

SENATE BILL REPORT

SB 6360

As of January 20, 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: Senators Hargrove, Keiser, Roach and Marr.

Brief History:

Committee Activity: Human Services & Corrections: 1/19/10.

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 have not had the opportunity to classify a sex offender. This may occur when the law changed after an offender's release from confinement or the offender has moved here 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 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

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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.

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: Sex or kidnapping offenders required to register under Washington law are no longer required to report to the sheriff every 90 days. The sheriff must make reasonable attempts to verify that an offender is residing at a registered address by sending a yearly mailing to the offender and/or when funded, entering into a performance based contract with WASPC to actively verify offender addresses. The performance-based agreement must ensure that offender addresses are verified every 12 months for level I offenders, every six months for level II offenders and every three months for level III offenders.

WASPC must collect performance data from all participating jurisdictions and annually submit a report to the Governor and the Legislature on the effectiveness of the program. WASPC may retain up to 3 percent of funding provided for administration costs. Unclassified offenders and kidnapping offenders must be considered level I offenders unless the local jurisdiction believes a higher classification is justified. A county sheriff may delegate his or her authority under this section to one or more police chiefs or town marshals.

Appropriation: None.

Fiscal Note: Requested on January 13, 2010.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: After the decision in Ramos, law enforcement spent various times talking to stakeholders to determine the best approach to address that issue while still doing as good a job at monitoring sex offenders. It was determined that codifying the address verification program was the appropriate way to do this. We believe we have a better ability to track sex offenders if we are actually able to verify the address in

person versus just receiving a post card from the offender. Just over 10 percent of offenders are not where they are supposed to be living. The address verification program has been effective in identifying these individuals.

This legislative fix removes an onerous requirement for offenders and replaces it with something that is easier to administer and that will withstand constitutional scrutiny.

Persons Testifying: PRO: Joanna Arlow, Don Pierce, Washington Association of Sheriffs and Police Chiefs; Amy Muth, Washington Association of Criminal Defense Lawyers and Washington Defenders' Association; Kathleen Swan, private citizen.