

# HOUSE BILL REPORT

## HB 1108

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**As Passed House:**  
March 11, 2013

**Title:** An act relating to rape in the third degree and indecent liberties.

**Brief Description:** Modifying the definition of rape in the third degree and indecent liberties.

**Sponsors:** Representatives Goodman, Jinkins, Wylie, Pedersen, Green, Roberts, Pettigrew, Maxwell, Orwall, Appleton, Ryu, Morrell and Bergquist.

**Brief History:**

**Committee Activity:**

Public Safety: 1/29/13, 2/7/13, 2/13/13 [DP].

**Floor Activity:**

Passed House: 3/11/13, 96-1.

**Brief Summary of Bill**

- Eliminates the marital rape exemption from the crimes of Rape in the third degree and Indecent Liberties.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** Do pass. Signed by 10 members: Representatives Goodman, Chair; Roberts, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Holy, Hope, Moscoso, Ross and Takko.

**Staff:** Yvonne Walker (786-7841).

**Background:**

*Rape in the Third Degree.* A person commits the crime of Rape in the third degree if he or she is not married to the victim, and he or she engages in sexual intercourse with another person (the victim) without consent or when there is a threat of substantial unlawful harm to the property rights of the victim. Rape in the third degree is a class C felony with a seriousness level of V. It is also a "three strikes" offense under the "Three Strikes and You are Out" persistent offender statute.

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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.*

*Indecent Liberties.* An offender commits the crime of Indecent Liberties if he or she causes a victim, who is not his or her spouse, to have sexual contact with the perpetrator or another person: (1) by forcible compulsion; (2) when the victim is incapable of consent by reason of being physically helpless or mentally incapacitated; (3) when the victim is developmentally disabled and the perpetrator, who is not married to the victim, has supervisory authority over the victim or was providing transportation (within the course of his or her employment) to the victim at the time of the offense; (4) when the perpetrator is a health care provider and the sexual contact occurs during a treatment session, consultation, interview, or examination; (5) when the victim is a resident of a facility for mentally disordered or chemically dependent persons and the perpetrator, who is not married to the victim, has supervisory authority over the victim; or (6) when the victim is a frail elder or vulnerable adult and the perpetrator, who is not married to the victim, has a significant relationship to the victim or was providing transportation (within the course of his or her employment) to the victim at the time of the offense. Indecent Liberties with forcible compulsion is a seriousness level X, class A felony offense. It is also a "two strikes" sex offense under the "Two Strikes and You are Out" persistent offender statute. Indecent Liberties without forcible compulsion is a seriousness level VII, class B felony offense. It is also a "three strikes" offense.

Due to the statutory marital exemption in both statutes a perpetrator cannot be convicted of a Rape in the third degree or an Indecent Liberties offense if he or she is married to the victim.

**Summary of Bill:**

The statutory exemption that prohibits a victim's spouse from being convicted of Rape in the third degree or Indecent Liberties offense is removed from statute. The crimes of Rape in the third degree and Indecent Liberties can occur and can be prosecuted in cases where the perpetrator is married to the victim.

**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) There has been concern over the marital rape exception in cases where a person forces his spouse into sexual relations and then he may not be charged or convicted. Washington is only one of a few states that has not eliminated the marital rape exception.

Back in the 1980s Washington used to be the front runner in eliminating marital rape and domestic violence. Now, Washington is out of step compared to other states, in how these cases are treated nationally. Marital relations should not be a defense to sexually assault anyone. These cases are rare but they do exist. People are often shocked that a person can commit a sex offense, a strike offense, a serious felony offense, against their spouse with no fear of prosecution. Consent is a part of sexual relations.

(With concerns) There is support for the intent of this legislation. However, in reviewing the Indecent Liberties statutes, which states that this crime occurs when someone has sexual contact with someone who is mentally defective, mentally incapacitated, or physically helpless, the courts have interpreted this to mean when a person is sleeping. So, if someone initiates sexual contact with a person that is sleeping, such as by touching them while they are asleep, then they have just committed a felony. It is suggested that an amendment be written to the bill to allow spouses to reach over and touch each other without committing a felony offense.

(Opposed) None.

**Persons Testifying:** (In support) Representative Goodman, prime sponsor; Andrea Piper-Wentland, Washington Coalition of Sexual Assault Programs; and David Martin, King County Prosecuting Attorney Office.

(With concerns) Brad Meryhew, Washington Association of Criminal Defense Lawyers.

**Persons Signed In To Testify But Not Testifying:** None.