

# HOUSE BILL REPORT

## SHB 1097

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**As Passed House:**

February 12, 2007

**Title:** An act relating to protecting frail elders and vulnerable adults and persons with developmental disabilities from perpetrators who commit their crimes while providing transportation, within the course of their employment, to frail elders and vulnerable adults and persons with developmental disabilities.

**Brief Description:** Protecting frail elders and vulnerable adults and persons with developmental disabilities from perpetrators who commit their crimes while providing transportation, within the course of their employment, to frail elders and vulnerable adults and persons with developmental disabilities.

**Sponsors:** By House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Miloscia, Priest, Chase, Green, Ormsby, B. Sullivan, O'Brien, Morrell, Kenney, Moeller, Wallace, McCune and Simpson).

**Brief History:**

**Committee Activity:**

Public Safety & Emergency Preparedness: 1/25/07, 2/1/07 [DPS].

**Floor Activity:**

Passed House: 2/12/07, 96-0.

**Brief Summary of Substitute Bill**

- Expands the crimes of Rape in the second degree and Indecent Liberties to include the situation in which the perpetrator: (a) has sexual intercourse with a frail elder, a vulnerable adult, or a person with a developmental disability and (b) was providing transportation, within the course of his or her employment, to the victim at the time of the offense.

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**HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Hurst, Vice Chair; Pearson, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Ahern, Goodman and Lovick.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

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

**Background:**

I. Rape in the second degree

A person commits Rape in the second degree if he or she engages in sexual intercourse with another person:

- by forcible compulsion;
- when the victim is incapable of consent by reason of being physically helpless or mentally incapacitated;
- when the victim is developmentally disabled and the perpetrator has supervisory authority over the victim;
- when the perpetrator is a health care provider and the intercourse occurs during a treatment session, consultation, interview, or examination;
- 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; and
- 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. It is also a "two strikes" offense and a "determinate plus" offense. This means that a first-time offender would generally be sentenced to a minimum term within a standard range of 78-102 months and a maximum term of life. The minimum term would be 25 years if: (a) a special allegation was made and proven that the victim of the crime was under the age of 15; or (b) the crime was committed with forcible compulsion and a special allegation was made and proven that the victim was a frail elder or vulnerable adult.

II. Indecent Liberties

A person commits Indecent Liberties if he or she engages in sexual contact with another person:

- by forcible compulsion;
- when the victim is incapable of consent by reason of being physically helpless or mentally incapacitated;
- when the victim is developmentally disabled and the perpetrator has supervisory authority over the victim;
- when the perpetrator is a health care provider and the contact occurs during a treatment session, consultation, interview, or examination;
- 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
- when the victim is a frail elder or vulnerable adult and the perpetrator has a significant relationship to the victim.

Indecent Liberties with forcible compulsion is a class A felony with a seriousness level of X. It is also a "two strikes" sex offense and a "determinate plus" offense. This means that a first-time offender would generally be sentenced to a minimum term within a standard range

of 51-68 months and a maximum term of life. The minimum term would be 25 years if a special allegation was made and proven that: (a) the victim of the crime was under the age of 15; or (b) the victim was a frail elder or vulnerable adult.

Indecent Liberties without forcible compulsion is a class B felony with a seriousness level of VII. It is also a "three strikes" offense. This means that a first-time offender would generally be sentenced within a standard range of 15-20 months.

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**Summary of Substitute Bill:**

I. Rape in the Second Degree

A person commits Rape in the second degree if he or she: (a) has sexual intercourse with a frail elder, a vulnerable adult, or a person with a developmental disability; and (b) was providing transportation, within the course of his or her employment, to the victim at the time of the offense.

II. Indecent Liberties

A person commits Indecent Liberties if he or she: (a) has sexual contact with a frail elder, a vulnerable adult, or a person with a developmental disability; and (b) was providing transportation, within the course of his or her employment, to the victim at the time of the offense.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:**

(In support) This bill is narrowly drawn to protect people in need who need our help. People who provide transportation to vulnerable populations have control and power over the people they are transporting. Such providers are responsible for providing transportation in a safe and secure environment; they are clearly in a trusted and authoritative position. Riders of this type of transportation depend on the transportation to live their lives and are in positions of vulnerability when they do so; they can neither help themselves nor get away. When persons who victimize riders are not held accountable, the riders are victimized twice: once by the perpetrator and once by the system. Most providers of transportation to vulnerable persons are law-abiding citizens. This bill will help punish those who are not and help riders live fuller lives knowing that they will be safe.

(In support with concerns) Some persons with developmental disabilities are served by personal care attendants with whom they are in a consensual sexual relationship. This bill may inappropriately criminalize sexual behavior in this situation.

(Opposed) None.

**Persons Testifying:** (In support) Representative Miloscia, prime sponsor; Representative Priest; Tim Leary, King County Prosecuting Attorneys Office; Patty Fitzpatrick; Erin Price; Emily Rogers, ARC of Washington; Ed Holen, Developmental Disabilities Council; and Mary Ellen Stone, King County Sexual Assault Resource Center.

(In support with concerns) David Lord, Washington Protection and Advocacy System.

**Persons Signed In To Testify But Not Testifying:** None.