

SENATE BILL REPORT

SB 6358

As Passed Senate, February 19, 2008

Title: An act relating to adding child care providers, volunteers, and employees to the definition of "predatory" perpetrators for the purposes of filing a special allegation.

Brief Description: Adding child care providers, volunteers, and employees to the definition of "predatory" perpetrators for the purposes of filing a special allegation.

Sponsors: Senators Regala, Stevens, Hargrove, Marr, Roach, Kohl-Welles and Kilmer.

Brief History:

Committee Activity: Human Services & Corrections:1/24/08, 2/5/08 [DP].
Passed Senate: 2/19/08, 47-0.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass.

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

Staff: Shani Bauer (786-7468)

Background: In 2001 the Legislature added determinate-plus sentencing for certain sex offenders. Determinate-plus offenders are sentenced to both a minimum and a maximum sentence. The minimum term is generally equal to the term under the standard range in the sentencing grid. The maximum term is the statutory maximum sentence for the crime (life for class A felonies; ten 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 five 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.

Determinate-plus sentencing applies to any person convicted of a first "two-strikes" sex offense committed after September 1, 2001, and any person who committed a first "two-strikes" sex offense prior to September 1, 2001, and who is then convicted of any other felony sex offense committed after September 1, 2001.

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.

Two-strike offenses:

- Rape 1 and 2;
- Rape of a child 1 and 2;
- Child molestation 1;
- Indecent liberties by forcible compulsion;
- Attempt to commit any of the above;
- Murder 1 and 2 (with sexual motivation);
- Homicide by abuse (with sexual motivation);
- Kidnapping 1 and 2 (with sexual motivation);
- Assault/Assault of a child (with sexual motivation);
- Burglary 1 (with sexual motivation).

In 2006 the Legislature authorized a 25-year minimum sentence for a determinate plus offense under certain circumstances:

- when the victim is under the age of 15 or a vulnerable adult and the crime is indecent liberties with forcible compulsion, kidnapping 1 with sexual motivation, rape 1 or rape 2 with forcible compulsion;
- when the crime is predatory and the crime is rape of a child 1 or 2, or child molestation. "Predatory" is defined as situations where the perpetrator:
 - was unknown to the child 24 hours before the offense;
 - established the relationship with the child for the purpose of participating in sexual conduct; or
 - has a special relationship with the child as provided in statute, such as teacher/student, coach/athlete, or church elder/member.

The prosecutor must make a special allegation that the offender's alleged conduct meets the requirements of the statute that must be individually proven for the enhanced 25-year minimum sentence to apply.

"Agency" under RCW 43.215.010 is defined as any person, firm, partnership, association, corporation, or facility that provides child care and early learning services outside a child's own home and includes a child care center, early learning facility, family day care provider.

Summary of Bill: For purposes of the enhanced 25-year minimum sentence, a predatory relationship may be found where a child care or early learning service provider has victimized a child in the care of that agency. Child care or early learning "agency" is as defined in current law.

Appropriation: None.

Fiscal Note: Requested on January 15, 2008.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is the result of a case in King County where a day care provider committed sex offenses with multiple victims. The day care was associated with a school, but the provider was not a school employee. As a result, the prosecutor could not charge the 25 year minimum sentence. The allegation is used conservatively and is generally reserved for egregious cases.

Persons Testifying: PRO: Tom McBride, Washington Association of Prosecuting Attorneys.