

# SENATE BILL REPORT

## SB 5234

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As Reported By Senate Committee On:  
Judiciary, February 3, 1999

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

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

**Sponsors:** Senators Long, Horn, Kline, Gardner, McCaslin, Zarelli, Roach, Hargrove, Kohl-Welles, Haugen, Franklin, Stevens, Thibaudeau, Oke, Winsley, Costa and Benton; by request of Department of Corrections.

**Brief History:**

**Committee Activity:** Judiciary: 1/29/99, 2/3/99 [DPS].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5234 be substituted therefor, and the substitute bill do pass.

Signed by Senators Heavey, Chair; Kline, Vice Chair; Costa, Johnson, Long, McCaslin, Roach and Thibaudeau.

**Staff:** Harry Steinmetz (786-7421)

**Background:** Currently it is not illegal for a prison or jail correctional officer to have consensual sexual relations with a prisoner in his or her custody. There are only 12 states that have not enacted a law forbidding this behavior. While a custodial situation may always raise questions of consent, rape cases against correctional officers are difficult to prosecute. It has been suggested that people who are under arrest or incarcerated are exceptionally vulnerable to sex offenses by persons with supervisory authority.

These situations cost the state money in the civil suits that are filed by prisoners. One correctional institution has paid out \$70,000 for two tort claims involving sexual relations between a prisoner and a correctional officer.

**Summary of Substitute Bill:** A new crime of custodial sexual misconduct is created. The victim must be a resident of a state, county, or city adult or juvenile correctional facility, or under correctional supervision. The perpetrator must be an employee or contract personnel of a correctional agency and have, or the victim must reasonably believe that the perpetrator has, the ability to influence the victim's incarceration or correctional supervision. Victims who are detained, under arrest, or in the custody of law enforcement are included.

Sexual intercourse is custodial sexual misconduct in the first degree, a class C felony. Sexual contact is custodial sexual misconduct in the second degree, a gross misdemeanor. The terms "sexual intercourse" and "sexual contact" are defined within RCW Chapter 9A.44.

Consent of the victim is not a defense. An affirmative defense is created if the sexual intercourse or sexual contact is the result of forcible compulsion by the other person.

The Department of Corrections is required to investigate an alleged violation for probable cause before reporting it to a prosecuting attorney.

**Substitute Bill Compared to Original Bill:** The original bill was not considered.

**Appropriation:** None.

**Fiscal Note:** Requested on January 20, 1999.

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

**Testimony For:** There needs to be a clear message that the state will not allow custodial officers to have sex with inmates. Although DOC already has a no tolerance policy, sex between guards and inmates does occur. Given the nature of the power between a guard and an inmate, any question of consent is suspect. This bill covers law enforcement in an arrest situation. There are protections for false reports and the investigation standards are the same as for any law enforcement investigation. Concerns were expressed that there needs to be a penalty for false reporting in this bill. Additionally, the state should provide representation for guards who are accused or there should be an attorney fees clause. This bill has burden of proof issues and does not solve the problem with civil suits.

**Testimony Against:** None.

**Testified:** PRO: Belinda Stewart, Superintendent, McNeill Island Correctional Facility; Annette Sandberg, Chief, Washington State Patrol; Tom McBride, WAPA; Larry Erickson, WASPC; Sid Sidorowicz, DSHS/JRA; Patrick Swanson, Teamsters; Mark Anderson, Teamsters.