

# SENATE BILL REPORT

## SB 5087

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As Reported by Senate Committee On:  
Law & Justice, January 19, 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:** Senators Pedersen, Mullet, Billig, Dhingra, Frame, Hasegawa, Hunt, Kauffman, Kuderer, Lias, Lovelett, Nobles, Saldaña, Stanford and Wellman; by request of Attorney General.

**Brief History:**

**Committee Activity:** Law & Justice: 1/16/23, 1/19/23 [DPS, DNP, w/oRec].

**Brief Summary of First Substitute Bill**

- Removes language from state laws identified as defects and omissions as reported by the supreme court pursuant to the state constitution.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5087 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon, Valdez and Wagoner.

**Minority Report:** Do not pass.

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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.*

Signed by Senator McCune.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; Torres and Wilson, L.

**Staff:** Tim Ford (786-7423)

**Background:** The Washington State Constitution requires an annual written report from the judges of the Washington State Supreme Court identifying defects and omissions in the laws as they may believe to exist. Chief Justice Steve González delivered the report in two letters and an email update listing the defects and omissions. The report constitutes a list of over 40 state laws that have been held to be unconstitutional by the Washington State Supreme Court that are still part of statutory law and have not been repealed by the Legislature. The report provides:

- the statutory citation for each law held unconstitutional;
- a brief description of the law;
- the name and citation of the court case that found it to be unconstitutional; and
- a short reason for why it is unconstitutional.

The report is publicly available online in the Legislature's electronic bill book.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (First Substitute):** The following sections of statutory law that were held unconstitutional by the Washington State Supreme Court are repealed or amended:

- RCW 2.43.040(4) - allowed trial courts to impose the cost of interpreters onto criminal defendants as part of court costs.
- RCW 2.48.190 and .210 - limited admission to the bar to United States citizens.
- RCW 4.16.190(2) - carved out medical malpractice claims from the general rule that statutes of limitations are tolled for minors.
- RCW 4.56.250(2) - capped noneconomic damages in wrongful death suits by a formula based on the victim's age and wages.
- RCW 6.25.030(10) - authorized attachment of real property without notice under certain circumstances.
- RCW 7.48.050 through .100 - classified certain adult entertainment facilities as nuisances and authorized courts to enter preliminary injunctions against them.
- RCW 7.70.150 - required plaintiffs to submit a certificate of merit from a health care provider as a prerequisite for filing a medical malpractice suit.
- RCW 9.81.010 through .120 - relates to subversive activities.
- RCW 9.91.180 - made it illegal to sell or rent violent video games to children.
- RCW 9.92.100 - allows a judge to order certain people sterilized.
- RCW 9.94A.530(2) - provided, in part, that criminal defendants must either object to

- the state's description of their criminal history or be deemed to have admitted it.
- RCW 9A.46.020(1)(a)(iv) - made it a crime to threaten to maliciously do an act that will substantially harm another's mental health or safety.
  - RCW 10.05.030 - authorizes judges, with the concurrence of the prosecuting attorney, to continue an arraignment pending drug or mental health treatment.
  - RCW 10.52.100 - prohibited disclosure, without an individualized assessment by a judge, of information regarding child sexual assault victims.
  - RCW 10.58.090 - made evidence of a defendant's prior sex crimes automatically admissible if they satisfy Evidence Rule 403.
  - several sections of chapter 10.95 RCW authorized and regulated capital punishment for aggravated first degree murder.
  - RCW 10.95.035(3) - part of the Miller-fix statute—gave certain juvenile offenders the right to resentencing but not the right to appeal the new sentence.
  - RCW 10.95.030(3)(a)(ii) - in part, was another part of the Miller-fix statute. This provision gave judges' discretion to sentence certain juveniles who had committed aggravated first-degree murder to life in prison without the possibility of parole.
  - RCW 18.108.190 - allowed law enforcement personnel to inspect massage businesses at any time without a warrant.
  - RCW 35.13.165 - allowed property owners to block annexation by filing a petition opposing annexation with the boundary review board.
  - Chapter 36.105 RCW - authorized the creation of "community councils" in counties made up entirely of islands with an unincorporated population in excess of 30,000 people.
  - Chapter 39.88 RCW - the Community Redevelopment Financing Act of 1982, attempted to create a mechanism for cities to issue bonds, secured by a portion of property tax, to fund public improvements.
  - RCW 41.20.110 - terminated the pension benefits of certain police officers convicted of a felony, among other things.
  - RCW 41.56.0251 - limited the collective bargaining rights of charter school employees.
  - RCW 43.135.034 - required either a two-thirds vote of the Legislature or referral to the voters to raise taxes.
  - RCW 47.44.030 - required the Department of Transportation to reimburse franchisees the cost of relocating or removing public utility facilities along highways under certain circumstances.
  - RCW 49.32.072, .073, and .074 - limited the power of the courts to issue injunctions in labor disputes.
  - RCW 66.24.480 - made operating an unlicensed bottle club a misdemeanor.
  - RCW 66.28.080 - required a local license before any place with a liquor license could allow music, dancing, or entertainment, with some exceptions.
  - RCW 35A.66.020 - refers to permitting requirements for music and entertainment.
  - RCW 73.04.050 and .060 - granted some honorably discharged veterans the privilege of peddling goods without a local license.
  - RCW 85.05.130 - allowed diking districts to assess fees on benefited land outside of

the specific district.

- RCW 9A.72.160(2)(b) - contains an incorrect citation.

The reason why the courts found these sections of law to be defects and omissions are set forth in the letters and email of Justice González. Those letters and email are appended to the bill file and are publicly available online in the Legislature's electronic bill book.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on First Substitute:** PRO: A main purpose of the code is, for there to be transparency about what the law is in the state of Washington. Article 4 section 25 of the constitution provides that the courts send a letter to the Governor every year, letting them know about statutes that have been struck down because they are no longer operative, but they stay on the books, making it confusing and deceptive for the public. This method of review allows for removal of statutes that have been held unconstitutional. The purpose of this bill is to remove some of the language the court has struck down to make the law more transparent. This bill repeals sentences, subsections, or entire sections that the courts have identified as problematic. The list included in this bill is not comprehensive, but it highlights the most important statutes that need removal.

**Persons Testifying:** PRO: Senator Jamie Pedersen, Prime Sponsor; Chalia Stallings-Ala'ilima, WA State Attorney General's Office; Brittany Gregory, Board for Judicial Administration.

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