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**Criminal Justice & Corrections  
Committee**

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**HB 2476**

**Brief Description:** Protecting children, vulnerable persons, and communities by strengthening laws regarding sex offenders regardless of whether the perpetrator was known or unknown to the victim at the time of the crime, and kidnapping offenders.

**Sponsors:** Representatives Shabro, Pearson, Nixon, McDonald, Talcott, Linville, Skinner, Buck, Condotta, Walsh, Ahern, Haler, Serben, Ericksen, Alexander, Schindler, Armstrong, McCune, Holmquist and Woods.

**Brief Summary of Bill**

- Creates four new crimes: Sexual Victimization in the first degree, sexual victimization in the second degree, Failure to Report an Unregistered Sex Offender, and Tampering with an Electronic Monitoring Device.
- Increases the sentences for certain sex offenses.
- Designates Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct a sex offense.
- Imposes electronic monitoring using an active global position system upon certain offenders.
- Adds to the aggravating circumstances that can warrant the death penalty.
- Requires sex offenders to complete treatment and admit guilt for their offenses before being released.
- Excludes certain persons from the Special Sex Offender Sentencing Alternative.
- Makes a variety of changes to the sex and kidnapping offender registration statute including requiring offenders to provide their "complete residential" addresses, decreasing the amount of time out-of-state registrants have to register from 30 days to 24 hours, requiring offenders to sign written notices sent to the county sheriff, requiring homeless offenders to list where they have been and where they plan to be when they check in

weekly, and clarifying that any knowing non-compliance with the registration statute is a crime.

- Increases the penalty for failing to comply with the sex and kidnapping offender registration statute.
- Makes an appropriation to the Office of the Attorney General for purposes of carrying out a public education and awareness campaign regarding sex and kidnapping offenders.

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

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

**Background:**

**I. Sex Offenses**

A variety of crimes are designated as sex offenses. There are several consequences of an offense being designated a sex offense including:

- Ineligibility for 50 percent earned release credits (the offender will be eligible for 10 percent or 33 percent depending on the sex offense involved);
- Mandatory terms of community custody for prison-bound offenders;
- Mandatory supervision by the Department of Corrections in the community;
- Triple scoring of prior sex offenses when computing the sentence for a new sex offense;
- Ineligibility for the Drug Offender Sentencing Alternative and the First Time Offender Waiver; and
- Registration (note that the definition of "sex offense" for purposes of the registration statute is broader than the definition for purposes of sentencing).

Examples of offenses that are currently designated as sex offenses include: Child Molestation in the first degree, Indecent Liberties, Kidnapping in the first degree with sexual motivation, Rape in the first degree, Rape in the second degree, Rape in the third degree, Rape of a Child in the first degree, and Rape of a Child in the second degree.

**Child Molestation in the first degree:** A person commits this crime 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.

**Indecent Liberties:** A person commits this crime if he or she engages in sexual contact 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 sexual contact 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. Indecent Liberties with forcible compulsion is a class A felony with a

seriousness level of X. It is also a "two strikes" sex offense. Indecent Liberties without forcible compulsion is a class B felony with a seriousness level of VII. It is also a "three strikes" offense.

**Kidnapping in the first degree with sexual motivation:** A person commits this crime when 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. It is also a "two strikes" sex offense.

**Rape in the first degree:** A person commits this crime 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 this crime 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.

**Rape in the third degree:** A person commits this crime if he or she engages in sexual intercourse with another person without consent or when there is a threat of substantial unlawful harm to the property rights of the victim. Rape in the third degree is a class C felony with a seriousness level of V. It is also a "three strikes" sex offense.

**Rape of a Child (statutory rape) in the first degree:** A perpetrator commits this crime 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.

**Rape of a Child (statutory rape) in the second degree:** A perpetrator commits this crime if he or she has sexual intercourse with a child aged 12 or 13 if the perpetrator is at least 36 months older than the victim. Rape of a Child in the second degree is a class A felony with a seriousness level of XI. It is also a "two strikes" sex offense.

## **II. Sentencing**

**Determinate Sentencing:** The Sentencing Reform Act of 1981 (SRA) imposes "determinate" sentences on most offenders who committed their crimes on or after July 1, 1984. Under the SRA's determinate sentencing system, a sentencing court is required to sentence an offender to a specific term of years within a standard range. The standard range is determined using a grid with a measure of the offender's criminal history (called "offender score") on the horizontal axis and the severity of the crime (called "seriousness level") on the vertical axis. Of the crimes listed above, a

court will impose a determinate sentence for Rape in the third degree and Indecent Liberties without forcible compulsion, provided that the "three strikes" law does not require the court to give the offender a life sentence.

**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. All of the crimes listed above are "two strikes" sex offenses except Rape in the third degree and Indecent Liberties without forcible compulsion.

A court must sentence a determinate-plus offender 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.

