

2 SHB 2573 - S COMM AMD

3 By Committee on Law & Justice

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 NEW SECTION. Sec. 1. A new section is added to chapter 9A.44 RCW  
8 to read as follows:

9 (1) A person is guilty of custodial sexual misconduct in the first  
10 degree when the person has sexual intercourse with another person:

11 (a)(i) Who is a resident of a state, county, or city adult or  
12 juvenile correctional facility, including but not limited to jails,  
13 prisons, detention centers, or work release facilities, or (ii) who is  
14 under correctional supervision; and the perpetrator is an employee or  
15 contract personnel of a correctional agency and the perpetrator has, or  
16 the resident reasonably believes the perpetrator has, the ability to  
17 influence the terms, conditions, length, or fact of incarceration or  
18 correctional supervision; or

19 (b) Who is being detained, under arrest or in the custody of a law  
20 enforcement officer and the perpetrator is a law enforcement officer.

21 (2) Consent of the victim is not a defense to a prosecution under  
22 this section.

23 (3) Custodial sexual misconduct in the first degree is a class C  
24 felony.

25 NEW SECTION. Sec. 2. A new section is added to chapter 9A.44 RCW  
26 to read as follows:

27 (1) A person is guilty of custodial sexual misconduct in the second  
28 degree when the person has sexual contact with another person:

29 (a)(i) Who is a resident of a state, county, or city adult or  
30 juvenile correctional facility, including but not limited to jails,  
31 prisons, detention centers, or work release facilities, or (ii) who is  
32 under correctional supervision; and the perpetrator is an employee or  
33 contract personnel of a correctional agency and the perpetrator has, or  
34 the resident reasonably believes the perpetrator has, the ability to

1 influence the terms, conditions, length, or fact of incarceration or  
2 correctional supervision; or

3 (b) Who is being detained, under arrest, or in the custody of a law  
4 enforcement officer and the perpetrator is a law enforcement officer.

5 (2) Consent of the victim is not a defense to a prosecution under  
6 this section.

7 (3) Custodial sexual misconduct in the second degree is a gross  
8 misdemeanor.

9 **Sec. 3.** RCW 9.94A.320 and 1997 c 365 s 4, 1997 c 346 s 3, 1997 c  
10 340 s 1, 1997 c 338 s 51, 1997 c 266 s 15, and 1997 c 120 s 5 are each  
11 reenacted and amended to read as follows:

12 TABLE 2

13 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

14	XV	Aggravated Murder 1 (RCW 10.95.020)
15	XIV	Murder 1 (RCW 9A.32.030)
16		Homicide by abuse (RCW 9A.32.055)
17		Malicious explosion 1 (RCW 70.74.280(1))
18	XIII	Murder 2 (RCW 9A.32.050)
19		Malicious explosion 2 (RCW 70.74.280(2))
20		Malicious placement of an explosive 1 (RCW
21		70.74.270(1))
22	XII	Assault 1 (RCW 9A.36.011)
23		Assault of a Child 1 (RCW 9A.36.120)
24		Rape 1 (RCW 9A.44.040)
25		Rape of a Child 1 (RCW 9A.44.073)
26		Malicious placement of an imitation device
27		1 (RCW 70.74.272(1)(a))
28	XI	Rape 2 (RCW 9A.44.050)
29		Rape of a Child 2 (RCW 9A.44.076)
30		Manslaughter 1 (RCW 9A.32.060)
31	X	Kidnapping 1 (RCW 9A.40.020)
32		Child Molestation 1 (RCW 9A.44.083)
33		Malicious explosion 3 (RCW 70.74.280(3))

1 Over 18 and deliver heroin or narcotic from  
2 Schedule I or II to someone under 18  
3 (RCW 69.50.406)  
4 Leading Organized Crime (RCW  
5 9A.82.060(1)(a))  
6 Indecent Liberties (with forcible  
7 compulsion) (RCW 9A.44.100(1)(a))  
8 IX Assault of a Child 2 (RCW 9A.36.130)  
9 Robbery 1 (RCW 9A.56.200)  
10 Explosive devices prohibited (RCW  
11 70.74.180)  
12 Malicious placement of an explosive 2 (RCW  
13 70.74.270(2))  
14 Over 18 and deliver narcotic from Schedule  
15 III, IV, or V or a nonnarcotic from  
16 Schedule I-V to someone under 18 and 3  
17 years junior (RCW 69.50.406)  
18 Controlled Substance Homicide (RCW  
19 69.50.415)  
20 Sexual Exploitation (RCW 9.68A.040)  
21 Inciting Criminal Profiteering (RCW  
22 9A.82.060(1)(b))  
23 Vehicular Homicide, by being under the  
24 influence of intoxicating liquor or  
25 any drug (RCW 46.61.520)  
26 VIII Arson 1 (RCW 9A.48.020)  
27 Promoting Prostitution 1 (RCW 9A.88.070)  
28 Selling for profit (controlled or  
29 counterfeit) any controlled substance  
30 (RCW 69.50.410)  
31 Manufacture, deliver, or possess with  
32 intent to deliver heroin or cocaine  
33 (RCW 69.50.401(a)(1)(i))  
34 Manufacture, deliver, or possess with  
35 intent to deliver methamphetamine (RCW  
36 69.50.401(a)(1)(ii))

