

SENATE BILL REPORT

EHB 1385

As Reported by Senate Committee On:
Judiciary, March 27, 2009

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: Passed House: 3/06/09, 81-14.
Committee Activity: Judiciary: 3/27/09 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Roach and Tom.

Staff: Brandon Roché (786-7405)

Background: Currently, a school employee is guilty of sexual misconduct with a minor in the first degree when the employee has sexual intercourse with a registered student of the school who is at least 16 years old and not married to the employee, if the employee is at least 60 months older than the student. Sexual misconduct with a minor in the second degree involves the same age qualifications but applies where there is sexual contact instead of sexual intercourse.

In *State of Washington v. Hirschfelder*, the Division II Court of Appeals held that this statute does not apply when the student is over the age of 18. The court relied on the legislative history of a series of bills that eventually led to the current statute. Of note to the court were the Legislature's and Governor's interpretation of the word "minor" throughout the process.

By statute, basic education programs must be accessible to students up to the age of 21.

Summary of Bill: A school employee is guilty of sexual misconduct with a minor in the first degree when that employee has sexual intercourse with a registered student of the same

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school who is at least 16 years old but less than 20 years old, if the employee is at least 60 months older than the student.

A school employee is guilty of sexual misconduct with a minor in the second degree if that employee has sexual contact with a registered student of the same school who is at least 16 years old but less than 20 years old, if the employee is at least 60 months older than the student.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This comes from a case that happened in the Richland school district. A teacher had groomed students until they reached the age of 18 and then the teacher preyed on them sexually. This is aimed at closing the loophole in the law. As long as a student is in public school, they are very vulnerable. The House version was changed to protect students 20 or younger in order to keep it alive in the House. It is my expectation that our students are safe from sexual predators while they are in school and that is why I support this bill.

We think this is an important bill. Some of the opponents have said these are two consenting adults but even if they're adults the teachers are in a position of trust, power, and influence. The vast majority of our school employees are quality people with a lot of integrity. This is aimed at the few bad apples.

CON: We would like to propose an amendment related to the conditions under which someone convicted under this statute must register as a sex offender. It should exclude persons convicted under this offense if the victim is over the age of 18. We recognize there is going to be a change to the overall state of the law but we think this exception is necessary. We want to make sure that individuals are protected but we have to balance that against what we think an appropriate level of maturity may be.

Persons Testifying: PRO: Representative Haler, prime sponsor; Washington State School Directors Association.

CON: Michael Hanbey, Washington Association of Criminal Defense Lawyers.