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HOUSE BILL 2573

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State of Washington

55th Legislature

1998 Regular Session

By Representatives Lambert, Carrell, Costa and Thompson

Read first time 01/15/98. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to custodial sexual misconduct; amending RCW  
2 43.43.830 and 70.125.030; reenacting and amending RCW 9.94A.320; adding  
3 a new section to chapter 9A.44 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.44 RCW  
6 to read as follows:

7 (1) A person is guilty of custodial sexual misconduct when the  
8 person has sexual intercourse with another person:

9 (a) Who is a resident of a state, county, or city adult or juvenile  
10 correctional facility, including but not limited to jails, prisons,  
11 detention centers, or work release facilities and the perpetrator is a  
12 person who has supervisory authority over the victim; or

13 (b) Who is under arrest and in custody of a law enforcement officer  
14 and the perpetrator is a law enforcement officer.

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

17 (3) Custodial sexual misconduct is a class C felony.



1 IX Assault of a Child 2 (RCW 9A.36.130)  
2 Robbery 1 (RCW 9A.56.200)  
3 Explosive devices prohibited (RCW  
4 70.74.180)  
5 Malicious placement of an explosive 2 (RCW  
6 70.74.270(2))  
7 Over 18 and deliver narcotic from Schedule  
8 III, IV, or V or a nonnarcotic from  
9 Schedule I-V to someone under 18 and 3  
10 years junior (RCW 69.50.406)  
11 Controlled Substance Homicide (RCW  
12 69.50.415)  
13 Sexual Exploitation (RCW 9.68A.040)  
14 Inciting Criminal Profiteering (RCW  
15 9A.82.060(1)(b))  
16 Vehicular Homicide, by being under the  
17 influence of intoxicating liquor or  
18 any drug (RCW 46.61.520)

19 VIII Arson 1 (RCW 9A.48.020)  
20 Promoting Prostitution 1 (RCW 9A.88.070)  
21 Selling for profit (controlled or  
22 counterfeit) any controlled substance  
23 (RCW 69.50.410)  
24 Manufacture, deliver, or possess with  
25 intent to deliver heroin or cocaine  
26 (RCW 69.50.401(a)(1)(i))  
27 Manufacture, deliver, or possess with  
28 intent to deliver methamphetamine (RCW  
29 69.50.401(a)(1)(ii))  
30 Possession of ephedrine or pseudoephedrine  
31 with intent to manufacture  
32 methamphetamine (RCW 69.50.440)  
33 Vehicular Homicide, by the operation of any  
34 vehicle in a reckless manner (RCW  
35 46.61.520)  
36 Manslaughter 2 (RCW 9A.32.070)

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

22 VI Bribery (RCW 9A.68.010)  
23 Rape of a Child 3 (RCW 9A.44.079)  
24 Intimidating a Juror/Witness (RCW  
25 9A.72.110, 9A.72.130)  
26 Malicious placement of an imitation device  
27 2 (RCW 70.74.272(1)(b))  
28 Incest 1 (RCW 9A.64.020(1))  
29 Manufacture, deliver, or possess with  
30 intent to deliver narcotics from  
31 Schedule I or II (except heroin or  
32 cocaine) (RCW 69.50.401(a)(1)(i))  
33 Intimidating a Judge (RCW 9A.72.160)  
34 Bail Jumping with Murder 1 (RCW  
35 9A.76.170(2)(a))  
36 Theft of a Firearm (RCW 9A.56.300)

1 V Persistent prison misbehavior (RCW  
2 9.94.070)  
3 Criminal Mistreatment 1 (RCW 9A.42.020)  
4 Abandonment of dependent person 1 (RCW  
5 9A.42.060)  
6 Rape 3 (RCW 9A.44.060)  
7 Sexual Misconduct with a Minor 1 (RCW  
8 9A.44.093)  
9 Custodial Sexual Misconduct (RCW 9A.44.---  
10 (section 1 of this act))  
11 Child Molestation 3 (RCW 9A.44.089)  
12 Kidnapping 2 (RCW 9A.40.030)  
13 Extortion 1 (RCW 9A.56.120)  
14 Incest 2 (RCW 9A.64.020(2))  
15 Perjury 1 (RCW 9A.72.020)  
16 Extortionate Extension of Credit (RCW  
17 9A.82.020)  
18 Advancing money or property for  
19 extortionate extension of credit (RCW  
20 9A.82.030)  
21 Extortionate Means to Collect Extensions of  
22 Credit (RCW 9A.82.040)  
23 Rendering Criminal Assistance 1 (RCW  
24 9A.76.070)  
25 Bail Jumping with class A Felony (RCW  
26 9A.76.170(2)(b))  
27 Sexually Violating Human Remains (RCW  
28 9A.44.105)  
29 Delivery of imitation controlled substance  
30 by person eighteen or over to person  
31 under eighteen (RCW 69.52.030(2))  
32 Possession of a Stolen Firearm (RCW  
33 9A.56.310)