1 Possession of ephedrine or pseudoephedrine  
2 with intent to manufacture  
3 methamphetamine (RCW 69.50.440)  
4 Vehicular Homicide, by the operation of any  
5 vehicle in a reckless manner (RCW  
6 46.61.520)  
7 Manslaughter 2 (RCW 9A.32.070)

8 VII Burglary 1 (RCW 9A.52.020)  
9 Vehicular Homicide, by disregard for the  
10 safety of others (RCW 46.61.520)  
11 Introducing Contraband 1 (RCW 9A.76.140)  
12 Indecent Liberties (without forcible  
13 compulsion) (RCW 9A.44.100(1) (b) and  
14 (c))  
15 Child Molestation 2 (RCW 9A.44.086)  
16 Dealing in depictions of minor engaged in  
17 sexually explicit conduct (RCW  
18 9.68A.050)  
19 Sending, bringing into state depictions of  
20 minor engaged in sexually explicit  
21 conduct (RCW 9.68A.060)  
22 Involving a minor in drug dealing (RCW  
23 69.50.401(f))  
24 Drive-by Shooting (RCW 9A.36.045)  
25 Unlawful Possession of a Firearm in the  
26 first degree (RCW 9.41.040(1)(a))  
27 Malicious placement of an explosive 3 (RCW  
28 70.74.270(3))

29 VI Bribery (RCW 9A.68.010)  
30 Rape of a Child 3 (RCW 9A.44.079)  
31 Intimidating a Juror/Witness (RCW  
32 9A.72.110, 9A.72.130)  
33 Malicious placement of an imitation device  
34 2 (RCW 70.74.272(1)(b))  
35 Incest 1 (RCW 9A.64.020(1))  
36 Manufacture, deliver, or possess with  
37 intent to deliver narcotics from

1 Schedule I or II (except heroin or  
2 cocaine) (RCW 69.50.401(a)(1)(i))  
3 Intimidating a Judge (RCW 9A.72.160)  
4 Bail Jumping with Murder 1 (RCW  
5 9A.76.170(2)(a))  
6 Theft of a Firearm (RCW 9A.56.300)

7 V Persistent prison misbehavior (RCW  
8 9.94.070)  
9 Criminal Mistreatment 1 (RCW 9A.42.020)  
10 Abandonment of dependent person 1 (RCW  
11 9A.42.060)  
12 Rape 3 (RCW 9A.44.060)  
13 Sexual Misconduct with a Minor 1 (RCW  
14 9A.44.093)  
15 Custodial Sexual Misconduct (RCW 9A.44.---  
16 (section 1 of this act))  
17 Child Molestation 3 (RCW 9A.44.089)  
18 Kidnapping 2 (RCW 9A.40.030)  
19 Extortion 1 (RCW 9A.56.120)  
20 Incest 2 (RCW 9A.64.020(2))  
21 Perjury 1 (RCW 9A.72.020)  
22 Extortionate Extension of Credit (RCW  
23 9A.82.020)  
24 Advancing money or property for  
25 extortionate extension of credit (RCW  
26 9A.82.030)  
27 Extortionate Means to Collect Extensions of  
28 Credit (RCW 9A.82.040)  
29 Rendering Criminal Assistance 1 (RCW  
30 9A.76.070)  
31 Bail Jumping with class A Felony (RCW  
32 9A.76.170(2)(b))  
33 Sexually Violating Human Remains (RCW  
34 9A.44.105)  
35 Delivery of imitation controlled substance  
36 by person eighteen or over to person  
37 under eighteen (RCW 69.52.030(2))  
38 Possession of a Stolen Firearm (RCW  
39 9A.56.310)

