# SENATE BILL REPORT
# SB 5643

As Reported By Senate Committee On:
Human Services & Corrections, February 24, 2005

**Title:** An act relating to community notification and release of sex offender information.

**Brief Description:** Exempting community notification and release of sex offender information from public disclosure.

**Sponsors:** Senators Hargrove, Kline and Brandland.

**Brief History:**
**Committee Activity:** Human Services & Corrections: 2/8/05, 2/24/05 [DPS].

## SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** That Substitute Senate Bill No. 5643 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Brandland, Carrell, McAuliffe and Thibaudeau.

**Staff:** Fara Daun (786-7459)

**Background:** The Community Protection Act of 1990 established sex offender registration and community notification.

The legislature found, in the Community Protection Act, that the exchange of information about sex offenders between public agencies and, under limited circumstances, the release of relevant and necessary information to the public furthered public safety and public scrutiny of the mental health and criminal justice systems. It defined the process for community notification in RCW 4.24.550, which limits disclosures to those that are accurate, relevant, and necessary to protect the public and defines who may receive the information based on the risk level of the offender. In 1994, the legislature provided that, where possible, community notification would occur 14 days prior to the release of an offender.

Since the passage of the Community Protection Act, releases of information about sex offenders throughout the code have been cross-referenced back to RCW 4.24.550 as the controlling statute. This includes releases by the Department of Corrections (DOC), Department of Social and Health Services, the Indeterminate Sentence Review Board, and the End of Sentence Review Committee (ESRC). RCW 4.24.550 is specifically cross referenced as the controlling statute on release of sex offender information under the Criminal Records Privacy Act, the Juvenile Justice Act of 1997, the confidentiality provisions for mental health treatment records, juvenile court records, jail photo records, civil commitment of sex offenders, the state sex offender website, and releases to parents of children at the state School for the Deaf. Releases of information that do not comply with the provisions of RCW 4.24.550 can result in loss of immunity for the release and in civil and criminal sanctions. The

End of Sentence Review committee is specifically instructed to issue information to law enforcement officials so that they can make sex offender notifications under RCW 4.24.550. This is usually done through law enforcement bulletins.

Although the code is clear throughout that sex offender information should be provided only under the notification provisions of RCW 4.24.550, there is no specific exemption or cross-reference in the public disclosure law. Under public disclosure law requested documents may be redacted to prevent the release of protected information. The information excluded by redaction, however, may not be replaced with other information. For example, a public agency may not release information that would show the identity of a child victim of a sex offender. If, however, the victim is a family member or intimate of the offender, redacting that information with no explanation makes the crime appear to have been committed on a stranger, who presents a very different risk to the public. This places a public agency who releases only the allowable information under a public disclosure request in violation of the provisions of community notification statute because the information released is no longer accurate and may not be the information that is necessary and relevant to protect the public.

**Summary of Substitute Bill:** Records or documents obtained, prepared, or maintained by an agency with jurisdiction over the release of sex offenders for the purpose of fulfilling the responsibility of the end of sentence review committee regarding sex offender assessment, risk level classification, and referral for civil commitment is exempt from public disclosure under chapter 42.17 RCW. The end of sentence review committee must prepare two documents. The present law enforcement bulletin is not a public document, and while it may be inspected upon request, it may not be copied. The second document is a narrative notice for use in community notification and is a public document. In addition to the identity of the offender, the general relationship between the offender and the victim(s), and the offender's criminal history, it must contain the end of sentence review committee's risk level classification and the reasons underlying that classification.

**Substitute Bill Compared to Original Bill:** The original bill did not require any changes to the documents prepared by the end of sentence review committee.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Testimony For:** The ESRC is an interdisciplinary committee with three functions: to assign risk levels to sex and kidnapping offenders, to determine which sex and kidnapping offenders to refer for civil commitment as sexually violent predators; and to make determinations for the Indeterminate Sentence Review Board whether a sex offender under its jurisdiction is "more likely than not" to commit a new sex offense. The ESRC issues law enforcement bulletins with relevant back-up documents. While necessary for law enforcement, neither these nor the many confidential and/or sensitive documents to which the ESRC needs access were ever intended for public disclosure. The ability to protect the public depends on the information that is available. Agencies are becoming hesitant to provide the ESRC with documents or they heavily redact exactly the language that is needed to make determinations because they are

concerned about their disclosure liability if the documents became public. Just as not enough information can weaken public protection, too much information can create vigilantism. This happened after the first community notification in Snohomish County when the public burned down the house in which they believed Joseph Gallardo was living.

The excruciating detail in the documents that is legitimately needed by law enforcement is not needed by the public and victims reading a bulletin, even without the offender's name, would recognize themselves and be re-traumatized. Sometimes the bulletins contain the offender's disclosures of victims who have never come forward, and those victims would be exposed without the provisions of the notification statute.

**Testimony Against:** There is a difference between community notification and public disclosure. The public ought to be able to get the law enforcement bulletins to determine for itself whether the ESRC is doing a good job. There is no public accountability for setting the sex offender levels unless the law enforcement bulletin can be obtained by the press. Much of the information it contains is already available in court documents that anyone can go read, so there is no reason to protect the compiled document.

**Who Testified:** PRO: Victoria Roberts, DOC; David Hackett, King County Prosecutor's Office; James MaMahan, Washington Association of Sheriffs and Police Chiefs; Det. Joseph Beard, Snohomish County Sheriff's Dep't.; Suzanne Brown-McBride, Washington Coalition of Sexual Assault Programs; Bev Emery, Office of Crime Victims Advocacy.

CON: Roland Thompson, Allied Daily Newspapers, Washington Newspaper Publishers' Association.