
SUBSTITUTE HOUSE BILL 1791

State of Washington **63rd Legislature** **2014 Regular Session**

By House Public Safety (originally sponsored by Representatives Parker, Orwall, Fagan, Riccelli, Ryu, Haler, Moscoso, and Santos)

READ FIRST TIME 02/05/14.

1 AN ACT Relating to trafficking; and amending RCW 9A.40.100 and
2 9A.44.128.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 9A.40.100 and 2013 c 302 s 6 are each amended to read
5 as follows:

6 (1)~~((a))~~ A person is guilty of trafficking in the first degree
7 when:

8 ~~((i))~~ (a) Such person:

9 ~~((A))~~ (i) Recruits, harbors, transports, transfers, provides,
10 obtains, buys, purchases, or receives by any means another person
11 knowing, or in reckless disregard of the fact, (A) that force, fraud,
12 or coercion as defined in RCW 9A.36.070 will be used to cause the
13 person to engage in:

14 (I) Forced labor~~((τ))~~;

15 (II) Involuntary servitude~~((τ))~~;

16 (III) A sexually explicit act~~((τ))~~; or

17 (IV) A commercial sex act, or (B) that the person has not attained
18 the age of eighteen years and is caused to engage in a sexually
19 explicit act or a commercial sex act; or

1 ~~((B))~~ (ii) Benefits financially or by receiving anything of value
2 from participation in a venture that has engaged in acts set forth in
3 (a)(i)~~((A))~~ of this subsection; and
4 ~~((ii))~~ (b) The acts or venture set forth in (a)~~((i))~~ of this
5 subsection:
6 ~~((A))~~ (i) Involve committing or attempting to commit kidnapping;
7 ~~((B))~~ (ii) Involve a finding of sexual motivation under RCW
8 9.94A.835;
9 ~~((C))~~ (iii) Involve the illegal harvesting or sale of human
10 organs; or
11 ~~((D))~~ (iv) Result in a death.
12 ~~((b))~~ (2) Trafficking in the first degree is a class A felony.
13 ~~((2))~~ (3)(a) A person is guilty of trafficking in the second
14 degree when such person:
15 (i) Recruits, harbors, transports, transfers, provides, obtains,
16 buys, purchases, or receives by any means another person knowing, or in
17 reckless disregard of the fact, that force, fraud, or coercion as
18 defined in RCW 9A.36.070 will be used to cause the person to engage in
19 forced labor, involuntary servitude, a sexually explicit act, or a
20 commercial sex act, or that the person has not attained the age of
21 eighteen years and is caused to ~~((engaged—[engage])~~) engage in a
22 sexually explicit act or a commercial sex act; or
23 (ii) Benefits financially or by receiving anything of value from
24 participation in a venture that has engaged in acts set forth in (a)(i)
25 of this subsection.
26 (b) Trafficking in the second degree is a class A felony.
27 ~~((3))~~ (4)(a) A person who is either convicted or given a deferred
28 sentence or a deferred prosecution or who has entered into a statutory
29 or nonstatutory diversion agreement as a result of an arrest for a
30 violation of a trafficking crime shall be assessed a ten thousand
31 dollar fee.
32 (b) The court shall not reduce, waive, or suspend payment of all or
33 part of the fee assessed in this section unless it finds, on the
34 record, that the offender does not have the ability to pay the fee in
35 which case it may reduce the fee by an amount up to two-thirds of the
36 maximum allowable fee.
37 (c) Fees assessed under this section shall be collected by the
38 clerk of the court and remitted to the treasurer of the county where

1 the offense occurred for deposit in the county general fund, except in
2 cases in which the offense occurred in a city or town that provides for
3 its own law enforcement, in which case these amounts shall be remitted
4 to the treasurer of the city or town for deposit in the general fund of
5 the city or town. Revenue from the fees must be used for local efforts
6 to reduce the commercial sale of sex including, but not limited to,
7 increasing enforcement of commercial sex laws.

8 (i) At least fifty percent of the revenue from fees imposed under
9 this section must be spent on prevention, including education programs
10 for offenders, such as john school, and rehabilitative services, such
11 as mental health and substance abuse counseling, parenting skills,
12 training, housing relief, education, vocational training, drop-in
13 centers, and employment counseling.

14 (ii) Revenues from these fees are not subject to the distribution
15 requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or
16 35.20.220.

17 (~~(4)~~) (5) If the victim of any offense identified in this section
18 is a minor, force, fraud, or coercion are not necessary elements of an
19 offense and consent to the sexually explicit act or commercial sex act
20 does not constitute a defense.

21 (~~(5)~~) (6) For purposes of this section:

22 (a) "Commercial sex act" means any act of sexual contact or sexual
23 intercourse, both as defined in chapter 9A.44 RCW, for which something
24 of value is given or received by any person; and

25 (b) "Sexually explicit act" means a public, private, or live
26 photographed, recorded, or videotaped act or show intended to arouse or
27 satisfy the sexual desires or appeal to the prurient interests of
28 patrons for which something of value is given or received.

29 **Sec. 2.** RCW 9A.44.128 and 2013 c 302 s 8 are each amended to read
30 as follows:

31 For the purposes of RCW 9A.44.130 through 9A.44.145, 10.01.200,
32 43.43.540, 70.48.470, and 72.09.330, the following definitions apply:

33 (1) "Business day" means any day other than Saturday, Sunday, or a
34 legal local, state, or federal holiday.

