

**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;

~~((4))~~ (5) "Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act;

~~((5))~~ (6) "Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped;

~~((6))~~ (7) "Consent" means that at the time of the act of sexual intercourse there are actual words or conduct indicating freely given agreement to have sexual intercourse;

(8) "Significant relationship" means a situation in which the perpetrator is:

(a) A person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors; or

(b) A person who in the course of his or her employment supervises minors.

(9) "Abuse of a supervisory position" means a direct or indirect threat or promise to use authority to the detriment or benefit of a minor.

NEW SECTION. Sec. 2. RAPE OF A CHILD IN THE FIRST DEGREE. (1) A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least twenty-four months older than the victim.

(2) Rape of a child in the first degree is a class A felony.

NEW SECTION. Sec. 3. RAPE OF A CHILD IN THE SECOND DEGREE. (1) A person is guilty of rape of a child in the second degree when the person has sexual intercourse with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Rape of a child in the second degree is a class B felony.

NEW SECTION. Sec. 4. RAPE OF A CHILD IN THE THIRD DEGREE. (1) A person is guilty of rape of a child in the third degree when the person has sexual intercourse with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim.

(2) Rape of a child in the third degree is a class C felony.

NEW SECTION. Sec. 5. CHILD MOLESTATION IN THE FIRST DEGREE. (1) A person is guilty of child molestation in the first degree when the person has sexual contact with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Child molestation in the first degree is a class B felony.

**NEW SECTION. Sec. 6. CHILD MOLESTATION IN THE SECOND DEGREE.** (1) A person is guilty of child molestation in the second degree when the person has sexual contact with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Child molestation in the second degree is a class B felony.

**NEW SECTION. Sec. 7. CHILD MOLESTATION IN THE THIRD DEGREE.** (1) A person is guilty of child molestation in the third degree when the person has sexual contact with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim.

(2) Child molestation in the third degree is a class C felony.

**NEW SECTION. Sec. 8. SEXUAL MISCONDUCT WITH A MINOR IN THE FIRST DEGREE.** (1) A person is guilty of sexual misconduct with a minor in the first degree when the person has sexual intercourse with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in sexual intercourse with the victim.

(2) Sexual misconduct with a minor in the first degree is a class C felony.

**NEW SECTION. Sec. 9. SEXUAL MISCONDUCT WITH A MINOR IN THE SECOND DEGREE.** (1) A person is guilty of sexual misconduct with a minor in the second degree when the person has sexual contact with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in sexual contact with the victim.

(2) Sexual misconduct with a minor in the second degree is a gross misdemeanor.

Sec. 10. Section 9A.88.100, chapter 260, Laws of 1975 1st ex. sess. as amended by section 1, chapter 131, Laws of 1986 and RCW 9A.44.100 are each amended to read as follows:

(1) A person is guilty of indecent liberties when he knowingly causes another person who is not his spouse to have sexual contact with him or another:

(a) By forcible compulsion; or

(b) ((When the other person is less than fourteen years of age; or

~~(c) When the other person is less than sixteen years of age and the perpetrator is more than forty-eight months older than the person and is in a position of authority over the person; or~~

~~(d)) When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless.~~

~~(2) ((For purposes of this section: (a) "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:~~

~~(b) "Person in a position of authority" means any person who is a parent or acting in the place of a parent and is charged with any of a parent's rights, duties, or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, education, or supervision of a child, either independently or through another, no matter how briefly, at the time of the act:~~

~~(3)) Indecent liberties is a class B felony.~~

Sec. 11. Section 3, chapter 137, Laws of 1981 as last amended by section 3, chapter 187, Laws of 1987, by section 1, chapter 456, Laws of 1987, and by section 1, chapter 458, Laws of 1987 and RCW 9.94A.030 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Commission" means the sentencing guidelines commission.

(2) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(3) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(4) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed pursuant to this chapter by a court. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(5) "Confinement" means total or partial confinement as defined in this section.

(6) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(7) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the

offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct.

(8) (a) "Criminal history" means the list of a defendant's prior convictions, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) "Criminal history" includes a defendant's prior convictions in juvenile court if: (i) The conviction was for an offense which is a felony and is criminal history as defined in RCW 13.40.020(6)(a); (ii) the defendant was fifteen years of age or older at the time the offense was committed; and (iii) with respect to prior juvenile class B and C felonies, the defendant was less than twenty-three years of age at the time the offense for which he or she is being sentenced was committed.

(9) "Department" means the department of corrections.

