

SENATE BILL REPORT

HB 1958

As Reported by Senate Committee On:
Law & Justice, February 20, 2024

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

Committee Activity: Law & Justice: 2/16/24, 2/20/24 [DP, DNP, w/oRec].

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 and requires the court to award costs and reasonable attorneys' fees to a prevailing plaintiff.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon and Valdez.

Minority Report: Do not pass.

Signed by Senators McCune and Wilson, L..

Minority Report: That it be referred without recommendation.

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.

Signed by Senators Padden, Ranking Member; Torres and Wagoner.

Staff: Ryan Giannini (786-7285)

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 or an actionable civil tort.

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.

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:

- used a sexually protective device that the other person knew had been tampered with in a manner likely to render the device ineffective; or
- 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.

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.

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 another person 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.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: Nonconsensual condom removal, also known as stealthing, is a violation of trust and personal autonomy. Stealthing is a serious issue of sexual and reproductive violence, coercion, and intimate partner violence. Stealthing can result in STIs, unwanted pregnancies, and serious mental and physical harm. There are very few practical resources or legal remedies for people in Washington who are victims of stealthing. This legislation will create civil remedies for victims, make clear to perpetrators that their actions will not be tolerated and that there are consequences to their actions, and ensure that victims have a path to justice when a victim's consent is violated.

Persons Testifying: PRO: Natalie Beetham; Mina Hashemi; Emma Schwartz, The Adjacent Project; Georgilee Flynn; Jennifer Friedman; Elizabeth Hendren, Sexual Violence Law Center; Skylar Johnson, Planned Parenthood Generation Action UW Chapter.

Persons Signed In To Testify But Not Testifying: No one.