1 IV Residential Burglary (RCW 9A.52.025)  
2 Theft of Livestock 1 (RCW 9A.56.080)  
3 Robbery 2 (RCW 9A.56.210)  
4 Assault 2 (RCW 9A.36.021)  
5 Escape 1 (RCW 9A.76.110)  
6 Arson 2 (RCW 9A.48.030)  
7 Commercial Bribery (RCW 9A.68.060)  
8 Bribing a Witness/Bribe Received by Witness  
9 (RCW 9A.72.090, 9A.72.100)  
10 Malicious Harassment (RCW 9A.36.080)  
11 Threats to Bomb (RCW 9.61.160)  
12 Willful Failure to Return from Furlough  
13 (RCW 72.66.060)  
14 Hit and Run--Injury Accident (RCW  
15 46.52.020(4))  
16 Hit and Run with Vessel--Injury Accident  
17 (RCW 88.12.155(3))  
18 Vehicular Assault (RCW 46.61.522)  
19 Manufacture, deliver, or possess with  
20 intent to deliver narcotics from  
21 Schedule III, IV, or V or nonnarcotics  
22 from Schedule I-V (except marijuana or  
23 methamphetamines) (RCW 69.50.401  
24 (a)(1) (iii) through (v))  
25 Influencing Outcome of Sporting Event (RCW  
26 9A.82.070)  
27 Use of Proceeds of Criminal Profiteering  
28 (RCW 9A.82.080 (1) and (2))  
29 Knowingly Trafficking in Stolen Property  
30 (RCW 9A.82.050(2))  
31 III Criminal Gang Intimidation (RCW 9A.46.120)  
32 Criminal Mistreatment 2 (RCW 9A.42.030)  
33 Abandonment of dependent person 2 (RCW  
34 9A.42.070)  
35 Extortion 2 (RCW 9A.56.130)  
36 Unlawful Imprisonment (RCW 9A.40.040)  
37 Assault 3 (RCW 9A.36.031)  
38 Assault of a Child 3 (RCW 9A.36.140)  
39 Custodial Assault (RCW 9A.36.100)

1 Unlawful possession of firearm in the  
2 second degree (RCW 9.41.040(1)(b))  
3 Harassment (RCW 9A.46.020)  
4 Promoting Prostitution 2 (RCW 9A.88.080)  
5 Willful Failure to Return from Work Release  
6 (RCW 72.65.070)  
7 Burglary 2 (RCW 9A.52.030)  
8 Introducing Contraband 2 (RCW 9A.76.150)  
9 Communication with a Minor for Immoral  
10 Purposes (RCW 9.68A.090)  
11 Patronizing a Juvenile Prostitute (RCW  
12 9.68A.100)  
13 Escape 2 (RCW 9A.76.120)  
14 Perjury 2 (RCW 9A.72.030)  
15 Bail Jumping with class B or C Felony (RCW  
16 9A.76.170(2)(c))  
17 Intimidating a Public Servant (RCW  
18 9A.76.180)  
19 Tampering with a Witness (RCW 9A.72.120)  
20 Manufacture, deliver, or possess with  
21 intent to deliver marijuana (RCW  
22 69.50.401(a)(1)(iii))  
23 Delivery of a material in lieu of a  
24 controlled substance (RCW  
25 69.50.401(c))  
26 Manufacture, distribute, or possess with  
27 intent to distribute an imitation  
28 controlled substance (RCW  
29 69.52.030(1))  
30 Recklessly Trafficking in Stolen Property  
31 (RCW 9A.82.050(1))  
32 Theft of livestock 2 (RCW 9A.56.080)  
33 Securities Act violation (RCW 21.20.400)  
34 II Unlawful Practice of Law (RCW 2.48.180)  
35 Malicious Mischief 1 (RCW 9A.48.070)  
36 Possession of Stolen Property 1 (RCW  
37 9A.56.150)  
38 Theft 1 (RCW 9A.56.030)