(10) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a fine or restitution. The fact that an offender through "earned early release" can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(11) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(12) "Escape" means:

(a) Escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), wilful failure to return from furlough (RCW 72.60.060), or wilful failure to return from work release (RCW 72.65.070); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(13) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(14) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

(15) (a) "First-time offender" means any person who is convicted of a felony (i) not classified as a violent offense or a sex offense under this chapter, or (ii) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug, and except as provided in (b) of this subsection, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(b) For purposes of (a) of this subsection, a juvenile adjudication for an offense committed before the age of fifteen years is not a previous felony conviction.

(16) "Nonviolent offense" means an offense which is not a violent offense.

(17) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(18) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release as defined in this section.

(19) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.

(20) "Serious traffic offense" means:

(a) Driving while intoxicated (RCW 46.61.502), actual physical control while intoxicated (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(21) "Serious violent offense" is a subcategory of violent offense and means:

(a) Murder in the first degree, homicide by abuse, murder in the second degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(22) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(23) "Sex offense" means:

(a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(24) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(25) "Victim" means any person who has sustained physical or financial injury to person or property as a direct result of the crime charged.

(26) "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, child molestation in the first degree, rape in the second degree, kidnapping in the second degree, arson in the second degree, assault in the second degree, extortion in the first degree, robbery in the second degree, vehicular assault, and vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in subsection (26)(a) of this section; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under subsection (26)(a) or (b) of this section.

(27) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility.

Sec. 12. Section 3, chapter 115, Laws of 1983 as last amended by section 4, chapter 187, Laws of 1987 and by section 1, chapter 224, Laws of 1987 and RCW 9.94A.320 are each reenacted and amended to read as follows:

TABLE 2

## CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XIV	Aggravated Murder 1 (RCW 10.95.020)
XIII	Murder 1 (RCW 9A.32.030) Homicide by abuse (RCW 9A.32.055)
XII	Murder 2 (RCW 9A.32.050)
XI	Assault 1 (RCW 9A.36.011)
X	Kidnapping 1 (RCW 9A.40.020) Rape 1 (RCW 9A.44.040) <u>Rape of a Child 1 (section 2 of this 1988 act)</u> Damaging building, etc., by explosion with threat to human being (RCW 70.74.280(1)) Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 and 3 years junior (RCW 69.50.406) Leading Organized Crime (RCW 9A.82.060(1)(a))
IX	Robbery 1 (RCW 9A.56.200) Manslaughter 1 (RCW 9A.32.060) <del>((Statutory Rape 1 (RCW 9A.44.070)))</del> Explosive devices prohibited (RCW 70.74.180) Endangering life and property by explosives with threat to human being (RCW 70.74.270) Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406) Sexual Exploitation, Under 16 (RCW 9.68A.040(2)(a)) Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
VIII	Arson 1 (RCW 9A.48.020) Rape 2 (RCW 9A.44.050) <u>Rape of a Child 2 (section 3 of this 1988 act)</u> <u>Child Molestation 1 (section 5 of this 1988 act)</u> Promoting Prostitution 1 (RCW 9A.88.070)



- Selling heroin for profit (RCW 69.50.410)
- VII Burglary 1 (RCW 9A.52.020)  
 Vehicular Homicide (RCW 46.61.520)  
 Introducing Contraband 1 (RCW 9A.76.140)  
 ((Statutory Rape 2 (RCW 9A.44.080)))  
 Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))  
 Sexual Exploitation, Under 18 (RCW 9.68A.040(2)(b))  
 Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)  
 Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- VI Bribery (RCW 9A.68.010)  
 Manslaughter 2 (RCW 9A.32.070)  
Child Molestation 2 (section 6 of this 1988 act)  
 Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)  
 Damaging building, etc., by explosion with no threat to human being (RCW 70.74.280(2))  
 Endangering life and property by explosives with no threat to human being (RCW 70.74.270)  
 Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b)((-c), and (-d))))  
 Incest 1 (RCW 9A.64.020(1))  
 Selling for profit (controlled or counterfeit) any controlled substance (except heroin) (RCW 69.50.410)  
 Manufacture, deliver, or possess with intent to deliver heroin or narcotics from Schedule I or II (RCW 69.50.401(a)(1)(i))  
 Intimidating a Judge (RCW 9A.72.160)
- V Criminal Mistreatment 1 (RCW 9A.42.020)  
 Rape 3 (RCW 9A.44.060)  
 Kidnapping 2 (RCW 9A.40.030)  
 Extortion 1 (RCW 9A.56.120)  
 Incest 2 (RCW 9A.64.020(2))  
 Perjury 1 (RCW 9A.72.020)  
 Extortionate Extension of Credit (RCW 9A.82.020)  
 Advancing money or property for extortionate extension of credit (RCW 9A.82.030)  
 Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)  
 Rendering Criminal Assistance 1 (RCW 9A.76.070)
- IV Robbery 2 (RCW 9A.56.210)  
 Assault 2 (RCW 9A.36.021)

