

SENATE BILL REPORT

SSB 6775

As Passed Senate, February 9, 2006

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

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).

Brief History:

Committee Activity: Human Services & Corrections: 1/26/06, 2/1/06 [DPS].

Passed Senate: 2/9/06, 44-4.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6775 be substituted therefor, and the substitute bill do pass.

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

Staff: Kiki Keizer (786-7430)

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 of Bill: 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 JRA supervision or serving a Special Sex Offender Disposition Alternative 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.

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

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Testimony For: Managers of facilities should be able to prevent sex offenders, who have had child victims and who are at high risk to re-offend, from coming onto their property. Owners and operators get law enforcement bulletins, so they can recognize problem sex offenders. No one would be arrested unless they received previous notice that they were not welcome on the property. The proposed law is flexible enough to allow persons ordered off the premises to request written permission to come back on the property, perhaps when children are not present or during certain hours of the day. The bill currently covers sex offenders at all risk level classifications

Testimony Against: None.

Who Testified: PRO: Todd Bowers, Assistant Attorney General.

House Amendment(s): The definition of "covered offender" includes persons convicted of indecent liberties against a child of fifteen, as well as persons convicted of any felony in effect at any time prior to the effective date of the act that is comparable to an offense listed in the act. Immunity from civil liability applies not only in cases of ejecting covered offenders from covered entities but also in cases of failing to eject covered offenders from covered entities.