

SENATE BILL REPORT

HB 2213

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

Title: An act relating to defects and omissions in the laws that have been identified by the justices of the supreme court or judges of the superior courts pursuant to Article IV, section 25 of the state Constitution.

Brief Description: Concerning defects and omissions in the laws that have been identified by the justices of the supreme court or judges of the superior courts pursuant to Article IV, section 25 of the state Constitution.

Sponsors: Representatives Cheney, Taylor, Duerr and Graham.

Brief History: Passed House: 2/13/24, 96-1.

Committee Activity: Law & Justice: 2/19/24, 2/20/24 [DP, DNP, w/oRec].

Brief Summary of Bill

- Amends or repeals several statutes that have been identified by the Washington Supreme Court and superior court judges as containing defects or omissions in the laws.

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 Padden, Ranking Member; McCune, Wagoner and Wilson, L..

Minority Report: That it be referred without recommendation.

Signed by Senator Torres.

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.

Staff: Ryan Giannini (786-7285)

Background: Article IV, section 25 of the Washington Constitution provides a requirement for the courts to identify and report on defects and omissions in the laws. Under this provision, superior court judges must annually report to the Washington Supreme Court "such defects and omissions in the law as their experience may suggest." This requirement is also contained in statute, which additionally requires court of appeals judges to report defects and omissions in the law to the Washington Supreme Court. The constitutional provision directs the Washington Supreme Court to annually report to the Governor, on or before the first day of January, those defects or omissions in the law that are believed to exist.

The 2023 letter from the Chief Justice of the Washington Supreme Court on defects and omissions in the law identifies several statutory provisions or chapters of law that have been found unconstitutional by Washington or federal courts, or whose validity is in question based on court decisions, but that remain codified in Washington law. When a statute is found unconstitutional, it is no longer valid or enforceable, but it remains in the law until the Legislature removes the unconstitutional provision by amendment or repeal of the statute.

Summary of Bill: Amended Statutes. The following statutes that have been found unconstitutional, or whose constitutionality is suspect given court decisions, are amended:

- RCW 10.95.030—requiring mandatory life sentence without the possibility of parole for any person convicted of aggravated first-degree murder if the offense was committed when the person is at least 18 years old. The statute is amended to require mandatory life sentence without the possibility of parole for anyone who is at least 21 years old, rather than 18 years old, at the time the offense is committed. Any person convicted of aggravated first-degree murder committed when the person was at least 16 years old but less than 21 years old, rather than 18 years old, must be sentenced to a minimum term of no less than 25 years and a maximum term of life imprisonment;
- RCW 10.116.030—requiring law enforcement agencies to receive authorization of the highest elected official of the jurisdiction in which tear gas is to be used before using tear gas to subdue a riot outside of a correctional, jail, or detention facility. The statutory definition of highest elected official for noncharter counties is amended to refer to the county sheriff, rather than the chair of the county legislative authority, so that in noncharter counties, the authorization to use tear gas to subdue a riot outside of a correctional or detention facility must be obtained from the county sheriff rather than the chair of the county legislative authority;
- RCW 13.04.030—relating to the jurisdiction of the juvenile courts. A provision is added to state that the statutory grant of exclusive original jurisdiction to the juvenile courts over specified matters relating to juveniles does not deprive the superior courts of original jurisdiction granted by the state constitution or by other laws;
- RCW 21.20.380—authorizing the Director of the Department of Financial Institutions (Director) to issue administrative subpoenas and require production of records

- relevant to investigations of violations under the Securities Act of Washington. A provision is added to state that the statute does not authorize the Director to compel the production of customer banking records; and
- RCW 29A.80.061—requiring the county chair of each major political party, after the statewide general election in even-numbered years, to call separate meetings of all elected precinct committee officers in each legislative district for the purpose of electing a legislative district chair in such district. The statute is amended to require the precinct committee officers in each legislative district to select, rather than elect, their legislative district chairs during the legislative reorganization meeting called by the county chair of each major political party.

Repealed Statutes. The following statutes or chapters of law that have been found unconstitutional, or whose constitutionality is suspect given court decisions, are repealed:

- RCW 9.68.060, RCW 9.68.070, and RCW 9.68.090—relating to procedures for applying to the superior court for a determination on whether material being sold, distributed, or exhibited in the state may be deemed erotic; labeling and display requirements for material deemed by the court to be erotic; and the crime of selling, distributing, or exhibiting erotic materials to minors after the court determines material to be erotic; and
- Initiative Measure No. 976, Chapter 1, Laws of 2020—relating to limiting state and local taxes, fees, and other charges relating to vehicles.

Other Provisions. The Secretary of State is respectfully requested to publish Article IX, section 1 of the state constitution without the added section caption of "Preamble" based on the legislative findings that this constitutional provision does not have a section caption in the original source.

Appropriation: None.

Fiscal Note: Not requested.

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

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

Staff Summary of Public Testimony: PRO: It is a good idea for citizens to be able to read through Washington statutes and know that such statutes are constitutionally valid. It is disconcerting if statutes that have been overturned in court rulings remain publicly available. This bill will remove statutory provisions that have been overturned and allow citizens to understand what is still good law.

OTHER: The language of the bill does not reflect the language used by the courts in the *Monschke* case. Other provisions need to be changed to reflect the court's decision in *Monschke*. Specific references to mitigating qualities of youth should be made. Better

language could be used to address the *Snaza* case regarding the use of tear gas.

Persons Testifying: PRO: Representative Greg Cheney, Prime Sponsor.

OTHER: James McMahan, WA Assoc Sheriffs & Police Chiefs; Russell Brown, WA Association of Prosecuting Attorneys.

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