

HOUSE BILL REPORT

SSB 6274

As Passed House - Amended:

March 1, 1996

Title: An act relating to supervision of sex offenders.

Brief Description: Providing for increased supervision of sex offenders for up to the entire maximum term of the sentence.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Long, Hargrove, Roach, Quigley, Wood, Smith, Schow, Winsley, Oke, A. Anderson, Rasmussen, Haugen and McAuliffe).

Brief History:

Committee Activity:

Corrections: 2/20/96, 2/23/96 [DPA];

Appropriations: 2/26/96 [DPA(APP w/o COR)p].

Floor Activity:

Passed House - Amended: 3/1/96, 97-0.

HOUSE COMMITTEE ON CORRECTIONS

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

Staff: Rick Neidhardt (786-7841).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendments by Committee on Corrections. Signed by 29 members: Representatives Huff, Chairman; Clements, Vice Chairman; H. Sommers, Ranking Minority Member; Valle, Assistant Ranking Minority Member; Basich; Brumsickle; Carlson; Chappell; Cooke; Crouse; Dellwo; Dyer; Foreman; Grant; Hickel; Jacobsen; Kessler; Lambert; Linville; McMorris; Poulsen; Reams; Rust; Sehlin; Sheahan; Silver; Smith; Talcott and Wolfe.

Staff: Dave Johnson (786-7154).

Background:

Current law requires a sentencing judge to impose mandatory periods of supervision for sex offenders. The duration and nature of this supervision depends on whether or not the offender is being given a special sex offender sentencing alternative (SSOSA). A SSOSA sentence involves a suspended sentence that allows the offender to receive treatment in the community.

1. Supervision of SSOSA offenders.

As part of a SSOSA sentence, the judge must impose community supervision for the duration of three years, or the length of the suspended sentence, whichever is longer.

An offender on community supervision must obey the directions of DOC, including reporting as directed to a community corrections officer (CCO), remaining within prescribed geographical boundaries, notifying the CCO of any changes in address or employment, and paying a supervision fee assessment. Although this statute would allow DOC to impose additional conditions beyond those just listed, DOC does not in fact do so, having been advised that doing so could violate an offender's constitutional rights in regard to double jeopardy.

2. Supervision of non-SSOSA sex offenders.

For non-SSOSA sentences, a sentencing judge must impose the form of supervision known as community placement. If the crime was committed after July 1, 1990, the duration of the community placement is to be for two years, or the length of earned early release time, whichever is longer.

Community placement has two components, community custody and post-release supervision. If an offender is released early from confinement due to earning early release, then community placement begins with a period of community custody, which lasts for the period of earned early release. Any time remaining after that point is served as post-release supervision. The period of community custody involves more significant restrictions on the offender. Most importantly, during this period DOC retains significant control over the offender's activities, DOC administratively addresses any violations of DOC's rules, and DOC can impose punishment up to returning the offender to prison for the duration of the judge's imposed sentence. Post-release supervision is in essence the same as community supervision.

3. Public notification about sex offenders.

a. In general. Public agencies are authorized to inform the public about sex offenders when doing so is necessary for public protection. This notification usually is left to the discretion of local law enforcement agencies. If an agency decides to notify the public, the agency is required to make a good faith effort to give the public at least 14 days notice before the offender's release.

In order for local law enforcement agencies to have the necessary information to make this decision, current law requires a number of state agencies to give advance notice to local law enforcement agencies prior to releasing sex offenders from confinement. For example, DOC and the Juvenile Rehabilitation Administration are each required to give at least 30 days' advance notice to a local law enforcement agency before releasing a sex offender.

b. Limit on authority to notify the public. It has been argued that current law limits a local law enforcement agency's notification authority to cases where the agency has received information on the offender from one of these statutorily mandated sources of information (e.g., the Department of Corrections). Under this argument, a local law enforcement agency could not notify the public if it learned reliable information from any other source.

c. Limits on authority for notification regarding SSOSA and SSODA offenders. Another potential limitation on notification of the public is statutory language that refers to sex offenders who are being "released." Some sex offenders, however, are not "released" from confinement, because they have not served any confinement time. Specifically, adult sex offenders who are given a special sex offender sentencing alternative (SSOSA), and juvenile sex offenders who receive the similar special sex offender disposition alternative (SSODA), are given suspended sentences and do not necessarily spend any time in confinement. When a judge imposes a SSOSA or SSODA sentence, the judge has determined that the offender can be treated in the community without endangering public safety. Sometimes, however, one of these offenders is deemed by local law enforcement agencies to be dangerous enough to warrant public notification.

