
HOUSE BILL 2411

State of Washington

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By Representatives O'Brien, Rodne, Ericks, Lovick, Anderson, Jarrett, Nixon, McDonald, Williams, Clibborn, Linville, Buck, Conway, P. Sullivan, Tom, Takko, Lantz, Kilmer, Fromhold, B. Sullivan, Morrell, Simpson, Springer, Green, Miloscia, Sells, Campbell and Ormsby

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1 AN ACT Relating to imposing more severe punishment for certain sex
2 offenses against children by increasing the minimum sentences for rape
3 of a child in the first degree and child molestation in the first
4 degree, when the offender was unknown to the victim prior to the crime,
5 and rape in the first degree, rape in the second degree, indecent
6 liberties by forcible compulsion, and kidnapping in the first degree
7 with sexual motivation, when the victim was under a certain age at the
8 time of the crime; amending RCW 9.94A.712 and 9.94A.712; adding new
9 sections to chapter 9.94A RCW; prescribing penalties; providing an
10 effective date; providing an expiration date; and declaring an
11 emergency.

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

13 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A RCW
14 to read as follows:

15 (1) In a prosecution for rape of a child in the first degree or
16 child molestation in the first degree, the prosecuting attorney shall
17 file a special allegation that the defendant was unknown to the victim
18 prior to the commission of the offense whenever sufficient admissible
19 evidence exists, which, when considered with the most plausible,

1 reasonably foreseeable defense that could be raised under the evidence,
2 would justify a finding by a reasonable and objective fact-finder that
3 the defendant was unknown to the victim prior to the commission of the
4 offense.

5 (2) Once a special allegation has been made under this section, the
6 state has the burden to prove beyond a reasonable doubt that the
7 defendant was unknown to the victim prior to the commission of the
8 offense. If a jury is had, the jury shall, if it finds the defendant
9 guilty, also find a special verdict as to whether the defendant was
10 unknown to the victim prior to the commission of the offense. If no
11 jury is had, the court shall make a finding of fact as to whether the
12 defendant was unknown to the victim prior to the commission of the
13 offense.

14 (3) The prosecuting attorney shall not withdraw a special
15 allegation filed under this section without the approval of the court
16 through an order of dismissal of the allegation. The court may not
17 dismiss the special allegation unless it finds that the order is
18 necessary to correct an error in the initial charging decision or that
19 there are evidentiary problems that make proving the special allegation
20 doubtful.

21 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.94A RCW
22 to read as follows:

23 (1) In a prosecution for rape in the first degree, rape in the
24 second degree, indecent liberties by forcible compulsion, or kidnapping
25 in the first degree where a special allegation has been made under RCW
26 9.94A.835, the prosecuting attorney shall file a special allegation
27 that the victim of the offense was under fifteen years of age at the
28 time of the offense whenever sufficient admissible evidence exists,
29 which, when considered with the most plausible, reasonably foreseeable
30 defense that could be raised under the evidence, would justify a
31 finding by a reasonable and objective fact-finder that the victim was
32 under fifteen years of age at the time of the offense.

33 (2) Once a special allegation has been made under this section, the
34 state has the burden to prove beyond a reasonable doubt that the victim
35 was under fifteen years of age at the time of the offense. If a jury
36 is had, the jury shall, if it finds the defendant guilty, also find a
37 special verdict as to whether the victim was under the age of fifteen

1 at the time of the offense. If no jury is had, the court shall make a
2 finding of fact as to whether the victim was under the age of fifteen
3 at the time of the offense.

4 (3) The prosecuting attorney shall not withdraw a special
5 allegation filed under this section without the approval of the court
6 through an order of dismissal of the allegation. The court may not
7 dismiss the special allegation unless it finds that the order is
8 necessary to correct an error in the initial charging decision or that
9 there are evidentiary problems that make proving the special allegation
10 doubtful.

