

HOUSE BILL REPORT

SSB 6414

As Passed House:
March 2, 2010

Title: An act relating to improving the administration and efficiency of sex and kidnapping offender registration.

Brief Description: Improving the administration and efficiency of sex and kidnapping offender registration.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senator Regala).

Brief History:

Committee Activity:

Human Services: 2/18/10, 2/22/10 [DP];

Ways & Means: 2/27/10 [DP].

Floor Activity:

Passed House: 3/2/10, 96-0.

Brief Summary of Substitute Bill

- Specifies the time frames within which persons convicted of sex and kidnapping offenses must register with law enforcement.
- Specifies the circumstances under which adults and juveniles may be relieved of the duty to register for a sex or kidnapping offense; and provides factors that the court may consider when a petition has been filed.
- Designates the offense of Failure to Register as a Sex Offender (Failure to Register) where the offender has at least one prior conviction.
- Requires a county sheriff, upon the request of a person listed in the Washington State Patrol central registry of sex and kidnapping offenders to investigate whether a person's duty to register has ended, pursuant to statute.
- Grants immunity to appointed or elected officials, public employees, and units of local government from civil liability for removing or requesting the removal of a person from the central registry of sex and kidnapping offenders or for the failure to remove such person from the central registry.

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.

- Includes offenders convicted of Failure to Register in the group of offenders that must be supervised by the Department of Corrections.
- Increases the offense level for Failure to Register to a class B for the third conviction.
- Decreases the period of community custody to 12 months for an offender's first conviction of Failure to Register.
- Applies the provisions of this bill retroactively.

HOUSE COMMITTEE ON HUMAN SERVICES

Majority Report: Do pass. Signed by 5 members: Representatives Dickerson, Chair; Orwall, Vice Chair; Darneille, Green and O'Brien.

Minority Report: Do not pass. Signed by 3 members: Representatives Dammeier, Ranking Minority Member; Herrera and Walsh.

Staff: Linda Merelle (786-7092).

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass. Signed by 22 members: Representatives Linville, Chair; Ericks, Vice Chair; Sullivan, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Cody, Conway, Darneille, Haigh, Hinkle, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew, Priest, Ross, Schmick and Seaquist.

Staff: Alex MacBain (786-7288).

Background:

Sex Offender Policy Board.

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 assignments for the Board, pursuant to Second Substitute House Bill 2714 (2008), was to review Washington's sex offender registration and notification laws. The Board submitted a report to the Legislature in November 2009. It 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 offender's first Failure to Register as a Sex Offender (Failure to Register) offense will not bar them from petitioning for relief from registration;
- establish a statutory list of nonexclusive criteria for judges to determine whether an offender should be relieved from the duty to register;

- adopt a tiered approach to the severity of the offense of Failure to Register; the offense would be classified as a class C felony for the first two convictions and class B for the third and subsequent convictions; and
- reduce community custody for the first Failure to Register conviction to 12 months; for second and subsequent convictions the period of community custody would be 36 months.

Offenses Requiring Registration.

The definition of a "sex offense" under the sex offender registration provisions is broader than the definition under the Sentencing Reform Act. Under the registration provisions, a person must register if he or she has been convicted of a sex or kidnapping offense.

A sex offense is defined as:

- any offense defined as a sex offense under the Sentencing Reform Act (only felony offenses, including felony offenses with a finding of sexual motivation);
- Sexual Misconduct with a Minor in the second degree (gross misdemeanor);
- Communication with a Minor for Immoral Purposes (felony or gross misdemeanor);
- any federal or out-of-state conviction for an offense that under the laws of Washington would be classified as a sex offense under the offender registration provisions; or
- any gross misdemeanor under the anticipatory offenses such as attempt, solicitation or conspiracy.

A kidnapping offense is defined as follows where the victim is a minor and the offender is not the minor's parent:

- Kidnapping in the first or second degree;
- Unlawful Imprisonment;
- any anticipatory offenses for Kidnapping or Unlawful Imprisonment; or
- any federal or out-of-state conviction for an offense that under the laws of Washington would be classified as a kidnapping offense.

Time Frames for Registration.

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 time frames for the offender to provide this notice. In many cases, the time frames are not consistent. For example, an offender must notify the sheriff at the time of release from custody; within 72 hours of changing residence in the same county; within 10 days of moving to a new county; and within 48 hours of ceasing to have a fixed residence.

Relief from Duty to Register.

Offenses Committed as an Adult

For adult offenders convicted of class B sex or kidnapping offenses, the duty to register ends after 15 years if the person has no prior sex offenses and no offenses during that time period.

For class C or gross misdemeanor offenses with no prior sex offenses, the duty to register ends after 10 years if the person has no other offenses. Under the statute, the person need not petition the court for relief from the duty to register.

After 10 years in the community without a new offense, a person may petition the court for an order relieving him or her from the duty to register. The petitioner must show by clear and convincing evidence that future registration will not meet the purposes of the statute. There are no provisions which describe the factors that the court may consider in determining whether the requirement for future registration will meet the purposes of the statute.

A person may not be relieved of the duty to register if the person has been determined to be a sexually violent predator or has been convicted of a sex or kidnapping offense that was committed with forcible compulsion on or after June 8, 2000. The court may not relieve a person of the duty to register if he or she has been convicted of one aggravated offense or more than one sexually violent offense, and the offenses were committed on or after March 12, 2002.

Offenses Committed as a Juvenile

A person who committed a sex or kidnapping offense as a juvenile may petition the court to be relieved of that duty.

Age 15 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.

