

HOUSE BILL REPORT

SSB 5087

As Passed House:

April 7, 2023

Title: An act relating to removing language from the Revised Code of Washington that has been identified by the justices of the supreme court or judges of the superior courts as defects and omissions in the laws pursuant to Article IV, section 25 of the Washington state Constitution.

Brief Description: Removing language from the Revised Code of Washington that has been identified by the justices of the supreme court or judges of the superior courts as defects and omissions in the laws pursuant to Article IV, section 25 of the Washington state Constitution.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Pedersen, Mullet, Billig, Dhingra, Frame, Hasegawa, Hunt, Kauffman, Kuderer, Liias, Lovelett, Nobles, Saldaña, Stanford and Wellman; by request of Attorney General).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/15/23, 3/17/23 [DP].

Floor Activity:

Passed House: 4/7/23, 58-39.

Brief Summary of Substitute Bill

- Repeals or amends numerous statutes and chapters of law that have been identified by the Washington Supreme Court and superior court judges as containing defects or omissions in the law.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 7 members: Representatives Hansen, Chair; Farivar, Vice Chair; Entenman, Goodman, Peterson, Thai and Walen.

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.

Minority Report: Do not pass. Signed by 2 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member.

Minority Report: Without recommendation. Signed by 2 members: Representatives Cheney and Rude.

Staff: Edie Adams (786-7180).

Background:

Article IV, section 25 of the Washington Constitution provides a requirement for the courts to identify and report on defects and omissions in the laws. Under this provision, superior court judges must annually report to the Supreme Court "such defects and omissions in the law as their experience may suggest." This requirement is also contained in statute, which additionally requires Court of Appeals judges to report defects and omissions in the law to the Washington Supreme Court. The constitutional provision directs the Washington Supreme Court to annually report to the Governor, on or before the first day of January, those defects or omissions in the law that are believed to exist.

The 2022 letter from the Chief Justice of the Washington Supreme Court on defects and omissions in the law identifies numerous statutory provisions or chapters of law that have been found unconstitutional by Washington or federal courts, or whose validity is in question based on court decisions, and that still remain codified in Washington law. When a statute is found unconstitutional, it is no longer valid or enforceable, but it remains in the law until the Legislature removes the unconstitutional provision by amendment or repeal of the statute.

Summary of Bill:

A number of statutes or chapters of law that have been found unconstitutional, or whose constitutionality is suspect given court decisions, are repealed or amended.

The following statutes or chapters of law are repealed:

- RCW 2.48.210—establishing an oath of admission to the practice of law that includes a requirement that the person swear that the person is a United States citizen;
- RCW 4.56.250—placing a cap on the amount of noneconomic damages that may be awarded in a tort action for personal injury or death according to a formula based on the average annual wage in Washington and the life expectancy of the person incurring noneconomic damages;
- RCW 7.48.050 through 7.48.100—regulating places and articles deemed moral nuisances, including places that exhibit lewd matter or where lewd performances, prostitution, illegal gambling, and certain other activities are carried on, including

allowing for issuance of temporary and permanent injunctions and closure of a business found to be a moral nuisance;

- RCW 7.70.150—providing that a plaintiff bringing a medical malpractice action must file a certificate of merit executed by a health professional indicating that there is a reasonable probability that the defendant's conduct did not meet the standard of care;
- Chapter 9.81 RCW—regulating subversive activities and subversive organizations, including by making it unlawful for any person to be a member of a subversive organization or to engage in subversive activities, prohibiting persons convicted of being subversive persons or members of subversive organizations from public employment, and requiring public employees to take a loyalty oath stating that the person is not a member of the Communist Party or other subversive organization;
- RCW 9.91.180—making it a class 1 civil infraction to sell, rent, or permit to be sold or rented, any video or computer game that the person knows to be a violent video or computer game to a person under age 17, and defining "violent video or computer game" to mean those in which the player kills or injures a human form who is depicted as a law enforcement officer;
- RCW 9.92.100—providing that a court may direct that an operation to prevent procreation be performed on a person convicted of rape or carnal abuse of a female under age 10, or adjudged to be an habitual criminal;
- RCW 10.52.100—requiring the court in any court proceeding involving a child victim of sexual assault to ensure that information identifying the child victim is not disclosed to the press or to the public;
- RCW 10.58.090—allowing introduction of evidence of a defendant's prior commission of a sex offense in a criminal action in which the defendant is accused of a sex offense, notwithstanding Evidence Rule 404(b), as long as the probative value of the evidence is not outweighed by its prejudicial impact;
- RCW 10.95.040 through 10.95.901—authorizing and establishing procedures for capital punishment in cases where a person is convicted of Aggravated Murder in the first degree if after a special sentencing proceeding it is determined that the death penalty is warranted;
- RCW 18.108.190—authorizing state and local law enforcement personnel to conduct warrantless inspections of the premises of massage therapist businesses at any time;
- RCW 35.13.165—allowing property owners in a proposed annexation area to block an annexation election under certain circumstances;

