

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5234**

56th Legislature  
1999 Regular Session

Passed by the Senate March 4, 1999  
YEAS 48 NAYS 0

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**President of the Senate**

Passed by the House April 7, 1999  
YEAS 90 NAYS 0

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**Speaker of the  
House of Representatives**

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**Speaker of the  
House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5234** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 5234**

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Passed Legislature - 1999 Regular Session

**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 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.

--- END ---