
SUBSTITUTE SENATE BILL 5234

State of Washington

56th Legislature

1999 Regular Session

By 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)

Read first time 02/04/1999.

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 new sections to chapter 9A.44 RCW; adding a new section to chapter
4 72.09 RCW; and prescribing penalties.

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

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

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

10 (a) When:

11 (i) The victim 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 is under
14 correctional supervision; and

15 (ii) The perpetrator is an employee or contract personnel of a
16 correctional agency and the perpetrator has, or the victim reasonably
17 believes the perpetrator has, the ability to influence the terms,
18 conditions, length, or fact of incarceration or correctional
19 supervision; or

1 (b) When the victim is being detained, under arrest or in the
2 custody of a law enforcement officer and the perpetrator is a law
3 enforcement officer.

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

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

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

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

12 (a) When:

13 (i) The victim is a resident of a state, county, or city adult or
14 juvenile correctional facility, including but not limited to jails,
15 prisons, detention centers, or work release facilities, or is under
16 correctional supervision; and

17 (ii) The perpetrator is an employee or contract personnel of a
18 correctional agency and the perpetrator has, or the victim reasonably
19 believes the perpetrator has, the ability to influence the terms,
20 conditions, length, or fact of incarceration or correctional
21 supervision; or

22 (b) When the victim is being detained, under arrest, or in the
23 custody of a law enforcement officer and the perpetrator is a law
24 enforcement officer.

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

27 (3) Custodial sexual misconduct in the second degree is a gross
28 misdemeanor.

29 NEW SECTION. **Sec. 3.** A new section is added to chapter 9A.44 RCW
30 to read as follows:

31 It is an affirmative defense to prosecution under section 1 or 2 of
32 this act, to be proven by the defendant by a preponderance of the
33 evidence, that the act of sexual intercourse or sexual contact resulted
34 from forcible compulsion by the other person.

1 **Sec. 4.** RCW 9.94A.320 and 1998 c 290 s 4, 1998 c 219 s 4, 1998 c
2 82 s 1, and 1998 c 78 s 1 are each reenacted and amended to read as
3 follows:

4 TABLE 2

5 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

6 XV	Aggravated Murder 1 (RCW 10.95.020)
7 XIV	Murder 1 (RCW 9A.32.030)
8	Homicide by abuse (RCW 9A.32.055)
9	Malicious explosion 1 (RCW 70.74.280(1))
10 XIII	Murder 2 (RCW 9A.32.050)
11	Malicious explosion 2 (RCW 70.74.280(2))
12	Malicious placement of an explosive 1 (RCW
13	70.74.270(1))
14 XII	Assault 1 (RCW 9A.36.011)
15	Assault of a Child 1 (RCW 9A.36.120)
16	Rape 1 (RCW 9A.44.040)
17	Rape of a Child 1 (RCW 9A.44.073)
18	Malicious placement of an imitation device
19	1 (RCW 70.74.272(1)(a))
20 XI	Rape 2 (RCW 9A.44.050)
21	Rape of a Child 2 (RCW 9A.44.076)
22	Manslaughter 1 (RCW 9A.32.060)
23 X	Kidnapping 1 (RCW 9A.40.020)
24	Child Molestation 1 (RCW 9A.44.083)
25	Malicious explosion 3 (RCW 70.74.280(3))
26	Over 18 and deliver heroin, a narcotic from
27	Schedule I or II, or flunitrazepam
28	from Schedule IV to someone under 18
29	(RCW 69.50.406)
30	Leading Organized Crime (RCW
31	9A.82.060(1)(a))
32	Indecent Liberties (with forcible
33	compulsion) (RCW 9A.44.100(1)(a))
34	Manufacture of methamphetamine (RCW
35	69.50.401(a)(1)(ii))

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, except
9 flunitrazepam, from Schedule I-V to
10 someone under 18 and 3 years junior
11 (RCW 69.50.406)
12 Controlled Substance Homicide (RCW
13 69.50.415)
14 Sexual Exploitation (RCW 9.68A.040)
15 Inciting Criminal Profiteering (RCW
16 9A.82.060(1)(b))
17 Vehicular Homicide, by being under the
18 influence of intoxicating liquor or
19 any drug (RCW 46.61.520)
20 Homicide by Watercraft, by being under the
21 influence of intoxicating liquor or
22 any drug (RCW 88.12.029)

