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**SUBSTITUTE SENATE BILL 5033**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Padden, Van De Wege, Dhingra, Hasegawa, Kuderer, and Wellman)

READ FIRST TIME 02/07/23.

1 AN ACT Relating to reclassifying the sentence for the crime of  
2 custodial sexual misconduct; amending RCW 9A.44.160, 9A.44.170, and  
3 9.94A.515; creating a new section; and prescribing penalties.

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

5 **Sec. 1.** RCW 9A.44.160 and 1999 c 45 s 1 are each amended to read  
6 as follows:

7 (1) A person is guilty of custodial sexual misconduct in the  
8 first degree when the person has sexual intercourse with another  
9 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  
2 the 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  
7 ((C)) B felony.

8 **Sec. 2.** RCW 9A.44.170 and 1999 c 45 s 2 are each amended to read  
9 as follows:

10 (1) A person is guilty of custodial sexual misconduct in the  
11 second 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~~) class C felony.

29 **Sec. 3.** RCW 9.94A.515 and 2022 c 231 s 13 are each amended to  
30 read as follows:

31 TABLE 2

32 CRIMES INCLUDED WITHIN EACH  
33 SERIOUSNESS LEVEL

34 XVI Aggravated Murder 1 (RCW 10.95.020)

35 XV Homicide by abuse (RCW 9A.32.055)

1 Malicious explosion 1 (RCW  
2 70.74.280(1))  
3 Murder 1 (RCW 9A.32.030)  
4 XIV Murder 2 (RCW 9A.32.050)  
5 Trafficking 1 (RCW 9A.40.100(1))  
6 XIII Malicious explosion 2 (RCW  
7 70.74.280(2))  
8 Malicious placement of an explosive 1  
9 (RCW 70.74.270(1))  
10 XII Assault 1 (RCW 9A.36.011)  
11 Assault of a Child 1 (RCW 9A.36.120)  
12 Malicious placement of an imitation  
13 device 1 (RCW 70.74.272(1)(a))  
14 Promoting Commercial Sexual Abuse of  
15 a Minor (RCW 9.68A.101)  
16 Rape 1 (RCW 9A.44.040)  
17 Rape of a Child 1 (RCW 9A.44.073)  
18 Trafficking 2 (RCW 9A.40.100(3))  
19 XI Manslaughter 1 (RCW 9A.32.060)  
20 Rape 2 (RCW 9A.44.050)  
21 Rape of a Child 2 (RCW 9A.44.076)  
22 Vehicular Homicide, by being under the  
23 influence of intoxicating liquor or  
24 any drug (RCW 46.61.520)  
25 Vehicular Homicide, by the operation of  
26 any vehicle in a reckless manner  
27 (RCW 46.61.520)  
28 X Child Molestation 1 (RCW 9A.44.083)  
29 Criminal Mistreatment 1 (RCW  
30 9A.42.020)  
31 Indecent Liberties (with forcible  
32 compulsion) (RCW  
33 9A.44.100(1)(a))  
34 Kidnapping 1 (RCW 9A.40.020)

1 Leading Organized Crime (RCW  
2 9A.82.060(1)(a))  
3 Malicious explosion 3 (RCW  
4 70.74.280(3))  
5 Sexually Violent Predator Escape (RCW  
6 9A.76.115)  
7 IX Abandonment of Dependent Person 1  
8 (RCW 9A.42.060)  
9 Assault of a Child 2 (RCW 9A.36.130)  
10 Explosive devices prohibited (RCW  
11 70.74.180)  
12 Hit and Run—Death (RCW  
13 46.52.020(4)(a))  
14 Homicide by Watercraft, by being under  
15 the influence of intoxicating liquor  
16 or any drug (RCW 79A.60.050)  
17 Inciting Criminal Profiteering (RCW  
18 9A.82.060(1)(b))  
19 Malicious placement of an explosive 2  
20 (RCW 70.74.270(2))  
21 Robbery 1 (RCW 9A.56.200)  
22 Sexual Exploitation (RCW 9.68A.040)  
23 VIII Arson 1 (RCW 9A.48.020)  
24 Commercial Sexual Abuse of a Minor  
25 (RCW 9.68A.100)  
26 Homicide by Watercraft, by the  
27 operation of any vessel in a reckless  
28 manner (RCW 79A.60.050)  
29 Manslaughter 2 (RCW 9A.32.070)  
30 Promoting Prostitution 1 (RCW  
31 9A.88.070)  
32 Theft of Ammonia (RCW 69.55.010)  
33 VII Air bag diagnostic systems (causing  
34 bodily injury or death) (RCW  
35 46.37.660(2)(b))

