
SENATE BILL 5234

State of Washington

56th Legislature

1999 Regular Session

By 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

Read first time 01/18/1999. Referred to Committee on Judiciary.

1 AN ACT Relating to custodial sexual misconduct; amending RCW
2 43.43.830 and 70.125.030; reenacting and amending RCW 9.94A.320; adding
3 new sections to chapter 9A.44 RCW; adding a new section to chapter
4 72.09 RCW; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.44 RCW
7 to read as follows:

8 (1) A person is guilty of custodial sexual misconduct in the first
9 degree when the person has sexual intercourse with another person:

10 (a)(i) Who is a resident of a state, county, or city adult or
11 juvenile correctional facility, including but not limited to jails,
12 prisons, detention centers, or work release facilities, or (ii) who is
13 under correctional supervision; and the perpetrator is an employee or
14 contract personnel of a correctional agency and the perpetrator has, or
15 the resident reasonably believes the perpetrator has, the ability to
16 influence the terms, conditions, length, or fact of incarceration or
17 correctional supervision; or

18 (b) Who is being detained, under arrest or in the custody of a law
19 enforcement officer and the perpetrator is a law enforcement officer.

1 (2) Consent of the victim is not a defense to a prosecution under
2 this section.

3 (3) Custodial sexual misconduct in the first degree is a class C
4 felony.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 9A.44 RCW
6 to read as follows:

7 (1) A person is guilty of custodial sexual misconduct in the second
8 degree when the person has sexual contact with another person:

9 (a)(i) Who is a resident of a state, county, or city adult or
10 juvenile correctional facility, including but not limited to jails,
11 prisons, detention centers, or work release facilities, or (ii) who is
12 under correctional supervision; and the perpetrator is an employee or
13 contract personnel of a correctional agency and the perpetrator has, or
14 the resident reasonably believes the perpetrator has, the ability to
15 influence the terms, conditions, length, or fact of incarceration or
16 correctional supervision; or

17 (b) Who is being detained, under arrest, or in the custody of a law
18 enforcement officer and the perpetrator is a law enforcement officer.

19 (2) Consent of the victim is not a defense to a prosecution under
20 this section.

21 (3) Custodial sexual misconduct in the second degree is a gross
22 misdemeanor.

23 **Sec. 3.** RCW 9.94A.320 and 1998 c 290 s 4, 1998 c 219 s 4, 1998 c
24 82 s 1, and 1998 c 78 s 1 are each reenacted and amended to read as
25 follows:

26 TABLE 2

27 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

28	XV	Aggravated Murder 1 (RCW 10.95.020)
29	XIV	Murder 1 (RCW 9A.32.030)
30		Homicide by abuse (RCW 9A.32.055)
31		Malicious explosion 1 (RCW 70.74.280(1))
32	XIII	Murder 2 (RCW 9A.32.050)
33		Malicious explosion 2 (RCW 70.74.280(2))
34		Malicious placement of an explosive 1 (RCW
35		70.74.270(1))

1 XII Assault 1 (RCW 9A.36.011)
2 Assault of a Child 1 (RCW 9A.36.120)
3 Rape 1 (RCW 9A.44.040)
4 Rape of a Child 1 (RCW 9A.44.073)
5 Malicious placement of an imitation device
6 1 (RCW 70.74.272(1)(a))
7 XI Rape 2 (RCW 9A.44.050)
8 Rape of a Child 2 (RCW 9A.44.076)
9 Manslaughter 1 (RCW 9A.32.060)
10 X Kidnapping 1 (RCW 9A.40.020)
11 Child Molestation 1 (RCW 9A.44.083)
12 Malicious explosion 3 (RCW 70.74.280(3))
13 Over 18 and deliver heroin, a narcotic from
14 Schedule I or II, or flunitrazepam
15 from Schedule IV to someone under 18
16 (RCW 69.50.406)
17 Leading Organized Crime (RCW
18 9A.82.060(1)(a))
19 Indecent Liberties (with forcible
20 compulsion) (RCW 9A.44.100(1)(a))
21 Manufacture of methamphetamine (RCW
22 69.50.401(a)(1)(ii))
23 IX Assault of a Child 2 (RCW 9A.36.130)
24 Robbery 1 (RCW 9A.56.200)
25 Explosive devices prohibited (RCW
26 70.74.180)
27 Malicious placement of an explosive 2 (RCW
28 70.74.270(2))
29 Over 18 and deliver narcotic from Schedule
30 III, IV, or V or a nonnarcotic, except
31 flunitrazepam, from Schedule I-V to
32 someone under 18 and 3 years junior
33 (RCW 69.50.406)
34 Controlled Substance Homicide (RCW
35 69.50.415)

