

2 **SB 5577** - H COMM AMD **ADOPTED 4-15-93**

3 By Committee on Judiciary

4

5 Strike everything after the enacting clause and insert the
6 following:

7 **"Sec. 1.** RCW 9A.44.010 and 1988 c 146 s 3 are each amended to read
8 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.

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

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

27 (4) "Mental incapacity" is that condition existing at the time of
28 the offense which prevents a person from understanding the nature or
29 consequences of the act of sexual intercourse whether that condition is
30 produced by illness, defect, the influence of a substance or from some
31 other cause.

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

35 (6) "Forcible compulsion" means physical force which overcomes
36 resistance, or a threat, express or implied, that places a person in

1 fear of death or physical injury to herself or himself or another
2 person, or in fear that she or he or another person will be kidnapped.

3 (7) "Consent" means that at the time of the act of sexual
4 intercourse or sexual contact there are actual words or conduct
5 indicating freely given agreement to have sexual intercourse or sexual
6 contact.

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

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

12 (b) A person who in the course of his or her employment supervises
13 minors.

14 (9) "Abuse of a supervisory position" means a direct or indirect
15 threat or promise to use authority to the detriment or benefit of a
16 minor.

17 (10) "Developmentally disabled," for purposes of RCW
18 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a
19 developmental disability as defined in RCW (~~(71.20.016)~~) 71A.10.020.

20 (11) "Person with supervisory authority," for purposes of RCW
21 9A.44.050(1)(c) or (e) and 9A.44.100(1)(c) or (e), means any proprietor
22 or employee of any public or private care or treatment facility who
23 directly supervises developmentally disabled, mentally disordered, or
24 chemically dependent persons at the facility.

25 (12) "Mentally disordered person" for the purposes of RCW
26 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental
27 disorder" as defined in RCW 71.05.020(2).

28 (13) "Chemically dependent person" for purposes of RCW
29 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically
30 dependent" as defined in RCW 70.96A.020(4).

31 (14) "Health care provider" for purposes of RCW 9A.44.050 and
32 9A.44.100 means a person who is, holds himself or herself out to be, or
33 provides services as if he or she were: (a) A member of a health care
34 profession under chapter 18.130 RCW; or (b) registered or certified
35 under chapter 18.19 RCW, regardless of whether the health care provider
36 is licensed, certified, or registered by the state.

37 (15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means
38 the active delivery of professional services by a health care provider

1 which the health care provider holds himself or herself out to be
2 qualified to provide.

3 **Sec. 2.** RCW 9A.44.050 and 1990 c 3 s 901 are each amended to read
4 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; ~~((or))~~

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; or

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.

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

26 **Sec. 3.** RCW 9A.44.100 and 1988 c 146 s 2 are each amended to read
27 as follows:

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

31 (a) By forcible compulsion; or

32 (b) When the other person is incapable of consent by reason of
33 being mentally defective, mentally incapacitated, or physically
34 helpless; ~~((or))~~

35 (c) When the victim is developmentally disabled and the perpetrator
36 is a person who is not married to the victim and who has supervisory
37 authority over the victim;

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

8 (e) When the victim is a resident of a facility for mentally
9 disordered or chemically dependent persons and the perpetrator is a
10 person who is not married to the victim and has supervisory authority
11 over the victim.

12 (2) Indecent liberties is a class B felony."

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