

# SENATE BILL REPORT

## ESHB 1394

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As of March 30, 2023

**Title:** An act relating to creating a developmentally appropriate response to youth who commit sexual offenses.

**Brief Description:** Creating a developmentally appropriate response to youth who commit sexual offenses.

**Sponsors:** House Committee on Human Services, Youth, & Early Learning (originally sponsored by Representatives Senn, Goodman, Simmons, Lekanoff and Doglio).

**Brief History:** Passed House: 3/3/23, 60-38.

**Committee Activity:** Human Services: 3/14/23, 3/21/23 [DP-WM, w/oRec].

Ways & Means: 3/30/23.

### Brief Summary of Bill

- Places limits on when a juvenile is required to register in the sex offender registry based on committing a sex offense.
- Reduces the time period a person adjudicated in juvenile court must register as a sex offender to two or three years.
- Reduces the classification of failing to register as a sex offender to a gross misdemeanor for individuals who are required to register based on the commission of a juvenile sex offense.

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### SENATE COMMITTEE ON HUMAN SERVICES

**Majority Report:** Do pass and be referred to Committee on Ways & Means.

Signed by Senators Wilson, C., Chair; Kauffman, Vice Chair; Frame, Nguyen, Warnick and Wilson, J..

**Minority Report:** That it be referred without recommendation.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Signed by Senator Boehnke, Ranking Member.

**Staff:** Delika Steele (786-7486)

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Sarian Scott (786-7729)

**Background:** Sex Offense Registration. Any adult or juvenile residing in Washington who has been found to have committed any sex offense or kidnapping offense must register with the county sheriff for the county of the person's residence, or the place where the person works or attends school.

There are a number of sex offenses requiring registration which include, but are not limited to, any federal or out of state conviction that would be a felony classified as a sex offense, any felony with a finding of sexual motivation, and a felony attempt, solicitation, or conspiracy to commit certain class A or B felonies.

Any person required to register based on a sex offense must give notice to the county sheriff within three business days prior to arriving at a school, prior to starting work at a school, or after any termination of enrollment or employment at a school.

Any person required to register based on a sex offense must provide the following information:

- name and aliases;
- residential address;
- date and place of birth;
- place of employment;
- crime for which convicted;
- date and place of conviction;
- Social Security number;
- photograph; and
- fingerprints.

Persons required to register based on a sex offense must provide additional information to the county sheriff when planning to travel outside the country. They must also notify the county sheriff if they intend to move or cease to have a fixed address.

Risk levels for individuals required to register based on committing a sex offense are determined by the law enforcement agency where the sex offender resides. Individuals classified as level 1 are considered a low-risk to reoffend. Individuals classified as level 2 are considered a moderate risk to reoffend. Individuals classified as level 3 are considered a high risk to reoffend.

The Washington State Patrol (WSP) maintains a central registry of individuals required to register based on a sex offense. County sheriffs must forward registration information, including the offender's risk level and notice of any address changes to the WSP for inclusion in the registry. Information about individuals classified as level 2 and 3 are published on a public website.

Failure to Register. If a person fails to register or fails to comply with any of the sex offense registration requirements, the person commits the crime of failure to register. The first failure to register conviction for an underlying felony is a class C felony. If someone is convicted of the felony of failure to register on two or more prior occasions, the offense is a class B felony. If the underlying offense requiring registration is a gross misdemeanor, the offense of failure to register is also a gross misdemeanor.

Length of Sex Offender Registration. For a person required to register as a sex offender for a class A conviction or if the person has one or more prior convictions requiring registration, the registration requirement continues indefinitely.

Someone required to register for a class B felony, that does not have a previous conviction requiring registration, must register for 15 years following the last date of release from confinement, if any.

For a person required to register for a class C felony or gross misdemeanor, that does not have a previous conviction requiring registration, the registration requirement ends ten years after the last date of release from confinement, if any.

Relief From Registration Based on Juvenile Offense. If a person has a duty to register for a sex offense committed when the person was a juvenile, when the person has not been determined to be a sexually violent predator, the person may petition the superior court to be relieved from the duty to register as follows:

- for class A offenses committed when the person was age 15 or older, if at least five years have passed since the adjudication and completion of any confinement, the petitioner has not been adjudicated or convicted of failure to register and the petitioner shows by a preponderance of the evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry; and
- for all other offenses, if at least two years have passed since the adjudication and completion of any confinement, the petitioner has not been adjudicated or convicted of failure to register, and the petitioner shows by a preponderance of the evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry.

