

SENATE BILL REPORT

2SSB 6172

As Passed Senate, February 9, 2006

Title: An act relating to increasing penalties for the crimes of possession of depictions of a minor engaged in sexually explicit conduct.

Brief Description: Increasing penalties for specified sex offenses.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators McAuliffe, Hargrove, Thibaudeau, Shin, Weinstein, Rockefeller, Keiser, Regala, Eide, Rasmussen and Benton).

Brief History:

Committee Activity: Human Services & Corrections: 1/19/06, 2/2/06 [DPS-WM].

Ways & Means: ; 2/6/06, 2/7/06 [DP2S].

Passed Senate: 2/9/06, 45-3.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6172 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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

Staff: Kiki Keizer (786-7430)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6172 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Doumit, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Fairley, Parlette, Pflug, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Thibaudeau.

Staff: Elaine Deschamps (786-7441)

Background: Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct

A person is guilty of Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct if he or she knowingly possesses visual or printed matter depicting a minor engaged in sexually explicit conduct. The crime is an "unranked" class C felony, punishable by zero to 12 months in jail. Persons convicted of knowingly possessing visual or printed matter depicting a minor engaged in sexually explicit conduct are not eligible for the Special Sex Offender Sentencing Alternative (SSOSA). A sentence under the SSOSA consists of a suspended standard range sentence, incarceration for up to 12 months, treatment for up to five years, and a term of community custody.

The Consequences of Classifying a Crime as a "Sex Offense" for Sentencing Purposes

Washington law identifies certain crimes as sex offenses for purposes of sentencing. The Legislature has established a whole series of consequences that are associated with being sentenced as a sex offender. For example, a person sentenced as a sex offender is not eligible for certain sentencing alternatives, such as the First Time Offender Waiver or the Drug Offender Sentencing Alternative. Once incarcerated, he or she is not eligible for as much earned early release time as other offenders. After release, he or she must comply with the state's registration requirements and is subject to a mandatory term of community custody and mandatory Department of Corrections supervision in the community. If sentenced for a subsequent offense, the seriousness level of his or her prior sex offense will be tripled for purposes of sentencing.

In 1990, the Legislature enacted the Community Protection Act, which created one of the first sex offender registration laws in the country. A person convicted of a sex or kidnapping offense must register with the county sheriff of the county in which he or she lives. The person subject to the registration requirements must provide such information as his or her name, address, date and place of birth, place of employment, crime of conviction, date and place of conviction, aliases, Social Security number, photograph, and fingerprints. He or she must also notify the county sheriff if he or she is enrolled in public or private school or in an institution of higher education.

Mandatory Registration

A person with a fixed residence need not go to the county sheriff's office to check in or to re-register. However, a homeless offender subject to registration requirements must check in with the county sheriff once a week.

If the crime requiring registration was a felony, failure to meet the registration requirements is a class C felony. The seriousness of this offense is not ranked for purposes of sentencing and may include up to 12 months in jail, a fine of up to \$10,000, or both. If the crime requiring registration was a misdemeanor or a gross misdemeanor, failure to register is a gross misdemeanor, punishable by up to 12 months in jail, a fine of \$5,000, or both.

Laws Requiring Background Checks on Persons Seeking Employment with Vulnerable Populations

Persons seeking employment in Washington schools, child care centers, or facilities designed to house the elderly or persons with developmental disabilities are subject to criminal background checks. Prospective foster parents are also required to undergo criminal background checks. When the criminal background check reveals certain criminal histories, Washington law precludes these persons from licensure or employment in these fields.

Laws that Penalize Facilitating or Concealing the Crimes of Another

In Washington, a person may be charged as an accomplice to a crime if he or she "with full knowledge that it will promote or facilitate the commission of a crime, . . . aids or agrees to aid such other person in planning or committing it." A person may be charged with rendering criminal assistance if he or she helps a person known to have committed an offense to avoid apprehension, with the intent to prevent or hinder apprehension or prosecution.

