

SENATE BILL REPORT

SB 6215

As Reported By Senate Committee On:
Law & Justice, February 6, 1998

Title: An act relating to custodial sexual misconduct.

Brief Description: Defining the crime of custodial sexual misconduct.

Sponsors: Senators Long, Franklin, Zarelli, Stevens, Kohl, Winsley and Oke.

Brief History:

Committee Activity: Law & Justice: 1/28/98, 2/6/98 [DPS].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6215 be substituted therefor, and the substitute bill do pass.

Signed by Senators Johnson, Vice Chair; Fairley, Kline, Long, McCaslin, Stevens and Thibaudeau.

Staff: Aldo Melchiori (786-7439)

Background: A person commits rape in the second degree if the person engages in sexual intercourse with another (a) by forcible compulsion; (b) when the victim is incapable of consent by reason of being physically helpless or mentally incapacitated; (c) when the victim is developmentally disabled and the perpetrator is a person who is not married to the victim and who has supervisory authority over the victim; (d) when the perpetrator is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination; or (e) when the victim is a resident of a facility for mentally disordered or chemically dependent persons and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim. Rape in the second degree is a class A felony ranked at the class XI level (78 to 102 months for a first offense).

Rape in the third degree is committed when a person engages in sexual intercourse: (a) when the victim did not consent and the lack of consent was clearly expressed or (b) when there is a threat of substantial harm to the property rights of the victim. Rape in the third degree is a class C felony ranked at the class V level (6 to 12 months for a first offense).

Applicants for paid or volunteer positions which will or may have access to children under 16 years of age, developmentally disabled persons, or vulnerable adults are subject to background checks including for crimes against children or other persons.

In 1979, the Legislature established the Victims of Sexual Assault Act to provide rape crisis centers and community based sexual assault programs. This program is operated through the Department of Community, Trade, and Economic Development.

It has been suggested that people who are under arrest or incarcerated are exceptionally vulnerable to sex offenses by persons with supervisory authority.

Summary of Substitute Bill: A person is guilty of custodial sexual misconduct in the first degree by having sexual intercourse with another person (a) who is a resident of an adult or juvenile correctional facility or work release facility and the offender is a person with supervisory authority over the victim or the victim reasonably believes the offender has such authority or (b) who is detained, under arrest or in the custody of a law enforcement officer and the offender is a law enforcement officer. Consent of the victim is not a defense. The offense is a class C felony ranked at level V.

A person is guilty of custodial sexual misconduct in the second degree by having sexual contact with another person (a) who is a resident of an adult or juvenile correctional facility or work release facility and the offender is a person with supervisory authority over the victim or the victim reasonably believes the offender has such authority or (b) who is detained, under arrest or in the custody of a law enforcement officer and the offender is a law enforcement officer. Consent of the victim is not a defense. The offense is a gross misdemeanor.

Custodial sexual misconduct is added to the list of crimes against children or other persons and the list of offenses for which victims can receive services to victims of sexual assault.

Substitute Bill Compared to Original Bill: Two degrees of custodial sexual misconduct are created in the substitute to reflect different degrees of offensive behavior. Detained victims are now included. If the victim has a reasonable belief that the offender has the ability to influence the terms, conditions, length, or fact of incarceration, the offense can occur.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill recognizes that a person who is in custody is not able to consent. We have greater expectations of people in positions of authority. Inmate testimony is never relied upon by itself.

Testimony Against: Having sex does not make people criminals. Termination is the most appropriate remedy. Inmates are given too much power and will conspire to seek favors from guards.

Testified: PRO: Senator Long, prime sponsor; Annette Sandberg, WSP; Andy Miller, Benton County Prosecutor; Russ Mauge, Kitsap County Prosecutor; Belinda Stewart, Dept. of Corrections; Alice Payne, Dept. of Corrections; CON: Pat O'Conner, Teamsters; Pat Swanson, Teamsters.