

SENATE BILL REPORT

SSB 6155

As Passed Senate, February 12, 2020

Title: An act relating to eliminating proof of nonmarriage as an element of a sex offense.

Brief Description: Eliminating proof of nonmarriage as an element of a sex offense.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Cleveland, Dhingra, Keiser, Kuderer, Mullet and Nguyen).

Brief History:

Committee Activity: Law & Justice: 1/21/20, 1/23/20 [DPS].

Floor Activity:

Passed Senate: 2/12/20, 46-0.

<p style="text-align: center;">Brief Summary of First Substitute Bill</p> <ul style="list-style-type: none">• Removes the requirement that the state prove the perpetrator was not married to the victim as an element of a sex crime involving a minor or vulnerable adult.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6155 be substituted therefor, and the substitute bill 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: In 1988, the state created several sex offenses for when the victim of the crime is a minor child or vulnerable adult. Many of these crimes differentiate between degrees depending on the victim's age. All of the crimes include the same terminology, requiring as an element of the crime, the victim not be married to the perpetrator. These crimes include the following:

- rape 2, when the victim is a person with a developmental disability, and the perpetrator has supervisory authority over the victim or was providing transportation to the victim in the course of their employment;

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.

- rape 2, when the victim is a frail elder or vulnerable adult, and the perpetrator has a significant relationship with the victim or was providing transportation;
- rape of a child 1, including sexual intercourse when the victim is less than 12 years old and the perpetrator is at least 24 months older than the victim;
- rape of a child 2, including sexual intercourse when the victim is between 12 and 14 years old and the perpetrator is at least 36 months older;
- rape of a child 3, including sexual intercourse when the victim is between 14 and 16 years old and the perpetrator is at least 48 months older;
- child molestation 1, including sexual contact of a victim less than 12 years old, when the perpetrator is at least 36 months older;
- child molestation 2, including sexual contact of a victim between 12 and 14 years old, when the perpetrator is at least 36 months older;
- child molestation 3, including sexual contact of a victim between 14 and 16 years old, when the perpetrator is at least 48 months older;
- sexual misconduct with a minor 1, including sexual intercourse with a victim between 16 and 18 years old, when the perpetrator is at least 36 months older, involving a significant relationship and abuses in a supervisory position;
- sexual misconduct with a minor 1, including sexual intercourse with a victim between 16 and 21 years old and an enrolled student, when the perpetrator is a school employee and at least 60 months older;
- sexual misconduct with a minor 2, including sexual contact with a victim between 16 and 18 years old, when the perpetrator is at least 60 months older and involves a significant relationship and abuses in a supervisory position;
- sexual misconduct with a minor 2, including sexual contact with a victim between 16 and 21 years old and an enrolled student, when the perpetrator is a school employee and at least 60 months older;
- indecent liberties, including sexual contact with a victim having a developmental disability and the perpetrator has supervisory authority over the victim or was providing transportation to the victim in the course of their employment;
- indecent liberties, including sexual contact with a victim who is a resident of a facility for persons with mental disorders or chemical dependency and the perpetrator has supervisory authority over the victim; and
- indecent liberties, including sexual contact with a victim who is a frail elder or vulnerable adult, and the perpetrator has a significant relationship with the victim or was providing transportation.

Significant relationship means a situation in which the perpetrator is:

- a person who provides education, health, welfare, or organized recreational activities principally for minors;
- a person, who in the course of their employment, supervises minors; or
- a person who provides welfare, health or residential assistance, personal care, or organized recreational activities to frail elders or vulnerable adults, but not including a consensual sexual partner.

A person with supervisory authority means any proprietor or employee of a public or private care or treatment facility who directly supervises developmentally disabled, mentally disordered, or chemically dependent persons at the facility.

Washington requires any offender convicted of a sex offense to register with the sheriff in the county in which they reside. If a sex offender moves to Washington from out of state, the offender is required to register in Washington if the person would be required to register as a sex offender while residing in their state of conviction; or, if not required to register in the state of conviction, an offense that under the laws of this state would be classified as a sex offense.

Earlier this year, the court held in *State v. Batson*, 9 Wn. App. 2d 546 (2019), requiring an offender to register in Washington if the person is required to register in their state of conviction was an unconstitutional delegation of authority. Washington is now required to conduct a comparability analysis for any sex offender moving to this state to determine if their offense is comparable to an offense for which registration is required in Washington. Many states do not include proof the perpetrator not be married to the victim at the time of the offense as an element of a sex crime. As a result, these crimes are not comparable to Washington crimes, and the out of state sex offender is not required to register when moving to Washington.

Summary of First Substitute Bill: The requirement that the perpetrator of a sex crime against a minor child or vulnerable adult not be married to the victim at the time of the offense is removed as an element of the crimes.

Appropriation: None.

Fiscal Note: Not requested.

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 on First Substitute: PRO: This bill is a request from the Children's Justice Center in my district. The Center helps investigate and prosecute cases of child abuse. The requirement to prove a victim is not married to the perpetrator is antiquated. Further, due to the court decision in *State v. Batson*, a sex offender who moves to Washington from out of state may not be required to register. There is a need to clarify existing law to ensure that we do not have unintended loopholes. Numerous other states have updated their laws and it is time to modernize our laws in the same way.

Right now in order to convict someone for rape of a child, the prosecutor must prove a 60-year-old perpetrator is not married to the victim even if the victim is 6 years old. The nonmarriage requirement was first written into the law when a man was legally entitled to own a woman's body. Because of current caselaw requiring us to prove an out of state offender is comparable to a crime in Washington, many out of state sex offenders are not being required to register and have had to deregister out of state offenders. We estimate 50 percent of out of state offenders are not being required to register as a result of the nonmarriage requirement. So far, 580 sex offenders have been deregistered in King County.

This is not just a registration concern, but also a sentencing concern. The same comparability issues can affect the sentencing an offender receives if they have an out of state sex offense. This is a public safety concern.

Sexual violence is wrong regardless of whether the victim and perpetrator are married or not. It is especially wrong when it involves a child. If sex offenders know they can come to Washington and escape registration, we will become a magnet for out of state sex offenders.

Persons Testifying: PRO: Senator Annette Cleveland, Prime Sponsor; Nami Kim, King County Prosecutor's Office; Russell Brown, Executive Director, Washington Association of Prosecuting Attorneys; James McMahan, Washington Association of Sheriffs and Police Chiefs.

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