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**SUBSTITUTE SENATE BILL 5309**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** Senate Committee on Human Services & Corrections (originally sponsored by Senators Kohl-Welles, Benton and Kline)

READ FIRST TIME 02/15/05.

1 AN ACT Relating to sexual misconduct with a minor; and amending RCW  
2 9A.44.010, 9A.44.093, and 9A.44.096.

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

4 **Sec. 1.** RCW 9A.44.010 and 2001 c 251 s 28 are each amended to read  
5 as follows:

6 As used in this chapter:

7 (1) "Sexual intercourse" (a) has its ordinary meaning and occurs  
8 upon any penetration, however slight, and

9 (b) Also means any penetration of the vagina or anus however  
10 slight, by an object, when committed on one person by another, whether  
11 such persons are of the same or opposite sex, except when such  
12 penetration is accomplished for medically recognized treatment or  
13 diagnostic purposes, and

14 (c) Also means any act of sexual contact between persons involving  
15 the sex organs of one person and the mouth or anus of another whether  
16 such persons are of the same or opposite sex.

17 (2) "Sexual contact" means any touching of the sexual or other  
18 intimate parts of a person done for the purpose of gratifying sexual  
19 desire of either party or a third party.

1 (3) "Married" means one who is legally married to another, but does  
2 not include a person who is living separate and apart from his or her  
3 spouse and who has filed in an appropriate court for legal separation  
4 or for dissolution of his or her marriage.

5 (4) "Mental incapacity" is that condition existing at the time of  
6 the offense which prevents a person from understanding the nature or  
7 consequences of the act of sexual intercourse whether that condition is  
8 produced by illness, defect, the influence of a substance or from some  
9 other cause.

10 (5) "Physically helpless" means a person who is unconscious or for  
11 any other reason is physically unable to communicate unwillingness to  
12 an act.

13 (6) "Forcible compulsion" means physical force which overcomes  
14 resistance, or a threat, express or implied, that places a person in  
15 fear of death or physical injury to herself or himself or another  
16 person, or in fear that she or he or another person will be kidnapped.

17 (7) "Consent" means that at the time of the act of sexual  
18 intercourse or sexual contact there are actual words or conduct  
19 indicating freely given agreement to have sexual intercourse or sexual  
20 contact.

21 (8) "Significant relationship" means a situation in which the  
22 perpetrator is:

23 (a) A person who undertakes the responsibility, professionally or  
24 voluntarily, to provide education, health, welfare, or organized  
25 recreational activities principally for minors;

26 (b) A person who in the course of his or her employment supervises  
27 minors; or

28 (c) A person who provides welfare, health or residential  
29 assistance, personal care, or organized recreational activities to  
30 frail elders or vulnerable adults, including a provider, employee,  
31 temporary employee, volunteer, or independent contractor who supplies  
32 services to long-term care facilities licensed or required to be  
33 licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home  
34 health, hospice, or home care agencies licensed or required to be  
35 licensed under chapter 70.127 RCW, but not including a consensual  
36 sexual partner.

37 (9) "Abuse of a supervisory position" means:

1        (a) To use a direct or indirect threat or promise to ((use))  
2 exercise authority to the detriment or benefit of a minor; or

3        (b) To exploit a significant relationship in order to obtain the  
4 consent of a minor.

5        (10) "Developmentally disabled," for purposes of RCW  
6 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a  
7 developmental disability as defined in RCW 71A.10.020.

8        (11) "Person with supervisory authority," for purposes of RCW  
9 9A.44.050(1) (c) or (e) and 9A.44.100(1) (c) or (e), means any  
10 proprietor or employee of any public or private care or treatment  
11 facility who directly supervises developmentally disabled, mentally  
12 disordered, or chemically dependent persons at the facility.

13        (12) "Mentally disordered person" for the purposes of RCW  
14 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental  
15 disorder" as defined in RCW 71.05.020.

16        (13) "Chemically dependent person" for purposes of RCW  
17 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically  
18 dependent" as defined in RCW 70.96A.020(4).

