

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1097**

60th Legislature  
2007 Regular Session

Passed by the House February 12, 2007  
Yeas 96 Nays 0

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**Speaker of the House of Representatives**

Passed by the Senate March 31, 2007  
Yeas 45 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1097** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 1097**

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Passed Legislature - 2007 Regular Session

**State of Washington                      60th Legislature                      2007 Regular Session**

**By** House Committee on Public Safety & Emergency Preparedness  
(originally sponsored by Representatives Miloscia, Priest, Chase,  
Green, Ormsby, B. Sullivan, O'Brien, Morrell, Kenney, Moeller,  
Wallace, McCune and Simpson)

READ FIRST TIME 02/05/07.

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, 9A.44.100, and  
6 9A.44.010; 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~~) a person with  
17 a 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~~) a person with  
30 a 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 **Sec. 3.** RCW 9A.44.010 and 2005 c 262 s 1 are each amended to read  
18 as follows:

19 As used in this chapter:

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

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

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

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

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

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

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

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

13 (7) "Consent" means that at the time of the act of sexual  
14 intercourse or sexual contact there are actual words or conduct  
15 indicating freely given agreement to have sexual intercourse or sexual  
16 contact.

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

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

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

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

33 (9) "Abuse of a supervisory position" means:

34 (a) To use a direct or indirect threat or promise to exercise  
35 authority to the detriment or benefit of a minor; or

36 (b) To exploit a significant relationship in order to obtain the  
37 consent of a minor.

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

5 (11) "Person with supervisory authority," for purposes of RCW  
6 9A.44.050(1) (c) or (e) and 9A.44.100(1) (c) or (e), means any  
7 proprietor or employee of any public or private care or treatment  
8 facility who directly supervises developmentally disabled, mentally  
9 disordered, or chemically dependent persons at the facility.

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

13 (13) "~~((Chemically dependent))~~ Person with a chemical dependency"  
14 for purposes of RCW 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person  
15 who is "chemically dependent" as defined in RCW 70.96A.020(4).

16 (14) "Health care provider" for purposes of RCW 9A.44.050 and  
17 9A.44.100 means a person who is, holds himself or herself out to be, or  
18 provides services as if he or she were: (a) A member of a health care  
19 profession under chapter 18.130 RCW; or (b) registered under chapter  
20 18.19 RCW or licensed under chapter 18.225 RCW, regardless of whether  
21 the health care provider is licensed, certified, or registered by the  
22 state.

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

27 (16) "Frail elder or vulnerable adult" means a person sixty years  
28 of age or older who has the functional, mental, or physical inability  
29 to care for himself or herself. "Frail elder or vulnerable adult" also  
30 includes a person found incapacitated under chapter 11.88 RCW, a person  
31 over eighteen years of age who has a developmental disability under  
32 chapter 71A.10 RCW, a person admitted to a long-term care facility that  
33 is licensed or required to be licensed under chapter 18.20, 18.51,  
34 72.36, or 70.128 RCW, and a person receiving services from a home  
35 health, hospice, or home care agency licensed or required to be  
36 licensed under chapter 70.127 RCW.

1        NEW SECTION.   **Sec. 4.**   This act is necessary for the immediate  
2   preservation of the public peace, health, or safety, or support of the  
3   state government and its existing public institutions, and takes effect  
4   immediately.

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