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**SUBSTITUTE HOUSE BILL 1759**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives H. Myers, Brough, Johanson, Miller, Locke, Ballasiotes, Chappell, Ludwig, Scott, Jones, Horn, Rayburn, Foreman, Roland, Forner and Wood)

Read first time 03/03/93.

1 AN ACT Relating to sex offenses; amending RCW 9A.44.010, 9A.44.050,  
2 and 9A.44.100; and prescribing penalties.

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

4 **Sec. 1.** RCW 9A.44.010 and 1988 c 146 s 3 are each amended to read  
5 as follows:

6 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

28 (9) "Abuse of a supervisory position" means a direct or indirect  
29 threat or promise to use authority to the detriment or benefit of a  
30 minor.

31 (10) "Developmentally disabled," for purposes of RCW  
32 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a  
33 developmental disability as defined in RCW (~~(71.20.016)~~) 71A.10.020.

34 (11) "Person with supervisory authority," for purposes of RCW  
35 9A.44.050(1)(c) or (e) and 9A.44.100(1)(c) or (e), means any proprietor  
36 or employee of any public or private care or treatment facility who  
37 directly supervises developmentally disabled, mentally disordered, or  
38 chemically dependent persons at the facility.

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

4       (13) "Chemically dependent person" for purposes of RCW  
5 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically  
6 dependent" as defined in RCW 70.96A.020(4).

7       (14) "Health care provider" for purposes of RCW 9A.44.050 and  
8 9A.44.100 means a person who is, holds himself or herself out to be, or  
9 provides services as if he or she were: (a) A member of a health care  
10 profession under chapter 18.130 RCW; or (b) registered or certified  
11 under chapter 18.19 RCW, regardless of whether the health care provider  
12 is licensed, certified, or registered by the state.

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

17       **Sec. 2.** RCW 9A.44.050 and 1990 c 3 s 901 are each amended to read  
18 as follows:

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

22       (a) By forcible compulsion;

23       (b) When the victim is incapable of consent by reason of being  
24 physically helpless or mentally incapacitated; ~~((or))~~

25       (c) When the victim is developmentally disabled and the perpetrator  
26 is a person who is not married to the victim and who has supervisory  
27 authority over the victim;

28       (d) When the perpetrator is a health care provider, the victim is  
29 a client or patient, and the sexual intercourse occurs during a  
30 treatment session, consultation, interview, or examination. It is an  
31 affirmative defense that the defendant must prove by a preponderance of  
32 the evidence that the client or patient consented to the sexual  
33 intercourse with the knowledge that the sexual intercourse was not for  
34 the purpose of treatment; or

35       (e) When the victim is a resident of a facility for mentally  
36 disordered or chemically dependent persons and the perpetrator is a  
37 person who is not married to the victim and has supervisory authority  
38 over the victim.

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

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

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

7 (a) By forcible compulsion; or

8 (b) When the other person is incapable of consent by reason of  
9 being mentally defective, mentally incapacitated, or physically  
10 helpless; (~~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 contact occurs during a treatment  
16 session, consultation, interview, or examination. It is an affirmative  
17 defense that the defendant must prove by a preponderance of the  
18 evidence that the client or patient consented to the sexual contact  
19 with the knowledge that the sexual contact was not for the purpose of  
20 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) Indecent liberties is a class B felony.

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