence may apply for a vacation of the applicant's record of conviction for the offense. The offender's record cannot be cleared if:

1. there are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court;
2. the offense was a violent offense or an attempt to commit a violent offense, as defined in RCW 9.94A.030;
3. the offense was a violation for driving while under the influence, actual physical control while under the influence, or operating a railroad, etc., while intoxicated;
4. the offense was any misdemeanor or gross misdemeanor violation, including an attempt, of obscenity and pornography, sexual exploitation of children, or a sex offense;
5. the applicant was convicted of a misdemeanor or gross misdemeanor domestic violence offense; or the court determines after a review of the court file that the

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offense was committed by one family member or household member against another; or the court determines that the offense involved domestic violence, and any one of the following factors exist:

- a. the applicant has not provided written notification of the vacation petition to the prosecuting attorney's office that prosecuted the offense for which vacation is sought or has not provided that notification to the court;
- b. the applicant has previously had a conviction for domestic violence. For purposes of this subsection, however, if the current application is for more than one conviction that arose out of a single incident, none of those convictions counts as a previous conviction;
- c. the applicant has signed an affidavit under penalty of perjury affirming that the applicant has not previously had a conviction for a domestic violence offense and a criminal history check reveals that the applicant has had such a conviction; or
- d. less than five years have elapsed since the person completed the terms of the original conditions of the sentence, including any financial obligations and successful completion of any treatment ordered as a condition of sentencing;
6. for any offense other than those offences involving domestic violence, as described above, less than three years have passed since the person completed the terms of the sentence, including any financial obligations;
7. the offender has been convicted of a new crime in this state, another state, or federal court since the date of conviction;
8. the applicant has ever had the record of another conviction vacated; or
9. the applicant is currently restrained or has been restrained within five years prior to the vacation application by a domestic violence protection order, a no-contact order, an antiharassment order, or a civil restraining order which restrains one party from contacting the other party.

If the offender meets these tests, the court may clear the record of conviction by permitting the applicant to withdraw the applicant's plea of guilty and to enter a plea of not guilty; or, if the applicant has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.

**Summary of Engrossed Bill:** In any prosecution for prostitution, it is an affirmative defense 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 Trafficking Victims Protection Act. Documentation that the defendant 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 creates a presumption that the person's participation in prostitution was a result of having been a victim of trafficking, promoting prostitution in the first degree, or trafficking in persons.

Every 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 Trafficking Victims Protection Act may apply to the sentencing court for vacation of the applicant's record of conviction for the prostitution offense. An applicant may not have the record of conviction for prostitution vacated if any one of the following is present:

1. there are any criminal charges against the applicant pending in any court of this state, another state, or in any federal court;
2. the offender has been convicted of another crime in this state, another state, or federal court since the date of conviction; or
3. the applicant has ever had the record of another prostitution conviction vacated.

**Appropriation:** None.

**Fiscal Note:** Available.

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

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

**Staff Summary of Public Testimony:** PRO: These people are victimized by all those around them and then they get prosecuted for prostitution. The weight of the world is truly on them. These children need to be given a chance to recover their lives. This is an excellent tool to help children get their lives back. With these offenses on their criminal record, these victims are unable to find employment. It would be helpful if more than one conviction could be vacated.

**Persons Testifying:** PRO: Tim Burgess, Seattle City Council; Gael Tarleton, President, Port of Seattle Commission; Jim Pugel, Asst. Chief, Seattle Police Dept.; Linda Smith, former U.S. Congresswoman; Rev. John Vaughn, Groundswell, Auburn Seminary; Sean O'Donnell, King County Deputy Prosecutor; Andy Conner, SeaTac Police; Brian Taylor, Detective, King County Sheriff; Leslie Briner, Youthcare; Nacole Svengard, mother; Velma Veloria, former State Representative; Emma Catague, Asian-Pacific Islander Woman's Safety Center; Megan McCloskey, University of WA Anti-Trafficking Task Force; Rose Gundersen, WA Engage; Kristine Harper, survivor.