

## SOPB Voting Ballot Information Packet (for 10/10/23 meeting)

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## Important concepts for review:

- Statutory maximums:
  - o The legislature has decided that there is a maximum punishment that should be applied based on felony classes. That is, they have decided the maximum appropriate punishment. Thus, the statutory maximum is for the worst of the worst cases.
  - o Class A: life in prison
  - o Class B: 120 months
  - o Class C: 60 months
  - o All offenses are grouped into these three large categories. With hundred of offenses, there is wide variance in the relative seriousness/severity of offenses. The sentencing guidelines are intended to differentiate that seriousness in more refined groups – those are **seriousness levels**.
  - o Starting from the top in each category, the new grid applies the statutory maximum to the cases that are presumably the worst of the worst – that is, the most serious offenses within the class and individuals with the longest criminal histories.
  - o From there, the new grid assumes that relative seriousness decreases by row and the relative risk decreases with each reduction in criminal history score. Thus, the maximum punishment decreases as you move down and as you move to the left in a systematic way.
- Guideline ranges
  - o Ranges are intended to reflect the *average* case.
  - o Exceptional cases, either mitigated or aggravated, should be addressed through other means including **enhancements** and downward or upward **departures**.
  - o More serious cases are also likely to involve multiple charges which may be sentenced consecutively rather than concurrently to account for the cumulative seriousness of the case.
  - o Ranges represent “bounded rationality” – that is, they provide a range with which judges may exert discretion to differentiate between cases, with more serious cases that do not meet the threshold of being “aggravated” to be sentenced higher in the range and other cases that are relatively less serious but do not meet the threshold of “mitigated” to be sentenced lower in the range.
  - o Throughout the proposed grid, it is important to look both at changes in the minimum and maximum. In many cases, the ranges widened. That is, the maximum may increase, but the minimum may also decrease.

## Rape 1 (SL 12, Class A):

(1) A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory:

- (a) Uses or threatens to use a deadly weapon or what appears to be a deadly weapon; or
- (b) Kidnaps the victim; or
- (c) Inflicts serious physical injury, including but not limited to physical injury which renders the victim unconscious; or
- (d) Feloniously enters into the building or vehicle where the victim is situated.

**Sentences 2010-2019:** 3 most serious offense

**Current Seriousness Level:** 12

**Current Class:** A

**Current Statutory Maximum:** Life

**Proposal 1** – Move to seriousness level 14

**Proposal 2** – Move to seriousness level 15

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	0.0	0.0	0.0	0.0	120.0	150.0	0.0	0.0	170.0	0.0										
Number of Sent	0	0	0	0	1	1	0	0	1	0										
<b>Current SL12</b>	<b>93</b>	<b>123</b>	<b>102</b>	<b>136</b>	<b>111</b>	<b>147</b>	<b>120</b>	<b>160</b>	<b>129</b>	<b>171</b>	<b>138</b>	<b>184</b>	<b>162</b>	<b>216</b>	<b>178</b>	<b>236</b>	<b>209</b>	<b>277</b>	<b>240</b>	<b>318</b>
Proposed SL14	86	123	93	133	101	145	111	158	122	174	144	192	160	214	178	238	200	267	231	308
Proposed SL15	98	140	106	151	115	165	126	180	139	198	164	218	182	243	203	270	228	304	262	350

### DISCUSSION NOTES

- Highly traumatic, violent offenses with serious harm caused to victims; high seriousness level of offense
- Classified by the Legislature currently as the only serious violent offense, designating this offense as most serious sex offense by definition.
  - Legislative precedent has confirmed this offense as most egregious.
  - On current grid, ROC 1 is comparable in level
- Data from ISRB:
  - CCB law change occurred in 2001
  - Between 2010 and 2020, CCB released 51 individuals with Rape 1 as longest running term.
    - Average term was around 120 months

## Rape 2 (SL 11, Class A):

(1) A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person:

- (a) By forcible compulsion;
- (b) When the victim is incapable of consent by reason of being physically helpless or mentally incapacitated;
- (c) When the victim is a person with a developmental disability and the perpetrator is a person who:
  - (i) Has supervisory authority over the victim; or
  - (ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense;
- (d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual intercourse with the knowledge that the sexual intercourse was not for the purpose of treatment;
- (e) When the victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who has supervisory authority over the victim; or
- (f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who:
  - (i) Has a significant relationship with the victim; or
  - (ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense.

**Sentences 2010-2019:** 4 most serious offense

**Current Seriousness Level:** 11

**Current Class:** A

**Current Statutory Maximum:** Life

**Proposal 1** – Move to seriousness level 13

**Proposal 2** – Move to seriousness level 14

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	84.0	0.0	110.0	0.0	0.0	0.0	0.0	0.0	0.0	240.0										
Number of Sent	2	0	1	0	0	0	0	0	0	1										
<b>Current SL11</b>	<b>78</b>	<b>102</b>	<b>86</b>	<b>114</b>	<b>95</b>	<b>125</b>	<b>102</b>	<b>136</b>	<b>111</b>	<b>147</b>	<b>120</b>	<b>158</b>	<b>146</b>	<b>194</b>	<b>159</b>	<b>211</b>	<b>185</b>	<b>245</b>	<b>210</b>	<b>280</b>
Proposed SL13	46	78	51	86	56	94	62	104	69	115	78	130	87	146	100	167	115	191	156	260
Proposed SL14	86	123	93	133	101	145	111	158	122	174	144	192	160	214	178	238	200	267	231	308

## DISCUSSION NOTES

- Data from ISRB:
  - CCB law change occurred in 2001
  - Between 2010 and 2020, CCB released approx. 120 individuals convicted of Rape 2.
    - Average term served was around 85 months

## Rape 3 (SL 5, Class C):

(1) A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person:

- (a) Where the victim did not consent as defined in \*RCW 9A.44.010(7), to sexual intercourse with the perpetrator; or
- (b) Where there is threat of substantial unlawful harm to property rights of the victim..

