

WASHINGTON STATE'S COMMUNITY NOTIFICATION LAW: 15 YEARS OF CHANGE

Introduction

In 1990, the Washington State Legislature unanimously passed the Community Protection Act. One of the law's provisions, community notification, authorized law enforcement agencies to release sex offender information to the public when they determined "disclosure of the information is relevant and necessary to protect the public."¹ Law enforcement agencies are immune from civil liability for damages for any decision to release, or not release, "relevant and necessary" sex offender information to the public.

This report summarizes the legislative changes in Washington's community notification law since 1990. State law regarding community notification has evolved over time. As the statute has been amended over the past 15 years, the types of offenders subject to notification have expanded, and the process of risk assessment and notification has become more uniform across the state. A statewide website of sex offenders was created in 2002.²

1990

The Community Protection Act required convicted sex offenders to register a home address with law enforcement after release from prison. For the first time in the U.S., public officials were also authorized to release information to the public regarding dangerous sex offenders.

"Public agencies are authorized to release relevant and necessary information regarding sex offenders when the release of the information is necessary for public protection."³

Decisions about which sex offenders were dangerous and how to notify citizens were left to the discretion of local officials.

Although local law enforcement was ultimately responsible for notifying the public, state officials provided information to assist in determining which released sex offenders posed a significant risk to the community. A multi-disciplinary committee within the Department of Corrections (DOC), the End of Sentence Review Committee (ESRC), which had already been established

¹ RCW 4.24.550.

² www.waspc.org.

³ Section 117, Chapter 3, Laws of 1990.

SUMMARY

In 1990, Washington became the first state to authorize the release of information regarding sex offenders to the public. Since then, the law has been amended numerous times to expand its application, increase uniformity across counties, and increase citizen access.

to assess high-risk offenders with multiple needs, evaluated sex offenders prior to their release.

The ESRC initially issued three types of notifications to law enforcement: Special Bulletins, Law Enforcement Alerts, and Teletype. Special Bulletins were issued on those offenders thought to pose the greatest risk to the public. Often a Special Bulletin provided the impetus for local law enforcement agencies to consider notifying the community about an individual.

The law did not specify a notification system, but most jurisdictions in the state followed the guidelines developed by the Washington Association of Sheriffs and Police Chiefs (WASPC) to determine what actions to take regarding community notification. These guidelines established three levels of notification based on the individual's perceived risk to reoffend:

- **Level I (low risk):** Information (including a photograph) may be shared with other law enforcement agencies.
- **Level II (moderate risk):** Includes the actions of Level I, and, in addition, schools, neighbors, and community groups may be notified of an offender's release.
- **Level III (high risk):** The most serious offenders are considered candidates for a Level III notification. Press releases may be issued in addition to the actions within Level I and Level II.

1994

In the original legislation, no time frame was specified for community notification. Following an incident in the state where neighbors learned about a high-risk sex offender shortly before he moved to the area, the 1994 Legislature directed that whenever possible law enforcement inform the public at least 14 days prior to the offender's release. In addition, DOC was to send written notice to law

enforcement officials at least 30 days prior to an offender's release.⁴ Advance notice was intended to give both law enforcement and the public time to prepare.

Also in 1994, the state Supreme Court upheld the sex offender registration and community notification statutes.⁵ The opinion clarified two issues: who should be the subject of notification, and how law enforcement officials should determine geographical boundaries related to notification. In the first area, the opinion stated that a disclosing agency or individual "must have some evidence of an offender's future dangerousness, likelihood of reoffense, or threat to the community, to justify disclosure to the public in a given case."

The court also found that "the geographic scope of dissemination must rationally relate to the threat posed by the registered offender. Depending on the particular methods of an offender, an agency might decide to limit disclosure only to the surrounding neighborhood, or to schools and child care centers or, in case of immediate or imminent risk of harm, the public at large. The scope of disclosure must relate to the scope of danger."

1996

The Legislature made two changes to the notification law in 1996. The first was to ensure that law enforcement officials were informed in a timely fashion about offenders moving to their jurisdiction upon release from a jail in another county.

