
HOUSE BILL 1791

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Parker, Orwall, Fagan, Riccelli, Ryu, O'Ban, Haler, Moscoso, and Santos

Read first time 02/08/13. Referred to Committee on Public Safety.

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

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

4 **Sec. 1.** RCW 9A.40.100 and 2012 c 144 s 2 and 2012 c 134 s 1 are
5 each reenacted and amended to read as follows:

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

7 (i) Such person:

8 (A) Recruits, harbors, transports, transfers, provides, obtains, or
9 receives by any means another person knowing that force, fraud, or
10 coercion as defined in RCW 9A.36.070 will be used to cause the person
11 to engage in:

12 (I) Forced labor((τ));

13 (II) Involuntary servitude((τ));

14 (III) A sexually explicit act((τ)); or

15 (IV) A commercial sex act; or

16 (B) Benefits financially or by receiving anything of value from
17 participation in a venture that has engaged in acts set forth in
18 (a)(i)(A) of this subsection; and

19 (ii) The acts or venture set forth in (a)(i) of this subsection:

- 1 (A) Involve committing or attempting to commit kidnapping;
2 (B) Involve a finding of sexual motivation under RCW 9.94A.835;
3 (C) Involve the illegal harvesting or sale of human organs; or
4 (D) Result in a death.

5 (b) Trafficking in the first degree is a class A felony.

6 (2)(a) A person is guilty of trafficking in the second degree when
7 such person:

8 (i) Recruits, harbors, transports, transfers, provides, obtains, or
9 receives by any means another person knowing that force, fraud, or
10 coercion as defined in RCW 9A.36.070 will be used to cause the person
11 to engage in forced labor, involuntary servitude, a sexually explicit
12 act, or a commercial sex act; or

13 (ii) Benefits financially or by receiving anything of value from
14 participation in a venture that has engaged in acts set forth in (a)(i)
15 of this subsection.

16 (b) Trafficking in the second degree is a class A felony.

17 (3)(a) A person who is either convicted or given a deferred
18 sentence or a deferred prosecution or who has entered into a statutory
19 or nonstatutory diversion agreement as a result of an arrest for a
20 violation of a trafficking crime shall be assessed a three thousand
21 dollar fee.

22 (b) The court shall not reduce, waive, or suspend payment of all or
23 part of the fee assessed in this section unless it finds, on the
24 record, that the offender does not have the ability to pay the fee in
25 which case it may reduce the fee by an amount up to two-thirds of the
26 maximum allowable fee.

27 (c) Fees assessed under this section shall be collected by the
28 clerk of the court and remitted to the treasurer of the county where
29 the offense occurred for deposit in the county general fund, except in
30 cases in which the offense occurred in a city or town that provides for
31 its own law enforcement, in which case these amounts shall be remitted
32 to the treasurer of the city or town for deposit in the general fund of
33 the city or town. Revenue from the fees must be used for local efforts
34 to reduce the commercial sale of sex including, but not limited to,
35 increasing enforcement of commercial sex laws.

36 (i) At least fifty percent of the revenue from fees imposed under
37 this section must be spent on prevention, including education programs
38 for offenders, such as john school, and rehabilitative services, such

1 as mental health and substance abuse counseling, parenting skills,
2 training, housing relief, education, vocational training, drop-in
3 centers, and employment counseling.

4 (ii) Revenues from these fees are not subject to the distribution
5 requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or
6 35.20.220.

7 (4) For purposes of this section, "sexually explicit act" means a
8 public, private, or live photographed, recorded, or videotaped act or
9 show intended to arouse or satisfy the sexual desires or appeal to the
10 prurient interests of patrons.

11 **Sec. 2.** RCW 9A.44.128 and 2012 c 134 s 2 are each amended to read
12 as follows:

13 For the purposes of RCW 9A.44.130 through 9A.44.145, 10.01.200,
14 43.43.540, 70.48.470, and 72.09.330, the following definitions apply:

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

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

19 (3) "Disqualifying offense" means a conviction for: Any offense
20 that is a felony; a sex offense as defined in this section; a crime
21 against children or persons as defined in RCW 43.43.830(~~(+5)~~) (7) and
22 9.94A.411(2)(a); an offense with a domestic violence designation as
23 provided in RCW 10.99.020; permitting the commercial sexual abuse of a
24 minor as defined in RCW 9.68A.103; or any violation of chapter 9A.88
25 RCW.

26 (4) "Employed" or "carries on a vocation" means employment that is
27 full time or part time for a period of time exceeding fourteen days, or
28 for an aggregate period of time exceeding thirty days during any
29 calendar year. A person is employed or carries on a vocation whether
30 the person's employment is financially compensated, volunteered, or for
31 the purpose of government or educational benefit.

32 (5) "Fixed residence" means a building that a person lawfully and
33 habitually uses as living quarters a majority of the week. Uses as
34 living quarters means to conduct activities consistent with the common
35 understanding of residing, such as sleeping; eating; keeping personal
36 belongings; receiving mail; and paying utilities, rent, or mortgage.
37 A nonpermanent structure including, but not limited to, a motor home,

1 travel trailer, camper, or boat may qualify as a residence provided it
2 is lawfully and habitually used as living quarters a majority of the
3 week, primarily kept at one location with a physical address, and the
4 location it is kept at is either owned or rented by the person or used
5 by the person with the permission of the owner or renter. A shelter
6 program may qualify as a residence provided it is a shelter program
7 designed to provide temporary living accommodations for the homeless,
8 provides an offender with a personally assigned living space, and the
9 offender is permitted to store belongings in the living space.

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

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

15 (8) "Kidnapping offense" means:

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

20 (b) Any offense that is, under chapter 9A.28 RCW, a criminal
21 attempt, criminal solicitation, or criminal conspiracy to commit an
22 offense that is classified as a kidnapping offense under this
23 subsection; and

24 (c) Any federal or out-of-state conviction for: An offense for
25 which the person would be required to register as a kidnapping offender
26 if residing in the state of conviction; or, if not required to register
27 in the state of conviction, an offense that under the laws of this
28 state would be classified as a kidnapping offense under this
29 subsection.

30 (9) "Lacks a fixed residence" means the person does not have a
31 living situation that meets the definition of a fixed residence and
32 includes, but is not limited to, a shelter program designed to provide
33 temporary living accommodations for the homeless, an outdoor sleeping
34 location, or locations where the person does not have permission to
35 stay.

36 (10) "Sex offense" means:

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

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

3 (c) Any violation under RCW 9.68A.090 (communication with a minor
4 for immoral purposes);

5 (d) A violation under RCW 9A.88.070 (promoting prostitution in the
6 first degree) or RCW 9A.88.080 (promoting prostitution in the second
7 degree) if the person has a prior conviction for one of these offenses;

8 (e) Any gross misdemeanor that is, under chapter 9A.28 RCW, a
9 criminal attempt, criminal solicitation, or criminal conspiracy to
10 commit an offense that is classified as a sex offense under RCW
11 9.94A.030 or this subsection;

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

13 (g) Any out-of-state conviction for an offense for which the person
14 would be required to register as a sex offender while residing in the
15 state of conviction; or, if not required to register in the state of
16 conviction, an offense that under the laws of this state would be
17 classified as a sex offense under this subsection;

18 ~~((g))~~ (h) Any federal conviction classified as a sex offense
19 under 42 U.S.C. Sec. 16911 (SORNA);

20 ~~((h))~~ (i) Any military conviction for a sex offense. This
21 includes sex offenses under the uniform code of military justice, as
22 specified by the United States secretary of defense;

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

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

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

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