**Sentences 2010-2019:** 345 most serious offense

**Current Seriousness Level:** 5

**Current Class:** C

**Current Statutory Maximum:** 60 months

**Proposal 1** – Keep at seriousness level 5

**Proposal 2** – Raise to seriousness level 6 and make Class B

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	8.9	12.9	15.3	18.4	24.8	36.3	50.6	56.8	60.0	61.1										
Number of Sent	163	36	29	45	26	8	12	5	5	16										
<b>Current SL5</b>	<b>6</b>	<b>12</b>	<b>12.03</b>	<b>14</b>	<b>13</b>	<b>17</b>	<b>15</b>	<b>20</b>	<b>22</b>	<b>29</b>	<b>33</b>	<b>43</b>	<b>41</b>	<b>54</b>	<b>51</b>	<b>68</b>	<b>62</b>	<b>82</b>	<b>72</b>	<b>96</b>
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75

### DISCUSSION NOTES

- Moving to SL6 would Require Rape 3 to be changed to a Class B offense
  - If changed to a Class B offense, this would change registration and supervision requirements
  - SL 5 is more consistent with status quo
- Individual could receive a local sentence if they receive exactly 12 months
- ISRB oversees many individuals convicted for this offense
- Data from ISRB:
  - Anecdotal: More often than not, the individual serves the maximum of their term (for subsequent offense)

## Indecent Liberties w/ forcible compulsion (SL 10, Class A):

(1) A person is guilty of indecent liberties when he or she knowingly causes another person to have sexual contact with him or her or another:

(a) By forcible compulsion;

**Sentences 2010-2019:** 2 most serious offense

**Current Seriousness Level:** 10

**Current Class:** A

**Current Statutory Maximum:** Life

**Proposal 1** – Move to seriousness level 12

**Proposal 2** – Move to seriousness level 13

	0	1	2	3	4	5	6	7	8	9+
Avg Sent (mos)	41.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	148.5
Number of Sent	1	0	0	0	0	0	0	0	0	1
<b>Current SL10</b>	<b>51 68</b>	<b>57 75</b>	<b>62 82</b>	<b>67 89</b>	<b>72 96</b>	<b>77 102</b>	<b>98 130</b>	<b>108 144</b>	<b>129 171</b>	<b>149 198</b>
Proposed SL12	40 67	44 74	49 82	54 90	59 99	67 112	76 126	87 145	99 166	135 225
Proposed SL13	46 78	51 86	56 94	62 104	69 115	78 130	87 146	100 167	115 191	156 260

### DISCUSSION NOTES

- General definition: Sexual assault short of penetration committed against a vulnerable person
- Using sufficient force to overcome resistance.
  - Includes sexual contact but does not include intercourse.
  - This offense is not eligible to be sealed (juvenile).
- This is an indeterminate offense under ISRB
  - Data:
    - Mean confinement time served: 85 months
    - Median: 75 months

## Indecent liberties (without forcible compulsion) (SL 7, Class B):

(1) A person is guilty of indecent liberties when he or she knowingly causes another person to have sexual contact with him or her or another:

~~(a) By forcible compulsion;~~

(b) When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless;

(c) When the victim is a person with a developmental disability and the perpetrator is a person who:

(i) Has supervisory authority over the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense;

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual contact occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual contact with the knowledge that the sexual contact was not for the purpose of treatment;

(e) When the victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who has supervisory authority over the victim; or

(f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who:

(i) Has a significant relationship with the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense.

**Sentences 2010-2019:** 256 most serious offense

**Current Seriousness Level:** 7

**Current Class:** B

**Current Statutory Maximum:** 120 months

**Proposal 1** – Reduce to seriousness level 6

**Proposal 2** – Keep at seriousness level 7

**Proposal 3** – Raise to seriousness level 8

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	16.8	24.0	30.6	36.5	44.3	49.9	68.2	75.3	88.0	93.9										
Number of Sent	96	24	14	37	20	12	22	4	6	21										
<b>Current SL7</b>	<b>15</b>	<b>20</b>	<b>21</b>	<b>27</b>	<b>26</b>	<b>34</b>	<b>31</b>	<b>41</b>	<b>36</b>	<b>48</b>	<b>41</b>	<b>54</b>	<b>57</b>	<b>75</b>	<b>67</b>	<b>89</b>	<b>77</b>	<b>102</b>	<b>87</b>	<b>116</b>
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75
Proposed SL7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90
Proposed SL8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105

### DISCUSSION NOTES

- General definition: sexual intercourse with related victim an abuse of power in absence of consent (and individual cannot consent)
- When the victim is under 14 this offense is a sexually violent offense under 71.09; doesn't change sentencing range
- SL 6 would give the court a county option potentially (only if the person has a criminal history score of 0) Only cell effected would be a 0. This would open up new treatment option for court; concern that program for alternative hasn't been flushed out yet
- SL 7 closest to status quo – not be eligible for treatment option due to prison sentence requirements
- SGC previously recommended to leave this offense as as an unranked offense (42 convictions between 2000-2020) (unranked felony out of scope)
- Potential recommendation idea: Healthcare provider distinction should not be treated different

- Idea: Single victim unranked and multiple victim ranked?
- Reminder: \*Any sentence 12 months or less is a jail sentence/local option. State Max: 120 months for Class B offense
- Data: As of June 30th 2023, DOC has 705 individuals on SSOSA



## Rape of a Child 1 (SL 12, Class A):

(1) A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve years old and the perpetrator is at least twenty-four months older than the victim.

**Sentences 2010-2019:** 26 most serious offense

**Current Seriousness Level:** 12

**Current Class:** A

**Current Statutory Maximum:** Life

**Proposal 1** – Move to seriousness level 14

**Proposal 2** – Move to seriousness level 15

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	98.3	0.0	132.0	123.7	157.0	0.0	194.0	0.0	0.0	276.0										
Number of Sent	9	0	1	9	3	0	3	0	0	1										
<b>Current SL12</b>	<b>93</b>	<b>123</b>	<b>102</b>	<b>136</b>	<b>111</b>	<b>147</b>	<b>120</b>	<b>160</b>	<b>129</b>	<b>171</b>	<b>138</b>	<b>184</b>	<b>162</b>	<b>216</b>	<b>178</b>	<b>236</b>	<b>209</b>	<b>277</b>	<b>240</b>	<b>318</b>
Proposed SL14	86	123	93	133	101	145	111	158	122	174	144	192	160	214	178	238	200	267	231	308
Proposed SL15	98	140	106	151	115	165	126	180	139	198	164	218	182	243	203	270	228	304	262	350

### DISCUSSION NOTES

- General definition: Sexual intercourse with child under the age of 12
- Some of the most serious crimes
  - victims in these cases are under 12
- Under current law, same sentence length as Rape 1
- Not classified in statute as serious violence offense
- Initial brainstormed thoughts:
  - moving to SL 14 to make it comparable to a very serious offense;
  - needs to move up;
  - don't believe we should go below the current length of time (new grid as it reads currently is approximately 2 years less than current grid sentence length);
  - Rape of a Child 1 should be one less than Rape 1 Starting out lower end of the range, gives the court the opportunity to consider important information.
  - 13 may be giving judges more leeway to use as they see fit because ISRB will have discretion at the back end to determine if the individual will be released
- 14 increases the minimum 9/10 cells and maximum of 9/10 cells

## Rape of a Child 2 (SL 11, Class A):

(1) A person is guilty of rape of a child in the second degree when the person has sexual intercourse with another who is at least twelve years old but less than fourteen years old and the perpetrator is at least thirty-six months older than the victim.

