

# FINAL BILL REPORT

## SSB 6775

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### C 125 L 06

Synopsis as Enacted

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

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

**Senate Committee on Human Services & Corrections**  
**House Committee on Criminal Justice & Corrections**

**Background:** The Consequences of a Conviction on the Basis of Committing a Sex Offense. Washington law identifies certain crimes as sex offenses for purposes of sentencing. The Legislature has established a whole series of consequences that are associated with being sentenced as a sex offender. For example, a person sentenced as a sex offender is not eligible for certain sentencing alternatives, such as the First Time Offender Waiver or the Drug Offender Sentencing Alternative. Once incarcerated, he or she is not eligible for as much earned early release time as other offenders. After release, he or she must comply with the state's registration requirements and is subject to a mandatory term of community custody and mandatory Department of Corrections supervision in the community. If sentenced for a subsequent offense, the seriousness level of his or her prior sex offense will be tripled for purposes of sentencing.

The Prohibition Against Ex Post Facto Laws. The *ex post facto* clause of the United States Constitution prohibits the retrospective application of a criminal law to acts that occurred before that law's enactment. Only future conduct may be prohibited by new criminal laws. The *ex post facto* clause also prohibits increasing the punishment of past conduct retroactively. Whether a particular legal consequence is considered "punishment" for purposes of *ex post facto* analysis turns on such factors as whether a person's liberty would be more severely restrained under the application of a new law or regulation. *Miller v. Florida*, 482 US 423 (1987).

The United States Supreme Court has ruled that retrospectively requiring sex offenders to register with a state authority is not a violation of the prohibition on *ex post facto* laws. The Court reasoned that registration serves as a civil, rather than criminal, means of protecting the public and that its effect is not punitive in nature. *Smith v. Doe*, 538 US 84 (2003).

Other Constitutional Considerations. The law protects against criminal laws that are drafted to sweep, within their coverage, activity that is generally innocent or constitutionally protected. For example, curfews that prevent persons under the age of 18 from being in public places after a certain hour have been found unconstitutionally vague on the basis that they do not "provide ascertainable standards for locating the line between innocent and unlawful behavior." *City of Seattle v. Pullman*, 82 Wn.2d 794 (1973). See also, *Nunez v. City of San Diego*, 114 F.3d 935 (9th Cir. 1997). Similarly, the United States Supreme Court determined

that Chicago's Gang Congregation Ordinance, which prohibited criminal street gang members from loitering in any public place, was unconstitutionally vague.

**Summary:** A person working for any public or private facility, the primary purpose of which, at any time, is to provide for the education, care, or recreation of a child or children, may order certain persons from the premises of the facility. The class of persons subject to ejection from public facilities or private businesses is limited to persons who are not currently under Juvenile Rehabilitation Administration (JRA) supervision or serving a Special Sex Offender Disposition Alternative (SSODA) suspended sentence and who are Level II and Level III offenders.

The person who works at the facility must give the person ordered to leave a written notice, informing him or her that he or she must leave and may not return without the written permission of the facility.

If the person who has been ordered to leave refuses to leave or comes back another time, that person may be charged and prosecuted for the crime of criminal trespass against children, a Class C felony, ranked at a Level IV seriousness level for sentencing purposes. The types of facilities that may prohibit a person from entry include, but are not limited to, community and recreational centers, playgrounds, schools, swimming pools, and state or municipal parks.

An owner, employee, or agent of the facility is not liable for any act or omission in connection with ordering persons in the class of offenders covered by the bill to leave the facility or failing to eject covered offenders from covered entities.

The bill contains a legislative intent section and an emergency clause.

**Votes on Final Passage:**

Senate	44	4	
House	91	7	(House amended)
Senate	47	0	(Senate concurred)

**Effective:** March 20, 2006