- Escape 1 (RCW 9A.76.110)
- Arson 2 (RCW 9A.48.030)
- Rape of a Child 3 (section 4 of this 1988 act)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72-.090, 9A.72.100)
- Malicious Harassment (RCW 9A.36.080)
- Wilful Failure to Return from Furlough (RCW 72.66.060)
- Hit and Run — Injury Accident (RCW 46.52.020(4))
- Vehicular Assault (RCW 46.61.522)
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I–V (except marijuana) (RCW 69.50.401(a)(1)(ii) through (iv))
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
- III Criminal mistreatment 2 (RCW 9A.42.030)  
(~~(Statutory Rape 3 (RCW 9A.44.090))~~)
- Sexual Misconduct with a Minor 1 (section 8 of this 1988 act)
- Child Molestation 3 (section 7 of this 1988 act)
- Extortion 2 (RCW 9A.56.130)
- Unlawful Imprisonment (RCW 9A.40.040)
- Assault 3 (RCW 9A.36.031)
- Unlawful possession of firearm or pistol by felon (RCW 9.41.040)
- Harassment (RCW 9A.46.020)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Wilful Failure to Return from Work Release (RCW 72.65.070)
- Introducing Contraband 2 (RCW 9A.76.150)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Escape 2 (RCW 9A.76.120)
- Perjury 2 (RCW 9A.72.030)
- Intimidating a Public Servant (RCW 9A.76.180)
- Tampering with a Witness (RCW 9A.72.120)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(ii))
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Theft of livestock 1 (RCW 9A.56.080)
- II Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property 1 (RCW 9A.56.150)

- Theft 1 (RCW 9A.56.030)
- Theft of Livestock 2 (RCW 9A.56.080)
- Burglary 2 (RCW 9A.52.030)
- Possession of controlled substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.401(d))
- Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
- Computer Trespass 1 (RCW 9A.52.110)
- I
  - Theft 2 (RCW 9A.56.040)
  - Possession of Stolen Property 2 (RCW 9A.56.160)
  - Forgery (RCW 9A.60.020)
  - Taking Motor Vehicle Without Permission (RCW 9A.56.070)
  - Vehicle Prowl 1 (RCW 9A.52.095)
  - Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
  - Malicious Mischief 2 (RCW 9A.48.080)
  - Reckless Burning 1 (RCW 9A.48.040)
  - Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
  - False Verification for Welfare (RCW 74.08.055)
  - Forged Prescription (RCW 69.41.020)
  - Forged Prescription for a Controlled Substance (RCW 69.50.403)
  - Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (RCW 69.50.401(d))

Sec. 13. Section 15, chapter 115, Laws of 1983 as amended by section 30, chapter 257, Laws of 1986 and RCW 9.94A.440 are each amended to read as follows:

(1) Decision not to prosecute.

**STANDARD:** A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

**GUIDELINE/COMMENTARY:**

Examples

The following are examples of reasons not to prosecute which could satisfy the standard.

(a) Contrary to Legislative Intent – It may be proper to decline to charge where the application of criminal sanctions would be clearly contrary to the intent of the legislature in enacting the particular statute.

(b) Antiquated Statute – It may be proper to decline to charge where the statute in question is antiquated in that:

(i) It has not been enforced for many years; and  
(ii) Most members of society act as if it were no longer in existence;  
and

(iii) It serves no deterrent or protective purpose in today's society; and  
(iv) The statute has not been recently reconsidered by the legislature.

This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.

(c) De Minimus Violation – It may be proper to decline to charge where the violation of law is only technical or insubstantial and where no public interest or deterrent purpose would be served by prosecution.

(d) Confinement on Other Charges – It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iii) Conviction of the new offense would not serve any significant deterrent purpose.

(e) Pending Conviction on Another Charge – It may be proper to decline to charge because the accused is facing a pending prosecution in the same or another county; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) Conviction in the pending prosecution is imminent;

(iii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iv) Conviction of the new offense would not serve any significant deterrent purpose.

(f) High Disproportionate Cost of Prosecution – It may be proper to decline to charge where the cost of locating or transporting, or the burden on, prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question. This reason should be limited to minor cases and should not be relied upon in serious cases.

(g) Improper Motives of Complainant – It may be proper to decline charges because the motives of the complainant are improper and prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

(h) Immunity – It may be proper to decline to charge where immunity is to be given to an accused in order to prosecute another where the accused's information or testimony will reasonably lead to the conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest.