1 Air bag replacement requirements  
2 (causing bodily injury or death)  
3 (RCW 46.37.660(1)(b))  
4 Burglary 1 (RCW 9A.52.020)  
5 Child Molestation 2 (RCW 9A.44.086)  
6 Civil Disorder Training (RCW  
7 9A.48.120)  
8 Custodial Sexual Misconduct 1 (RCW  
9 9A.44.160)  
10 Dealing in depictions of minor engaged  
11 in sexually explicit conduct 1  
12 (RCW 9.68A.050(1))  
13 Drive-by Shooting (RCW 9A.36.045)  
14 False Reporting 1 (RCW  
15 9A.84.040(2)(a))  
16 Homicide by Watercraft, by disregard  
17 for the safety of others (RCW  
18 79A.60.050)  
19 Indecent Liberties (without forcible  
20 compulsion) (RCW 9A.44.100(1)  
21 (b) and (c))  
22 Introducing Contraband 1 (RCW  
23 9A.76.140)  
24 Malicious placement of an explosive 3  
25 (RCW 70.74.270(3))  
26 Manufacture or import counterfeit,  
27 nonfunctional, damaged, or  
28 previously deployed air bag  
29 (causing bodily injury or death)  
30 (RCW 46.37.650(1)(b))  
31 Negligently Causing Death By Use of a  
32 Signal Preemption Device (RCW  
33 46.37.675)

1 Sell, install, or reinstall counterfeit,  
2 nonfunctional, damaged, or  
3 previously deployed airbag (RCW  
4 46.37.650(2)(b))  
5 Sending, bringing into state depictions  
6 of minor engaged in sexually  
7 explicit conduct 1 (RCW  
8 9.68A.060(1))  
9 Unlawful Possession of a Firearm in the  
10 first degree (RCW 9.41.040(1))  
11 Use of a Machine Gun or Bump-fire  
12 Stock in Commission of a Felony  
13 (RCW 9.41.225)  
14 Vehicular Homicide, by disregard for  
15 the safety of others (RCW  
16 46.61.520)  
17 VI Bail Jumping with Murder 1 (RCW  
18 9A.76.170(3)(a))  
19 Bribery (RCW 9A.68.010)  
20 Incest 1 (RCW 9A.64.020(1))  
21 Intimidating a Judge (RCW 9A.72.160)  
22 Intimidating a Juror/Witness (RCW  
23 9A.72.110, 9A.72.130)  
24 Malicious placement of an imitation  
25 device 2 (RCW 70.74.272(1)(b))  
26 Possession of Depictions of a Minor  
27 Engaged in Sexually Explicit  
28 Conduct 1 (RCW 9.68A.070(1))  
29 Rape of a Child 3 (RCW 9A.44.079)  
30 Theft of a Firearm (RCW 9A.56.300)  
31 Theft from a Vulnerable Adult 1 (RCW  
32 9A.56.400(1))  
33 Unlawful Storage of Ammonia (RCW  
34 69.55.020)  
35 V Abandonment of Dependent Person 2  
36 (RCW 9A.42.070)

1 Advancing money or property for  
2 extortionate extension of credit  
3 (RCW 9A.82.030)

4 Air bag diagnostic systems (RCW  
5 46.37.660(2)(c))

6 Air bag replacement requirements  
7 (RCW 46.37.660(1)(c))

8 Bail Jumping with class A Felony  
9 (RCW 9A.76.170(3)(b))

10 Child Molestation 3 (RCW 9A.44.089)

11 Criminal Mistreatment 2 (RCW  
12 9A.42.030)

13 ~~((Custodial Sexual Misconduct 1 (RCW  
14 9A.44.160)))~~

15 Custodial Sexual Misconduct 2 (RCW  
16 9A.44.170)

17 Dealing in Depictions of Minor  
18 Engaged in Sexually Explicit  
19 Conduct 2 (RCW 9.68A.050(2))

20 Domestic Violence Court Order  
21 Violation (RCW 7.105.450,  
22 10.99.040, 10.99.050, 26.09.300,  
23 26.10.220, 26.26B.050, 26.50.110,  
24 26.52.070, or 74.34.145)

25 Extortion 1 (RCW 9A.56.120)

26 Extortionate Extension of Credit (RCW  
27 9A.82.020)

28 Extortionate Means to Collect  
29 Extensions of Credit (RCW  
30 9A.82.040)

31 Incest 2 (RCW 9A.64.020(2))

32 Kidnapping 2 (RCW 9A.40.030)

33 Manufacture or import counterfeit,  
34 nonfunctional, damaged, or  
35 previously deployed air bag (RCW  
36 46.37.650(1)(c))