1 Sexual Exploitation (RCW 9.68A.040)
2 Inciting Criminal Profiteering (RCW
3 9A.82.060(1)(b))
4 Vehicular Homicide, by being under the
5 influence of intoxicating liquor or
6 any drug (RCW 46.61.520)
7 Homicide by Watercraft, by being under the
8 influence of intoxicating liquor or
9 any drug (RCW 88.12.029)

10 VIII Arson 1 (RCW 9A.48.020)
11 Promoting Prostitution 1 (RCW 9A.88.070)
12 Selling for profit (controlled or
13 counterfeit) any controlled substance
14 (RCW 69.50.410)
15 Manufacture, deliver, or possess with
16 intent to deliver heroin or cocaine
17 (RCW 69.50.401(a)(1)(i))
18 Deliver or possess with intent to deliver
19 m e t h a m p h e t a m i n e (R C W
20 69.50.401(a)(1)(ii))
21 Manufacture, deliver, or possess with
22 intent to deliver amphetamine (RCW
23 69.50.401(a)(1)(ii))
24 Possession of ephedrine or pseudoephedrine
25 with intent to manufacture
26 methamphetamine (RCW 69.50.440)
27 Vehicular Homicide, by the operation of any
28 vehicle in a reckless manner (RCW
29 46.61.520)
30 Homicide by Watercraft, by the operation of
31 any vessel in a reckless manner (RCW
32 88.12.029)
33 Manslaughter 2 (RCW 9A.32.070)

1 VII Burglary 1 (RCW 9A.52.020)
2 Vehicular Homicide, by disregard for the
3 safety of others (RCW 46.61.520)
4 Homicide by Watercraft, by disregard for
5 the safety of others (RCW 88.12.029)
6 Introducing Contraband 1 (RCW 9A.76.140)
7 Indecent Liberties (without forcible
8 compulsion) (RCW 9A.44.100(1) (b) and
9 (c))
10 Child Molestation 2 (RCW 9A.44.086)
11 Dealing in depictions of minor engaged in
12 sexually explicit conduct (RCW
13 9.68A.050)
14 Sending, bringing into state depictions of
15 minor engaged in sexually explicit
16 conduct (RCW 9.68A.060)
17 Involving a minor in drug dealing (RCW
18 69.50.401(f))
19 Drive-by Shooting (RCW 9A.36.045)
20 Unlawful Possession of a Firearm in the
21 first degree (RCW 9.41.040(1)(a))
22 Malicious placement of an explosive 3 (RCW
23 70.74.270(3))
24 VI Bribery (RCW 9A.68.010)
25 Rape of a Child 3 (RCW 9A.44.079)
26 Intimidating a Juror/Witness (RCW
27 9A.72.110, 9A.72.130)
28 Malicious placement of an imitation device
29 2 (RCW 70.74.272(1)(b))
30 Incest 1 (RCW 9A.64.020(1))
31 Manufacture, deliver, or possess with
32 intent to deliver narcotics from
33 Schedule I or II (except heroin or
34 cocaine) or flunitrazepam from
35 Schedule IV (RCW 69.50.401(a)(1)(i))
36 Intimidating a Judge (RCW 9A.72.160)
37 Bail Jumping with Murder 1 (RCW
38 9A.76.170(2)(a))
39 Theft of a Firearm (RCW 9A.56.300)

