

# SENATE BILL REPORT

## SB 5033

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As Reported by Senate Committee On:  
Law & Justice, February 2, 2023

**Title:** An act relating to reclassifying the sentence for the crime of custodial sexual misconduct.

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

**Sponsors:** Senators Padden, Van De Wege, Dhingra, Hasegawa, Kuderer and Wellman.

**Brief History:**

**Committee Activity:** Law & Justice: 1/30/23, 2/02/23 [DPS].

**Brief Summary of First Substitute Bill**

- Increases the classification of the offenses of Custodial Sexual Misconduct in the First and Second Degree (CSM 1 and 2) to a class B and class C felony.
- Increases the penalty range for CSM 1 and 2 to seriousness levels VII and V.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5033 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Torres, Valdez, Wagoner and Wilson, L..

**Staff:** Kevin Black (786-7747)

**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

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

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 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 for up to 364 days, by a fine of up to \$5,000, or by both imprisonment and a fine.

**Summary of Bill (First Substitute):** 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.

**EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):**

- Provides that this act may be known and cited as Kimberly Bender's law.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: I heard about a person who was found guilty in Clallam County with a sentence which did not seem appropriate. Violators exploit vulnerable inmates. There are power dynamics at play. The assaults are traumatic for survivors. Law enforcement should be held to a higher standard and abuse of trust must be punished. My daughter took her life in jail after being accosted by a jail guard. Please name the bill Kimberly's Law after her. This bill will hopefully deter this from happening again. Failure to punish engenders disrespect for the system. Any cost for this bill would be wiped out with one tort claim.

**Persons Testifying:** PRO: Senator Mike Padden, Prime Sponsor; Dawn Reid; Gabe Galanda, Galanda Broadman, PLLC; Michele Devlin, Clallam County Prosecutor's Office; Larry Shannon, Washington State Association for Justice; Eric Pratt, I, America.

**Persons Signed In To Testify But Not Testifying:** No one.