

HOUSE BILL REPORT

EHB 1385

As Passed Legislature

Title: An act relating to sexual misconduct by school employees.

Brief Description: Modifying provisions relating to sexual misconduct by school employees.

Sponsors: Representatives Haler, Van De Wege, Kessler, Pearson, Takko, Klippert, Blake, Morrell, Dammeier, Warnick, Smith and Johnson.

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 1/28/09, 2/11/09 [DP].

Floor Activity:

Passed House: 3/6/09, 81-14.

Senate Amended.

Passed Senate: 3/17/09, 44-0.

House Concurred.

Passed House: 4/21/09, 82-16.

Passed Legislature.

Brief Summary of Engrossed Bill

- Defines the term "enrolled student."
- Modifies the crimes of sexual misconduct with a minor in the first and second degrees to prohibit sexual intercourse and sexual contact between a school employee and an enrolled student of the school who is at least 16 years old and not more than 21 years old.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: Do pass. Signed by 6 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Kirby and Ross.

Minority Report: Do not pass. Signed by 2 members: Representatives Appleton and Goodman.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Lara Zarowsky (786-7123)

Background:

A person is guilty of the class C felony of sexual misconduct with a minor in the first degree when the person:

- abuses a supervisory position within a significant relationship with another person who is at least 60 months younger in order to engage in sexual intercourse with the victim;
- is a school employee who has sexual intercourse with a registered student of the school who is at least 16 years old, if the employee is at least 60 months older than the student; or
- is a foster parent and has sexual intercourse with his or her foster child who is at least 16.

A person is guilty of the class B felony of sexual misconduct with a minor in the second degree when the person:

- abuses a supervisory position within a significant relationship with another person at least 60 months younger in order to engage in sexual contact with the victim;
- is a school employee who has sexual contact with a registered student of the school who is at least 16 years old, if the employee is at least 60 months older than the student; or
- is a foster parent who has sexual contact with his or her foster child who is at least 16.

Earlier this month, Division II of the Washington Court of Appeals interpreted the sexual misconduct with a minor statute in the case of *State v. Hirschfelder*. In that case, a high school choir teacher was alleged to have had sexual intercourse with an 18-year-old member of the high school choir shortly before the student graduated from high school. The teacher was charged with one count of first degree sexual misconduct with a minor. The question considered by the Court of Appeals was whether the statute prohibits sexual intercourse with minor students aged 16 and 17 only, or with *all* students 16 and older.

The Court of Appeals held the statute is ambiguous, but that legislative history indicates the Legislature intended to criminalize only sexual contact between school employees and students aged 16 and 17.

Summary of Engrossed Bill:

The term "enrolled student" is defined to mean: (1) any student enrolled at or attending a program hosted or sponsored by a common school as defined in RCW 28A.150.020; (2) a student enrolled at or attending a program hosted or sponsored by a private school under chapter 28A.195 RCW; or (3) any person who receives home-based instruction under chapter 28A.200 RCW.

The crime of sexual misconduct with a minor in the first degree is modified to criminalize sexual intercourse between a school employee and an enrolled student of the school who is at least 16 years old and not more than 21 years old.

The crime of sexual misconduct with a minor in the second degree is modified to criminalize sexual contact between a school employee and an enrolled student of the school who is at least 16 years old and not more than 21 years old.

Appropriation: None.

Fiscal Note: Available.

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) Sex predators working in the school districts have been allowed to groom victims due to this loophole in the law. This bill is important to protect students in our schools from predatory behavior. Most educators are there for the right reasons, but situations arise where employees cross the line professionally and ethically. The law needs to be changed to clearly state that any school district employee is prohibited from having sexual relationships with any students. This is especially important for students between the ages of 16 and 21. Most students who are in school up to the age of 21 are in greatest need of protection under the law because they are most vulnerable. Those teachers or employees of the school who groom their victims should go to jail. Teachers are in positions of great trust and great power and need to be held accountable. Prosecutors have always thought the change under the bill was the law. The law protects the relationship between students in a K-12 setting and school employees.

(Opposed) Sexual conduct between minor students and teachers is a serious boundary violation, but this bill seeks to criminalize sexual conduct between consenting adults. There is no compelling reason to criminalize this kind of activity given the serious consequences through the school system and through the state licensing system. The existing criminal law should punish relationships between school employees and minor students, but the regulatory process should be applied in the adult-student context. There are already provisions in the criminal law regarding grooming and vulnerable individuals who are not capable of consent even if over the age of 18. Relationships between school employees and adult students are unfortunate and wrong, but shouldn't be criminal.

Persons Testifying: (In support) Representative Haler, prime sponsor; Rebecca Hissam; Heather Cleary and Richard Jansons, Richland School Board; and Tom McBride, Washington Association of Prosecuting Attorneys.

(Opposed) Wade Samuelson, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

Persons Signed In To Testify But Not Testifying: None.