19        (14) "Health care provider" for purposes of RCW 9A.44.050 and  
20 9A.44.100 means a person who is, holds himself or herself out to be, or  
21 provides services as if he or she were: (a) A member of a health care  
22 profession under chapter 18.130 RCW; or (b) registered under chapter  
23 18.19 RCW or licensed under chapter 18.225 RCW, regardless of whether  
24 the health care provider is licensed, certified, or registered by the  
25 state.

26        (15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means  
27 the active delivery of professional services by a health care provider  
28 which the health care provider holds himself or herself out to be  
29 qualified to provide.

30        (16) "Frail elder or vulnerable adult" means a person sixty years  
31 of age or older who has the functional, mental, or physical inability  
32 to care for himself or herself. "Frail elder or vulnerable adult" also  
33 includes a person found incapacitated under chapter 11.88 RCW, a person  
34 over eighteen years of age who has a developmental disability under  
35 chapter 71A.10 RCW, a person admitted to a long-term care facility that  
36 is licensed or required to be licensed under chapter 18.20, 18.51,  
37 72.36, or 70.128 RCW, and a person receiving services from a home

1 health, hospice, or home care agency licensed or required to be  
2 licensed under chapter 70.127 RCW.

3 **Sec. 2.** RCW 9A.44.093 and 2001 2nd sp.s. c 12 s 357 are each  
4 amended to read as follows:

5 (1) A person is guilty of sexual misconduct with a minor in the  
6 first degree when: (a) The person has, or knowingly causes another  
7 person under the age of eighteen to have, sexual intercourse with  
8 another person who is at least sixteen years old but less than eighteen  
9 years old and not married to the perpetrator, if the perpetrator is at  
10 least sixty months older than the victim, is in a significant  
11 relationship to the victim, and abuses a supervisory position within  
12 that relationship in order to engage in or cause another person under  
13 the age of eighteen to engage in sexual intercourse with the victim;  
14 ~~((or))~~ (b) the person is a school employee who has, or knowingly causes  
15 another person under the age of eighteen to have, sexual intercourse  
16 with a registered student of the school who is at least sixteen years  
17 old and not married to the employee, if the employee is at least sixty  
18 months older than the student; or (c) the person is a foster parent who  
19 has, or knowingly causes another person under the age of eighteen to  
20 have, sexual intercourse with his or her foster child who is at least  
21 sixteen.

22 (2) Sexual misconduct with a minor in the first degree is a class  
23 C felony.

24 (3) For the purposes of this section, "school employee" means an  
25 employee of a common school defined in RCW 28A.150.020, or a grade  
26 kindergarten through twelve employee of a private school under chapter  
27 28A.195 RCW, who is not enrolled as a student of the common school or  
28 private school.

29 **Sec. 3.** RCW 9A.44.096 and 2001 2nd sp.s. c 12 s 358 are each  
30 amended to read as follows:

31 (1) A person is guilty of sexual misconduct with a minor in the  
32 second degree when: (a) The person has, or knowingly causes another  
33 person under the age of eighteen to have, sexual contact with another  
34 person who is at least sixteen years old but less than eighteen years  
35 old and not married to the perpetrator, if the perpetrator is at least  
36 sixty months older than the victim, is in a significant relationship to

1 the victim, and abuses a supervisory position within that relationship  
2 in order to engage in or cause another person under the age of eighteen  
3 to engage in sexual contact with the victim; ~~((or))~~ (b) the person is  
4 a school employee who has, or knowingly causes another person under the  
5 age of eighteen to have, sexual contact with a registered student of  
6 the school who is at least sixteen years old and not married to the  
7 employee, if the employee is at least sixty months older than the  
8 student; or (c) the person is a foster parent who has, or knowingly  
9 causes another person under the age of eighteen to have, sexual contact  
10 with his or her foster child who is at least sixteen.

11 (2) Sexual misconduct with a minor in the second degree is a gross  
12 misdemeanor.

13 (3) For the purposes of this section, "school employee" means an  
14 employee of a common school defined in RCW 28A.150.020, or a grade  
15 kindergarten through twelve employee of a private school under chapter  
16 28A.195 RCW, who is not enrolled as a student of the common school or  
17 private school.

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