

HOUSE BILL REPORT

SHB 1791

As Passed Legislature

Title: An act relating to trafficking.

Brief Description: Concerning trafficking.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Parker, Orwall, Fagan, Riccelli, Ryu, Haler, Moscoso and Santos).

Brief History:

Committee Activity:

Public Safety: 1/28/14, 2/4/14 [DPS].

Floor Activity:

Passed House: 2/12/14, 97-0.

Senate Amended.

Passed Senate: 3/5/14, 49-0.

House Concurred.

Passed House: 3/10/14, 98-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Expands the definition of "sex offense" to include Trafficking in the first degree when the trafficked person is caused to engage in a sexually explicit act or a commercial sex act.
- Allows 90 percent of the proceeds of seizure and forfeiture actions stemming from child pornography, sexual exploitation of a minor, or Promoting Prostitution in the first degree to be used by the seizing law enforcement agencies for increased enforcement.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Roberts, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Holy, Hope, Moscoso, Pettigrew, Ross and Takko.

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.

Staff: Sarah Koster (786-7303).

Background:

Trafficking and Sex Offenses.

A person is guilty of trafficking when that person:

- recruits, harbors, transports, transfers, provides, obtains, buys, purchases, or receives by any means another person knowing, or in reckless disregard for 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, or a commercial sex act, or that the person has not reached the age of 18 years and is caused to engage in a sexually explicit act or a commercial sex act; or
- benefits financially or receives anything of value from participation in a venture that has engaged in the above acts.

The offense is trafficking in the first degree if the acts involve kidnapping, sexual motivation, illegal harvesting of human organs, or results in a death. Trafficking in the first degree is a class A felony.

A person convicted of a sex offense must register with the county sheriff for that person's county of residence and provide specific personal information. This information is placed in a central registry maintained by the Washington State Patrol. Some information about registered sex offenders, including residential address and conviction data, is made available to the public.

Currently a conviction for trafficking in the first degree is not a sex offense that triggers registration unless there is a finding of sexual motivation that is alleged by the prosecutor and found by the fact finder beyond a reasonable doubt. Sexual motivation means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

Seizure and Forfeiture.

When authorized by law, a law enforcement agency may take possession of property with the intent to forfeit a person's right to own or possess that property.

Generally, civil property forfeiture may be permitted when the property was used to facilitate a crime, the property is actual proceeds of a crime, or the property was purchased from proceeds traceable to criminal activity. Washington law currently permits forfeiture of property in the case of drug crimes, crimes committed with a firearm, human sex trafficking and sexual exploitation crimes, criminal profiteering, and other felony crimes. The seizing law enforcement agency must comply with specific statutory procedural due process requirements in order to successfully forfeit a previous ownership or possessory right in such property.

Pornographic materials and personal property used or intended to be used to facilitate the manufacture or distribution of child pornography are subject to forfeiture. If property is forfeited to a law enforcement agency under these circumstances the agency may retain the property for official use, release the property to another law enforcement agency for the

exclusive use of enforcing the chapter on sexual exploitation of children, or sell any property that is not required to be destroyed by law or is harmful to the public. The proceeds from property forfeited in connection with child pornography will be used by the seizing agency for payment of all proper expenses of the investigation and the forfeiture and sale proceedings. Fifty percent of the money remaining after these expenses are paid is to be deposited into the State General Fund and 50 percent is to be deposited into the general fund of the state, county, or city of the seizing law enforcement agency.

Property acquired by or used to facilitate the crimes of Commercial Sexual Abuse of a Minor, Promoting Commercial Sexual Abuse of a Minor, or Promoting Prostitution in the first degree is subject to forfeiture. If property is forfeited to a law enforcement agency under these circumstances, the agency must sell any tangible property that is not required to be destroyed by law. By January 31, each seizing agency must pay to the State Treasury an amount equal to the net proceeds of any property forfeited under these circumstances during the preceding year. The net proceeds is the value of the property after deducting any outstanding security interest in the property, cost of sale, and cost of damages owed to a landlord, if applicable. The funds must be deposited into the state Prostitution Prevention and Intervention Account. The seizing law enforcement agency is not permitted to retain any portion of the forfeiture proceeds.

Summary of Substitute Bill:

Sex Offense.

The statutory definition of sex offense includes the crime of trafficking in the first degree when:

- force, fraud, or coercion is used to cause the trafficked person to engage in a sexually explicit act or a commercial sex act; or
- a person under age 18 is caused to engage in a sexually explicit act or commercial sex act.

A finding of sexual motivation is not required in these circumstances in order for the offense to qualify as a sex offense.

Seizure and Forfeiture.

Property forfeited because of its connection to child pornography, commercial sexual abuse, or promoting prostitution may be retained for use by the seizing law enforcement agency or another law enforcement agency for enforcement of any of the above offenses, destroyed, if required by law, or sold.

After satisfying any bona fide security interest and paying the cost of the sale, 10 percent of the proceeds from a forfeiture will be remitted to the Prostitution Prevention and Intervention Account through an annual remittance by January 31 of each year. The remaining 90 percent must be used by the seizing law enforcement agency to pay expenses of the investigation leading to seizure and the forfeiture and sale proceedings. Any remaining money may be used by the seizing law enforcement agency for the exclusive use of enforcing chapters 9.68 and 9A.88 RCW, relating to sexual exploitation of children, prostitution, or promoting prostitution.

The value of the forfeited property includes the sale price of sold property and the fair market value of retained property. Destroyed property or retained firearms or illegal property has no value for the purpose of this calculation.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Human trafficking is an important issue to many of us. It takes the shape of labor and prostitution trafficking, with an division of 70 percent labor and 30 percent prostitution in Washington and nationwide. This bill divides the two so they can be approached from a labor or prostitution standpoint as appropriate. The bill also requires traffickers to be registered as sex offenders in our community.

(With concerns) The bill sponsor and bill should be applauded. It is important that the experts in this area, the Sex Offender Policy Board, be involved as this bill moves forward to evaluate how the current system would be impacted by the inclusion of trafficking perpetrators, who look different from those who commit other sex offenses. There are costs of monitoring sex offenders to consider and whether the risk assessment tools can be used for these offenders.

(Opposed) None.

Persons Testifying: (In support) Representative Parker, prime sponsor.

(With concerns) Rebecca Johnson, Washington Coalition of Sexual Assault Programs.

Persons Signed In To Testify But Not Testifying: None.