

HOUSE BILL REPORT

HB 1759

As Reported By House Committee On:
Judiciary

Title: An act relating to sex offenses.

Brief Description: Changing sex offense provisions for perpetrators who are health care providers or persons with supervisory authority.

Sponsors: Representatives H. Myers, Brough, Johanson, Miller, Locke, Ballasiotes, Chappell, Ludwig, Scott, Jones, Horn, Rayburn, Foreman, Roland, Forner and Wood.

Brief History:

Reported by House Committee on:
Judiciary, March 3, 1993, DPS.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Forner; Johanson; Locke; Long; Mastin; H. Myers; Riley; Schmidt; Scott; Tate; and Wineberry.

Staff: Patricia Shelledy (786-7149).

Background: A person is guilty of rape in the second degree when the person engages in sexual intercourse with another person: (1) by forcible compulsion; (2) when the victim is incapable of consent by reason of being physically helpless or mentally incapacitated; or (3) when the victim is developmentally disabled and the perpetrator is a person who is not married to the victim and who has supervisory authority over the victim.

A person is guilty of indecent liberties when he or she knowingly causes another person who is not a spouse to have sexual contact with the person: (1) by forcible compulsion; (2) when the victim is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless; or (3) when the victim is developmentally disabled and the perpetrator is a person who

is not married to the victim and who has supervisory authority over the victim.

"Sexual intercourse" and "sexual contact" are defined. Sexual intercourse occurs upon penetration, however slight, except when the penetration is accomplished for medically recognized treatment or diagnostic purposes. Sexual contact involves the touching of the sexual or other intimate parts of a person and is done for the purpose of gratifying the sexual desire of either party. The term "physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

The provisions do not cover sexual intercourse or sexual contact with a mentally disordered person or a chemically dependent person who is a resident of a health care facility and who may be subjected to the sexual intercourse or contact by a person who is in a supervisory position over the patient.

Apparently, the current provisions do not govern situations in which a health care provider deceives a client by misrepresenting that a procedure which results in sexual intercourse or sexual contact is part of the medical treatment and, therefore, the client "consents" to the procedure because the client believes the contact is part of the treatment. The current provisions also apparently do not cover situations in which the client is in a physically compromised position but is not "physically helpless," and is either unable to stop the intercourse or contact or does not fully comprehend what is happening until after the intercourse or contact occurs. An example of the latter situation is when a dentist fondles the dental patient while the dentist cleans the patient's teeth.

In some cases, health care professionals may develop consensual sexual relationships with their clients that extend beyond the actual treatment session. Although that conduct is often unethical, depending on the health care professional, it is not a crime.

Summary of Substitute Bill: The second-degree rape statute and the indecent liberties statute are amended to address situations involving sexual intercourse or sexual contact between health care providers and their patients.

A health care provider is guilty of rape in the second degree when he or she engages in sexual intercourse with a client or patient during a treatment session, a consultation, an interview, or an examination.

It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual intercourse or contact with the knowledge that the sexual intercourse or contact was not for the purpose of treatment.

A person is also guilty of rape in the second degree if he or she: (1) engages in sexual intercourse with a resident of a facility for mentally disordered or chemically dependent persons; (2) is not married to the victim; and (3) is in a position of supervisory authority over the victim.

The indecent liberties statute is amended in the same manner as the rape statute.

A "mentally disordered person" is a person with a mental disorder as defined in the provisions governing mental illness.

A "chemically dependent person" is a person with a chemical dependency as defined in the provisions governing drug and alcohol addictions.

"Health care providers" include a variety of persons in the health professions.

"Treatment" means the active delivery of professional services by a health care provider which the health care provider holds himself or herself out to be qualified to provide.

Substitute Bill Compared to Original Bill: A technical amendment to the existing definition of "consent" is added to include consent to sexual contact, not just sexual intercourse. A clarifying amendment is added which provides that the sexual intercourse or contact must occur during a "treatment session" as opposed to anytime during a period in which the patient is "in treatment." Reference to "patients" is added in addition to the existing reference in the bill to "clients," because medical professionals refer to their customers as patients. An affirmative defense may be established by the defendant by a preponderance of the evidence that the client or patient consented to the sexual contact with the knowledge that the sexual contact was not for the purpose of treatment.

Fiscal Note: Available.

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

Testimony For: The bill corrects a gap in the law. Health care providers who assault their patients can only be prosecuted for fourth-degree assault in many cases because the elements of rape in the second or third degree do not apply. Some of the attacks are accomplished by deceiving the victim that the sexual assault is part of necessary treatment. Other attacks are accomplished before the victim has the opportunity to object or resist the attack.

Testimony Against: The bill will have an adverse impact on civil actions and victims of abuse. Insurance companies do not insure health care workers for criminal behavior, so victims will be unable to obtain damages from the health care provider's insurance company. Consumers are currently protected by disciplinary boards which regulate their members. Under the current system, an abuser may admit that he or she abused the patient because the health care worker does not face criminal liability. Health care workers who abuse their patients will not admit the abuse if criminal charges may result from the admission. A victim's recovery from the abuse may be adversely impacted if the perpetrator does not admit the abuse.

Witnesses: Shirley Siegel, Stop Abuse by Counselors (con); Shirley Feldman-Summers, psychologist (con); Ione George, Kitsap County Prosecutor's Office (pro); Jim O'Toole, Detective, Kirkland Police Department (pro); Andrea Evarts, citizen (pro); and Donna Deleno, Washington Coalition of Sexual Assault Programs (pro).