

# HOUSE BILL REPORT

## HB 2400

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### As Reported by House Committee On:

Criminal Justice & Corrections

**Title:** An act relating to sentence enhancement for sex crimes against minors.

**Brief Description:** Providing enhanced penalties for sex crimes against children.

**Sponsors:** Representatives McMahan, Carrell, Mielke, Talcott, Crouse, Bush, Ahern, Newhouse, G. Simpson, Woods and Orcutt.

### Brief History:

#### Committee Activity:

Criminal Justice & Corrections: 2/13/04 [DP].

#### Brief Summary of Bill

- Imposes sentencing enhancements for certain sex offenses against children.
- Imposes a mandatory minimum sentence for sexual misconduct with a minor in the 2nd degree.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Pearson and Veloria.

**Staff:** Jim Morishima (786-7191).

### Background:

#### I. Sex Offender Sentencing in Washington

For sex offenses committed on or after July 1, 2001, there are three main ways in which such offenses are sentenced: Sentencing for "two strikes" offenses, sentencing for non-two strikes offenses, and the special sex offender sentencing alternative.

#### A. *Two Strikes Offenses ("Determinate Plus" Sentencing)*

More than one conviction for certain sex offenses will result in a sentence of life in prison without possibility of parole. Those sex offenses are:

- Rape in the 1st and 2nd degrees;
- Rape of a child in the 1st and 2nd degrees;
- Child molestation in the 1st degree;
- Indecent liberties by forcible compulsion; and
- The following crimes if committed with sexual motivation:
  - Murder in the 1st and 2nd degrees;
  - Homicide by abuse;
  - Kidnaping in the 1st and 2nd degrees;
  - Assault in the 1st and 2nd degrees;
  - Assault of a child in the 1st degree; and
  - Burglary in the 1st degree.

A court will generally sentence an offender convicted of a first "two strikes" offense under the "determinate plus" method of sentencing (this method of sentencing applies to crimes committed on or after July 1, 2001). Under this method, the court will sentence the offender to a minimum term and a maximum term. The minimum term is the offender's standard range sentence under the Sentencing Reform Act (SRA). The maximum term is the statutory maximum for the crime (which is life in prison for class A felonies, 10 years for class B felonies, and five years for class C felonies).

After the expiration of the offender's minimum term, the Indeterminate Sentence Review Board (ISRB) evaluates the offender. The ISRB must order the release of the offender unless it finds that the offender is likelier than not to commit a predatory sex offense if released. If the person is not released, the ISRB must reevaluate the offender at least every two years. An offender who continues to fail his or her ISRB evaluations may be incarcerated up to his or her maximum term. An offender who is released into the community by the ISRB will be on community custody status for the remainder of his or her maximum term.

As mentioned above, an offender who commits a second "two strikes" offense will be sentenced to life in prison without the possibility of release.

#### *B. Non-Two Strikes Offenses*

A court must generally sentence an offender convicted of a non-"two strikes" sex offense in the manner all other offenders are sentenced under the SRA. In other words, the court will sentence the offender within the standard sentence range, which is determined by the seriousness level of the crime and the offender's criminal history.

The exception to this general rule occurs when the offender has a previous conviction for a "two strikes" offense and commits a non-strike sex offense. In that case, the court must impose the offender's sentence using the "determinate plus" method of sentencing

described above.

### C. *The Special Sex Offender Sentencing Alternative*

In 1984, the Legislature created the Special Sex Offender Sentencing Alternative (SSOSA). In a SSOSA sentence, the court suspends the offender's sentence in exchange for treatment. In addition to the treatment, a court may impose other types of conditions including up to six months of confinement, crime related prohibitions, and requirements that the offender stay within specified geographical boundaries.

An offender is eligible for a SSOSA sentence if he or she:

- Has been convicted of a sex offense, other than a sex offense that is a serious violent offense or rape in the second degree;
- Has no prior conviction for any sex offense; and
- Has a standard sentence range that includes the possibility of confinement for less than 11 years.