1 V Persistent prison misbehavior (RCW
2 9.94.070)
3 Criminal Mistreatment 1 (RCW 9A.42.020)
4 Abandonment of dependent person 1 (RCW
5 9A.42.060)
6 Rape 3 (RCW 9A.44.060)
7 Sexual Misconduct with a Minor 1 (RCW
8 9A.44.093)
9 Custodial Sexual Misconduct 1 (RCW
10 9A.44.--- (section 1 of this act))
11 Child Molestation 3 (RCW 9A.44.089)
12 Kidnapping 2 (RCW 9A.40.030)
13 Extortion 1 (RCW 9A.56.120)
14 Incest 2 (RCW 9A.64.020(2))
15 Perjury 1 (RCW 9A.72.020)
16 Extortionate Extension of Credit (RCW
17 9A.82.020)
18 Advancing money or property for
19 extortionate extension of credit (RCW
20 9A.82.030)
21 Extortionate Means to Collect Extensions of
22 Credit (RCW 9A.82.040)
23 Rendering Criminal Assistance 1 (RCW
24 9A.76.070)
25 Bail Jumping with class A Felony (RCW
26 9A.76.170(2)(b))
27 Sexually Violating Human Remains (RCW
28 9A.44.105)
29 Delivery of imitation controlled substance
30 by person eighteen or over to person
31 under eighteen (RCW 69.52.030(2))
32 Possession of a Stolen Firearm (RCW
33 9A.56.310)

34 IV Residential Burglary (RCW 9A.52.025)
35 Theft of Livestock 1 (RCW 9A.56.080)
36 Robbery 2 (RCW 9A.56.210)
37 Assault 2 (RCW 9A.36.021)
38 Escape 1 (RCW 9A.76.110)
39 Arson 2 (RCW 9A.48.030)

1 Commercial Bribery (RCW 9A.68.060)
2 Bribing a Witness/Bribe Received by Witness
3 (RCW 9A.72.090, 9A.72.100)
4 Malicious Harassment (RCW 9A.36.080)
5 Threats to Bomb (RCW 9.61.160)
6 Willful Failure to Return from Furlough
7 (RCW 72.66.060)
8 Hit and Run--Injury Accident (RCW
9 46.52.020(4))
10 Hit and Run with Vessel--Injury Accident
11 (RCW 88.12.155(3))
12 Vehicular Assault (RCW 46.61.522)
13 Assault by Watercraft (RCW 88.12.032)
14 Manufacture, deliver, or possess with
15 intent to deliver narcotics from
16 Schedule III, IV, or V or nonnarcotics
17 from Schedule I-V (except marijuana,
18 amphetamine, methamphetamines, or
19 flunitrazepam) (RCW 69.50.401(a)(1)
20 (iii) through (v))
21 Influencing Outcome of Sporting Event (RCW
22 9A.82.070)
23 Use of Proceeds of Criminal Profiteering
24 (RCW 9A.82.080 (1) and (2))
25 Knowingly Trafficking in Stolen Property
26 (RCW 9A.82.050(2))
27 III Criminal Gang Intimidation (RCW 9A.46.120)
28 Criminal Mistreatment 2 (RCW 9A.42.030)
29 Abandonment of dependent person 2 (RCW
30 9A.42.070)
31 Extortion 2 (RCW 9A.56.130)
32 Unlawful Imprisonment (RCW 9A.40.040)
33 Assault 3 (RCW 9A.36.031)
34 Assault of a Child 3 (RCW 9A.36.140)
35 Custodial Assault (RCW 9A.36.100)
36 Unlawful possession of firearm in the
37 second degree (RCW 9.41.040(1)(b))
38 Harassment (RCW 9A.46.020)
39 Promoting Prostitution 2 (RCW 9A.88.080)

