

# HOUSE BILL REPORT

## HB 1746

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**As Reported by House Committee On:**  
Criminal Justice & Corrections

**Title:** An act relating to requiring arson offenders to register with the county sheriff.

**Brief Description:** Requiring arson offenders to register with the county sheriff.

**Sponsors:** Representatives Holmquist, O'Brien, Hinkle, Lantz, Woods, Ahern, Cox, Simpson, Sump, Kagi, McDonald, Haler, Newhouse, McCune, Kretz, Serben, Clements, Condotta, Roach, Pearson, Kirby, Bailey, Strow, Williams, Moeller, Kenney and Kristiansen.

**Brief History:**

**Committee Activity:**

Criminal Justice & Corrections: 2/15/05, 2/22/05 [DPS].

**Brief Summary of Substitute Bill**

- Requires arson offenders convicted, or found not guilty by reason of insanity, of arson in the first and second degree to register with the county sheriff.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives O'Brien, Chair; Pearson, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kirby and Strow.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Darneille, Vice Chair; and Kagi.

**Staff:** Kathryn Leathers (786-7114).

**Background:**

Arson in the first degree is a class A felony with a seriousness level of VIII. Arson in the second degree is a class B felony, with a seriousness level of IV.

Arson in the first degree: Arson in the first degree is committed when a person knowingly and maliciously: (a) causes a fire or explosion which is manifestly dangerous to any human life, including firefighters; or (b) causes a fire or explosion which damages a dwelling; or (c) causes a fire or explosion in any building in which there shall be at the time a human being who is not a participant in the crime; or (d) causes a fire or explosion on property valued at \$10,000 or more with intent to collect insurance proceeds.

Arson in the second degree: Arson in the second degree is committed when he or she knowingly and maliciously causes a fire or explosion which damages a building, or any structure or erection appurtenant to or joining any building, or any wharf, dock, machine, engine, automobile, or other motor vehicle, watercraft, aircraft, bridge, or trestle, or hay, grain, crop, or timber, whether cut or standing, or any range land, or pasture land, or any fence, or any lumber, shingle, or other timber products, or any property.

Convicted first and second degree arsonists in this state are not required to register with a law enforcement agency upon release.

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### **Summary of Substitute Bill:**

Requires arson offenders convicted, or found not guilty by reason of insanity, of arson in the first and second degree to register with the county sheriff in a manner similar to the current registration requirements for sex offenders and kidnapping offenders.

#### Registration Requirements

An initial registration must be made in person at the proper county sheriff's office, however the registration requirements vary depending on the individual offender's status. For example:

- if in custody, within 24 hours of the time of release;
- if not in custody but under federal, state, or local jurisdiction on the effective date of this act, within 30 days of the effective date of this act;
- if convicted but not confined, immediately upon completion of being sentenced;
- if a new resident or a returning Washington resident, and he or she is not under the jurisdiction of the Department of Corrections, the Indeterminate Sentence Review Board, or the Department of Social and Health Services at the time of moving to Washington, within 10 days of establishing residency or re-establishing residency; if he or she is under the jurisdiction of one of the above mentioned state agencies, he or she must register within 24 hours of moving to Washington;
- if found not guilty by reason of insanity and is in custody at the time of this act, within 24 hours from the time of release; if released before the effective date of this act, within 24 hours of receiving notice of the registration requirements;
- if lacking a fixed residence and leaves the county in which he or she is registered and enters and remains within a new county for 24 hours, he or she is required to register in the new county within 24 hours;
- if the offender moves to, works, carries on a vocation in, or attends school in another state, he or she must register in the new state within 10 days after establishing residency; and
- in all other cases, he or she shall register within 30 days after the effective date of this bill.

Other registration requirements imposed following the initial registration include:

- if a person's address changes within the same county, he or she must notify the county sheriff of the new address within 14 days;

- if the address change is a move to a new county, the sheriff of the old county must be notified 14 days before moving and the sheriff in the new county must be notified within 14 days after the move; and
- if a person ceases to have a fixed residence, he or she must notify the county sheriff of that fact within 14 days after ceasing to have a fixed residence, and any person who lacks a fixed residence must report weekly.

#### Violations of the Duty to Register

Failure to register within the subscribed deadlines is a per se violation. Violation of the duty to register is a class C felony. Any person charged with failure to register who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty (provided by the arrest, service, or arraignment). Registering following an arrest, however, does not relieve the offender from criminal liability for failure to register prior to the filing of the original charge. An offender may only be relieved of the duty to register by a court through a petition process.

#### Affirmative Defenses

It is an affirmative defense to a charge that a person failed to register within the deadlines if: (a) the person was not under the jurisdiction of the Department of Corrections, the Indeterminate Sentence Review Board, or the Department of Social and Health Services at the time of moving to Washington; (b) the person was unaware of his or her duty to register; (c) it was reasonable for the person to be unaware of his or her duty to register; and (d) the person registered within 24 hours of receiving notice of his or her duty to register from a law enforcement official. The defendant must establish the defense by a preponderance of the evidence.

It is also an affirmative defense to a charge of failure to register that: (a) the charge of failure to register is based solely on an out-of-state conviction that would require a person to register in Washington if he or she had been convicted in Washington; (b) the person who is charged works, carries on a vocation, or attends school in Washington but resides in another state; (c) the person was unaware of his or her duty to register in Washington; (d) it was reasonable for the person to be unaware of his or her duty to register in Washington; and (e) the person registered in Washington within 24 hours of receiving notice of his or her duty to register from a law enforcement official. The defendant must establish the defense by a preponderance of the evidence.

#### **Substitute Bill Compared to Original Bill:**

Removes the provision that allows the Department of Natural Resources and regularly organized fire departments to access the crime information data entered in the Washington State Crime Center electronic database.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** Arson is an important issue and these crimes affect both private and public property. This will give the arson investigators a tool that will allow them to share data with arson investigators in other counties. There is a high recidivism rate associated with such arsonists, 35 to 64 percent. In 2003, about 1,600 arson-related fires were started, causing approximately \$8 million in property loss. This bill creates a great starting point to track especially those arsonists who pose a great danger to society due to their frequent rate of re-offending.

(Concerns) This bill does not indicate what the fiscal impact will be at the local level. It is important to obtain a local fiscal note because of the extensive requirements when an offender moves and because it continues for at least 10 years, despite the fact that some of the costs to local enforcement will be reimbursed.

**Testimony Against:** None.

**Persons Testifying:** (In support) Representative Holmquist, prime sponsor; Angela Foster, State Fire Marshall's Office; and Clayton Myers and Gene Davis, Kittitas County Sheriff's Office.

(Concerns) Sophia Byrd, Association of Counties.

**Persons Signed In To Testify But Not Testifying:** None.