**Sentences 2010-2019:** 11 most serious offense

**Current Seriousness Level:** 11

**Current Class:** A

**Current Statutory Maximum:** Life

**Proposal 1** – Move to seriousness level 13

**Proposal 2** – Move to seriousness level 14

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	86.5	0.0	0.0	113.1	0.0	0.0	0.0	0.0	0.0	174.0										
Number of Sent	3	0	0	7	0	0	0	0	0	1										
<b>Current SL11</b>	<b>78</b>	<b>102</b>	<b>86</b>	<b>114</b>	<b>95</b>	<b>125</b>	<b>102</b>	<b>136</b>	<b>111</b>	<b>147</b>	<b>120</b>	<b>158</b>	<b>146</b>	<b>194</b>	<b>159</b>	<b>211</b>	<b>185</b>	<b>245</b>	<b>210</b>	<b>280</b>
Proposed SL13	46	78	51	86	56	94	62	104	69	115	78	130	87	146	100	167	115	191	156	260
Proposed SL14	86	123	93	133	101	145	111	158	122	174	144	192	160	214	178	238	200	267	231	308

### DISCUSSION NOTES

- Historical info: Reform was done on ROC 2 which increased from a B to an A

## Rape of a Child 3 (SL 6, Class C):

- (1) A person is guilty of rape of a child in the third degree when the person has sexual intercourse with another who is at least fourteen years old but less than sixteen years old and the perpetrator is at least forty-eight months older than the victim.

**Sentences 2010-2019:** 518 most serious offense

**Current Seriousness Level:** 6

**Current Class:** C

**Current Statutory Maximum:** 60 months

**Proposal 1** – Move to seriousness level 5

**Proposal 2** – Keep at seriousness level 6 and make Class B

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	12.9	17.2	24.2	30.8	38.9	42.1	50.8	60.0	60.0	62.8										
Number of Sent	196	53	20	107	18	15	30	7	6	66										
<b>Current SL6</b>	<b>12.05</b>	<b>14</b>	<b>15</b>	<b>20</b>	<b>21</b>	<b>27</b>	<b>26</b>	<b>34</b>	<b>31</b>	<b>41</b>	<b>36</b>	<b>48</b>	<b>46</b>	<b>61</b>	<b>57</b>	<b>75</b>	<b>67</b>	<b>89</b>	<b>77</b>	<b>102</b>
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75

### DISCUSSION NOTES

- Defense uses this offense for lots of pleas due to Class C. Could impact pleas being entered if moved to a Class B
- Arguments and discussion are similar to Rape 3
- \*\*\* In original version of grid, previous comments when assumed level 5:
  - If up to a VI, then would move to Class B

## Child Molestation 1 (SL 10, Class A):

(1) A person is guilty of child molestation in the first degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old and the perpetrator is at least thirty-six months older than the victim.

**Sentences 2010-2019:** 44 most serious offense

**Current Seriousness Level:** 10

**Current Class:** A

**Current Statutory Maximum:** Life

**Proposal 1** – Move to seriousness level 12

**Proposal 2** – Move to seriousness level 13

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	58.6	58.0	62.0	70.3	0.0	77.0	112.9	0.0	0.0	0.0										
Number of Sent	20	3	1	12	0	2	4	0	1	1										
<b>Current SL10</b>	<b>51</b>	<b>68</b>	<b>57</b>	<b>75</b>	<b>62</b>	<b>82</b>	<b>67</b>	<b>89</b>	<b>72</b>	<b>96</b>	<b>77</b>	<b>102</b>	<b>98</b>	<b>130</b>	<b>108</b>	<b>144</b>	<b>129</b>	<b>171</b>	<b>149</b>	<b>198</b>
Proposed SL12	40	67	44	74	49	82	54	90	59	99	67	112	76	126	87	145	99	166	135	225
Proposed SL13	46	78	51	86	56	94	62	104	69	115	78	130	87	146	100	167	115	191	156	260

### DISCUSSION NOTES

- Victims are under the ages of 12
  - perpetrator must be 24 months older than the victim

## Child Molestation 2 (SL 7, Class B):

(1) A person is guilty of child molestation in the second degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least twelve years old but less than fourteen years old and the perpetrator is at least thirty-six months older than the victim.

**Sentences 2010-2019:** 687 most serious offense

**Current Seriousness Level:** 7

**Current Class:** B

**Current Statutory Maximum:** 120 months

**Proposal 1** – Keep at seriousness level 7

**Proposal 2** – Raise to seriousness level 8

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	16.9	24.1	28.9	35.9	43.7	49.2	67.4	85.1	84.5	102.7										
Number of Sent	257	43	12	160	25	13	87	7	6	77										
<b>Current SL7</b>	<b>15</b>	<b>20</b>	<b>21</b>	<b>27</b>	<b>26</b>	<b>34</b>	<b>31</b>	<b>41</b>	<b>36</b>	<b>48</b>	<b>41</b>	<b>54</b>	<b>57</b>	<b>75</b>	<b>67</b>	<b>89</b>	<b>77</b>	<b>102</b>	<b>87</b>	<b>116</b>
Proposed SL7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90
Proposed SL8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105

### DISCUSSION NOTES

- General definition: sexual intercourse with related victim an abuse of power in absence of consent (and individual cannot consent)
- Victims are ages 12 and 13
  - perpetrator must be 36 months older than the victim
- SL 7 is closest to status quo
- Not a lifetime ISRB case

## Child Molestation 3 (SL 5, Class C):

(1) A person is guilty of child molestation in the third degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least fourteen years old but less than sixteen years old and the perpetrator is at least forty-eight months older than the victim.