1 Perjury 1 (RCW 9A.72.020)  
2 Persistent prison misbehavior (RCW  
3 9.94.070)  
4 Possession of a Stolen Firearm (RCW  
5 9A.56.310)  
6 Rape 3 (RCW 9A.44.060)  
7 Rendering Criminal Assistance 1 (RCW  
8 9A.76.070)  
9 Sell, install, or reinstall counterfeit,  
10 nonfunctional, damaged, or  
11 previously deployed airbag (RCW  
12 46.37.650(2)(c))  
13 Sending, Bringing into State Depictions  
14 of Minor Engaged in Sexually  
15 Explicit Conduct 2 (RCW  
16 9.68A.060(2))  
17 Sexual Misconduct with a Minor 1  
18 (RCW 9A.44.093)  
19 Sexually Violating Human Remains  
20 (RCW 9A.44.105)  
21 Stalking (RCW 9A.46.110)  
22 Taking Motor Vehicle Without  
23 Permission 1 (RCW 9A.56.070)  
24 IV Arson 2 (RCW 9A.48.030)  
25 Assault 2 (RCW 9A.36.021)  
26 Assault 3 (of a Peace Officer with a  
27 Projectile Stun Gun) (RCW  
28 9A.36.031(1)(h))  
29 Assault 4 (third domestic violence  
30 offense) (RCW 9A.36.041(3))  
31 Assault by Watercraft (RCW  
32 79A.60.060)  
33 Bribing a Witness/Bribe Received by  
34 Witness (RCW 9A.72.090,  
35 9A.72.100)  
36 Cheating 1 (RCW 9.46.1961)



1 Commercial Bribery (RCW 9A.68.060)  
2 Counterfeiting (RCW 9.16.035(4))  
3 Driving While Under the Influence  
4 (RCW 46.61.502(6))  
5 Endangerment with a Controlled  
6 Substance (RCW 9A.42.100)  
7 Escape 1 (RCW 9A.76.110)  
8 Hate Crime (RCW 9A.36.080)  
9 Hit and Run—Injury (RCW  
10 46.52.020(4)(b))  
11 Hit and Run with Vessel—Injury  
12 Accident (RCW 79A.60.200(3))  
13 Identity Theft 1 (RCW 9.35.020(2))  
14 Indecent Exposure to Person Under Age  
15 14 (subsequent sex offense) (RCW  
16 9A.88.010)  
17 Influencing Outcome of Sporting Event  
18 (RCW 9A.82.070)  
19 Physical Control of a Vehicle While  
20 Under the Influence (RCW  
21 46.61.504(6))  
22 Possession of Depictions of a Minor  
23 Engaged in Sexually Explicit  
24 Conduct 2 (RCW 9.68A.070(2))  
25 Residential Burglary (RCW 9A.52.025)  
26 Robbery 2 (RCW 9A.56.210)  
27 Theft of Livestock 1 (RCW 9A.56.080)  
28 Threats to Bomb (RCW 9.61.160)  
29 Trafficking in Stolen Property 1 (RCW  
30 9A.82.050)  
31 Unlawful factoring of a credit card or  
32 payment card transaction (RCW  
33 9A.56.290(4)(b))

1 Unlawful transaction of health coverage  
2 as a health care service contractor  
3 (RCW 48.44.016(3))  
4 Unlawful transaction of health coverage  
5 as a health maintenance  
6 organization (RCW 48.46.033(3))  
7 Unlawful transaction of insurance  
8 business (RCW 48.15.023(3))  
9 Unlicensed practice as an insurance  
10 professional (RCW 48.17.063(2))  
11 Use of Proceeds of Criminal  
12 Profiteering (RCW 9A.82.080 (1)  
13 and (2))  
14 Vehicle Prowling 2 (third or subsequent  
15 offense) (RCW 9A.52.100(3))  
16 Vehicular Assault, by being under the  
17 influence of intoxicating liquor or  
18 any drug, or by the operation or  
19 driving of a vehicle in a reckless  
20 manner (RCW 46.61.522)  
21 Viewing of Depictions of a Minor  
22 Engaged in Sexually Explicit  
23 Conduct 1 (RCW 9.68A.075(1))  
24 Willful Failure to Return from Furlough  
25 (RCW 72.66.060)  
26 III Animal Cruelty 1 (Sexual Conduct or  
27 Contact) (RCW 16.52.205(3))  
28 Assault 3 (Except Assault 3 of a Peace  
29 Officer With a Projectile Stun Gun)  
30 (RCW 9A.36.031 except subsection  
31 (1)(h))  
32 Assault of a Child 3 (RCW 9A.36.140)  
33 Bail Jumping with class B or C Felony  
34 (RCW 9A.76.170(3)(c))  
35 Burglary 2 (RCW 9A.52.030)

