

# HOUSE BILL REPORT

## HB 3277

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### As Passed Legislature

**Title:** An act relating to authorizing special verdicts that would result in more severe punishment for certain sex offenses against children and vulnerable adults by increasing the minimum sentences to twenty-five years or the maximum of the standard sentence range, whichever is greater, for rape of a child in the first degree, rape of a child in the second degree, and child molestation in the first degree, when a special allegation that the offense was predatory has been made and proven beyond a reasonable doubt, by increasing the minimum sentences to twenty-five years or the maximum of the standard sentence range, whichever is greater, for rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, and kidnapping in the first degree with sexual motivation, when a special allegation that the victim was under age fifteen at the time of the crime has been made and proven beyond a reasonable doubt, and by increasing the minimum sentences to twenty-five years or the maximum of the standard sentence range, whichever is greater, for rape in the first degree, rape in the second degree by forcible compulsion, indecent liberties by forcible compulsion, and kidnapping in the first degree with sexual motivation, when a special allegation that the victim was, at the time of the crime, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, has been made and proven beyond a reasonable doubt, without making any change to the sentencing grid, RCW 9.94A.510, or the seriousness level table, RCW 9.94A.515.

**Brief Description:** Authorizing special verdicts for specified sex offenses against children and vulnerable adults.

**Sponsors:** By Representatives O'Brien, Rodne, Kirby, Williams, Darneille, Sells, Kessler, Lovick, Ericks, Simpson, Kilmer, Lantz, Anderson, Takko, Green, Moeller, Campbell, Morris, Hunt, Conway, Fromhold, Chase and Woods.

### **Brief History:**

#### **Committee Activity:**

Criminal Justice & Corrections: 1/31/06 [DP].

#### **Floor Activity:**

Passed House: 2/1/06, 97-0.

Senate Amended.

Passed Senate: 3/1/06, 45-1.

House Concurred.

Passed House: 3/4/06, 97-0.

Passed Legislature.

### Brief Summary of Bill

- Increases the minimum sentence for child molestation in the first degree, rape of a child in the first degree, and rape of a child in the second degree, when a special allegation has been made and proven that the offense was predatory.
- Increases the minimum sentence for indecent liberties with forcible compulsion, kidnapping in the first degree with sexual motivation, rape in the first degree, and rape in the second degree, when a special allegation has been made and proven that the victim was under the age of 15 at the time of the offense.
- Increases the minimum sentence for indecent liberties with forcible compulsion, kidnapping in the first degree with sexual motivation, rape in the first degree, and rape in the second degree with forcible compulsion, when a special allegation has been made and proven that the victim was a person with a developmental disability, a mentally disordered person, or a frail elder or vulnerable adult.

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## HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass. Signed by 6 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Ahern, Assistant Ranking Minority Member; Kirby, Strow and Williams.

**Minority Report:** Do not pass. Signed by 1 member: Representative Pearson, Ranking Minority Member.

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

### **Background:**

#### "Two-Strikes" Sex Offenses

In 1996, the Legislature passed SHB 2320, otherwise known as the "two-strikes" law, which imposed a life sentence upon certain repeat sex offenders. Under the two-strikes law, an offender convicted of a second two-strikes offense must be sentenced to life in prison without the possibility of release.

The following is a partial list of two-strikes offenses:

- **Child molestation in the first degree:** A person commits this crime if he or she has sexual contact with a child under 12 if the perpetrator is at least 36 months older than the victim. Child molestation in the first degree is a class A felony with a seriousness level of X.
- **Indecent liberties with forcible compulsion:** A person commits this crime if he or she engages in sexual contact with another person by forcible compulsion. Indecent liberties with forcible compulsion is a class A felony with a seriousness level of X.
- **Kidnapping in the first degree with sexual motivation:** A person commits this crime when he or she, with sexual motivation, abducts another person with the intent to hold the

person from ransom or reward, to facilitate the commission of a felony (or flight therefrom), to inflict bodily injury, to inflict extreme mental distress, or to interfere with the performance of a governmental function. Kidnapping in the first degree with sexual motivation is a class A felony with a seriousness level of X.