### **III. Possession of Child Pornography**

A person is guilty of Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct if he or she knowingly possesses visual or printed matter depicting a minor engaged in sexually explicit conduct. The crime is an "unranked" class C felony (zero-12 months in jail for each offense). The crime is currently not a sex offense.

### **IV. GPS Monitoring**

A court is authorized to impose electronic monitoring as part of an offender's sentence. The Department of Corrections (DOC) may also impose electronic monitoring as part of the offender's sentence as long as the monitoring does not contravene one of the conditions imposed by the court.

A variety of electronic monitoring systems are available to monitor offenders, including global positioning systems (GPS). There are two main types of GPS: active and passive systems. Active GPS enables the user to actively track an offender's movements in real time. Passive GPS creates a record of the offender's movements that can later be downloaded by the user.

## **V. The Death Penalty**

The death penalty may be imposed by a jury upon a person found guilty of Aggravated First Degree Murder. A person is guilty of Aggravated First Degree Murder if he or she commits Murder in the first degree and one of several aggravating circumstances are found to exist. Examples of aggravating circumstances include when the murder was committed in the course of Rape in the first degree or Kidnapping in the first degree, when the murder was committed to conceal a crime, or when the murder involved multiple victims.

## **VI. Sex Offender Treatment**

The DOC provides sex offender treatment to offenders on a volunteer basis. The DOC is required to offer treatment to any offender who is sentenced to a determinate-plus sentence.

## **VII. The Special Sex Offender Sentencing Alternative**

The Special Sex Offender Sentencing Alternative (SSOSA) was put in place by the Legislature in 1984. A SSOSA sentence consists of a suspended standard range sentence, incarceration for up to 12 months, treatment for up to five years, and a term of community custody. An offender is eligible for a SSOSA sentence if: (1) he or she is convicted of a sex offense that is not a serious violent offense or Rape in the 2nd degree, (2) he or she has no prior felony sex offenses, (3) he or she has no prior adult violent offenses within five years of the current offense, (4) the current offense did not cause substantial bodily harm to the victim, (5) he or she has an established relationship or connection to the victim, and (6) his or her standard sentence range includes the possibility of incarceration for less than 11 years.

## **VIII. Sex Offender Registration**

In 1990, the Legislature enacted the Community Protection Act, which, among other things, created a sex offender registry in Washington. A sex or kidnapping offender must register with the county sheriff in the county where he or she resides. The offender must also notify the sheriff when he or she enrolls in a public or private school or an institution of higher education. Law enforcement officials use the information in the registry to notify the public, within certain guidelines, of a sex offender's presence in the community.

**Information Provided upon Registration:** When an offender registers, he or she must provide a variety of information including his or her name, address (a homeless offender must provide a description of where he or she plans to stay), date and place of birth, place of employment, crime of conviction, date and place of conviction, aliases used, social security number, photograph, and fingerprints.

**Out-of-State Registrants:** An offender subject to the registration requirements who moves to Washington from another state, or who is a former Washington resident returning to this state, must register within 30 days of establishing a residence in Washington.

**Written Notices:** A registered sex or kidnapping offender who changes addresses within a county must send written notice to the county sheriff within 72 hours of moving. If the offender moves to the new county, he or she must provide written notice to the sheriff of the new county at least 14 days prior to moving and must provide written notice to the sheriff of the old county within 10 days of moving. An offender who becomes homeless must send written notice to the county sheriff within 48 hours of becoming homeless.

**Homeless Offenders:** Homeless offenders must check in with the county sheriff once a week on a date specified by the sheriff. The sheriff may require the offender to list the places where he or she stayed during the previous week.

**Re-Registration:** Offenders with a fixed residence are not required to periodically check in or re-register with the county sheriff.

**Criminal Penalties:** An offender who knowingly fails to register or notify the county sheriff, or who changes his or her name without notifying the county sheriff or the Washington State Patrol, is guilty of a crime. The offender is guilty of an "unranked" class C felony (zero-12 months in jail, a fine of up to \$10,000, or both) if the crime that caused the person to register was a felony. The person is guilty of a gross misdemeanor (zero-12 months in jail, a fine of up to \$5,000, or both) if the crime that caused the person to register was a misdemeanor or a gross misdemeanor.

## **Summary of Bill:**

### **I. New Offenses**

Four new crimes are created: Sexual Victimization in the first degree, Sexual Victimization in the second degree, Failure to Report an Unregistered Sex Offender, and Tampering with an Electronic Monitoring Device.

**Sexual Victimization in the first degree:** A person commits this crime if he or she commits Rape in the first degree and the victim of the crime was under 12 years of age at the time of the offense. Sexual Victimization in the first degree is a class A felony with a seriousness level of XII (A/B+ on the juvenile sentencing grid). The crime is also a "two strikes" sex offense.

**Sexual Victimization in the second degree:** A person commits Sexual Victimization in the second degree if he or she:

- Has sexual intercourse or sexual contact with a victim incapable of consent because of physical helplessness or mental incapacity; or
- Commits Rape in the first degree, Rape in the second degree with forcible compulsion, Rape in the third degree, or Indecent Liberties with forcible compulsion, and the victim was a person with a developmental disability, mentally disordered, or a frail elder or vulnerable adult.

