

HOUSE BILL REPORT

ESHB 1394

As Passed House:

March 3, 2023

Title: An act relating to creating a developmentally appropriate response to youth who commit sexual offenses.

Brief Description: Creating a developmentally appropriate response to youth who commit sexual offenses.

Sponsors: House Committee on Human Services, Youth, & Early Learning (originally sponsored by Representatives Senn, Goodman, Simmons, Lekanoff and Doglio).

Brief History:

Committee Activity:

Human Services, Youth, & Early Learning: 1/25/23, 2/3/23 [DPS];
Appropriations: 2/21/23, 2/23/23 [DPS(HSEL)].

Floor Activity:

Passed House: 3/3/23, 60-38.

Brief Summary of Engrossed Substitute Bill

- Places limits on when a juvenile is required to register in the sex offender registry based on committing a sex offense.
- Reduces the time period a person adjudicated in juvenile court must register as a sex offender to two or three years.
- Reduces the classification of failing to register as a sex offender to a gross misdemeanor for individuals who are required to register based on the commission of a juvenile sex offense.

HOUSE COMMITTEE ON HUMAN SERVICES, YOUTH, & EARLY LEARNING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.

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

Signed by 6 members: Representatives Senn, Chair; Cortes, Vice Chair; Taylor, Vice Chair; Callan, Goodman and Ortiz-Self.

Minority Report: Do not pass. Signed by 4 members: Representatives Eslick, Ranking Minority Member; Couture, Assistant Ranking Minority Member; Dent and Walsh.

Minority Report: Without recommendation. Signed by 1 member: Representative Rule.

Staff: Luke Wickham (786-7146).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Human Services, Youth, & Early Learning be substituted therefor and the substitute bill do pass. Signed by 18 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Chopp, Davis, Fitzgibbon, Lekanoff, Pollet, Riccelli, Ryu, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 11 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Chandler, Connors, Couture, Dye, Rude, Sandlin, Schmick and Steele.

Minority Report: Without recommendation. Signed by 1 member: Representative Harris.

Staff: Yvonne Walker (786-7841).

Background:

Sex Offense Registration.

Any adult or juvenile residing in Washington who has been found to have committed any sex offense or kidnapping offense must register with the county sheriff for the county of the person's residence, or the place where the person works or attends school.

The sex offenses requiring registration include:

- Child Molestation;
- Commercial Sexual Abuse of a Minor;
- Communicating with a Minor for Immoral Purposes;
- Criminal Trespass Against Children;
- Custodial Sexual Misconduct;
- Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct;
- Failure to Register (second violation);
- Incest;
- Indecent Liberties;
- Minor Dealing in Depictions of Another Minor 12 Years or Younger Engaged in

- Sexually Explicit Conduct;
- Minor Financing or Selling Depictions of Another Minor Engaged in Sexually Explicit Conduct;
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct;
- Promoting Commercial Sexual Abuse of a Minor;
- Promoting Travel for Commercial Sexual Abuse of a Minor;
- Rape;
- Rape of a Child;
- Sending or Bringing into the State Depictions of a Minor Engaged in Sexually Explicit Conduct;
- Sexual Exploitation of a Minor;
- Sexual Misconduct with a Minor;
- Sexually Violating Human Remains;
- Viewing Depictions of Minor Engaged in Sexually Explicit Conduct; and
- Voyeurism, among others.

The following offenses also require sex offense registration:

- any federal or out of state conviction that would be a felony classified as a sex offense;
- any felony with a finding of sexual motivation; and
- a class A felony attempt, solicitation, or conspiracy to commit a class A or B felony listed above.

Persons who are required to register based on a sex offense must give notice to the county sheriff within three business days:

- prior to arriving at a school;
- prior to starting work at a school; or
- after any termination of enrollment or employment at a school.

Persons required to register based on a sex offense must provide the following information when registering:

- name and aliases;
- residential address;
- date and place of birth;
- place of employment;
- crime for which convicted;
- date and place of conviction;
- Social Security number;
- photograph; and
- fingerprints.

Persons required to register based on a sex offense must provide additional information to the county sheriff when planning to travel outside the country.

If someone required to register based on a sex offense intends to move or ceases to have a fixed address, the person must provide notice to the county sheriff.

Risk levels for individuals required to register based on committing a sex offense are determined by the law enforcement agency where the sex offender resides. Individuals classified as level 1 are considered at low risk to reoffend. Individuals classified as level 2 are considered a moderate risk to reoffend. Individuals classified as level 3 are considered a high risk to reoffend.

