

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5033

Chapter 7, Laws of 2023

68th Legislature
2023 Regular Session

CUSTODIAL SEXUAL MISCONDUCT—RECLASSIFICATION

EFFECTIVE DATE: July 23, 2023

Passed by the Senate February 27,
2023

Yeas 48 Nays 0

DENNY HECK

President of the Senate

Passed by the House March 22, 2023

Yeas 97 Nays 0

LURIE JINKINS

**Speaker of the House of
Representatives**

Approved March 30, 2023 11:45 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5033** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

March 30, 2023

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5033

Passed Legislature - 2023 Regular Session

State of Washington

68th Legislature

2023 Regular Session

By Senate Law & Justice (originally sponsored by Senators Padden, Van De Wege, Dhingra, Hasegawa, Kuderer, and Wellman)

READ FIRST TIME 02/07/23.

1 AN ACT Relating to reclassifying the sentence for the crime of
2 custodial sexual misconduct; amending RCW 9A.44.160, 9A.44.170, and
3 9.94A.515; creating a new section; and prescribing penalties.

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

5 **Sec. 1.** RCW 9A.44.160 and 1999 c 45 s 1 are each amended to read
6 as follows:

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

10 (a) When:

11 (i) The victim is a resident of a state, county, or city adult or
12 juvenile correctional facility, including but not limited to jails,
13 prisons, detention centers, or work release facilities, or is under
14 correctional supervision; and

15 (ii) The perpetrator is an employee or contract personnel of a
16 correctional agency and the perpetrator has, or the victim reasonably
17 believes the perpetrator has, the ability to influence the terms,
18 conditions, length, or fact of incarceration or correctional
19 supervision; or

1 (b) When the victim is being detained, under arrest(~~(+)~~), or in
2 the custody of a law enforcement officer and the perpetrator is a law
3 enforcement officer.

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

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

8 **Sec. 2.** RCW 9A.44.170 and 1999 c 45 s 2 are each amended to read
9 as follows:

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

12 (a) When:

13 (i) The victim is a resident of a state, county, or city adult or
14 juvenile correctional facility, including but not limited to jails,
15 prisons, detention centers, or work release facilities, or is under
16 correctional supervision; and

17 (ii) The perpetrator is an employee or contract personnel of a
18 correctional agency and the perpetrator has, or the victim reasonably
19 believes the perpetrator has, the ability to influence the terms,
20 conditions, length, or fact of incarceration or correctional
21 supervision; or

22 (b) When the victim is being detained, under arrest, or in the
23 custody of a law enforcement officer and the perpetrator is a law
24 enforcement officer.

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

27 (3) Custodial sexual misconduct in the second degree is a (~~gross~~
28 ~~misdemeanor~~) class C felony.

29 **Sec. 3.** RCW 9.94A.515 and 2022 c 231 s 13 are each amended to
30 read as follows:

31 TABLE 2

32 CRIMES INCLUDED WITHIN EACH
33 SERIOUSNESS LEVEL

34 XVI Aggravated Murder 1 (RCW 10.95.020)

35 XV Homicide by abuse (RCW 9A.32.055)

1 Malicious explosion 1 (RCW
2 70.74.280(1))
3 Murder 1 (RCW 9A.32.030)
4 XIV Murder 2 (RCW 9A.32.050)
5 Trafficking 1 (RCW 9A.40.100(1))
6 XIII Malicious explosion 2 (RCW
7 70.74.280(2))
8 Malicious placement of an explosive 1
9 (RCW 70.74.270(1))
10 XII Assault 1 (RCW 9A.36.011)
11 Assault of a Child 1 (RCW 9A.36.120)
12 Malicious placement of an imitation
13 device 1 (RCW 70.74.272(1)(a))
14 Promoting Commercial Sexual Abuse of
15 a Minor (RCW 9.68A.101)
16 Rape 1 (RCW 9A.44.040)
17 Rape of a Child 1 (RCW 9A.44.073)
18 Trafficking 2 (RCW 9A.40.100(3))
19 XI Manslaughter 1 (RCW 9A.32.060)
20 Rape 2 (RCW 9A.44.050)
21 Rape of a Child 2 (RCW 9A.44.076)
22 Vehicular Homicide, by being under the
23 influence of intoxicating liquor or
24 any drug (RCW 46.61.520)
25 Vehicular Homicide, by the operation of
26 any vehicle in a reckless manner
27 (RCW 46.61.520)
28 X Child Molestation 1 (RCW 9A.44.083)
29 Criminal Mistreatment 1 (RCW
30 9A.42.020)
31 Indecent Liberties (with forcible
32 compulsion) (RCW
33 9A.44.100(1)(a))
34 Kidnapping 1 (RCW 9A.40.020)

