

CERTIFICATION OF ENROLLMENT  
**SUBSTITUTE SENATE BILL 5010**

Chapter 72, Laws of 1999

56th Legislature  
1999 Regular Session

SEXUAL MISCONDUCT BY EMPLOYEES OF CUSTODIAL AGENCIES

EFFECTIVE DATE: 7/25/99

Passed by the Senate March 12, 1999  
YEAS 48 NAYS 0

BRAD OWEN  
**President of the Senate**

Passed by the House April 9, 1999  
YEAS 93 NAYS 0

CLYDE BALLARD  
**Speaker of the  
House of Representatives**

FRANK CHOPP  
**Speaker of the  
House of Representatives**

Approved April 22, 1999

GARY LOCKE  
**Governor of the State of Washington**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5010** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK  
**Secretary**

FILED

April 22, 1999 - 3:34 p.m.

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 5010**

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Passed Legislature - 1999 Regular Session

**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.

Passed the Senate March 12, 1999.

Passed the House April 9, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.