

HOUSE BILL REPORT

SSB 5154

As Passed House - Amended:
April 15, 2015

Title: An act relating to registered sex or kidnapping offenders.

Brief Description: Concerning registered sex or kidnapping offenders.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senator Hargrove).

Brief History:

Committee Activity:

Public Safety: 3/13/15, 3/31/15 [DPA].

Floor Activity:

Passed House - Amended: 4/15/15, 98-0.

**Brief Summary of Substitute Bill
(As Amended by House)**

- Establishes new registration procedures for sex and kidnapping offenders and makes other changes and clarifications to sex and kidnapping registration laws.
- Creates the crime of refusal to provide a DNA sample.
- Makes multiple changes to the community notification procedures and requirements of public agencies regarding sex and kidnapping offenders.
- Requires the Sex Offender Policy Board to review and make findings on certain issues related to sex and kidnapping offenders and report to the Governor and the Legislature.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass as amended. Signed by 9 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Moscoso, Pettigrew and Wilson.

Staff: Cassie Jones (786-7303).

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

Background:

Sex Offender and Kidnapping Offender Registration.

Any adult or juvenile who is residing, is a student, or is employed in Washington who has been found to have committed or has been convicted of a sex or kidnapping offense, or who has been found not guilty by reason of insanity of committing a sex or kidnapping offense, must register with the county sheriff for the county of the person's residence, or county of school or employment if not a resident. If the sex or kidnapping offender is in custody, the duty to register begins at the time of release from custody. Sex and kidnapping offenders who are required to register are required to provide a biological sample for purposes of DNA identification analysis.

A sex or kidnapping offender's duty-to-register continues for the following durations:

- indefinitely, if the offender was convicted of a class A felony or if the offender was convicted of any sex or kidnapping offense and has one or more prior convictions for a sex or kidnapping offense;
- for 15 years, if the offender was convicted of a class B felony and has no prior sex or kidnapping offenses, and provided the offender has had no subsequent convictions for disqualifying offenses; and
- for 10 years, if the offender was convicted of a class C felony and has no prior sex or kidnapping offenses, and provided the offender has had no subsequent convictions for disqualifying offenses.

Offenders may petition the court for relief from the duty-to-register under certain circumstances; however, a person may not petition for such relief if the person has been determined to be a sexually violent predator or was convicted as an adult of a class A felony sex or kidnapping offense with forcible compulsion.

Community Notification.

The Department of Corrections (DOC) is authorized to release relevant information that is necessary to protect the public concerning offenders convicted of sex offenses. The DOC has established the End-of-Sentence Review Committee (Committee) for the purposes of assigning risk levels, reviewing release plans, and making appropriate referrals for sex offenders. The Committee classifies offenders according to risk levels I, II, and III based on risk to re-offend in the community (low, moderate, and high risk, respectively).

Law enforcement agencies responsible for disseminating information regarding sex and kidnapping offenders must do the following: (1) review available risk level classifications made by the DOC and other agencies; (2) assign risk level classifications to all offenders; and (3) make a good faith effort to notify the public and residents within a reasonable period of time after the offender registers with the agency.

Public agencies are authorized to release information to the public regarding sex offenders and kidnapping offenders when the agency determines that disclosure of the information is relevant and necessary to protect the public and counteract the danger created by a particular offender. The extent of the public disclosure must be relationally related to: (1) the level of risk posed by the offender to the community; (2) the locations where the offender resides,

expects to reside, or is regularly found; and (3) the needs of the affected community members for information to enhance their individual and collective safety.

Law enforcement must consider certain guidelines in determining the extent of the public disclosures regarding sex and kidnapping offenders. For example, for offenders classified as risk level I, the agencies must share information with other law enforcement agencies, and if the offender is a student, with the public or private school. Agencies may disclose information about a level I sex offender to any victim or witness to the offense and to any individual community member who lives near the offender's residence. In addition, agencies may disclose information regarding level II sex offenders to law enforcement agencies, public and private schools, day care centers, libraries, and other entities near where the offender resides. Agencies may also disclose information regarding level III sex offenders to the public at large. The county sheriff with whom an offender is registered as a risk level III must also publish by legal notice, advertising, or news release a sex offender community notification in at least one legal newspaper with general circulation in the area of the sex offender's registered address or location.