## II. Sex Offenses Against Children

There are several sex offenses that deal specifically with child victims, including rape of a child, child molestation, and sexual misconduct with a minor.

### A. *Rape of a Child*

Rape of a child, also known as statutory rape, occurs when an adult, who is a certain number of months older than the victim, has sexual intercourse with a child under 16 years of age. For purposes of this crime, it is not necessary to prove lack of consent on the part of the victim. It is generally not a defense to this crime that the defendant did not know the victim's age or believed that the victim was older (unless the defendant reasonably believed the victim to be older based on declarations made by the victim).

The punishment for rape of a child depends on the age of the offender and the age of the victim:

- If the victim is less than 12 years old and the offender is at least 24 months older than the victim, the offender is guilty of rape of a child in the 1st degree, which is a class A felony with a seriousness level of XII. Rape of a child in the 1st degree is a two strikes offense.
- If the victim is at least 12 years old, but less than 14 years old, and the offender is at least 36 months older than the victim, the offender is guilty of rape of a child in the 2nd degree, which is a class A felony with a seriousness level of XI. Rape of a child in the 2nd degree is a two strikes offense.
- If the victim is at least 14 years old, but less than 16 years old, and the offender is at least 48 months older than the victim, the offender is guilty of rape of a child in the 3rd degree, which is a class C felony with a seriousness level of VI. Rape of a child

in the 3rd degree is not a two strikes offense.

#### B. *Child Molestation*

Child molestation is similar to rape of a child except it involves sexual contact instead of sexual intercourse. The crime occurs when an adult, who is a certain number of months older than the victim has, or causes another person under the age of 18 to have, sexual contact with a child under 16 years of age. Similar to rape of a child, for purposes of this crime, it is not necessary to prove lack of consent on the part of the victim for purposes of this crime. It is generally not a defense to this crime that the defendant did not know the victim's age or believed that the victim was older (unless the defendant reasonably believed the victim to be older based on declarations made by the victim).

The punishment for child molestation depends on the age of the offender and the age of the victim:

- If the victim is less than 12 years old and the offender is at least 36 months older than the victim, the offender is guilty of child molestation in the 1st degree, which is a class A felony with a seriousness level of X. Child molestation in the 1st degree is a two strikes offense.
- If the victim is at least 12 years old, but less than 14 years old, and the offender is at least 36 months older than the victim, the offender is guilty of child molestation in the 2nd degree, which is a class B felony with a seriousness level of VII. Child molestation in the 2nd degree is not a two strikes offense.
- If the victim is at least 14 years old, but less than 16 years old, and the offender is at least 48 months older than the victim, the offender is guilty of child molestation in the 3rd degree, which is a class C felony with a seriousness level of V. Child molestation in the 3rd degree is not a two strikes offense.

#### C. *Sexual Misconduct with a Minor*

Sexual misconduct with a minor occurs in two main circumstances:

- When an offender who is at least 60 months older than a victim aged 16 or 17 has a significant relationship with the victim and abuses a supervisory position within that relationship to engage, or cause another person under the age of 18 to engage, in sexual intercourse or sexual contact with the victim. Abuse of a supervisory position occurs when there is a direct or indirect threat or promise to use authority to the detriment or benefit of the minor; and
- When an offender who is a school employee and is at least 60 months older than a victim aged 16 or 17 has, or knowingly causes another person under the age of 18 to have, sexual intercourse or sexual contact with the victim (in this circumstance, abuse of a supervisory position is not required).

Similar to rape of a child and child molestation, for purposes of this crime, it is not necessary to prove lack of consent on the part of the victim for purposes of this crime. It

is generally not a defense to this crime that the defendant did not know the victim's age or believed that the victim was older (unless the defendant reasonably believed the victim to be older based on declarations made by the victim).

