

2017 Washington Legislative Session: Sex Offender Laws Enacted and Pending

HB 1079. Creating a criminal no-contact order for trafficking and prostitution-related offenses

- Signed by Governor Inslee May 5, 2017. Effective July 23, 2017.
- 1. Requires defendants charged with trafficking or promoting prostitution offenses, who are not arrested, to appear in court no later than fourteen days after they are served with the citation, complaint or summons.
- 2. Requires the court, at that appearance, to determine the necessity of imposing a no-contact order and other conditions of pretrial release.
- 3. Requires the clerk of the court, when a no-contact order is issued, to forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency.

HB 1079. Summary of Bill Continued

- 4. Requires the law enforcement agency to enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available to list outstanding warrants.
- 5. Authorizes general authority Washington peace officers to enforce provisions restricting a defendant's ability to have contact with the victim or others.
- 6. Authorizes the court, under certain circumstances, to terminate or modify the terms of an existing no-contact order, including terms related to firearms, other dangerous weapons, or concealed pistol licenses.

HB 1832. The commercially sexually exploited children statewide coordinating committee

- Signed by Governor Inslee April 17, 2017. Effective April 17, 2017.
- The Commercially Sexually Exploited Children Statewide Coordinating Committee (Committee) was established in 2013 to address the issue of children who are commercially sexually exploited, to examine the practices of local and regional entities involved in addressing sexually exploited children, and to make recommendations on statewide laws and practices.
- Summary of the Bill: The Committee's expiration date is extended to June 30, 2023. The reporting requirement is changed to an annual requirement, and the Committee must report on recommendations, as well as findings as an ongoing requirement.

HB 1109. Supporting victims of sexual assault- Sexual Assault Kits, trauma informed policing

- Signed by Governor Inslee on May 16, 2017. Effective July 23, 2017.
- 1. Creates the Washington Sexual Assault Kit Initiative (SAKI) Pilot Project to fund the creation of locally based multidisciplinary community response teams to conduct cold case investigations tied to previously unsubmitted sexual assault kits (SAKs).
- 2. Requires the Washington association of sheriffs and police chiefs to establish the Washington sexual assault kit initiative project.

HB 1109. Training and Funding.

- 3. Requires the criminal justice training commission to:
 - (a.) Provide training for persons responsible for investigating sexual assault cases involving adult victims;
 - (b.) Develop training on a victim-centered, trauma-informed approach to interacting with victims and responding to sexual assault calls; and
 - (c.) In developing the training, seek advice from the Washington association of sheriffs and police chiefs, the Washington coalition of sexual assault programs, and experts on sexual assault and the neurobiology of trauma.
- 4. Creates the sexual assault prevention and response account. Provides that this act is null and void if appropriations are not approved.

HB 1109. Some History

2015 Change to SAK Handling

- Prior to 2015, law enforcement agencies and prosecutors had discretion to send SAKs to forensic laboratories for testing, but were not required to do so.
- In 2015 the Legislature passed Substitute House Bill 1068 (SHB 1068), which requires a law enforcement agency to submit a SAK to the Washington State Patrol (WSP) Crime Laboratory within 30 days of receiving it, provided that the victim has consented to the testing.
- Consent is not a condition of submission if the SAK was collected from a non-emancipated minor.
- The requirement to test SAKs is prospective as of July 24, 2015, meaning it does not apply to previously collected SAKs.

HB 1184.

Modifying patronizing a prostitute provisions

- Governor Inslee signed May 5, 2017. Effective July 23, 2017.
- Provides that the crime of patronizing a prostitute may be considered as being committed in more than one location.
- The crime is deemed to have been committed in any location in which the defendant commits an act that constitutes part of the crime.
- Considers a person who sends a communication to patronize a prostitute to have committed the crime both at the place from which the contact was made and where the communication is received,
- However it must be construed to prohibit anyone from being prosecuted twice for substantially the same crime.

HB 1200. Creating the new crime of Voyeurism Second Degree

- Governor Inslee signed on May 16, 2017. Effective July 23, 2017.
- 1. Establishes the crime of voyeurism in the second degree which is a gross misdemeanor and is not a sex offense for the purposes of sentencing or sex offender registration requirements.
- 2. Diversion for younger juveniles. Requires a prosecutor, where a case is legally sufficient to charge an alleged offender with voyeurism in the second degree, and the offender is under seventeen years old, and the alleged offense is the offender's first voyeurism in the second degree offense, to divert the case, unless the offender has received two diversions for any offense in the previous two years.