**Sentences 2010-2019:** 345 most serious offense

**Current Seriousness Level:** 5

**Current Class:** C

**Current Statutory Maximum:** 60 months

**Proposal 1** – Keep at seriousness level 5

**Proposal 2** – Raise to seriousness level 6 and make Class B

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	8.3	12.7	15.0	17.9	26.1	38.2	47.5	60.0	60.0	60.0										
Number of Sent	221	20	17	49	7	6	13	2	1	9										
<b>Current SL5</b>	<b>6</b>	<b>12</b>	<b>12.03</b>	<b>14</b>	<b>13</b>	<b>17</b>	<b>15</b>	<b>20</b>	<b>22</b>	<b>29</b>	<b>33</b>	<b>43</b>	<b>41</b>	<b>54</b>	<b>51</b>	<b>68</b>	<b>62</b>	<b>82</b>	<b>72</b>	<b>96</b>
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75

### DISCUSSION NOTES

- Victims are ages 14 and 15 (less than 16yrs);
  - perpetrator must be 48 months older than the victim;
  - individuals can be contemporaries in school
- If changed to a Class B offense, this would change registration and supervision requirements
- Similar discussion to Rape 3 and ROC 3; it may make sense to increase to SL 6
- Brainstormed idea: ROC 3 more serious than CM3. If CM3 is SL5, then should ROC 3 be SL6?

## Promoting Commercial Sexual Abuse of a Minor (SL 12, Class A):

(1) A person is guilty of promoting commercial sexual abuse of a minor if he or she knowingly advances commercial sexual abuse or a sexually explicit act of a minor or profits from a minor engaged in sexual conduct or a sexually explicit act.

(3) For the purposes of this section:

(a) A person "advances commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct or as a person engaged in commercial sexual abuse of a minor, he or she causes or aids a person to commit or engage in commercial sexual abuse of a minor, procures or solicits customers for commercial sexual abuse of a minor, provides persons or premises for the purposes of engaging in commercial sexual abuse of a minor, operates or assists in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor.

(b) A person "profits from commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct, he or she accepts or receives money or anything of value pursuant to an agreement or understanding with any person whereby he or she participates or will participate in the proceeds of commercial sexual abuse of a minor.

(c) A person "advances a sexually explicit act of a minor" if he or she causes or aids a sexually explicit act of a minor, procures or solicits customers for a sexually explicit act of a minor, provides persons or premises for the purposes of a sexually explicit act of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate a sexually explicit act of a minor.

(d) A "sexually explicit act" is a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons and for which anything of value is given or received.

(e) A "patron" is a person who provides or agrees to provide anything of value to another person as compensation for a sexually explicit act of a minor or who solicits or requests a sexually explicit act of a minor in return for a fee.

(4) Consent of a minor to the sexually explicit act or sexual conduct does not constitute a defense to any offense listed in this section.

(5) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

**Sentences 2010-2019:** 17 most serious offense

**Current Seriousness Level:** 12

**Current Class:** A

**Current Statutory Maximum:** Life

**Proposal 1 – Move to seriousness level 14**

**Proposal 2 – Move to seriousness level 15**

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	0.0	94.6	100.5	120.0	0.0	120.5	189.0	236.0	209.0	279.0										
Number of Sent	0	4	2	2	0	3	1	2	1	2										
<b>Current SL12</b>	<b>93</b>	<b>123</b>	<b>102</b>	<b>136</b>	<b>111</b>	<b>147</b>	<b>120</b>	<b>160</b>	<b>129</b>	<b>171</b>	<b>138</b>	<b>184</b>	<b>162</b>	<b>216</b>	<b>178</b>	<b>236</b>	<b>209</b>	<b>277</b>	<b>240</b>	<b>318</b>
Proposed SL14	86	123	93	133	101	145	111	158	122	174	144	192	160	214	178	238	200	267	231	308
Proposed SL15	98	140	106	151	115	165	126	180	139	198	164	218	182	243	203	270	228	304	262	350

### DISCUSSION NOTES

- Historical info: Reform was done on ROC 2 which increased from a B to an A
- Usually accompanied by a great deal of violence in addition to sexual exploitation.
- This offense is rarely sentenced in WA due to the difficulties in proving the cases; if it is charged is often pled down
- Historical increase in level of seriousness by the Legislature
- Not an ISRB qualifying offense (determinate sentence)

## Commercial Sex Abuse of a Minor (SL 8, Class B):

(1) A person is guilty of commercial sexual abuse of a minor if:

(a) He or she provides anything of value to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her;

(b) He or she provides or agrees to provide anything of value to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or

(c) He or she solicits, offers, or requests to engage in sexual conduct with a minor in return for anything of value.

(2) Commercial sexual abuse of a minor is a class B felony punishable under chapter 9A.20 RCW.

(3) In addition to any other penalty provided under chapter 9A.20 RCW, a person guilty of commercial sexual abuse of a minor is subject to the provisions under RCW 9A.88.130 and 9A.88.140.

(4) Consent of a minor to the sexual conduct does not constitute a defense to any offense listed in this section.

(5) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

**Sentences 2010-2019:** 56 most serious offense

**Current Seriousness Level:** 8

**Current Class:** B

**Current Statutory Maximum:** 120 months

**Proposal 1** – Lower to seriousness level 7

**Proposal 2** – Keep at seriousness level 8

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	19.0	19.5	36.0	38.7	48.0	47.4	70.7	90.0	0.0	103.5										
Number of Sent	21	2	1	13	1	4	11	1	0	2										
<b>Current SL8</b>	<b>21</b>	<b>27</b>	<b>26</b>	<b>34</b>	<b>31</b>	<b>41</b>	<b>36</b>	<b>48</b>	<b>41</b>	<b>54</b>	<b>46</b>	<b>61</b>	<b>67</b>	<b>89</b>	<b>77</b>	<b>102</b>	<b>87</b>	<b>116</b>	<b>108</b>	<b>144</b>
Proposed SL7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90
Proposed SL8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105

### DISCUSSION NOTES

- Leg substantially increased seriousness level in 2010; previously known as patronizing a juvenile
- Not a lot of data on the victims on these cases; challenges in determining real v. fictitious victims.
- Very challenging to get cooperation; there can be distrust of authority from victims



## Sexual Exploitation of a Minor (SL 9, Class B):

(1) A person is guilty of sexual exploitation of a minor if the person:

- (a) Compels a minor by threat or force to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance;
- (b) Aids, invites, employs, authorizes, or causes a minor to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance; or
- (c) Being a parent, legal guardian, or person having custody or control of a minor, permits the minor to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance.

