

# HOUSE BILL ANALYSIS

## HB 1177

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**Title:** An act relating to custodial sexual misconduct.

**Brief Description:** Defining the crime of custodial sexual misconduct.

**Sponsors:** Representatives Ballasiotes, Lambert, Koster, Kagi, O'Brien, Cairnes, Lovick, Constantine, Hurst, Kessler and Conway; by request of Department of Corrections.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS

**Staff:** Jean Ann Quinn (786-7310).

#### **Background:**

**Custodial Sexual Misconduct:** Currently, there is no specific crime making unlawful sexual intercourse or sexual contact between a correctional or law enforcement officer and a person detained, arrested, or otherwise in custody.

**Background Checks:** 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 checks for crimes against children or other persons.

**Programs under the Victims of Sexual Assault Act:** Under the Victims of Sexual Assault Act, the Department of Community, Trade, and Economic Development coordinates activities of programs relating to sexual assault, and aids organizations that provide services to sexual assault victims, such as rape crisis centers and other community-based sexual assault programs.

#### **Summary:**

**Custodial Sexual Misconduct in the First Degree:** The crime of custodial sexual misconduct in the first degree occurs (a) when an employee or contract personnel of a correctional agency engages in sexual intercourse with another person who is a resident of an adult or juvenile correctional facility or work release facility, or who is under correctional supervision, and the perpetrator has, or the resident reasonably believes that the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or (b) when a law enforcement officer engages

in sexual intercourse with a person who is being detained, under arrest, or in the custody of a law enforcement officer. Consent of the victim is not a defense to prosecution. Custodial sexual misconduct in the first degree is a class C felony.

**Custodial Sexual Misconduct in the Second Degree:** The crime of custodial sexual misconduct in the second degree occurs when (a) when an employee or contract personnel of a correctional agency has sexual contact with another person who is a resident of an adult or juvenile correctional facility or work release facility, or who is under correctional supervision, and the perpetrator has, or the resident reasonably believes that the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or (b) when a law enforcement officer has sexual contact with a person who is being detained, under arrest, or in the custody of a law enforcement officer. Consent of the victim is not a defense to prosecution. Custodial sexual misconduct in the second degree is a gross misdemeanor.

**Investigation by the Department:** Before reporting an allegation of custodial sexual misconduct in the first or second degree to the prosecuting attorney, the Department of Corrections is required to conduct an investigation to determine whether there is probable cause to believe the allegation is true.

**Background Checks:** Custodial sexual misconduct is added to the list of crimes that are considered crimes against children and other persons– for the purposes of disclosure in background checks.

**Programs under the Victims of Sexual Assault Act:** Custodial sexual misconduct is added to the list of offenses included in the definition of sexual assault for the purposes of the Victims of Sexual Assault Act.

**Fiscal Note:** Requested on January 19, 1999.

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