11 **Sec. 3.** RCW 9.94A.712 and 2005 c 436 s 2 are each amended to read
12 as follows:

13 (1) An offender who is not a persistent offender shall be sentenced
14 under this section if the offender:

15 (a) Is convicted of:

16 (i) Rape in the first degree, rape in the second degree, rape of a
17 child in the first degree, child molestation in the first degree, rape
18 of a child in the second degree, or indecent liberties by forcible
19 compulsion;

20 (ii) Any of the following offenses with a finding of sexual
21 motivation: Murder in the first degree, murder in the second degree,
22 homicide by abuse, kidnapping in the first degree, kidnapping in the
23 second degree, assault in the first degree, assault in the second
24 degree, assault of a child in the first degree, or burglary in the
25 first degree; or

26 (iii) An attempt to commit any crime listed in this subsection
27 (1)(a);
28 committed on or after September 1, 2001; or

29 (b) Has a prior conviction for an offense listed in RCW
30 9.94A.030(33)(b), and is convicted of any sex offense which was
31 committed after September 1, 2001.

32 For purposes of this subsection (1)(b), failure to register is not
33 a sex offense.

34 (2) An offender convicted of rape of a child in the first or second
35 degree or child molestation in the first degree who was seventeen years
36 of age or younger at the time of the offense shall not be sentenced
37 under this section.

1 (3)(a) Upon a finding that the offender is subject to sentencing
2 under this section, the court shall impose a sentence to a maximum term
3 (~~consisting of the statutory maximum sentence for the offense~~) and a
4 minimum term (~~either within the standard sentence range for the~~
5 ~~offense, or outside the standard sentence range pursuant to RCW~~
6 ~~9.94A.535, if the offender is otherwise eligible for such a sentence~~).

7 (b) The maximum term shall consist of the statutory maximum
8 sentence for the offense.

9 (c)(i) Except as provided in (c)(ii) of this subsection, the
10 minimum term shall be either within the standard sentence range for the
11 offense, or outside the standard sentence range pursuant to RCW
12 9.94A.535, if the offender is otherwise eligible for such a sentence.

13 (ii) If the offense that caused the offender to be sentenced under
14 this section was rape of a child in the first degree or child
15 molestation in the first degree, and there has been a finding that the
16 defendant was unknown to the victim prior to the offense under section
17 1 of this act, the minimum term shall be either the maximum of the
18 standard sentence range or twenty-five years, whichever is greater. If
19 the offense that caused the offender to be sentenced under this section
20 was rape in the first degree, rape in the second degree, indecent
21 liberties by forcible compulsion, or kidnapping in the first degree
22 with a finding of sexual motivation, and there has been a finding that
23 the victim was under the age of fifteen at the time of the offense
24 under section 2 of this act, the minimum term shall be either the
25 maximum of the standard range for the offense or twenty-five years,
26 whichever is greater.

27 (d) A minimum sentence imposed under (c)(ii) of this subsection
28 shall not affect an offender's eligibility for the special sex offender
29 sentencing alternative under RCW 9.94A.670 if the offender is otherwise
30 eligible for the sentencing alternative.

31 (4) A person sentenced under subsection (3) of this section shall
32 serve the sentence in a facility or institution operated, or utilized
33 under contract, by the state.

34 (5) When a court sentences a person to the custody of the
35 department under this section, the court shall, in addition to the
36 other terms of the sentence, sentence the offender to community custody
37 under the supervision of the department and the authority of the board

1 for any period of time the person is released from total confinement
2 before the expiration of the maximum sentence.

3 (6)(a)(i) Unless a condition is waived by the court, the conditions
4 of community custody shall include those provided for in RCW
5 9.94A.700(4). The conditions may also include those provided for in
6 RCW 9.94A.700(5). The court may also order the offender to participate
7 in rehabilitative programs or otherwise perform affirmative conduct
8 reasonably related to the circumstances of the offense, the offender's
9 risk of reoffending, or the safety of the community, and the department
10 and the board shall enforce such conditions pursuant to RCW 9.94A.713,
11 9.95.425, and 9.95.430.

12 (ii) If the offense that caused the offender to be sentenced under
13 this section was an offense listed in subsection (1)(a) of this section
14 and the victim of the offense was under eighteen years of age at the
15 time of the offense, the court shall, as a condition of community
16 custody, prohibit the offender from residing in a community protection
17 zone.