35 (2) "Conviction" means any adult conviction or juvenile
36 adjudication for a sex offense or kidnapping offense.

1 (3) "Disqualifying offense" means a conviction for: Any offense
2 that is a felony; a sex offense as defined in this section; a crime
3 against children or persons as defined in RCW 43.43.830(7) and
4 9.94A.411(2)(a); an offense with a domestic violence designation as
5 provided in RCW 10.99.020; permitting the commercial sexual abuse of a
6 minor as defined in RCW 9.68A.103; or any violation of chapter 9A.88
7 RCW.

8 (4) "Employed" or "carries on a vocation" means employment that is
9 full time or part time for a period of time exceeding fourteen days, or
10 for an aggregate period of time exceeding thirty days during any
11 calendar year. A person is employed or carries on a vocation whether
12 the person's employment is financially compensated, volunteered, or for
13 the purpose of government or educational benefit.

14 (5) "Fixed residence" means a building that a person lawfully and
15 habitually uses as living quarters a majority of the week. Uses as
16 living quarters means to conduct activities consistent with the common
17 understanding of residing, such as sleeping; eating; keeping personal
18 belongings; receiving mail; and paying utilities, rent, or mortgage.
19 A nonpermanent structure including, but not limited to, a motor home,
20 travel trailer, camper, or boat may qualify as a residence provided it
21 is lawfully and habitually used as living quarters a majority of the
22 week, primarily kept at one location with a physical address, and the
23 location it is kept at is either owned or rented by the person or used
24 by the person with the permission of the owner or renter. A shelter
25 program may qualify as a residence provided it is a shelter program
26 designed to provide temporary living accommodations for the homeless,
27 provides an offender with a personally assigned living space, and the
28 offender is permitted to store belongings in the living space.

29 (6) "In the community" means residing outside of confinement or
30 incarceration for a disqualifying offense.

31 (7) "Institution of higher education" means any public or private
32 institution dedicated to postsecondary education, including any
33 college, university, community college, trade, or professional school.

34 (8) "Kidnapping offense" means:

35 (a) The crimes of kidnapping in the first degree, kidnapping in the
36 second degree, and unlawful imprisonment, as defined in chapter 9A.40
37 RCW, where the victim is a minor and the offender is not the minor's
38 parent;

1 (b) Any offense that is, under chapter 9A.28 RCW, a criminal
2 attempt, criminal solicitation, or criminal conspiracy to commit an
3 offense that is classified as a kidnapping offense under this
4 subsection; and

5 (c) Any federal or out-of-state conviction for: An offense for
6 which the person would be required to register as a kidnapping offender
7 if residing in the state of conviction; or, if not required to register
8 in the state of conviction, an offense that under the laws of this
9 state would be classified as a kidnapping offense under this
10 subsection.

11 (9) "Lacks a fixed residence" means the person does not have a
12 living situation that meets the definition of a fixed residence and
13 includes, but is not limited to, a shelter program designed to provide
14 temporary living accommodations for the homeless, an outdoor sleeping
15 location, or locations where the person does not have permission to
16 stay.

17 (10) "Sex offense" means:

18 (a) Any offense defined as a sex offense by RCW 9.94A.030;

19 (b) Any violation under RCW 9A.44.096 (sexual misconduct with a
20 minor in the second degree);

21 (c) Any violation under RCW 9A.40.100(1)(~~(a)(ii)(B)~~) (b)(ii)
22 (trafficking);

23 (d) Any violation under RCW 9.68A.090 (communication with a minor
24 for immoral purposes);

25 (e) A violation under RCW 9A.88.070 (promoting prostitution in the
26 first degree) or RCW 9A.88.080 (promoting prostitution in the second
27 degree) if the person has a prior conviction for one of these offenses;

28 (f) Any violation under RCW 9A.40.100(1)(a)(i)(A) (III) or (IV) or
29 (a)(i)(B);

30 (g) Any gross misdemeanor that is, under chapter 9A.28 RCW, a
31 criminal attempt, criminal solicitation, or criminal conspiracy to
32 commit an offense that is classified as a sex offense under RCW
33 9.94A.030 or this subsection;

34 (~~(g)~~) (h) Any out-of-state conviction for an offense for which
35 the person would be required to register as a sex offender while
36 residing in the state of conviction; or, if not required to register in
37 the state of conviction, an offense that under the laws of this state
38 would be classified as a sex offense under this subsection;

1 (~~(h)~~) (i) Any federal conviction classified as a sex offense
2 under 42 U.S.C. Sec. 16911 (SORNA);

3 (~~(i)~~) (j) Any military conviction for a sex offense. This
4 includes sex offenses under the uniform code of military justice, as
5 specified by the United States secretary of defense;

6 (~~(j)~~) (k) Any conviction in a foreign country for a sex offense
7 if it was obtained with sufficient safeguards for fundamental fairness
8 and due process for the accused under guidelines or regulations
9 established pursuant to 42 U.S.C. Sec. 16912.

10 (11) "School" means a public or private school regulated under
11 Title 28A RCW or chapter 72.40 RCW.

12 (12) "Student" means a person who is enrolled, on a full-time or
13 part-time basis, in any school or institution of higher education.

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