

FINAL BILL REPORT

SSB 5234

C 45 L 99

Synopsis as Enacted

Brief Description: Defining the crime of custodial sexual misconduct.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Long, Horn, Kline, Gardner, McCaslin, Zarelli, Roach, Hargrove, Kohl-Welles, Haugen, Franklin, Stevens, Thibaudeau, Oke, Winsley, Costa and Benton; by request of Department of Corrections).

Senate Committee on Judiciary

House Committee on Criminal Justice & Corrections

Background: Currently it is not illegal for a prison or jail correctional officer to have consensual sexual relations with a prisoner in his or her custody. There are only 12 states that have not enacted a law forbidding this behavior. While a custodial situation may always raise questions of consent, rape cases against correctional officers are difficult to prosecute. It has been suggested that people who are under arrest or incarcerated are exceptionally vulnerable to sex offenses by persons with supervisory authority.

These situations cost the state money in the civil suits that are filed by prisoners. One correctional institution has paid out \$70,000 for two tort claims involving sexual relations between a prisoner and a correctional officer.

Summary: A new crime of custodial sexual misconduct is created. The victim must be a resident of a state, county, or city adult or juvenile correctional facility, or under correctional supervision. The perpetrator must be an employee or contract personnel of a correctional agency and have, or the victim must reasonably believe that the perpetrator has, the ability to influence the victim's incarceration or correctional supervision. Victims who are detained, under arrest, or in the custody of law enforcement are included.

Sexual intercourse is custodial sexual misconduct in the first degree, a class C felony. Sexual contact is custodial sexual misconduct in the second degree, a gross misdemeanor. The terms sexual intercourse— and sexual contact— are defined within RCW Chapter 9A.44.

Consent of the victim is not a defense. An affirmative defense is created if the sexual intercourse or sexual contact is the result of forcible compulsion by the other person.

The Department of Corrections is required to investigate an alleged violation for probable cause before reporting it to a prosecuting attorney.

Votes on Final Passage:

Senate	48 0
House	90 0

Effective: July 25, 1999