23 VIII Arson 1 (RCW 9A.48.020)
24 Promoting Prostitution 1 (RCW 9A.88.070)
25 Selling for profit (controlled or
26 counterfeit) any controlled substance
27 (RCW 69.50.410)
28 Manufacture, deliver, or possess with
29 intent to deliver heroin or cocaine
30 (RCW 69.50.401(a)(1)(i))
31 Deliver or possess with intent to deliver
32 methamphetamine (RCW
33 69.50.401(a)(1)(ii))
34 Manufacture, deliver, or possess with
35 intent to deliver amphetamine (RCW
36 69.50.401(a)(1)(ii))
37 Possession of ephedrine or pseudoephedrine
38 with intent to manufacture
39 methamphetamine (RCW 69.50.440)

1 Vehicular Homicide, by the operation of any
2 vehicle in a reckless manner (RCW
3 46.61.520)
4 Homicide by Watercraft, by the operation of
5 any vessel in a reckless manner (RCW
6 88.12.029)
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 Homicide by Watercraft, by disregard for
12 the safety of others (RCW 88.12.029)
13 Introducing Contraband 1 (RCW 9A.76.140)
14 Indecent Liberties (without forcible
15 compulsion) (RCW 9A.44.100(1) (b) and
16 (c))
17 Child Molestation 2 (RCW 9A.44.086)
18 Dealing in depictions of minor engaged in
19 sexually explicit conduct (RCW
20 9.68A.050)
21 Sending, bringing into state depictions of
22 minor engaged in sexually explicit
23 conduct (RCW 9.68A.060)
24 Involving a minor in drug dealing (RCW
25 69.50.401(f))
26 Drive-by Shooting (RCW 9A.36.045)
27 Unlawful Possession of a Firearm in the
28 first degree (RCW 9.41.040(1)(a))
29 Malicious placement of an explosive 3 (RCW
30 70.74.270(3))

31 VI Bribery (RCW 9A.68.010)
32 Rape of a Child 3 (RCW 9A.44.079)
33 Intimidating a Juror/Witness (RCW
34 9A.72.110, 9A.72.130)
35 Malicious placement of an imitation device
36 2 (RCW 70.74.272(1)(b))
37 Incest 1 (RCW 9A.64.020(1))

1 Manufacture, deliver, or possess with
2 intent to deliver narcotics from
3 Schedule I or II (except heroin or
4 cocaine) or flunitrazepam from
5 Schedule IV (RCW 69.50.401(a)(1)(i))
6 Intimidating a Judge (RCW 9A.72.160)
7 Bail Jumping with Murder 1 (RCW
8 9A.76.170(2)(a))
9 Theft of a Firearm (RCW 9A.56.300)

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

1 Delivery of imitation controlled substance
2 by person eighteen or over to person
3 under eighteen (RCW 69.52.030(2))
4 Possession of a Stolen Firearm (RCW
5 9A.56.310)

6 IV Residential Burglary (RCW 9A.52.025)
7 Theft of Livestock 1 (RCW 9A.56.080)
8 Robbery 2 (RCW 9A.56.210)
9 Assault 2 (RCW 9A.36.021)
10 Escape 1 (RCW 9A.76.110)
11 Arson 2 (RCW 9A.48.030)
12 Commercial Bribery (RCW 9A.68.060)
13 Bribing a Witness/Bribe Received by Witness
14 (RCW 9A.72.090, 9A.72.100)
15 Malicious Harassment (RCW 9A.36.080)
16 Threats to Bomb (RCW 9.61.160)
17 Willful Failure to Return from Furlough
18 (RCW 72.66.060)
19 Hit and Run--Injury Accident (RCW
20 46.52.020(4))
21 Hit and Run with Vessel--Injury Accident
22 (RCW 88.12.155(3))
23 Vehicular Assault (RCW 46.61.522)
24 Assault by Watercraft (RCW 88.12.032)
25 Manufacture, deliver, or possess with
26 intent to deliver narcotics from
27 Schedule III, IV, or V or nonnarcotics
28 from Schedule I-V (except marijuana,
29 amphetamine, methamphetamines, or
30 flunitrazepam) (RCW 69.50.401(a)(1)
31 (iii) through (v))
32 Influencing Outcome of Sporting Event (RCW
33 9A.82.070)
34 Use of Proceeds of Criminal Profiteering
35 (RCW 9A.82.080 (1) and (2))
36 Knowingly Trafficking in Stolen Property
37 (RCW 9A.82.050(2))