(i) Victim Request – It may be proper to decline to charge because the victim requests that no criminal charges be filed and the case involves the following crimes or situations:

(i) Assault cases where the victim has suffered little or no injury;

(ii) Crimes against property, not involving violence, where no major loss was suffered;

(iii) Where doing so would not jeopardize the safety of society.

Care should be taken to insure that the victim's request is freely made and is not the product of threats or pressure by the accused.

The presence of these factors may also justify the decision to dismiss a prosecution which has been commenced.

#### Notification

The prosecutor is encouraged to notify the victim, when practical, and the law enforcement personnel, of the decision not to prosecute.

(2) Decision to prosecute.

#### STANDARDS:

Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder.

Crimes against property/other crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact-finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

See table below for the crimes within these categories.

### CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

#### CRIMES AGAINST PERSONS

Aggravated Murder

1st Degree Murder

2nd Degree Murder

1st Degree Kidnaping

1st Degree Assault

1st Degree Rape

1st Degree Robbery

~~((1st Degree Statutory Rape))~~

1st Degree Rape of a Child

1st Degree Arson

2nd Degree Kidnaping

2nd Degree Assault

2nd Degree Rape

2nd Degree Robbery

1st Degree Burglary

1st Degree Manslaughter  
 2nd Degree Manslaughter  
 1st Degree Extortion  
 Indecent Liberties  
 ((2nd Degree Statutory Rape))  
 Incest  
2nd Degree Rape of a Child  
 Vehicular Homicide  
 Vehicular Assault  
 3rd Degree Rape  
 ((3rd Degree Statutory Rape))  
3rd Degree Rape of a Child  
1st Degree Child Molestation  
2nd Degree Child Molestation  
3rd Degree Child Molestation  
 2nd Degree Extortion  
 1st Degree Promoting Prostitution  
 Intimidating a Juror  
 Communication with a Minor  
 Intimidating a Witness  
 Intimidating a Public Servant  
 Bomb Threat (if against person)  
 3rd Degree Assault  
 Unlawful Imprisonment  
 Promoting a Suicide Attempt  
 Riot (if against person)

#### CRIMES AGAINST PROPERTY/OTHER CRIMES

2nd Degree Arson  
 1st Degree Escape  
 2nd Degree Burglary  
 1st Degree Theft  
 1st Degree Perjury  
 1st Degree Introducing Contraband  
 1st Degree Possession of Stolen Property  
 Bribery  
 Bribing a Witness  
 Bribe received by a Witness  
 Bomb Threat (if against property)  
 1st Degree Malicious Mischief  
 2nd Degree Theft  
 2nd Degree Escape  
 2nd Degree Introducing Contraband  
 2nd Degree Possession of Stolen Property

2nd Degree Malicious Mischief  
1st Degree Reckless Burning  
Taking a Motor Vehicle without Authorization  
Forgery  
2nd Degree Perjury  
2nd Degree Promoting Prostitution  
Tampering with a Witness  
Trading in Public Office  
Trading in Special Influence  
Receiving/Granting Unlawful Compensation  
Bigamy  
Eluding a Pursuing Police Vehicle  
Wilful Failure to Return from Furlough  
Riot (if against property)  
Thefts of Livestock

**ALL OTHER UNCLASSIFIED FELONIES**

**Selection of Charges/Degree of Charge**

(1) The prosecutor should file charges which adequately describe the nature of defendant's conduct. Other offenses may be charged only if they are necessary to ensure that the charges:

(a) Will significantly enhance the strength of the state's case at trial;  
or

(b) Will result in restitution to all victims.

(2) The prosecutor should not overcharge to obtain a guilty plea.  
Overcharging includes:

- (a) Charging a higher degree;
- (b) Charging additional counts.

This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a defendant's criminal conduct, but to decline to charge crimes which are not necessary to such an indication. Crimes which do not merge as a matter of law, but which arise from the same course of conduct, do not all have to be charged.

**GUIDELINES/COMMENTARY:**

**Police Investigation**

A prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The prosecuting attorney shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made. In ordinary circumstances the investigation should include the following:

- (1) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;
- (2) The completion of necessary laboratory tests; and

(3) The obtaining, in accordance with constitutional requirements, of the suspect's version of the events.

If the initial investigation is incomplete, a prosecuting attorney should insist upon further investigation before a decision to prosecute is made, and specify what the investigation needs to include.

#### Exceptions

In certain situations, a prosecuting attorney may authorize filing of a criminal complaint before the investigation is complete if:

- (1) Probable cause exists to believe the suspect is guilty; and
- (2) The suspect presents a danger to the community or is likely to flee if not apprehended; or
- (3) The arrest of the suspect is necessary to complete the investigation of the crime.