Electronic Monitoring

A court is authorized to impose electronic monitoring as part of an offender's sentence. The Department of Corrections (DOC) may also impose electronic monitoring as part of an offender's terms of supervision, as long as the monitoring does not contravene one of the conditions imposed by the court.

Tampering with an electronic monitoring device could be a violation of an offender's terms of supervision. It could be considered absconding from supervision.

Recent Washington Task Forces, Studies, Work Groups, and Pilot Programs

In 2005, the Legislature established a task force to review a number of issues in connection with sex offender placement in communities and community notification and safety. The task force held five public meetings and issued a report to the Legislature and the Governor in December 2005. The task force's recommendations covered such areas as the challenge of managing homeless or transient offenders, the need for services to victims and for effective sex offender treatment, and the possibility of restricting where convicted sex offenders may live.

In 2004, the Legislature directed the Washington State Institute for Public Policy (WSIPP) to conduct a comprehensive analysis and evaluation of the impact and effectiveness of sex offender sentencing policies. In response to this directive, the WSIPP issued a series of reports in the fall of 2005.

In 2003, the Legislature directed the Washington Association of Sheriffs and Police Chiefs (WASPC), along with the Department of Corrections (DOC) and the Department of Social and Health Services (DSHS), to conduct a pilot program, using the global positioning system (GPS) to electronically monitor a group of offenders. The pilot program was designed, in part, to examine the feasibility of electronically monitoring homeless or transient Level III sex offenders and kidnapping offenders.

In 2004, the WASPC, the DOC, and the DSHS issued a report to the Legislature, based upon the findings and conclusions that those agencies reached as a result of the pilot project. Among other things, the report stated that the technology used in the pilot project proved problematic when used to track homeless populations. Limited battery life and lack of access to phone lines interfered with homeless persons' abilities to use the monitoring devices effectively. In addition, tall buildings, bad weather, dense vegetation, and other obstacles sometimes interfered with the electronic monitoring devices' connections to the satellites necessary to transmit the subjects' whereabouts.

The 2004 report also stated that electronic monitoring does not prevent offenders from committing new crimes and that tracking offenders' whereabouts requires a significant investment of staff time. In 2003 and 2005, the Legislature directed agencies, such as the Office of the Superintendent of Public Instruction (OSPI) and the DSHS's Juvenile Rehabilitation Administration (JRA) to form work groups to address the safe transition of juvenile sex offenders back to schools after their term of confinement.

The National Sex Offender Public Registry

The WASPC currently sends information on registered sex offenders who reside in Washington for inclusion in the National Sex Offender Public Registry operated by the United States Department of Justice.

Summary of Bill: Possession of depictions of a minor engaged in sexually explicit conduct is raised from a class C to a class B felony. It is defined as a "sex offense" for sentencing purposes and ranked at a seriousness level VI for sentencing purposes. It is included as one of the crimes for which the SSOSA could be available if other eligibility criteria are met. Voyeurism is ranked at a seriousness level II for sentencing purposes. Communication with a minor for immoral purposes includes electronic communications.

Appropriation: None.

Fiscal Note: Requested for substitute.

Committee/Commission/Task Force Created: Yes.

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

Testimony For (Human Services & Corrections): It makes sense to study electronic monitoring to determine how it can be most effective and most cost-effective.

The penalties for failure to register should reflect that it is a serious offense and needs to be taken seriously.

Testimony Against (Human Services & Corrections): It's not a good idea to punish people with a criminal history who need stability, treatment, and money for paying off their legal financial obligations from seeking employment. It's important in this context, also, to differentiate between offenders whose victims were children and those whose were not.

Who Testified (Human Services & Corrections): PRO: Tom McBride, Washington Association of Prosecuting Attorneys; Ted Vosk, Washington Association of Criminal Defense Attorneys.

CON: Amy Muth, Washington Defender Association.

Testimony For (Ways & Means): None.

Testimony Against (Ways & Means): None.

Who Testified (Ways & Means): No one.

House Amendment(s): A reference to classifying possession of depictions of a minor engaged in sexually explicit conduct as a "sex offense" for purposes of the Special Sex Offender Sentence Alternative is removed.