18 (b) As part of any sentence under this section, the court shall
19 also require the offender to comply with any conditions imposed by the
20 board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

21 **Sec. 4.** RCW 9.94A.712 and 2004 c 176 s 3 are each amended to read
22 as follows:

23 (1) An offender who is not a persistent offender shall be sentenced
24 under this section if the offender:

25 (a) Is convicted of:

26 (i) Rape in the first degree, rape in the second degree, rape of a
27 child in the first degree, child molestation in the first degree, rape
28 of a child in the second degree, or indecent liberties by forcible
29 compulsion;

30 (ii) Any of the following offenses with a finding of sexual
31 motivation: Murder in the first degree, murder in the second degree,
32 homicide by abuse, kidnapping in the first degree, kidnapping in the
33 second degree, assault in the first degree, assault in the second
34 degree, assault of a child in the first degree, or burglary in the
35 first degree; or

36 (iii) An attempt to commit any crime listed in this subsection
37 (1)(a);

1 committed on or after September 1, 2001; or

2 (b) Has a prior conviction for an offense listed in RCW
3 9.94A.030(32)(b), and is convicted of any sex offense which was
4 committed after September 1, 2001.

5 For purposes of this subsection (1)(b), failure to register is not
6 a sex offense.

7 (2) An offender convicted of rape of a child in the first or second
8 degree or child molestation in the first degree who was seventeen years
9 of age or younger at the time of the offense shall not be sentenced
10 under this section.

11 (3)(a) Upon a finding that the offender is subject to sentencing
12 under this section, the court shall impose a sentence to a maximum term
13 (~~consisting of the statutory maximum sentence for the offense~~) and a
14 minimum term (~~either within the standard sentence range for the
15 offense, or outside the standard sentence range pursuant to RCW
16 9.94A.535, if the offender is otherwise eligible for such a sentence~~).

17 (b) The maximum term shall consist of the statutory maximum
18 sentence for the offense.

19 (c)(i) Except as provided in (c)(ii) of this subsection, the
20 minimum term shall be either within the standard sentence range for the
21 offense, or outside the standard sentence range pursuant to RCW
22 9.94A.535, if the offender is otherwise eligible for such a sentence.

23 (ii) If the offense that caused the offender to be sentenced under
24 this section was rape of a child in the first degree or child
25 molestation in the first degree, and there has been a finding that the
26 defendant was unknown to the victim prior to the offense under section
27 1 of this act, the minimum term shall be either the maximum of the
28 standard sentence range or twenty-five years, whichever is greater. If
29 the offense that caused the offender to be sentenced under this section
30 was rape in the first degree, rape in the second degree, indecent
31 liberties by forcible compulsion, or kidnapping in the first degree
32 with a finding of sexual motivation, and there has been a finding that
33 the victim was under the age of fifteen at the time of the offense
34 under section 2 of this act, the minimum term shall be either the
35 maximum of the standard range for the offense or twenty-five years,
36 whichever is greater.

37 (d) A minimum sentence imposed under (c)(ii) of this subsection

1 shall not affect an offender's eligibility for the special sex offender
2 sentencing alternative under RCW 9.94A.670 if the offender is otherwise
3 eligible for the sentencing alternative.

4 (4) A person sentenced under subsection (3) of this section shall
5 serve the sentence in a facility or institution operated, or utilized
6 under contract, by the state.

7 (5) When a court sentences a person to the custody of the
8 department under this section, the court shall, in addition to the
9 other terms of the sentence, sentence the offender to community custody
10 under the supervision of the department and the authority of the board
11 for any period of time the person is released from total confinement
12 before the expiration of the maximum sentence.

13 (6)(a) Unless a condition is waived by the court, the conditions of
14 community custody shall include those provided for in RCW 9.94A.700(4).
15 The conditions may also include those provided for in RCW 9.94A.700(5).
16 The court may also order the offender to participate in rehabilitative
17 programs or otherwise perform affirmative conduct reasonably related to
18 the circumstances of the offense, the offender's risk of reoffending,
19 or the safety of the community, and the department and the board shall
20 enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and
21 9.95.430.

22 (b) As part of any sentence under this section, the court shall
23 also require the offender to comply with any conditions imposed by the
24 board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

25 NEW SECTION. Sec. 5. Section 3 of this act expires July 1, 2006.

26 NEW SECTION. Sec. 6. Section 4 of this act takes effect July 1,
27 2006.

28 NEW SECTION. Sec. 7. Sections 1 through 3 of this act are
29 necessary for the immediate preservation of the public peace, health,
30 or safety, or support of the state government and its existing public
31 institutions, and take effect immediately.

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