34 IV Residential Burglary (RCW 9A.52.025)  
35 Theft of Livestock 1 (RCW 9A.56.080)  
36 Robbery 2 (RCW 9A.56.210)  
37 Assault 2 (RCW 9A.36.021)  
38 Escape 1 (RCW 9A.76.110)  
39 Arson 2 (RCW 9A.48.030)

1 Commercial Bribery (RCW 9A.68.060)  
2 Bribing a Witness/Bribe Received by Witness  
3 (RCW 9A.72.090, 9A.72.100)  
4 Malicious Harassment (RCW 9A.36.080)  
5 Threats to Bomb (RCW 9.61.160)  
6 Willful Failure to Return from Furlough  
7 (RCW 72.66.060)  
8 Hit and Run--Injury Accident (RCW  
9 46.52.020(4))  
10 Hit and Run with Vessel--Injury Accident  
11 (RCW 88.12.155(3))  
12 Vehicular Assault (RCW 46.61.522)  
13 Manufacture, deliver, or possess with  
14 intent to deliver narcotics from  
15 Schedule III, IV, or V or nonnarcotics  
16 from Schedule I-V (except marijuana or  
17 methamphetamines) (RCW 69.50.401  
18 (a)(1) (iii) through (v))  
19 Influencing Outcome of Sporting Event (RCW  
20 9A.82.070)  
21 Use of Proceeds of Criminal Profiteering  
22 (RCW 9A.82.080 (1) and (2))  
23 Knowingly Trafficking in Stolen Property  
24 (RCW 9A.82.050(2))  
25 III Criminal Gang Intimidation (RCW 9A.46.120)  
26 Criminal Mistreatment 2 (RCW 9A.42.030)  
27 Abandonment of dependent person 2 (RCW  
28 9A.42.070)  
29 Extortion 2 (RCW 9A.56.130)  
30 Unlawful Imprisonment (RCW 9A.40.040)  
31 Assault 3 (RCW 9A.36.031)  
32 Assault of a Child 3 (RCW 9A.36.140)  
33 Custodial Assault (RCW 9A.36.100)  
34 Unlawful possession of firearm in the  
35 second degree (RCW 9.41.040(1)(b))  
36 Harassment (RCW 9A.46.020)  
37 Promoting Prostitution 2 (RCW 9A.88.080)  
38 Willful Failure to Return from Work Release  
39 (RCW 72.65.070)

1 Burglary 2 (RCW 9A.52.030)  
2 Introducing Contraband 2 (RCW 9A.76.150)  
3 Communication with a Minor for Immoral  
4 Purposes (RCW 9.68A.090)  
5 Patronizing a Juvenile Prostitute (RCW  
6 9.68A.100)  
7 Escape 2 (RCW 9A.76.120)  
8 Perjury 2 (RCW 9A.72.030)  
9 Bail Jumping with class B or C Felony (RCW  
10 9A.76.170(2)(c))  
11 Intimidating a Public Servant (RCW  
12 9A.76.180)  
13 Tampering with a Witness (RCW 9A.72.120)  
14 Manufacture, deliver, or possess with  
15 intent to deliver marijuana (RCW  
16 69.50.401(a)(1)(iii))  
17 Delivery of a material in lieu of a  
18 controlled substance (RCW  
19 69.50.401(c))  
20 Manufacture, distribute, or possess with  
21 intent to distribute an imitation  
22 controlled substance (RCW  
23 69.52.030(1))  
24 Recklessly Trafficking in Stolen Property  
25 (RCW 9A.82.050(1))  
26 Theft of livestock 2 (RCW 9A.56.080)  
27 Securities Act violation (RCW 21.20.400)  
28 II Unlawful Practice of Law (RCW 2.48.180)  
29 Malicious Mischief 1 (RCW 9A.48.070)  
30 Possession of Stolen Property 1 (RCW  
31 9A.56.150)  
32 Theft 1 (RCW 9A.56.030)  
33 Class B Felony Theft of Rental, Leased, or  
34 Lease-purchased Property (RCW  
35 9A.56.096(4))  
36 Trafficking in Insurance Claims (RCW  
37 48.30A.015)  
38 Unlicensed Practice of a Profession or  
39 Business (RCW 18.130.190(7))