1 Leading Organized Crime (RCW
2 9A.82.060(1)(a))
3 Malicious explosion 3 (RCW
4 70.74.280(3))
5 Sexually Violent Predator Escape (RCW
6 9A.76.115)
7 IX Abandonment of Dependent Person 1
8 (RCW 9A.42.060)
9 Assault of a Child 2 (RCW 9A.36.130)
10 Explosive devices prohibited (RCW
11 70.74.180)
12 Hit and Run—Death (RCW
13 46.52.020(4)(a))
14 Homicide by Watercraft, by being under
15 the influence of intoxicating liquor
16 or any drug (RCW 79A.60.050)
17 Inciting Criminal Profiteering (RCW
18 9A.82.060(1)(b))
19 Malicious placement of an explosive 2
20 (RCW 70.74.270(2))
21 Robbery 1 (RCW 9A.56.200)
22 Sexual Exploitation (RCW 9.68A.040)
23 VIII Arson 1 (RCW 9A.48.020)
24 Commercial Sexual Abuse of a Minor
25 (RCW 9.68A.100)
26 Homicide by Watercraft, by the
27 operation of any vessel in a reckless
28 manner (RCW 79A.60.050)
29 Manslaughter 2 (RCW 9A.32.070)
30 Promoting Prostitution 1 (RCW
31 9A.88.070)
32 Theft of Ammonia (RCW 69.55.010)
33 VII Air bag diagnostic systems (causing
34 bodily injury or death) (RCW
35 46.37.660(2)(b))

1 Air bag replacement requirements
2 (causing bodily injury or death)
3 (RCW 46.37.660(1)(b))
4 Burglary 1 (RCW 9A.52.020)
5 Child Molestation 2 (RCW 9A.44.086)
6 Civil Disorder Training (RCW
7 9A.48.120)
8 Custodial Sexual Misconduct 1 (RCW
9 9A.44.160)
10 Dealing in depictions of minor engaged
11 in sexually explicit conduct 1
12 (RCW 9.68A.050(1))
13 Drive-by Shooting (RCW 9A.36.045)
14 False Reporting 1 (RCW
15 9A.84.040(2)(a))
16 Homicide by Watercraft, by disregard
17 for the safety of others (RCW
18 79A.60.050)
19 Indecent Liberties (without forcible
20 compulsion) (RCW 9A.44.100(1)
21 (b) and (c))
22 Introducing Contraband 1 (RCW
23 9A.76.140)
24 Malicious placement of an explosive 3
25 (RCW 70.74.270(3))
26 Manufacture or import counterfeit,
27 nonfunctional, damaged, or
28 previously deployed air bag
29 (causing bodily injury or death)
30 (RCW 46.37.650(1)(b))
31 Negligently Causing Death By Use of a
32 Signal Preemption Device (RCW
33 46.37.675)

