

**HOUSE BILL ANALYSIS  
HB 2470**

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**Title:** An act relating to rape of an inmate or criminal defendant by a person with supervisory authority over the inmate or criminal defendant.

**Brief Description:** Prohibiting sexual contact with an inmate or criminal defendant by supervisor.

**Sponsors:** Representatives Lambert, Sheahan, Carrell, Zellinsky, and Mulliken.

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**HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS**

**Hearing Date:** January 27, 1998.

**Prepared By:** Mark G. Hamilton, Counsel (786-7310).

**Background:** *Definition of "Person with Supervisory Authority."* Currently, a person has "supervisory authority," for purposes of sex offenses under chapter 9A.44 RCW, if he or she is a proprietor or employee of a care or treatment facility who directly supervises developmentally disabled, mentally disordered, or chemically dependent persons.

*Definitions of Crimes of Rape in Second Degree and Indecent Liberties.* Currently, the crime of rape in the second degree occurs when, under circumstances which do not amount to rape in the first degree, a person engages in sexual intercourse with another person under a variety of circumstances. Rape in the second degree is a class A felony. The crime of indecent liberties occurs when a person causes a non-spouse to have sexual contact with him or another person under the same circumstances as rape in the second degree. Indecent liberties is a class B felony. The circumstances under which these crimes occur are:

- (1) by forcible compulsion;
- (2) when the victim is incapable of consent by physical or mental incapacity;
- (3) when the victim is physically disabled and the perpetrator has supervisory authority over the victim;
- (4) when the victim is a client or patient of a health care provider, who is the perpetrator, and the intercourse occurs during the course of treatment without consent; and
- (5) when the victim resides in a facility for mentally disordered or chemically dependent persons and the perpetrator has supervisory authority over the victim.

*Victim Reporting Requirement.* For the crime of rape in the second degree, report of the crime affects the statute of limitations (RCW 9A.04.080). If the crime is reported within a one year of its occurrence, it may be prosecuted up to 10 years after its occurrence. However, if the crime is *not* reported within a year, it may only be prosecuted up to 3 years after its occurrence. The limitations are slightly different when the victim is under age 14. If reported within a year, the crime may be prosecuted up to 3 years after the victim's 18<sup>th</sup> birthday or 10 years after the crime, whichever is later. If not reported, it may be prosecuted only up to 3 years after the victim's 18<sup>th</sup> birthday or 7 years after the crime, whichever is later. There is no victim reporting requirement for the crime of indecent liberties.

*Application to Public Employees.* There is currently no statute which requires discharge of public employees upon conviction of a sex offense.

*Liability for Costs.* Currently, several statutes require or permit those convicted of crimes to pay the costs incurred by their trials and/or incarceration, as well as contribute to or fully pay restitution to the victims of their crimes. There are also a number of methods of enforcing this, including lien and wage attachment.

**Summary:**

**Section 1.** Amends RCW 9A.44.010(11).

*Definition of "Person with Supervisory Authority."* Augments definition of "person with supervisory authority" to include a proprietor or employee of an incarceration, imprisonment, detention, or inmate housing facility, who directly supervises the inmate or criminal defendant at the facility.

**Sections 2 and 3.** Amend RCW 9A.44.050(1) and 9A.44.100(1).

*Definitions of Crimes of Rape in Second Degree and Indecent Liberties.* Adds additional elements which can constitute the crimes of rape in the second degree and indecent liberties. Specifically, applies to cases when the victim is an inmate or criminal defendant in custody and the perpetrator has supervisory authority over the victim, and is not the victim's spouse.

**Sections 4 to 6.** Add new sections to chapter 9A.44 RCW.

*Victim Reporting Requirement; Victim Examination; Notice; False Claims.* The new definitions do not apply unless the victim "directly or indirectly" reports the incident within 24 hours of its occurrence to a person who has supervisory authority over him or her *and* submits to examination and testing by a physician or nurse, at the facility's discretion. In effect, the incident is not a crime if it is not timely reported by the victim or if the victim does not submit to examination. The facility is required to provide notice of these provisions to inmates or criminal defendants. Finally, if the facility finds that a false incident claim has been brought by an inmate, it may take disciplinary action.

*Application to Public Employees; Employer Immunity from Liability.* Conviction of a public employee under the act's provisions requires termination of employment. In addition, the public employer is immune from

liability, if the public employee's conviction is amended or reversed on appeal.

*Liability for Costs.* A public employee who is convicted under this act is liable for the "costs incurred by the public employer as a result of the criminal actions of the employee, including any judgment costs." In addition, the public employer has the right of lien on any undistributed assets or benefits belonging to the employee, including public pension benefits.

**Rules Authority:** No.

**Fiscal Note:** Requested January 23, 1998.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.