1 Class B Felony Theft of Rental, Leased, or  
2 Lease-purchased Property (RCW  
3 9A.56.096(4))  
4 Trafficking in Insurance Claims (RCW  
5 48.30A.015)  
6 Unlicensed Practice of a Profession or  
7 Business (RCW 18.130.190(7))  
8 Health Care False Claims (RCW 48.80.030)  
9 Possession of controlled substance that is  
10 either heroin or narcotics from  
11 Schedule I or II (RCW 69.50.401(d))  
12 Possession of phencyclidine (PCP) (RCW  
13 69.50.401(d))  
14 Create, deliver, or possess a counterfeit  
15 controlled substance (RCW  
16 69.50.401(b))  
17 Computer Trespass 1 (RCW 9A.52.110)  
18 Escape from Community Custody (RCW  
19 72.09.310)  
20 I Theft 2 (RCW 9A.56.040)  
21 Class C Felony Theft of Rental, Leased, or  
22 Lease-purchased Property (RCW  
23 9A.56.096(4))  
24 Possession of Stolen Property 2 (RCW  
25 9A.56.160)  
26 Forgery (RCW 9A.60.020)  
27 Taking Motor Vehicle Without Permission  
28 (RCW 9A.56.070)  
29 Vehicle Prowl 1 (RCW 9A.52.095)  
30 Attempting to Elude a Pursuing Police  
31 Vehicle (RCW 46.61.024)  
32 Malicious Mischief 2 (RCW 9A.48.080)  
33 Reckless Burning 1 (RCW 9A.48.040)  
34 Unlawful Issuance of Checks or Drafts (RCW  
35 9A.56.060)  
36 Unlawful Use of Food Stamps (RCW 9.91.140  
37 (2) and (3))  
38 False Verification for Welfare (RCW  
39 74.08.055)



1 Forged Prescription (RCW 69.41.020)  
2 Forged Prescription for a Controlled  
3 Substance (RCW 69.50.403)  
4 Possess Controlled Substance that is a  
5 Narcotic from Schedule III, IV, or V  
6 or Non-narcotic from Schedule I-V  
7 (except phencyclidine) (RCW  
8 69.50.401(d))

9 **Sec. 4.** RCW 43.43.830 and 1996 c 178 s 12 are each amended to read  
10 as follows:

11 Unless the context clearly requires otherwise, the definitions in  
12 this section apply throughout RCW 43.43.830 through 43.43.840.

13 (1) "Applicant" means:

14 (a) Any prospective employee who will or may have unsupervised  
15 access to children under sixteen years of age or developmentally  
16 disabled persons or vulnerable adults during the course of his or her  
17 employment or involvement with the business or organization;

18 (b) Any prospective volunteer who will have regularly scheduled  
19 unsupervised access to children under sixteen years of age,  
20 developmentally disabled persons, or vulnerable adults during the  
21 course of his or her employment or involvement with the business or  
22 organization under circumstances where such access will or may involve  
23 groups of (i) five or fewer children under twelve years of age, (ii)  
24 three or fewer children between twelve and sixteen years of age, (iii)  
25 developmentally disabled persons, or (iv) vulnerable adults; or

26 (c) Any prospective adoptive parent, as defined in RCW 26.33.020.

27 (2) "Business or organization" means a business or organization  
28 licensed in this state, any agency of the state, or other governmental  
29 entity, that educates, trains, treats, supervises, houses, or provides  
30 recreation to developmentally disabled persons, vulnerable adults, or  
31 children under sixteen years of age, including but not limited to  
32 public housing authorities, school districts, and educational service  
33 districts.

34 (3) "Civil adjudication" means a specific court finding of sexual  
35 abuse or exploitation or physical abuse in a dependency action under  
36 RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In  
37 the case of vulnerable adults, civil adjudication means a specific  
38 court finding of abuse or financial exploitation in a protection

1 proceeding under chapter 74.34 RCW. It does not include administrative  
2 proceedings. The term "civil adjudication" is further limited to court  
3 findings that identify as the perpetrator of the abuse a named  
4 individual, over the age of eighteen years, who was a party to the  
5 dependency or dissolution proceeding or was a respondent in a  
6 protection proceeding in which the finding was made and who contested  
7 the allegation of abuse or exploitation.

8 (4) "Conviction record" means "conviction record" information as  
9 defined in RCW 10.97.030(3) relating to a crime against children or  
10 other persons committed by either an adult or a juvenile. It does not  
11 include a conviction for an offense that has been the subject of an  
12 expungement, pardon, annulment, certificate of rehabilitation, or other  
13 equivalent procedure based on a finding of the rehabilitation of the  
14 person convicted, or a conviction that has been the subject of a  
15 pardon, annulment, or other equivalent procedure based on a finding of  
16 innocence. It does include convictions for offenses for which the  
17 defendant received a deferred or suspended sentence, unless the record  
18 has been expunged according to law.

