

HOUSE BILL REPORT

SSB 6155

As Reported by House Committee On:
Public Safety

Title: An act relating to eliminating proof of nonmarriage as an element of a sex offense.

Brief Description: Eliminating proof of nonmarriage as an element of a sex offense.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Cleveland, Dhingra, Keiser, Kuderer, Mullet and Nguyen).

Brief History:

Committee Activity:

Public Safety: 2/20/20, 2/27/20 [DPA].

**Brief Summary of Substitute Bill
(As Amended by Committee)**

- Removes nonmarriage of the victim and perpetrator as an element of certain grounds of various sex offenses, including Rape of a Child, Child Molestation, Sexual Misconduct with a Minor, Rape in the second degree, and Indecent Liberties.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass as amended. Signed by 11 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, 2nd Vice Chair; Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Graham, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

Staff: Omeara Harrington (786-7136).

Background:

Sex Offenses in Which Nonmarriage of the Victim and Perpetrator is an Element.

A number of sex offenses, or sex offenses committed on certain grounds, require, as an element of the offense, proof that the perpetrator is not married to the victim.

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.

Rape of a Child and Child Molestation. A person commits Rape of a Child if he or she has sexual intercourse with a minor, and a person commits Child Molestation if he or she has sexual contact with a minor. Each offense is classified into three different degrees (first, second, and third degree), according to the age of the victim at the time of the offense and the age difference between the victim and the perpetrator. A person commits a first degree offense if the victim is younger than 12 years old and, for Rape of a Child, the perpetrator is at least 24 months older than the victim, or, for Child Molestation, is at least 36 months older; a second degree offense if the victim is 12 or 13 years old and the perpetrator is at least 36 months older than the victim; and a third degree offense if the victim is 14 or 15 years old and the perpetrator is at least 48 months older than the victim.

For all degrees of Rape of a Child and Child Molestation, an element of the offense that must be established is that the perpetrator is not married to the victim.

Sexual Misconduct with a Minor. A person commits Sexual Misconduct with a Minor if he or she has sexual intercourse or sexual contact with a minor or younger person with whom he or she has a supervisory relationship or other qualifying relationship. The offense may be committed on various grounds, including: when the perpetrator is at least 60 months older than the victim, the victim is 16 or 17 years old, and the perpetrator abuses a supervisory position within a significant relationship in order to engage in the sexual intercourse or sexual contact with the victim; or when the perpetrator is at least 60 months older than the victim and is a school employee, and he or she has sexual intercourse or sexual contact with an enrolled student between the ages of 16 and 21. On either of these grounds, an element of the offense that must be proven is that the perpetrator is not married to the victim.

Rape and Indecent Liberties. The crimes of Rape and Indecent Liberties involve sexual intercourse or sexual contact (respectively) in circumstances in which the conduct is nonconsensual or otherwise prohibited. Among other grounds, a person commits the crime of Rape in the second degree if he or she engages in sexual intercourse with another person, and commits the crime of Indecent Liberties if he or she has sexual contact with another person, when:

- the victim has a developmental disability, and the perpetrator has supervisory authority over the victim or was providing transportation to the victim within the course of his or her employment at the time of the offense;
- the victim is a frail elder or vulnerable adult, and the perpetrator has a significant relationship with the victim or was providing transportation to the victim within the course of his or her employment at the time of the offense; or
- the victim is a resident of a behavioral health facility and the perpetrator has supervisory authority over the victim.

On any of these grounds, it is an element of the offense that the perpetrator is not married to the victim.

Legal Age to Marry.

Marriage is authorized when each member of the couple is at least 18 years old and is otherwise capable. Seventeen-year-olds may marry with the consent of a parent or legal guardian. If either person entering a marriage is 16 years old or younger, the marriage is void unless the superior court grants a waiver based on a showing of necessity.

A marriage validly entered into in another jurisdiction is recognized in Washington, unless prohibited based on a member of the couple already being married or when the couple is related.

Summary of Amended Bill:

The requirement to prove that the perpetrator is not married to the victim is removed for purposes of establishing relevant grounds of Rape of a Child, Child Molestation, Sexual Misconduct with a Minor, Rape in the second degree, and Indecent Liberties.

Amended Bill Compared to Substitute Bill:

All provisions of the underlying bill are retained, and an emergency clause is added.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This bill will remove antiquated language in the sex offense statutes related to victimization of children, as has been done previously with Rape and Indecent Liberties offenses. Rape is wrong whether the victim and the perpetrator know each other or not, and whether they are married or not. The way marital age is restricted, it is almost a legal fiction that persons involved in offenses involving minors could be married.

The bill will also address an issue that has emerged related to sex offender registration requirements for persons who commit an offense out-of-state and move to Washington. As a result of recent Court of Appeals decisions that are currently on appeal to the Washington Supreme Court, local jurisdictions are having to perform a comparability analysis of the out-of-state offense as compared to the in-state offense. The marital exception language is unique to Washington, so those registered in other states do not have to register here because the offenses are not comparable. This makes Washington a magnet for people who have committed sex offenses against children elsewhere because they do not have to register in this state. There is a similar issue with respect to scoring prior out-of-state offenses for sentencing purposes.

(Opposed) None.

Persons Testifying: Paula Reed, Children's Advocacy Centers of Washington; James McMahan, Washington Association Sheriffs and Police Chiefs; and Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.