1 Sell, install, or reinstall counterfeit,
2 nonfunctional, damaged, or
3 previously deployed airbag (RCW
4 46.37.650(2)(b))
5 Sending, bringing into state depictions
6 of minor engaged in sexually
7 explicit conduct 1 (RCW
8 9.68A.060(1))
9 Unlawful Possession of a Firearm in the
10 first degree (RCW 9.41.040(1))
11 Use of a Machine Gun or Bump-fire
12 Stock in Commission of a Felony
13 (RCW 9.41.225)
14 Vehicular Homicide, by disregard for
15 the safety of others (RCW
16 46.61.520)
17 VI Bail Jumping with Murder 1 (RCW
18 9A.76.170(3)(a))
19 Bribery (RCW 9A.68.010)
20 Incest 1 (RCW 9A.64.020(1))
21 Intimidating a Judge (RCW 9A.72.160)
22 Intimidating a Juror/Witness (RCW
23 9A.72.110, 9A.72.130)
24 Malicious placement of an imitation
25 device 2 (RCW 70.74.272(1)(b))
26 Possession of Depictions of a Minor
27 Engaged in Sexually Explicit
28 Conduct 1 (RCW 9.68A.070(1))
29 Rape of a Child 3 (RCW 9A.44.079)
30 Theft of a Firearm (RCW 9A.56.300)
31 Theft from a Vulnerable Adult 1 (RCW
32 9A.56.400(1))
33 Unlawful Storage of Ammonia (RCW
34 69.55.020)
35 V Abandonment of Dependent Person 2
36 (RCW 9A.42.070)

1 Advancing money or property for
2 extortionate extension of credit
3 (RCW 9A.82.030)

4 Air bag diagnostic systems (RCW
5 46.37.660(2)(c))

6 Air bag replacement requirements
7 (RCW 46.37.660(1)(c))

8 Bail Jumping with class A Felony
9 (RCW 9A.76.170(3)(b))

10 Child Molestation 3 (RCW 9A.44.089)

11 Criminal Mistreatment 2 (RCW
12 9A.42.030)

13 ~~((Custodial Sexual Misconduct 1 (RCW
14 9A.44.160)))~~

15 Custodial Sexual Misconduct 2 (RCW
16 9A.44.170)

17 Dealing in Depictions of Minor
18 Engaged in Sexually Explicit
19 Conduct 2 (RCW 9.68A.050(2))

20 Domestic Violence Court Order
21 Violation (RCW 7.105.450,
22 10.99.040, 10.99.050, 26.09.300,
23 26.10.220, 26.26B.050, 26.50.110,
24 26.52.070, or 74.34.145)

25 Extortion 1 (RCW 9A.56.120)

26 Extortionate Extension of Credit (RCW
27 9A.82.020)

28 Extortionate Means to Collect
29 Extensions of Credit (RCW
30 9A.82.040)

31 Incest 2 (RCW 9A.64.020(2))

32 Kidnapping 2 (RCW 9A.40.030)

33 Manufacture or import counterfeit,
34 nonfunctional, damaged, or
35 previously deployed air bag (RCW
36 46.37.650(1)(c))

1 Perjury 1 (RCW 9A.72.020)
2 Persistent prison misbehavior (RCW
3 9.94.070)
4 Possession of a Stolen Firearm (RCW
5 9A.56.310)
6 Rape 3 (RCW 9A.44.060)
7 Rendering Criminal Assistance 1 (RCW
8 9A.76.070)
9 Sell, install, or reinstall counterfeit,
10 nonfunctional, damaged, or
11 previously deployed airbag (RCW
12 46.37.650(2)(c))
13 Sending, Bringing into State Depictions
14 of Minor Engaged in Sexually
15 Explicit Conduct 2 (RCW
16 9.68A.060(2))
17 Sexual Misconduct with a Minor 1
18 (RCW 9A.44.093)
19 Sexually Violating Human Remains
20 (RCW 9A.44.105)
21 Stalking (RCW 9A.46.110)
22 Taking Motor Vehicle Without
23 Permission 1 (RCW 9A.56.070)
24 IV Arson 2 (RCW 9A.48.030)
25 Assault 2 (RCW 9A.36.021)
26 Assault 3 (of a Peace Officer with a
27 Projectile Stun Gun) (RCW
28 9A.36.031(1)(h))
29 Assault 4 (third domestic violence
30 offense) (RCW 9A.36.041(3))
31 Assault by Watercraft (RCW
32 79A.60.060)
33 Bribing a Witness/Bribe Received by
34 Witness (RCW 9A.72.090,
35 9A.72.100)
36 Cheating 1 (RCW 9.46.1961)