In the event that the exception to the standard is applied, the prosecuting attorney shall obtain a commitment from the law enforcement agency involved to complete the investigation in a timely manner. If the subsequent investigation does not produce sufficient evidence to meet the normal charging standard, the complaint should be dismissed.

#### Investigation Techniques

The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:

- (1) Polygraph testing;
- (2) Hypnosis;
- (3) Electronic surveillance;
- (4) Use of informants.

#### Pre-Filing Discussions with Defendant

Discussions with the defendant or his/her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached.

Sec. 14. Section 1, chapter 85, Laws of 1986 and section 13, chapter 257, Laws of 1986 and RCW 9A.04.080 are each reenacted and amended to read as follows:

~~(1) Prosecutions for ((the offenses of murder, and arson where death ensues, may be commenced at any period after the commission of the offense; for offenses the punishment of which may be imprisonment in a state correctional institution, committed by any public officer in connection with the duties of his office or constituting a breach of his public duty or a violation of his oath of office, and arson where death does not ensue, within ten years after their commission; for violations of RCW 9A.44.070, 9A.44.080, and 9A.44.100(1)(b), within seven years after their commission; for violations of RCW 9A.82.060 or 9A.82.080, within six years after their commission; for violations of class C felonies under chapter 74.09 RCW, within five years after their commission; for bigamy, within three years of the time specified in RCW 9A.64.010; for all other offenses the punishment of which~~



~~may be imprisonment in a state correctional institution, within three years after their commission; two years for gross misdemeanors; and for all other offenses, within one year after their commission. PROVIDED, That any length of time during which the party charged was not usually and publicly resident within this state shall not be reckoned within the one, two, three, five, six, seven, and ten years respectively. AND FURTHER PROVIDED, That where an indictment has been found, or complaint or an information filed, within the time limited for the commencement of a criminal action, if the indictment, complaint or information be set aside, the time of limitation shall be extended by the length of time from the time of filing of such indictment, complaint, or information, to the time such indictment, complaint, or information was set aside))~~ criminal offenses shall not be commenced after the periods prescribed in this section.

(a) The following offenses may be prosecuted at any time after their commission:

(i) Murder;

(ii) Arson if a death results.

(b) The following offenses shall not be prosecuted more than ten years after their commission:

(i) Any felony committed by a public officer if the commission is in connection with the duties of his or her office or constitutes a breach of his or her public duty or a violation of the oath of office;

(ii) Arson if no death results.

(c) The following offenses shall not be prosecuted more than seven years after their commission: Rape of a child in the first or second degree or child molestation in the first or second degree.

(d) The following offenses shall not be prosecuted more than six years after their commission: Violations of RCW 9A.82.060 or 9A.82.080.

(e) The following offenses shall not be prosecuted more than five years after their commission: Any class C felony under chapter 74.09 RCW.

(f) Bigamy shall not be prosecuted more than three years after the time specified in RCW 9A.64.010.

(g) No other felony may be prosecuted more than three years after its commission.

(h) No gross misdemeanor may be prosecuted more than two years after its commission.

(i) No misdemeanor may be prosecuted more than one year after its commission.

(2) The periods of limitation prescribed in subsection (1) of this section do not run during any time when the person charged is not usually and publicly resident within this state.

(3) If, before the end of a period of limitation prescribed in subsection (1) of this section, an indictment has been found or a complaint or an information has been filed, and the indictment, complaint, or information is

set aside, then the period of limitation is extended by a period equal to the length of time from the finding or filing to the setting aside.

Sec. 15. Section 6, chapter 288, Laws of 1985 and RCW 9A.46.060 are each amended to read as follows:

As used in this chapter, "harassment" may include but is not limited to any of the following crimes:

- (1) Harassment (RCW 9A.46.020);
- (2) Malicious harassment (RCW 9A.36.080);
- (3) Telephone harassment (RCW 9.61.230);
- (4) Assault in the first degree (RCW ((~~9A.36.010~~) 9A.36.011);
- (5) Assault in the second degree (RCW ((~~9A.36.020~~) 9A.36.021);
- (6) Simple assault (RCW ((~~9A.36.040~~) 9A.36.041);
- (7) Reckless endangerment (RCW 9A.36.050);
- (8) Extortion in the first degree (RCW 9A.56.120);
- (9) Extortion in the second degree (RCW 9A.56.130);
- (10) Coercion (RCW 9A.36.070);
- (11) Burglary in the first degree (RCW 9A.52.020);
- (12) Burglary in the second degree (RCW 9A.52.030);
- (13) Criminal trespass in the first degree (RCW 9A.52.070);
- (14) Criminal trespass in the second degree (RCW 9A.52.080);
- (15) Malicious mischief in the first degree (RCW 9A.48.070);
- (16) Malicious mischief in the second degree (RCW 9A.48.080);
- (17) Malicious mischief in the third degree (RCW 9A.48.090);
- (18) Kidnapping in the first degree (RCW 9A.40.020);
- (19) Kidnapping in the second degree (RCW 9A.40.030);
- (20) Unlawful imprisonment (RCW 9A.40.040);
- (21) Rape in the first degree (RCW 9A.44.040);
- (22) Rape in the second degree (RCW 9A.44.050);
- (23) Rape in the third degree (RCW 9A.44.060);
- (24) Indecent liberties (RCW 9A.44.100);
- (25) ((Statutory)) Rape of a child in the first degree ((~~RCW 9A.44-070~~)) (section 2 of this 1988 act);
- (26) ((Statutory)) Rape of a child in the second degree ((~~RCW 9A-44-080~~)) (section 3 of this 1988 act); ((and))
- (27) ((Statutory)) Rape of a child in the third degree ((~~RCW 9A.44-090~~)) (section 4 of this 1988 act);
- (28) Child molestation in the first degree (section 5 of this 1988 act);
- (29) Child molestation in the second degree (section 6 of this 1988 act); and
- (30) Child molestation in the third degree (section 7 of this 1988 act).

Sec. 16. Section 9A.88.030, chapter 260, Laws of 1975 1st ex. sess. as amended by section 15, chapter 244, Laws of 1979 ex. sess. and RCW 9A.88.030 are each amended to read as follows:

(1) A person is guilty of prostitution if such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

(2) For purposes of this section, "sexual conduct" means "sexual intercourse" ~~((as defined in RCW 9A.44.010(1)))~~ or "sexual contact," both as defined in chapter 9A.44 RCW ~~((9A.44.100(2)))~~.

(3) Prostitution is a misdemeanor.

Sec. 17. Section 56, chapter 291, Laws of 1977 ex. sess. as last amended by section 7, chapter 191, Laws of 1983 and RCW 13.40.020 are each amended to read as follows:

For the purposes of this chapter:

(1) "Serious offender" means a person fifteen years of age or older who has committed an offense which if committed by an adult would be:

(a) A class A felony, or an attempt to commit a class A felony;

(b) Manslaughter in the first degree or rape in the second degree; or

(c) Assault in the second degree, extortion in the first degree, ~~((indecent liberties))~~ child molestation in the first or second degree, rape of a child in the second degree, kidnapping in the second degree, robbery in the second degree, or burglary in the second degree, ((or statutory rape in the second degree;)) where such offenses include the infliction of bodily harm upon another or where during the commission of or immediate withdrawal from such an offense the perpetrator is armed with a deadly weapon or firearm as defined in RCW 9A.04.110;

(2) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender as punishment for committing an offense;

(3) "Community supervision" means an order of disposition by the court of an adjudicated youth. A community supervision order for a single offense may be for a period of up to one year and include one or more of the following:

(a) A fine, not to exceed one hundred dollars;

(b) Community service not to exceed one hundred fifty hours of service;

(c) Attendance of information classes;

(d) Counseling; or

(e) Such other services to the extent funds are available for such services, conditions, or limitations as the court may require which may not include confinement;

(4) "Confinement" means physical custody by the department of social and health services in a facility operated by or pursuant to a contract with the state, or physical custody in a facility operated by or pursuant to a contract with any county. Confinement of less than thirty-one days imposed as part of a disposition or modification order may be served consecutively or intermittently, in the discretion of the court;

(5) "Court", when used without further qualification, means the juvenile court judge(s) or commissioner(s);

(6) "Criminal history" includes all criminal complaints against the respondent for which, prior to the commission of a current offense:

(a) The allegations were found correct by a court. If a respondent is convicted of two or more charges arising out of the same course of conduct, only the highest charge from among these shall count as an offense for the purposes of this chapter; or

(b) The criminal complaint was diverted by a prosecutor pursuant to the provisions of this chapter on agreement of the respondent and after an advisement to the respondent that the criminal complaint would be considered as part of the respondent's criminal history;

(7) "Department" means the department of social and health services;

(8) "Diversion unit" means any probation counselor who enters into a diversion agreement with an alleged youthful offender or any other person or entity with whom the juvenile court administrator has contracted to arrange and supervise such agreements pursuant to RCW 13.04.040, as now or hereafter amended, or any person or entity specially funded by the legislature to arrange and supervise diversion agreements in accordance with the requirements of this chapter;

