

# HOUSE BILL REPORT

## SSB 5033

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**As Passed House:**

March 22, 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:** Senate Committee on Law & Justice (originally sponsored by Senators Padden, Van De Wege, Dhingra, Hasegawa, Kuderer and Wellman).

**Brief History:**

**Committee Activity:**

Community Safety, Justice, & Reentry: 3/9/23, 3/16/23 [DP].

**Floor Activity:**

Passed House: 3/22/23, 97-0.

**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.

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### HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

**Majority Report:** Do pass. Signed by 9 members: Representatives Goodman, Chair; Simmons, Vice Chair; Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Davis, Farivar, Fosse, Graham and Ramos.

**Staff:** Michelle Rusk (786-7153).

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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.*

## **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:

- the victim is a resident of a state, county, or city adult or juvenile correctional facility or under correctional supervision; and 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
- 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:

<b>Classification</b>	<b>Maximum Confinement</b>	<b>Maximum Fine</b>
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.

**Staff Summary of Public Testimony:**

(In support) The idea for this bill came from events that were brought forward in the news involving a corrections officer assaulting several women confined in jail. The circumstances involved an officer receiving a light sentence of 13 months despite assaulting numerous women, including one woman who may have been assaulted and ultimately did commit suicide after recounting to her family the horrible experiences she had while under the custodial care of the corrections officer. This officer preyed on women at their lowest and most vulnerable points. Upon more investigation, it seemed inappropriate to have such a light sentence associated with this offense, and that a stronger statement should be made.

The offense of custodial misconduct is unique because of the power dynamics between a custodial person in charge of and controlling the person under their care. These power dynamics create an opportunity to use this power to exploit persons under one's care. This policy gives meaning and protection to victims, as well as a way to create accountability for those engaged in this behavior. The vast majority of people working in our institutions do great and heroic work. It is one person who can ruin the respect and appreciation for the system; it just takes a bad actor. This bill is needed to enhance sentencing to better deter custodial sexual misconduct. The system has protected and emboldened officers and there is not sufficient accountability.

(Opposed) None.

**Persons Testifying:** Senator Mike Padden, prime sponsor; Dawn Bender; Larry Shannon, Washington State Association for Justice; and Gabriel Galanda, Galanda Broadman PLLC.

**Persons Signed In To Testify But Not Testifying:** None.