1 III Criminal Gang Intimidation (RCW 9A.46.120)
2 Criminal Mistreatment 2 (RCW 9A.42.030)
3 Abandonment of dependent person 2 (RCW
4 9A.42.070)
5 Extortion 2 (RCW 9A.56.130)
6 Unlawful Imprisonment (RCW 9A.40.040)
7 Assault 3 (RCW 9A.36.031)
8 Assault of a Child 3 (RCW 9A.36.140)
9 Custodial Assault (RCW 9A.36.100)
10 Unlawful possession of firearm in the
11 second degree (RCW 9.41.040(1)(b))
12 Harassment (RCW 9A.46.020)
13 Promoting Prostitution 2 (RCW 9A.88.080)
14 Willful Failure to Return from Work Release
15 (RCW 72.65.070)
16 Burglary 2 (RCW 9A.52.030)
17 Introducing Contraband 2 (RCW 9A.76.150)
18 Communication with a Minor for Immoral
19 Purposes (RCW 9.68A.090)
20 Patronizing a Juvenile Prostitute (RCW
21 9.68A.100)
22 Escape 2 (RCW 9A.76.120)
23 Perjury 2 (RCW 9A.72.030)
24 Bail Jumping with class B or C Felony (RCW
25 9A.76.170(2)(c))
26 Intimidating a Public Servant (RCW
27 9A.76.180)
28 Tampering with a Witness (RCW 9A.72.120)
29 Manufacture, deliver, or possess with
30 intent to deliver marijuana (RCW
31 69.50.401(a)(1)(iii))
32 Delivery of a material in lieu of a
33 controlled substance (RCW
34 69.50.401(c))
35 Manufacture, distribute, or possess with
36 intent to distribute an imitation
37 controlled substance (RCW
38 69.52.030(1))

1 Recklessly Trafficking in Stolen Property
2 (RCW 9A.82.050(1))
3 Theft of livestock 2 (RCW 9A.56.080)
4 Securities Act violation (RCW 21.20.400)

5 II Unlawful Practice of Law (RCW 2.48.180)
6 Malicious Mischief 1 (RCW 9A.48.070)
7 Possession of Stolen Property 1 (RCW
8 9A.56.150)
9 Theft 1 (RCW 9A.56.030)
10 Class B Felony Theft of Rental, Leased, or
11 Lease-purchased Property (RCW
12 9A.56.096(4))
13 Trafficking in Insurance Claims (RCW
14 48.30A.015)
15 Unlicensed Practice of a Profession or
16 Business (RCW 18.130.190(7))
17 Health Care False Claims (RCW 48.80.030)
18 Possession of controlled substance that is
19 either heroin or narcotics from
20 Schedule I or II or flunitrazepam from
21 Schedule IV (RCW 69.50.401(d))
22 Possession of phencyclidine (PCP) (RCW
23 69.50.401(d))
24 Create, deliver, or possess a counterfeit
25 controlled substance (RCW
26 69.50.401(b))
27 Computer Trespass 1 (RCW 9A.52.110)
28 Escape from Community Custody (RCW
29 72.09.310)

30 I Theft 2 (RCW 9A.56.040)
31 Class C Felony Theft of Rental, Leased, or
32 Lease-purchased Property (RCW
33 9A.56.096(4))
34 Possession of Stolen Property 2 (RCW
35 9A.56.160)
36 Forgery (RCW 9A.60.020)
37 Taking Motor Vehicle Without Permission
38 (RCW 9A.56.070)

1 Vehicle Prowl 1 (RCW 9A.52.095)
2 Attempting to Elude a Pursuing Police
3 Vehicle (RCW 46.61.024)
4 Malicious Mischief 2 (RCW 9A.48.080)
5 Reckless Burning 1 (RCW 9A.48.040)
6 Unlawful Issuance of Checks or Drafts (RCW
7 9A.56.060)
8 Unlawful Use of Food Stamps (RCW 9.91.140
9 (2) and (3))
10 False Verification for Welfare (RCW
11 74.08.055)
12 Forged Prescription (RCW 69.41.020)
13 Forged Prescription for a Controlled
14 Substance (RCW 69.50.403)
15 Possess Controlled Substance that is a
16 Narcotic from Schedule III, IV, or V
17 or Non-narcotic from Schedule I-V
18 (except phencyclidine or
19 flunitrazepam) (RCW 69.50.401(d))

20 **Sec. 5.** RCW 43.43.830 and 1998 c 10 s 1 are each amended to read
21 as follows:

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

24 (1) "Applicant" means:

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

29 (b) Any prospective volunteer who will have regularly scheduled
30 unsupervised access to children under sixteen years of age,
31 developmentally disabled persons, or vulnerable adults during the
32 course of his or her employment or involvement with the business or
33 organization under circumstances where such access will or may involve
34 groups of (i) five or fewer children under twelve years of age, (ii)
35 three or fewer children between twelve and sixteen years of age, (iii)
36 developmentally disabled persons, or (iv) vulnerable adults; or

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

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

8 (3) "Civil adjudication" means a specific court finding of sexual
9 abuse or exploitation or physical abuse in a dependency action under
10 RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In
11 the case of vulnerable adults, civil adjudication means a specific
12 court finding of abuse or financial exploitation in a protection
13 proceeding under chapter 74.34 RCW. It does not include administrative
14 proceedings. The term "civil adjudication" is further limited to court
15 findings that identify as the perpetrator of the abuse a named
16 individual, over the age of eighteen years, who was a party to the
17 dependency or dissolution proceeding or was a respondent in a
18 protection proceeding in which the finding was made and who contested
19 the allegation of abuse or exploitation.

