

# SENATE BILL REPORT

## SB 5543

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As of February 7, 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:** Senators Frame, Wilson, C., Lovelett, Nguyen and Wellman.

**Brief History:**

**Committee Activity:** Human Services: 2/07/23.

**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 years, and allows prosecutors to request an extension up to an additional two years.
- Reduces the classification of failing to register as a sex offender to a gross misdemeanor for individuals who committed a juvenile sex offense.

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### SENATE COMMITTEE ON HUMAN SERVICES

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

**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.

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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.*

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 at 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 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 as 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 the juvenile was 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.

**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, and did not receive a special sex offender disposition alternative;
- 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;
- has an out-of-state, tribal, or federal conviction; or
- committed a kidnapping offense.

The classification of failing to register as a sex offender is reduced 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 for an offense in adult court due to decline of juvenile court jurisdiction:

- the time period for registering as a sex offender is reduced to two years, but a prosecutor may request an extension for up to an additional two years; and
- the requirement to register as a sex offender is extinguished for those who would no longer be required to register under the terms of this Act on November 1, 2023.

For those juveniles still required to register under the terms of this act, the legal obligation extinguishes two 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.

The Department of Children, Youth, and Families (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.

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

The definitions of certified sex offender treatment provider and certified affiliate sex offender treatment provider are 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:** PRO: This bill shifts away from the overuse of the sex offender registry, which is known to not work, and instead turns towards treatment. Rates of recidivism among youth adjudicated for sex crimes are low. 97% of youth who commit these types of crimes do not reoffend. Many children who engage in this behavior are often doing what was done to them, and requiring them to register does not increase public safety but instead disrupts the lives of these children and their families. Families with juveniles who are required to register struggle to find housing, and must often choose between the entire family being unhoused or just the juvenile being unhoused. Many juveniles on the offender list are unhoused because they have very limited housing options and also have difficulty accessing schooling and finding and keeping a job.

Registered children are 4 times more likely to attempt suicide, 5 times more likely to be approached by an adult for sex in the past year, and 2 times more likely to have been physically and sexually assaulted in the past year. Children subject to registration are at increased risk for sexual assault victimization and are susceptible to being trapped in a cycle of addiction, homelessness, and incarceration. Without exception, these policies fail to improve public safety in any way and do not achieve the intended goals of preventing recidivism and first time sex crimes. These policies instead create unintended consequences such as juveniles plea bargaining to be charged with a different crime to avoid being on the offender registry. Requiring juveniles to register is harmful to the juvenile, their family, and their victim and leads juveniles to isolate and see themselves as bad people.

Justice means something different to each survivor of sexual abuse. However, most survivors want their perpetrator to admit what they did to them, change their behavior and not do it again. Survivors want to be able to heal and move on. Juvenile sex offender registration does not meet these needs for survivors. Registration often results in survivors having to be involved in the criminal legal system for longer periods of time. Additionally, the registry gives a false sense of security to communities because most sex offenses are not

reported, or if offenses are reported, the offenders are not convicted. This bill can ensure accountability and remove barriers for transformation. It does not change the responses but provides more options. Under current law, the SSODA program provides a 2-year rehabilitation program, and this bill would enhance access to this program. Increasing access to treatment will limit the destabilizing impact of the registry on youth, while promoting Washington State's commitment to not exit youth into public systems of care and homelessness.

CON: These crimes may have low levels of recidivism but these crimes are also underreported. Changing the system is important but this is not the way to do it. This bill would allow older teens who have committed serious crimes such as rape to avoid registering. This means these individuals could go back to school and attend community and other events without those involved being able to take simple and appropriate precautions. These registries are important for keeping the public informed. The single most effective thing the Legislature could do to prevent against unintended consequences of the registry is to follow through on the unanimous recommendation related to RCW 4.24.550 made by the Sex Offender Policy Board.

OTHER: Registration is not a cure or fix for public safety and treating children as adults is an inappropriate policy. However, it's important to acknowledge the differences in the most serious offenses.

**Persons Testifying:** PRO: Senator Noel Frame, Prime Sponsor; Katherine Hurley, Washington Defender Association; Karen Pillar, TeamChild; Dr. Elizabeth Letourneau, Moore Center for the Prevention of Sexual Abuse; Nicholas Oakley, Center for Children & Youth Justice (CCYJ); Susan Marks; Shannon Perez-Darby; Timothy Kahn, Kahn and Hansen & Associates; Emily Hiskes, Snohomish County Public Defender Association; Laura Martin, Snohomish County Public Defender Association; Joanne Smieja, WA Voices; Roxana Gomez, ACLU of Washington; Larry Jefferson, Washington State Office of Public Defense.

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

OTHER: Brad Meryhew, Sex Offender Policy Board; Whitney Hunt, Sex Offender Policy Board; Shawn Sant, Franklin County Prosecutor.

**Persons Signed In To Testify But Not Testifying:** PRO: George Yeannakis, Washington State Office of Public Defense.