HB 1200. Elements and consequences of Voyeurism Second Degree

- A person commits the crime of voyeurism in the second degree if
- (a) he or she intentionally photographs or films another person for the purpose of photographing or filming the intimate areas of that person
- (b) **with the intent to distribute/disseminate the photograph or film, (rather than sexual gratification)**
- (c) without that person's knowledge and consent,
- (d) and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.
- Voyeurism in the second degree is a **gross misdemeanor**.
- Voyeurism in the second degree is **not a sex offense** for the purposes of sentencing or sex offender registration requirements under this chapter.

HB 1200. Voyeurism First Degree Created

- Same as current Voyeurism, which requires the element of “for the purpose of arousing or gratifying the sexual desire of any person.”
- Second Degree is designed to address voyeuristic behavior not covered under the current law which requires proof of sexual gratification.
- Testimony in favor of HB 1200 cited instances where cheerleaders said they did not want to wear skirts because perpetrators were using cell phone cameras to film under their skirts, and noted this is happening in schools, churches, airports.
- Currently, Prosecutors may be reluctant to charge cases because they cannot prove sexual gratification. The bill addresses this situation by creating a lesser offense where sexual gratification is not an element.

HB 1728. Protecting minors from sexual exploitation-Special Inquiry Judge Process

- Governor Inslee signed on April 25, 2017. Effective July 23, 2017.
- Summary. In any criminal investigation of an offense involving the sexual exploitation of children, the prosecuting attorney must use the Special Inquiry Judge (SIJ) process when the prosecuting attorney determines it is necessary to the investigation to subpoena a provider of electronic communication services or remote computing services for production of records relevant to the investigation.

HB 1728. What the SIJ subpoena can obtain

- Records of information that may be obtained under the subpoena include, but are not limited to, the following subscriber or customer information:
 - name and address;
 - local and long distance telephone connection records, or records of session times and durations;
 - length of service and types of service utilized;
 - telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
 - means and source of payment for such service, including any credit card or bank account number.

HB 1728. Notice to subscribers/subjects of SIJ subpoena is forbidden

- A provider of electronic communication services or remote computing services that receives a subpoena for subscriber or customer records may not disclose the existence of the subpoena to the subscribers or customers whose records or information are requested or released under the subpoena.

HB 1728. Special Inquiry Judge Proceedings: Some History

- Special inquiry judge (SIJ) proceedings were established in 1971 to combat crime and corruption.
- A "special inquiry judge" is a superior court judge designated by the judges of that court to hear and receive evidence of crime and corruption.
- An SIJ proceeding may be initiated by petition of the prosecuting attorney.
- The SIJ may issue subpoenas for records and testimony when there is **reason to suspect crime or corruption**. (which is a lower standard than **probable cause**)
- Special inquiry judge proceedings are secret. Records are available only to the attorney that instituted the proceeding, or as ordered by the court.
- An SIJ proceeding may be used only during criminal investigations and may not be used once a crime has been charged.

HB 1754. Prioritizing sex offender treatment based on the offender's risk to reoffend

- Governor Inslee signed April 27, 2017. Effective July 23, 2017.
- Requires the Department of Corrections to prioritize access to sex offender treatment based on an offender's risk to reoffend, rather than provide access to treatment for all offenders serving determinate-plus sentences.
- Lower risk offenders with indeterminate sentences will likely not receive SOTP in prison and will be required to obtain psychosexual evaluations and pay for treatment once and if they are released.

SB 5030. Concerning trafficking, promoting prostitution, commercial sexual abuse of a minor

- Governor Inslee signed May 5, 2017. Effective July 23, 2017.
- 1. The crimes of commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, and promoting prostitution are modified to specify that the crimes can be committed when anything of value is provided, rather than just providing a fee or other property.
- 2. The statute of limitations for commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, and promoting travel for commercial sexual abuse of a minor are extended to the later of the victim's 30th birthday or ten years after the offense is committed.
- 3. The statute of limitations for human trafficking is extended to ten years after the offense is committed.

SB 5083. Concerning notice to victim's of petitions for relief from the duty to register

- Governor Inslee signed April 20, 2017. Effective July 23, 2017.
- Addresses the petition for relief from registration or exemption from community notification requirements with regard to sex offenders and kidnapping offenders.
- Requires the prosecuting attorney to make reasonable efforts to notify the victim via the victim's choice of telephone, letter, or e-mail, if known.
- Courts were already required to consider “Any input of the victim” in considering these petitions (9A.44.142, 143) but there was no explicit requirement they be contacted about those petitions.

SB 5256. Concerning sexual assault protection orders (SAPOs)

- Governor Inslee signed May 5, 2017. Effective July 23, 2017.
- Summary. Provisions governing the allowed term of a sexual assault protection order and standards for renewal, modification, or termination of a sexual assault protection order are revised.
- Term of an Order: The two-year maximum term for a final sexual assault protection order is changed to allow an order to be made permanent.

