

# SENATE BILL REPORT

## SSB 5154

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As Amended by House, April 15, 2015

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

**Brief Description:** Concerning registered sex or kidnapping offenders.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senator Hargrove).

**Brief History:**

**Committee Activity:** Law & Justice: 1/22/15, 2/19/15 [DP-WM].

Ways & Means: 2/23/15, 2/26/15 [DPS, w/oRec].

Passed Senate: 3/04/15, 48-1.

Passed House: 4/15/15, 98-0.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass and be referred to Committee on Ways & Means.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Kohl-Welles, Pearson and Roach.

**Staff:** Lindsay Erickson (786-7465)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 5154 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hill, Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Bailey, Becker, Billig, Brown, Conway, Fraser, Hasegawa, Hatfield, Hewitt, Kohl-Welles, O'Ban, Padden, Parlette, Rolfes, Schoesler and Warnick.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Braun, Vice Chair.

**Staff:** Steve Jones (786-7440)

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*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.*

**Background:** 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 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. 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 ESRC has not had the opportunity to classify a sex offender, such as when the offender has moved to Washington State 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. 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.

An adult sex offender may petition the superior court to be relieved of the duty to register when the person has spent ten 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.

In 1994 Congress passed the Jacob Wetterling Act. That act required states to institute lifetime registration requirements 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 Substitute Bill:** In assigning risk levels, an offender must be classified as:

- Level I – if the person's risk assessment and other relevant factors indicate that the person is at a low risk to sexually reoffend within the community at large;
- Level II – if the person's risk assessment and other relevant factors indicate that the person is at a moderate risk to sexually reoffend within the community at large; or

- Level III – if the person's risk assessment and other relevant factors indicate that the person is at a high risk to sexually reoffend within the community at large.

A person required to register as a sex offender who intends to travel outside the United States must notify the county sheriff where the person is registered at least 21 days prior to travel. The notice must include identifying information and details regarding the person's travel. The county sheriff must notify the United States Marshals Service as soon as practicable after receipt of the notification. Temporary residents visiting from another state or country who will be in the state longer than ten days must register their temporary addresses with the county sheriff within three days of arrival.

The crime of refusal to provide DNA is established. A person is guilty of the refusal to provide DNA if the person has a duty to register and refuses to comply with a request for a DNA sample as required by law. The refusal to provide DNA is a gross misdemeanor.

The Office of Superintendent of Public Instruction must publish on its website educational materials developed in conjunction with partner agencies for parents and other interested family members in recognizing characteristics of sex offenders and preventing victimization.

Sex offender and kidnapping offender registration information is exempt from public disclosure under chapter 42.56 RCW.

A number of other changes are made that close various loopholes or provide clarification with regard to sex offender registration and notification including the following:

- a tribal conviction for an offense for which the person would be required to register as a sex offender while residing in the reservation of conviction is defined as a sex offense requiring registration under Washington law;
- law enforcement may disclose information about offenders classified as level I upon the request of any person seeking information regarding a specifically named offender;
- when a sex offender moves to another county, the sheriff with whom the sex offender last registered is responsible for verification of the offender until the offender registers in the new county;
- 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;
- law enforcement agencies may develop a process to allow an offender to petition for review of the offender's assigned risk level classification;
- law enforcement may remove a sex offender from the registry if an administrative authority in the person's state of conviction has made an individualized determination that the person is not required to register;
- 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;
- a person may not petition for relief from registration if the person has been determined to be a sexually violent predator;
- when a person who is required to register is placed on partial confinement in the community, the person must register with the county sheriff while on partial confinement;

- a person convicted in another state as a juvenile may petition for relief from registration in the county in which the person resides; and
- expired provisions that were passed in order to comply with the federal Jacob Wetterling Act are removed.

**Appropriation:** None.

**Fiscal Note:** Available.

**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 (Law & Justice):** PRO: This bill does three main things: (1) gets the state in better compliance with the Adam Walsh Act; (2) cleans up existing provisions in current laws that can be improved; and (3) addresses conflict between the Public Records Act (RCW 42.56) and sex offender notification and disclosure laws (RCW 4.24.550). This bill would also improve coordination between out-of-state and tribal convictions and provide clarity for county-to-county transfers. In particular this brings Washington into federal compliance when sex offenders travel to other states. This also gives offenders the ability to petition to change their risk level classification.

The big change this year is regarding how law enforcement gives sex offender information out to the community. WASPC is currently involved in litigation on this issue in four counties, and clear statutory language would help clarify the information they can disclose to the public relating to registered sex and kidnapping offenders. As currently written, the law allows for too much exposure for Level 1 offenders and has too many collateral consequences.

CON: The public disclosure aspects of this bill are troubling and overreaching. Information on sex offenders is of primary importance to members of our community. People generally want to know about sex offenders living in a particular geographical area, and it's almost impossible to know the specific name of an offender. There should also be more information relating to how the risk levels are set, because there doesn't seem to be oversight to this process.

**Persons Testifying (Law & Justice):** PRO: James McMahan, WASPC; Brad Meryhew, WA Assn. of Criminal Defense Lawyers; Mike Sommerfeld, Pierce Co. Sheriff's Dept.

CON: Rowland Thompson, Allied Daily Newspapers.

**Staff Summary of Public Testimony on Original Bill (Ways & Means):** PRO: This bill has been agreed to by both law enforcement and defense lawyers. The bill significantly clarifies numerous statutes. The only portion of the bill that has fiscal impact is the section directing the Attorney General to develop a database of comparable offenses among states, federal government, and other jurisdictions. This section is not essential to the bill.

**Persons Testifying (Ways & Means):** PRO: James McMahan, WASPC.

**Persons Signed in to Testify But Not Testifying:** No one.

**House Amendment(s):**

- Removes provisions that would make sex offender and kidnapping offender information exempt from public disclosure under the Public Records Act.
- Requires the WASPC, upon receipt of a public records request for sex and kidnapping offender information, to refer the requestor, in writing, to the appropriate agency or agencies for submission of the request. Provides that WASPC has no further duty to respond to such public records requests.
- Requires a person who is required to register as a sex or kidnapping offender who has notified the county sheriff of plans to travel outside the United States to notify the sheriff if the plans to travel are cancelled or postponed no later than three days after the cancellation or postponement, or on the scheduled departure date, whichever is earlier, instead of three days after the departure date provided in the notification.
- Allows offenders who travel outside the United States due to a work or family emergency, or who travel routinely outside of the United States for work purposes to give notice of travel at least 24 hours in advance of travel instead of at least 21 days, as is required for all other registered offenders.
- Clarifies that a person who is required to register as a sex or kidnapping offender who moves to a new county notify the sheriff of the new county within three business days of moving.
- Removes the provision in the bill that limits the Department of Corrections' authorization to disclose sex and kidnapping offender information to law enforcement agencies only.
- Requires the Sex Offender Policy Board to review and make findings and recommendations regarding: (1) public disclosure of sex and kidnapping offender information and the relationship between current laws on public disclosure; (2) best practices from other states regarding public disclosure of sex and kidnapping offender information; (3) ability of registered sex and kidnapping offenders to have their risk level classification reviewed and whether there should be a uniform statewide policy for review; and (4) guidelines established by a sex offender policy workgroup addressing community notification and how public access to the guidelines can be improved.