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**SENATE BILL 5177**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senators Cleveland and Dhingra

1 AN ACT Relating to eliminating proof of nonmarriage as an element  
2 of a sex offense; amending RCW 9A.44.050, 9A.44.073, 9A.44.076,  
3 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, 9A.44.093, 9A.44.096, and  
4 9A.44.100; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 9A.44.050 and 2007 c 20 s 1 are each amended to read  
7 as follows:

8 (1) A person is guilty of rape in the second degree when, under  
9 circumstances not constituting rape in the first degree, the person  
10 engages in sexual intercourse with another person:

11 (a) By forcible compulsion;

12 (b) When the victim is incapable of consent by reason of being  
13 physically helpless or mentally incapacitated;

14 (c) When the victim is a person with a developmental disability  
15 and the perpetrator is a person who (~~is not married to the victim~~  
16 ~~and who~~):

17 (i) Has supervisory authority over the victim; or

18 (ii) Was providing transportation, within the course of his or  
19 her employment, to the victim at the time of the offense;

20 (d) When the perpetrator is a health care provider, the victim is  
21 a client or patient, and the sexual intercourse occurs during a

1 treatment session, consultation, interview, or examination. It is an  
2 affirmative defense that the defendant must prove by a preponderance  
3 of the evidence that the client or patient consented to the sexual  
4 intercourse with the knowledge that the sexual intercourse was not  
5 for the purpose of treatment;

6 (e) When the victim is a resident of a facility for persons with  
7 a mental disorder or chemical dependency and the perpetrator is a  
8 person who (~~is not married to the victim and~~) has supervisory  
9 authority over the victim; or

10 (f) When the victim is a frail elder or vulnerable adult and the  
11 perpetrator is a person who (~~is not married to the victim and who~~):

12 (i) Has a significant relationship with the victim; or

13 (ii) Was providing transportation, within the course of his or  
14 her employment, to the victim at the time of the offense.

15 (2) Rape in the second degree is a class A felony.

16 **Sec. 2.** RCW 9A.44.073 and 1988 c 145 s 2 are each amended to  
17 read as follows:

18 (1) A person is guilty of rape of a child in the first degree  
19 when the person has sexual intercourse with another who is less than  
20 twelve years old (~~and not married to the perpetrator~~) and the  
21 perpetrator is at least twenty-four months older than the victim.

22 (2) Rape of a child in the first degree is a class A felony.

23 **Sec. 3.** RCW 9A.44.076 and 1990 c 3 s 903 are each amended to  
24 read as follows:

25 (1) A person is guilty of rape of a child in the second degree  
26 when the person has sexual intercourse with another who is at least  
27 twelve years old but less than fourteen years old (~~and not married~~  
28 ~~to the perpetrator~~) and the perpetrator is at least thirty-six  
29 months older than the victim.

30 (2) Rape of a child in the second degree is a class A felony.

31 **Sec. 4.** RCW 9A.44.079 and 1988 c 145 s 4 are each amended to  
32 read as follows:

33 (1) A person is guilty of rape of a child in the third degree  
34 when the person has sexual intercourse with another who is at least  
35 fourteen years old but less than sixteen years old (~~and not married~~  
36 ~~to the perpetrator~~) and the perpetrator is at least forty-eight  
37 months older than the victim.

1 (2) Rape of a child in the third degree is a class C felony.

2 **Sec. 5.** RCW 9A.44.083 and 1994 c 271 s 303 are each amended to  
3 read as follows:

4 (1) A person is guilty of child molestation in the first degree  
5 when the person has, or knowingly causes another person under the age  
6 of eighteen to have, sexual contact with another who is less than  
7 twelve years old (~~((and not married to the perpetrator))~~) and the  
8 perpetrator is at least thirty-six months older than the victim.

9 (2) Child molestation in the first degree is a class A felony.

10 **Sec. 6.** RCW 9A.44.086 and 1994 c 271 s 304 are each amended to  
11 read as follows:

12 (1) A person is guilty of child molestation in the second degree  
13 when the person has, or knowingly causes another person under the age  
14 of eighteen to have, sexual contact with another who is at least  
15 twelve years old but less than fourteen years old (~~((and not married  
16 to the perpetrator))~~) and the perpetrator is at least thirty-six  
17 months older than the victim.

18 (2) Child molestation in the second degree is a class B felony.

19 **Sec. 7.** RCW 9A.44.089 and 1994 c 271 s 305 are each amended to  
20 read as follows:

21 (1) A person is guilty of child molestation in the third degree  
22 when the person has, or knowingly causes another person under the age  
23 of eighteen to have, sexual contact with another who is at least  
24 fourteen years old but less than sixteen years old (~~((and not married  
25 to the perpetrator))~~) and the perpetrator is at least forty-eight  
26 months older than the victim.

27 (2) Child molestation in the third degree is a class C felony.

