

HOUSE BILL REPORT

SSB 5042

As Passed House - Amended:

April 13, 2005

Title: An act relating to tolling the statute of limitations for felony sex offenses.

Brief Description: Tolling the statute of limitations for felony sex offenses.

Sponsors: By Senate Committee on Judiciary (originally sponsored by Senator McCaslin).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 3/25/05, 3/31/05 [DPA].

Floor Activity:

Passed House - Amended: 4/13/05, 94-1.

Brief Summary of Substitute Bill (As Amended by House)

- Removes all statutes of limitations for the crimes of rape in the first and second degree, if the victim is under the age of 18, and for rape of a child in the first and second degree.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass as amended. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Pearson, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Kirby and Strow.

Staff: Kathryn Leathers (786-7114).

Background:

Most criminal offenses are subject to specific time limitations during which the crime must be prosecuted. The offenses for which no statute of limitations applies, and therefore may be prosecuted at any time after their commission, include murder, homicide by abuse, vehicular homicide and, if death results, arson, hit-and-run injury-accident, and vehicular assault.

Sex offenses committed against minors are subject to the following limitations periods:

Rape in the first or second degree:

If the victim is either an adult or a minor age 14 or older and the crime is reported to law enforcement within one year of the date of the crime, the limitations period is 10 years after commission of the crime.

If the victim is under the age of 14 and the crime is reported to law enforcement within one year of the date of the crime, the offense may be prosecuted up to three years after the victim's 18th birthday or 10 years after commission of the crime, whichever is later.

If the crime is not reported to law enforcement within one year from the date of the crime, the offense may not be prosecuted more than three years after the commission of the crime unless the victim was under the age of 14 at the time the crime was committed. In the event the victim was under the age of 14 at the time the crime was committed, the offense may not be prosecuted more than three years after the victim's 18th birthday or more than seven years after the rape's commission, whichever is later.

Other Sex Offenses:

The following crimes may not be prosecuted more than three years after the victim's 18th birthday or more than seven years after their commission, whichever is later:

- rape of a child in the first and second degree;
- child molestation in the first and second degree;
- indecent liberties as it applies to any child that is mentally disabled or physically helpless; and
- incest in the first and second degree.

Summary of Amended Bill:

This bill removes the statutes of limitations for, if the victim is under the age of 18, rape in the first and second degree, and also for rape of a child in the first and second degree. As a result, such an offense may be prosecuted at any time after the date the crime is committed, regardless of when the crime is reported by the victim.

Rape in the first degree is a class A felony with a seriousness level of XII. Rape in the first degree is committed when a person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory: (a) uses or threatens to use a deadly weapon or what appears to be a deadly weapon; or (b) kidnaps the victim; or (c) inflicts serious physical injury, including but not limited to physical injury which renders the victim unconscious; or (d) feloniously enters into the building or vehicle where the victim is situated.

Rape in the second degree is a class A felony with a seriousness level of XI. Rape in the second degree is committed when, under circumstances not constituting rape in the first degree, a person engages in sexual intercourse with another person: (a) by forcible compulsion; (b) when the victim is incapable of consent by reason of being physically helpless or mentally incapacitated; (c) when the victim is developmentally disabled and the perpetrator is a person who is not married to the victim and who has supervisory authority

over the victim; (d) when the perpetrator is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination; (e) when the victim is a resident of a facility for mentally disordered or chemically dependent persons and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or (f) when the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who has a significant relationship with the victim.

Rape of a child in the first degree is a class A felony with a seriousness level of XII. Rape of a child in the first degree is committed when the person has sexual intercourse with another who is less than 12 years old and not married to the perpetrator and the perpetrator is at least 24 months older than the victim.

Rape of a child in the second degree is a class A felony with a seriousness level of XI. Rape of a child in the second degree is committed when the person has sexual intercourse with another who is at least 12 years old but less than 14 years old and not married to the perpetrator and the perpetrator is at least 36 months older than the victim.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: None.

Testimony Against: There are some concerns regarding this bill as drafted. Although felony sex offenses are currently subject to statutes of limitations ranging from three to 10 years, the effect of this bill is to entirely eliminate the statute of limitations for all felony sex offenses. Defense attorneys understand and generally agree that the advances in deoxyribonucleic acid (DNA) technology should be fully utilized, including in cold cases, to advance the cause of justice in the court system – the victims deserve no less. However, there are some very important concerns with this legislation. First, it impacts the right of a person to get a fair trial many, many, years later, and it ultimately impacts the credibility of the result. In cold cases, witnesses' memories are no longer clear, evidence may no longer be available, and even finding the witnesses can also be problematic. DNA does not necessarily establish that the person identified is guilty of the crime. For example, if DNA taken from saliva on a cigarette found in an alley establishes the identify of the person who smoked the cigarette, it does not prove that he or she committed whatever crime took place in or near the alley. Defendants finding themselves identified as suspects under similar circumstances will have great difficulty in defending themselves 20 years after the fact. An additional concern with the bill as proposed is that it puts the triggering of the statute of limitations, a jurisdictional issue, in the hands of the police and crime lab, not the hands of the elected prosecutor. Everyone prioritizes their work, and often priorities are established by deadlines. Without deadlines, the

crime labs will not have any incentive to run these tests. This is bad for everyone - the defense, prosecution, and victims. Also, there are concerns with the triggering language in that it requires "conclusive" establishment of a suspect's identification. What about the situation where the lab finds a "preliminary" or "tentative" match by running it through a single database? This preliminary identification would probably trigger an investigation by police but it would not trigger the statute of limitations. And, there is still no motivation for the crime lab to run the preliminary results through other databases. It is not clear from the bill who is responsible for reaching the conclusion that a suspect has been "conclusively" identified. One suggestion to address this issue is to amend this section to state that the statute of limitations is triggered when a DNA profile is matched with a DNA profile from any certified database from our jurisdiction or some other jurisdiction.

Persons Testifying: Mark Prothero, Washington Association of Criminal Defense Lawyers and Washington Defenders Association.

Persons Signed In To Testify But Not Testifying: None.