

SENATE BILL REPORT

SB 5351

As of February 14, 2011

Title: An act relating to prohibiting certain registered sex offenders from entering school grounds.

Brief Description: Prohibiting certain registered sex offenders from entering school grounds.

Sponsors: Senators Honeyford, Swecker and Schoesler.

Brief History:

Committee Activity: Human Services & Corrections: 2/11/11.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Shani Bauer (786-7468)

Background: A covered offender may be ordered from the premises of a public or private facility whose primary purpose is to provide for the education, care, or recreation of children. A covered offender is defined as a registered sex offender 18 years of age or older who is classified as a risk level II or risk level III and who has been convicted of a sex crime involving a minor.

In order to remove the offender from the premises, the owner or manager of the facility must first provide the offender with written notice informing the offender to leave the premises and not return. If the offender returns without written permission, the offender may be charged and prosecuted for criminal trespass against children. Criminal trespass against children is an unranked class C felony. The facility may give the offender written permission of entry for limited purposes and times.

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. ESRC 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 when an offender has moved

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here from another state. In this case, the sheriff's office will perform its own classification of the offender's risk.

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 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.

Summary of Bill: A covered offender may not knowingly enter the premises of a school unless the school has given the offender written permission to enter for limited times and purposes. If the offender enters the school without written permission, the offender may be charged and prosecuted with criminal trespass against children. This provision does not apply to an offender who is 18 years of age and who is attending or planning to attend the school.

The designations of risk level II and risk level III are removed from the definition of a covered offender. The list of sex crimes involving a minor is updated to include crimes for the commercial sexual abuse of a minor. A second or subsequent offense for criminal trespass against children is ranked as a seriousness level IV.

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: PRO: I was shocked and amazed when I attended a school event that was also attended by a convicted child rapist. I contacted the school and was told that the law protects the person's right to be there, and they could not do anything. Through contact with the media, I discovered that the school has the right under current law to prevent a sex offender from coming on school grounds, but they refuse to use the provision. If we can take away an offender's voting rights, we should be able to take away a sex offender's right to go onto school grounds. If a parent recognizes a sex offender on

school grounds, a parent should be able to go to law enforcement or the school and have the offender removed.

CON: As convicted level I sex offenders, we are constantly targeted by bills that propose to strip us of our constitutional rights and put our safety at risk. There is nothing in this bill that tells a person how they should go about getting permission to go on school premises. As written, the bill would prevent us from attending many church functions that are either held on school grounds or are held at a church that contains a school. Resources could better be spent monitoring juvenile sex offenders that already attend the school with permission. This bill does nothing to promote public safety.

OTHER: Conceptually this bill has merit, but we have concerns about the decisions to be made at the school level. The bill does not specify what criteria should be used to determine whether a sex offender should be given permission to enter school grounds. It is unclear how the provision would be implemented and whether funding would be available to develop criteria and train school principals in how to apply it. Without the development of criteria and training, there will be consistency issues across the state. The scope of this issue is very large as there are currently approximately 20,000 registered sex offenders in Washington. Principals do not want sex offenders on campus in a position to harm children, it just becomes an issue as to how to do that effectively in the current budget climate.

Persons Testifying: PRO: William Stephens, citizen.

CON: Kathleen Swan, citizen.

OTHER: Joe Pope, Jerry Bender, Association of Washington School Principals.