**Sentences 2010-2019:** 56 most serious offense

**Current Seriousness Level:** 9

**Current Class:** B

**Current Statutory Maximum:** 120 months

**Proposal 1** – Keep at seriousness level 9

**Proposal 2** – Move to seriousness level 10 and make Class A

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	32.6	41.5	0.0	53.5	68.0	68.8	82.1	0.0	108.0	120.0										
Number of Sent	12	4	0	10	1	6	10	0	1	12										
<b>Current SL9</b>	<b>31</b>	<b>41</b>	<b>36</b>	<b>48</b>	<b>41</b>	<b>54</b>	<b>46</b>	<b>61</b>	<b>51</b>	<b>68</b>	<b>57</b>	<b>75</b>	<b>77</b>	<b>102</b>	<b>87</b>	<b>116</b>	<b>108</b>	<b>144</b>	<b>129</b>	<b>171</b>
Proposed SL9	19	33	22	37	26	43	30	50	34	57	39	66	45	76	52	87	60	100	72	120
Proposed SL10	27	46	30	51	33	56	37	62	41	68	46	77	52	87	60	100	68	114	93	155

### DISCUSSION NOTES

- General definition: taking videos or photographs of minors engaged in sexually explicit conduct (between adults and minors); often “sexting”))
- Most of these cases will end up in federal court.
- Moving to a SL 10 or 11 would make this a Class A offense
  - Class B cannot be any higher than Level 9

## Comm w/ Minor for immoral purposes, second or prior sex offense (SL3, Class C):

2) A person who communicates with a minor for immoral purposes is guilty of a class C felony punishable according to chapter 9A.20 RCW if the person has previously been convicted under this section or of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or any other state or if the person communicates with a minor or with someone the person believes to be a minor for immoral purposes, including the purchase or sale of commercial sex acts and sex trafficking, through the sending of an electronic communication.

**Sentences 2010-2019:** 414 most serious offense

**Current Seriousness Level:** 3

**Current Class:** C

**Current Statutory Maximum:** 60 months

**Proposal 1** – Reduce to seriousness level 2

**Proposal 2** – Keep to seriousness level 3

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	1.9	6.6	7.9	10.3	13.2	20.0	26.0	43.3	50.3	55.9										
Number of Sent	166	90	17	51	16	12	20	12	3	27										
<b>Current SL3</b>	<b>1</b>	<b>3</b>	<b>3</b>	<b>8</b>	<b>4</b>	<b>12</b>	<b>9</b>	<b>12</b>	<b>12.03</b>	<b>16</b>	<b>17</b>	<b>22</b>	<b>22</b>	<b>29</b>	<b>33</b>	<b>43</b>	<b>43</b>	<b>57</b>	<b>51</b>	<b>68</b>
Proposed SL2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	28
Proposed SL3	2	7	2	9	3	11	4	13	4	16	5	19	6	23	8	27	10	33	11	39

### DISCUSSION NOTES

- General offense description: Communication with a person under the age of 18 (and 16 in certain contexts) about matters of a sexual nature
- If communications are done in person (non-electronic communications), then charged as gross misdemeanor
- If communications are done through electronic communications (or the individual a prior sex offense or charge of CMIP), then charged as Class A felony

## Sending, Bringing into the State Depictions of Minor Engaged in Sexually Explicit Conduct 1 (SL 7, Class B):

(1)(a) Except as provided in subsections (3) and (4) of this section, a person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, a visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

**Sentences 2010-2019:** 1 most serious offense

**Current Seriousness Level:** 7

**Current Class:** B

**Current Statutory Maximum:** 120 months

**Proposal 1** – Keep at seriousness level 7

**Proposal 2** – Raise to seriousness level 8

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	0.0	0.0	0.0	0.0	0.0	41.0	0.0	0.0	0.0	0.0										
Number of Sent	0	0	0	0	0	1	0	0	0	0										
<b>Current SL7</b>	<b>15</b>	<b>20</b>	<b>21</b>	<b>27</b>	<b>26</b>	<b>34</b>	<b>31</b>	<b>41</b>	<b>36</b>	<b>48</b>	<b>41</b>	<b>54</b>	<b>57</b>	<b>75</b>	<b>67</b>	<b>89</b>	<b>77</b>	<b>102</b>	<b>87</b>	<b>116</b>
Proposed SL7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90
Proposed SL8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105

## Sending, Bringing into the state depictions of minor engaged in sexually explicit conduct 2 (SL 5, Class B):

(2)(a) Except as provided in subsections (3) and (4) of this section, a person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, any visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

(b) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the second degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of sending or bringing into the state one or more depictions or images of visual or printed matter constitutes a separate offense.

(3) This section does not apply to a minor who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for distribution, visual or printed matter depicting any minor thirteen years of age or older engaged in sexually explicit conduct.

(4) This section does not apply to a person under thirteen years of age who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for distribution, visual or printed matter depicting himself or herself engaged in sexually explicit conduct.

**Sentences 2010-2019:** 0 most serious offense

**Current Seriousness Level:** 5

**Current Class:** B

**Current Statutory Maximum:** 120 months

**Proposal 1** – Keep at seriousness level 5

**Proposal 2** – Raise to seriousness level 6

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)																				
Number of Sent																				
<b>Current SL5</b>	<b>6</b>	<b>12</b>	<b>12.03</b>	<b>14</b>	<b>13</b>	<b>17</b>	<b>15</b>	<b>20</b>	<b>22</b>	<b>29</b>	<b>33</b>	<b>43</b>	<b>41</b>	<b>54</b>	<b>51</b>	<b>68</b>	<b>62</b>	<b>82</b>	<b>72</b>	<b>96</b>
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75

### DISCUSSION NOTES

- Making this a SL6 would result in a prison sentence

## Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 1 (SL 7, Class B):

(1)(a) A person eighteen years of age or older commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the first degree when he or she:

(i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells a visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e); or

(ii) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Dealing in depictions of a minor engaged in sexually explicit conduct in the first degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

