

# HOUSE BILL REPORT

## SB 5832

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### As Passed House:

April 1, 2009

**Title:** An act relating to allowing the prosecution of sex offenses against minor victims until the victim's twenty-eighth birthday if the offense is listed in RCW 9A.04.080(1) (b)(iii)(A) or (c).

**Brief Description:** Allowing the prosecution of sex offenses against minor victims until the victim's twenty-eighth birthday if the offense is listed in RCW 9A.04.080(1) (b)(iii)(A) or (c).

**Sponsors:** Senators Kohl-Welles, Stevens and Marr; by request of Sentencing Guidelines Commission.

### Brief History:

#### Committee Activity:

Public Safety & Emergency Preparedness: 3/18/09 [DP].

#### Floor Activity

Passed House: 4/1/09, 97-0.

### Brief Summary of Bill

- Extends the statute of limitations for certain sex offenses to the victim's 28th birthday.

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## HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

**Majority Report:** Do pass. Signed by 8 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton, Goodman, Kirby and Ross.

**Staff:** Lara Zarowsky (786-7123)

### Background:

Statutes of limitation are legislative declarations of the period within which actions may be brought on certain claims, or during which certain crimes may be prosecuted. Once a statute

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of limitations has expired, there is in place an absolute bar to prosecution. The period of limitation is suspended during any period in which the person charged is out of the state, or is subject to a complaint, information, or indictment related to the offense. Statutes of limitations function to encourage prosecutions based upon reasonably fresh evidence to lessen the possibility of an erroneous conviction.

Statutes of limitation vary according to the crime. In general, simple misdemeanors must be prosecuted within one year, gross misdemeanors must be prosecuted within two years, and felony offenses must be prosecuted within three years of the commission of the crime. However, the limitation period may be varied by statute, and there is no limitation on the time within which a prosecution must commence for the crimes of murder, homicide by abuse, vehicular homicide, or for the crimes of vehicular assault, hit and run injury-accident, or arson if death results.

Sex offenses carry different statutes of limitation depending on the offense and the age of the victim.

Violations of the following crimes may not be prosecuted more than three years after the victim's 18th birthday, or more than seven years after their commission, whichever is later:

- Rape of a child in the first degree;
- Rape of a child in the second degree;
- Child Molestation in the first degree;
- Child Molestation in the second degree;
- Indecent Liberties where the victim is incapable of consent due to mental defect, incapacity or physical helplessness;
- Statutory Rape in the first and second degrees (repealed in 1988); and
- Incest.

In 2006 the Legislature extended the statute of limitations for any sex offense defined in RCW 9.94A.030 to run from the date the crime was committed, or one year from the date the identity of the suspect is conclusively established by deoxyribonucleic acid (DNA) testing, whichever is later.

### **Summary of Bill:**

The statute of limitations is extended for certain sex offenses.

The following crimes may be prosecuted up to the victim's 28th birthday:

- Rape in the first and second degrees where the victim was under 14 years of age, if the rape was reported within one year of its commission;
- Rape of a child in the first, second, and third degrees;
- Child molestation in the first, second, and third degrees;
- Indecent liberties where the victim is incapable of consent due to mental defect, incapacity or physical helplessness; and
- Incest.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This is a very sensitive issue frequently involving intra-family abuse in which the victim is a child at the time of abuse and has a lot of guilty feelings. The abuse has often gone on over a number of years and involves substantial grooming. It is important to recognize that there can be substantial effects on the family if the abused person comes forward at the time it is occurring. It is often not until years later that the victim is able to come forward. Some believe there should be no statute of limitations for sex crimes at all, others believe what we have in current law is too long. This bill represents a fair balance. The Sentencing Guidelines Commission (SGC) has brought this bill forward with a strong recommendation and the SGC will continue to work on this issue throughout the interim due to its serious nature.

This is a tough issue, especially where the victim of a sex offense is a child. The SGC created an ad hoc group and held a large public hearing on this topic to hear what the issues are. There is a compelling reason to extend the date for which the person who was a child-victim must report and have a sex crime prosecuted. It is unrealistic to expect a 21-year-old to be independent enough economically and emotionally to be ready to come forward. On the other hand, there are good reasons to maintain statutes of limitation to ensure the availability of good evidence, and preserve the rights of all parties to prove their case one way or another.

Across the United States there is no consistent scheme of statutes of limitation on sex crimes where the victim is a child. If there is any consistency across the states, it is that 28 is a reasonable age to set the statutes of limitation for these crimes. Washington has done a lot of work on these issues, and statutes of limitation for sex crimes are very individualized based on the age of the victim and the nature of the crime.

These are not easy cases to win and they're not easy cases for victims to experience. There should be no statute of limitations on civil prosecutions. Prosecutors make the charging decisions for criminal cases, and they base this on the existence of physical evidence, the availability of witnesses to come forward, and the general reliability of evidence. It is difficult to know how many people will be able to have such cases successfully prosecuted. In some cases where victims have not had support of their families, memories can be repressed.

(Opposed) None.

**Persons Testifying:** Senator Kohl-Welles, prime sponsor; Jean Soliz-Conklin, Sentencing Guidelines Commission; and Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs.

**Persons Signed In To Testify But Not Testifying:** None.