1 Commercial Bribery (RCW 9A.68.060)
2 Counterfeiting (RCW 9.16.035(4))
3 Driving While Under the Influence
4 (RCW 46.61.502(6))
5 Endangerment with a Controlled
6 Substance (RCW 9A.42.100)
7 Escape 1 (RCW 9A.76.110)
8 Hate Crime (RCW 9A.36.080)
9 Hit and Run—Injury (RCW
10 46.52.020(4)(b))
11 Hit and Run with Vessel—Injury
12 Accident (RCW 79A.60.200(3))
13 Identity Theft 1 (RCW 9.35.020(2))
14 Indecent Exposure to Person Under Age
15 14 (subsequent sex offense) (RCW
16 9A.88.010)
17 Influencing Outcome of Sporting Event
18 (RCW 9A.82.070)
19 Physical Control of a Vehicle While
20 Under the Influence (RCW
21 46.61.504(6))
22 Possession of Depictions of a Minor
23 Engaged in Sexually Explicit
24 Conduct 2 (RCW 9.68A.070(2))
25 Residential Burglary (RCW 9A.52.025)
26 Robbery 2 (RCW 9A.56.210)
27 Theft of Livestock 1 (RCW 9A.56.080)
28 Threats to Bomb (RCW 9.61.160)
29 Trafficking in Stolen Property 1 (RCW
30 9A.82.050)
31 Unlawful factoring of a credit card or
32 payment card transaction (RCW
33 9A.56.290(4)(b))

1 Unlawful transaction of health coverage
2 as a health care service contractor
3 (RCW 48.44.016(3))
4 Unlawful transaction of health coverage
5 as a health maintenance
6 organization (RCW 48.46.033(3))
7 Unlawful transaction of insurance
8 business (RCW 48.15.023(3))
9 Unlicensed practice as an insurance
10 professional (RCW 48.17.063(2))
11 Use of Proceeds of Criminal
12 Profiteering (RCW 9A.82.080 (1)
13 and (2))
14 Vehicle Prowling 2 (third or subsequent
15 offense) (RCW 9A.52.100(3))
16 Vehicular Assault, by being under the
17 influence of intoxicating liquor or
18 any drug, or by the operation or
19 driving of a vehicle in a reckless
20 manner (RCW 46.61.522)
21 Viewing of Depictions of a Minor
22 Engaged in Sexually Explicit
23 Conduct 1 (RCW 9.68A.075(1))
24 Willful Failure to Return from Furlough
25 (RCW 72.66.060)
26 III Animal Cruelty 1 (Sexual Conduct or
27 Contact) (RCW 16.52.205(3))
28 Assault 3 (Except Assault 3 of a Peace
29 Officer With a Projectile Stun Gun)
30 (RCW 9A.36.031 except subsection
31 (1)(h))
32 Assault of a Child 3 (RCW 9A.36.140)
33 Bail Jumping with class B or C Felony
34 (RCW 9A.76.170(3)(c))
35 Burglary 2 (RCW 9A.52.030)

1 Communication with a Minor for
2 Immoral Purposes (RCW
3 9.68A.090)
4 Criminal Gang Intimidation (RCW
5 9A.46.120)
6 Custodial Assault (RCW 9A.36.100)
7 Cyber Harassment (RCW
8 9A.90.120(2)(b))
9 Escape 2 (RCW 9A.76.120)
10 Extortion 2 (RCW 9A.56.130)
11 False Reporting 2 (RCW
12 9A.84.040(2)(b))
13 Harassment (RCW 9A.46.020)
14 Intimidating a Public Servant (RCW
15 9A.76.180)
16 Introducing Contraband 2 (RCW
17 9A.76.150)
18 Malicious Injury to Railroad Property
19 (RCW 81.60.070)
20 Manufacture of Untraceable Firearm
21 with Intent to Sell (RCW 9.41.190)
22 Manufacture or Assembly of an
23 Undetectable Firearm or
24 Untraceable Firearm (RCW
25 9.41.325)
26 Mortgage Fraud (RCW 19.144.080)
27 Negligently Causing Substantial Bodily
28 Harm By Use of a Signal
29 Preemption Device (RCW
30 46.37.674)
31 Organized Retail Theft 1 (RCW
32 9A.56.350(2))
33 Perjury 2 (RCW 9A.72.030)
34 Possession of Incendiary Device (RCW
35 9.40.120)