(9) "Institution" means a juvenile facility established pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

(10) "Juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years and who has not been previously transferred to adult court;

(11) "Juvenile offender" means any juvenile who has been found by the juvenile court to have committed an offense, including a person eighteen years of age or older over whom jurisdiction has been extended under RCW 13.40.300;

(12) "Manifest injustice" means a disposition that would either impose an excessive penalty on the juvenile or would impose a serious, and clear danger to society in light of the purposes of this chapter;

(13) "Middle offender" means a person who has committed an offense and who is neither a minor or first offender nor a serious offender;

(14) "Minor or first offender" means a person sixteen years of age or younger whose current offense(s) and criminal history fall entirely within one of the following categories:

(a) Four misdemeanors;

(b) Two misdemeanors and one gross misdemeanor;

(c) One misdemeanor and two gross misdemeanors;

(d) Three gross misdemeanors;

(e) One class C felony and one misdemeanor or gross misdemeanor;

(f) One class B felony except: Any felony which constitutes an attempt to commit a class A felony; manslaughter in the first degree; rape in the

second degree; assault in the second degree; extortion in the first degree; indecent liberties; kidnapping in the second degree; robbery in the second degree; burglary in the second degree; ((statutory)) rape of a child in the second degree; vehicular homicide; or arson in the second degree.

For purposes of this definition, current violations shall be counted as misdemeanors;

(15) "Offense" means an act designated a violation or a crime if committed by an adult under the law of this state, under any ordinance of any city or county of this state, under any federal law, or under the law of another state if the act occurred in that state;

(16) "Respondent" means a juvenile who is alleged or proven to have committed an offense;

(17) "Restitution" means financial reimbursement by the offender to the victim, and shall be limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical treatment for physical injury to persons, and lost wages resulting from physical injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses. Nothing in this chapter shall limit or replace civil remedies or defenses available to the victim or offender;

(18) "Secretary" means the secretary of the department of social and health services;

(19) "Services" mean services which provide alternatives to incarceration for those juveniles who have pleaded or been adjudicated guilty of an offense or have signed a diversion agreement pursuant to this chapter;

(20) "Foster care" means temporary physical care in a foster family home or group care facility as defined in RCW 74.15.020 and licensed by the department, or other legally authorized care;

(21) "Violation" means an act or omission, which if committed by an adult, must be proven beyond a reasonable doubt, and is punishable by sanctions which do not include incarceration.

Sec. 18. Section 65, chapter 291, Laws of 1977 ex. sess. as amended by section 63, chapter 155, Laws of 1979 and RCW 13.40.110 are each amended to read as follows:

(1) The prosecutor, respondent, or the court on its own motion may, before a hearing on the information on its merits, file a motion requesting the court to transfer the respondent for adult criminal prosecution and the matter shall be set for a hearing on the question of declining jurisdiction. Unless waived by the court, the parties, and their counsel, a decline hearing shall be held where:

(a) The respondent is sixteen or seventeen years of age and the information alleges a class A felony or an attempt to commit a class A felony; or

(b) The respondent is seventeen years of age and the information alleges assault in the second degree, extortion in the first degree, indecent

liberties, rape of a child in the second degree, child molestation in the first or second degree, kidnaping in the second degree, rape in the second degree, or robbery in the second degree.

(2) The court after a decline hearing may order the case transferred for adult criminal prosecution upon a finding that the declination would be in the best interest of the juvenile or the public. The court shall consider the relevant reports, facts, opinions, and arguments presented by the parties and their counsel.

(3) When the respondent is transferred for criminal prosecution or retained for prosecution in juvenile court, the court shall set forth in writing its finding which shall be supported by relevant facts and opinions produced at the hearing.

Sec. 19. Section 3, chapter 219, Laws of 1979 ex. sess. and RCW 70.125.030 are each amended to read as follows:

As used in this chapter and unless the context indicates otherwise:

(1) "Department" means the department of social and health services.

(2) "Law enforcement agencies" means police and sheriff's departments of this state.

(3) "Personal representative" means a friend, relative, attorney, or employee or volunteer from a rape crisis center.

(4) "Rape crisis center" means a community-based social service agency which provides services to victims of sexual assault.

(5) "Secretary" means the secretary of the department of social and health services.

(6) "Sexual assault" means one or more of the following:

(a) Rape or ((statutory)) rape of a child;

(b) Assault with intent to commit rape;

(c) Incest or indecent liberties; or

(d) An attempt to commit any of the aforementioned offenses.

(7) "Victim" means any person who suffers physical and/or mental anguish as a proximate result of a sexual assault.

