

SENATE BILL REPORT

SHB 2534

As of February 23, 2010

Title: An act relating to establishing a program to verify the address of registered sex offenders and kidnapping offenders.

Brief Description: Establishing a program to verify the address of registered sex offenders and kidnapping offenders.

Sponsors: House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Hurst, Pearson, O'Brien, Chase, Kelley, Conway, Van De Wege, Sells, Ericks, Morrell, Kirby, Campbell, Haigh and Smith).

Brief History: Passed House: 2/11/10, 97-0.

Committee Activity: Human Services & Corrections: 2/25/10.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Shani Bauer (786-7468)

Background: The End of Sentence Review Committee (ESRC), chaired by the Department of Corrections, classifies sex offenders being released from Washington correctional institutions according to their risk of reoffense within the community. The ESRC classifies each offender as a level I (low risk), level II (moderate risk), or level III (high risk), and then forwards this classification to the county sheriff in the jurisdiction where the offender will reside. The sheriff may adopt the ESRC's risk level or establish a different level. In some situations, the ESRC may not have had the opportunity to classify a sex offender. This may occur when the law changed after an offender's release from confinement, or when the offender has moved to Washington State from another state. In this case, the sheriff's office will perform its own classification of the offender's risk.

Sex offenders designated as risk level II or III must report in person every 90 days to the sheriff of the county in which they are registered. Failure to meet this requirement is a Class C felony. In prosecuting a failure to report, the state must prove, as an element of the crime, that the defendant has been designated a risk level II or III.

In *State v. Ramos*, 202 P.3d 383 (2009), the court found that when a risk level classification is an element of a crime, a risk level classification made solely by the sheriff is an unconstitutional delegation of legislative authority. Ramos was convicted of sexual

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exploitation of a minor and released from confinement in 1995, prior to when the registration law went into effect. In 2001 Ramos became subject to the registration laws and was classified as a level II sex offender by the county sheriff. In 2008 Ramos failed to check in with the sheriff as required every 90 days and was subsequently convicted of a failure to register.

Under the separation of powers doctrine, the authority to define crimes and set punishments rests firmly within the Legislature. Specifically, the Legislature is responsible for defining the elements of a crime. The Legislature may delegate its authority only if it provides the other branch with adequate direction to reach a sufficient definition. Washington law does not provide criteria or any substantial definition to assist law enforcement in designating a sex offender as a risk level I, II, or III. The court therefore concluded that when the risk level is an element of the crime, the leveling decision constitutes an impermissible delegation of authority to law enforcement. Ramos' conviction was overturned for failure to register.

A homeless offender must report to the sheriff of the county where he or she is registered on a weekly basis. The sheriff's office may require the person to list the locations where the person has stayed during the last seven days. In *State v. Flowers*, the court found that a homeless offender could not be charged with a failure to register for failure to provide a list of the locations of where he or she stayed because it is not a requirement of the statute.

In 2008 the Legislature funded the Washington Association of Sheriffs and Police Chiefs (WASPC) to enter into performance based contracts with local sheriffs for the purposes of verifying addresses for sex offenders required to register. The budget proviso specified the funding was to ensure that addresses were verified every 12 months for level I offenders, every six months for level II offenders, and every three months for level III offenders.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Amendments):

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.