1 Possession of Machine Gun, Bump-Fire
2 Stock, Undetectable Firearm, or
3 Short-Barreled Shotgun or Rifle
4 (RCW 9.41.190)
5 Promoting Prostitution 2 (RCW
6 9A.88.080)
7 Retail Theft with Special Circumstances
8 1 (RCW 9A.56.360(2))
9 Securities Act violation (RCW
10 21.20.400)
11 Tampering with a Witness (RCW
12 9A.72.120)
13 Telephone Harassment (subsequent
14 conviction or threat of death) (RCW
15 9.61.230(2))
16 Theft of Livestock 2 (RCW 9A.56.083)
17 Theft with the Intent to Resell 1 (RCW
18 9A.56.340(2))
19 Trafficking in Stolen Property 2 (RCW
20 9A.82.055)
21 Unlawful Hunting of Big Game 1 (RCW
22 77.15.410(3)(b))
23 Unlawful Imprisonment (RCW
24 9A.40.040)
25 Unlawful Misbranding of Fish or
26 Shellfish 1 (RCW 77.140.060(3))
27 Unlawful possession of firearm in the
28 second degree (RCW 9.41.040(2))
29 Unlawful Taking of Endangered Fish or
30 Wildlife 1 (RCW 77.15.120(3)(b))
31 Unlawful Trafficking in Fish, Shellfish,
32 or Wildlife 1 (RCW
33 77.15.260(3)(b))
34 Unlawful Use of a Nondesignated
35 Vessel (RCW 77.15.530(4))

1 Vehicular Assault, by the operation or
2 driving of a vehicle with disregard
3 for the safety of others (RCW
4 46.61.522)

5 Willful Failure to Return from Work
6 Release (RCW 72.65.070)

7 II Commercial Fishing Without a License
8 1 (RCW 77.15.500(3)(b))

9 Computer Trespass 1 (RCW 9A.90.040)

10 Counterfeiting (RCW 9.16.035(3))

11 Electronic Data Service Interference
12 (RCW 9A.90.060)

13 Electronic Data Tampering 1 (RCW
14 9A.90.080)

15 Electronic Data Theft (RCW 9A.90.100)

16 Engaging in Fish Dealing Activity
17 Unlicensed 1 (RCW 77.15.620(3))

18 Escape from Community Custody
19 (RCW 72.09.310)

20 Failure to Register as a Sex Offender
21 (second or subsequent offense)
22 (RCW 9A.44.130 prior to June 10,
23 2010, and RCW 9A.44.132)

