
SENATE BILL 5439

State of Washington 60th Legislature 2007 Regular Session

By Senators Eide, Haugen, McAuliffe, Benton, Rasmussen and Kohl-Welles

Read first time 01/19/2007. Referred to Committee on Judiciary.

1 AN ACT Relating to protecting frail elders and vulnerable adults
2 and persons with developmental disabilities from perpetrators who
3 commit their crimes while providing transportation, within the course
4 of their employment, to frail elders and vulnerable adults and persons
5 with developmental disabilities; amending RCW 9A.44.050 and 9A.44.100;
6 prescribing penalties; and declaring an emergency.

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

8 **Sec. 1.** RCW 9A.44.050 and 1997 c 392 s 514 are each amended to
9 read as follows:

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

13 (a) By forcible compulsion;

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

16 (c) When the victim (~~is developmentally disabled~~) has a
17 developmental disability and the perpetrator is a person who is not
18 married to the victim and who:

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

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

3 (d) When the perpetrator is a health care provider, the victim is
4 a client or patient, and the sexual intercourse occurs during a
5 treatment session, consultation, interview, or examination. It is an
6 affirmative defense that the defendant must prove by a preponderance of
7 the evidence that the client or patient consented to the sexual
8 intercourse with the knowledge that the sexual intercourse was not for
9 the purpose of treatment;

10 (e) When the victim is a resident of a facility for (~~mentally~~
11 ~~disordered or chemically dependent~~) persons with a mental disorder or
12 chemical dependency and the perpetrator is a person who is not married
13 to the victim and has supervisory authority over the victim; or

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

16 (i) Has a significant relationship with the victim; or
17 (ii) Was providing transportation, within the course of his or her
18 employment, to the victim at the time of the offense.

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

20 **Sec. 2.** RCW 9A.44.100 and 2003 c 53 s 67 are each amended to read
21 as follows:

22 (1) A person is guilty of indecent liberties when he or she
23 knowingly causes another person who is not his or her spouse to have
24 sexual contact with him or her or another:

25 (a) By forcible compulsion;

26 (b) When the other person is incapable of consent by reason of
27 being mentally defective, mentally incapacitated, or physically
28 helpless;

29 (c) When the victim (~~is developmentally disabled~~) has a
30 developmental disability and the perpetrator is a person who is not
31 married to the victim and who:

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

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

35 (d) When the perpetrator is a health care provider, the victim is
36 a client or patient, and the sexual contact occurs during a treatment
37 session, consultation, interview, or examination. It is an affirmative

1 defense that the defendant must prove by a preponderance of the
2 evidence that the client or patient consented to the sexual contact
3 with the knowledge that the sexual contact was not for the purpose of
4 treatment;

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

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

- 11 (i) Has a significant relationship with the victim; or
12 (ii) Was providing transportation, within the course of his or her
13 employment, to the victim at the time of the offense.

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

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

17 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
18 preservation of the public peace, health, or safety, or support of the
19 state government and its existing public institutions, and takes effect
20 immediately.

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