The Washington State Patrol (WSP) maintains a central registry of individuals required to register based on a sex offense. County sheriffs must forward registration information, including the offender's risk level and notice of any address changes to the WSP for inclusion in the registry. Information about individuals classified as level 2 and 3 are published on a public website.

Failure to Register.

If a person fails to register or fails to comply with any of the sex offense registration requirements, the person commits the crime of Failure to Register. The first Failure to Register conviction for an underlying felony is a class C felony. If someone is convicted of felony Failure to Register on two or more prior occasions, the offense is a class B felony. If the underlying offense requiring registration is a gross misdemeanor, the offense of Failure to Register is also a gross misdemeanor.

Length of Sex Offender Registration.

For a person required to register as a sex offender for a class A conviction or if the person has one or more prior convictions requiring registration, the registration requirement continues indefinitely.

Someone required to register for a class B felony, who does not have a previous conviction requiring registration, must register for 15 years following the last date of release from confinement, if any.

For a person required to register for a class C felony or gross misdemeanor, who does not have a previous conviction requiring registration, the registration requirement ends 10 years after the last date of release from confinement, if any.

Relief from Registration based on Juvenile Offense.

If a person has a duty to register for a sex offense committed when the person was a juvenile, when the person has not been determined to be a sexually violent predator, the person may petition the superior court to be relieved from the duty to register as follows:

- for class A offenses committed when the person was age 15 or older, if at least five years have passed since the adjudication and completion of any confinement, the petitioner has not been adjudicated or convicted of Failure to Register, and the petitioner shows by a preponderance of the evidence that the petitioner is sufficiently

- rehabilitated to warrant removal from the central registry; and
- for all other offenses, if at least two years have passed since the adjudication and completion of any confinement, the petitioner has not been adjudicated or convicted of Failure to Register, and the petitioner shows by a preponderance of the evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry.

Juvenile Court Jurisdiction.

In Washington, juvenile courts are a division of the state's superior court system. Juvenile courts have jurisdiction over persons under age 18 who are alleged to have committed a crime. However, there are several exceptions to that jurisdiction where state law requires youth to be tried in adult courts. There are three situations where adult criminal courts may have jurisdiction over persons under age 18:

- The juvenile court may decline jurisdiction to adult court following a discretionary decline hearing, which a court can initiate on its own motion, or any party may file a motion requesting the court transfer the juvenile to adult court only if:
 - the respondent is at least age 15 and is charged with a serious violent offense;
 - the respondent is age 14 or younger and is charged with Murder in the first or second degree; or
 - the respondent is any age and is charged with Custodial Assault and, at the time the respondent is charged, is already serving a minimum juvenile sentence to age 21.
- The juvenile court is required to hold a decline hearing in circumstances when the information alleges an escape and the juvenile is serving a minimum juvenile sentence to age 21.
- Adult criminal courts have exclusive jurisdiction over juveniles age 16 or 17 on the date of the offense when the offense is:
 - a serious violent offense;
 - a violent offense and the juvenile has a criminal history consisting of a prior serious violent offense, two or more prior violent offenses, or three or more of any combination of class A felonies, class B felonies, Vehicular Assault, or Manslaughter in the second degree; or
 - Rape of a Child in the first degree.

The juvenile court has jurisdiction over the disposition of any remaining charges in any case in which the juvenile is found not guilty in the adult criminal court of the charge or charges for which he or she was transferred, or is convicted in the adult criminal court of an offense that is not also an offense over which the adult court has exclusive jurisdiction.

Juvenile Parole.

The Department of Children, Youth, and Families (DCYF) secretary may require persons to comply with a period of parole following the person's release from a juvenile rehabilitation facility, which could last up to 18 months. However, for juveniles sentenced for Rape in the first or second degree, Rape of a Child in the first or second degree, Child Molestation in

the first degree, or Indecent Liberties with Forcible Compulsion the period of parole must be two to three years. Parole is also mandatory for persons who receive a juvenile sentence for Theft of a Motor Vehicle, Possession of a Stolen Motor Vehicle, or Taking a Motor Vehicle Without Permission.

Juvenile parole involves DCYF staff, in collaboration with community-based services, providing youth and their families with reentry support and helping eliminate barriers to accessing essential services. This includes resources such as employment, housing, education, and treatment, as well as individually-tailored supervision to enhance a young person's compliance with parole conditions and follow-through on reentry plans they developed while in residential care.

