

# SENATE BILL REPORT

## SB 5147

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As Passed Senate, March 7, 2009

**Title:** An act relating to criminal libel.

**Brief Description:** Repealing criminal libel statutes.

**Sponsors:** Senators Kline and Rockefeller.

**Brief History:**

**Committee Activity:** Judiciary: 1/14/09, 2/25/09 [DP].

Passed Senate: 3/07/09, 44-0.

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; McCaslin, Ranking Minority Member; Kohl-Welles, Roach and Tom.

**Staff:** Juliana Roe (786-7438)

**Background:** Division II of the Washington State Court of Appeals found, in *Parmelee v. Lehman*, that Washington's criminal libel statutory scheme, RCW 9.58.010 and RCW 9.58.020, is facially unconstitutional because it prohibits true speech and false speech made without actual malice. The court further found the statutes to be unconstitutional for overbreadth. The decision of this court has not been appealed. Therefore, Division II will deem these statutes unconstitutional until the Supreme Court makes a different determination as to the constitutionality of these statutes or the Legislature modifies or repeals them. Court of Appeals Divisions I and III have not yet been faced with the task to determine the constitutionality of these statutes. Hence, there is not uniformity between the courts as to the constitutionality of these statutes.

**Summary of Bill:** The criminal libel statutes are repealed.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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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 a part of the legislation nor does it constitute a statement of legislative intent.*

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

**Staff Summary of Public Testimony:** PRO: These statutes are very old. They date back to feudal times where speech was censored. They have no relevance in modern society. Over 40 years ago, the United State Supreme Court decided *Garrison*. In that case, the court found that the libel statute at issue, which was almost identical to the Washington statute, was unconstitutional. This statute is dead. This is not a controversial statute. It is not controversial to not criminalize true speech or unknowingly false speech. The fact that true speech can be prosecuted by this statute is the problem this bill tries to fix.

**Persons Testifying:** PRO: Rowland Thompson, Allied Daily Newspapers; Tom McBride, Washington Association of Prosecuting Attorneys; Shankar Narayan, ACLU.