

SENATE BILL REPORT

SB 5224

As Reported By Senate Committee On:
Judiciary, March 1, 2005

Title: An act relating to penalties for indecent liberties.

Brief Description: Clarifying the penalties for indecent liberties.

Sponsors: Senators Esser and Doumit.

Brief History:

Committee Activity: Judiciary: 2/1/05, 3/1/05 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5224 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Carrell, Esser and Hargrove.

Staff: Lilah Amos (786-7429)

Background: A person commits the crime of indecent liberties by knowingly causing another person, not a spouse, to have sexual contact with him, her, or another. There are six alternative methods of committing the crime of indecent liberties. When the crime is committed with forcible compulsion, it is a class A felony, a violent sex offense, and is listed as seriousness level X, in a range of I (lowest) to XV (highest). Conviction subjects the defendant to a maximum penalty of life in prison and a fine of \$50,000.

The remaining five alternative methods of committing the crime of indecent liberties without forcible compulsion are all class B felonies, subjecting defendants to a maximum of 10 years in prison and a fine of \$20,000. Two of these alternatives involve sexual contact with a victim who is incapable of consent by reason of mental defect, mental incapacity, or physical helplessness, and with a victim who is developmentally disabled when the perpetrator is not married to the victim and is in a position of supervisory authority over the victim. Both of these alternatives are seriousness level VII. The standard sentencing range for these two alternatives is 15 to 20 months in prison with no prior offenses, increasing to 87 to 116 months in prison with nine or more offender points.

Three alternative ways to commit indecent liberties without forcible compulsion have no listed seriousness level. They are, therefore, unranked felonies with a possible sentence range of 0 to 12 months incarceration, regardless of the defendant's criminal history or offender points. Unranked felonies are below the seriousness level I sentencing range. These alternatives are:

- when the perpetrator is a health care provider, the victim is a client or patient, and the sexual contact occurs during treatment;

- when the victim resides in a facility for mentally disordered or chemically dependent persons and the perpetrator is not married to the victim and has supervisory authority over the victim; and
- when the victim is a frail elder or vulnerable adult and the perpetrator is not married to the victim and has a significant relationship with the victim involving a caretaker function.

Summary of Substitute Bill: Four of the five alternative methods of committing the crimes of indecent liberties without forcible compulsion are ranked as seriousness level VII on the sentencing grid. One alternative, when the perpetrator is a health care provider, the victim is a client or patient, and the sexual contact occurs during treatment, is ranked as seriousness level VI on the sentencing grid.

Substitute Bill Compared to Original Bill: The crime of indecent liberties committed by a health care provider against a client or patient during a treatment session, consultation, interview, or examination is ranked at a lower seriousness level VI on the sentencing grid.

Appropriation: None.

Fiscal Note: Requested on January 31, 2005.

Committee/Commission/Task Force Created: No.

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

Testimony For: The differences in available punishment for alternative methods of committing the crime of indecent liberties lead to unfair and inconsistent results. An example is the court's current inability to adequately punish a health care provider who molests patients during treatment. There is no multiplier for additional counts or prior crimes, so the punishment for the unranked offense is limited to one year in jail.

Testimony Against: None.

Who Testified: PRO: Tom McBride, Washington Association of Prosecuting Attorneys.