

HOUSE BILL REPORT

SB 5649

As Passed House:
April 10, 2019

Title: An act relating to crimes of sexual assault.

Brief Description: Adjusting the statute of limitations for sexual assault.

Sponsors: Senators Dhingra, Pedersen, Palumbo, Saldaña, Das, Wilson, C., Frockt, Keiser and Kuderer.

Brief History:

Committee Activity:

Public Safety: 3/19/19, 4/1/19 [DP].

Floor Activity:

Passed House: 4/10/19, 94-1.

Brief Summary of Bill

- Eliminates or extends the statute of limitations for certain felony sex offenses.
- Modifies the offense of Rape in the third degree.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass. Signed by 9 members: Representatives Goodman, Chair; Davis, Vice Chair; Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Graham, Griffey, Lovick, Orwall and Pellicciotti.

Minority Report: Do not pass. Signed by 2 members: Representatives Appleton and Pettigrew.

Staff: Omeara Harrington (786-7136).

Background:

Statutes of Limitations.

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.

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 limitations 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 that result in death.

Statutes of Limitations 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 30th birthday	10 years (if reported within 1 year); or 3 years (if not reported within 1 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	Later of Victim's 30th birthday or 10 years	N/A

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 third degree; Indecent Liberties; and Sexual Misconduct with a Minor in the first degree.

The statutes of limitations 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 Limitations.

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 affect cases in which the statute of limitations has already expired.

Rape in the Third Degree.

The crime of Rape in the third degree is a class C felony. A person commits Rape in the third degree when, under circumstances not constituting Rape in the first or second degrees, such person engages in sexual intercourse with another person:

- where the victim did not consent to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct; or
- where there is threat of substantial unlawful harm to property rights of the victim.

"Consent" is defined in the criminal code provisions governing Rape and other sex offenses as meaning that, at the time of the act of sexual intercourse or sexual contact, there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

Summary of Bill:

Statutes of Limitations.

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

- Rape in the first and second degrees if the victim is under the age of 16;
- 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;
- Custodial Sexual Misconduct in the first degree; and
- Sexual Exploitation of a Minor.

The statute of limitations is extended to 20 years for Rape in the first and second degrees if the victim is 16 years or older, and for Indecent Liberties.

For Rape in the third degree, the statute of limitations is extended to 10 years. The statute of limitations for Incest is extended to 10 years, or the victim's thirtieth birthday if committed against a victim under the age of 18, whichever is later.

Rape in the Third Degree.

The crime of Rape in the third degree is modified by removing the language requiring that a victim's lack of consent was clearly expressed by the victim's words or conduct.

Accordingly, a person commits Rape in the third degree when, under circumstances not constituting Rape in the first or second degrees, such person engages in sexual intercourse with another person:

- where the victim did not consent to sexual intercourse with the perpetrator; or
- where there is threat of substantial unlawful harm to property rights of the victim.

The underlying statutory definition of "consent" applicable to sex offenses remains, requiring that, at the time of the act of sexual intercourse or sexual contact, there was a lack of actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

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:

(In support) A lot of stakeholder work went into forming this bill. This bill will help victims, contribute to offender accountability, and increase community safety. Washington has some of the shortest and most complex statute of limitations laws for sex offenses in the country. The system needs to be responsive to sexual assault victims and their trauma. Rape is the most underreported crime, and delay in reporting is not unusual for many reasons, including fear of not being believed, feeling threatened, or not wanting to see the person who caused the harm incarcerated. Though early reporting helps prosecution, there are more tools and technology available now to bring charges in older cases. Jury pools are not the same today as they were 30 years ago, and delays in reporting are now better understood. It is better to try and fail than not to try at all. Serial predators may offend throughout their lifetimes. People have come forward later and, through those reports, other victims have been identified. Offenders should be fearful and looking over their shoulders for the rest of their lives.

There are people interested in amending the bill to address young men or boys who commit rape or sexual assault, but the bill should remain unamended. The culture historically has been concerned with the consequences to young rapists. However, young women and girls who have been assaulted suffer long-term psychological and physical trauma. For generations, the concerns about consequences to young men have been prioritized over the consequences to young women. Prosecutors have discretion to decide how to handle offenses that were committed by juveniles, and this is something they deal with in current law. Prosecutors are in a position to evaluate the circumstances and take victim input into account. Victims should not be denied justice because of the age of the person who victimized them. One-third of all sex offenses against minors are committed by other minors. Accountability is needed, even if it is later in life. This is not the vehicle for broad juvenile justice reform, and only amending this overall policy for sex offenses sends the message that sex offenses are less important than other offenses. This is an opportunity for the Legislature to send the message that it is focused on looking out for young girls and women and giving survivors the respect and dignity they need and deserve.

With respect to the amendment to the crime of Rape in the third degree, it is not uncommon for survivors to report that they believe they did not say "no" loudly enough or fight hard enough. This bill sends a message to victims that it is not their fault. There is no requirement in the general assault statutes that a victim must object.

(Opposed) Nobody thinks sex offenses are not heinous crimes, but issues arise when offenses committed by juveniles are prosecuted much later in adult court. In one case, a person allegedly committed an offense at age 13 but was not charged until they were 32 years old. This person had not committed any crimes in the intervening years, and the evaluator said they were either fully rehabilitated or possibly not guilty. Sometimes these are intrafamilial cases. When the conviction date is much later than the offense, it still looks like the offense just happened. For instance, if the offense is child molestation, the offense may have actually involved two children, but if prosecuted later, the conviction date can make it appear that a person in their thirties molested a child. There are significant differences among counties and prosecutors as to how these cases are handled.

Persons Testifying: (In support) Senator Dhingra, prime sponsor; Andrea Piper-Wentland, Washington Coalition of Sexual Assault Programs; Rhiddi Mukhopadhyay, Sexual Violence Legal Services; David Ward, Legal Voice; James McMahan, Washington Association of Sheriffs and Police Chiefs; Russell Brown, Washington Association of Prosecuting Attorneys; and Andy Miller, Benton County and Washington Association of Prosecuting Attorneys.

(Opposed) Elissa Brine, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

Persons Signed In To Testify But Not Testifying: None.