

CERTIFICATION OF ENROLLMENT

SENATE BILL 5177

Chapter 142, Laws of 2021

67th Legislature
2021 Regular Session

SEX OFFENSES—NONMARRIAGE ELEMENT

EFFECTIVE DATE: April 26, 2021

Passed by the Senate February 16,
2021

Yeas 47 Nays 0

DENNY HECK

President of the Senate

Passed by the House April 8, 2021

Yeas 97 Nays 1

Laurie Jinkins

**Speaker of the House of
Representatives**

Approved April 26, 2021 2:29 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5177** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

April 26, 2021

**Secretary of State
State of Washington**

SENATE BILL 5177

Passed Legislature - 2021 Regular Session

State of Washington

67th Legislature

2021 Regular Session

By Senators Cleveland, Dhingra, Das, Hunt, Nguyen, Pedersen, and Wilson, C.

Read first time 01/13/21. Referred to Committee on Law & Justice.

1 AN ACT Relating to eliminating proof of nonmarriage as an element
2 of a sex offense; amending RCW 9A.44.050, 9A.44.073, 9A.44.076,
3 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, 9A.44.093, 9A.44.096, and
4 9A.44.100; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 9A.44.050 and 2007 c 20 s 1 are each amended to read
7 as follows:

8 (1) A person is guilty of rape in the second degree when, under
9 circumstances not constituting rape in the first degree, the person
10 engages in sexual intercourse with another person:

11 (a) By forcible compulsion;

12 (b) When the victim is incapable of consent by reason of being
13 physically helpless or mentally incapacitated;

14 (c) When the victim is a person with a developmental disability
15 and the perpetrator is a person who (~~is not married to the victim~~
16 ~~and who~~):

17 (i) Has supervisory authority over the victim; or

18 (ii) Was providing transportation, within the course of his or
19 her employment, to the victim at the time of the offense;

20 (d) When the perpetrator is a health care provider, the victim is
21 a client or patient, and the sexual intercourse occurs during a

1 treatment session, consultation, interview, or examination. It is an
2 affirmative defense that the defendant must prove by a preponderance
3 of the evidence that the client or patient consented to the sexual
4 intercourse with the knowledge that the sexual intercourse was not
5 for the purpose of treatment;

6 (e) When the victim is a resident of a facility for persons with
7 a mental disorder or chemical dependency and the perpetrator is a
8 person who (~~is not married to the victim and~~) has supervisory
9 authority over the victim; or

10 (f) When the victim is a frail elder or vulnerable adult and the
11 perpetrator is a person who (~~is not married to the victim and who~~):

12 (i) Has a significant relationship with the victim; or

13 (ii) Was providing transportation, within the course of his or
14 her employment, to the victim at the time of the offense.

15 (2) Rape in the second degree is a class A felony.

16 **Sec. 2.** RCW 9A.44.073 and 1988 c 145 s 2 are each amended to
17 read as follows:

18 (1) A person is guilty of rape of a child in the first degree
19 when the person has sexual intercourse with another who is less than
20 twelve years old (~~and not married to the perpetrator~~) and the
21 perpetrator is at least twenty-four months older than the victim.

22 (2) Rape of a child in the first degree is a class A felony.

23 **Sec. 3.** RCW 9A.44.076 and 1990 c 3 s 903 are each amended to
24 read as follows:

25 (1) A person is guilty of rape of a child in the second degree
26 when the person has sexual intercourse with another who is at least
27 twelve years old but less than fourteen years old (~~and not married~~
28 ~~to the perpetrator~~) and the perpetrator is at least thirty-six
29 months older than the victim.

30 (2) Rape of a child in the second degree is a class A felony.

31 **Sec. 4.** RCW 9A.44.079 and 1988 c 145 s 4 are each amended to
32 read as follows:

33 (1) A person is guilty of rape of a child in the third degree
34 when the person has sexual intercourse with another who is at least
35 fourteen years old but less than sixteen years old (~~and not married~~
36 ~~to the perpetrator~~) and the perpetrator is at least forty-eight
37 months older than the victim.

1 (2) Rape of a child in the third degree is a class C felony.

2 **Sec. 5.** RCW 9A.44.083 and 1994 c 271 s 303 are each amended to
3 read as follows:

4 (1) A person is guilty of child molestation in the first degree
5 when the person has, or knowingly causes another person under the age
6 of eighteen to have, sexual contact with another who is less than
7 twelve years old (~~(and not married to the perpetrator)~~) and the
8 perpetrator is at least thirty-six months older than the victim.

9 (2) Child molestation in the first degree is a class A felony.

10 **Sec. 6.** RCW 9A.44.086 and 1994 c 271 s 304 are each amended to
11 read as follows:

12 (1) A person is guilty of child molestation in the second degree
13 when the person has, or knowingly causes another person under the age
14 of eighteen to have, sexual contact with another who is at least
15 twelve years old but less than fourteen years old (~~(and not married~~
16 ~~to the perpetrator)~~) and the perpetrator is at least thirty-six
17 months older than the victim.

18 (2) Child molestation in the second degree is a class B felony.

19 **Sec. 7.** RCW 9A.44.089 and 1994 c 271 s 305 are each amended to
20 read as follows:

21 (1) A person is guilty of child molestation in the third degree
22 when the person has, or knowingly causes another person under the age
23 of eighteen to have, sexual contact with another who is at least
24 fourteen years old but less than sixteen years old (~~(and not married~~
25 ~~to the perpetrator)~~) and the perpetrator is at least forty-eight
26 months older than the victim.

27 (2) Child molestation in the third degree is a class C felony.