- **Rape in the first degree:** A person commits this crime if he or she engages in sexual intercourse with a victim by forcible compulsion and uses a deadly weapon, kidnaps the victim, inflicts serious physical injury, or feloniously enters the building or vehicle where the victim is situated. Rape in the first degree is a class A felony with a seriousness level of XII.
- **Rape in the second degree:** A person commits this crime if he or she engages in sexual intercourse with another person (a) by forcible compulsion, (b) when the victim is incapable of consent by reason of being physically helpless or mentally incapacitated, (c) when the victim is developmentally disabled and the perpetrator has supervisory authority over the victim, (d) when the perpetrator is a health care provider and the intercourse occurs during a treatment session, consultation, interview, or examination, (e) when the victim is a resident of a facility for mentally disordered or chemically dependent persons and the perpetrator has supervisory authority over the victim, or (f) when the victim is a frail elder or vulnerable adult and the perpetrator has a significant relationship to the victim. Rape in the second degree is a class A felony with a seriousness level of XI.
- **Rape of a child (statutory rape) in the first degree:** A person commits this crime if he or she has sexual intercourse with a child under 12 if the person is at least 24 months older than the victim. Rape of a child in the first degree is a class A felony with a seriousness level of XII. It is also a "two strikes" sex offense.
- **Rape of a child (statutory rape) in the second degree:** A person commits this crime if he or she has sexual intercourse with a child age 12 or 13 if the person is at least 36 months older than the victim. Rape of a child in the second degree is a class A felony with a seriousness level of XI. It is also a "two-strikes" sex offense.

### Determinate-Plus Sentencing

In 2001, the Legislature passed 3ESSB 6151, which created a type of sentencing that has come to be known as "determinate-plus" sentencing. Determinate-plus sentencing applies to two groups of offenders: (1) offenders convicted of a first two-strikes sex offense and (2) offenders who have a prior two-strikes offense in their criminal histories who are convicted of a subsequent sex offense that is not a two-strikes offense.

A court must sentence a determinate-plus offender to a minimum term and a maximum term. The minimum term is generally equal to the standard range sentence. The maximum term is equal to the statutory maximum for the offense: life for class A felonies, 10 years for class B felonies, and five years for class C felonies.

The Indeterminate Sentence Review Board (ISRB) must evaluate the offender prior to the expiration of the minimum term. The ISRB must order the release of the offender upon expiration of the minimum term unless the offender is likelier than not to commit a sex offense if released. If the ISRB does not release the offender, it must re-evaluate the offender at least once every two years up to the offenders maximum term. If the ISRB releases the

offender, the offender will be on community custody status for the remainder of his or her maximum term.

For an offender sentenced to a determinate-plus sentence for any two-strikes offense (which are all class A felonies), this means that the offender may be incarcerated for life if he or she continues to fail his or her ISRB evaluations. If the offender is ever released, he or she will be on community custody for life.

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### **Summary of Bill:**

For purposes of imposing a determinate-plus sentence, the minimum terms for child molestation in the first degree, indecent liberties with forcible compulsion, kidnapping in the first degree with sexual motivation, rape in the first degree, rape in the second degree, rape of a child in the first degree, and rape of a child in the second degree, are increased as follows:

- Twenty-five years or the maximum of the standard range, whichever is greater, for child molestation in the first degree, rape of a child in the first degree, or rape of a child in the second degree, when the offense was "predatory." "Predatory" is defined as situations where: (a) the perpetrator was a stranger to the victim (unknown to the victim 24 hours prior to the offense); (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization was a significant reason the relationship was established; (c) the perpetrator was a teacher, counselor, volunteer, or other person in authority and the victim was a student of the school under his or her authority or supervision; (d) the perpetrator was a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in that activity under his or her authority or supervision; or (e) the perpetrator was a pastor, elder, volunteer, or other person in authority in any church or religious organization and the victim was a member or participant of the organization under his or her authority.
- Twenty-five years or the maximum of the standard range, whichever is greater, for indecent liberties with forcible compulsion, kidnapping in the first degree with sexual motivation, rape in the first degree, or rape in the second degree, when the victim was under the age of 15 at the time of the offense.
- Twenty-five years or the maximum of the standard range, whichever is greater, for indecent liberties with forcible compulsion, kidnapping in the first degree with sexual motivation, rape in the first degree, or rape in the second degree with forcible compulsion, when the victim was a person with a developmental disability, a mentally disordered person, or a frail elder or vulnerable adult.

