

# HOUSE BILL REPORT

## SB 5177

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**As Passed House:**

April 8, 2021

**Title:** An act relating to eliminating proof of nonmarriage as an element of a sex offense.

**Brief Description:** Eliminating proof of nonmarriage as an element of a sex offense.

**Sponsors:** Senators Cleveland, Dhingra, Das, Hunt, Nguyen, Pedersen and Wilson, C..

**Brief History:**

**Committee Activity:**

Public Safety: 3/19/21, 3/25/21 [DP].

**Floor Activity:**

Passed House: 4/8/21, 97-1.

**Brief Summary of Bill**

- Removes nonmarriage of the victim and perpetrator as an element of certain grounds of various sex offenses, including Rape of a Child, Child Molestation, Sexual Misconduct with a Minor, Rape in the second degree, and Indecent Liberties.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** Do pass. Signed by 13 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Davis, Graham, Griffey, Hackney, Lovick, Orwall, Ramos, Simmons and Young.

**Staff:** Omeara Harrington (786-7136).

**Background:**

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*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.*

Nonmarriage of the Victim and Perpetrator as an Element of Certain Sex Offenses.

A number of sex offenses, or sex offenses committed on certain grounds, require, as an element of the offense, proof that the perpetrator is not married to the victim.

*Rape of a Child and Child Molestation.* A person commits Rape of a Child if he or she has sexual intercourse with a minor, and a person commits Child Molestation if he or she has sexual contact with a minor. Each offense is classified into three different degrees (first, second, and third degree), according to the age of the victim at the time of the offense and the age difference between the victim and the perpetrator. A person commits a first degree offense if the victim is younger than 12 years old and, for Rape of a Child, the perpetrator is at least 24 months older than the victim, or, for Child Molestation, is at least 36 months older; a second degree offense if the victim is 12 or 13 years old and the perpetrator is at least 36 months older than the victim; and a third degree offense if the victim is 14 or 15 years old and the perpetrator is at least 48 months older than the victim.

For all degrees of Rape of a Child and Child Molestation, an element of the offense that must be established is that the perpetrator is not married to the victim.

*Sexual Misconduct with a Minor.* A person commits Sexual Misconduct with a Minor if he or she has sexual intercourse or sexual contact with a minor or younger person with whom he or she has a supervisory relationship or other qualifying relationship. The offense may be committed on various grounds, including: when the perpetrator is at least 60 months older than the victim, the victim is 16 or 17 years old, and the perpetrator abuses a supervisory position within a significant relationship in order to engage in the sexual intercourse or sexual contact with the victim; or when the perpetrator is at least 60 months older than the victim and is a school employee, and he or she has sexual intercourse or sexual contact with an enrolled student between the ages of 16 and 21. On either of these grounds, an element of the offense that must be proven is that the perpetrator is not married to the victim.

*Rape and Indecent Liberties.* The crimes of Rape and Indecent Liberties involve sexual intercourse or sexual contact (respectively) in circumstances in which the conduct is nonconsensual or otherwise prohibited. Among other grounds, a person commits the crime of Rape in the second degree if he or she engages in sexual intercourse with another person, and commits the crime of Indecent Liberties if he or she has sexual contact with another person, when:

- the victim has a developmental disability, and the perpetrator has supervisory authority over the victim or was providing transportation to the victim within the course of his or her employment at the time of the offense;
- the victim is a frail elder or vulnerable adult, and the perpetrator has a significant relationship with the victim or was providing transportation to the victim within the course of his or her employment at the time of the offense; or
- the victim is a resident of a behavioral health facility and the perpetrator has supervisory authority over the victim.

On any of these grounds, it is an element of the offense that the perpetrator is not married to the victim.

Legal Age to Marry.

Marriage is authorized when each member of the couple is at least 18 years old and is otherwise capable. Seventeen-year-olds may marry with the consent of a parent or legal guardian. If either person entering a marriage is 16 years old or younger, the marriage is void unless the superior court grants a waiver based on a showing of necessity.

A marriage validly entered into in another jurisdiction is recognized in Washington, unless prohibited based on a member of the couple already being married or when the couple is related.

**Summary of Bill:**

The requirement to prove that the perpetrator is not married to the victim is removed for purposes of establishing relevant grounds of Rape of a Child, Child Molestation, Sexual Misconduct with a Minor, Rape in the second degree, and Indecent Liberties.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:**

(In support) Washington is one of the only states where inconsistency with other state statutes has enabled some sex offenders to avoid sex offender registration. One of the primary drivers for this bill was an adverse court ruling that resulted in sex offenders in other states moving to Washington because Washington's statutes are out of alignment with other states' statutes. The element requiring proof of nonmarriage should be removed in order to address this problem. The court ruling was ultimately overturned, but the bill should pass anyway because rape is rape regardless of whether or not people are married. The current language is archaic and offensive, and the law does not represent societal values. Prosecutors should not have to ask a child if the child is married to his or her perpetrator in court. This requirement is antiquated and troubling. The current statutory provisions date back to old statutes where a person could marry a 10-year-old, but that situation no longer exists. The current law also creates issues with offender scoring for comparable out-of-state offenses, as well as when applying persistent offender laws. The emergency clause is necessary because this change needs to happen right away.

(Opposed) None.

**Persons Testifying:** Senator Cleveland, prime sponsor; James McMahan, Washington Association of Sheriffs and Police Chiefs; Seth Dawson, Children's Advocacy Centers of Washington; and Nami Kim, King County Prosecuting Attorney's Office.

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