The second modification required DOC to implement a policy governing release plans and supervision of sex offenders.⁶ This process was to allow victims, witnesses, and other interested persons a way to provide information and comments to officials on potential safety risks posed by a specific sex offender.

In terms of release plans, new restrictions indicated where sex offenders under supervision could live following release from prison. DOC was not to approve a residence location if a minor victim or child of similar age or circumstance as a previous victim lived in the proposed residence, and the state determined that the offender posed substantial risk. Released sex offenders could not be permitted to live within "close proximity" of the current residence of their minor victim unless such a restriction would impede family reunification efforts ordered by the court or directed by the Department of Social and Health Services (DSHS). Also, offenders could not live within "close proximity" to schools, child care centers, playgrounds, or other facilities where children of similar age or circumstance to a victim were present and determined by the state to be at substantial risk of harm.

⁴ SHB 2540, Chapter 129, Laws of 1994.

⁵ State v. Ward, 123 Wn2d 488 503 (1994).

⁶ SHB 2545 Sec. 3, Chapter 215, Laws of 1996.

1997

In 1997, the notification law was significantly modified to establish a more consistent statewide approach.⁷ Prior to 1997, DOC notified law enforcement of a sex offender's release in one of three ways. First, for those sex offenders determined by the ESRC to be a low risk to sexually reoffend in the community, a teletype notification was sent to local law enforcement. Second, for those sex offenders judged at moderate risk to reoffend, a law enforcement alert was distributed. Third, for those determined to pose a high risk for sexual reoffense, a special bulletin was sent that included a summary of the person's criminal history and behavior at the institution. Local law enforcement was responsible for determining sex offenders' risk level and the process for notification (flyers, meetings, etc.).

The 1997 legislation directed that a consistent means be used to determine a sex offender's risk to the community as well as a uniform notification process. This work was done by a large multi-disciplinary group and resulted in adoption of the Washington State Sex Offender Risk Level Classification Tool, new notification considerations, notification formats, and suggested protocols for community meetings.

The three risk levels and corresponding notification parameters were adjusted as follows:

- **Level I:** Those offenders whose risk assessment indicates a low risk of sexual reoffense within the community at large. For offenders classified as Level I, law enforcement shall share information with other appropriate law enforcement agencies and may disclose, upon request, relevant, necessary, and accurate information to any victim or witness and to any individual community member who lives near the residence where the offender resides, expects to reside, or is regularly found.
- **Level II:** Those offenders whose risk assessment indicates a moderate risk of sexual reoffense within the community at large. For offenders classified as a Level II, law enforcement may also disclose relevant, necessary, and accurate information to public and private schools, child care centers, family daycare providers, businesses and organizations that serve primarily children, women, or vulnerable adults, and neighbors and community groups near the residence where the offender resides, expects to reside, or is regularly found.
- **Level III:** Those offenders whose risk assessment indicates a high risk of sexual reoffense within the community at large. For offenders classified as a Level III, in addition to the disclosures as a Level II, law enforcement may also disclose relevant, necessary, and accurate information to the public at large."⁸

⁷ ESSB 5759, Chapter 364, Laws of 1997.

⁸ Washington State Department of Corrections, www.doc.wa.gov/CPU/lawenf_index.htm

At least six months prior to an eligible sex offender's release from prison, the ESRC uses the Sex Offender Risk Level Classification Tool to calculate the offender's initial risk level designation. This tool combines two factors: an offender's risk assessment score, and specific notification considerations.⁹ The ESRC notification level is then sent to law enforcement where the offender will live, to determine the final decision on risk level.