Sex Offender Policy Board.

The Sex Offender Policy Board (SOPB) was created by the Legislature in 2008. The SOPB, established and maintained by the Sentencing Guidelines Commission, advises the Governor and the Legislature as necessary on issues relating to sex offender management.

The Governor or a Legislative Committee may request that the SOPB undertake projects to assist policy makers in making informed judgments about issues relating to sex offender policy and conduct case review of sex offense incidents to understand the performance of Washington's sex offender prevention and response systems. The SOPB consists of 13 voting members from the following organizations:

- the Washington Association of Sheriffs and Police Chiefs;
- the Washington Association of Prosecuting Attorneys;
- the Washington Association of Criminal Defense Lawyers;
- the Indeterminate Sentence Review Board;
- the Washington Association for the Treatment of Sex Abusers;
- the Department of Corrections;
- the Washington Superior Court Judges Association;
- the Juvenile Rehabilitation Administration;
- the Office of Crime Victims Advocacy;
- the Washington State Association of Counties;
- the Association of Washington Cities;
- the Washington Association of Sexual Assault Programs; and
- the Special Commitment Center.

Summary of Amended Bill:

Sex Offender and Kidnapping Offender Registration.

The following changes or clarifications are made to laws regarding sex and kidnapping offender registration:

Procedures for Offenders Required to Register.

The amended substitute bill:

- creates the gross misdemeanor crime of refusal to provide DNA and provides that a person has committed this crime if the person has the duty-to-register as a sex or kidnapping offender and willfully refuses to comply with a legal request for a DNA sample;
- requires a person required to register as a sex or kidnapping offender who intends to travel outside the United States to provide written notice of the plan to travel to the county sheriff of the county where the person is registered and establishes what information must be in the notice;
- requires a person required to register as a sex offender who is approved for partial confinement to register at the time of transfer to partial confinement;
- requires sex and kidnapping offenders who are visiting Washington and intend to reside in the state for 10 days or more to register with the county sheriff of the county where the offender will be staying;
- allows a juvenile who is required to register as a sex or kidnapping offender as a result of a conviction in another state or foreign country to petition for relief from the duty-to-register in the county in which the juvenile is registered at the time a petition sought; and
- provides that an adult prosecuted for an offense committed as a juvenile, in a case where the juvenile court has lost jurisdiction due to the passage of time, may petition for relief from the duty-to-register under the law applicable to juvenile offenders.

Consequences of a Tribal Conviction.

The amended substitute bill:

- includes in the definition of "sex offense" and "kidnapping offense" any tribal conviction for which a person would be required to register as a sex or kidnapping offender while residing in the reservation of conviction; or, an offense that under the laws of this state would be classified as a sex or kidnapping offense under current law;
- provides that a person required to register based on a federal, tribal, or out-of-state conviction has the duty-to-register indefinitely, unless relieved of the duty-to-register pursuant to law;
- includes persons listed in the Washington State Patrol (WSP) central registry of sex and kidnapping offenders as a result of a tribal conviction among others (persons with federal or out-of-state convictions) who may request the county sheriff to investigate whether the person should be removed from the registry; and
- allows persons listed in the WSP's central registry of sex and kidnapping offenders as a result of federal, tribal, and out-of-state convictions to request the county sheriff to investigate whether a person should be removed from the registry when an administrative authority in a person's state of conviction has determined that the person is not required to register.

Other Clarifications.

The amended substitute bill:

- clarifies that sex and kidnapping offender laws apply to any person who is or has been determined to be a sexually violent predator and requires that a sexually violent predator register for life;

- clarifies that prior convictions for failure to register include failures to register under federal law;
- provides that if a person is relieved of the duty to register, this relief does not constitute a certificate of rehabilitation for purposes of restoration of firearm possession; and
- removes certain provisions that expired in 2012.

Community Notification.