Juvenile Court Jurisdiction. In Washington, juvenile courts are a division of the state's superior court system and have jurisdiction over persons under age 18 who are alleged to have committed a crime. However, there are several exceptions to that jurisdiction where state law requires youth to be tried in adult courts. There are three situations where adult criminal courts may have jurisdiction over persons under age 18:

- the juvenile court declines jurisdiction to adult court following a discretionary decline hearing;
- the juvenile court holds a required decline hearing because the information alleges an escape and the juvenile is serving a minimum juvenile sentence to age 21; and
- a juvenile commits certain offenses at age 16 or 17.

A juvenile court can initiate a decline hearing on its own motion or any party may file a motion requesting the court transfer the juvenile to adult court when:

- the respondent is at least age 15 and is charged with a serious violent offense;
- the respondent is age 14 or younger and is charged with murder in the first or second degree; or
- the respondent is any age and is charged with custodial assault and, at the time the respondent is charged, is already serving a minimum juvenile sentence to age 21.

The juvenile court has jurisdiction over the disposition of any remaining charges in any case in which the juvenile is found not guilty in the adult criminal court of the charge or charges for which they were transferred, or is convicted in the adult criminal court of an offense that is not also an offense over which the adult court has exclusive jurisdiction.

Juvenile Parole. The Department of Children, Youth, and Families (DCYF) secretary may require persons to comply with a period of parole following the person's release from a juvenile rehabilitation facility, which could last up to 18 months. However, for juveniles sentenced for rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, or indecent liberties with forcible compulsion the period of parole must be two to three years. Parole is also mandatory for persons who receive a juvenile sentence for theft of a motor vehicle, possession of a stolen motor vehicle, or taking a motor vehicle without permission.

Juvenile parole involves DCYF staff, in collaboration with community-based services, providing youth and their families with reentry support and helping eliminate barriers to accessing essential services. This includes resources such as employment, housing, education, and treatment, as well as individually tailored supervision to enhance a young person's compliance with parole conditions and follow through on reentry plans they developed while in residential care.

**Summary of Bill:** Juvenile sex offender registration is limited to juveniles—where the offense was committed while under age 18 and not sentenced for an offense in adult court due to decline of juvenile court jurisdiction—who:

- committed a class A or class B sex offense when the person was age 16 or 17 or a rape in the second degree offense at age 14 or 15 and did not receive a special sex offender disposition alternative;
- committed a rape in the first degree offense when the person was age 14 or 15;
- committed a sex offense and, on the offense date, the juvenile had a prior conviction for a sex offense or had a deferred disposition for a sex offense;

- has a special sex offender disposition alternative revoked for a class A or class B sex offense that was committed when the person was age 16 or 17 or a rape in the second degree offense when the person was age 14 or 15;
- following a court finding based on clear, cogent, and convincing evidence that the person is age 14 to 17 and was adjudicated of multiple sex offenses involving two or more victims, presents a serious threat to public safety following release, and registration is required to lessen that threat;
- has an out-of-state, tribal, or federal conviction for a sex offense; or
- committed a kidnapping offense.

The classification of failing to register as a sex offender is reduced to from a felony to a gross misdemeanor if the person has a duty to register for an offense which occurred when the person was under age 18 and the person was not sentenced for the offense in adult court due to decline of juvenile court jurisdiction.

For juveniles who committed an offense while under age 18 and who were not sentenced in adult court due to decline of juvenile court jurisdiction:

- the time period for registering as a sex offender is reduced to two years, except for persons age 15 to 17 required to register for a class A offense, who must register for three years; and
- the requirement to register as a sex offender is extinguished for juveniles who would no longer be required to register under the terms of the bill on November 1, 2023.

For those juveniles who are still required to register under the terms of the bill, the legal obligation extinguishes two or three years after the last date of release from confinement.

Sheriffs must remove all persons from the sex offender registry who no longer have an obligation to register.

WSP must notify registered sex offenders of the extinguishing of the legal obligation to register created by the bill.

DCYF must develop and implement a grant program that allows defense attorneys and counties to apply for funding for sex offender evaluation and treatment programs.

Any person released from a DCYF juvenile rehabilitation facility who was sentenced as a juvenile for a sex offense must receive two to three years of parole, rather than just those who received a sentence as a juvenile for rape in the first or second degree, rape of a Child in the first or second degree, child molestation in the first degree, or indecent liberties with forcible compulsion.

DCYF must provide funding to counties for process mapping, site assessment, and training for sex offender treatment modalities.

The definition of certified affiliate sex offender treatment provider is expanded to include a licensed mental health counselor associate, licensed independent clinical social worker associate, licensed advanced social worker associate, and licensed marriage and family therapist associate.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony (Human Services):** PRO: This about breaking the cycle of sexual abuse and assault. Evidence shows that registration does not increase public safety and often leads to youth becoming homeless and separated from their families, sex trafficking, suicide, and other negative outcomes. Registries don't do what we hoped they'd do and result in isolation rather than accountability. Recidivism rates for these types of offenses is low and research shows that the risk drops off when a person reaches the late teens and early 20s. Registration does not lower the risk. Most survivors want offenders to admit what they did and never do it again. Registration does not meet these needs and often requires survivors to stay engaged with the system. This bill strikes a good balance between prioritizing registration for the violent and older chronic offenders while allowing practitioners and judges to consider individual circumstances and risk level.

