
HOUSE BILL 2470

State of Washington 55th Legislature 1998 Regular Session

By Representatives Lambert, Sheahan, Carrell, Zellinsky and Mulliken

Read first time . Referred to Committee on .

1 AN ACT Relating to rape of an inmate or criminal defendant by a
2 person with supervisory authority over the inmate or criminal
3 defendant; amending RCW 9A.44.050 and 9A.44.100; reenacting and
4 amending RCW 9A.44.010; adding new sections to chapter 9A.44 RCW;
5 adding a new section to chapter 43.121 RCW; and prescribing penalties.

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

7 **Sec. 1.** RCW 9A.44.010 and 1997 c 392 s 513 and 1997 c 112 s 37 are
8 each reenacted and amended to read as follows:

9 As used in this chapter:

10 (1) "Sexual intercourse" (a) has its ordinary meaning and occurs
11 upon any penetration, however slight, and

12 (b) Also means any penetration of the vagina or anus however
13 slight, by an object, when committed on one person by another, whether
14 such persons are of the same or opposite sex, except when such
15 penetration is accomplished for medically recognized treatment or
16 diagnostic purposes, and

17 (c) Also means any act of sexual contact between persons involving
18 the sex organs of one person and the mouth or anus of another whether
19 such persons are of the same or opposite sex.

1 (2) "Sexual contact" means any touching of the sexual or other
2 intimate parts of a person done for the purpose of gratifying sexual
3 desire of either party or a third party.

4 (3) "Married" means one who is legally married to another, but does
5 not include a person who is living separate and apart from his or her
6 spouse and who has filed in an appropriate court for legal separation
7 or for dissolution of his or her marriage.

8 (4) "Mental incapacity" is that condition existing at the time of
9 the offense which prevents a person from understanding the nature or
10 consequences of the act of sexual intercourse whether that condition is
11 produced by illness, defect, the influence of a substance or from some
12 other cause.

13 (5) "Physically helpless" means a person who is unconscious or for
14 any other reason is physically unable to communicate unwillingness to
15 an act.

16 (6) "Forcible compulsion" means physical force which overcomes
17 resistance, or a threat, express or implied, that places a person in
18 fear of death or physical injury to herself or himself or another
19 person, or in fear that she or he or another person will be kidnapped.

20 (7) "Consent" means that at the time of the act of sexual
21 intercourse or sexual contact there are actual words or conduct
22 indicating freely given agreement to have sexual intercourse or sexual
23 contact.

24 (8) "Significant relationship" means a situation in which the
25 perpetrator is:

26 (a) A person who undertakes the responsibility, professionally or
27 voluntarily, to provide education, health, welfare, or organized
28 recreational activities principally for minors;

29 (b) A person who in the course of his or her employment supervises
30 minors; or

31 (c) A person who provides welfare, health or residential
32 assistance, personal care, or organized recreational activities to
33 frail elders or vulnerable adults, including a provider, employee,
34 temporary employee, volunteer, or independent contractor who supplies
35 services to long-term care facilities licensed or required to be
36 licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home
37 health, hospice, or home care agencies licensed or required to be
38 licensed under chapter 70.127 RCW, but not including a consensual
39 sexual partner.

1 (9) "Abuse of a supervisory position" means a direct or indirect
2 threat or promise to use authority to the detriment or benefit of a
3 minor.

4 (10) "Developmentally disabled," for purposes of RCW
5 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a
6 developmental disability as defined in RCW 71A.10.020.

7 (11) "Person with supervisory authority," for purposes of RCW
8 9A.44.050(1) (c) or (e) and 9A.44.100(1) (c) or (e), means any
9 proprietor or employee of any public or private care or treatment
10 facility who directly supervises developmentally disabled, mentally
11 disordered, or chemically dependent persons at the facility, and any
12 proprietor or employee of any public or private facility used for the
13 incarceration, imprisonment, detention, or housing of inmates or
14 criminal defendants, who directly supervises the inmate or criminal
15 defendant at the facility.

16 (12) "Mentally disordered person" for the purposes of RCW
17 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental
18 disorder" as defined in RCW 71.05.020.

19 (13) "Chemically dependent person" for purposes of RCW
20 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically
21 dependent" as defined in RCW 70.96A.020(4).

22 (14) "Health care provider" for purposes of RCW 9A.44.050 and
23 9A.44.100 means a person who is, holds himself or herself out to be, or
24 provides services as if he or she were: (a) A member of a health care
25 profession under chapter 18.130 RCW; or (b) registered or certified
26 under chapter 18.19 RCW, regardless of whether the health care provider
27 is licensed, certified, or registered by the state.

28 (15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means
29 the active delivery of professional services by a health care provider
30 which the health care provider holds himself or herself out to be
31 qualified to provide.

