

HOUSE BILL REPORT

HB 2754

As Passed House:

February 16, 2004

Title: An act relating to preventing the sexual abuse of children by custodians.

Brief Description: Preventing the sexual abuse of children by custodians.

Sponsors: By Representatives Linville and Rockefeller.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/30/04, 2/6/04 [DP].

Floor Activity:

Passed House: 2/16/04, 94-0.

Brief Summary of Bill

- Prohibits a legal custodian from having sexual intercourse or sexual contact with a 16 or 17 year old under certain circumstances.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Pearson and Veloria.

Staff: Jim Morishima (786-7191).

Background:

Generally, the age of consent in Washington is 16 years old. In other words, a person who has consensual sexual intercourse or sexual contact with a 16 or 17 year old is generally not guilty of a crime. The one exception to this general rule is the crime known as sexual misconduct with a minor.

Sexual misconduct with a minor occurs in two main circumstances:

- When a perpetrator who is at least 60 months older than a victim aged 16 or 17 has a significant relationship with the victim and abuses a supervisory position within that

relationship to engage, or cause another person under the age of 18 to engage, in sexual intercourse or sexual contact with the victim. Abuse of a supervisory position occurs when there is a direct or indirect threat or promise to use authority to the detriment or benefit of the minor; and

- When a perpetrator who is a school employee and is at least 60 months older than a victim aged 16 or 17 has, or knowingly causes another person under the age of 18 to have, sexual intercourse or sexual contact with the victim (in this circumstance, abuse of a supervisory position is not required).

Sexual misconduct with a minor in the first degree occurs in situations where sexual intercourse is involved. Sexual misconduct with a minor in the first degree is a class C felony with a seriousness level of V. Sexual misconduct with a minor in the second degree occurs in situations where sexual contact, not sexual intercourse, is involved. Sexual misconduct with a minor in the second degree is a gross misdemeanor.

Summary of Bill:

A person is guilty of sexual misconduct with a minor if he or she:

- Is a custodian of a victim aged 16 or 17;
- Is at least 60 months older than the victim; and
- Has, or knowingly causes another person under the age of 18 to have, sexual intercourse or sexual contact with the victim.

"Custodian of a victim" is defined as a person who:

- Operates, is employed by, or is a volunteer for an entity that has custody of the victim and is a child day-care center, child-placing agency, community facility, crisis residential center, emergency respite center, family day-care provider, foster-family home, group care facility, HOPE center, maternity service, responsible living skills program, or service provider as defined in the RCW chapter dealing with the care of children, expectant mothers, and the developmentally disabled;
- Is a legal guardian of the victim; or
- Has been granted legal custody of the victim in any other manner.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (Neutral - available for questions) Prosecutors sometimes have problems proving abuse of a supervisory relationship in these cases. If the Legislature does decide

to do something, it should be done correctly because these are hard cases to get in the middle of.

Testimony Against: None.

Persons Testifying: (Responded to questions) Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.