

FINAL BILL REPORT

HB 3277

C 122 L 06

Synopsis as Enacted

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.

House Committee on Criminal Justice & Corrections
Senate Committee on Human Services & Corrections
Senate Committee on Ways & Means

Background:

"Two-Strikes" Sex Offenses

In 1996, the Legislature enacted 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 age 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 for 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 (1) by forcible compulsion, (2) when the victim is

incapable of consent by reason of being physically helpless or mentally incapacitated, (3) when the victim is developmentally disabled and the perpetrator has supervisory authority over the victim, (4) when the perpetrator is a health care provider and the intercourse occurs during a treatment session, consultation, interview, or examination, (5) 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 (6) 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.
- *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.

Determinate-Plus Sentencing

In 2001, legislation was enacted that 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 offender's 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.

Summary:

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: (1) the perpetrator was a stranger to the victim (unknown to the victim 24 hours prior to the offense); (2) 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; (3) the perpetrator was a teacher, counselor, volunteer, or other person in authority and the victim was a student of the school under the perpetrator's authority or supervision; (4) 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 (5) 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 the perpetrator's 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.

Votes on Final Passage:

House	97	0	
Senate	45	1	(Senate amended)
House	97	0	(House concurred)

Effective: March 20, 2006
July 1, 2006 (Sections 5 and 7)