

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1097

Chapter 20, Laws of 2007

60th Legislature
2007 Regular Session

PROTECTING FRAIL ELDERS AND VULNERABLE ADULTS

EFFECTIVE DATE: 04/10/07

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

FRANK CHOPP

Speaker of the House of Representatives

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

BRAD OWEN

President of the Senate

Approved April 10, 2007, 11:06 a.m.

CHRISTINE GREGOIRE

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.

RICHARD NAFZIGER

Chief Clerk

FILED

April 10, 2007

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1097

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.

 Passed by the House February 12, 2007.

 Passed by the Senate March 31, 2007.

 Approved by the Governor April 10, 2007.

 Filed in Office of Secretary of State April 10, 2007.