**Sentences 2010-2019:** 62 most serious offense

**Current Seriousness Level:** 7

**Current Class:** B

**Current Statutory Maximum:** 120 months

**Proposal 1** – Keep at seriousness level 7

**Proposal 2** – Raise to seriousness level 8

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	16.9	24.0	0.0	35.3	0.0	41.0	63.3	80.3	0.0	101.2										
Number of Sent	11	1	0	13	0	1	17	3	0	16										
<b>Current SL7</b>	<b>15</b>	<b>20</b>	<b>21</b>	<b>27</b>	<b>26</b>	<b>34</b>	<b>31</b>	<b>41</b>	<b>36</b>	<b>48</b>	<b>41</b>	<b>54</b>	<b>57</b>	<b>75</b>	<b>67</b>	<b>89</b>	<b>77</b>	<b>102</b>	<b>87</b>	<b>116</b>
Proposed SL7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90
Proposed SL8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105

## Possession of depictions of minor engaged in sexually explicit conduct 1 (SL 6, Class B):

(1)(a) Except as provided in subsections (3) and (4) of this section, a person commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly possesses a visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Possession of depictions of a minor engaged in sexually explicit conduct in the first degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

**Sentences 2010-2019:** 322 most serious offense

**Current Seriousness Level:** 6

**Current Class:** B

**Current Statutory Maximum:** 120 months

**Proposal 1** – Keep at seriousness level 6

**Proposal 2** – Raise to seriousness level 7

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	12.6	15.9	23.0	29.2	33.3	44.0	51.8	60.5	70.3	85.4										
Number of Sent	108	10	3	74	9	2	58	6	4	48										
<b>Current SL6</b>	<b>12.05</b>	<b>14</b>	<b>15</b>	<b>20</b>	<b>21</b>	<b>27</b>	<b>26</b>	<b>34</b>	<b>31</b>	<b>41</b>	<b>36</b>	<b>48</b>	<b>46</b>	<b>61</b>	<b>57</b>	<b>75</b>	<b>67</b>	<b>89</b>	<b>77</b>	<b>102</b>
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75
Proposed SL7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90

### DISCUSSION NOTES

- If changed to SL VII, then it would be a prison sentence

## Possession of Depictions of Minor engaged in sexually explicit conduct 2 (SL4, Class B\*):

(2)(a) Except as provided in subsections (3) and (4) of this section, a person commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly possesses any visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

(b) Possession of depictions of a minor engaged in sexually explicit conduct in the second degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of possession of one or more depictions or images of visual or printed matter constitutes a separate offense.

\*\*Changed from Class C to Class B in 2017, but did not change in rank\*\*

**Sentences 2010-2019:** 5 most serious offense

**Current Seriousness Level:** 4

**Current Class:** B

**Current Statutory Maximum:** 120 months

**Proposal 1** – Keep at seriousness level 4

**Proposal 2** – Raise to seriousness level 5

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	9.0	0.0	0.0	12.5	0.0	0.0	36.0	0.0	0.0	75.0										
Number of Sent	1	0	0	2	0	0	1	0	0	1										
<b>Current SL4</b>	<b>3</b>	<b>9</b>	<b>6</b>	<b>12</b>	<b>12.03</b>	<b>14</b>	<b>13</b>	<b>17</b>	<b>15</b>	<b>20</b>	<b>22</b>	<b>29</b>	<b>33</b>	<b>43</b>	<b>43</b>	<b>57</b>	<b>53</b>	<b>70</b>	<b>63</b>	<b>84</b>
Proposed SL4	2	9	3	11	4	14	5	17	6	20	7	24	8	29	10	35	12	42	14	49
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60

### DISCUSSION NOTES

- General definition: Images that do not involve actual sexual contact with another person

## Viewing depictions of minor engaged in sexually explicit conduct 1 (SL4, Class B):

(1) Except as provided in subsections (5) and (6) of this section, a person who intentionally views over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e) is guilty of viewing depictions of a minor engaged in sexually explicit conduct in the first degree, a class B felony punishable under chapter 9A.20 RCW.

**Sentences 2010-2019:** 20 most serious offense

**Current Seriousness Level:** 4

**Current Class:** B

**Current Statutory Maximum:** 120 months

**Proposal 1** – Keep at seriousness level 4

**Proposal 2** – Raise to seriousness level 5

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	3.5	6.0	0.0	14.2	0.0	29.0	24.0	40.4	0.0	73.5										
Number of Sent	6	1	0	5	0	1	3	2	0	2										
<b>Current SL4</b>	<b>3</b>	<b>9</b>	<b>6</b>	<b>12</b>	<b>12.03</b>	<b>14</b>	<b>13</b>	<b>17</b>	<b>15</b>	<b>20</b>	<b>22</b>	<b>29</b>	<b>33</b>	<b>43</b>	<b>43</b>	<b>57</b>	<b>53</b>	<b>70</b>	<b>63</b>	<b>84</b>
Proposed SL4	2	9	3	11	4	14	5	17	6	20	7	24	8	29	10	35	12	42	14	49
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60

### DISCUSSION NOTES

- Newest statute of sex offenses
- General offense example: when internet cache was cleared and not saved to hard drive, but browser history/cache/places similar show evidence
- Statute used for looking at CSEM images but without downloading/possession.
- If communications are done through electronic communications (or the individual a prior sex offense or charge of CMIP), then charged as Class A felony



## Incest 1 (SL 6, Class B):

(1)(a) A person is guilty of incest in the first degree if he or she engages in sexual intercourse with a person whom he or she knows to be related to him or her, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.

**Sentences 2010-2019:** 85 most serious offense

**Current Seriousness Level:** 6

**Current Class:** B

**Current Statutory Maximum:** 120 months

**Proposal 1** – Keep at seriousness level 6

**Proposal 2** – Raise to seriousness level 7

	0	1	2	3	4	5	6	7	8	9+
Avg Sent (mos)	12.6	17.9	24.0	31.3	37.7	44.0	55.3	61.8	80.0	95.3
Number of Sent	16	6	3	18	3	2	14	4	1	18
<b>Current SL6</b>	<b>12.05 14</b>	<b>15 20</b>	<b>21 27</b>	<b>26 34</b>	<b>31 41</b>	<b>36 48</b>	<b>46 61</b>	<b>57 75</b>	<b>67 89</b>	<b>77 102</b>
Proposed SL6	12 20	14 23	16 27	18 31	21 36	24 41	28 47	32 54	37 63	45 75
Proposed SL7	14 24	17 28	19 32	22 37	25 43	29 49	34 57	39 65	45 75	54 90

### DISCUSSION NOTES

- General definition: sexual intercourse with related victim

## Incest 2 (SL 5, Class C):

(2)(a) A person is guilty of incest in the second degree if he or she engages in sexual contact with a person whom he or she knows to be related to him or her, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.