Under age 15 at the time of the offense: The petitioner must show by a preponderance of the evidence that he or she has not committed a new sex or kidnapping offense in the 24 months following the adjudication and continued registration will not meet the purposes of the statute.

A conviction for Failure to Register (except where the underlying offense is a kidnapping offense) is considered a sex offense and will preclude the petitioner from being relieved of the duty to register for a period of 10 years even if the offense was committed when the person was a juvenile.

Community Custody for Failure to Register Offenses.

A Failure to Register offense is a class C felony if the underlying sex offense was a felony. The maximum sentence is five years, or 60 months. The combination of confinement and community custody must not exceed the five-year statutory limit. The length of the standard range sentence may curtail the period of time that the person spends on community custody if it approaches the 60-month time period.

Summary of Bill:

Offenses Requiring Registration.

Under this bill, a conviction for Failure to Register, where the offender has at least one prior conviction for Failure to Register, is added as a sex offense.

Time Frames for Registration.

The time frames 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. The terms "business day" and "disqualifying offense" are defined.

Duration of Duty to Register.

For a person convicted of a class A felony or an "aggravated offense," or convicted in this state of any sex or kidnapping offense who has one or more prior convictions for a sex or kidnapping offense, the duty to register shall continue indefinitely unless a court order is issued relieving the offender of the duty to register. For a person required to register for a federal or out-of-state conviction, the duty to register also continues indefinitely in the absence of a court order.

For persons convicted of class B and class C offenses with no prior offenses and whose current offense is not an aggravated offense, the duty to register ends after 15 and 10 years, respectively, if the person has spent that time in the community without any disqualifying offense.

A disqualifying offense is: any offense that is a felony; a sex offense, as defined under the registration statutes; a crime against children or persons; an offense with a domestic violence designation; or permitting the commercial sexual abuse of a minor, or any commercial sex offense.

Regardless of the continuation of a duty to register, a person may petition the court to be relieved of the duty to register if the person has spent 10 years in the community without being convicted of any disqualifying offense.

Removal from Central Registry.

Upon the request of a person who is listed in the Washington State Patrol central registry of sex and kidnapping offenders, the county sheriff must investigate whether the person's duty to register has ended. If the county sheriff determines that the duty to register has ended by operation of law, the county sheriff must request that the Washington State Patrol remove the person's name from the central registry.

Appointed or elected public officials, public employees, public agencies, and units of local governments and their employees are immune from civil liability for damages for removing or requesting the removal of a person from the central registry of sex and kidnapping offenders or for the failure to remove or request removal of a person.

Relief from Registration.

Adult Offenses

As an alternative to allowing the time for registration to expire pursuant to statute, a person not precluded from being relieved from registering based upon the type of offense committed may petition the court for relief from registration if he or she has spent 10 years in the community without being convicted of a disqualifying offense during that time period. For a federal or out-of-state conviction, the person must spend 15 years in the community without committing a disqualifying offense.

The court may relieve a petitioner of the duty to register only if the petitioner shows by clear and convincing evidence that he or she is sufficiently rehabilitated to warrant removal from the central registry of sex and kidnapping offenders. The court may consider the following in making its determination:

- the nature of the offense, including the number of victims and length of the offense history;
- any subsequent criminal history;
- the petitioner's compliance with supervision requirements;
- the length of time since the charged incident(s) occurred;
- any input from community corrections officers, law enforcement, or treatment providers;
- participation in sex offender treatment;
- participation in other treatment and rehabilitative programs;
- the offender's stability in employment and housing;
- the offender's community and personal support system;
- any risk assessments or evaluations prepared by a qualified professional;
- any updated polygraph examination;
- any input from the victim; and
- any other factors deemed relevant by the court.

Juvenile Offenses

A person may petition the court to be relieved from the duty to register for offenses committed as a juvenile if at least 24 months have passed since the adjudication for the offense giving rise to the duty to register, and the petitioner has not been adjudicated of any additional sex or kidnapping offenses or the offense of Failure to Register. If the petitioner was age 15 or older at the time of the offense, he or she must show sufficient rehabilitation by clear and convincing evidence. If the offender was under the age of 15, he or she must show sufficient rehabilitation by a preponderance of the evidence. In making its determination, the court may consider the same factors that it would consider for an offender who committed his or her offenses as an adult.

Supervision by the Department of Corrections.

The Department of Corrections must supervise offenders convicted of Failure to Register whether the offense is a felony or a gross misdemeanor.

Increased Class of Offense for Third Conviction.

On the third felony conviction for Failure to Register, the offense is classified as a class B felony rather than a class C felony.

Community Custody for Failure to Register.

For the first conviction for a felony offense Failure to Register, the period of community custody is 12 months. For subsequent convictions, the period is 36 months.

The provisions of the act apply retroactively.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Human Services):

(In support) The Sex Offender Policy Board (Board) was created by the Legislature to provide a coordinated and integrated response to sex offender issues. Last year, the Board was tasked with looking at community notification and registration laws. The Board took a comprehensive approach and met at least monthly. The Board has made good progress with this bill and looks at continuing the work. This bill is the result of a collaborative effort. It streamlines dates and compliance time frames. This bill adds clarity to the sex offender statutory registration provisions.

(Opposed) None.

Staff Summary of Public Testimony (Ways & Means):

No public testimony.

Persons Testifying (Human Services): Senator Regala, prime sponsor; Kecia Rongen, Sex Offender Policy Board; and Jo Arlow, Washington Association of Sheriffs and Police Chiefs.

Persons Testifying (Ways & Means): None.

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

Persons Signed In To Testify But Not Testifying (Ways & Means): None.