

HOUSE BILL REPORT

ESSB 5735

As Reported by House Committee On:
Public Safety

Title: An act relating to registered sex or kidnapping offenders.

Brief Description: Concerning registered sex or kidnapping offenders.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Carrell and Darneille).

Brief History:

Committee Activity:

Public Safety: 3/26/13, 4/3/13 [DPA].

**Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)**

- Allows law enforcement agencies to disclose information about a level I offender to any individual who identifies the offender by name but requires that requests for information about level I offenders be in writing.
- Requires that local law enforcement agencies' use of risk assessment tools be empirically validated or generally accepted and that the staff scoring the tools be trained.
- Requires persons determined to be sexually violent predators to register for the rest of their life.
- Allows juvenile sex offenders to petition for relief from the duty-to-register in their home county.
- Clarifies that relief from duty-to-register does not constitute a certificate of rehabilitation for the purpose of restoration of the right to possess a firearm.
- Clarifies language around leveling and notification.

HOUSE COMMITTEE ON PUBLIC SAFETY

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.

Majority Report: Do pass as amended. Signed by 9 members: Representatives Goodman, Chair; Roberts, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Holy, Moscoso, Pettigrew and Takko.

Minority Report: Do not pass. Signed by 2 members: Representatives Hope and Ross.

Staff: Sarah Koster (786-7303).

Background:

Sex Offender Registration and Levels.

Any adult or juvenile offender residing in the state who has been convicted of a sex offense must register with the county sheriff upon release from confinement. The offender must provide complete information to the county sheriff including the offender's address, aliases used, place of employment, Social Security number, photograph, and fingerprints. Beginning in 2008, all registered offenders also must provide a deoxyribonucleic acid (DNA) sample. This requirement is not part of the registration requirements and therefore the failure to provide a DNA sample is not a failure to register.

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 ESRC's risk level or establish a different level. If the ESRC has not had the opportunity to classify a sex offender, such as when the offender has moved to Washington from another state, the sheriff's office will perform its own classification of the offender's risk. The risk-level classification dictates the level of notice to the public and the amount of information the sheriff may release about the offender.

The Washington Association of Sheriffs and Police Chiefs (WASPC) operates an electronic statewide unified sex offender notification and registration program which contains a database of all registered sex offenders in the State of Washington. The WASPC creates and maintains a public website that posts all level II and level III sex offenders. Law enforcement may also disclose information about offenders classified as level I upon the request of any victim or witness to the offense or any community member who lives near the offender. For level III sex offenders, law enforcement must additionally publish notice in at least one newspaper in the area of the sex offender's registered address.

Relief From the Duty to Register.

An adult sex offender may petition the superior court to be relieved of the duty to register when the person has spent 10 consecutive years in the community without being convicted of a disqualifying offense during that time period. If the person is required to register for a federal or out-of-state conviction, the person may petition after 15 consecutive years in the community without a disqualifying offense. A person may not petition for relief from registration if the person has been determined to be a sexually violent predator or convicted as an adult of a sex offense that is a class A felony that was committed with forcible compulsion. Otherwise, an offender's duty to register ends after 10 years in the community

without conviction of a disqualifying offense for a class C felony, after 15 years in the community without conviction of a disqualifying offense for a class B felony, and indefinitely for a class A felony, a federal or out-of-state offense, or if the offender had any prior registerable offenses.

A person who is required to register for an offense committed as a juvenile may petition the court to be relieved of that duty if the offender has not been convicted of any additional sex offenses and five years have passed since completing any term of confinement if the offender was 15 years old or older and the offense was a class A sex or kidnapping offense. For other offenses, or younger offenders, the offender may petition the court if 24 months have passed since completing any term of confinement. The petition will be made to the court which sentenced them or, for out-of-state, federal, or foreign convictions, Thurston County Court.

Failure to Register.

A person commits the offense of Failure to Register as a sex offender if the person has a duty-to-register for a felony sex offense and knowingly fails to comply with the registration requirements. The offense is a class C felony if the person has never, or once, been convicted of felony failure to register in Washington or another state. The failure to register is a class B felony if the person has on two or more prior occasions been convicted of felony failure to register in Washington or another state.

Information for Parents.

The Washington Coalition of Sexual Assault Programs, in consultation with the WASPC, the Washington Association of Prosecuting Attorneys, and the Office of Superintendent of Public Instruction, is required to develop educational materials to inform parents and community members about sex offense and offender registration laws, how to recognize characteristics of sex offenders and prevent victimization, and community resources for victims of sexual assault.

Jacob Wetterling Act.

In 1994 Congress passed the Jacob Wetterling Act (Act). That Act required states to institute lifetime registration requirement for offenders convicted of specified sex offenses or face financial penalties to the federal Byrne grant. In 2001 the Legislature passed the Jacob Wetterling provisions requiring lifetime registration for further classes of offenders. Those provisions expired on July 1, 2012.

Summary of Amended Bill:

Sex Offender Registration and Levels.

In assigning risk levels, an offender must be classified as a:

- level I– if the person's risk assessment and other relevant factors indicate that the person is a low-risk offender within the community at large;
- level II– if the person's risk assessment and other relevant factors indicate that the person is a moderate-risk offender within the community at large; or
- level III– if the person's risk assessment and other relevant factors indicate that the person is a high-risk offender within the community at large.