Sec. 20. Section 3, chapter 14, Laws of 1975 1st ex. sess. and RCW 9A.44.030 are each amended to read as follows:

(1) In any prosecution under this chapter in which lack of consent is based solely upon the victim's mental incapacity or upon the victim's being physically helpless, it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless.

(2) In any prosecution under this chapter in which the offense or degree of the offense depends on the victim's age, it is no defense that the perpetrator did not know the victim's age, or that the perpetrator believed the victim to be older, as the case may be: PROVIDED, That it is a defense which the defendant must prove by a preponderance of the evidence that at

the time of the offense the defendant reasonably believed the alleged victim to be ~~((older))~~ the age identified in subsection (3) of this section based upon declarations as to age by the alleged victim.

(3) The defense afforded by subsection (2) of this section requires that for the following defendants, the reasonable belief be as indicated:

(a) For a defendant charged with rape of a child in the first degree, that the victim was at least twelve, or was less than twenty-four months younger than the defendant;

(b) For a defendant charged with rape of a child in the second degree, that the victim was at least fourteen, or was less than thirty-six months younger than the defendant;

(c) For a defendant charged with rape of a child in the third degree, that the victim was at least sixteen, or was less than forty-eight months younger than the defendant;

(d) For a defendant charged with sexual misconduct with a minor in the first degree, that the victim was at least eighteen, or was less than sixty months younger than the defendant;

(e) For a defendant charged with child molestation in the first degree, that the victim was at least twelve, or was less than thirty-six months younger than the defendant;

(f) For a defendant charged with child molestation in the second degree, that the victim was at least fourteen, or was less than thirty-six months younger than the defendant;

(g) For a defendant charged with child molestation in the third degree, that the victim was at least sixteen, or was less than thirty-six months younger than the defendant;

(h) For a defendant charged with sexual misconduct with a minor in the second degree, that the victim was at least eighteen, or was less than sixty months younger than the defendant.

NEW SECTION. Sec. 21. The State of Washington Juvenile Disposition Sentencing Standards, Schedule A, is amended to include the following:

<u>JUVENILE DISPOSITION OFFENSE CATEGORY</u>	<u>DJR CODE</u>	<u>DESCRIPTION (RCW CITE)</u>	<u>JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY OR SOLICITATION</u>
A-	9A44B70	Rape of a child, 1 Degree	B+
C+	9A44B80	Rape of a child, 2 Degree	D+
B+	9A44I01	Child Molestation, 1 Degree	C+
B+	9A44I02	Child Molestation, 2 Degree	C+

NEW SECTION. Sec. 22. Section captions as used in this chapter do not constitute any part of the law.

NEW SECTION. Sec. 23. Sections 2 through 9 and 22 of this act are each added to chapter 9A.44 RCW.

NEW SECTION. Sec. 24. The following acts or parts of acts are each repealed:

(1) Section 7, chapter 14, Laws of 1975 1st ex. sess., section 4, chapter 244, Laws of 1979 ex. sess., section 31, chapter 257, Laws of 1986 and RCW 9A.44.070;

(2) Section 8, chapter 14, Laws of 1975 1st ex. sess., section 5, chapter 244, Laws of 1979 ex. sess. and RCW 9A.44.080; and

(3) Section 9, chapter 14, Laws of 1975 1st ex. sess., section 6, chapter 244, Laws of 1979 ex. sess. and RCW 9A.44.090.

NEW SECTION. Sec. 25. This act shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which is already in existence on July 1, 1988, and shall apply only to offenses committed on or after July 1, 1988.

NEW SECTION. Sec. 26. This act shall take effect July 1, 1988.

Passed the House March 9, 1988.

Passed the Senate March 8, 1988.

Approved by the Governor March 21, 1988.

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

CHAPTER 146

[Substitute House Bill No. 1302]

SEXUAL OFFENSES INVOLVING DEVELOPMENTALLY DISABLED VICTIMS—  
PATRONIZING A PROSTITUTE

AN ACT Relating to sexual offenses; amending RCW 9A.44.050, 9A.44.100, and 9A.44.010; adding a new section to chapter 9A.88 RCW; prescribing penalties; providing an effective date; and declaring an emergency.

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

Sec. 1. Section 5, chapter 14, Laws of 1975 1st ex. sess. as last amended by section 2, chapter 118, Laws of 1983 and RCW 9A.44.050 are each amended to read as follows:

(1) A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person:

(a) By forcible compulsion; ~~((or))~~

(b) When the victim is incapable of consent by reason of being physically helpless or mentally incapacitated; or

(c) 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.

(2) Rape in the second degree is a class B felony.