

FINAL BILL REPORT

HB 1088

C 268 L 95

Synopsis as Enacted

Brief Description: Clarifying the definition of "sex offense".

Sponsors: Representatives Hatfield, Ballasiotes, Kessler, Poulsen, Sheldon, Schoesler, Brumsickle, Blanton, Campbell, Pennington, Costa, Sherstad and Benton.

House Committee on Corrections
Senate Committee on Human Services & Corrections

Background:

Registration of sex offenders. Sex offenders must register within 24 hours of being released from confinement. The registration statutes define "sex offense" by incorporating that term's definition in the Sentencing Reform Act (SRA). The SRA defines "sex offense" as a felony violation of certain specified statutes. The definition also expressly includes at least some convictions for attempting to commit these offenses.

An issue has arisen over whether a conviction for an attempted offense must itself be a felony to qualify as a "sex offense." This issue arises in the context of a conviction for attempting to commit a Class C felony; such an attempt is itself only a gross misdemeanor. Some trial judges have concluded the term "sex offense" applies only to felony-level convictions, thereby excluding convictions for attempting to commit a Class C felony offense. Some judges have concluded otherwise, determining that the definition includes an attempt to commit a felony-level offense, even when the attempt is itself only a gross misdemeanor.

A concern exists that a person who is convicted of attempting to commit a Class C felony sex offense should be required to register as sex offender.

Duration of registration requirement. The seriousness of the sex offense determines how long the sex offender must remain registered. The registration requirement ends for class C felonies after 10 years and for class B felonies after 15 years. For class A felonies there is no automatic ending date. Any sex offender can be relieved from the registration requirement by proving to a judge that the offender's registration no longer meets the statutory purposes.

Other uses of "sex offense" in the SRA. The SRA uses the definition of "sex offense" for a number of purposes. For example, whether or not an offense is a sex offense changes how that offense is scored for purposes of criminal history. Being convicted of a sex offense can also disqualify a person from a number of sentencing options.

Juvenile offenses committed with sexual motivation. The SRA defines "sex offense" to include adult convictions for felonies that were specially found to have been sexually motivated. The definition does not, however, include juvenile adjudications for these same offenses.

Under the Juvenile Justice Act, a juvenile may receive a disposition longer than the standard range when the juvenile's offense includes a finding of sexual motivation. This provision of the act, however, erroneously refers to the adult statute on sexual motivation rather than to the parallel juvenile statute.

In each of these two instances, the failure to refer to the juvenile statute on sexually motivated offenses appears to have been inadvertent. A recent appellate court decision reached this same conclusion.

Summary: The bill creates a separate definition of "sex offense" for purposes of registration and clarifies the definition that applies for other purposes under the SRA.

Registration of sex offenders. For purposes of registration, the definition of "sex offense" is changed to include convictions for attempting to commit felony sex offenses, even if the attempt itself is not a felony. Accordingly, a person convicted of attempting to commit a class C felony sex offense must register as a sex offender.

Duration of registration requirement. For those non-felony attempts that qualify as sex offenses, the registration requirement automatically ends after 10 years. These offenders are also eligible to petition the court to be released from this requirement.

Other uses of "sex offense" in the SRA. For all other purposes under the SRA, the definition of "sex offense" is clarified to unambiguously apply only to offenses that are themselves felonies. Accordingly, a person convicted of an attempt that is not itself a felony has not committed a sex offense for the SRA's sentencing purposes.

Juvenile offenses committed with sexual motivation. The SRA's definition of "sex offense" is expanded to include juvenile felonies that were found to have been sexually motivated. The Juvenile Justice Act's erroneous reference to the adult statute on sexually motivated offenses is corrected to refer to the parallel juvenile statute.

Votes on Final Passage:

House	92	0	
Senate	46	0	(Senate amended)
House	88	0	(House concurred)

Effective: July 23, 1995