24 Health Care False Claims (RCW
25 48.80.030)

26 Identity Theft 2 (RCW 9.35.020(3))

27 Improperly Obtaining Financial
28 Information (RCW 9.35.010)

29 Malicious Mischief 1 (RCW 9A.48.070)

30 Organized Retail Theft 2 (RCW
31 9A.56.350(3))

32 Possession of Stolen Property 1 (RCW
33 9A.56.150)

34 Possession of a Stolen Vehicle (RCW
35 9A.56.068)

1 Retail Theft with Special Circumstances
2 2 (RCW 9A.56.360(3))
3 Scrap Processing, Recycling, or
4 Supplying Without a License
5 (second or subsequent offense)
6 (RCW 19.290.100)
7 Theft 1 (RCW 9A.56.030)
8 Theft of a Motor Vehicle (RCW
9 9A.56.065)
10 Theft of Rental, Leased, Lease-
11 purchased, or Loaned Property
12 (valued at \$5,000 or more) (RCW
13 9A.56.096(5)(a))
14 Theft with the Intent to Resell 2 (RCW
15 9A.56.340(3))
16 Trafficking in Insurance Claims (RCW
17 48.30A.015)
18 Unlawful factoring of a credit card or
19 payment card transaction (RCW
20 9A.56.290(4)(a))
21 Unlawful Participation of Non-Indians
22 in Indian Fishery (RCW
23 77.15.570(2))
24 Unlawful Practice of Law (RCW
25 2.48.180)
26 Unlawful Purchase or Use of a License
27 (RCW 77.15.650(3)(b))
28 Unlawful Trafficking in Fish, Shellfish,
29 or Wildlife 2 (RCW
30 77.15.260(3)(a))
31 Unlicensed Practice of a Profession or
32 Business (RCW 18.130.190(7))
33 Voyeurism 1 (RCW 9A.44.115)
34 I Attempting to Elude a Pursuing Police
35 Vehicle (RCW 46.61.024)

1 False Verification for Welfare (RCW
2 74.08.055)
3 Forgery (RCW 9A.60.020)
4 Fraudulent Creation or Revocation of a
5 Mental Health Advance Directive
6 (RCW 9A.60.060)
7 Malicious Mischief 2 (RCW 9A.48.080)
8 Mineral Trespass (RCW 78.44.330)
9 Possession of Stolen Property 2 (RCW
10 9A.56.160)
11 Reckless Burning 1 (RCW 9A.48.040)
12 Spotlighting Big Game 1 (RCW
13 77.15.450(3)(b))
14 Suspension of Department Privileges 1
15 (RCW 77.15.670(3)(b))
16 Taking Motor Vehicle Without
17 Permission 2 (RCW 9A.56.075)
18 Theft 2 (RCW 9A.56.040)
19 Theft from a Vulnerable Adult 2 (RCW
20 9A.56.400(2))
21 Theft of Rental, Leased, Lease-
22 purchased, or Loaned Property
23 (valued at \$750 or more but less
24 than \$5,000) (RCW
25 9A.56.096(5)(b))
26 Transaction of insurance business
27 beyond the scope of licensure
28 (RCW 48.17.063)
29 Unlawful Fish and Shellfish Catch
30 Accounting (RCW 77.15.630(3)(b))
31 Unlawful Issuance of Checks or Drafts
32 (RCW 9A.56.060)
33 Unlawful Possession of Fictitious
34 Identification (RCW 9A.56.320)
35 Unlawful Possession of Instruments of
36 Financial Fraud (RCW 9A.56.320)

1 Unlawful Possession of Payment
2 Instruments (RCW 9A.56.320)
3 Unlawful Possession of a Personal
4 Identification Device (RCW
5 9A.56.320)
6 Unlawful Production of Payment
7 Instruments (RCW 9A.56.320)
8 Unlawful Releasing, Planting,
9 Possessing, or Placing Deleterious
10 Exotic Wildlife (RCW
11 77.15.250(2)(b))
12 Unlawful Trafficking in Food Stamps
13 (RCW 9.91.142)
14 Unlawful Use of Food Stamps (RCW
15 9.91.144)
16 Unlawful Use of Net to Take Fish 1
17 (RCW 77.15.580(3)(b))
18 Unlawful Use of Prohibited Aquatic
19 Animal Species (RCW
20 77.15.253(3))
21 Vehicle Prowl 1 (RCW 9A.52.095)
22 Violating Commercial Fishing Area or
23 Time 1 (RCW 77.15.550(3)(b))

24 NEW SECTION. **Sec. 4.** This act may be known and cited as
25 Kimberly Bender's law.

Passed by the Senate February 27, 2023.
Passed by the House March 22, 2023.
Approved by the Governor March 30, 2023.
Filed in Office of Secretary of State March 30, 2023.

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