Summary of Engrossed Substitute Bill:

Juvenile sex offender registration is limited to juveniles (where the offense was committed while under age 18 and not sentenced for an offense in adult court due to decline of juvenile court jurisdiction) who:

- committed a class A or class B sex offense when the person was age 16 or 17 or a Rape in the second degree offense at age 14 or 15 and did not receive a special sex offender disposition alternative;
- committed a Rape in the first degree offense when the person was age 14 or 15;
- committed a sex offense and, on the offense date, the juvenile had a prior conviction for a sex offense or had a deferred disposition for a sex offense;
- has a special sex offender disposition alternative revoked for:
 - a class A or class B sex offense that was committed when the person was age 16 or 17; or
 - a Rape in the second degree offense when the person was age 14 or 15;
- following a court finding based on clear, cogent, and convincing evidence that the person:
 - is age 14 to 17 and was adjudicated of multiple sex offenses involving two or more victims, presents a serious threat to public safety following release, and registration is required to lessen that threat;
- has an out-of-state, tribal, or federal conviction for a sex offense; or
- committed a kidnapping offense.

The classification of failing to register as a sex offender is reduced to a gross misdemeanor (from a felony) if the person has a duty to register for an offense which occurred when the person was under age 18 and the person was not sentenced for the offense in adult court due to decline of juvenile court jurisdiction.

The time period that a juvenile (where the offense was committed while under age 18 and not sentenced for an offense in adult court due to decline of juvenile court jurisdiction) must register as a sex offender (if required) is reduced to two years, except for persons age 15 to 17 required to register for a class A offense, who must register for three years.

The requirement to register as a sex offender is extinguished for juveniles (where the offense was committed while under age 18 and not sentenced for an offense in adult court due to decline of juvenile court jurisdiction) who would no longer be required to register under the terms of the bill on November 1, 2023. For those juveniles who are still required to register under the terms of the bill, the legal obligation extinguishes two or three years after the last date of release from confinement.

Sheriffs must remove all persons from the sex offender registry who no longer have an obligation to register.

The Washington State Patrol must notify registered sex offenders of the extinguishing of the legal obligation to register created by the bill.

The Department of Children, Youth, and Families (DCYF) must develop and implement a grant program that allows defense attorneys and counties to apply for funding for sex offender evaluation and treatment programs.

Any person releasing from a DCYF juvenile rehabilitation facility who was sentenced as a juvenile for a sex offense must receive two to three years of parole (rather than just those who received a sentence as a juvenile for Rape in the first or second degree, Rape of a Child in the first or second degree, Child Molestation in the first degree, or Indecent Liberties with Forcible Compulsion).

The DCYF must provide funding to counties for process mapping, site assessment, and training for sex offender treatment modalities.

The definition of "certified affiliate sex offender treatment provider" is expanded to include a licensed mental health counselor associate, licensed independent clinical social worker associate, licensed advanced social worker associate, and licensed marriage and family therapist associate.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 4, 2023.

Effective Date: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony (Human Services, Youth, & Early Learning):

(In support) In order to break the cycle, youth must be provided with appropriate treatment.

Treatment for sexual behavior results in lower recidivism rates. Registration requirements do not result in improved outcomes. In fact, sex offender registration results in mental

health struggles, depression, anxiety, and homelessness.

Families often face a difficult choice of whether to welcome their child home and risk the stability of their housing.

The average sexual recidivism rate for juveniles going back to the 1930s is less than 5 percent. More recent data from 2000 indicates that it is under 3 percent.

The registration requirement does not have a deterrent effect. It does not seem to protect society. Registration disrupts a child's housing and school and has profound mental health effects. Research shows that youth who are required to register are 3.5 times more likely to commit suicide. These youth are five times more likely to be sexually approached by adults in the last year and twice as likely to have been sexually assaulted. These youth are particularly vulnerable.

Children have very low sexual recidivism rates. When individuals who were required to register are compared against people who were not but also committed a sex offense, there is no difference in the sexual recidivism rates.

Current state law provides a range of responses to youth who commit sex offenses. This bill does not change the responses to sexual offending but does provide additional resources for treatment and ends the harmful registration requirement. These youth have difficulty understanding the consequences that come with being required to register as a sex offender. However, the parents of these children know that this registration requirement brings with it housing and employment instability. This is a critical step to protect public safety by providing meaningful opportunities for rehabilitation.

Children as young as 12 are forced to find a new place to live because the child's parents could not remain in their housing if the child returned home based on the child's requirement to register as a sex offender.

It is known that the current registration system does not make the community safer; it creates harm.

