

SENATE BILL REPORT

SHB 2534

As Reported by Senate Committee On:
Human Services & Corrections, February 25, 2010

Title: An act relating to establishing a program to verify the address of registered sex offenders and kidnapping offenders.

Brief Description: Establishing a program to verify the address of registered sex offenders and kidnapping offenders.

Sponsors: House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Hurst, Pearson, O'Brien, Chase, Kelley, Conway, Van De Wege, Sells, Ericks, Morrell, Kirby, Campbell, Haigh and Smith).

Brief History: Passed House: 2/11/10, 97-0.

Committee Activity: Human Services & Corrections: 2/25/10 [DPA].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, Kauffman and McAuliffe.

Staff: Shani Bauer (786-7468)

Background: 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 the ESRC's risk level or establish a different level. In some situations, the ESRC may not have had the opportunity to classify a sex offender. This may occur when the law changed after an offender's release from confinement, or when the offender has moved to Washington State from another state. In this case, the sheriff's office will perform its own classification of the offender's risk.

Sex offenders designated as risk level II or III must report in person every 90 days to the sheriff of the county in which they are registered. Failure to meet this requirement is a Class

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.

C felony. In prosecuting a failure to report, the state must prove, as an element of the crime, that the defendant has been designated a risk level II or III.

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.

A homeless offender must report to the sheriff of the county where he or she is registered on a weekly basis. The sheriff's office may require the person to list the locations where the person has stayed during the last seven days. In *State v. Flowers*, the court found that a homeless offender could not be charged with a failure to register for failure to provide a list of the locations of where he or she stayed because it is not a requirement of the statute.

In 2008 the Legislature funded the Washington Association of Sheriffs and Police Chiefs (WASPC) to enter into performance based contracts with local sheriffs for the purposes of verifying addresses for sex offenders required to register. The budget proviso specified the funding was to ensure that addresses were verified every 12 months for level I offenders, every six months for level II offenders, and every three months for level III offenders.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Amendments): Sex or kidnapping offenders required to register under Washington law are no longer required to report to law enforcement every 90 days. When funded, local governments may enter into performance based contracts with WASPC to actively verify offender addresses. The performance-based agreement must ensure that offender addresses are verified every 12 months for level I offenders, every six months for level II offenders, and every three months for level III offenders. If local law enforcement does not participate in the address verification grant program, the sheriff, police chief, or town marshal must send a verification form to the offender no less than annually, by certified mail, with return receipt requested.

WASPC must collect performance data from all participating jurisdictions and annually submit a report to the Governor and the Legislature on the effectiveness of the program. WASPC may retain up to 3 percent of funding provided for administration costs.

Unclassified offenders and kidnapping offenders must be considered level I offenders unless the local jurisdiction believes a higher classification is justified.

Instead of allowing the sheriff's office to require a homeless offender to list the locations where the person has stayed during the last seven days, a homeless offender must keep an accounting of where he or she stays during the week and give it to the sheriff upon request.

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: We believe that public safety is served with the repeal of the 90-day check-in and codification of the address verification program.

CON: We have an issue with the requirement to provide an accurate accounting. There is no clarification as to what an accounting is, what it must look like, how long an offender must retain it, and what the penalty is for noncompliance.

Persons Testifying: PRO: Joanna Arlow, Washington Association of Sheriffs & Police Chiefs.

CON: Bob Cooper, Washington Defender's Association, Washington Association of Criminal Defense Lawyers.