(b) Incest in the second degree is a class C felony.

(3) As used in this section:

(a) "Descendant" includes stepchildren and adopted children under eighteen years of age;

(b) "Sexual contact" has the same meaning as in RCW 9A.44.010; and

(c) "Sexual intercourse" has the same meaning as in RCW 9A.44.010.

**Sentences 2010-2019:** 45 most serious offense

**Current Seriousness Level:** 5

**Current Class:** C

**Current Statutory Maximum:** 60 months

**Proposal 1** – Keep at seriousness level 5

**Proposal 2** – Raise to seriousness level 6 and make Class B

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	7.9	13.0	15.0	18.8	26.0	0.0	0.0	60.0	0.0	60.0										
Number of Sent	28	2	2	6	2	0	0	1	0	4										
<b>Current SL5</b>	<b>6</b>	<b>12</b>	<b>12.03</b>	<b>14</b>	<b>13</b>	<b>17</b>	<b>15</b>	<b>20</b>	<b>22</b>	<b>29</b>	<b>33</b>	<b>43</b>	<b>41</b>	<b>54</b>	<b>51</b>	<b>68</b>	<b>62</b>	<b>82</b>	<b>72</b>	<b>96</b>
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75

### DISCUSSION NOTES

- Generally: sexual contact with related victim
- Making this a SL6 would change to Class B Offense
- Typically charged:
  - when there isn't an age difference (ex: siblings close in age);
  - when adult has sexual contact with a child 16/17+;
  - anecdotally these charges are generally in conjunction with other charges (like ROC 1-3).

## Custodial Sexual Misconduct 1 (SL 7\*, Class B):

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

(a) When:

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

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

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

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

**Sentences 2010-2019:** 5 most serious offense

*\*\*\*NOTE: Prior to 2023, CSM was SL 5 and Class C offense. Now moving to SL 7 and Class B. 5 sentences below were prior to legislative change and subject to current SL 5 ranges.*

**Current Seriousness Level:** 7

**Current Class:** B

**Current Statutory Maximum:** 120 months

**Proposal 1** – Keep at seriousness level 7

**Proposal 2** – Raise to seriousness level 8

### DISCUSSION NOTES

- General definition: sexual intercourse with related victim an abuse of power in absence of consent (and individual cannot consent)
- 2023 Leg session: changed from C to a B

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	9.8	0.0	0.0	0.0	29.0	0.0	0.0	0.0	0.0	0.0										
Number of Sent	4	0	0	0	1	0	0	0	0	0										
<b>Current SL7</b>	<b>15</b>	<b>20</b>	<b>21</b>	<b>27</b>	<b>26</b>	<b>34</b>	<b>31</b>	<b>41</b>	<b>36</b>	<b>48</b>	<b>41</b>	<b>54</b>	<b>57</b>	<b>75</b>	<b>67</b>	<b>89</b>	<b>77</b>	<b>102</b>	<b>87</b>	<b>116</b>
Proposed SL7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90
Proposed SL8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105

## Custodial Sexual Misconduct 2 (SL 5, Class C):

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

(a) When:

- (i) The victim is a resident of a state, county, or city adult or juvenile correctional facility, including but not limited to jails, prisons, detention centers, or work release facilities, or is under correctional supervision; and
- (ii) The perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or

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

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

**Sentences 2010-2019: NOTE:** Prior to 2023, custodial sexual misconduct 2 was a gross misdemeanor and custodial sexual misconduct 1 was SL 5. In 2023, Custodial Sexual Misconduct 2 was moved to a class C felony at SL 5 and Custodial Misconduct 1 was increased to SL 7 and made a class B felony.

**Current Seriousness Level:** 5

**Current Class:** C

**Current Statutory Maximum:** 60 months

**Proposal 1** – Keep at seriousness level 5

**Proposal 2** – Raise to seriousness level 6 and make Class B

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)																				
Number																				
<b>Current SL5</b>	<b>6</b>	<b>12</b>	<b>12.03</b>	<b>14</b>	<b>13</b>	<b>17</b>	<b>15</b>	<b>20</b>	<b>22</b>	<b>29</b>	<b>33</b>	<b>43</b>	<b>41</b>	<b>54</b>	<b>51</b>	<b>68</b>	<b>62</b>	<b>82</b>	<b>72</b>	<b>96</b>
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75

### DISCUSSION NOTES

- 2023 Leg session: offense changed from gross misdemeanor to Class C

## Sexually Violating Human Remains (SL 5, Class C):

(1) Any person who has sexual intercourse or sexual contact with a dead human body is guilty of a class C felony.

(2) As used in this section:

(a) "Sexual intercourse" (i) has its ordinary meaning and occurs upon any penetration, however slight; and (ii) also means any penetration of the vagina or anus however slight, by an object, when committed on a dead human body, except when such penetration is accomplished as part of a procedure authorized or required under chapter 68.50 RCW or other law; and (iii) also means any act of sexual contact between the sex organs of a person and the mouth or anus of a dead human body.

(b) "Sexual contact" means any touching by a person of the sexual or other intimate parts of a dead human body done for the purpose of gratifying the sexual desire of the person.

**Sentences 2010-2019:** 0 most serious offense

**Current Seriousness Level:** 5

**Current Class:** C

**Current Statutory Maximum:** 60 months

**Proposal 1** – Keep at seriousness level 5

**Proposal 2** – Raise to seriousness level 6 and make Class B

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)																				
Number of Sent																				
<b>Current SL5</b>	<b>6</b>	<b>12</b>	<b>12.03</b>	<b>14</b>	<b>13</b>	<b>17</b>	<b>15</b>	<b>20</b>	<b>22</b>	<b>29</b>	<b>33</b>	<b>43</b>	<b>41</b>	<b>54</b>	<b>51</b>	<b>68</b>	<b>62</b>	<b>82</b>	<b>72</b>	<b>96</b>
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75

### DISCUSSION NOTES

- There is very little data on this offense: 0 convictions and 2 charges
- SGC subcommittees have adopted general practice that, if there is insufficient data, then they are recommending no change to the SL

## Sexual Misconduct with a Minor (SL 5, Class C):

1) A person is guilty of sexual misconduct with a minor in the first degree when:

(a) The person has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with another person who is at least sixteen years old but less than eighteen years old, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual intercourse with the victim;

(b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with an enrolled student of the school who is at least sixteen years old and not more than twenty-one years old, if the employee is at least sixty months older than the student; or

(c) the person is a foster parent who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with his or her foster child who is at least sixteen.

