

# SENATE BILL REPORT

## SB 5649

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As Passed Senate, February 20, 2019

**Title:** An act relating to crimes of sexual assault.

**Brief Description:** Adjusting the statute of limitations for sexual assault.

**Sponsors:** Senators Dhingra, Pedersen, Palumbo, Saldaña, Das, Wilson, C., Frockt, Keiser and Kuderer.

**Brief History:**

**Committee Activity:** Law & Justice: 2/07/19, 2/14/19 [DP].

**Floor Activity:**

Passed Senate: 2/20/19, 48-0.

**Brief Summary of Bill**

- Eliminates or extends the statutes of limitations for several sex offenses.
- Eliminates the evidentiary requirement that the victim clearly expressed their lack of consent by words or conduct in order to prove rape in the third degree.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Holy, Kuderer, Salomon and Wilson, L..

**Staff:** Shani Bauer (786-7468)

**Background:** A statute of limitations is a time limit for initiating prosecution after a crime is committed. Once a statute of limitations has expired, a prosecutor is barred from bringing charges against an alleged perpetrator.

Statutes of limitations vary according to the crime. Generally, simple misdemeanors must be prosecuted within one year, gross misdemeanors within two years, and felony offenses within three years of the commission of the crimes.

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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.*

However, the statute of limitations for certain specified felony offenses has been extended to five, six, or ten years. There is no limit on the time within which a prosecution must be commenced for the crime of murder, and various other crimes in which a death results, including homicide by abuse, arson, vehicular homicide, vehicular assault, and hit-and-run.

Statutes of Limitations for Sex Offenses. The statutes of limitations for some felony sex offenses vary depending on the age of the victim at the time of the offense or when the offense was reported to law enforcement.

The statute of limitations is the victim's thirtieth birthday if the victim was under the age of eighteen at the time of commission for the following offenses:

- rape in the first or second degree;
- rape of a child in the first, second, or third degree;
- child molestation in the first, second, or third degree;
- sexual exploitation of a minor;
- indecent liberties when the person is incapable of consent due to mental defect or incapacity; and
- incest in the first, or second degree.

The statute of limitations is ten years from commission of the crime for:

- rape in the first or second degree if reported within one year of the crime; and
- indecent liberties when the person is incapable of consent due to mental defect or incapacity.

The statute of limitations for all other sex offenses is three years from the commission of the crime.

Applicability of Changes to Statutes of Limitations. When the Legislature enacts an amendment increasing a criminal statute of limitations period, the new limitation period applies to all crimes not yet time barred on the effective date of the change. However, a legislative change to lengthen a statute of limitations does not impact cases in which the statute of limitations has already expired.

Rape in the Third Degree. In the context of rape and other sex offenses, "consent" means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person commits rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person:

- where the victim did not consent to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct; or
- where there is threat of substantial unlawful harm to the property rights of the victim.

Rape in the third degree is a class C felony and a seriousness level V offense.

**Summary of Bill:** Statutes of Limitations. The statutes of limitations for specified sex offenses are modified as follows:

No statute of limitations:

- rape in the first or second degree when the victim is under age sixteen;
- rape of a child in the first, second, or third degree;
- sexual misconduct with a minor in the first degree;
- custodial sexual misconduct in the first degree;
- child molestation in the first, second, or third degree; and
- sexual exploitation of a minor.

Twenty years from commission of the crime:

- rape in the first or second degree—victim over age sixteen; and
- indecent liberties.

Ten years from commission of the crime:

- rape in the third degree.

Ten years from commission of the crime or up to the victim's thirtieth birthday if the victim was under the age of eighteen at the time of commission of the crime:

- incest;
- commercial sex abuse of a minor—current statute; and
- promoting or promoting travel for commercial sex abuse of a minor—current statute.

Rape in the Third Degree. Rape in the third degree is modified by removing the language requiring that lack of consent was clearly expressed by the victim's words or conduct. Instead, a person commits rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person:

- where the victim did not consent to sexual intercourse with the perpetrator; or
- where there is threat of substantial unlawful harm to the property rights of the victim.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: This bill attempts to align the law with the science of how people process crime. Victims of sexual assault are dealing with an array of trauma, which prevents them from reporting a crime. It often takes victims years to acknowledge what has happened to them. This bill strikes a good balance of allowing victims time to process while holding offenders accountable.

Sexual violence affects 1 in 5 women and 1 in 75 men. This bill is about holding the perpetrators of sexual assault accountable. Removing the reporting requirement will give survivors more time to process the crime or get out of a dangerous situation. There are a myriad of reasons why people have delayed reporting. We have learned from neurobiology that when placed in a traumatic situation, a person may experience fight, flight, or freeze.

Freeze equals tonic immobility. This is where the brain shuts the body down. When this happens, the person does not have the ability to express by words or action that they are not consenting to the experience. This results in another layer of guilt and shame for the survivor.

Often the perpetrator is in a position of trust over a child. It takes time for a person to process and get to point where they can report. Victims should be empowered to come forward when they are ready to do so.

Extending the SOL is very helpful for those seeking justice. After the crime of rape, the thought of anyone touching you or asking questions about what happened can be unacceptable. Further, there is the knowledge that the person reporting will be blamed for the crime and have their credibility questioned. Upon reporting, a victim has to tell their story over and over again and will have their clothing, behavior, actions, etc. questioned at every turn. The decision to report is terrifying and personal.

This bill shifts the burden from the victim just a little bit. Changing the consent language in the rape 3 statute means the world in the ability to prosecute these crimes.

By the time a person realizes what happened to them and is strong enough to report, the statute for the crime has likely run. This is devastating. It takes awhile until a victim no longer blames themselves for the abuse or failing to come forward. Blame is on the state for not having stronger laws to protect victims.

This bill contains two important proposals to expand support for sexual survivors. Rape is the most heinous crime after murder, but the statutes do not reflect that. Every survivor has their own experience and how they deal with trauma. This bill says the state is taking this crime seriously. We have seen multiple accusations in public this year, but only a handful of victims have been able to seek justice for the crime due to the statute of limitations.

The further in time you get from the offense, the less chance of a successful investigation and prosecution. Knowing that, law enforcement supports changes to the SOL. We would much rather fail trying than fail not trying. We would like the best chance of bringing justice as possible. Changing the consent provision for rape 3 sends a message that the victim is not at fault. No other crime requires an affirmative statement on the part of the victim that the criminal behavior is not okay.

CON: This is an emotional issue and presents a challenge for finding the right balance of addressing the harm, promoting access to justice, and allowing for due process. Eliminating the SOL will result in disruption to families when a perpetrator would have been prosecuted in juvenile court had the crime been reported in a timely manner. The perpetrator will now be prosecuted in adult court. It is also not uncommon that a family victim will not want to see another member of the family prosecuted.

**Persons Testifying:** PRO: Senator Manka Dhingra, Prime Sponsor; Andrea Piper-Wentland, Washington Coalition of Sexual Assault Programs; Lisa Flotin, Survivor; Megan Freney, Survivor; David Ward, Legal Voice; James McMahan, Washington Association of Sheriffs and Police Chiefs; Pennie Saum, Brave and Unbroken; Lisa Blume, citizen; Nick Federici, Meridian High School AP U.S. Government & Politics class, through TVW's Capitol

Classroom.

CON: Alex Hur, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

**Persons Signed In To Testify But Not Testifying:** No one.