

# SENATE BILL REPORT

## SB 5204

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As of February 9, 2011

**Title:** An act relating to juveniles who have been adjudicated of a sex offense.

**Brief Description:** Concerning juveniles who have been adjudicated of a sex offense.

**Sponsors:** Senators Regala, Hargrove and Stevens.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 1/25/11.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Staff:** Shani Bauer (786-7468)

**Background:** Juvenile Duty to Register & Relief from Registration. In Washington State, a juvenile who is adjudicated of a sex or kidnapping offense has the same duty to register as an adult offender, regardless of the person's age at the time of offense. If the juvenile is under the custody of the Juvenile Rehabilitation Administration, the End of Sentence Review Committee with the Department of Corrections will review the person's file and assign an initial risk classification. If the juvenile is on probation at the county level or serving a sentence under a Special Sex Offender Disposition Alternative (SSODA), the juvenile's initial risk classification will be assigned by the county sheriff.

A person who has a duty to register for a sex or kidnapping offense committed when the person was a juvenile may be relieved of the duty to register if:

- at least 24 months have passed since the adjudication with no new sex or kidnapping offenses;
- the person has not been adjudicated or convicted of a failure to register during the 24 months prior to filing the petition;
- if the person was 15 years of age or older at the time of the offense, the person shows by clear and convincing evidence that he or she is sufficiently rehabilitated to warrant removal from the registration system, or if the person was under the age of 15 at the time of the offense, the person shows by a preponderance of the evidence that he or she is sufficiently rehabilitated.

In general legal terms, clear and convincing is a higher standard of proof than a preponderance of the evidence. Preponderance of the evidence is met if the proposition is

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more likely to be true than not true. Effectively, the standard is satisfied if there is a greater than 50 percent chance that the proposition is true. Clear and convincing means that it is substantially more likely than not that the thing is in fact true. Beyond a reasonable doubt would be further along the continuum, requiring that the trier of fact be close to certain of the truth of the matter asserted.

In 2008 the Legislature created the Sex Offender Policy Board (Board) to promote a coordinated and integrated response to sex offender management. One of the first tasks assigned to the Board, through 2SHB 2714 (2008), was to review Washington's sex offender registration and notification laws. Soon after its inception, the Board created a subcommittee to address issues specifically related to juveniles who have been adjudicated of a sex offense.

In response to recommendations from the Board, the Legislature modified provisions for a juvenile to petition for relief from registration. Specifically, the Legislature clarified that a juvenile would not be precluded from petitioning for relief if they juvenile had committed only one failure to register. The Legislature also adopted 12 specific factors for the court to review in determining whether to relieve the person from the duty to register. Those factors include the nature of the offense, subsequent criminal history, the person's participation in treatment and rehabilitative programs, input from the victim, and an updated polygraph examination.

Sealing of Juvenile Records. Upon motion to the court, the court may seal the records of a juvenile if:

1. there is no proceeding pending against the moving party seeking his or her conviction for a juvenile or criminal offense;
2. there is no proceeding pending seeking the formation of a diversion agreement with that person;
3. full restitution has been paid;
4. the person has not been convicted of a sex offense; and
5. the following time periods have passed since the last date of release from confinement, full-time residential treatment, or entry of disposition in the community without being convicted of any offense or crime:
  - a. class A felony – five years;
  - b. class B or C felony, gross misdemeanor and misdemeanor offenses and diversions – two years.

Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order.

Registered Persons Who Attend School. In May of 2010, a student in a Seattle school was sexually assaulted by another student who was a registered juvenile sex offender. In response to that incident, Senator Hargrove and Senator McAuliffe asked the Board to study existing laws regarding juvenile sex offenders and school notification. The Board came to several consensus recommendations, including requiring:

- that a court that orders 24/7 monitoring as part of SSODA must enter findings regarding that condition;

- schools to have policy and procedures in place regarding students who have been adjudicated of a registrable sex offense and the provision of a safe learning environment for all students;
- the Department of Corrections, End of Sentence Review Committee (ESRC) to assign the initial risk classification for all juveniles required to register as a sex offender who go through the Juvenile Rehabilitation Association and those who receive a SSODA sentence.

