

**RCW 9.94A.838 Special allegation—Victim had diminished capacity**

**—Procedures.** (1) In a prosecution for rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation, the prosecuting attorney shall file a special allegation that the victim of the offense was, at the time of the offense, a person with a developmental disability or a mental disorder or a frail elder or vulnerable adult, whenever sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding by a reasonable and objective fact finder that the victim was, at the time of the offense, a person with a developmental disability or a mental disorder or a frail elder or vulnerable adult, unless the prosecuting attorney determines, after consulting with a victim, that filing a special allegation under this section is likely to interfere with the ability to obtain a conviction.

(2) Once a special allegation has been made under this section, the state has the burden to prove beyond a reasonable doubt that the victim was, at the time of the offense, a person with a developmental disability or a mental disorder or a frail elder or vulnerable adult. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the victim was, at the time of the offense, a person with a developmental disability or a mental disorder or a frail elder or vulnerable adult. If no jury is had, the court shall make a finding of fact as to whether the victim was, at the time of the offense, a person with a developmental disability or a mental disorder or a frail elder or vulnerable adult.

(3) The prosecuting attorney shall not withdraw a special allegation filed under this section without the approval of the court through an order of dismissal of the allegation. The court may not dismiss the special allegation unless it finds that the order is necessary to correct an error in the initial charging decision or that there are evidentiary problems that make proving the special allegation doubtful.

(4) For purposes of this section, "person with a developmental disability," "person with a mental disorder," and "frail elder or vulnerable adult" have the same meaning as in RCW 9A.44.010. [2023 c 470 § 3010; 2006 c 122 § 3.]

**Explanatory statement—2023 c 470:** See note following RCW 10.99.030.

**Effective date—2006 c 122 §§ 1-4 and 6:** See note following RCW 9.94A.836.