In at least one case, a court has construed the "released" language to mean that community notification is not authorized for a person who has been given a SSODA disposition.

d. Limitations on information regarding SSODA offenders. Although local law enforcement agencies receive information from many different state agencies regarding sex offenders, they do not currently receive information on SSODA offenders from the juvenile courts.

4. Sex offender registration.

a. General background. A sex offender must register with the county sheriff within 24 hours of being released from confinement.

The registration statute's definition of "sex offense" includes all felony sex offenses (such as rape, molestation, and incest) covered under the Sentencing Reform Act.

Until last year, the registration requirement applied only to felony sex offenses. Last year, the Legislature passed two bills extending the requirement to particular gross misdemeanors. The gross misdemeanors are (1) attempts to commit a Class C felony sex offense, and (2) communication with a minor for immoral purposes.

b. Duration of registration requirement. Unless the period of registration is shortened by court order,

- (1) a person convicted of a Class A felony sex offense must be registered for life;
- (2) a person convicted of a Class B felony sex offense must be registered for 15 years following release from confinement; and
- (3) a person convicted of a Class C felony sex offense, or any gross misdemeanor sex offense that is subject to registration, must be registered for 10 years following release from confinement.

c. Changes in address. At the time of registration, the sex offender must inform the county sheriff of the address where he or she will be living. During the registration period, any sex offender who moves to another address in the same county must inform the sheriff of the change in address within 10 days after moving. During the registration period, any sex offender who moves to a new county must re-register with the new county's sheriff within 10 days after moving.

d. Sexual misconduct with a minor in the second degree. This offense is a gross misdemeanor and involves sexual contact with a 16-year-old or 17-year-old when the perpetrator is more than five years older than the victim, is in a significant relationship to the victim, and abuses a supervisory position in order to have the sexual contact. "Significant relationship" encompasses such positions as teacher, coach, counselor, or supervisor.

5. Release of offenders pending sentencing or appeal.

One governing statute provides that when a criminal defendant is convicted of a felony and is awaiting sentencing, the court must detain the defendant pending sentencing unless the court finds by clear, cogent, and convincing evidence that the defendant is not likely to flee or pose a danger to a person or the community.

When the defendant has been sentenced and files an appeal, another governing statute provides that the court may not stay execution of the sentence if the court determines by a preponderance of the evidence that

- the defendant is likely to flee or pose a danger to the safety of another person or the community;
- the delay will diminish the deterrent effect of the punishment;
- the stay will cause unreasonable trauma to the victim; or
- the defendant has not paid his or her financial obligations.

Summary of Bill:

1. Supervision of SSOSA offenders.

Offenders who receive suspended SSOSA sentences are placed on community custody rather than community supervision. The duration of this period is not changed.

SSOSA offenders can be required to comply with appropriate conditions imposed by DOC, such as not having contact with specific individuals or classes of individuals. No other indication is given as to what constitutes appropriate conditions. Conditions may be imposed before or during the term of community custody.

DOC administratively addresses violations of the conditions of community custody. When DOC finds a violation occurred, DOC can either impose up to 60 days in a county jail for each violation, or may recommend that the court revoke the suspended sentence. DOC must notify the court whenever it imposes a sanction on a SSOSA offender.

2. Supervision of non-SSOSA sex offenders.

Non-SSOSA sex offenders are placed on community custody (instead of community placement) for up to three years (instead of two years) or the period of earned early release, whichever is longer.

DOC may impose appropriate conditions on these sex offenders, including prohibiting contact with individuals or classes of individuals. No other indication is given as to what constitutes appropriate conditions. Conditions may be imposed before or during the term of community custody.

DOC administratively addresses violations of any conditions during community custody. When DOC finds a violation occurred, DOC can impose various penalties. If the maximum time of confinement has not yet expired, DOC can impose a penalty up to and including returning the offender to prison until the expiration of this maximum time of confinement. If the maximum time of confinement has already

expired, DOC can impose up to 60 days confinement in a county jail for each violation.

