

# SENATE BILL REPORT

## SB 5177

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As Passed Senate, February 16, 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:** Law & Justice: 1/25/21, 1/28/21 [DP].

**Floor Activity:** Passed Senate: 2/16/21, 47-0.

**Brief Summary of Bill**

- Removes the requirement that the state prove the perpetrator was not married to the victim as an element of a sex crime involving a minor or vulnerable adult.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; McCune, Assistant Ranking Member; Darneille, Holy, Kuderer, Salomon and Wagoner.

**Staff:** Shani Bauer (786-7468)

**Background:** In 1988, the state created several sex offenses for when the victim of the crime is a minor child or vulnerable adult. Among others, these crimes include rape when the victim is a frail elder or vulnerable adult, rape of a child, child molestation, and sexual misconduct with a minor. Many of these crimes differentiate between degrees depending on the victim's age. All of the crimes include the same terminology, requiring as an element of the crime, the victim not be married to the perpetrator.

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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.*

**Summary of Bill:** The requirement that the perpetrator of a sex crime against a minor child or vulnerable adult not be married to the victim at the time of the offense is removed as an element of the crimes.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

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

**Staff Summary of Public Testimony:** PRO: Numerous other states have updated their statutes to remove the marital exemption in sex crimes. We are only a handful of states that still have this language. This language harks back to the early 1900's when it was still legal to marry a 10-year-old child. It is antiquated and past time for the language to be modernized.

Rape is rape regardless of the age of the victim or marital status. The Batson decision had significant safety impacts, which have been reduced now that it has been overturned. We still strongly support this bill. Marriage should not provide immunity from sexual assault.

Even without Batson, this bill has a practical effect on criminal justice when sentencing a person with out of state history. It is difficult to include an out of state sex offense in a criminal history score, as a multiplier, or as a strike offense if the other state's conviction did not include the victim's marital status as an element of proof.

This bill is a child protection measure that needs to pass as quickly as possible. Please include an emergency clause.

**Persons Testifying:** PRO: Senator Annette Cleveland, Prime Sponsor; James McMahan, Washington Association of Sheriffs and Police Chiefs; Russell Brown, Washington Association of Prosecuting Attorneys; Nami Kim, King County Prosecuting Attorney's Office; Seth Dawson, Children's Advocacy Centers of Washington; Carolyn Gray, King County Sexual Assault Resource Center.

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