A person who is required to register must give notice to the county sheriff within three days prior to arriving at a school or institution of higher education to attend classes, prior to starting work at an institution of higher education, and after any termination of enrollment or employment at a school or institution. The sheriff is in turn required to notify the school's principal or institution's department of public safety. If the student is a risk level II or III, the principal must provide information about the student to every teacher of the student and any other personnel who, in the judgment of the principal, supervises the student or for security purposes, should be aware of the student's record. If the student is a risk level I, information may only be released to personnel who, in the judgment of the principal, should be aware of the student's record.

In 2006 the legislature required the Office of the Superintendent of Public Instruction (OSPI) to convene a workgroup to draft a model policy for school principals to follow when they receive notification from law enforcement that a registered sex/kidnapping offender is attending or is expecting to attend the school (SB 6580). The model policy was created and provides the intended direction. However, schools and school districts are not mandated to adopt the policy or implement safety plans for these students and consequently there is not consistent approach throughout the state.

**Summary of Bill:** A person who has a duty to register for a sex or kidnapping offense committed when the person was a juvenile must show by a preponderance of the evidence that he or she is sufficiently rehabilitated to warrant removal from the registration system in order to be relieved of the duty to register. This burden of proof applies regardless if the person was under or over the age of 15 at the time of the offense. If a person who committed a sex offense as a juvenile has been relieved of the duty to register or the person's duty to register has ended, the juvenile records may be sealed in the same manner and under the same conditions as other offenses.

If the court orders 24 hour continuous monitoring of an offender who is awarded a SSODA, the court must include the basis of this condition in its findings. The ESRC must assign the initial risk classification for all juveniles required to register as a sex offender.

OSPI must publish on its website a revised and updated model policy for schools to following regarding students who are required to register as sex or kidnapping offenders and educational materials developed in conjunction with partner agencies for parents and other interested family members in recognizing characteristics of sex offenders and preventing victimization. Each school district must develop their own policies in how to manage enrolled students who are required to register as sex or kidnapping offenders to ensure the health and safety of students and staff. Policy guidelines are outlined. Each school is required to designate a primary contact for law enforcement and, in coordination with other

interested professionals, must develop individual student safety plans for any enrolled student who is required to register as a sex or kidnapping offender.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed, except Sections 7 and 8 which take effect September 1, 2011.

**Staff Summary of Public Testimony:** PRO: These recommendations are based on best practice research informed by differences between juveniles and adults. Juveniles are amendable to treatment, have different developmental needs and are less likely to recidivate. Prior to last session, a juvenile over the age of 15 was not required to wait any amount of time before petitioning for relief from registration as opposed to offenders under the age of 15. The Board felt that this was the reason the burden of proof was different for these populations. The two-year waiting period now applies to all persons who committed their crime as a juvenile. At the Board's recommendation, the Legislature also adopted specific criteria for the judge to consider in relieving a juvenile from registration. For these reasons, the Board feels that it is appropriate to apply the lower burden of proof to both populations of juveniles.

OTHER: The prosecutors are asking for an amendment to the sealing provision. Last session the Legislature shortened the time period before a juvenile could seek to have his or her record sealed. We believe that these time periods are too short for certain classes of offenses and would ask that rape in the first degree, rape in the second degree, and forcible indecent liberties be exempt from these provisions. These are crimes of violence in addition to sex crimes and we therefore believe there is a benefit to tracking those for a lengthier period of time.

**Persons Testifying:** PRO: Andrea Piper, Sex Offender Policy Board; Brad Meryhew, WA Assn. of Criminal Defense Lawyers/WA Defenders Association.

OTHER: Tom McBride, Washington Association of Prosecuting Attorneys.