
SUBSTITUTE SENATE BILL 5010

State of Washington

56th Legislature

1999 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Kohl-Welles, Hargrove, Long, Goings, Swecker, Winsley, Oke, Benton and Costa)

Read first time 02/08/1999.

1 AN ACT Relating to sexual misconduct by employees of custodial
2 agencies; adding a new section to chapter 13.40 RCW; adding a new
3 section to chapter 72.09 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 13.40 RCW
6 to read as follows:

7 (1) When the secretary has reasonable cause to believe that sexual
8 intercourse or sexual contact between an employee and an offender has
9 occurred, notwithstanding any rule adopted under chapter 41.06 RCW the
10 secretary shall immediately suspend the employee.

11 (2) The secretary shall immediately institute proceedings to
12 terminate the employment of any person:

13 (a) Who is found by the department, based on a preponderance of the
14 evidence, to have had sexual intercourse or sexual contact with the
15 offender; or

16 (b) Upon a guilty plea or conviction for any crime specified in
17 chapter 9A.44 RCW when the victim was an offender.

18 (3) When the secretary has reasonable cause to believe that sexual
19 intercourse or sexual contact between the employee of a contractor and

1 an offender has occurred, the secretary shall require the employee of
2 a contractor to be immediately removed from any employment position
3 which would permit the employee to have any access to any offender.

4 (4) The secretary shall disqualify for employment with a contractor
5 in any position with access to an offender, any person:

6 (a) Who is found by the department, based on a preponderance of the
7 evidence, to have had sexual intercourse or sexual contact with the
8 offender; or

9 (b) Upon a guilty plea or conviction for any crime specified in
10 chapter 9A.44 RCW when the victim was an offender.

11 (5) The secretary, when considering the renewal of a contract with
12 a contractor who has taken action under subsection (3) or (4) of this
13 section, shall require the contractor to demonstrate that there has
14 been significant progress made in reducing the likelihood that any of
15 its employees will have sexual intercourse or sexual contact with an
16 offender. The secretary shall examine whether the contractor has taken
17 steps to improve hiring, training, and monitoring practices and whether
18 the employee remains with the contractor. The secretary shall not
19 renew a contract unless he or she determines that significant progress
20 has been made.

21 (6)(a) For the purposes of RCW 50.20.060, a person terminated under
22 this section shall be considered discharged for misconduct.

23 (b)(i) The department may, within its discretion or upon request of
24 any member of the public, release information to an individual or to
25 the public regarding any person or contract terminated under this
26 section.

27 (ii) An appointed or elected public official, public employee, or
28 public agency as defined in RCW 4.24.470 is immune from civil liability
29 for damages for any discretionary release of relevant and necessary
30 information, unless it is shown that the official, employee, or agency
31 acted with gross negligence or in bad faith. The immunity provided
32 under this section applies to the release of relevant and necessary
33 information to other public officials, public employees, or public
34 agencies, and to the public.

35 (iii) Except as provided in chapter 42.17 RCW, or elsewhere,
36 nothing in this section shall impose any liability upon a public
37 official, public employee, or public agency for failing to release
38 information authorized under this section. Nothing in this section
39 implies that information regarding persons designated in subsection (2)

1 of this section is confidential except as may otherwise be provided by
2 law.

3 (7) The department shall adopt rules to implement this section.
4 The rules shall reflect the legislative intent that this section
5 prohibits individuals who are employed by the department or a
6 contractor of the department from having sexual intercourse or sexual
7 contact with offenders. The rules shall also reflect the legislative
8 intent that when a person is employed by the department or a contractor
9 of the department, and has sexual intercourse or sexual contact with an
10 offender against the employed person's will, the termination provisions
11 of this section shall not be invoked.

12 (8) As used in this section:

13 (a) "Contractor" includes all subcontractors of a contractor;

14 (b) "Offender" means a person under the jurisdiction or supervision
15 of the department; and

16 (c) "Sexual intercourse" and "sexual contact" have the meanings
17 provided in RCW 9A.44.010.