Youth registration can isolate youth in their communities and subject them to stigma. Under the current system, children have access to a special sex offender disposition alternative. This bill would expand access to proven treatment options.

Children are capable of remorse and true empathy for those who were harmed by their behavior. These children have served time in prison, they have completed treatment, and the registration requirements remain.

There are some youth who are in foster care and are required to figure out the registration requirements on their own. This registration requirement can last for a long time.

There is a need to recruit and support new clinicians to work in the sex offender treatment field. The provisions that expand the credentials provided in this bill are appropriate.

Registration does not prevent sex offenses, but it does harm youth required to register. The label of a sex offender required by registration goes against treatment goals of building resilience.

(Opposed) The opposition to this bill is only related to the registration pieces included in this bill. Persons who are no longer required to register would include youth age 15. The current registration system is not perfect, and there is support for a better system that provides for public safety and reduces victimizations. Unfortunately, this bill does not provide a better system and reduces the only system that currently exists.

The single best thing the Legislature could do related to sex offense is to exempt sex offender registration information from public disclosure.

(Other) This bill addresses a lot of the concerns. The goal of prosecutors is to work with defense attorneys to try and prevent adult offenders. There needs to be a way to appropriately address the commission of serious juvenile sex offenses while not having a "one size fits all" approach to adults and juveniles who commit sex offenses.

There is support for the goal of limiting the group of young people who are required to register and the time they are required to register. The bill attempts to do this, but it may not be perfect. There will be continued efforts to strike the right balance.

In 2008 the Legislature established the Sex Offender Policy Board (Board). The Board consists of board members established in statute who represent the various stakeholders in the topic. What the Board attempts to do is to hear everyone, and those questions begin and end with victims.

There are fewer than 100 sex offender treatment providers in Washington. That number needs to increase, and the reforms that are included in this bill would expand the number of treatment providers that are sorely needed as there are growing needs.

The Failure to Register changes made by this bill are consistent with the Board's recommendations in the most recent 2022 report. This bill helps align the registration requirements with proven practices.

Staff Summary of Public Testimony (Appropriations):

(In support) Over the years, it has been proven that sex offender registration does not improve public safety. This bill does not reduce sentence time or parole. The focus of this bill is to ensure that young juvenile sex offenders get therapy because they will eventually

end up back in local communities. The additional therapy will reduce recidivism, and it provides for better public safety in the future.

This bill mitigates harm caused by registration that creates more risk to youth who are required to register, such as homelessness and suicide. For example, these youth are often released as homeless because they are not able to go back home to live with their families who may be living in affordable housing or in a rental home which prohibits sex offenders.

Current state law includes a range of responses to juveniles that have committed sexual offenses, including extensive probation, the Special Sex Offender Disposition Alternative Program, school notification, and incarceration. This bill does not change these responses, but it does provide juvenile courts with additional needed resources to implement an evidence-based treatment modality. The bill also imposes critical limits on sex offender registration laws which do not protect our community.

(Opposed) It is recognized that children should be treated different, and the current sex offender registration may not be the best. However, the bill takes the sex offender registration away from the vast majority of sex offenders, but it does not replace it with something else. One has to recognize that children commit atrocities upon other people including other children.

(Other) This bill is attempting to encapsulate those juveniles who commit the most serious sexual assaults crimes. There is support for an increase of funding for therapy in the bill. However, it is recommended that the bill should be amended and expanded to include 14 year old juveniles that are required to register.

Persons Testifying (Human Services, Youth, & Early Learning): (In support) Representative Tana Senn, prime sponsor; Roxana Gomez, American Civil Liberties Union of Washington; Larry Jefferson, Washington State Office of Public Defense; Nicholas Oakley, Center for Children and Youth Justice; Joanne Smieja, Washington Voices; Michael Caldwell; Katherine Hurley, King County Department of Public Defense; Karen Pillar, TeamChild; Sonja Hardenbrook, Hardenbrook Law; Timothy Kahn, Kahn and Hansen and Associates; and Shannon Perez-Darby.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Other) Shawn Sant, Washington Association of Prosecuting Attorneys and Franklin County; Brad Meryhew and Whitney Hunt, Sex Offender Policy Board; and Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Testifying (Appropriations): (In support) Representative Tana Senn, prime sponsor; Katherine Hurley, Washington Defender Association; and Karen Pillar, TeamChild.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Other) Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying (Human Services, Youth, & Early Learning): Sarah Rafton.

Persons Signed In To Testify But Not Testifying (Appropriations): None.