SB 5256. Renewal of SAPO Orders

- Renewal of an Order. A motion to renew an ex parte temporary or nonpermanent final sexual assault protection order must state the reasons for seeking renewal.
- The court must grant a motion for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not engage in, or attempt contact with, the petitioner after the order expires.

SB 5256. Respondent's Burden to Prevent SAPO Renewal

- The passage of time and compliance with the existing order are not, alone, sufficient to meet the burden of proof.
- In determining whether there has been a material change in circumstances, the court may consider only factors that address whether the respondent is likely to engage in, or attempt contact with, the petitioner when the order expires, including whether or not the respondent:
 - has committed or threatened sexual assault, domestic violence, stalking, or other violent acts since the order was entered;
 - has violated the terms of the order, and how much time has passed since entry of the order;
 - has exhibited suicidal ideation or attempts since the order was entered;

SB 5256. Respondent's Burden to Prevent SAPO Renewal, Continued

- has been convicted of criminal activity since the order was entered;
- has acknowledged responsibility for the acts of sexual assault underling the order or has successfully completed sexual assault perpetrator treatment or counseling since the order was entered;
- has a continuing involvement with drug or alcohol abuse, if such abuse was a factor in the protection order;
- or has relocated to an area more distant from the other party.

SB 5256. Respondent's Burden to Modify or Terminate SAPO

- The procedures for modification or termination of a sexual assault protection order are revised and standards are established for a respondent to petition for termination or modification, including for modification or termination of restrictions on firearm purchase, transfer, or possession.
- The respondent must include a declaration setting forth facts supporting the requested order for termination or modification, and the nonmoving parties may file opposing declarations.
- The court may set the motion for hearing only if the court finds adequate cause for a hearing based on the declarations.

SB 5256. Hearing on Respondent's Motion to Modify or Terminate SAPO

- After a hearing, the court may terminate or modify the order if the respondent proves by a preponderance of the evidence that there has been a material change in circumstances such that the respondent is not likely to engage in, or attempt contact with, the protected person if the order is terminated or modified.
- A respondent may petition for termination or modification once in every 12-month period.
- A court may require the respondent to pay the petitioner for costs incurred in responding to a motion to terminate or modify, including reasonable attorneys' fees.

SB 5813. Concerning crimes against minors, certain defenses are barred

- In a prosecution under chapter 9A.40 RCW (kidnapping, unlawful imprisonment, custodial interference, luring, trafficking, and coercion of involuntary servitude) in which the offense or degree of the offense depends on the victim's age, it is not a defense that the perpetrator did not know the victim's age, or that the perpetrator believed the victim to be older, as the case may be."
- This statute was silent on this issue prior to this.

SB 5813. Some Context--Defenses based on knowledge of minor's age in other crimes

- For Child Molestation or Rape of a Child That it is a defense that the defendant **reasonably believed** the alleged victim to be the age identified in subsection (3) of this section (of legal age for that person) **based upon declarations as to age by the alleged victim. 9A.44.030.**
- With CMIP or CSAM, it is a defense if the person makes a bona fide attempt to discover the person's age by asking for **a valid identification** and does not rely solely on the oral statements or apparent age of the minor. **9.68A.110.**
- With Child Porn cases, it is a defense, that at the time of the offense the defendant was **not in possession of any facts on the basis of which he or she should reasonably have known** that the person depicted was a minor. **9.68A.110.**

Pending Bills of Interest:

HB 1111. Concerning DNA biological samples

- Has not passed either House yet.
- 1. Requires DNA collection from offenders upon conviction for indecent exposure.
- 2. Requires DNA collection from persons convicted under a municipal ordinance that is equivalent to a state criminal statute for which DNA is collected upon conviction.
- 3. Expands the crime of Refusal to Provide a DNA sample to apply to any person lawfully required to provide a sample, rather than only persons required to register as sex or kidnapping offenders.

HB 1155.

Statute of Limitations for felony sex offenses

- **Making felony sex offenses a crime that may be prosecuted at any time after its commission.** Passed the House 90 – 8.
- Allows the following offenses to be prosecuted at any time after their commission:
 - (1) Rape 1, 2 or 3; (2) Rape of a child 1, 2 or 3;
 - (3) Child molestation 1, 2, or 3; (4) Sexual misconduct with a minor 1;
 - (5) Sexually violating human remains; (6) Custodial sexual misconduct 1;
 - (7) Incest 1 or 2; (8) Sexual exploitation of a minor;
 - (9) Commercial sexual abuse of a minor; (10) Promoting commercial sexual abuse of a minor;
 - (11) Promoting travel for commercial sexual abuse of a minor.

Contact Information

Brad A. Meryhew

The Meryhew Law Group, PLLC

The Pioneer Building

600 First Avenue, Suite 512

Seattle, Washington 98104

(206) 264-1590

brad@meryhewlaw.com

www.meryhewlaw.com