28 **Sec. 8.** RCW 9A.44.093 and 2009 c 324 s 1 are each amended to
29 read as follows:

30 (1) A person is guilty of sexual misconduct with a minor in the
31 first degree when: (a) The person has, or knowingly causes another
32 person under the age of eighteen to have, sexual intercourse with
33 another person who is at least sixteen years old but less than
34 eighteen years old (~~(and not married to the perpetrator)~~), if the
35 perpetrator is at least sixty months older than the victim, is in a
36 significant relationship to the victim, and abuses a supervisory

1 position within that relationship in order to engage in or cause
2 another person under the age of eighteen to engage in sexual
3 intercourse with the victim; (b) the person is a school employee who
4 has, or knowingly causes another person under the age of eighteen to
5 have, sexual intercourse with an enrolled student of the school who
6 is at least sixteen years old and not more than twenty-one years old
7 (~~and not married to the employee~~), if the employee is at least
8 sixty months older than the student; or (c) the person is a foster
9 parent who has, or knowingly causes another person under the age of
10 eighteen to have, sexual intercourse with his or her foster child who
11 is at least sixteen.

12 (2) Sexual misconduct with a minor in the first degree is a class
13 C felony.

14 (3) For the purposes of this section:

15 (a) "Enrolled student" means any student enrolled at or attending
16 a program hosted or sponsored by a common school as defined in RCW
17 28A.150.020, or a student enrolled at or attending a program hosted
18 or sponsored by a private school under chapter 28A.195 RCW, or any
19 person who receives home-based instruction under chapter 28A.200 RCW.

20 (b) "School employee" means an employee of a common school
21 defined in RCW 28A.150.020, or a grade kindergarten through twelve
22 employee of a private school under chapter 28A.195 RCW, who is not
23 enrolled as a student of the common school or private school.

24 **Sec. 9.** RCW 9A.44.096 and 2009 c 324 s 2 are each amended to
25 read as follows:

26 (1) A person is guilty of sexual misconduct with a minor in the
27 second degree when: (a) The person has, or knowingly causes another
28 person under the age of eighteen to have, sexual contact with another
29 person who is at least sixteen years old but less than eighteen years
30 old (~~and not married to the perpetrator~~), if the perpetrator is at
31 least sixty months older than the victim, is in a significant
32 relationship to the victim, and abuses a supervisory position within
33 that relationship in order to engage in or cause another person under
34 the age of eighteen to engage in sexual contact with the victim; (b)
35 the person is a school employee who has, or knowingly causes another
36 person under the age of eighteen to have, sexual contact with an
37 enrolled student of the school who is at least sixteen years old and
38 not more than twenty-one years old (~~and not married to the~~
39 ~~employee~~), if the employee is at least sixty months older than the

1 student; or (c) the person is a foster parent who has, or knowingly
2 causes another person under the age of eighteen to have, sexual
3 contact with his or her foster child who is at least sixteen.

4 (2) Sexual misconduct with a minor in the second degree is a
5 gross misdemeanor.

6 (3) For the purposes of this section:

7 (a) "Enrolled student" means any student enrolled at or attending
8 a program hosted or sponsored by a common school as defined in RCW
9 28A.150.020, or a student enrolled at or attending a program hosted
10 or sponsored by a private school under chapter 28A.195 RCW, or any
11 person who receives home-based instruction under chapter 28A.200 RCW.

12 (b) "School employee" means an employee of a common school
13 defined in RCW 28A.150.020, or a grade kindergarten through twelve
14 employee of a private school under chapter 28A.195 RCW, who is not
15 enrolled as a student of the common school or private school.

16 **Sec. 10.** RCW 9A.44.100 and 2013 c 94 s 2 are each amended to
17 read as follows:

18 (1) A person is guilty of indecent liberties when he or she
19 knowingly causes another person to have sexual contact with him or
20 her or another:

21 (a) By forcible compulsion;

22 (b) When the other person is incapable of consent by reason of
23 being mentally defective, mentally incapacitated, or physically
24 helpless;

25 (c) When the victim is a person with a developmental disability
26 and the perpetrator is a person who (~~is not married to the victim~~
27 ~~and who~~):

28 (i) Has supervisory authority over the victim; or

29 (ii) Was providing transportation, within the course of his or
30 her employment, to the victim at the time of the offense;

31 (d) When the perpetrator is a health care provider, the victim is
32 a client or patient, and the sexual contact occurs during a treatment
33 session, consultation, interview, or examination. It is an
34 affirmative defense that the defendant must prove by a preponderance
35 of the evidence that the client or patient consented to the sexual
36 contact with the knowledge that the sexual contact was not for the
37 purpose of treatment;

38 (e) When the victim is a resident of a facility for persons with
39 a mental disorder or chemical dependency and the perpetrator is a

1 person who (~~is not married to the victim and~~) has supervisory
2 authority over the victim; or

3 (f) When the victim is a frail elder or vulnerable adult and the
4 perpetrator is a person who (~~is not married to the victim and who~~):

5 (i) Has a significant relationship with the victim; or

6 (ii) Was providing transportation, within the course of his or
7 her employment, to the victim at the time of the offense.

8 (2)(a) Except as provided in (b) of this subsection, indecent
9 liberties is a class B felony.

10 (b) Indecent liberties by forcible compulsion is a class A
11 felony.

12 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
13 preservation of the public peace, health, or safety, or support of
14 the state government and its existing public institutions, and takes
15 effect immediately.

Passed by the Senate February 16, 2021.

Passed by the House April 8, 2021.

Approved by the Governor April 26, 2021.

Filed in Office of Secretary of State April 26, 2021.

--- END ---