The following changes are made to laws regarding community notification:

- requires the WASPC, upon receipt of a public records request for sex and kidnapping offender information, to refer the requestor, in writing, to the appropriate agency or agencies for submission of the request. Provides that WASPC has no further duty to respond to such public records requests;
- permits a law enforcement agency to disclose information regarding an offender classified as risk level I to any individual who requests information regarding a specifically named offender;
- removes the requirement that a county sheriff with whom an offender is registered as a risk level III publish by legal notice, advertising, or news release a sex offender community notification in at least one legal newspaper with general circulation in the area of the sex offender's registered address or location;
- clarifies that the statewide registered kidnapping and sex offender website post level I sex offenders only if they are out of compliance with registration requirements or lack a fixed address;
- requires law enforcement agencies to assign a risk level classification to all offenders after consideration of these specific guidelines: (1) available risk classifications made by the DOC and other agencies; (2) the agency's own risk assessment tool; and (3) other information and aggravating and mitigating factors known to the agency and deemed to be rationally related to the risk posed by the offender to the community;
- requires law enforcement agencies to classify offenders as follows: risk level I if the offender is at a low risk to sexually re-offend, risk level II if the offender is at a moderate risk to re-offend, and risk level III if the offender is at a high risk to sexually re-offend;
- permits agencies to develop a process to allow an offender to petition for review of his or her risk classification; and
- requires the Committee to classify offenders into risk levels based on their risk to sexually re-offend, rather than generally re-offend.

Sex Offender Policy Board.

The SOPB is required to review and make findings and recommendations regarding the following:

- public disclosure of sex and kidnapping offender information and the relationship between the Public Records Act and the community notification statute;
- best practices from other states regarding public disclosure of sex and kidnapping offender information;
- ability of registered sex and kidnapping offenders to have their risk level classification reviewed and whether there should be a uniform statewide policy for review; and

- guidelines established by a sex offender policy work group addressing community notification and how public access to the guidelines can be improved.

The SOPB must report its findings and recommendations to the Governor and appropriate committees of the Legislature by December 1, 2015.

Other Provisions.

The Superintendent of Public Instruction must publish on its website educational materials regarding:

- the laws related to sex offenses, including registration, community notification, and the classification of sex offenders based on an assessment of the risk of reoffending;
- how to recognize behaviors characteristic of sex offenses and sex offenders;
- how to take advantage of community resources for victims of sexual assault;
- how to prevent children from being recruited into sex trafficking; and
- other information as deemed appropriate.

The Attorney General must evaluate the availability of data to determine the comparability of sex and kidnapping offenses among the states, federal government, and other jurisdictions and recommend whether such a database should be created. The Attorney General must report his or her findings to the appropriate policy committees of the Legislature by December 1, 2015.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support of original bill) A number of changes are made in this bill that have been vetted and have full support of many groups. The bulk of this bill was before this committee in a prior session. The big change from the last version is the public records piece. The bill clarifies that the public notification law is how the community is given information about the sex offender registry. This should not to be done under the Public Records Act. A number of people exploit the Public Records Act to cause alarm in the community and create unnecessary costs to public agencies.

Sheriff's offices have received massive public records requests for their entire databases on sex offenders. This bill would provide clarity from the Legislature that notification and release of information is not governed by the Public Records Act. The courts have struggled to deal with the two conflicting statutes: the Public Records Act, and the community notification statute. Under the Public Records Act, public officials are not to consider the identity of the requester or his or her reason for the request. However, under the community notification statute, any disclosures beyond what is required to be posted online must meet a three part test or a set of guidelines that conflict with the Public Records Act. There is a request for an amendment that would make the bill remedial and retroactive.

Various stakeholder groups have participated in the crafting of this legislation. This bill should be passed as written. The defense bar is supportive of maintaining the privacy of its clients subject to the registry where possible and is supportive of the housekeeping provisions of the bill. State law does not parallel the federal law in terms of travel. State defendants do not get notice of the federal laws. If state law does parallel federal law then defendants actually have more notice of the federal requirements. The criminalization of failure to provide DNA is a compromise among stakeholders. It is a better outcome than making it a felony as part of the failure-to-register. Most registered sex offenders are felons and have given their DNA in any case. This crime would only apply to a very narrow group of offenders.

(Opposed) None.

Persons Testifying: James McMahan, Washington Association of Sheriffs and Police Chiefs; Mike Sommerfeld, Pierce County Sheriff's Department; and Paul Strophy, Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.