- Chapter 36.105 RCW—authorizing voters of unincorporated communities in counties composed entirely of islands and that have a population of more than 30,000 to establish elected community councils to serve as a forum to discuss issues and to develop proposed community comprehensive plans and proposed community zoning ordinances;
- Chapter 39.88 RCW—authorizing cities to issue bonds to finance public improvements that are secured by a portion of property tax revenues collected from property owners inside an apportionment district surrounding the site of the public improvements;
- RCW 41.20.110—allowing for termination of the pension benefits of certain police officers convicted of any felony offense or found to have engaged in certain other behavior;
- RCW 47.44.030—authorizing the Department of Transportation to require franchise holders to remove or relocate facilities along highways for public safety, construction, or maintenance purposes, and to reimburse franchisees for the costs of the removal or relocation;
- RCW 49.32.072 through 49.32.074—placing limitations on the power of courts to enter restraining orders or temporary or permanent injunctions in cases involving labor disputes;
- RCW 66.24.480—making operation of a bottle club without a license a criminal offense, but providing no mechanism for issuance of licenses to bottle club operators, and providing that a "bottle club" is a club or association operating premises in which the members or other persons may resort for the primary or incidental purpose of keeping or consuming liquor on the premises;
- RCW 66.28.080—prohibiting any person or entity holding a liquor license from allowing on the licensed premises any music, dancing, or entertainment, without first obtaining a license or permit to do so from local authorities;
- RCW 73.04.050 and 73.04.060—allowing specified honorably discharged veterans to peddle, vend, or sell goods without paying for the license required for engaging in these activities; and
- RCW 85.05.130—authorizing diking districts to assess fees on all lands benefited by the diking system, whether those lands are within or outside of the diking district.

The following statutes are amended to remove the specified language:

- RCW 2.43.040(4)—providing that the cost of an interpreter for non-English speaking persons is a taxable cost in proceedings in which costs are ordinarily taxed;

- RCW 2.48.190—prohibiting persons who are not citizens of the United States from practicing law in Washington;
- RCW 4.16.190(2)—providing that the tolling of statutes of limitations based on minority does not apply to actions for injuries resulting from health care;
- RCW 6.25.030(10)—allowing a writ of attachment to be issued authorizing the seizure of property before a judgment is entered in a court action when the action is brought to recover on an express or implied contract;
- RCW 9.94A.530(2)—providing that, when a court determines a criminal sentence based on information that is acknowledged in a trial or at sentencing, an acknowledgement includes not objecting to information in presentence reports or criminal history presented at the time of sentencing;
- RCW 9A.46.020(1)(a)(iv)—providing that the crime of harassment includes actions intended to substantially harm a person's mental health;
- RCW 10.05.030—requiring consent of a prosecuting attorney before an arraigning judge in a criminal case may continue an arraignment and refer a person for a diagnostic investigation and evaluation;
- RCW 10.95.030(2)—relating to special sentencing proceedings to determine whether a person will be sentenced to death;
- RCW 10.95.035(3)—providing that certain juveniles who are resentenced after having been sentenced to life without the possibility of parole must seek review of the new sentence through a personal restraint petition, rather than a direct appeal;
- RCW 10.95.030(3)(a)(ii)—providing that a minimum term of life may be imposed, without possibility of parole or early release, upon a person convicted of Aggravated Murder in the first degree committed when the person was 16 or 17 years old;
- RCW 41.56.0251—limiting the collective bargaining rights of charter school employees by limiting the bargaining unit to employees working in the charter school and providing that the bargaining unit must be separate from other bargaining units in school districts, education service districts, or institutions of higher education; and
- RCW 43.135.034—requiring a two-thirds vote in the House of Representatives and the Senate for any legislative action that raises taxes, and providing that tax increases may be referred to the voters for their approval or rejection.

Technical changes are made to remove citations to statutes that are repealed under the act,

and to correct an inaccurate citation. Citations to the definitions of economic damages and noneconomic damages contained in a section repealed by the act are replaced with the relevant definition language.

Appropriation: None.

Fiscal Note: Not requested.

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) The purpose of this bill is to make sure that the Revised Code of Washington (code) accurately reflects what the law is by removing provisions that have been found unconstitutional and are no longer valid. The fundamental purpose of the code is for citizens to understand what laws are in effect. Allowing unconstitutional laws to remain on the books misleads the public and creates confusion for those in the court system. The bill is straightforward in that it just repeals statutes that have been struck down and are no longer in effect, including some that have been controversial, such as the death penalty, two-thirds majority vote for tax increases, and forced sterilization of certain sex offenders. While the bill is not comprehensive, it does remove many important statutes that should be addressed. People are free to seek reenactment of these laws in a form that would survive constitutional scrutiny through the legislative process.

Washington's death penalty statute was found unconstitutional because it is administered in an arbitrary and racially disproportionate manner. Black men are seven times more likely to be wrongly convicted of homicide than a white person who is wrongly convicted. In the last three years 23 people have been fully exonerated from death row in the United States based on actual innocence, and a total of 190 people have been exonerated based on actual innocence since 1973. These exonerations are not evidence that the system works, because those working on these cases are operating outside the system on a pro bono basis. The risks of wrongly convicting and executing a person are too great to maintain the death penalty. It is time to remove the inhuman practice of the death penalty from the law, even if it is intended to be rarely applied. A civil society should not adopt a system based on revenge, which only creates a vicious cycle that destroys the basis on which societies are built. All investigations are subject to human error, which become irreversible in the case of the death penalty. State resources should not be directed towards violence upon violence, but rather to the improvement of life, including victim services, effective law enforcement, and mental health and drug abuse treatment.

(Opposed) This bill seems to be an attempt to be selective about what is included, and it covers a broad range of subjects. Article II, section 19, of the state Constitution prohibits bills from having more than one subject, which must be expressed in the title, and this bill

seems to contain multiple subjects, many of which relate to important issues. The Legislature should consider these issues individually, not as part of a big package.

Persons Testifying: (In support) Senator Jamie Pedersen, prime sponsor; Jasmit Singh, Khalsa Gurmat Center; Brittany Gregory, Board for Judicial Administration; Lara Zarowsky, Washington Innocence Project; Kristin Ang, Faith Action Network; and Chalia Stallings-Ala'ilima, Washington State Attorney General's Office.

(Opposed) Eric Pratt.

Persons Signed In To Testify But Not Testifying: None.