The court may increase or add to conditions of community custody at any time before community custody is completed, if it finds public safety would be enhanced. The conditions may not be extended any longer than the statutory maximum sentence (e.g., up to life for Class A felonies). Violations during this extended period of time beyond community custody time are treated as contempt of court, which can trigger a fine of up to \$5,000 or confinement of up to one year in a county jail.

Provision is also made for allocating financial responsibility between DOC and local jurisdictions with respect to the costs of incarcerating offenders who have violated the conditions of their community custody.

3. Public notification about sex offenders.

A number of possible limitations on public notification about sex offenders are removed, as indicated in the following paragraphs.

Clarification is provided that public notification may occur even when the local law enforcement agency did not receive its information from a public agency that was required by law to report information to the local law enforcement agency.

The authority is explicitly expanded to include not only sex offenders who are being released from confinement, but also SSOSA and SSODA offenders who are allowed to remain in the community as part of their original sentences. When a local law enforcement agency determines such an offender merits public notification, the agency shall make a good faith effort to notify the public within 30 days after the offender is sentenced.

When a juvenile court imposes a SSODA disposition on a juvenile offender, the court shall send written notice of the disposition, at the earliest possible date and no later than five days after disposition, to the local law enforcement agencies in the area where the juvenile will reside.

Juvenile courts are authorized to release information about a sex offender when the information is necessary and relevant to public safety.

4. Sex offender registration.

During the registration period, any sex offender who moves to another address in the same county must notify the sheriff of the change in address at least 14 days before moving. Any sex offender who moves to a new county must notify the new county's sheriff of the change in address at least 14 days before moving, and must re-register

with the new county's sheriff within 24 hours after moving. An affirmative defense is created to allow a sex offender to show that he or she did not know the new address at least 14 days prior to moving.

The sex offender registration requirements are extended to include the gross misdemeanor crime of sexual misconduct with a minor in the second degree. For this crime, the offender must remain registered for 10 years unless the time period is shortened by the judge.

5. Release of sex offenders pending sentencing or appeal.

A defendant who is convicted of one of several offenses must be detained following conviction while pending sentencing. In addition, if the defendant files an appeal of one of those convictions, the court may not stay execution of the judgment. The offenses are as follows:

- rape in the first or second degree;
- rape of a child in the first, second, or third degree;
- child molestation in the first, second, or third degree;
- sexual misconduct with a minor in the first or second degree;
- indecent liberties;
- incest;
- luring;
- any class A or B felony that is a sexually motivated offense;
- a felony conviction for communication with a minor for immoral purposes; and
- any offense that is an attempt to commit one of the above listed offenses.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The provisions relating to public notification about sex offenders are the subject of an emergency clause and go into effect immediately. The rest of the bill goes into effect ninety days after adjournment of session in which bill was passed. However, the bill is null and void if not funded in the budget.

Testimony For: (Corrections) (on unamended bill) This bill was drafted in response to a recent gathering of experts on sex offender supervision. A need exists at the supervision stage for better consideration of offender risk. The third year after release is when most re-offenses occur. We need more tools for supervising sex offenders. DOC needs to be able to impose restrictions after sentencing based on information that arises during incarceration. It is important for courts to have power to extend conditions beyond the initially imposed period of supervision. DOC needs

greater flexibility. Sex offenders on the street can be dangerous. The bill encourages quick resolution of violations.

(Appropriations) None.

Testimony Against: (Corrections) (on unamended bill) SSOSA sanctions should not disrupt an offender's treatment plans. Courts need to know about DOC sanctions on SSOSA offenders because the courts have the ultimate responsibility for deciding whether to revoke SSOSA sentences. Local jurisdictions will no longer have control over who is placed in local jails nor for how long.

(Appropriations) None.

Testified: (Corrections) (on unamended bill) Senator Jeanine Long, prime sponsor; Mike Patrick, Washington State Council of Police Officers (pro); Tom McBride, Washington Association of Prosecuting Attorneys (with concern); Dave Savage, Department of Corrections (pro); and Kurt Sharar, Washington State Association of Counties (with concern).

(Appropriations) None.