S-0109.2

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**SENATE BILL 5177**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Cleveland, Dhingra, Das, Hunt, Nguyen, Pedersen, and Wilson, C.

AN ACT Relating to eliminating proof of nonmarriage as an element of a sex offense; amending RCW 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, 9A.44.093, 9A.44.096, and 9A.44.100; and declaring an emergency.

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

**Sec.**  RCW 9A.44.050 and 2007 c 20 s 1 are each amended to read as follows:

(1) A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person:

(a) By forcible compulsion;

(b) When the victim is incapable of consent by reason of being physically helpless or mentally incapacitated;

(c) When the victim is a person with a developmental disability and the perpetrator is a person who ((~~is not married to the victim and who~~)):

(i) Has supervisory authority over the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense;

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual intercourse with the knowledge that the sexual intercourse was not for the purpose of treatment;

(e) When the victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who ((~~is not married to the victim and~~)) has supervisory authority over the victim; or

(f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who ((~~is not married to the victim and who~~)):

(i) Has a significant relationship with the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense.

(2) Rape in the second degree is a class A felony.

**Sec.**  RCW 9A.44.073 and 1988 c 145 s 2 are each amended to read as follows:

(1) A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve years old ((~~and not married to the perpetrator~~)) and the perpetrator is at least twenty-four months older than the victim.

(2) Rape of a child in the first degree is a class A felony.

**Sec.**  RCW 9A.44.076 and 1990 c 3 s 903 are each amended to read as follows:

(1) A person is guilty of rape of a child in the second degree when the person has sexual intercourse with another who is at least twelve years old but less than fourteen years old ((~~and not married to the perpetrator~~)) and the perpetrator is at least thirty-six months older than the victim.

(2) Rape of a child in the second degree is a class A felony.

**Sec.**  RCW 9A.44.079 and 1988 c 145 s 4 are each amended to read as follows:

(1) A person is guilty of rape of a child in the third degree when the person has sexual intercourse with another who is at least fourteen years old but less than sixteen years old ((~~and not married to the perpetrator~~)) and the perpetrator is at least forty-eight months older than the victim.

(2) Rape of a child in the third degree is a class C felony.

**Sec.**  RCW 9A.44.083 and 1994 c 271 s 303 are each amended to read as follows:

(1) A person is guilty of child molestation in the first degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old ((~~and not married to the perpetrator~~)) and the perpetrator is at least thirty-six months older than the victim.

(2) Child molestation in the first degree is a class A felony.

**Sec.**  RCW 9A.44.086 and 1994 c 271 s 304 are each amended to read as follows:

(1) A person is guilty of child molestation in the second degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least twelve years old but less than fourteen years old ((~~and not married to the perpetrator~~)) and the perpetrator is at least thirty-six months older than the victim.

(2) Child molestation in the second degree is a class B felony.

**Sec.**  RCW 9A.44.089 and 1994 c 271 s 305 are each amended to read as follows:

(1) A person is guilty of child molestation in the third degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least fourteen years old but less than sixteen years old ((~~and not married to the perpetrator~~)) and the perpetrator is at least forty-eight months older than the victim.

(2) Child molestation in the third degree is a class C felony.

**Sec.**  RCW 9A.44.093 and 2009 c 324 s 1 are each amended to read as follows:

(1) A person is guilty of sexual misconduct with a minor in the first degree when: (a) The person has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with another person who is at least sixteen years old but less than eighteen years old ((~~and not married to the perpetrator~~)), if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual intercourse with the victim; (b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with an enrolled student of the school who is at least sixteen years old and not more than twenty-one years old ((~~and not married to the employee~~)), if the employee is at least sixty months older than the student; or (c) the person is a foster parent who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with his or her foster child who is at least sixteen.

(2) Sexual misconduct with a minor in the first degree is a class C felony.

(3) For the purposes of this section:

(a) "Enrolled student" means any student enrolled at or attending a program hosted or sponsored by a common school as defined in RCW 28A.150.020, or a student enrolled at or attending a program hosted or sponsored by a private school under chapter 28A.195 RCW, or any person who receives home-based instruction under chapter 28A.200 RCW.

(b) "School employee" means an employee of a common school defined in RCW 28A.150.020, or a grade kindergarten through twelve employee of a private school under chapter 28A.195 RCW, who is not enrolled as a student of the common school or private school.

**Sec.**  RCW 9A.44.096 and 2009 c 324 s 2 are each amended to read as follows:

(1) A person is guilty of sexual misconduct with a minor in the second degree when: (a) The person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another person who is at least sixteen years old but less than eighteen years old ((~~and not married to the perpetrator~~)), if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual contact with the victim; (b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual contact with an enrolled student of the school who is at least sixteen years old and not more than twenty-one years old ((~~and not married to the employee~~)), if the employee is at least sixty months older than the student; or (c) the person is a foster parent who has, or knowingly causes another person under the age of eighteen to have, sexual contact with his or her foster child who is at least sixteen.

(2) Sexual misconduct with a minor in the second degree is a gross misdemeanor.

(3) For the purposes of this section:

(a) "Enrolled student" means any student enrolled at or attending a program hosted or sponsored by a common school as defined in RCW 28A.150.020, or a student enrolled at or attending a program hosted or sponsored by a private school under chapter 28A.195 RCW, or any person who receives home-based instruction under chapter 28A.200 RCW.

(b) "School employee" means an employee of a common school defined in RCW 28A.150.020, or a grade kindergarten through twelve employee of a private school under chapter 28A.195 RCW, who is not enrolled as a student of the common school or private school.

**Sec.**  RCW 9A.44.100 and 2013 c 94 s 2 are each amended to read as follows:

(1) A person is guilty of indecent liberties when he or she knowingly causes another person to have sexual contact with him or her or another:

(a) By forcible compulsion;

(b) When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless;

(c) When the victim is a person with a developmental disability and the perpetrator is a person who ((~~is not married to the victim and who~~)):

(i) Has supervisory authority over the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense;

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual contact occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual contact with the knowledge that the sexual contact was not for the purpose of treatment;

(e) When the victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who ((~~is not married to the victim and~~)) has supervisory authority over the victim; or

(f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who ((~~is not married to the victim and who~~)):

(i) Has a significant relationship with the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense.

(2)(a) Except as provided in (b) of this subsection, indecent liberties is a class B felony.

(b) Indecent liberties by forcible compulsion is a class A felony.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**