1 Communication with a Minor for  
2 Immoral Purposes (RCW  
3 9.68A.090)  
4 Criminal Gang Intimidation (RCW  
5 9A.46.120)  
6 Custodial Assault (RCW 9A.36.100)  
7 Cyber Harassment (RCW  
8 9A.90.120(2)(b))  
9 Escape 2 (RCW 9A.76.120)  
10 Extortion 2 (RCW 9A.56.130)  
11 False Reporting 2 (RCW  
12 9A.84.040(2)(b))  
13 Harassment (RCW 9A.46.020)  
14 Intimidating a Public Servant (RCW  
15 9A.76.180)  
16 Introducing Contraband 2 (RCW  
17 9A.76.150)  
18 Malicious Injury to Railroad Property  
19 (RCW 81.60.070)  
20 Manufacture of Untraceable Firearm  
21 with Intent to Sell (RCW 9.41.190)  
22 Manufacture or Assembly of an  
23 Undetectable Firearm or  
24 Untraceable Firearm (RCW  
25 9.41.325)  
26 Mortgage Fraud (RCW 19.144.080)  
27 Negligently Causing Substantial Bodily  
28 Harm By Use of a Signal  
29 Preemption Device (RCW  
30 46.37.674)  
31 Organized Retail Theft 1 (RCW  
32 9A.56.350(2))  
33 Perjury 2 (RCW 9A.72.030)  
34 Possession of Incendiary Device (RCW  
35 9.40.120)

1 Possession of Machine Gun, Bump-Fire  
2 Stock, Undetectable Firearm, or  
3 Short-Barreled Shotgun or Rifle  
4 (RCW 9.41.190)  
5 Promoting Prostitution 2 (RCW  
6 9A.88.080)  
7 Retail Theft with Special Circumstances  
8 1 (RCW 9A.56.360(2))  
9 Securities Act violation (RCW  
10 21.20.400)  
11 Tampering with a Witness (RCW  
12 9A.72.120)  
13 Telephone Harassment (subsequent  
14 conviction or threat of death) (RCW  
15 9.61.230(2))  
16 Theft of Livestock 2 (RCW 9A.56.083)  
17 Theft with the Intent to Resell 1 (RCW  
18 9A.56.340(2))  
19 Trafficking in Stolen Property 2 (RCW  
20 9A.82.055)  
21 Unlawful Hunting of Big Game 1 (RCW  
22 77.15.410(3)(b))  
23 Unlawful Imprisonment (RCW  
24 9A.40.040)  
25 Unlawful Misbranding of Fish or  
26 Shellfish 1 (RCW 77.140.060(3))  
27 Unlawful possession of firearm in the  
28 second degree (RCW 9.41.040(2))  
29 Unlawful Taking of Endangered Fish or  
30 Wildlife 1 (RCW 77.15.120(3)(b))  
31 Unlawful Trafficking in Fish, Shellfish,  
32 or Wildlife 1 (RCW  
33 77.15.260(3)(b))  
34 Unlawful Use of a Nondesignated  
35 Vessel (RCW 77.15.530(4))

1 Vehicular Assault, by the operation or  
2 driving of a vehicle with disregard  
3 for the safety of others (RCW  
4 46.61.522)

5 Willful Failure to Return from Work  
6 Release (RCW 72.65.070)

7 II Commercial Fishing Without a License  
8 1 (RCW 77.15.500(3)(b))

9 Computer Trespass 1 (RCW 9A.90.040)

10 Counterfeiting (RCW 9.16.035(3))

11 Electronic Data Service Interference  
12 (RCW 9A.90.060)

13 Electronic Data Tampering 1 (RCW  
14 9A.90.080)

15 Electronic Data Theft (RCW 9A.90.100)

16 Engaging in Fish Dealing Activity  
17 Unlicensed 1 (RCW 77.15.620(3))

18 Escape from Community Custody  
19 (RCW 72.09.310)

20 Failure to Register as a Sex Offender  
21 (second or subsequent offense)  
22 (RCW 9A.44.130 prior to June 10,  
23 2010, and RCW 9A.44.132)

