

HOUSE BILL REPORT

SHB 2705

As Passed House:
February 17, 2016

Title: An act relating to increasing the seriousness level of first degree rape and first degree rape of a child.

Brief Description: Concerning first degree rape.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Klippert, Hayes, Wilson, Griffey, Muri and Smith).

Brief History:

Committee Activity:

Public Safety: 2/2/16, 2/5/16 [DPS].

Floor Activity:

Passed House: 2/17/16, 98-0.

Brief Summary of Substitute Bill

- Increases the seriousness level of Rape in the first degree from XII (12) to XV (15).

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Griffey, Moscoso, Pettigrew and Wilson.

Minority Report: Do not pass. Signed by 1 member: Representative Appleton.

Staff: Kelly Leonard (786-7147).

Background:

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.

Rape in the First Degree. A person is guilty of Rape in the first degree when such person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory:

- uses or threatens to use a deadly weapon or what appears to be a deadly weapon; or
- kidnaps the victim; or
- inflicts serious physical injury, including but not limited to physical injury which renders the victim unconscious; or
- feloniously enters into the building or vehicle where the victim is situated.

Rape in the first degree is class A felony with a ranked seriousness level of XII (12).

Sentencing. For most ranked felony offenses, the Sentencing Reform Act applies and determines the specific range of sentence from which a judge can select a length of confinement for a defendant. Sentences are determined by reference to a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the offender's criminal history. An offender score may vary from zero to nine plus points depending on certain factors in his or her history.

The following table highlights the standard ranges (in months) for seriousness level XV and XII offenses for offender scores of zero, two, four, and six:

Seriousness Level	Offender Score			
	0	2	4	6
XV (15)	240-320 Months	261-347 Months	281-374 Months	312-416 Months
XII (12)	93-123 Months	111-147 Months	129-171 Months	162-216 Months

Rape in the first degree falls under the state policy of "determinate plus" sentencing for certain sex offenses. "Determinate plus" requires convicted offenders to be sentenced to an indeterminate range of confinement. A "determinate-plus" sentence contains a minimum term of confinement falling within the standard range (shown in the chart above) paired with a maximum term equaling the statutory maximum sentence for the offense. The statutory maximum for Rape in the first degree is life in prison.

Offenders given "determinate plus" sentences fall under the purview of the Indeterminate Sentence Review Board through the maximum term of the sentence. Those released from prison will be supervised by the Department of Corrections and will remain on community custody through the maximum term of the sentence.

Voters approved Initiative 593 ("Three Strikes and You're Out") in 1993. The law established the penalty of life in prison without the possibility of release for "persistent offenders." The life sentence applies to both "Three Strike" and "Two Strike" offenders. Rape in the first degree is a strike offense in both categories.

Summary of Substitute Bill:

The seriousness level of Rape in the first degree is increased to XV (15).

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Rape in the first degree and Rape of a Child in the first degree are terrible crimes. Victims often suffer a fate worse than death. If someone commits either crime, the state should lock them away for a long time. The state should stop these people from committing more crimes.

(Opposed) Rape in the first degree is a crime of violence, and the state should and does treat it differently. On the other hand, Rape of a Child in the first degree is different. It is often an incest offense committed by family members and sometimes by children. The courts utilize the special sex offender sentencing alternative (SSOSA) for these types of offenses. The SSOSA is generally limited to familial offenses and where the victim supports it. The SSOSA is an effective tool for resolving these cases because it allows prosecution of offenses in circumstances where families are hesitant to come forward. Twenty-two of the 75 SSOSA cases last year involved Rape of a Child in the first degree.

However, the bill would effectively eliminate the availability of SSOSA for Rape of a Child in the first degree. In order to be eligible for a SSOSA, the minimum sentence for the crime must be 11 years or less. If the Legislature increases the seriousness level to XV (15), then the minimum term would exceed the limits for the SSOSA program. The SSOSA is an effective program, both for prosecution of these crimes and for treatment.

Persons Testifying: (In support) Representative Klippert, prime sponsor.

(Opposed) Brad Meryhew, Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.