

HOUSE BILL REPORT

SB 5147

As Passed House:
April 6, 2009

Title: An act relating to criminal libel.

Brief Description: Repealing criminal libel statutes.

Sponsors: Senators Kline and Rockefeller.

Brief History:

Committee Activity:

Judiciary: 3/18/09, 3/19/09 [DP].

Floor Activity

Passed House: 4/6/09, 95-1.

<p>Brief Summary of Bill</p> <ul style="list-style-type: none">• Repeals the criminal libel statutes.
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HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

Staff: Kate Moeur (786-5793) and Trudes Tango (786-7384).

Background:

Libel is defined under Washington's criminal libel statute as any malicious publication that tends to expose any living or deceased person to hatred, contempt, ridicule, or obloquy, or to injure any person in his or her business or occupation. A person who publishes a libel is guilty of a gross misdemeanor.

Washington's criminal libel statutes establish a presumption that statements meeting the definition of "libel" are malicious unless justified or excused. A publication is justified if the statement charged as libelous charges the commission of a crime, is a true and fair statement,

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and was published with good motives and for justifiable ends. A publication is excused if the statement charged as libelous was honestly made in the belief that it was true and fair, upon reasonable grounds for such belief, and consists of fair comments upon the conduct of any person in respect to public affairs. Washington's criminal libel statute does not otherwise distinguish between statements about public and private individuals.

Recently, Division II of the Washington Court of Appeals ruled that Washington's criminal libel statutory scheme, primarily embodied in RCW 9.58.010 and RCW 9.58.020, is facially unconstitutional for overbreadth and vagueness. *Parmalee v. Lehman*, 145 Wn.App. 223, 186 P.3d 1094 (2008).

The *Parmalee* court also held that Washington's criminal libel statutory scheme does not meet minimum constitutional standards as established by the U.S. Supreme Court in *Garrison v. Louisiana*, 379 U.S. 64 (1964). The *Garrison* court, in examining Louisiana's criminal libel statute, held that punishing false statements against public officials without regard as to whether they were made with actual malice is unconstitutional. (A statement is made with "actual malice" when made with knowledge that it is false or with reckless disregard for whether it was false or not.) The *Parmalee* court thus concluded that Washington's criminal libel statutory scheme is unconstitutional because it permits prosecution of persons for making false statements without actual malice and/or making true statements without good motive or intent.

Summary of Bill:

The criminal libel statutes are repealed.

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.

Staff Summary of Public Testimony:

(In support) This is a clean-up bill. The criminal libel statute has been held to be unconstitutional since 1964 and has not been the basis for a criminal prosecution in decades. Washington's criminal libel statutes have been found cited in civil legal briefs likely due to a lack of awareness that these statutes have been invalidated. As a matter of public policy, Washington's criminal libel statute allows for consideration of a speaker's motive even if the speaker's statements are true. This bill corrects that problem by repealing the criminal libel statute.

(Opposed) None.

Persons Testifying: Senator Kline, prime sponsor; and Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.