19 (5) "Crime against children or other persons" means a conviction of  
20 any of the following offenses: Aggravated murder; first or second  
21 degree murder; first or second degree kidnaping; first, second, or  
22 third degree assault; first, second, or third degree assault of a  
23 child; first, second, or third degree rape; first, second, or third  
24 degree rape of a child; first or second degree robbery; first degree  
25 arson; first degree burglary; first or second degree manslaughter;  
26 first or second degree extortion; indecent liberties; incest; vehicular  
27 homicide; first degree promoting prostitution; communication with a  
28 minor; unlawful imprisonment; simple assault; sexual exploitation of  
29 minors; first or second degree criminal mistreatment; child abuse or  
30 neglect as defined in RCW 26.44.020; first or second degree custodial  
31 interference; first or second degree sexual misconduct; malicious  
32 harassment; first, second, or third degree child molestation; first or  
33 second degree sexual misconduct with a minor; first or second degree  
34 rape of a child; patronizing a juvenile prostitute; child abandonment;  
35 promoting pornography; selling or distributing erotic material to a  
36 minor; custodial assault; violation of child abuse restraining order;  
37 child buying or selling; prostitution; felony indecent exposure;  
38 criminal abandonment; or any of these crimes as they may be renamed in  
39 the future.

1 (6) "Crimes relating to financial exploitation" means a conviction  
2 for first, second, or third degree extortion; first, second, or third  
3 degree theft; first or second degree robbery; forgery; or any of these  
4 crimes as they may be renamed in the future.

5 (7) "Disciplinary board final decision" means any final decision  
6 issued by a disciplining authority under chapter 18.130 RCW or the  
7 secretary of the department of health for the following businesses or  
8 professions:

- 9 (a) Chiropractic;
- 10 (b) Dentistry;
- 11 (c) Dental hygiene;
- 12 (d) Massage;
- 13 (e) Midwifery;
- 14 (f) Naturopathy;
- 15 (g) Osteopathic medicine and surgery;
- 16 (h) Physical therapy;
- 17 (i) Physicians;
- 18 (j) Practical nursing;
- 19 (k) Registered nursing; and
- 20 (l) Psychology.

21 "Disciplinary board final decision," for real estate brokers and  
22 salespersons, means any final decision issued by the director of the  
23 department of licensing for real estate brokers and salespersons.

24 (8) "Unsupervised" means not in the presence of:

25 (a) Another employee or volunteer from the same business or  
26 organization as the applicant; or

27 (b) Any relative or guardian of any of the children or  
28 developmentally disabled persons or vulnerable adults to which the  
29 applicant has access during the course of his or her employment or  
30 involvement with the business or organization.

31 (9) "Vulnerable adult" means "vulnerable adult" as defined in  
32 chapter 74.34 RCW, except that for the purposes of requesting and  
33 receiving background checks pursuant to RCW 43.43.832, it shall also  
34 include adults of any age who lack the functional, mental, or physical  
35 ability to care for themselves.

36 (10) "Financial exploitation" means the illegal or improper use of  
37 a vulnerable adult or that adult's resources for another person's  
38 profit or advantage.

1 (11) "Agency" means any person, firm, partnership, association,  
2 corporation, or facility which receives, provides services to, houses  
3 or otherwise cares for vulnerable adults.

4 **Sec. 5.** RCW 70.125.030 and 1996 c 123 s 6 are each amended to read  
5 as follows:

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

7 (1) "Core services" means treatment services for victims of sexual  
8 assault including information and referral, crisis intervention,  
9 medical advocacy, legal advocacy, support, and system coordination.

10 (2) "Department" means the department of community, trade, and  
11 economic development.

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

14 (4) "Personal representative" means a friend, relative, attorney,  
15 or employee or volunteer from a community sexual assault program or  
16 specialized treatment service provider.

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

19 (6) "Community sexual assault program" means a community-based  
20 social service agency that is qualified to provide and provides core  
21 services to victims of sexual assault.

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

23 (a) Rape or rape of a child;

24 (b) Assault with intent to commit rape or rape of a child;

25 (c) Incest or indecent liberties;

26 (d) Child molestation;

27 (e) Sexual misconduct with a minor;

28 (f) Custodial sexual misconduct;

29 (g) Crimes with a sexual motivation; or

30 ~~((g))~~ (h) An attempt to commit any of the aforementioned  
31 offenses.

32 (8) "Specialized services" means treatment services for victims of  
33 sexual assault including support groups, therapy, specialized sexual  
34 assault medical examination, and prevention education to potential  
35 victims of sexual assault.

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

1 **SHB 2573** - S COMM AMD  
2 By Committee on Law & Justice

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4 On page 1, line 1 of the title, after "misconduct;" strike the  
5 remainder of the title and insert "amending RCW 43.43.830 and  
6 70.125.030; reenacting and amending RCW 9.94A.320; adding new sections  
7 to chapter 9A.44 RCW; and prescribing penalties."

--- END ---