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**Criminal Justice & Corrections  
Committee**

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**HB 2411**

**Brief Description:** Changing the provisions relating to punishment for certain sex offenses.

**Sponsors:** Representatives O'Brien, Rodne, Ericks, Lovick and Anderson.

**Brief Summary of Bill**

- Increases the minimum term for Rape of a Child in the first degree and Child Molestation in the first degree when the perpetrator was unknown to the victim.
- Increases the minimum term for Rape in the first degree, Rape in the second degree, Indecent Liberties by forcible compulsion, and Kidnapping in the first degree with sexual motivation, when the victim was under the age of 15 at the time of the offense.

**Hearing Date:** 1/12/06

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

**Background:**

Rape of a Child in the First Degree

A person is guilty of Rape of a Child (statutory rape) in the first degree if he or she has sexual intercourse with a child under 12 if the perpetrator is at least 24 months older than the victim. Rape of a Child in the first degree is a class A felony with a seriousness level of XII. It is also a "two strikes" sex offense.

Child Molestation in the First Degree

A person commits Child Molestation in the first degree if he or she has sexual contact with a child under 12 if the perpetrator is at least 36 months older than the victim. Child Molestation in the first degree is a class A felony with a seriousness level of X. It is also a "two strikes" sex offense.

Rape in the First Degree

A person commits Rape in the first degree if he or she engages in sexual intercourse with a victim by forcible compulsion and uses a deadly weapon, kidnaps the victim, inflicts serious physical injury, or feloniously enters the building or vehicle where the victim is situated. Rape in the first degree is a class A felony with a seriousness level of XII. It is also a "two strikes" sex offense.

## Rape in the Second Degree

A person commits Rape in the second degree if he or she engages in sexual intercourse with another person: (a) by forcible compulsion, (b) when the victim is incapable of consent by reason of being physically helpless or mentally incapacitated, (c) when the victim is developmentally disabled and the perpetrator has supervisory authority over the victim, (d) when the perpetrator is a health care provider and the intercourse occurs during a treatment session, consultation, interview, or examination, (e) 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 (f) 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" sex offense.

## Indecent Liberties by Forcible Compulsion

A person commits Indecent Liberties by forcible compulsion if he or she engages in sexual contact with another person by forcible compulsion. Indecent Liberties by forcible compulsion is a class A felony with a seriousness level of X. It is also a "two strikes" sex offense.

## Kidnapping in the First Degree with Sexual Motivation

A person is guilty of Kidnapping in the first degree with sexual motivation if he or she, with sexual motivation, abducts another person with the intent to hold the person for ransom or reward, to facilitate the commission of a felony (or flight therefrom), to inflict bodily injury, to inflict extreme mental distress, or to interfere with the performance of a governmental function. Kidnapping in the first degree with sexual motivation is a class A felony with a seriousness level of X.

## Determinate-Plus Sentencing

In 2001, the Legislature passed 3ESSB 6151, which created a type of sentencing that has come to be known as "determinate-plus" sentencing. Determinate-plus sentencing applies to two groups of offenders: (1) offenders convicted of a first two-strikes sex offense and (2) offenders who have a prior two-strikes offense in their criminal histories who are convicted of a subsequent sex offense that is not a two-strikes offense. As mentioned above, Rape of Child in the first degree, Child Molestation in the first degree, Rape in the first degree, Rape in the second degree, Indecent Liberties by forcible compulsion, and Kidnapping in the first degree with sexual motivation are all two-strikes sex offenses and therefore subject to determinate-plus sentencing.

A court must sentence an offender convicted of a determinate-plus offense to a minimum term and a maximum term. The minimum term is generally equal to the standard range sentence. The maximum term is equal to the statutory maximum for the offense: life for class A felonies, 10 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 two years up to the offenders 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.

For an offender sentenced to a determinate-plus sentence for any two-strikes offense (which are all class A felonies), this means that the offender may be incarcerated for life if he or she continues to fail his or her ISRB evaluations. If the offender is ever released, he or she will be on community custody for life.

An offender sentenced to a determinate-plus sentence for a two-strikes offense committed against a minor victim is prohibited from living within a "community protection zone" for the duration of his or her term of community custody. A community protection zone is the area within two blocks of a public or private school. The legislation creating these living restrictions terminates on July 1, 2006.

**Summary of Bill:**

For purposes of imposing a determinate-plus sentence, the minimum terms for Rape of a Child in the first degree, Child Molestation in the first degree, Rape in the first degree, Rape in the second degree, Indecent Liberties by forcible compulsion, and Kidnapping in the first degree with sexual motivation are increased as follows:

- 25 years or the maximum of the standard range, whichever is greater, for Rape of a Child in the first degree and Child Molestation in the first degree, when the perpetrator was unknown to the victim at the time of the offense; and
- 25 years or the maximum of the standard range, whichever is greater, for Rape in the first degree, Rape in the second degree, Indecent Liberties by forcible compulsion, and Kidnapping in the first degree, when the victim was under the age of 15 at the time of the offense.

A process is established for purposes of determining whether the perpetrator was unknown to the victim or whether the victim was under the age of 15 at the time of the offense. The prosecutor, when sufficient admissible evidence exists, must file a special allegation that the perpetrator was unknown to the victim or the victim was under the age of 15 at the time of the offense. The prosecutor has the burden of proving the special allegation beyond a reasonable doubt to the jury (or the judge if there is no jury). The prosecutor may not withdraw a special allegation without the permission of the court.

**Appropriation:** None.

**Fiscal Note:** Requested on January 4, 2006.

**Effective Date:** The bill contains an emergency clause and takes effect immediately, except for Section 4, which takes effect July 1, 2006.