1 Willful Failure to Return from Work Release
2 (RCW 72.65.070)
3 Burglary 2 (RCW 9A.52.030)
4 Introducing Contraband 2 (RCW 9A.76.150)
5 Communication with a Minor for Immoral
6 Purposes (RCW 9.68A.090)
7 Patronizing a Juvenile Prostitute (RCW
8 9.68A.100)
9 Escape 2 (RCW 9A.76.120)
10 Perjury 2 (RCW 9A.72.030)
11 Bail Jumping with class B or C Felony (RCW
12 9A.76.170(2)(c))
13 Intimidating a Public Servant (RCW
14 9A.76.180)
15 Tampering with a Witness (RCW 9A.72.120)
16 Manufacture, deliver, or possess with
17 intent to deliver marijuana (RCW
18 69.50.401(a)(1)(iii))
19 Delivery of a material in lieu of a
20 controlled substance (RCW
21 69.50.401(c))
22 Manufacture, distribute, or possess with
23 intent to distribute an imitation
24 controlled substance (RCW
25 69.52.030(1))
26 Recklessly Trafficking in Stolen Property
27 (RCW 9A.82.050(1))
28 Theft of livestock 2 (RCW 9A.56.080)
29 Securities Act violation (RCW 21.20.400)
30 II Unlawful Practice of Law (RCW 2.48.180)
31 Malicious Mischief 1 (RCW 9A.48.070)
32 Possession of Stolen Property 1 (RCW
33 9A.56.150)
34 Theft 1 (RCW 9A.56.030)
35 Class B Felony Theft of Rental, Leased, or
36 Lease-purchased Property (RCW
37 9A.56.096(4))
38 Trafficking in Insurance Claims (RCW
39 48.30A.015)

1 Unlicensed Practice of a Profession or
2 Business (RCW 18.130.190(7))
3 Health Care False Claims (RCW 48.80.030)
4 Possession of controlled substance that is
5 either heroin or narcotics from
6 Schedule I or II or flunitrazepam from
7 Schedule IV (RCW 69.50.401(d))
8 Possession of phencyclidine (PCP) (RCW
9 69.50.401(d))
10 Create, deliver, or possess a counterfeit
11 controlled substance (RCW
12 69.50.401(b))
13 Computer Trespass 1 (RCW 9A.52.110)
14 Escape from Community Custody (RCW
15 72.09.310)

16 I Theft 2 (RCW 9A.56.040)
17 Class C Felony Theft of Rental, Leased, or
18 Lease-purchased Property (RCW
19 9A.56.096(4))
20 Possession of Stolen Property 2 (RCW
21 9A.56.160)
22 Forgery (RCW 9A.60.020)
23 Taking Motor Vehicle Without Permission
24 (RCW 9A.56.070)
25 Vehicle Prowl 1 (RCW 9A.52.095)
26 Attempting to Elude a Pursuing Police
27 Vehicle (RCW 46.61.024)
28 Malicious Mischief 2 (RCW 9A.48.080)
29 Reckless Burning 1 (RCW 9A.48.040)
30 Unlawful Issuance of Checks or Drafts (RCW
31 9A.56.060)
32 Unlawful Use of Food Stamps (RCW 9.91.140
33 (2) and (3))
34 False Verification for Welfare (RCW
35 74.08.055)
36 Forged Prescription (RCW 69.41.020)
37 Forged Prescription for a Controlled
38 Substance (RCW 69.50.403)

1 Possess Controlled Substance that is a
2 Narcotic from Schedule III, IV, or V
3 or Non-narcotic from Schedule I-V
4 (except phencyclidine or
5 flunitrazepam) (RCW 69.50.401(d))

6 **Sec. 4.** RCW 43.43.830 and 1998 c 10 s 1 are each amended to read
7 as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout RCW 43.43.830 through 43.43.840.