The punishment for sexual misconduct with a minor depends on the type of sexual activity involved:

- If the sexual activity at issue was sexual intercourse, the offender is guilty of sexual misconduct with a minor in the 1st degree, which is a class C felony with a seriousness level of V. Sexual misconduct with a minor in the 1st degree is not a two strikes offense.
- If the sexual activity at issue was sexual contact, the offender is guilty of sexual misconduct with a minor in the 2nd degree, which is a gross misdemeanor. Sexual misconduct with a minor in the 2nd degree is not a two strikes offense.

### III. Sentencing Enhancements

Sentencing enhancements are periods of incarceration that are added to an offender's standard sentence range. Under the SRA, a court must impose a sentencing enhancement for an offender who committed a crime while armed with a deadly weapon, an offender who committed certain drug crimes in prison or jail, and an offender who committed vehicular homicide with certain prior offenses in his or her criminal history.

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#### **Summary of Bill:**

Sentencing enhancements are imposed for certain sex offenses against children. The enhancements must be added to an offender's standard sentence range. The enhancements are mandatory, must be served in total confinement, and must run consecutively to all other sentencing provisions. The enhancements are imposed as follows:

- For rape of a child in the 1st and 2nd degrees and child molestation in the 1st degree, the enhancement is 10 years.
- For child molestation in the 2nd degree, the enhancement is five years.
- For rape of a child in the 3rd degree, child molestation in the 3rd degree, and sexual misconduct with a minor in the 1st degree, the enhancement is three years.

An offender convicted of sexual misconduct with a minor in the 2nd degree (a gross misdemeanor) must be sentenced to at least a year in jail.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately, except for section 2, which takes effect July 1, 2004.

**Testimony For:** Children depend on us to keep them safe. There is no more essential duty for the Legislature than the protection of lives and the administration of justice. Persons guilty of victimizing our children must serve time. A message must be sent for the sake of children “ if you do the crime, you do hard time. This bill will give families and victims justice. As for the costs of the bill, the safety of our children is priceless. Everything possible should be done to protect children. Use of SSOSA has led to sentences for these crimes dramatically below the standard range. People get much more severe punishment for less serious crimes. The persons evaluating an offender’s fitness for SSOSA are often the same persons who are contracted to give the offender treatment services. These treatment providers therefore have financial incentive to recommend an offender to SSOSA. Offenders should get treatment in prison, not in the community.

(Concerns) There have been many changes to the sentencing laws over the last 20 years. We do not know what the effect of these changes has been. Before we change sentencing again, we should take a step back and look at the effect of these changes. We need to get more of these cases reported and into the courts. The problem with SSOSA is that it is all or nothing. However, there is an appropriate role for SSOSA. SSOSA helps to encourage victims to come forward and can help prosecutors get convictions in tough cases. The problem with SSOSA has existed for years. The program should be tightened, not eliminated.

**Testimony Against:** SSOSA can help to decrease the occurrence of sex offenses. However, this bill would effectively eliminate SSOSA, which would discourage the reporting and prosecution of sex offenses. Many sex offenses occur in the family context. Family members are often reluctant to report sex offenses if they feel the perpetrator will get a lengthy prison sentence. Treatment in prison is often less effective than treatment under SSOSA. SSOSA offenders get treatment for a long time and have incentives to participate given the lengthy suspended sentence imposed by the program.

**Persons Testifying:** (In support) Representative McMahan, prime sponsor; Jim Hines and Theresa Gibbs, Friends and Neighbors of Theresa Gibbs; Shawna Peterson, victim and aunt of victim; Patricia Gibbs, grandmother; Michele Clute, Safe Haven; Lisa Lockwood, parent and spokesperson of Whatcom County; and Lane McNitt, grandfather of victim.

(Concerns) Suzanne Brown-McBride, Washington Coalition of Sexual Assault Programs.

(Opposed) David Marshall, Washington Association of Criminal Defense Lawyers and Washington Defenders Association.

(Comments) Tom McBride, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** (Concerns) Representative Eickmeyer, Sound Institute; and Kevin Glacken-Coley, Children's Alliance.

(Opposed) Richard Packard, Washington Association for the Treatment of Sexual Abusers; Linda Rutledge; and Ron Rogers.