

# SENATE BILL REPORT

## EHB 1205

---

As Reported By Senate Committee On:  
Law & Justice, February 19, 1998

**Title:** An act relating to sex offenses against children.

**Brief Description:** Prohibiting specified sex offenses against children.

**Sponsors:** Representatives Lambert, Koster, McMorris, L. Thomas, Pennington, Sump, Carrell, Johnson, Sheahan, Cooke, Schoesler, Mielke, McDonald, Zellinsky and Thompson.

**Brief History:**

**Committee Activity:** Law & Justice: 3/24/97, 4/1/97 [DP]; 2/19/98 [DP, DNP].

---

### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Goings, Hargrove, Long and Zarelli.

**Minority Report:** Do not pass.

Signed by Senator Fairley.

**Staff:** Aldo Melchiori (786-7439)

**Background:** The crime of rape of a child involves sexual intercourse with a child. The crime of child molestation involves sexual contact with a child. There are three degrees of the crimes of rape of a child and child molestation, based on the age of the victim and the age of the perpetrator.

A person is guilty of rape of a child in the first degree if the person has sexual intercourse with a child under the age of 12 and the person is at least 24 months older than the child. A person is guilty of first-degree child molestation if the person has sexual contact with a child under the age of 12 and the person is at least 36 months older than the child. Both of these crimes are class A felonies.

Rape of a child in the second degree and child molestation in the second degree are committed if the victim is at least 12, but less than 14, and the perpetrator is at least 36 months older than the victim. Both of these crimes are class B felonies.

Rape of a child in the third degree and child molestation in the third degree are committed if the victim is at least 14, but less than 16, and the perpetrator is at least 48 months older than the victim. Both of these crimes are class C felonies.

Sexual intercourse or sexual contact with a minor who is 16 or 17 is not a crime, except under one circumstance. Sexual misconduct with a minor is a crime if the minor is at least

age 16, but less than 18, and the perpetrator is at least 60 months older than the victim, is in a significant relationship to the victim (as defined by RCW 9A.44.010), and abuses a supervisory position within that relationship to engage in or cause the minor to have sexual intercourse (first degree) or sexual contact (second degree). Sexual misconduct with a minor in the first degree is a class C felony and sexual misconduct in the second degree is a gross misdemeanor.

None of these crimes applies if the child and the perpetrator are married.

**Summary of Bill:** A person commits the crime of rape of a child in the fourth degree if the person has sexual intercourse with another who is 16 or 17 and the person is at least five years older than the child. Rape of a child in the fourth degree is a gross misdemeanor.

A person commits the crime of child molestation in the fourth degree if the person has sexual contact with a child who is 16 or 17 and the person is at least five years older than the child. Fourth-degree child molestation is a gross misdemeanor.

Neither of these crimes applies if the child and the adult are married. It is an affirmative defense that the defendant did not know the victim was 16 or 17. This must be shown by a preponderance of the evidence.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** This bill fills a need, protecting children from being preyed upon by adults. Safeguards are built into the bill to protect unjustified application of the bill.

**Testimony Against:** The bill raises the age of consent from 16 to 18. Is this really what our state believes? The Legislature may pass the bill with only a simple majority, but prosecutors must be able to convince all jurors of the criminality of the offense. A five year difference is not enough.

**Testified:** Representative Lambert, prime sponsor (pro); Tom McBride, Washington Association of Prosecuting Attorneys (con); Deborah Ruggles, Washington Coalition of Sexual Assault Programs (concerns).