

HOUSE BILL REPORT

ESHB 1155

As Passed House:
February 8, 2018

Title: An act relating to making felony sex offenses a crime that may be prosecuted at any time after its commission.

Brief Description: Making felony sex offenses a crime that may be prosecuted at any time after its commission.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Griffey, Orwall, Klippert, McCabe, Kraft, Caldier, Muri, Bergquist, Stanford, Fitzgibbon, McDonald, Doglio and Macri).

Brief History:

Committee Activity:

Public Safety: 1/17/17, 1/19/17 [DPS];
Appropriations: 2/8/17, 2/23/17 [DPS(PS)].

Floor Activity:

Passed House: 3/6/17, 90-8.

Floor Activity:

Passed House: 2/8/18, 90-8.

Brief Summary of Engrossed Substitute Bill

- Eliminates the statute of limitations for certain felony sex offenses.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.
Signed by 10 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

Staff: Omeara Harrington (786-7136).

HOUSE COMMITTEE ON APPROPRIATIONS

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.

Majority Report: The substitute bill by Committee on Public Safety be substituted therefor and the substitute bill do pass. Signed by 29 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Bergquist, Buys, Caldier, Cody, Condotta, Fitzgibbon, Haler, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Manweller, Pettigrew, Sawyer, Schmick, Senn, Springer, Sullivan, Tharinger, Vick, Volz and Wilcox.

Minority Report: Do not pass. Signed by 3 members: Representatives Nealey, Pollet and Taylor.

Staff: Rachelle Harris (786-7137).

Background:

Statutes of Limitation. A statute of limitations is a time limit for initiating prosecution after a crime is committed. Once a statute of limitations has expired, a prosecutor is barred from bringing charges against an alleged perpetrator.

Statutes of limitation vary according to the crime. Generally, simple misdemeanors must be prosecuted within one year, gross misdemeanors must be prosecuted within two years, and felony offenses must be prosecuted within three years of the commission of the crime. However, the statute of limitations for certain specified felony offenses has been extended to five years, six years, or 10 years, and there is no limit on the time within which a prosecution must commence for the crime of Murder, and various other crimes in which a death results.

Statutes of Limitation for Sex Offenses. For some felony sex offenses, the statute of limitations varies depending on the age of the victim at the time of the offense or when the offense was reported to law enforcement.

Offense	Statute of Limitations	
	Victim is Under Age 18	Victim is Over Age 18
Rape in the first and second degrees.	Victim's thirtieth birthday	10 years (if reported within one year); or 3 years (if not reported within one year)
Rape of a Child in the first, second, and third degrees.		N/A
Child Molestation in the first, second, and third degrees.		
Sexual Exploitation of a Minor		
Incest in the first and second degrees.		3 Years
Indecent Liberties when the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless.		10 years

Commercial Sexual Abuse of a Minor; Promoting Commercial Sexual Abuse of a Minor; Promoting Travel for Commercial Sexual Abuse of a Minor.	10 years	N/A
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For all other felony sex offenses, the statute of limitations is three years. This includes, but is not limited to: Custodial Sexual Misconduct in the first degree; Rape in the first degree; Sexual Misconduct with a Minor in the first degree; and Sexually Violating Human Remains.

The periods of limitation for sex offenses run from the date of commission or one year from the date on which the identity of the suspect is conclusively established by deoxyribonucleic acid (DNA) testing or by photograph, whichever is later.

Applicability of Changes to Statutes of Limitation. When the Legislature enacts an amendment increasing a criminal statute of limitations period, the new limitation period applies to all crimes not yet time barred on the effective date of the change. However, a legislative change to lengthen a statute of limitations does not impact cases in which the statute of limitations has already expired.

