

Ordinance No. 00248

[Council Meeting Minutes 00/11/20](#)

ORDINANCE NO. 248

AN ORDINANCE of the City Council of the City of Lakewood, Washington creating new Sections 9.26.010 and 9.26.020 of the Lakewood Municipal Code relating to the offense of Custodial Sexual Misconduct in the Second Degree

WHEREAS, in a recent legislative session, the state legislature adopted new laws providing for criminal violations of Custodial Sexual Misconduct, including Custodial Sexual Misconduct in the Second Degree, a gross misdemeanor; and,

WHEREAS, this new law (codified as RCW 9A.44.170) is prosecutable by the City, as it is written, pursuant to the authority of RCW 39.34.180, but there are concerns that some issues may not be adequately covered to meet the City's specific needs; and,

WHEREAS, the language of the statute on which the offense is based does not specify the implications of the offense where the victim is under correctional supervision, or is a patient residing on a criminal offender ward of Western State Hospital, issues that are very specific to the City of Lakewood; and,

WHEREAS, it is the intent of the City to insure that patients are protected from abuse and misconduct while in the care of Western State Mental Hospital; and,

WHEREAS, the proposed departure from state law adds specificity, and is not intended to conflict with the current state law.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON DO ORDAIN as follows:

Section 1. That a new Section 9.26.010 of the Lakewood Municipal Code is hereby created to provide as follows:

9.26.010 Custodial Sexual Misconduct in the Second Degree.

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

1. When:

(a) 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, or a patient residing on a criminal offender ward of Western State Hospital; and

(b) The perpetrator is an employee or contract personnel of a correctional agency, including any employee or contract personnel of Western State Hospital, and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration, correctional supervision, or residence; or

2. 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.

B. Consent of the victim is not a defense to prosecution under this section.

C. Custodial misconduct in the second degree is a gross misdemeanor. (See RCW 9A.44.170.)

Section 2. That a new Section 9.26.020 of the Lakewood Municipal Code is hereby created to provide as follows:

9.26.020 Custodial Sexual Misconduct - Defense.

It is an affirmative defense to prosecution under Section 9.26.010 of the City Code, to be proven by the defendant by a preponderance of the evidence, that the act of sexual intercourse or sexual contact resulted from forcible compulsion by the other person.

(See RCW 9A.44.180.)

Section 3. Severability.

That if any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of this Ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 4. Effective Date.

That this Ordinance shall be in full force and effect five (5) days after publication of the Ordinance Summary

ADOPTED by the City Council this 20th day of November, 2000.

CITY OF LAKEWOOD

Bill Harrison, Mayor

Attest:

Alice M. Bush, CMC/AAE, City Clerk

Approved as to Form:

Daniel B. Heid, City Attorney

.....