

# FINAL BILL REPORT

## SSB 5033

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### C 7 L 23

Synopsis as Enacted

**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).

**Senate Committee on Law & Justice**

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

**Background:** Custodial Sexual Misconduct in the First and Second Degree. The offenses of custodial sexual misconduct (CSM) 1 and 2 were established in 1999. A person commits CSM 1 when the person has sexual intercourse with another person who is the resident of a state, county, or city adult or juvenile correctional facility, or who is under correctional supervision, and the perpetrator is an employee of the correctional agency who has or is perceived to have the ability to influence the terms, conditions, length, or fact of the victim's incarceration or correctional supervision. CSM 1 is also committed if the perpetrator is a law enforcement officer who has sexual intercourse with a victim who is being detained, under arrest, or is in the officer's custody. The elements of CSM 2 are similar, but require proof of sexual contact instead of sexual intercourse. Consent of the victim is not a defense to CSM 1 or 2. An affirmative defense is available if the act of sexual intercourse or sexual contact resulted from forcible compulsion by the other person.

CSM 1 is a class C felony with a felony sentencing seriousness level of V. CSM 2 is a gross misdemeanor.

Felony Sentencing. Felonies use determinate sentencing, in which a sentencing judge must sentence the defendant within a narrow sentencing range determined using a grid which compares a seriousness level for the offense, established by the Legislature, with an offender score calculated based on the defendant's criminal history. There are 16 seriousness levels ranging from I to XVI, and ten possible offender scores range from 0 to 9 or more. The judge must sentence the defendant within the range unless the judge finds grounds for imposition of an exceptional sentence, the judge finds grounds to impose a

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sentencing alternative, or a persistent offender sentence or mandatory minimum sentence applies. Sentencing enhancement provisions may apply to increase the sentence beyond the standard range.

Seriousness level V encompasses sentencing ranges from 6 to 12 months for defendants with an offender score of 0, to 72 to 96 months for defendants with an offender score of 9 or more. Seriousness level VII encompasses ranges from 12 months and a day to 14 months for the lowest offender score, to 87 to 116 months for the highest. Sentences for confinement of 12 months or fewer are served in a county jail, while confinement sentences of 12 months and a day or greater are served in state prison.

Gross Misdemeanor Sentencing. A person convicted of a gross misdemeanor may be punished by imprisonment in a county jail up to 364 days, by a fine up to \$5,000, or by both imprisonment and a fine.

**Summary:** The classification of the offense of CSM 1 is raised from a class C to a class B felony. The seriousness level is increased from level V to level VII.

The classification of CSM 2 is raised from a gross misdemeanor to a class C felony. The seriousness level is established at level V.

This act may be known and cited as Kimberly Bender's law.

**Votes on Final Passage:**

Senate	48	0
House	97	0

**Effective:** July 23, 2023