Sexual Victimization in the second degree is a class A felony with a seriousness level of XII (A/B+ on the juvenile sentencing grid). The crime is also a "two strikes" sex offense.

**Failure to Report an Unregistered Sex Offender:** A person commits this crime if he or she:

- Knows that another person has not complied with the sex and kidnapping offender registration statute; and
- Withholds information from law enforcement with the intent to help the person evade law enforcement.

Failure to Report an Unregistered Sex Offender is a class C felony with a seriousness level of VI. The crime is neither a strike offense nor a sex offense.

**Tampering with an Electronic Monitoring Device:** A person commits this crime if he or she:

- Is required to be electronically monitored under the act (see below); and
- Intentionally alters, tampers with, damages, or destroys an electronic monitoring device.

Tampering with an Electronic Monitoring Device is a class C felony with a seriousness level of IV. The crime is not a strike, but is a sex offense.

## **II. Sentencing**

Under determinate-plus sentencing, the minimum terms are increased as follows for Sexual Victimization in the first degree, Rape of a Child in the first degree, Child Molestation in the first degree, Kidnapping in the first degree with sexual motivation, Rape of a Child in the second degree, and Sexual Victimization in the second degree:

- For Sexual Victimization in the first degree, the minimum term is life;
- For Rape of a Child in the first degree, the minimum term is either 30 years or the maximum of the standard range, whichever is greater; and
- For Child Molestation in the first degree, Kidnapping in the first degree with sexual motivation, Rape of a Child in the second degree, and Sexual Victimization in the second degree, the minimum term is either 25 years or the maximum of the standard range, whichever is greater.

The minimum sentences do not apply to juveniles who were discretionarily declined into adult court.

## **III. Possession of Child Pornography**

Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct is designated a sex offense.

## **IV. GPS Monitoring**

The DOC must electronically monitor an offender on community custody pursuant to a conviction for a "two strikes" sex offense. When monitoring such an offender, the DOC must use active GPS.

The WSP must electronically monitor a registered sex offender who was convicted of a "two strikes" sex offense if the offender is not being monitored by the DOC; i.e., is not on community custody status. When monitoring such an offender, the WSP must use active GPS.

## **V. The Death Penalty**

The following circumstances are added to the list of aggravated circumstances for purposes of imposing the death penalty:

- The murder was committed with sexual motivation and the victim was under the age of 16 at the time of the offense.
- The murder was committed with sexual motivation and the victim was incapable of consent by reason of being physically helpless or mentally incapacitated or was a person with a developmental disability, a mentally disordered person, or a frail elder or vulnerable adult.

## **VI. Sex Offender Treatment**

An indeterminate sentence is imposed on all sex offenders who are not sentenced under determinate-plus sentencing. The sentence consists of a minimum term, which is equal to the standard range, and a maximum term, which is equal to the statutory maximum sentence for the offense. Such a sex offender may not be released prior to the completion of his or her maximum term unless he or she has successfully completed a sex offender treatment program and admitted guilt for his or her offense.

For an offender who is given a determinate-plus sentence, the ISRB may not release the offender prior to the expiration of his or her maximum term unless he or she has successfully completed a sex offender treatment program and admitted guilt for his or her offense.

## **VII. The Special Sex Offender Sentencing Alternative**

The following persons are made ineligible for SSOSA:

- Persons who undertake, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors; and
- Persons who, in the course of their employment, supervise minors.

## **VIII. Sex Offender Registration**

**Information Provided upon Registration:** Instead of requiring the offender to provide his or her "address" when registering, the offender is required to provide his or her "complete residential address."

**Out-of-State Registrants:** The amount of time an out-of-state registrant is given to register once he or she has established a residence in Washington is decreased to 24 hours (from 30 days).

**Written Notices:** The written notices that must be provided to the county sheriff when an offender moves or becomes homeless must be signed.

**Homeless Offenders:** When a homeless offender checks in weekly, the county sheriff must require the offender to list the places, including addresses when applicable, where he or she has stayed over the last seven days and the places he or she plans to stay in the forthcoming seven days.

**Re-Registration:** Level III sex offenders must re-register once a month. Level I and II sex offenders must re-register twice a year.

**Criminal Penalties:** A person is subject to criminal liability for any knowing non-compliance with the registration statute. Felony violations of the registration statute are ranked at seriousness level IV, which would lead to a mandatory prison sentence for a first offense.

**Appropriation:** An appropriation is made to the Office of the Attorney General for purposes of carrying out a public education and awareness campaign regarding sex and kidnapping offenders.

**Fiscal Note:** Requested on January 11, 2006.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed, except for sections 10 and 12, which, because of prior double amendments, take effect on July 1,

2006, and section 24, which, because of prior double amendments, takes effect on September 1, 2006.