

FINAL BILL REPORT

ESHB 1394

C 150 L 23
Synopsis as Enacted

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).

House Committee on Human Services, Youth, & Early Learning
House Committee on Appropriations
Senate Committee on Human Services
Senate Committee on Ways & Means

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.

Some of the sex offenses requiring registration include:

- Child Molestation;
- Commercial Sexual Abuse of a Minor;
- Communicating with a Minor for Immoral Purposes;
- Criminal Trespass Against Children;
- Custodial Sexual Misconduct;
- Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct;
- Failure to Register (second violation);
- Incest;
- Indecent Liberties;
- Minor Dealing in Depictions of Another Minor 12 Years or Younger Engaged in Sexually Explicit Conduct;
- Minor Financing or Selling Depictions of Another Minor Engaged in Sexually

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.

- Explicit Conduct;
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct;
 - Promoting Commercial Sexual Abuse of a Minor;
 - Promoting Travel for Commercial Sexual Abuse of a Minor;
 - Rape;
 - Rape of a Child;
 - Sending or Bringing into the State Depictions of a Minor Engaged in Sexually Explicit Conduct;
 - Sexual Exploitation of a Minor;
 - Sexual Misconduct with a Minor;
 - Sexually Violating Human Remains;
 - Viewing Depictions of Minor Engaged in Sexually Explicit Conduct; and
 - Voyeurism.

The following offenses also require sex offense registration:

- 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 class A felony attempt, solicitation, or conspiracy to commit a class A or B felony listed above.

Persons who are 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.

Persons required to register based on a sex offense must provide the following information when registering:

- 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.

If someone required to register based on a sex offense intends to move or ceases to have a fixed address, the person must provide notice to the county sheriff.

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 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 felony 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, who 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, who does not have a previous conviction requiring registration, the registration requirement ends 10 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. Juvenile courts 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 may decline jurisdiction to adult court following a discretionary decline hearing, which a court can initiate on its own motion, or any party may file a motion requesting the court transfer the juvenile to adult court only if:
 - 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 is required to hold a decline hearing in circumstances when the information alleges an escape and the juvenile is serving a minimum juvenile sentence to age 21.
- Adult criminal courts have exclusive jurisdiction over juveniles age 16 or 17 on the date of the offense when the offense is:
 - a serious violent offense;
 - a violent offense and the juvenile has a criminal history consisting of a prior serious violent offense, two or more prior violent offenses, or three or more of any combination of class A felonies, class B felonies, Vehicular Assault, or Manslaughter in the second degree; or
 - Rape of a Child in the first degree.

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 he or she 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.

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:

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 a gross misdemeanor (from a felony) 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.

The time period that a juvenile (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) must register as a sex offender (if required) 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.

The requirement to register as a sex offender is extinguished for 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 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.

The Washington State Patrol must notify registered sex offenders of the extinguishing of the legal obligation to register created by the bill.

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.

Any person releasing 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).

The 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.

Votes on Final Passage:

House	60	38
Senate	28	21

Effective: July 23, 2023
November 1, 2023 (Section 10)