

HOUSE BILL REPORT

SSB 6775

As Passed House - Amended:

March 3, 2006

Title: An act relating to criminal trespass against children by sex offenders.

Brief Description: Creating the crime of criminal trespass against children.

Sponsors: By Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Stevens, Rasmussen and McAuliffe; by request of Attorney General).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/21/06, 2/23/06 [DPA].

Floor Activity:

Passed House - Amended: 3/3/06, 91-7.

Brief Summary of Substitute Bill (As Amended by House)

- Allows facilities that provide services to children to exclude certain sex offenders from the premises of the facilities.
- Imposes criminal liability on an offender who remains within, or returns to, a facility that has excluded him or her.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass as amended. Signed by 6 members: Representatives O'Brien, Chair; Pearson, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kirby, Strow and Williams.

Minority Report: Do not pass. Signed by 1 member: Representative Darneille, Vice Chair.

Staff: Jim Morishima (786-7191).

Background:

I. Post-Release Requirements for Sex Offenders

A sex offender can be subject to several types of requirements and restrictions upon release from incarceration. For example, a sex offender sentenced to a prison term must serve a mandatory term of community custody upon release. The conditions of the term of

community custody must include a requirement that the offender obtain residence approval from the Department of Corrections (DOC). Also, the conditions may include a requirement that the offender stay out of certain geographic areas. For a sex offender convicted of a "two-strikes" offense committed on or after July 24, 2005, the conditions of community custody must include a prohibition against living within 880 feet of a public or private school (the statute imposing this requirement expires on July 1, 2006).

II. Criminal Trespass

A person who enters or remains unlawfully in the premises of another is guilty of Criminal Trespass. Criminal Trespass in the first degree occurs if the premises involved is a building. Criminal Trespass in the first degree is a gross misdemeanor. Criminal Trespass in the second degree occurs if the premises involved is not a building. Criminal Trespass in the second degree is a misdemeanor.

It is a defense to Criminal Trespass that: (a) the building was abandoned, (b) the premises were open to the public and the defendant complied with all of the requirements for access to the premises, (c) the defendant reasonably believed that the owner would have given him or her permission to enter or remain, or (d) the defendant was attempting to serve legal process.

Summary of Amended Bill:

An owner, employee, or agent of a public or private facility, whose primary purpose is to provide for the education, care, or recreation of children, may order a "covered offender" from the premises of the facility. When the facility orders a covered offender to leave the premises, it must provide written notice to the offender that: (a) he or she must leave the premises, and (b) he or she will be subject to criminal liability if he or she refuses to leave or returns.

"Covered offender" is defined as a person who is at least 18 years of age, who is not under the jurisdiction of the Juvenile Rehabilitation Administration of the Department of Social and Health Services or serving a Special Sex Offender Disposition Alternative, who has been assessed as being a risk level II or III, and who has been convicted of any of the following crimes:

- Rape of a Child in the first degree;
- Rape of a Child in the second degree;
- Rape of a Child in the third degree;
- Child Molestation in the first degree;
- Child Molestation in the second degree;
- Child Molestation in the third degree;
- Indecent Liberties against a child under 15;
- Sexual Misconduct with a Minor in the first degree;
- Sexual Misconduct with a Minor in the second degree;
- Incest in the first degree;
- Incest in the second degree;
- Luring with sexual motivation;

- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct;
- Dealing in Depictions of Minors Engaged in Sexually Explicit Conduct;
- Bringing into the State Depictions of Minors Engaged in Sexually Explicit Conduct;
- Sexual Exploitation of a Minor;
- Communicating with a Minor for Immoral Purposes;
- Patronizing a Juvenile Prostitute;
- Any felony in effect at any time prior to the effective date of the act that is comparable to one of the offenses listed above, including, but not limited to, Statutory Rape in the first degree, Statutory Rape in the second degree, and Carnal Knowledge;
- Any other felony with a finding of sexual motivation if the victim was under 16 years of age at the time of the offense;
- Any attempt, solicitation, or conspiracy to commit any of the crimes listed above; and
- Any conviction from any jurisdiction that is comparable to one of the offenses listed above.

A covered offender is guilty of Criminal Trespass Against Children if he or she receives written notice that he or she must leave a facility and remains within or reenters the facility without written permission. Criminal Trespass Against Children is an unranked class C felony for a first offense. A second or subsequent offense is a class C felony with a seriousness level of IV.

A facility is immune from civil liability for damages arising from ejecting, or failing to eject, a covered offender.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: If this bill passes, it will be the first law of its kind in the nation. It will help address the situation where a sex offender shows up at a community center or a park and grooms children who are there. This bill provides these facilities the legal mechanism to require the offender to leave. This is an alternative to the idea of community protection zones. This bill does not give communities a false sense of security like community protection zones do. The bill satisfies due process concerns because it requires written notice to be given to an offender and because an arrest and a criminal prosecution are required for its provisions to be enforced. The bill also gives covered entities the flexibility to craft exceptions for things like picking up a child from school or voting.

Testimony Against: This bill will exclude many sex offenders from many aspects of public life with no means of redress. There is currently no formal mechanism to review a sex offender's risk level classification. Also, there is no way to appeal a covered entity's decision to exclude an offender. This bill may violate an offender's right to due process because there

is no way to contest the facts underlying the exclusion from a covered entity. There is also no requirement that an offender do anything wrong before being excluded and no requirement that anyone prove that he or she has the requisite criminal history. There are no built-in exceptions for when no children are present or to participate in activities like voting. The civil immunity provisions give an offender no recourse if he or she is wrongfully excluded from a covered entity.

Persons Testifying: (In support) Senator Hargrove, prime sponsor; Rob McKenna, Attorney General; and Todd Bowers, Office of the Attorney General.

(In support with amendments) Tammy Fellin, Association of Washington Cities.

(Opposed) Mark Muenster, Washington Association of Criminal Defense Lawyers and Washington Defenders Association; and Jennifer Shaw, American Civil Liberties Union.

Persons Signed In To Testify But Not Testifying: None.