
SENATE BILL 5309

State of Washington

59th Legislature

2005 Regular Session

By Senators Kohl-Welles, Benton and Kline

Read first time 01/19/2005. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to abuse of a supervisory position; and amending
2 RCW 9A.44.010.

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 a direct or indirect

1 threat or promise to use authority to the detriment or benefit of a
2 minor or the use of a significant relationship to obtain the consent of
3 a minor.

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

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

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

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

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

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

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

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