1 Health Care False Claims (RCW 48.80.030)  
2 Possession of controlled substance that is  
3 either heroin or narcotics from  
4 Schedule I or II (RCW 69.50.401(d))  
5 Possession of phencyclidine (PCP) (RCW  
6 69.50.401(d))  
7 Create, deliver, or possess a counterfeit  
8 controlled substance (RCW  
9 69.50.401(b))  
10 Computer Trespass 1 (RCW 9A.52.110)  
11 Escape from Community Custody (RCW  
12 72.09.310)

13 I Theft 2 (RCW 9A.56.040)  
14 Class C Felony Theft of Rental, Leased, or  
15 Lease-purchased Property (RCW  
16 9A.56.096(4))  
17 Possession of Stolen Property 2 (RCW  
18 9A.56.160)  
19 Forgery (RCW 9A.60.020)  
20 Taking Motor Vehicle Without Permission  
21 (RCW 9A.56.070)  
22 Vehicle Prowl 1 (RCW 9A.52.095)  
23 Attempting to Elude a Pursuing Police  
24 Vehicle (RCW 46.61.024)  
25 Malicious Mischief 2 (RCW 9A.48.080)  
26 Reckless Burning 1 (RCW 9A.48.040)  
27 Unlawful Issuance of Checks or Drafts (RCW  
28 9A.56.060)  
29 Unlawful Use of Food Stamps (RCW 9.91.140  
30 (2) and (3))  
31 False Verification for Welfare (RCW  
32 74.08.055)  
33 Forged Prescription (RCW 69.41.020)  
34 Forged Prescription for a Controlled  
35 Substance (RCW 69.50.403)  
36 Possess Controlled Substance that is a  
37 Narcotic from Schedule III, IV, or V  
38 or Non-narcotic from Schedule I-V



1 (except phencyclidine) (RCW  
2 69.50.401(d))

3 **Sec. 3.** RCW 43.43.830 and 1996 c 178 s 12 are each amended to read  
4 as follows:

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

7 (1) "Applicant" means:

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

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

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

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

28 (3) "Civil adjudication" means a specific court finding of sexual  
29 abuse or exploitation or physical abuse in a dependency action under  
30 RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In  
31 the case of vulnerable adults, civil adjudication means a specific  
32 court finding of abuse or financial exploitation in a protection  
33 proceeding under chapter 74.34 RCW. It does not include administrative  
34 proceedings. The term "civil adjudication" is further limited to court  
35 findings that identify as the perpetrator of the abuse a named  
36 individual, over the age of eighteen years, who was a party to the  
37 dependency or dissolution proceeding or was a respondent in a

1 protection proceeding in which the finding was made and who contested  
2 the allegation of abuse or exploitation.

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

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

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

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

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

17 "Disciplinary board final decision," for real estate brokers and  
18 salespersons, means any final decision issued by the director of the  
19 department of licensing for real estate brokers and salespersons.

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

21 (a) Another employee or volunteer from the same business or  
22 organization as the applicant; or

23 (b) Any relative or guardian of any of the children or  
24 developmentally disabled persons or vulnerable adults to which the  
25 applicant has access during the course of his or her employment or  
26 involvement with the business or organization.

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

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

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

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

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

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

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

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

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

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

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

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

20       (a) Rape or rape of a child;

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

22       (c) Incest or indecent liberties;

23       (d) Child molestation;

24       (e) Sexual misconduct with a minor;

25       (f) Custodial sexual misconduct;

26       (g) Crimes with a sexual motivation; or

27       (~~(g)~~) (h) An attempt to commit any of the aforementioned  
28 offenses.

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

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

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