A process is established for purposes of determining whether the offense was predatory, whether the victim was under the age of 15 at the time of the offense, or whether the victim was a person with a developmental disability, a mentally disordered person, or a frail elder or vulnerable adult. The prosecutor, when sufficient admissible evidence exists, must file a special allegation that the offense was predatory, the victim was under the age of 15 at the time of the offense, or the victim was a person with a developmental disability, a mentally disordered person, or a frail elder or vulnerable adult. The prosecutor has the burden of

proving the special allegation beyond a reasonable doubt to the jury (or the judge if there is no jury). The prosecutor may not withdraw a special allegation without the permission of the court. The prosecuting attorney does not have to bring a special allegation that would lead to a 25-year minimum sentence if he or she determines, after consulting with a victim, that filing a special allegation is likely to interfere with the ability to obtain a conviction.

The 25-year minimum sentences do not apply to a juvenile tried as an adult.

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**Appropriation:** None.

**Fiscal Note:** Requested on January 30, 2006.

**Effective Date:** The bill contains an emergency clause and takes effect immediately, except for sections 5 and 7, which, because of prior double amendments, take effect on July 1, 2006.

**Testimony For:** This bill reflects concerns expressed in testimony on HB 2411. The minimum sentences in the bill apply to a much broader spectrum of people now: persons who are strangers, persons who groom their victims, and persons who are teachers, coaches, or members of the clergy. It also now protects persons with developmental disabilities or mental disorders as well as frail elders and vulnerable adults. This bill gives prosecutors the leverage they need to successfully prosecute these crimes. This bill gives prosecutors the tools they need to deal with child witnesses who are unable to testify. Sex offenses cover a broad range of situations and this bill will help cover all of them. The bill strengthens the law, but also leaves all of the existing tools in place.

**Testimony Against:** Mandatory minimum sentences can do more harm than good. These offenders already face potential life sentences under determinate-plus sentencing. In order to have control over these offenders, we must convict them first. Mandatory minimum sentences could force more trials and lead to less convictions. Sex offenders are a broad category of offenders. You therefore cannot paint them with a broad brush. Victims are often victimized three times: once by the offense, once by the courts, and once when they have to send family members to prison. This bill does not go far enough. The Legislature should eliminate the Special Sex Offender Sentencing Alternative (SSOSA) for non-family members. There is a silent epidemic of children being victimized in this state; it is the worst form of violence a child can experience. A child victim will feel the effects of the crime throughout his or her life. When an offender is convicted, there is little chance that real punishment will occur because of the lenient terms of a SSOSA sentence. Giving an offender a SSOSA sends the wrong message to victims by trivializing what happened to them. It is often difficult for a parent to explain why his or her child's victimizer received a short SSOSA sentence. A rape is a rape. One offender should not be able to get a six month sentence, while another receives 25 years. This is a form of discrimination against children when they know the person who molested them. Getting rid of SSOSA will not decrease the number of willing child witnesses. A child molester is not a family member; he or she is a pedophile. The public is getting angry about this situation and are going to do something about it if the Legislature does not address this issue.

**Persons Testifying:** (In support) Representative O'Brien, prime sponsor; Seth Dawson, Washington State Association of Children's Advocacy Centers; Dave Johnson, Washington Coalition of Crime Victims Advocates; and Tom McBride, Washington Association of Prosecuting Attorneys.

(Opposed) Alvina Olstead, Deborah and Shaela Goldsbury, Lisa L. Lockwood, Supportive Parents and Friends of Whatcom County; Patricia Gibbs; Terra West; and Jim Hines, Preserve Childhood Innocence.

**Persons Signed In To Testify But Not Testifying:** Kitty M. Jones; Peg McNitt, Karin McNitt; Lane McNitt; Thomas E. Weaver, Christi Hurt, Washington Coalition of Sexual Assault Programs; and Myra Owens.