20 (4) "Conviction record" means "conviction record" information as
21 defined in RCW 10.97.030(3) relating to a crime against children or
22 other persons committed by either an adult or a juvenile. It does not
23 include a conviction for an offense that has been the subject of an
24 expungement, pardon, annulment, certificate of rehabilitation, or other
25 equivalent procedure based on a finding of the rehabilitation of the
26 person convicted, or a conviction that has been the subject of a
27 pardon, annulment, or other equivalent procedure based on a finding of
28 innocence. It does include convictions for offenses for which the
29 defendant received a deferred or suspended sentence, unless the record
30 has been expunged according to law.

31 (5) "Crime against children or other persons" means a conviction of
32 any of the following offenses: Aggravated murder; first or second
33 degree murder; first or second degree kidnaping; first, second, or
34 third degree assault; first, second, or third degree assault of a
35 child; first, second, or third degree rape; first, second, or third
36 degree rape of a child; first or second degree robbery; first degree
37 arson; first degree burglary; first or second degree manslaughter;
38 first or second degree extortion; indecent liberties; incest; vehicular
39 homicide; first degree promoting prostitution; communication with a

1 minor; unlawful imprisonment; simple assault; sexual exploitation of
2 minors; first or second degree criminal mistreatment; child abuse or
3 neglect as defined in RCW 26.44.020; first or second degree custodial
4 interference; first or second degree custodial sexual misconduct;
5 malicious harassment; first, second, or third degree child molestation;
6 first or second degree sexual misconduct with a minor; patronizing a
7 juvenile prostitute; child abandonment; promoting pornography; selling
8 or distributing erotic material to a minor; custodial assault;
9 violation of child abuse restraining order; child buying or selling;
10 prostitution; felony indecent exposure; criminal abandonment; or any of
11 these crimes as they may be renamed in the future.

12 (6) "Crimes relating to drugs" means a conviction of a crime to
13 manufacture, delivery, or possession with intent to manufacture or
14 deliver a controlled substance.

15 (7) "Crimes relating to financial exploitation" means a conviction
16 for first, second, or third degree extortion; first, second, or third
17 degree theft; first or second degree robbery; forgery; or any of these
18 crimes as they may be renamed in the future.

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

- 23 (a) Chiropractic;
- 24 (b) Dentistry;
- 25 (c) Dental hygiene;
- 26 (d) Massage;
- 27 (e) Midwifery;
- 28 (f) Naturopathy;
- 29 (g) Osteopathic medicine and surgery;
- 30 (h) Physical therapy;
- 31 (i) Physicians;
- 32 (j) Practical nursing;
- 33 (k) Registered nursing; and
- 34 (l) Psychology.

35 "Disciplinary board final decision," for real estate brokers and
36 salespersons, means any final decision issued by the director of the
37 department of licensing for real estate brokers and salespersons.

38 (9) "Unsupervised" means not in the presence of:

1 (a) Another employee or volunteer from the same business or
2 organization as the applicant; or

3 (b) Any relative or guardian of any of the children or
4 developmentally disabled persons or vulnerable adults to which the
5 applicant has access during the course of his or her employment or
6 involvement with the business or organization.

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

12 (11) "Financial exploitation" means the illegal or improper use of
13 a vulnerable adult or that adult's resources for another person's
14 profit or advantage.

15 (12) "Agency" means any person, firm, partnership, association,
16 corporation, or facility which receives, provides services to, houses
17 or otherwise cares for vulnerable adults.

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

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

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

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

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

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

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

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

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

37 (a) Rape or rape of a child;

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

1 (c) Incest or indecent liberties;
2 (d) Child molestation;
3 (e) Sexual misconduct with a minor;
4 (f) Custodial sexual misconduct;
5 (g) Crimes with a sexual motivation; or
6 ~~((g))~~ (h) An attempt to commit any of the aforementioned
7 offenses.

8 (8) "Specialized services" means treatment services for victims of
9 sexual assault including support groups, therapy, specialized sexual
10 assault medical examination, and prevention education to potential
11 victims of sexual assault.

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

14 NEW SECTION. Sec. 7. A new section is added to chapter 72.09 RCW
15 to read as follows:

16 The department shall investigate any alleged violations of section
17 1 or 2 of this act that are alleged to have been committed by an
18 employee or contract personnel of the department, to determine whether
19 there is probable cause to believe that the allegation is true before
20 reporting the alleged violation to a prosecuting attorney.

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