**Sentences 2010-2019:** 25 most serious offense

**Current Seriousness Level:** 5

**Current Class:** C

**Current Statutory Maximum:** 60 months

**Proposal 1** – Keep at seriousness level 5

**Proposal 2** – Raise to seriousness level 6 and make Class B

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	8.8	15.0	0.0	16.9	29.0	0.0	48.0	0.0	0.0	60.0										
Number of Sent	10	2	0	8	1	0	1	0	0	3										
<b>Current SL5</b>	<b>6</b>	<b>12</b>	<b>12.03</b>	<b>14</b>	<b>13</b>	<b>17</b>	<b>15</b>	<b>20</b>	<b>22</b>	<b>29</b>	<b>33</b>	<b>43</b>	<b>41</b>	<b>54</b>	<b>51</b>	<b>68</b>	<b>62</b>	<b>82</b>	<b>72</b>	<b>96</b>
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75

### DISCUSSION NOTES

- **Generally:** this charge was designed to protect teenage children from exploitation by people who have power over them;
  - example of offense with adults = supervisor to supervisee
- Moving to SL VI would make this offense a Class B Offense
- Idea: Offense should be equal to custodial sexual misconduct (B, SL6)

## Voyeurism 1 (SL 2, Class C):

(1) As used in this section:

- (a) "Intimate areas" means any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view;
- (b) "Photographs" or "films" means the making of a photograph, motion picture film, videotape, digital image, or any other recording or transmission of the image of a person;
- (c) "Place where he or she would have a reasonable expectation of privacy" means:
  - (i) A place where a reasonable person would believe that he or she could disrobe in privacy, without being concerned that his or her undressing was being photographed or filmed by another; or
  - (ii) A place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance;
- (d) "Surveillance" means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person;
- (e) "Views" means the intentional looking upon of another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or with a device designed or intended to improve visual acuity.

(2)(a) A person commits the crime of voyeurism in the first degree if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films:

- (i) Another person without that person's knowledge and consent while the person being viewed, photographed, or filmed is in a place where he or she would have a reasonable expectation of privacy; or
- (ii) The intimate areas of another person without that person's knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

(b) Voyeurism in the first degree is a class C felony.

**Sentences 2010-2019:** 158 most serious offense

**Current Seriousness Level:** 2

**Current Class:** C

**Current Statutory Maximum:** 60 months

**Proposal 1** – keep at seriousness level 2

**Proposal 2** – raise to seriousness level 3

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	1.6	2.6	5.5	7.5	12.1	17.5	19.6	26.0	39.7	48.8										
Number of Sent	76	8	6	26	10	4	10	4	3	11										
<b>Current SL2</b>	<b>0</b>	<b>3</b>	<b>2</b>	<b>6</b>	<b>3</b>	<b>9</b>	<b>4</b>	<b>12</b>	<b>12.03</b>	<b>14</b>	<b>14</b>	<b>18</b>	<b>17</b>	<b>22</b>	<b>22</b>	<b>29</b>	<b>33</b>	<b>43</b>	<b>43</b>	<b>57</b>
Proposed SL2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	28
Proposed SL3	2	7	2	9	3	11	4	13	4	16	5	19	6	23	8	27	10	33	11	39

## FTR as SO second violation on or after 6/10/2010 (SL2, Class C):

(1) A person commits the crime of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a felony sex offense and knowingly fails to comply with any of the requirements of RCW 9A.44.130.

(a) The failure to register as a sex offender pursuant to this subsection is a class C felony if:

(i) It is the person's first conviction for a felony failure to register; or

(ii) The person has previously been convicted of a felony failure to register as a sex offender in this state or pursuant to the laws of another state, or pursuant to federal law.

### **\*\*Prior SOPB recommendations from December 2022 submitted to SGC**

#### Previous Recommendations made in December 2022 [Report](#):

##### No. 15 (failure to register)

The SOPB recommends that the offense of Failure to Register, pursuant to RCW 9A.44.132, be reduced from a Seriousness Level II offense to an Unranked Felony for the purposes of sentencing. This would result in a presumed sentencing range of 0 – 12 months.

##### No. 16 (failure to register)

The SOPB recommends that for the crime of Failure to Register, defendants shall be given one year of community custody regardless of risk level for a first offense and two years of community custody for subsequent offenses.

##### No. 17 (failure to register)

The SOPB recommends that Failure to Register offenses should not be defined as a “sex offense” under RCW 9A.44.128 of 9.94A.030. Under current law the second offense of Failure to Register and thereafter are defined as “sex offenses.”

##### No. 18 (failure to register)

The SOPB recommends that Failure to Register should be classified as a “disqualifying offense” as defined in RCW 9A.44.128, which would restart the waiting periods for relief from registration for a conviction.

##### No. 19 (failure to register)

The SOPB recommends that individuals under the jurisdiction of the Department of Corrections for a Failure to Register offense, whether they are in the community or still in prison, be assessed to identify the individual's barrier(s) to registration compliance and provided with resources and tools to support compliance and improve functioning in the community, including housing, vocational rehabilitation, treatment as necessary, and community supports. The SOPB specifically endorses the use of navigators or other specialized corrections approaches in meeting the needs of this population.

##### No. 20 (failure to register)

The SOPB recommends that the Washington Association of Sheriffs and Police Chiefs (WASPC) review the Model Policy for Washington Law Enforcement regarding Adult and Juvenile Sex Offender Registration and Community Notification (4.24.5501) to identify opportunities to utilize technology to streamline initial and ongoing registration processes.



## FTR as SO third or subsequent violation on or after 6/10/2010 (SL2, Class B):

(1) A person commits the crime of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a felony sex offense and knowingly fails to comply with any of the requirements of RCW 9A.44.130.

(b) If a person has been convicted of a felony failure to register as a sex offender in this state or pursuant to the laws of another state, or pursuant to federal law, on two or more prior occasions, the failure to register under this subsection is a class B felony.

### **\*\*Prior SOPB recommendations from December 2022 submitted to SGC**

#### Previous Recommendations made in December 2022 [Report](#):

##### No. 15 (failure to register)

The SOPB recommends that the offense of Failure to Register, pursuant to RCW 9A.44.132, be reduced from a Seriousness Level II offense to an Unranked Felony for the purposes of sentencing. This would result in a presumed sentencing range of 0 – 12 months.

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