This bill is a critical step in protecting people from further harm and is the smart and right approach. The expansion of parole services will lead to actual results and create an opportunity for knowing what is going on in the lives of these youths. Registration shows where youths are, parole shows how youths are actually doing.

The bill will allow for more pleas for rape charges, more accurate pleas overall and will save time. Accurate pleas can be an important step in a survivor's healing journey; survivors can see perpetrators admit to and be appropriately charged for their actions. Currently, offenders are often unwilling to take pleas for sex offenses because they require registration. Families often avoid reporting to avoid registration and the stigma. Registration is harmful to the individuals, their victims, and their families. End registration so that we can heal families.

The bill does not reduce sentencing but instead provides more treatment options. It expands the type of people who can offer treatment and allows for grant work with counties so that more treatment options are available. The focus should be on getting these youths on a better path. We do not need to paint a lifelong scarlet letter on these youths so that they can never move on, never get a job, or find a home. This is an opportunity to ensure accountability while limiting the barriers to successful transformation. Furthermore, this bill

came out of the house with bipartisan support and is a culmination of a report submitted to the Legislature on this issue.

CON: The treatment provisions of the bill should be supported. However, there are a number of public safety concerns with this bill. Juveniles have trouble with housing because they committed a sex offense not because of the registry, and this bill doesn't change that. The single most effective thing the Legislature could do to decrease unintended consequences is to exempt the sex offender registry from public records. This would prevent people from using this information to prey on juveniles, and has been unanimously recommended by the sex offender policy board on three different occasions.

OTHER: Juveniles account for about 40% of all sex offenses and their victims are often minors themselves. It is important to remember that it is no less traumatic for victims that the person who caused them harm is also a young person. It is vital to recognize that each sex abuse case and situation is unique and should be responded to accordingly. Age is an arbitrary way to determine risk and need for registration, and offense charges do not always equate to the risk. Some juveniles who offend are at higher risk and do require more intensive interventions. There should be a more nuanced and flexible response rather than broad mandates.

**Persons Testifying (Human Services):** PRO: Representative Tana Senn, Prime Sponsor; Dr. Michael Caldwell, University of Wisconsin-Madison; Laura Merchant; Susan Marks; Shannon Perez-Darby; Katherine Hurley, Washington Defender Association; Joanne Smieja, WA Voices; Larry Jefferson, Washington State Office of Public Defense; Sonja Hardenbrook, Hardenbrook Law; Karen Pillar, TeamChild; Jimmy Hung, King County Prosecuting Attorney's Office; Ben Santos, King County Prosecuting Attorney's Office; Shawn Sant, Franklin County Prosecutor; Nicholas Oakley, Center for Children & Youth Justice (CCYJ); Jon Tunheim, Thurston County Prosecutor.

CON: James McMahan, WA Assoc Sheriffs & Police Chiefs.

OTHER: Megan Allen, King County Sexual Assault Resource Center.

**Persons Signed In To Testify But Not Testifying (Human Services):** No one.

**Staff Summary of Public Testimony (Ways & Means):** PRO: Strong support of this bill. It provides juvenile courts with additional needed resources. It also expands parole. It is time to enhance evidence based care. It is time to enhance evidence based treatment options for juveniles accused of sexual offenses. This bill will help create and support a sustainable system. Trains providers in evidence based practices such as problematic sexual behavior and cognitive behavioral therapy. It is time to get rid of blanket sex offender registration only maintain registration for the highest risk sexual offenders. Notification does not improve victim safety. Based on research it leads to negative outcomes. There are an unprecedented amount of cases. This bill is a step in the right direction.

CON: Not comfortable with this policy. We do like section 2. Juveniles are different, but we think someone who commits rape in the 3rd degree should have to register. We think not having that requirement is a problem. Section 10 requires a thorough review and gives only one month to do that, not realistic.

OTHER: Our work, in part, led to this bill. We support this bill. There is consensus that this is an appropriate approach for juveniles charged with sexual misconduct. We are a collaborative board, we listen to all. This is a common sense and nuanced approach.

**Persons Testifying (Ways & Means):** PRO: Katie Hurley, King County Department of Public Defense; Laura Merchant; Jimmy Hung, King County Prosecuting Attorney's Office; Shawn Sant, Franklin County Prosecutor.

CON: James McMahan, WA Assoc Sheriffs & Police Chiefs.

OTHER: Brad Meryhew, Chair, Sex Offender Policy Board.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.