

HOUSE BILL REPORT

HB 1177

As Reported By House Committee On:
Criminal Justice & Corrections
Appropriations

Title: An act relating to custodial sexual misconduct.

Brief Description: Defining the crime of custodial sexual misconduct.

Sponsors: Representatives Ballasiotes, Lambert, Koster, Kagi, O'Brien, Cairnes, Lovick, Constantine, Hurst, Kessler and Conway; by request of Department of Corrections.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/29/99, 2/3/99 [DP];
Appropriations: 2/16/99, 2/22/99 [DPS].

Brief Summary of Substitute Bill

- Creates a new crime of custodial sexual misconduct « in the first degree as a class C felony and, in the second degree, as a gross misdemeanor.
- Adds the crime of custodial sexual misconduct to the list of crimes considered "crimes against children and other persons" for disclosure purposes in background checks.
- Includes custodial sexual misconduct in the definition of sexual assault for the purposes of programs under the Victims of Sexual Assault Act.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Cairnes, Republican Vice Chair; Lovick, Democratic Vice Chair; Chandler; Constantine; Kagi and Koster.

Staff: Jean Ann Quinn (786-7310).

Background:

Custodial Sexual Misconduct: Currently, there is no specific crime making unlawful sexual intercourse or sexual contact between a correctional or law enforcement officer and a person detained, arrested, or otherwise in custody.

Background Checks: Applicants for paid or volunteer positions which will or may have access to children under 16 years of age, developmentally disabled persons, or vulnerable adults are subject to background checks including checks for crimes against children or other persons.

Programs under the Victims of Sexual Assault Act: Under the Victims of Sexual Assault Act, the Department of Community, Trade and Economic Development coordinates activities of programs relating to sexual assault, and aids organizations that provide services to sexual assault victims, such as rape crisis centers and other community-based sexual assault programs.

Summary of Bill:

Custodial Sexual Misconduct in the First Degree: The crime of custodial sexual misconduct in the first degree occurs: (a) when an employee or contract personnel of a correctional agency engages in sexual intercourse with another person who is a resident of an adult or juvenile correctional facility or work release facility, or who is under correctional supervision, and the perpetrator has, or the resident reasonably believes that the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or (b) when a law enforcement officer engages in sexual intercourse with a person who is being detained, under arrest, or in the custody of a law enforcement officer. Consent of the victim is not a defense to prosecution. Custodial sexual misconduct in the first degree is a class C felony.

Custodial Sexual Misconduct in the Second Degree: The crime of custodial sexual misconduct in the second degree occurs when: (a) when an employee or contract personnel of a correctional agency has sexual contact with another person who is a resident of an adult or juvenile correctional facility or work release facility, or who is under correctional supervision, and the perpetrator has, or the resident reasonably believes that the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or (b) when a law enforcement officer has sexual contact with a person who is being detained, under arrest, or in the custody of a law enforcement officer. Consent of the victim is not a defense to prosecution. Custodial sexual misconduct in the second degree is a gross misdemeanor.

Investigation by the Department: Before reporting an allegation of custodial sexual misconduct in the first or second degree to the prosecuting attorney, the Department of

Corrections is required to conduct an investigation to determine whether there is probable cause to believe the allegation is true.

Background Checks: Custodial sexual misconduct is added to the list of crimes that are considered "crimes against children and other persons" for the purposes of disclosure in background checks.

Programs under the Victims of Sexual Assault Act: Custodial sexual misconduct is added to the list of offenses included in the definition of sexual assault for the purposes of the Victims of Sexual Assault Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Washington is one of only 15 states in the nation that doesn't have a law covering this. Correctional institutions in the state have a "no-tolerance" policy against this behavior, but the law is needed to provide extra deterrence. It is a problem not only for female offenders, but one that is shared throughout correctional institutions. The cases are difficult to prosecute without this law because perpetrators can use consent as a defense. The law is necessary because of the power differential between people in custody and correctional authorities and law enforcement officers. The law protects the right of arrested persons to talk to a lawyer -- why would we not want to protect their right not to be sexually abused? Professional ethics alone should prevent this problem, but sadly it is not. False allegations should not be a problem because allegations are subject to a long and thorough investigation process and other corroborating evidence. Also making a false allegation subjects an offender to penalties.

(With concerns) Although the concept of making custodial sexual misconduct a crime is endorsed, there is a concern that inmates will manipulate this law by making false allegations and, as a result, disrupt the balance of power within institutions, and put officers at risk of losing their jobs. Since the union does not represent correctional officers charged with felonies, the officers will have to hire private counsel and incur huge legal fees defending themselves against false allegations. Although there are penalties under the law for making false allegations, the penalties mostly provide for loss of "good time" which, in the case of "third strike" offenders, means nothing and, in fact, is sometimes considered a badge of honor.

Testimony Against: None.

Testified: (In support) Alice Payne, Department of Corrections; Annette Sandberg, Washington State Patrol; Sid Sidorowicz, Department of Social and Health Services; Tom McBride, Washington Association of Prosecuting Attorneys; Larry Erickson, Washington Association of Sheriffs and Police Chiefs; Marlene Watkins-Dewey, Washington Coalition of Sexual Assault Programs; Joseph Cooper, Department of Corrections; and Michael Green, McNeil Island Corrections.

(In support with concerns) Mike Ryherd, Teamsters; and Chuck Barrow, Teamsters.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 32 members: Representatives Huff, Republican Co-Chair; H. Sommers, Democratic Co-Chair; Alexander, Republican Vice Chair; Doumit, Democratic Vice Chair; D. Schmidt, Republican Vice Chair; Barlean; Benson; Boldt; Carlson; Clements; Cody; Crouse; Gombosky; Grant; Kagi; Keiser; Kenney; Kessler; Lambert; Linville; Lisk; Mastin; McIntire; McMorris; Mulliken; Parlette; Regala; Rockefeller; Ruderman; Sullivan; Tokuda and Wensman.

Staff: Dave Johnson (786-7154).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Criminal Justice & Corrections: Clarifies that in situations where the alleged conduct already constitutes a more serious crime, prosecutors may charge the more serious crime.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Original bill) This is the correctional problem of the '90s. This is a severe problem for the Department of Corrections (DOC). All but 15 states currently have laws like this. There is not a law in this state that prohibits sex between offenders and state employees. This needs to be corrected. It is difficult to fire employees having sex with offenders if that person is found not guilty of rape. There is a power disparity between offenders and staff so that true consent is not possible.

Testimony Against: None.

Testified: Alice Payne, Department of Corrections; and Larry Erickson, Washington Association of Sheriffs and Police Chiefs.