

"I am returning herewith, without my approval as to section 22, Substitute House Bill No. 1271 entitled:

"AN ACT Relating to the department of corrections."

Section 22 of this bill clarifies language relating to the tolling of sentences when offenders have absented themselves from supervision or are confined for violations of sentence conditions. Similar language is contained in Engrossed Substitute House Bill No. 1424, section 9, which establishes a program of community placement. The language of that bill is more comprehensive and includes elements of the newly authorized program. In order to avoid confusion, I have vetoed section 22 of this bill.

With the exception of section 22, Substitute House Bill No. 1271 is approved."

CHAPTER 144

[Engrossed Substitute Senate Bill No. 6305]

CHILDHOOD SEXUAL ABUSE—STATUTE OF LIMITATIONS

AN ACT Relating to the statute of limitations for sexual abuse or exploitation of a child; amending RCW 4.16.350; adding a new section to chapter 4.16 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 4.16 RCW to read as follows:

(1) All claims or causes of action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse shall be commenced within three years of the act alleged to have caused the injury or condition, or three years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by said act, whichever period expires later.

(2) The victim need not establish which act in a series of continuing sexual abuse or exploitation incidents caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse or exploitation.

(3) The knowledge of a custodial parent or guardian shall not be imputed to a person under the age of eighteen years.

(4) For purposes of this section, "child" means a person under the age of eighteen years.

(5) As used in this section, "childhood sexual abuse" means any act committed by the defendant against a complainant who was less than eighteen years of age at the time of the act and which act would have been a violation of chapter 9A.44 RCW or RCW 9.68A.040 or prior laws of similar effect at the time the act was committed.

Sec. 2. Section 1, chapter 80, Laws of 1971 as last amended by section 1401, chapter 212, Laws of 1987 and RCW 4.16.350 are each amended to read as follows:

Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976 against:

(1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his estate or personal representative;

(2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his estate or personal representative; or

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his employment, including, in the event such officer, director, employee, or agent is deceased, his estate or personal representative;

based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later, except that in no event shall an action be commenced more than eight years after said act or omission: **PROVIDED**, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect.

For purposes of this section, notwithstanding RCW 4.16.190, the knowledge of a custodial parent or guardian shall be imputed to a person under the age of eighteen years, and such imputed knowledge shall operate to bar the claim of such minor to the same extent that the claim of an adult would be barred under this section. Any action not commenced in accordance with this section shall be barred.

For purposes of this section, with respect to care provided after June 25, 1976, and before August 1, 1986, the knowledge of a custodial parent or guardian shall be imputed as of April 29, 1987, to persons under the age of eighteen years.

This section does not apply to a civil action based on intentional conduct brought against those individuals or entities specified in this section by a person for recovery of damages for injury occurring as a result of childhood sexual abuse as defined in section 1(5) of this act.

NEW SECTION. Sec. 3. Sections 1 and 2 of this act apply to all causes of action commenced on or after the effective date of this act, regardless of when the cause of action may have arisen. To this extent, sections 1 and 2 of this act apply retrospectively.

Passed the Senate March 7, 1988.

Passed the House March 3, 1988.

Approved by the Governor March 21, 1988.

Filed in Office of Secretary of State March 21, 1988.

CHAPTER 145

[Substitute House Bill No. 1333]

SEXUAL OFFENSES

AN ACT Relating to creating sexual offenses with age differentials between victims and perpetrators; amending RCW 9A.44.010, 9A.44.100, 9.94A.440, 9A.46.060, 9A.88.030, 13.40.020, 13.40.110, 70.125.030, and 9A.44.030; reenacting and amending RCW 9.94A.030, 9.94A.320, and 9A.04.080; adding new sections to chapter 9A.44 RCW; creating new sections; repealing RCW 9A.44.070, 9A.44.080, and 9A.44.090; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 14, Laws of 1975 1st ex. sess. as amended by section 1, chapter 123, Laws of 1981 and RCW 9A.44.010 are each amended to read as follows:

As used in this chapter:

(1) "Sexual intercourse" (a) has its ordinary meaning and occurs upon any penetration, however slight, and

(b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and

(c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

(2) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party.

(3) "Married" means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and who has filed in an appropriate court for legal separation or for dissolution of his or her marriage.

~~((3))~~ (4) "Mental incapacity" is that condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse whether that condition is produced by illness, defect, the influence of a substance or from some other cause;