

HOUSE BILL REPORT

HB 1958

As Passed Legislature

Title: An act relating to nonconsensual removal of or tampering with a sexually protective device.

Brief Description: Concerning nonconsensual removal of or tampering with a sexually protective device.

Sponsors: Representatives Berry, Orwall, Ryu, Fitzgibbon, Leavitt, Ramel, Reed, Simmons, Ormsby, Fosse, Lekanoff, Reeves, Pollet, Davis and Doglio.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/10/24, 1/19/24 [DP].

Floor Activity:

Passed House: 2/7/24, 64-33.

Passed Senate: 3/1/24, 43-6.

Passed Legislature.

Brief Summary of Bill

- Creates a civil cause of action for nonconsensual removal of or tampering with a sexually protective device, or for misleading a person into believing that a sexually protective device was used.
- Prescribes penalties, including statutory damages of \$5,000 per violation, and requires the court to award costs and reasonable attorneys' fees to a prevailing plaintiff.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 7 members: Representatives Taylor, Chair; Farivar, Vice Chair; Entenman, Goodman, Peterson, Thai and Walen.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Without recommendation. Signed by 4 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno and Cheney.

Staff: Yelena Baker (786-7301).

Background:

"Stealthing" generally refers to the intentional removal or destruction of a condom or another sexually protective device during sexual intercourse by one partner without the other partner's consent. Stealthing may result in unintended pregnancy and the transmission of sexually transmitted infections.

Stealthing is not explicitly prohibited under state law. Depending on the specific circumstances, the underlying conduct may qualify as a criminal offense, such as intentional transmission of HIV, or an actionable civil tort, such as the intentional tort of battery.

At least two states, California and Maine, have recently enacted legislation authorizing civil remedies for nonconsensual removal of or tampering with a condom, and several other states, including Iowa, New York, and Texas, have recently introduced legislation explicitly prohibiting stealthing and providing for civil and criminal penalties.

Summary of Bill:

A person who engaged in sexual contact or sexual penetration with another person may bring a civil action against that other person if the other person engaged in sexual contact or penetration after:

- removing the sexually protective device without the plaintiff's consent;
- becoming aware that the sexually protective device had been unintentionally removed, but not obtaining the plaintiff's consent to engage or continue engaging in sexual contact or penetration without the use of a sexually protective device; or
- tampering with the sexually protective device without the plaintiff's consent in a manner likely to render the device ineffective.

Evidence that the plaintiff consented to previous sexual contact or penetration without a sexually protective device does not by itself establish consent to any subsequent sexual contact or penetration without a sexually protective device.

A person who engaged in sexual contact or sexual penetration with another person may also bring a civil action against that other person if the other person:

- misled the plaintiff into believing that a sexually protective device was used by the other person; and
- knew that the device was not used, had been tampered with, or was otherwise inoperable.

Subject to applicable state law and procedural rules, a plaintiff may use a pseudonym in place of the plaintiff's true name in an action for nonconsensual removal of or tampering with a sexually protective device or for misleading regarding the use of a sexually protective device.

A prevailing plaintiff may recover compensatory and punitive damages, statutory damages of \$5,000 per violation, injunctive relief, and any other relief the court deems appropriate. In determining punitive damages, the court may take into consideration any previous findings of liability against the defendant for nonconsensual removal of, tampering with, or misleading about the use of a sexually protective device. The court must award costs and reasonable attorneys' fees to a prevailing plaintiff.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on July 1, 2024.

Staff Summary of Public Testimony:

(In support) Part of having safe sex is using protection, and condoms are the best way to protect against sexually transmitted infections (STIs) and unintended pregnancies. This is important for a person's health and bodily autonomy. If a person consents to having sex with a condom, it is a violation of the person's trust and bodily autonomy if the person's partner takes the condom off or tampers with it without the person's consent. In addition to being a violation, this behavior is physically dangerous and can impact the person's long-term health.

There are countless stories of people of all ages who have consented to sex only after explicitly requiring a condom and who were shocked to find out that the condom had been removed during the act. People who have experienced nonconsensual condom removal feel violated, experience anxiety about unwanted pregnancy and STIs, and spend time and money on testing and backup birth control. These victims have very few resources and no legal remedies available to them. Survivors deserve a mechanism to hold perpetrators accountable and remedies to help deal with the financial barriers and the emotional trauma. A civil right of action empowers survivors to choose if they want to pursue anything and what protection or remedy they want to ask for.

The behavior addressed in the bill is a very specific type of sexual violence, yet it barely fits within the existing definitions of sexual assault. This loophole on assault must be closed. This bill would create remedies for people who experience this type of assault and protect their reproductive consent. People want processes and systems that recognize the many forms of abuse and assault that are part of sexual violence and that create more pathways for

justice and for survivors in Washington.

This bill is the first in the nation to address not only removing or tampering with condoms but also other sexually protective devices, so it is more inclusive than any other state's laws

(Opposed) None.

(Other) The underlying principle of the bill is a positive one for everybody. It is important to address any type of coercion or anything of that sort of destructive nature. But the bill does not go far enough because it does not encompass oral contraceptives or barrier devices, such as diaphragms. This means the bill misses a huge portion of a problem that occurs every day, such as cases of oral contraceptive and diaphragm tampering. The bill's idea should be approached with more reserve until the legislators can find a proper and pragmatic way for the law to address these problems.

Persons Testifying: (In support) Mina Hashemi; Skylar Johnson, Planned Parenthood Generation Action, University of Washington Chapter; Rebecca Faust; and Elizabeth Hendren, Sexual Violence Law Center.

(Other) Eric Pratt.

Persons Signed In To Testify But Not Testifying: None.