10 (1) "Applicant" means:

11 (a) Any prospective employee who will or may have unsupervised
12 access to children under sixteen years of age or developmentally
13 disabled persons or vulnerable adults during the course of his or her
14 employment or involvement with the business or organization;

15 (b) Any prospective volunteer who will have regularly scheduled
16 unsupervised access to children under sixteen years of age,
17 developmentally disabled persons, or vulnerable adults during the
18 course of his or her employment or involvement with the business or
19 organization under circumstances where such access will or may involve
20 groups of (i) five or fewer children under twelve years of age, (ii)
21 three or fewer children between twelve and sixteen years of age, (iii)
22 developmentally disabled persons, or (iv) vulnerable adults; or

23 (c) Any prospective adoptive parent, as defined in RCW 26.33.020.

24 (2) "Business or organization" means a business or organization
25 licensed in this state, any agency of the state, or other governmental
26 entity, that educates, trains, treats, supervises, houses, or provides
27 recreation to developmentally disabled persons, vulnerable adults, or
28 children under sixteen years of age, including but not limited to
29 public housing authorities, school districts, and educational service
30 districts.

31 (3) "Civil adjudication" means a specific court finding of sexual
32 abuse or exploitation or physical abuse in a dependency action under
33 RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In
34 the case of vulnerable adults, civil adjudication means a specific
35 court finding of abuse or financial exploitation in a protection
36 proceeding under chapter 74.34 RCW. It does not include administrative
37 proceedings. The term "civil adjudication" is further limited to court
38 findings that identify as the perpetrator of the abuse a named

1 individual, over the age of eighteen years, who was a party to the
2 dependency or dissolution proceeding or was a respondent in a
3 protection proceeding in which the finding was made and who contested
4 the allegation of abuse or exploitation.

5 (4) "Conviction record" means "conviction record" information as
6 defined in RCW 10.97.030(3) relating to a crime against children or
7 other persons committed by either an adult or a juvenile. It does not
8 include a conviction for an offense that has been the subject of an
9 expungement, pardon, annulment, certificate of rehabilitation, or other
10 equivalent procedure based on a finding of the rehabilitation of the
11 person convicted, or a conviction that has been the subject of a
12 pardon, annulment, or other equivalent procedure based on a finding of
13 innocence. It does include convictions for offenses for which the
14 defendant received a deferred or suspended sentence, unless the record
15 has been expunged according to law.

16 (5) "Crime against children or other persons" means a conviction of
17 any of the following offenses: Aggravated murder; first or second
18 degree murder; first or second degree kidnaping; first, second, or
19 third degree assault; first, second, or third degree assault of a
20 child; first, second, or third degree rape; first, second, or third
21 degree rape of a child; first or second degree robbery; first degree
22 arson; first degree burglary; first or second degree manslaughter;
23 first or second degree extortion; indecent liberties; incest; vehicular
24 homicide; first degree promoting prostitution; communication with a
25 minor; unlawful imprisonment; simple assault; sexual exploitation of
26 minors; first or second degree criminal mistreatment; child abuse or
27 neglect as defined in RCW 26.44.020; first or second degree custodial
28 interference; first or second degree custodial sexual misconduct;
29 malicious harassment; first, second, or third degree child molestation;
30 first or second degree sexual misconduct with a minor; patronizing a
31 juvenile prostitute; child abandonment; promoting pornography; selling
32 or distributing erotic material to a minor; custodial assault;
33 violation of child abuse restraining order; child buying or selling;
34 prostitution; felony indecent exposure; criminal abandonment; or any of
35 these crimes as they may be renamed in the future.

36 (6) "Crimes relating to drugs" means a conviction of a crime to
37 manufacture, delivery, or possession with intent to manufacture or
38 deliver a controlled substance.

