

SENATE BILL REPORT

SB 6414

As Reported by Senate Committee On:
Human Services & Corrections, February 2, 2010

Title: An act relating to sex offender registration concerning consistency in registration deadlines, criteria for which a court may relieve a person of the duty to register, the class of felony for a failure to register, when a failure to register will be considered a sex offense, and community custody terms for a failure to register.

Brief Description: Modifying sex offender registration provisions.

Sponsors: Senator Regala.

Brief History:

Committee Activity: Human Services & Corrections: 1/19/10, 2/02/10 [DPS].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6414 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, Kauffman and McAuliffe.

Staff: Shani Bauer (786-7468)

Background: In 2008 the Legislature created the Sex Offender Policy Board (Board) to promote a coordinated and integrated response to sex offender management. One of the first tasks assigned to the Board, through 2SHB 2714 (2008), was to review Washington's sex offender registration and notification laws. The Board submitted a report to the Legislature in November 2009, which contained several consensus recommendations including:

- standardize all registration requirement deadlines within the registration statute to three business days with few exceptions;
- change the statute so that a juvenile sex offender's first failure to register offense will not bar them from petitioning for relief from registration;
- establish a statutory list of criteria that is illustrative to the judge of considerations that may be important in determining whether an adult offender should be relieved from registration;

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- adopt a tiered approach to the class of felony for a failure to register as a sex offender – class C for the first two convictions and class B for the third and subsequent convictions;
- reduce community custody for the first failure to register for a sex offense conviction to 12 months; second and subsequent convictions would continue to require 36 months of supervision;
- repeal the 90-day registration requirement for level II and III adult sex offenders and support codification of law enforcement's address verification program.

Washington's registration law requires a sex or kidnapping offender to keep the county sheriff informed of his or her residence and any school the offender plans to attend or is attending. The statute sets out the timeframes for the offender to provide this notice. In many cases, the timeframes are not consistent. For example, an offender must notify the sheriff: at the time of release from custody; within 72 hours of changing his or her residence address in the same county; within ten days of moving to a new county; and within 48 hours of ceasing to have a fixed residence.

A person who has a duty to register for a sex offense committed when the person was a juvenile may petition the court to be relieved of that duty:

- if the petitioner was 15 years or older at the time of the offense, the petitioner must show by clear and convincing evidence that continued registration will not meet the purposes of the statute;
- if the petitioner was under the age of 15 at the time of the offense, the petitioner must show by a preponderance of the evidence that the juvenile has not committed a new sex or kidnapping offense in the 24 months following adjudication and continued registration will not meet the purposes of the statute.

The failure to register is considered a sex offense and will preclude the petitioner from being relieved of the duty to register.

Adult offenders convicted of class B or class C sex offenses may be relieved of the duty to register after ten years for a class C offense or 15 years for a class B offense. In order for the court to relieve a person from registration, the petitioner must not commit any new offense in the stated time period and show by clear and convincing evidence that future registration will not meet the purposes of the statute.

For both adult and juvenile offenders, a failure to register is a class C felony if the underlying sex offense was a felony, carrying a maximum sentence of 60 months. A person may not be sentenced to confinement time and community custody in excess of the statutory maximum. When an offender has been convicted of a failure to register several times or has a significant criminal history, the statutory range for a failure to register is 43 to 57 months and carries a mandatory term of community custody of 36 months. If the offender were sentenced to 57 months confinement, an offender could only be sentenced to a three-month term of community custody. For this reason, the Legislature passed 2SHB 2714 in 2008 changing an adult failure to register to a class B felony (statutory maximum of 120 months). This law takes effect after the 2010 Legislative Session unless otherwise amended by the Legislature.

Summary of Bill (Recommended Substitute): Business day and disqualifying offense are defined. An offender may not be relieved from registration if that offender has committed a disqualifying offense within the applicable time period. The timeframes for a sex or kidnapping offender to report to the county sheriff are changed to three business days with the exception of a few isolated circumstances. A person who is moving in-state must provide notice by certified mail or in person with the county sheriff.

An offender who is required to register in his or her state of conviction must register in Washington unless the person has specifically been relieved of registration by the state of conviction. A person's duty to register for an out of state offense continues indefinitely, but the person may petition after 15 years in the community with no disqualifying offense.

Separate sections address the duration of registration, relief from registration and relief from registration for offenses committed as a juvenile. When the person's duty to register ends by operation of law, the person may request the county sheriff to review his or her records. If the sheriff finds that the person has been in the community the requisite period of time with no disqualifying offense, the sheriff will request that the Washington State Patrol (WSP) remove the person from the sex or kidnapping offender registry. Law enforcement and the WSP are immune from liability for the removal or failure to remove a person from the registry.

