

# HOUSE BILL REPORT

## HB 1088

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### As Passed Legislature

**Title:** An act relating to sex offenders.

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

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

#### **Brief History:**

##### **Committee Activity:**

Corrections: 2/8/95, 2/15/95 [DP].

##### **Floor Activity:**

Passed House: 2/25/95, 92-0.

Senate Amended.

House Concurred.

Passed Legislature.

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### HOUSE COMMITTEE ON CORRECTIONS

**Majority Report:** Do pass. Signed by 10 members: Representatives Ballasiotes, Chairman; Blanton, Vice Chairman; Sherstad, Vice Chairman; Quall, Ranking Minority Member; Tokuda, Assistant Ranking Minority Member; Cole; Dickerson; Koster; Radcliff and Schoesler.

**Staff:** Rick Neidhardt (786-7841).

#### **Background:**

Registration of sex offenders. Sex offenders must register with their local sheriff within 24 hours after their release from confinement.

The registration requirement applies to any person who commits a sex offense. Although the registration statutes are not part of the Sentencing Reform Act (SRA), they use the SRA's definition of "sex offense." The SRA defines a sex offense as including both completed offenses and at least some attempted offenses.

As to completed crimes, the definition is clear that "sex offense" only applies to felonies. The definition is not clear, however, whether the attempts also have to be

felonies. Some trial court judges have held that non-felony attempts can qualify as sex offenses under current law, while others have held they do not.

This difference in interpretation comes into play when a person has been convicted of attempting to commit a class C felony sex offense. An attempt to commit that offense is itself only a gross misdemeanor.

A concern exists that the registration requirements should apply to offenders who are convicted of attempting to commit a felony sex offense even when the attempt is not itself a felony.

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 included a finding of sexual motivation. 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 of Bill:** 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 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.

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.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** This bill closes a loophole for attempted class C felony sex offenses. The bill will apply only in a handful of cases. It will help protect the public. The definition of "sex offense" should not necessarily be the same for purposes of sex offender registration as for purposes of the Sentencing Reform Act. The Sentencing Reform Act applies only to felonies, but there is no reason why the registration statutes should be limited only to felonies. A person who attempts a sex offense is just as much a threat to the community as is a person who completes the offense.

**Testimony Against:** None.

**Testified:** Tom McBride, Washington Association of Prosecuting Attorneys (pro); and Stew Menefee and Joseph Wheeler Jr., Grays Harbor County Prosecutor's Office (pro).