1 (7) "Crimes relating to financial exploitation" means a conviction
2 for first, second, or third degree extortion; first, second, or third
3 degree theft; first or second degree robbery; forgery; or any of these
4 crimes as they may be renamed in the future.

5 (8) "Disciplinary board final decision" means any final decision
6 issued by a disciplining authority under chapter 18.130 RCW or the
7 secretary of the department of health for the following businesses or
8 professions:

- 9 (a) Chiropractic;
- 10 (b) Dentistry;
- 11 (c) Dental hygiene;
- 12 (d) Massage;
- 13 (e) Midwifery;
- 14 (f) Naturopathy;
- 15 (g) Osteopathic medicine and surgery;
- 16 (h) Physical therapy;
- 17 (i) Physicians;
- 18 (j) Practical nursing;
- 19 (k) Registered nursing; and
- 20 (l) Psychology.

21 "Disciplinary board final decision," for real estate brokers and
22 salespersons, means any final decision issued by the director of the
23 department of licensing for real estate brokers and salespersons.

24 (9) "Unsupervised" means not in the presence of:

25 (a) Another employee or volunteer from the same business or
26 organization as the applicant; or

27 (b) Any relative or guardian of any of the children or
28 developmentally disabled persons or vulnerable adults to which the
29 applicant has access during the course of his or her employment or
30 involvement with the business or organization.

31 (10) "Vulnerable adult" means "vulnerable adult" as defined in
32 chapter 74.34 RCW, except that for the purposes of requesting and
33 receiving background checks pursuant to RCW 43.43.832, it shall also
34 include adults of any age who lack the functional, mental, or physical
35 ability to care for themselves.

36 (11) "Financial exploitation" means the illegal or improper use of
37 a vulnerable adult or that adult's resources for another person's
38 profit or advantage.

1 (12) "Agency" means any person, firm, partnership, association,
2 corporation, or facility which receives, provides services to, houses
3 or otherwise cares for vulnerable adults.

4 **Sec. 5.** RCW 70.125.030 and 1996 c 123 s 6 are each amended to read
5 as follows:

6 As used in this chapter and unless the context indicates otherwise:

7 (1) "Core services" means treatment services for victims of sexual
8 assault including information and referral, crisis intervention,
9 medical advocacy, legal advocacy, support, and system coordination.

10 (2) "Department" means the department of community, trade, and
11 economic development.

12 (3) "Law enforcement agencies" means police and sheriff's
13 departments of this state.

14 (4) "Personal representative" means a friend, relative, attorney,
15 or employee or volunteer from a community sexual assault program or
16 specialized treatment service provider.

17 (5) "Rape crisis center" means a community-based social service
18 agency which provides services to victims of sexual assault.

19 (6) "Community sexual assault program" means a community-based
20 social service agency that is qualified to provide and provides core
21 services to victims of sexual assault.

22 (7) "Sexual assault" means one or more of the following:

23 (a) Rape or rape of a child;

24 (b) Assault with intent to commit rape or rape of a child;

25 (c) Incest or indecent liberties;

26 (d) Child molestation;

27 (e) Sexual misconduct with a minor;

28 (f) Custodial sexual misconduct;

29 (g) Crimes with a sexual motivation; or

30 ~~((g))~~ (h) An attempt to commit any of the aforementioned
31 offenses.

32 (8) "Specialized services" means treatment services for victims of
33 sexual assault including support groups, therapy, specialized sexual
34 assault medical examination, and prevention education to potential
35 victims of sexual assault.

36 (9) "Victim" means any person who suffers physical and/or mental
37 anguish as a proximate result of a sexual assault.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 72.09 RCW
2 to read as follows:

3 Before reporting an alleged violation of section 1 or 2 of this act
4 to a prosecuting attorney, the department shall conduct an
5 investigation to determine whether there is probable cause to believe
6 the allegation is true.

--- END ---