
**Community Safety, Justice, & Reentry
Committee**

SSB 5033

Brief Description: Reclassifying the sentence for the crime of custodial sexual misconduct.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Padden, Van De Wege, Dhingra, Hasegawa, Kuderer and Wellman).

Brief Summary of Substitute Bill

- Reclassifies the offense of Custodial Sexual Misconduct in the First Degree to a class B felony, from a class C felony, and increases the seriousness level from V to VII.
- Reclassifies the offense of Custodial Sexual Misconduct in the Second Degree to a class C felony, from a gross misdemeanor, and ranks the offense as a seriousness level V offense.

Hearing Date: 3/9/23

Staff: Michelle Rusk (786-7153).

Background:

I. Custodial Sexual Misconduct.

The crime of Custodial Sexual Misconduct can be committed in two ways. The offense is committed in the First Degree when a person has sexual intercourse with another person in the following circumstances:

- when (a) the victim is a resident of a state, county, or city adult or juvenile correctional facility or under correctional supervision; and (b) the perpetrator is an employee or contract personnel of a correctional agency, and the perpetrator has, or the victim

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- reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or
- 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.

The offense is committed in the Second Degree when a person, in one of the circumstances described above, has sexual contact with another person.

Classification and Seriousness Level.

Custodial Sexual Misconduct in the First Degree is a class C felony and seriousness level V offense. Custodial Sexual Misconduct in the Second Degree is a gross misdemeanor.

Defenses.

The defense of consent is not available. However, an affirmative defense is available, which must be proven by a defendant by a preponderance of the evidence, that the sexual contact or sexual intercourse resulted from forcible compulsion by the other person.

II. Sentencing.

Crimes are classified as misdemeanors, gross misdemeanors, or felonies. The classification of a crime generally determines the maximum term of confinement and/or fine for an offense. For each classification, the maximum terms of confinement and maximum fines are as follows:

Classification	Maximum Confinement	Maximum Fine
Misdemeanor	90 days	\$1,000
Gross Misdemeanor	364 days	\$5,000
Class C Felony	5 years	\$10,000
Class B Felony	10 years	\$20,000
Class A Felony	Life	\$50,000

When a person is convicted of a felony, the Sentencing Reform Act (SRA) applies and determines a sentence range within the statutory maximum. Sentence ranges are determined by reference to a sentencing grid that provides a standard range of months for the sentence based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the offender's criminal history. Seriousness levels range from I to XVI. Offender scores can range from zero to nine or more points. A higher seriousness level or offender score results in a longer sentence.

Summary of Bill:

Custodial Sexual Misconduct.

The offense of Custodial Sexual Misconduct in the First Degree is reclassified from a class C felony to a class B felony, and is ranked as a seriousness level VII offense instead of seriousness

level V.

The offense of Custodial Sexual Misconduct in the Second Degree is reclassified from a gross misdemeanor to a class C felony, and is ranked as a seriousness level V offense.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.