A risk assessment tool utilized by local law enforcement agencies for the purpose of assigning a risk level classification must be empirically validated or generally accepted and the staff scoring the tool must be trained in its use.

If an offender who is required to register is transferred from total confinement to partial confinement within the community, the offender is required to register upon the time of transfer.

Law enforcement may disclose information about offenders classified as level I upon the request of any person seeking information regarding a specifically named offender. Any request for information about a level I offender, except from law enforcement agencies or the school where the offender may attend, must be in writing. When an offender is classified as a level III, law enforcement must issue a new release, but is not required to actively publish notice in the newspaper.

Relief From Duty to Register.

A person who has been determined to be a sexually violent predator will be required to register indefinitely.

Someone who was convicted of a registerable offense as a juvenile may petition to be relieved of the duty to register in their county of registration and will not be ineligible to petition based on other convictions more than five years before the initial conviction.

The court's decision to relieve a sex offender of the duty to register does not constitute a certificate of rehabilitation for the purposes of restoring a person's right to possess a firearm.

Failure to Register.

Convictions of felony Failure to Register pursuant to federal law count as prior convictions for the purpose of calculating the class of felony Failure to Register, so that the offense is a class C felony if the person has never, or once, been convicted of felony Failure to Register in Washington, another state, or pursuant to federal law. The Failure to Register is a class B felony if the person has on two or more prior occasions been convicted of felony Failure to Register in Washington, another state, or pursuant to federal law.

Information for Parents.

The Office of Superintendent of Public Instruction must publish on its website educational materials developed with partner agencies designed to inform parents and community members about sex offense and offender registration laws, how to recognize characteristics of sex offenders and prevent victimization, and community resources for victims of sexual assault.

Jacob Wetterling Act.

Expired provisions that were passed in order to comply with the federal Act are removed.

Amended Bill Compared to Engrossed Substitute Bill:

The amended act: (1) removes the criminal penalties for refusal to provide a DNA sample; (2) requires that a public request for information about a level I sex offender be made in writing; (3) requires that a risk assessment tool used by local law enforcement agencies in scoring sex offenders be empirically validated or generally accepted and that the staff scoring the tool be trained; (4) removes the requirement that registered sex offenders notify the county sheriff before travelling outside the United States; and (5) removes the provisions which regulate district and school policies relating to students required to register as sex offenders.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 11 relating to the publication of educational materials, which takes effect September 1, 2013.

Staff Summary of Public Testimony:

(In support) Most of this bill is having the law reflect current practice and achieve greater compliance with model practice and the Adam Walsh Act. This is a substantive bill, but it is a lot of clean-up. Leveling is primarily about notification; levels are set to determine notification to the community. There is clean up about notification: with regard to newspapers, there are many other ways these days to get the notice out so a public notice need not be purchased. The notification requirement before travelling is a provision of the Adam Walsh Act. As a state there is no interest in total compliance, but there are reasons to move closer to a national standard. With regard to sex offenders in schools, there seems to be a lot of legislation every year about how schools should handle this issue. This bill clarifies the appropriate way for this to happen, through a single point of contact.

This bill has been well-worked and if it is not right, it is pretty close. This bill is the product of the work by the Sex Offender Policy Board and it seems like a lot, but it mostly adds clarification and creates consistency with schools, notification practices, and particularly, juveniles seeking relief from the duty-to-register. Law enforcement should not be able to go door to door and give out information about level I offenders because it is destabilizing. The bill says for the first time that locals have to use a risk assessment tool, but the concern is that it allows use of tools that counties have come up with on their own. This is problematic particularly for juveniles. The bill's acknowledgement that juveniles should be treated differently from adults should be applauded.

Provisions allows adults to use the juvenile process for removal from the duty-to-register, with its lower waiting periods and lower burden of proof, if they committed their offenses as minors. The Sex Offender Policy Board determined, not unanimously, that there should be no community notification for juveniles, except for the highest risk level III older teenagers who have raped strangers. There are such negative consequence for juveniles that

notification for them needs to be reconsidered in total. Schools need to receive better information and make sure there is someone clearly accountable to receive notice.

(Opposed) Current laws place a heavy burden on 20,000 registrants and their families and children. A glaring example is the murder of two registrants last year in Sequim; one was a father and the other was convicted as a juvenile. Requiring 21 days of advance notice before travel is an onerous burden which will not help the community. Very few states have this provision and none in the west have it. This has not been shown to be effective.

Releasing information about level I offenders is the first step towards general disclosure of this information, which is more likely to make people homeless, jobless, and more of a threat to society. Law enforcement should not have free reign to make risk assessments. There should be an independent review or opportunity to petition a health professional to review risk evaluations which were inappropriately created by law enforcement, who do not have the tools to make that sort of judgment.

Persons Testifying: (In support) Don Pierce, Washington Association of Sheriffs and Police Chiefs; Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs; and Brad Meryhew, Washington Association of Criminal Defense Lawyers.

(Opposed) Mathew Lawson, Washington Voices.

Persons Signed In To Testify But Not Testifying: None.