28 **Sec. 8.** RCW 9A.44.093 and 2009 c 324 s 1 are each amended to  
29 read as follows:

30 (1) A person is guilty of sexual misconduct with a minor in the  
31 first degree when: (a) The person has, or knowingly causes another  
32 person under the age of eighteen to have, sexual intercourse with  
33 another person who is at least sixteen years old but less than  
34 eighteen years old (~~((and not married to the perpetrator))~~), if the  
35 perpetrator is at least sixty months older than the victim, is in a  
36 significant relationship to the victim, and abuses a supervisory

1 position within that relationship in order to engage in or cause  
2 another person under the age of eighteen to engage in sexual  
3 intercourse with the victim; (b) the person is a school employee who  
4 has, or knowingly causes another person under the age of eighteen to  
5 have, sexual intercourse with an enrolled student of the school who  
6 is at least sixteen years old and not more than twenty-one years old  
7 (~~and not married to the employee~~), if the employee is at least  
8 sixty months older than the student; or (c) the person is a foster  
9 parent who has, or knowingly causes another person under the age of  
10 eighteen to have, sexual intercourse with his or her foster child who  
11 is at least sixteen.

12 (2) Sexual misconduct with a minor in the first degree is a class  
13 C felony.

14 (3) For the purposes of this section:

15 (a) "Enrolled student" means any student enrolled at or attending  
16 a program hosted or sponsored by a common school as defined in RCW  
17 28A.150.020, or a student enrolled at or attending a program hosted  
18 or sponsored by a private school under chapter 28A.195 RCW, or any  
19 person who receives home-based instruction under chapter 28A.200 RCW.

20 (b) "School employee" means an employee of a common school  
21 defined in RCW 28A.150.020, or a grade kindergarten through twelve  
22 employee of a private school under chapter 28A.195 RCW, who is not  
23 enrolled as a student of the common school or private school.

24 **Sec. 9.** RCW 9A.44.096 and 2009 c 324 s 2 are each amended to  
25 read as follows:

26 (1) A person is guilty of sexual misconduct with a minor in the  
27 second degree when: (a) The person has, or knowingly causes another  
28 person under the age of eighteen to have, sexual contact with another  
29 person who is at least sixteen years old but less than eighteen years  
30 old (~~and not married to the perpetrator~~), if the perpetrator is at  
31 least sixty months older than the victim, is in a significant  
32 relationship to the victim, and abuses a supervisory position within  
33 that relationship in order to engage in or cause another person under  
34 the age of eighteen to engage in sexual contact with the victim; (b)  
35 the person is a school employee who has, or knowingly causes another  
36 person under the age of eighteen to have, sexual contact with an  
37 enrolled student of the school who is at least sixteen years old and  
38 not more than twenty-one years old (~~and not married to the~~  
39 ~~employee~~), if the employee is at least sixty months older than the

1 student; or (c) the person is a foster parent who has, or knowingly  
2 causes another person under the age of eighteen to have, sexual  
3 contact with his or her foster child who is at least sixteen.

4 (2) Sexual misconduct with a minor in the second degree is a  
5 gross misdemeanor.

6 (3) For the purposes of this section:

7 (a) "Enrolled student" means any student enrolled at or attending  
8 a program hosted or sponsored by a common school as defined in RCW  
9 28A.150.020, or a student enrolled at or attending a program hosted  
10 or sponsored by a private school under chapter 28A.195 RCW, or any  
11 person who receives home-based instruction under chapter 28A.200 RCW.

12 (b) "School employee" means an employee of a common school  
13 defined in RCW 28A.150.020, or a grade kindergarten through twelve  
14 employee of a private school under chapter 28A.195 RCW, who is not  
15 enrolled as a student of the common school or private school.

16 **Sec. 10.** RCW 9A.44.100 and 2013 c 94 s 2 are each amended to  
17 read as follows:

18 (1) A person is guilty of indecent liberties when he or she  
19 knowingly causes another person to have sexual contact with him or  
20 her or another:

21 (a) By forcible compulsion;

22 (b) When the other person is incapable of consent by reason of  
23 being mentally defective, mentally incapacitated, or physically  
24 helpless;

25 (c) When the victim is a person with a developmental disability  
26 and the perpetrator is a person who (~~is not married to the victim~~  
27 ~~and who~~):

28 (i) Has supervisory authority over the victim; or

29 (ii) Was providing transportation, within the course of his or  
30 her employment, to the victim at the time of the offense;

31 (d) When the perpetrator is a health care provider, the victim is  
32 a client or patient, and the sexual contact occurs during a treatment  
33 session, consultation, interview, or examination. It is an  
34 affirmative defense that the defendant must prove by a preponderance  
35 of the evidence that the client or patient consented to the sexual  
36 contact with the knowledge that the sexual contact was not for the  
37 purpose of treatment;

38 (e) When the victim is a resident of a facility for persons with  
39 a mental disorder or chemical dependency and the perpetrator is a

1 person who (~~is not married to the victim and~~) has supervisory  
2 authority over the victim; or

3 (f) When the victim is a frail elder or vulnerable adult and the  
4 perpetrator is a person who (~~is not married to the victim and who~~):

5 (i) Has a significant relationship with the victim; or

6 (ii) Was providing transportation, within the course of his or  
7 her employment, to the victim at the time of the offense.

8 (2)(a) Except as provided in (b) of this subsection, indecent  
9 liberties is a class B felony.

10 (b) Indecent liberties by forcible compulsion is a class A  
11 felony.

12 NEW SECTION. **Sec. 11.** This act is necessary for the immediate  
13 preservation of the public peace, health, or safety, or support of  
14 the state government and its existing public institutions, and takes  
15 effect immediately.

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