Summary of Engrossed Substitute Bill:

The statute of limitations is eliminated for certain sex offenses, allowing a prosecutor to bring charges at any time after the commission of the offense. The statute of limitations is eliminated for the following:

- Rape in the first, second, and third degrees;
- Rape of a Child in the first, second, and third degrees;
- Child Molestation in the first, second, and third degrees;
- Sexual Misconduct with a Minor in the first degree;
- Sexually Violating Human Remains;
- Custodial Sexual Misconduct in the first degree;
- Incest in the first and second degrees;
- Sexual Exploitation of a Minor;
- Commercial Sexual Abuse of a Minor;
- Promoting Commercial Sexual Abuse of a Minor; and
- Promoting Travel for Commercial Sexual Abuse of a Minor.

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 (Public Safety):

(In support) If prosecutors can find a way to prosecute, they should be able to bring charges at any time after the commission of the crime. When this policy was considered previously, prosecutors expressed concerns about creating unreasonable expectations for victims that they will get a conviction. When this was brought up on social media, numerous female

contacts reported that they were victims, and did not harbor any illusion that prosecution would be difficult.

Many people have personally experienced sexual assault and do not have the strength to stand up and talk about it. Individual personal stories represent many. There are incentives to not report, particularly in the common situation in which the victim knows the attacker or abuser, or when the victim has been manipulated. Often abusers are trusted people in the community, like teachers and coaches. Victims may finally report only to be told that the statute of limitations has run. The hands of law enforcement are tied until new victims come forward. This tells criminals they can commit a crime and never be prosecuted.

This is an important issue that affects communities. Studies show that pedophiles, on average, molest hundreds of victims over the course of a lifetime. These are not isolated cases. Victims are often revictimized later in life. With technology the evidence is available, it is necessary to hold people accountable, and victims need an opportunity for justice. A statute of limitations is a ticking clock, and some hope is better than no hope.

Given advances in research, it is prime time to make this change, as other states across the nation are adopting this policy. Advocates will have to set clear expectations with survivors about the chances of prosecution.

(Opposed) Wholesale elimination of the statute of limitations is bad policy and is counterproductive. Statutes of limitation serve certain functions, including producing more reliable results, encouraging prosecutions while recollections and evidence are fresh, and reducing the chance that relevant evidence is lost. There is no denying the devastating impact of these crimes, but it is not good to create unreasonable expectations. The criminal justice system is not designed to handle older cases. Instead, the focus should be on the impediments to prosecution, and taking scientifically-based approaches to raising statutes of limitation.

(Other) Older cases are harder to prove. In the past, raising the statute of limitations was opposed because it gives the message that it does not matter whether a crime is reported right away. In reality, reporting quickly does matter for a successful prosecution. The position has evolved over time with modern technology. There is so much more of a record now that there is an increased likelihood that some very old cases could be prosecuted. This is significant with respect to intergenerational cases. Prosecutors will still decline to file many old cases, but there is a path forward in some cases.

Staff Summary of Public Testimony (Appropriations):

(In support) With the current law, the rate of convictions for sex offenses is low. Removing the expiration date for these crimes is good policy. This bill is important to help us with our policy of testing DNA and rape kits. There is a very strong serial nature to sex offenses, and the extension of the statute of limitations will help position our state to prosecute effectively. If DNA hasn't been tested previously, and then it is tested, the timeline opens some ability to prosecute. Sex crimes have impacts that spill over far beyond their direct victims. Some victims lack the awareness of their circumstances, and others are too scared to

be able to come forward right away. This means that the statutes of limitations are unjust to the victims because they put an artificial limitation on when victims can report their abuse.

(Opposed) None.

Persons Testifying (Public Safety): (In support) Representative Griffey, prime sponsor; Dinah Lee Griffey; Greg and Christina-Marie Wright; April Ferguson; and Andrea Piper-Wentland, Washington Coalition of Sexual Assault Programs.

(Opposed) David Donnan, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

(Other) Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Testifying (Appropriations): Representative Griffey, prime sponsor; Representative Orwall; Dinah Griffey; and April Ferguson.

Persons Signed In To Testify But Not Testifying (Public Safety): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.