24 Health Care False Claims (RCW  
25 48.80.030)

26 Identity Theft 2 (RCW 9.35.020(3))

27 Improperly Obtaining Financial  
28 Information (RCW 9.35.010)

29 Malicious Mischief 1 (RCW 9A.48.070)

30 Organized Retail Theft 2 (RCW  
31 9A.56.350(3))

32 Possession of Stolen Property 1 (RCW  
33 9A.56.150)

34 Possession of a Stolen Vehicle (RCW  
35 9A.56.068)

1 Retail Theft with Special Circumstances  
2 2 (RCW 9A.56.360(3))  
3 Scrap Processing, Recycling, or  
4 Supplying Without a License  
5 (second or subsequent offense)  
6 (RCW 19.290.100)  
7 Theft 1 (RCW 9A.56.030)  
8 Theft of a Motor Vehicle (RCW  
9 9A.56.065)  
10 Theft of Rental, Leased, Lease-  
11 purchased, or Loaned Property  
12 (valued at \$5,000 or more) (RCW  
13 9A.56.096(5)(a))  
14 Theft with the Intent to Resell 2 (RCW  
15 9A.56.340(3))  
16 Trafficking in Insurance Claims (RCW  
17 48.30A.015)  
18 Unlawful factoring of a credit card or  
19 payment card transaction (RCW  
20 9A.56.290(4)(a))  
21 Unlawful Participation of Non-Indians  
22 in Indian Fishery (RCW  
23 77.15.570(2))  
24 Unlawful Practice of Law (RCW  
25 2.48.180)  
26 Unlawful Purchase or Use of a License  
27 (RCW 77.15.650(3)(b))  
28 Unlawful Trafficking in Fish, Shellfish,  
29 or Wildlife 2 (RCW  
30 77.15.260(3)(a))  
31 Unlicensed Practice of a Profession or  
32 Business (RCW 18.130.190(7))  
33 Voyeurism 1 (RCW 9A.44.115)  
34 I Attempting to Elude a Pursuing Police  
35 Vehicle (RCW 46.61.024)

1 False Verification for Welfare (RCW  
2 74.08.055)  
3 Forgery (RCW 9A.60.020)  
4 Fraudulent Creation or Revocation of a  
5 Mental Health Advance Directive  
6 (RCW 9A.60.060)  
7 Malicious Mischief 2 (RCW 9A.48.080)  
8 Mineral Trespass (RCW 78.44.330)  
9 Possession of Stolen Property 2 (RCW  
10 9A.56.160)  
11 Reckless Burning 1 (RCW 9A.48.040)  
12 Spotlighting Big Game 1 (RCW  
13 77.15.450(3)(b))  
14 Suspension of Department Privileges 1  
15 (RCW 77.15.670(3)(b))  
16 Taking Motor Vehicle Without  
17 Permission 2 (RCW 9A.56.075)  
18 Theft 2 (RCW 9A.56.040)  
19 Theft from a Vulnerable Adult 2 (RCW  
20 9A.56.400(2))  
21 Theft of Rental, Leased, Lease-  
22 purchased, or Loaned Property  
23 (valued at \$750 or more but less  
24 than \$5,000) (RCW  
25 9A.56.096(5)(b))  
26 Transaction of insurance business  
27 beyond the scope of licensure  
28 (RCW 48.17.063)  
29 Unlawful Fish and Shellfish Catch  
30 Accounting (RCW 77.15.630(3)(b))  
31 Unlawful Issuance of Checks or Drafts  
32 (RCW 9A.56.060)  
33 Unlawful Possession of Fictitious  
34 Identification (RCW 9A.56.320)  
35 Unlawful Possession of Instruments of  
36 Financial Fraud (RCW 9A.56.320)

1 Unlawful Possession of Payment  
2 Instruments (RCW 9A.56.320)  
3 Unlawful Possession of a Personal  
4 Identification Device (RCW  
5 9A.56.320)  
6 Unlawful Production of Payment  
7 Instruments (RCW 9A.56.320)  
8 Unlawful Releasing, Planting,  
9 Possessing, or Placing Deleterious  
10 Exotic Wildlife (RCW  
11 77.15.250(2)(b))  
12 Unlawful Trafficking in Food Stamps  
13 (RCW 9.91.142)  
14 Unlawful Use of Food Stamps (RCW  
15 9.91.144)  
16 Unlawful Use of Net to Take Fish 1  
17 (RCW 77.15.580(3)(b))  
18 Unlawful Use of Prohibited Aquatic  
19 Animal Species (RCW  
20 77.15.253(3))  
21 Vehicle Prowl 1 (RCW 9A.52.095)  
22 Violating Commercial Fishing Area or  
23 Time 1 (RCW 77.15.550(3)(b))

24 NEW SECTION. **Sec. 4.** This act may be known and cited as  
25 Kimberly Bender's law.

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