32 (16) "Frail elder or vulnerable adult" means a person sixty years
33 of age or older who has the functional, mental, or physical inability
34 to care for himself or herself. "Frail elder or vulnerable adult" also
35 includes a person found incapacitated under chapter 11.88 RCW, a person
36 over eighteen years of age who has a developmental disability under
37 chapter 71A.10 RCW, a person admitted to a long-term care facility that
38 is licensed or required to be licensed under chapter 18.20, 18.51,
39 72.36, or 70.128 RCW, and a person receiving services from a home

1 health, hospice, or home care agency licensed or required to be
2 licensed under chapter 70.127 RCW.

3 **Sec. 2.** RCW 9A.44.050 and 1997 c 392 s 514 are each amended to
4 read as follows:

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

8 (a) By forcible compulsion;

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

11 (c) When the victim is developmentally disabled and the perpetrator
12 is a person who is not married to the victim and who has supervisory
13 authority over the victim;

14 (d) When the perpetrator is a health care provider, the victim is
15 a client or patient, and the sexual intercourse occurs during a
16 treatment session, consultation, interview, or examination. It is an
17 affirmative defense that the defendant must prove by a preponderance of
18 the evidence that the client or patient consented to the sexual
19 intercourse with the knowledge that the sexual intercourse was not for
20 the purpose of treatment;

21 (e) When the victim is a resident of a facility for mentally
22 disordered or chemically dependent persons and the perpetrator is a
23 person who is not married to the victim and has supervisory authority
24 over the victim; ~~((or))~~

25 (f) When the victim is a resident of a facility for inmates or
26 criminal defendants and the perpetrator is a person who is not married
27 to the victim and has supervisory authority over the victim; or

28 (g) When the victim is a frail elder or vulnerable adult and the
29 perpetrator is a person who is not married to the victim and who has a
30 significant relationship with the victim.

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

32 **Sec. 3.** RCW 9A.44.100 and 1997 c 392 s 515 are each amended to
33 read as follows:

34 (1) A person is guilty of indecent liberties when he knowingly
35 causes another person who is not his spouse to have sexual contact with
36 him or another:

37 (a) By forcible compulsion;

1 (b) When the other person is incapable of consent by reason of
2 being mentally defective, mentally incapacitated, or physically
3 helpless;

4 (c) When the victim is developmentally disabled and the perpetrator
5 is a person who is not married to the victim and who has supervisory
6 authority over the victim;

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

14 (e) When the victim is a resident of a facility for mentally
15 disordered or chemically dependent persons and the perpetrator is a
16 person who is not married to the victim and has supervisory authority
17 over the victim; ~~((or))~~

18 (f) When the victim is a resident of a facility for inmates or
19 criminal defendants and the perpetrator is a person who is not married
20 to the victim and has supervisory authority over the victim; or

21 (g) When the victim is a frail elder or vulnerable adult and the
22 perpetrator is a person who is not married to the victim and who has a
23 significant relationship with the victim.

24 (2) Indecent liberties is a class B felony.

25 NEW SECTION. **Sec. 4.** A new section is added to chapter 9A.44 RCW
26 to read as follows:

27 (1) The provisions of RCW 9A.44.050(1)(f) and 9A.44.100(1)(f) shall
28 not apply unless the victim reports, directly or indirectly, the
29 criminal act to a person who is in a supervisory capacity over the
30 victim other than the alleged perpetrator within twenty-four hours of
31 when the alleged incident occurred and submits to examination and
32 testing by a qualified physician or nurse at the discretion of the
33 facility.

34 (2) Notice of the provisions of this section shall be provided to
35 residents of facilities for inmates or criminal defendants.

36 (3) Facility administrative staff, after making a finding that an
37 inmate or criminal defendant made a false claim under the provisions of

1 RCW 9A.44.050(1)(f) or 9A.44.100(1)(f), shall not be precluded from
2 taking disciplinary action against that inmate or criminal defendant.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 9A.44 RCW
4 to read as follows:

5 The public employment of a public employee who is convicted for
6 violation of RCW 9A.44.050(1)(f) or 9A.44.100(1)(f), or is convicted
7 for violation of another section of chapter 9A.44 RCW on allegations
8 which led to charging under RCW 9A.44.050(1)(f) or 9A.44.100(1)(f),
9 shall be terminated from employment upon conviction of the employee.
10 The public employer of the public employee is immune from liability if
11 the conviction of the employee is amended or reversed on appeal.

12 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.121 RCW
13 to read as follows:

14 A public employee who is convicted for violation of RCW
15 9A.44.050(1)(f) or 9A.44.100(1)(f), or is convicted for violation of
16 another section of chapter 9A.44 RCW on allegations which led to
17 charging under RCW 9A.44.050(1)(f) or 9A.44.100(1)(f), shall be liable
18 for any costs incurred by the public employer as a result of the
19 criminal actions of the employee, including any judgment costs. The
20 public employer of the public employee shall have a right of lien on
21 any undistributed assets or benefits belonging to the employee,
22 including any public pension benefits.

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