

SENATE BILL REPORT

HB 3277

As Reported By Senate Committee On:
Human Services & Corrections, February 23, 2006
Ways & Means, February 27, 2006

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: 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: Passed House: 2/01/06, 97-0.

Committee Activity: Human Services & Corrections: 2/20/06, 2/23/06 [DPA-WM].
Ways & Means: 2/27/06 [DPA(HSC)].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell and McAuliffe.

Staff: Kiki Keizer (786-7430)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Human Services & Corrections.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Doumit, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Parlette, Pflug, Rasmussen, Regala, Roach, Rockefeller and Schoesler.

Staff: Elaine Deschamps (786-7441)

Background: Washington's Existing Sentencing Laws Subjecting Convicted Sex Offenders to Life in Prison without the Possibility of Release: Three-Strikes Law Passed in 1993

In 1993, the voters passed Initiative 593, otherwise known as the "three-strikes" law, which imposed a life sentence upon certain repeat offenders. Under the initiative, an offender convicted of a third "strike" (known as a "most serious offense") must be sentenced to life in prison without the possibility of release.

Sex offenses that are strikes under the three-strikes law include:

- Child Molestation in the 2nd degree;
- Incest in the 1st degree;
- Incest in the 2nd degree;
- Indecent Liberties (without forcible compulsion);
- Rape in the 3rd degree; and
- Sexual Exploitation of a Minor.

Washington's Existing Sentencing Laws Subjecting Convicted Sex Offenders to Life in Prison without the Possibility of Release: Two-Strikes Law Passed in 1996

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 SHB 2320, an offender convicted of a second "two-strikes" offense must be sentenced to life in prison without the possibility of release.

Offenses that are strikes under the two-strikes law include:

- Child Molestation in the 1st degree;
- Indecent liberties (with forcible compulsion);
- Rape in the 1st degree;
- Rape in the 2nd degree;
- Rape of a Child (statutory rape) in the 1st degree;
- Rape of a Child (statutory rape) in the 2nd degree;
- Any of the following crimes if committed with sexual motivation:
 - Assault in the 1st degree;
 - Assault in the 2nd degree;
 - Assault of a Child in the 1st degree;
 - Burglary in the 1st degree;
 - Homicide by Abuse;
 - Kidnapping in the 1st degree;
 - Kidnapping in the 2nd degree;
 - Murder in the 1st degree; and
 - Murder in the 2nd degree.

Washington's Existing Sentencing Laws Subjecting Offenders Convicted of One Two-Strikes Offense to Longer Sentences and Increased Supervision: Determinate-Plus Sentencing Passed in 2001

In 2001, the Legislature passed 3ESSB 6151, which created a type of sentencing that has come to be known as "determinate-plus" sentencing. In brief, determinate-plus sentencing allows longer sentences and greater supervision for offenders convicted of serious sex offenses.

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 the rest of his or her life.

Summary of Amended Bill: Prosecutors must file a special allegation in cases involving charges of certain types of sex offenses against certain classes of victims. If the prosecutor proves such a special allegation beyond a reasonable doubt, the convicted person must be sentenced to 25 years or the statutory maximum for the offense, whichever is greater.

The special allegation must be filed in three classes of cases unless, after consulting with the victim, the prosecutor determines that filing a special allegation is likely to interfere with the ability to obtain a conviction. The three classes of cases in which a special allegation would be filed are:

- Certain "predatory" sex offenses against children. "Predatory" conduct is defined to include: situations in which the perpetrator was unknown to the child 24 hours before the offense; situations in which the perpetrator establishes a relationship with a child, the purpose of which is to participate in sexual conduct with the child; or situations in which a special relationship exists between the perpetrator and the child, such as teacher-student, coach-athlete, or church elder-member of congregation.

The crimes for which this special allegation must be filed are rape of a child in the first degree, rape of a child in the second degree, and child molestation in the first degree.

- Certain crimes in which the victim is under 15. The crimes for which this special allegation must be filed are indecent liberties with forcible compulsion, kidnap 1 with sexual motivation, rape 1, or rape 2 with forcible compulsion.
- Certain crimes in which victim was a person with a developmental disability, was mentally disordered, or was a frail elder or vulnerable adult. The crimes for which this special allegation must be filed are indecent liberties with forcible compulsion, kidnap 1 with sexual motivation, rape 1, or rape 2 with forcible compulsion.

A prosecutor must prove the special allegation beyond a reasonable doubt.

In cases involving rape of a child in the first degree, rape of a child in the second degree, and child molestation in the first degree, the minimum terms of confinement set out in the act do not apply to juveniles tried as adults.

Amended Bill Compared to Original Bill: The amendment specifies that the special allegations to be filed under the act must be filed unless the prosecutor determines, after consulting with the victim, that filing a special allegation is likely to interfere with the ability to obtain a conviction.

Appropriation: None.

Fiscal Note: Available on original bill.

Committee/Commission/Task Force Created: No.

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 (Human Services & Corrections): The bill creates very serious penalties that would apply in limited circumstances, while keeping the Special Sex Offender Sentence Alternative in place, which is very important in cases in which the victim is unwilling or unable to withstand a full-scale prosecution of the person who committed the offense against him or her.

It is important to support victims and their choices, while imposing strong penalties, where warranted.

Vulnerable adults must be protected from sex offenders.

Victims and their families often struggle after an abusive relationship is revealed. In order to overcome the pain caused by sexual abuse, victims need strong support from family members and others.

With respect to exceptional sentencing issues, it is important to note that after the Blakely v. Washington case heard by the U.S. Supreme Court, any factor that increases an offender's sentence above the standard range must be proven to a jury. A court cannot increase the sentence on its own, in the absence of a finding by the trier of fact.

Testimony Against (Human Services & Corrections): Prosecutors and the courts are in the best position to decide whether the facts in a particular case justify longer periods of incarceration, so their discretion should not be circumvented by drawing a bright-line rule that

would apply in every case. The current system allows for the types of sentences called for by the bill, where the facts warrant such serious punishment. For example, the law allows for "exceptional sentences" in very bad cases.

The danger of false allegations in cases where sex abuse is charged is very real. It is hard to imagine going to prison for the rest of your life for something you didn't do. The possibility of greater punishment should be balanced with safeguards regarding interrogation, corroborating evidence, and meaningful appointed counsel.

There are unseen costs to dramatically increasing sentences, including the need to build more prison housing. In addition, as offenders age in prison, their health care costs will increase, and those costs will need to be borne by the tax-paying public. Sex offenders also require heightened monitoring within prisons, and sometimes protective custody, because they are more likely to be beaten and abused by other inmates.

This bill does not go far enough to severely punish sex offenders.

Who Testified (Human Services & Corrections): PRO: John Christy, Correctional Officer, Washington State Penitentiary; Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs; Jim Hines, Pat Gibbs, Theresa Gibbs, and Deborah Goldsbury, Preserve Childhood Innocence; Dave Johnson, Washington Coalition of Crime Victim Advocates; Tom McBride, Washington Association of Prosecuting Attorneys; Seth Dawson, Washington State Association of Children's Advocacy Centers; Lisa Lockwood, Supportive Parents and Friends of Victims of Whatcom County (Pro, if Amended); Marjorie, Trudy, and Alden, citizens (Identified by first names only).

CON: Jim Curtis, citizen; Thomas Weaver, Washington Association of Criminal Defense Lawyers; Luke Becker, Preserve Childhood Innocence; George White, citizen.

Testimony For (Ways & Means): The amended bill allows victim input in the decision on whether or not to file a special allegation.

Testimony Against (Ways & Means): None.

Who Testified (Ways & Means): PRO: Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs