

# HOUSE BILL REPORT

## HB 2619

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### As Reported by House Committee On: Public Safety

**Title:** An act relating to protecting the public by increasing penalties for certain repeat offenders who engage in lurid criminal conduct.

**Brief Description:** Increasing penalties for certain repeat offenders who engage in lurid criminal contact.

**Sponsors:** Representatives Irwin, Eslick, Orwall, Pellicciotti, Volz, Walsh, Griffey, Hayes, Johnson, Van Werven, Stambaugh, Wylie, Muri, McDonald and Young.

#### **Brief History:**

##### **Committee Activity:**

Public Safety: 1/29/18, 2/1/18 [DPS].

#### **Brief Summary of Substitute Bill**

- Makes the crime of Indecent Exposure a class C felony when a defendant has a prior conviction under a municipal or out-of-state offense comparable to Indecent Exposure or a sex offense.
- Makes felony Indecent Exposure a level II offense in certain circumstances.
- Elevates Assault in the fourth degree involving sexual motivation from a gross misdemeanor to a class C felony and a level III offense when a defendant has two or more prior convictions for certain crimes involving sexual motivation within 10 years.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Appleton, Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

**Staff:** Kelly Leonard (786-7147).

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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.*

**Background:**

*Indecent Exposure.* A person is guilty of Indecent Exposure if he or she intentionally makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm. The act of breastfeeding or expressing breast milk is not Indecent Exposure.

The classification of Indecent Exposure varies as follows:

- class C felony if the person has a prior conviction of Indecent Exposure or of a sex offense;
- gross misdemeanor on the first offense if the person exposes himself or herself to a person under the age of 14 years; or
- misdemeanor in all other circumstances.

Felony Indecent Exposure when committed against a person under the age of 14 years is a level IV offense under the Sentencing Reform Act (SRA). Other circumstances for felony convictions of Indecent Exposure are unranked offenses.

*Assault in the Fourth Degree.* A person is guilty of Assault in the fourth degree if, under circumstances not amounting to Assault in the first, second, or third degree, or Custodial Assault, he or she assaults another. Assault in the fourth degree is a gross misdemeanor.

*Sentencing.* Crimes are classified as misdemeanors, gross misdemeanors, or felonies. While there are exceptions, the classification of a crime generally determines the maximum term of confinement and/or fine for an offense. For each classification, the maximum terms of confinement and maximum fines are as follows:

<u>Classification</u>	<u>Maximum Confinement</u>	<u>Maximum Fine</u>
Misdemeanor	90 days	\$1,000
Gross Misdemeanor	364 days	\$5,000
Class C Felony	5 years	\$10,000
Class B Felony	10 years	\$20,000
Class A Felony	Life	\$50,000

When a person is convicted of a felony, the SRA applies and determines a specific range of sentence within the statutory maximum. Under the SRA, sentences for felony offenses are determined by reference to a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the offender's criminal history. If a felony does not have a seriousness level under the SRA, then the maximum term of confinement is one year.

*Sexual Motivation.* A person commits a crime with Sexual Motivation if one of the purposes for which he or she committed his or her crime was sexual gratification. In a prosecution of any offense (other than a sex offense), the prosecutor must file a special allegation of Sexual Motivation if evidence exists that would justify a finding by a reasonable and objective

factfinder. A court is required to add time to an offender's standard sentence range if he or she is convicted of Sexual Motivation, as follows:

- 24 months for a class A felony;
- 18 months for a class B felony; and
- 12 months for a class C felony.

The time of the enhancement is doubled if the person was subject to the Sexual Motivation enhancement in a previous conviction. A Sexual Motivation enhancement is mandatory, is served in total confinement, and runs consecutively to all other sentencing provisions.

A finding of Sexual Motivation for any felony also elevates the offense to a sex offense, which can trigger sex offender registration and community supervision requirements.

A finding of Sexual Motivation for a gross misdemeanor or misdemeanor does not have the same consequences as for a felony conviction; however, a conviction of Assault in the fourth degree with a finding of Sexual Motivation currently requires an offender to submit a biological sample for DNA analysis and entry into the Combined DNA Index System (CODIS).

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### **Summary of Substitute Bill:**

*Indecent Exposure.* Indecent Exposure is a class C felony if the person has previously been convicted of a municipal ordinance or out-of-state offense comparable to Indecent Exposure or a sex offense.

Felony Indecent Exposure is a seriousness level II offense for circumstances where the present offense does not involve a victim under the age of 14 years.

*Felony Assault in the Fourth Degree with a Finding of Sexual Motivation.* Assault in the fourth degree where Sexual Motivation is pleaded and proven is a class C felony ranked at a seriousness level III if the person has two or more prior convictions within 10 years for any of the following crimes where Sexual Motivation was pleaded and proven:

- Assault in the fourth degree;
- Assault in the third degree;
- Assault in the second degree;
- Assault in the first degree;
- a municipal offense comparable to any of the above offenses; or
- an out-of-state offense comparable to any of the above offenses.

### **Substitute Bill Compared to Original Bill:**

The penalty provisions for Indecent Exposure are modified by specifying that it is a level II offense when it does not involve circumstances where the defendant exposed himself or herself to someone under the age of 14 years (rather than when it does involve circumstances where the defendant exposed himself or herself to someone age 14 years or older).

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date of Substitute Bill:** 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 is a class of offenders who serially commit sexually motivated assaults, including grabbing women's bodies and exposing themselves. This happens with shocking regularity in cities. However, the offense remains a misdemeanor, regardless if an offender has several prior convictions. These offenders know this is the case, and they continue to engage in the conduct because the consequences are minimal. Offenders know the system does not take these crimes seriously, despite the disgusting nature of the conduct and traumatizing impact it has on the public. For example, there was an instance where an offender exposed himself to someone, chased after her, and then stood on her doorstep while performing a sexual act.

The behavior escalates into more serious crimes, and the government is faced with an individual that could have been stopped had there been earlier intervention. This bill elevates the penalties for these offenses for someone who has prior convictions. This creates more accountability, and it also affords the state an opportunity to intervene before an offender commits more serious, violent offenses.

The bill is not targeted at first time offenders or those who can be rehabilitated. This is about repeat offenders who engage in this conduct over and over again. Possible prison and jail time is an appropriate response to repeat offenders.

(Opposed) None.

**Persons Testifying:** Representative Irwin, prime sponsor; and Suzanne Monroe, Seattle Police Department.

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