When determining whether to relieve an adult or juvenile from registration, a list of criteria is provided as guidance for the court to consider, including the nature of the offense, any subsequent criminal history, the offender's stability in the community, and any other factors the court considers relevant.

A person who is required to register for an offense committed when the person was a juvenile may be relieved of registration if the person has not committed a new sex or kidnapping offense since adjudication. The person will not be prevented from being relieved of registration if the person was convicted of only one failure to register. However, the person may not have been adjudicated or convicted of a failure to register in the 24 months prior to filing.

A juvenile or adult conviction for failure to register carries a maximum 12-month sentence of community custody for the first conviction and 36 months for the second and subsequent convictions. The Department of Corrections is directed to apply these changes retroactively to offenders currently incarcerated or on community custody. The first two adult convictions for failure to register are designated as class C felonies. An adult offender's third conviction for failure to register is designated as a class B felony.

A table of the impacts of the various convictions for a failure to register is below. The changes made by this bill are noted with a *.

FAILURE TO REGISTER

	Gross Misdemeanor	1st Felony Conviction	2nd Felony Conviction	3rd+ Conviction
Class of offense	If underlying offense not felony, always gross misdemeanor	Class C felony	Class C felony	*Class B felony*
Sex offense?	No	*No*	Yes	Yes
Supervision	Court ordered probation	*1 year community custody*	3 years community custody	3 years community custody
Time for relief - adult offense	Resets adult expiration clock (10 years)	Resets adult expiration clock (10 yr - class C / 15 yr class B)	Resets clock and carries own 10-yr req. to register	Resets clock and carries own 10-yr. req. to register
Time for relief - juv. offense	*Must wait 2 years from FTR to petition*	*Must wait 2 years from FTR to petition*	Resets clock (2 yr) and carries own 10-yr req. to register	Resets clock (2 yr) and carries own 10-yr req. to register

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute): The title is amended and a definition section is added. Offenses that will disqualify an offender from being relieved from registration are specifically defined. A person who moves in-state must provide notice to the county sheriff by certified mail or in person. Separate statutes are created to address the duration of registration, relief from registration, and relief from registration for juvenile offenses. A person who is required to register in his or her state of conviction must register in Washington unless the person has specifically been relieved of registration by their home state. A person's duty to register for an out-of-state conviction continues indefinitely, but the person may petition after 15 years in the community without committing a disqualifying offense. Direction is provided as to how a person is removed from the registry when that person's duty to register ends by operation of law. Law enforcement and the Washington State Patrol are immune from liability for the removal or failure to remove a person from the registry. The Department of Corrections is directed to apply the community custody changes to offenders currently incarcerated or on community custody. The new provisions apply to offenders convicted before, on, or after the effective date of this act. Other technical language changes are made for clarity and consistency.

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.

Staff Summary of Public Testimony on Original Bill: PRO: The Sex Offender Policy Board put a lot of time and effort into these recommendations, meeting a total of 38 times over the past couple of years. This was a collaborative process and reflects consensus recommendations of a variety of stakeholders. The recommendations are rooted in evidence based practices and support enhancements to our existing systems. Further, the practices are victim centered and provide a good balance for public safety. This is how we make well reasoned sex offender policy in the state of Washington.

This bill is a work in progress and the Board continues to work on various pieces. The Board anticipates recommending changes or additions to address the comparability of out-of-state sex offenses, the interplay of certain dates with regard to the Jacob Wetterling Act, and what crimes should disqualify an individual from petitioning for relief from registration. For out-of-state offenders, the offender should be required to register in Washington if he or she is required to register in their state of conviction. This is an important fix for law enforcement because they spend a good deal of time analyzing the out-of-state offense to determine its comparability.

The list of criteria for courts to consider in relieving an offender from registration will have an enormous impact on a person's ability to petition. Judges currently do not have much guidance. Each one of the criteria has background in research as to the offender's risk. The change to allow an offender convicted as a juvenile to have one failure to register and still be able to seek relief from registration is a good fix. Often this is not indicative of the person's risk of reoffense, but indicative of a failure to understand the rules.

The current sex offender registration law is fraught with traps for persons trying to comply with the law. This bill is a vast improvement.

Persons Testifying: PRO: Andrea Piper, Russ Hauge, Sex Offender Policy Board; Joanna Arlow, Washington Association of Sheriffs and Policy Chiefs; Amy Muth, Washington Association of Criminal Defense Lawyers and Washington Defenders' Association; Kathleen Swan, private citizen.