18 NEW SECTION. **Sec. 2.** A new section is added to chapter 72.09 RCW
19 to read as follows:

20 (1) When the secretary has reasonable cause to believe that sexual
21 intercourse or sexual contact between an employee and an inmate has
22 occurred, notwithstanding any rule adopted under chapter 41.06 RCW the
23 secretary shall immediately suspend the employee.

24 (2) The secretary shall immediately institute proceedings to
25 terminate the employment of any person:

26 (a) Who is found by the department, based on a preponderance of the
27 evidence, to have had sexual intercourse or sexual contact with the
28 inmate; or

29 (b) Upon a guilty plea or conviction for any crime specified in
30 chapter 9A.44 RCW when the victim was an inmate.

31 (3) When the secretary has reasonable cause to believe that sexual
32 intercourse or sexual contact between the employee of a contractor and
33 an inmate has occurred, the secretary shall require the employee of a
34 contractor to be immediately removed from any employment position which
35 would permit the employee to have any access to any inmate.

36 (4) The secretary shall disqualify for employment with a contractor
37 in any position with access to an inmate, any person:

1 (a) Who is found by the department, based on a preponderance of the
2 evidence, to have had sexual intercourse or sexual contact with the
3 inmate; or

4 (b) Upon a guilty plea or conviction for any crime specified in
5 chapter 9A.44 RCW when the victim was an inmate.

6 (5) The secretary, when considering the renewal of a contract with
7 a contractor who has taken action under subsection (3) or (4) of this
8 section, shall require the contractor to demonstrate that there has
9 been significant progress made in reducing the likelihood that any of
10 its employees will have sexual intercourse or sexual contact with an
11 inmate. The secretary shall examine whether the contractor has taken
12 steps to improve hiring, training, and monitoring practices and whether
13 the employee remains with the contractor. The secretary shall not
14 renew a contract unless he or she determines that significant progress
15 has been made.

16 (6)(a) For the purposes of RCW 50.20.060, a person terminated under
17 this section shall be considered discharged for misconduct.

18 (b)(i) The department may, within its discretion or upon request of
19 any member of the public, release information to an individual or to
20 the public regarding any person or contract terminated under this
21 section.

22 (ii) An appointed or elected public official, public employee, or
23 public agency as defined in RCW 4.24.470 is immune from civil liability
24 for damages for any discretionary release of relevant and necessary
25 information, unless it is shown that the official, employee, or agency
26 acted with gross negligence or in bad faith. The immunity provided
27 under this section applies to the release of relevant and necessary
28 information to other public officials, public employees, or public
29 agencies, and to the public.

30 (iii) Except as provided in chapter 42.17 RCW, or elsewhere,
31 nothing in this section shall impose any liability upon a public
32 official, public employee, or public agency for failing to release
33 information authorized under this section. Nothing in this section
34 implies that information regarding persons designated in subsection (2)
35 of this section is confidential except as may otherwise be provided by
36 law.

37 (7) The department shall adopt rules to implement this section.
38 The rules shall reflect the legislative intent that this section
39 prohibits individuals who are employed by the department or a

1 contractor of the department from having sexual intercourse or sexual
2 contact with inmates. The rules shall also reflect the legislative
3 intent that when a person is employed by the department or a contractor
4 of the department, and has sexual intercourse or sexual contact with an
5 inmate against the employed person's will, the termination provisions
6 of this section shall not be invoked.

7 (8) As used in this section:

8 (a) "Contractor" includes all subcontractors of a contractor;

9 (b) "Inmate" means an inmate as defined in RCW 72.09.015 or a
10 person under the supervision of the department; and

11 (c) "Sexual intercourse" and "sexual contact" have the meanings
12 provided in RCW 9A.44.010.

13 NEW SECTION. **Sec. 3.** Nothing in section 1 or 2 of this act
14 affects any collective bargaining agreement in place on the effective
15 date of this act.

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