

SENATE BILL REPORT

ESSB 5735

As Reported by Senate Committee On:
Human Services & Corrections, February 5, 2014

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

Brief Description: Concerning registered sex or kidnapping offenders.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Carrell and Darneille).

Brief History:

Committee Activity: Human Services & Corrections: 2/20/13 [DPS-WM]; 1/30/14, 2/05/14 [DP2S].

Passed Senate: 3/13/13, 49-0.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Second Substitute Senate Bill No. 5735 be substituted therefor, and the second substitute bill do pass.

Signed by Senators O'Ban, Chair; Pearson, Vice Chair; Darneille, Ranking Member; Hargrove and Padden.

Staff: Shani Bauer (786-7468)

Background: Any adult or juvenile offender residing in the state who has been convicted of a sex offense must register with the county sheriff upon release from confinement. The offender must provide complete information to the county sheriff including the offender's address, aliases used, place of employment, social security number, photograph, and fingerprints. Beginning in 2008, all registered offenders also must provide a DNA sample. This requirement is not part of the registration requirements and therefore the failure to provide a DNA sample is not a failure to register.

The End of Sentence Review Committee (ESRC), chaired by the Department of Corrections, classifies sex offenders being released from Washington correctional institutions according to their risk of reoffense within the community. ESRC classifies each offender as a level I – low risk, level II – moderate risk, or level III – high risk, and then forwards this classification to the county sheriff in the jurisdiction where the offender will reside. The sheriff may adopt ESRC's risk level or establish a different level. If ESRC has not had the opportunity to

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classify a sex offender, such as when the offender has moved to Washington State from another state, the sheriff's office will perform its own classification of the offender's risk. The risk level classification dictates the level of notice to the public and the amount of information the sheriff may release about the offender.

The Washington Association of Sheriffs and Police Chiefs (WASPC) operates an electronic statewide unified sex offender notification and registration program (SONAR) which contains a database of all registered sex offenders in the state of Washington. WASPC creates and maintains a public website that posts all level II and level III sex offenders. Law enforcement may also disclose information about offenders classified as level I upon the request of any victim or witness to the offense or any community member who lives near the offender. For level III sex offenders, law enforcement must additionally publish notice in at least one newspaper in the area of the sex offender's registered address.

An adult sex offender may petition the superior court to be relieved of the duty to register when the person has spent ten consecutive years in the community without being convicted of a disqualifying offense during that time period. If the person is required to register for a federal or out-of-state conviction, the person may petition after 15 consecutive years in the community without a disqualifying offense. A person may not petition for relief from registration if the person has been determined to be a sexually violent predator or convicted as an adult of a sex offense that is a class A felony that was committed with forcible compulsion.

In 1994, Congress passed the Jacob Wetterling Act. That act required states to institute lifetime registration requirement for offenders convicted of specified sex offenses or face financial penalties to the federal Byrne grant. In 2001, the Legislature passed the Jacob Wetterling provisions requiring lifetime registration for further classes of offenders. Those provisions expired on July 1, 2012.

Summary of Bill (Recommended Second Substitute): In assigning risk levels, an offender must be classified as a:

- Level I – if the person's risk assessment and other relevant factors indicate that the person is at a low risk to sexually reoffend within the community at large;
- Level II – if the person's risk assessment and other relevant factors indicate that the person is at a moderate risk to sexually reoffend within the community at large; or
- Level III – if the person's risk assessment and other relevant factors indicate that the person is at a high risk to sexually reoffend within the community at large.

A person required to register as a sex offender who intends to travel outside the United States must notify the county sheriff where the person is registered at least 21 days prior to travel. The notice must include identifying information and details regarding the person's travel. The county sheriff must notify the United States Marshals Service as soon as practicable after receipt of the notification. Temporary residents visiting from another state or country who will be in the state longer than ten days must register their temporary addresses with the county sheriff within three days of arrival.

The crime of refusal to provide DNA is established. A person is guilty of the refusal to provide DNA if the person has a duty to register and refuses to comply with a request for a DNA sample as required by law. The refusal to provide DNA is a gross misdemeanor.

The Office of Superintendent of Public Instruction must publish on its website educational materials developed in conjunction with partner agencies for parents and other interested family members in recognizing characteristics of sex offenders and preventing victimization.

A number of other changes are made that close various loopholes or provide clarification with regard to sex offender registration and notification including the following:

- a tribal conviction for an offense for which the person would be required to register as a sex offender while residing in the reservation of conviction is defined as a sex offense requiring registration under Washington law;
- law enforcement may disclose information about offenders classified as level I upon the request of any person seeking information regarding a specifically named offender;
- when a sex offender moves to another county, the sheriff with whom the sex offender last registered is responsible for verification of the offender until the offender registers in the new county;
- when an offender is classified as a level III, law enforcement must issue a new release, but is not required to actively publish notice in the newspaper;
- law enforcement agencies may develop a process to allow an offender to petition for review of the offender's assigned risk level classification;
- law enforcement may remove a sex offender from the registry if an administrative authority in the person's state of conviction has made an individualized determination that the person is not required to register;
- the court's decision to relieve a sex offender of the duty to register does not constitute a certificate of rehabilitation for the purposes of restoring a person's right to possess a firearm;
- a person may not petition for relief from registration if the person has been determined to be a sexually violent predator;
- when a person who is required to register is placed on partial confinement in the community, the person must register with the county sheriff while on partial confinement; and
- expired provisions that were passed in order to comply with the federal Jacob Wetterling Act are removed.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Second Substitute as Passed Committee):

A tribal conviction for an offense for which the person would be required to register as a sex offender while residing in the reservation of conviction is defined as a sex offense requiring registration under Washington law. Temporary residents who will be in the state longer than ten days must register his or her temporary address with the county sheriff within three days of arrival. When a sex offender moves to another county, the sheriff with whom the sex offender last registered is responsible for verification of the sex offender until the offender registers in the new county. Law enforcement agencies may develop a process to allow an offender to petition for review of the offender's assigned risk level classification. The timing, frequency, and process for review are at the sole discretion of the agency. Law enforcement

may remove a sex offender from the registry if an administrative authority in the person's state of conviction has made an individualized determination that the person is not required to register. Provisions requiring school districts to develop individual policies for students who are sex offenders are removed.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: None.

Persons Testifying: No one.

Staff Summary of Public Testimony on Substitute as Heard in Committee: PRO: This bill contains a series of cleanups recommended by the Washington Association of Sheriffs and Police Chiefs, who handle the registration of sex and kidnapping offenders. There are a few additional loopholes that need to be addressed.

OTHER: This bill is accurately described as a cleanup bill. However, there is concern with the creation of a crime for the failure to collect a DNA sample. This probably does not happen very often and would be better if it were treated as contempt of court.

Persons Testifying: PRO: Don Pierce, WA Assn. of Sheriffs and Police Chiefs.

OTHER: Amy Muth, WA Assn. of Criminal Defense Lawyers, WA Defender Assn.