The 1997 Legislature also added offenders convicted of a kidnapping offense to those subject to community notification.¹⁰

1998

Legislative action in 1998 added students or persons employed in the state to the group of sex offenders required to register.¹¹

The Legislature also made the verification of sex offenders' addresses more systematic. Law enforcement officials are required to send a non-forwardable verification form once a year for each individual. Through this means, they learn which addresses are current. In addition, the time period was shortened (from 14 days to within 72 hours) for an offender to register a change of address within the same county. When offenders move to a new county, they must send written notice of the change of address, at least 14 days before moving, to the county sheriff in the new county of residence and must register with that sheriff within 24 hours of moving. The person must also send a written notice of departure within 10 days to the previous county.¹²

Finally, the Legislature set new policy regarding when some offenders can petition the court to be relieved of registration duties and thus end notification responsibilities. Any person required to register may petition the superior court to be relieved of that duty if the person has spent ten consecutive years in the community without any new offenses. Additionally, offenders required to register for offenses committed when the person was a juvenile (except those prosecuted as adults) may petition the superior court to be relieved of that duty. For offenses committed when the individual was 15 years of age or older, the duty to register can be relieved if the court finds that future registration will not serve the purposes of the law. For those under the age of 15, the court must also find evidence that the offender has not been adjudicated of any additional sex or kidnapping offenses during the 24 months following the original offense.¹³

⁹ R. Barnoski (2005). *Sex offender sentencing in Washington State: Notification levels and recidivism* (Document No. 05-12-1203), Olympia: Washington State Institute for Public Policy.

¹⁰ SSB 5621, Chapter 113, Laws of 1997.

¹¹ HB 1172 Sec. 1, Chapter 220, Laws of 1998.

¹² HB 1172 Sec. 2, Chapter 220, Laws of 1998.

¹³ HB 1172 Sec. 3, Chapter 220, Laws of 1998.

2001

The 2001 Legislature addressed transient and homeless offenders. First, those individuals required to register who lack a fixed residence must provide written notice to the sheriff of the county where he or she last registered within 48 hours after ceasing to have a fixed residence. Additionally, offenders without a fixed residence must report weekly in person to the county sheriff.¹⁴

Because transient and homeless individuals lack a fixed residence, local law enforcement was given discretion to disclose relevant, necessary, and accurate information to the public at large.

For Level III notifications, statewide policy was set regarding public access.¹⁵ The sheriff must publish the notice or news release in at least one legal newspaper with general circulation in the area. In addition, a list of Level III sex offenders for each county must be published by the sheriff twice a year.

A list of Level III sex offenders must also be available on a publicly accessible website maintained by the county sheriff and updated at least once per month.

2002

The 2002 Legislature directed WASPC to create a statewide publicly accessible registered sex offender website.¹⁶ The website is to post information on all Level III registered sex offenders in the state, including name, relevant criminal convictions, address by the hundred block designation (e.g., 600, 500), physical description, and photograph. The website shall provide mapping capabilities and allow the public to search for sex offenders by last name, type of conviction, address by hundred block, city, county, and zip code.

The legislation also mandated that WASPC receive notification when local law enforcement officials change the risk level classification assigned by the ESRC.

2003

The 2003 Legislature broadened the scope of the statewide website by adding Level II offenders.¹⁷ The same information and citizen access for Level III offenders should be included for Level II offenders.

In 2003, the Legislature ruled that websites must meet federal constitutional standards. The U.S. Supreme Court unanimously ruled that states may publish names, pictures, and other information about convicted sex offenders on the Internet without giving each offender a hearing to

¹⁴ HB 1952 Chapter 169, Laws of 2001.

¹⁵ ESSB 6143, Chapter 283, Laws of 2001.

¹⁶ SSB 6488, Chapter 118, Laws of 2002.

¹⁷ SB 5410 Chapter 217, Laws of 2003.

determine whether he or she is still dangerous.¹⁸ In a separate 6 to 3 ruling, the Court turned down a challenge from sex offenders who argued they deserved a chance to prove that they are not dangerous and thereby avoid having their pictures and addresses posted on the Internet.¹⁹

2005

In 2005, registered kidnapping offenders were added to the statewide registered sex offender website.²⁰ In addition, public libraries were added to the list of organizations and individuals to receive Level II and Level III notifications.²¹

Laws were also passed concerning sex offenders in schools.²² Any adult or juvenile required to register must notify the sheriff of their intent to attend a public or private school, and the sheriff has the responsibility to promptly inform the principal of the school. The principal is responsible for disclosing the information on Level II and Level III offenders to every teacher of the student and to any other personnel the principal believes should be aware of the student's background.

The state established "community protection zones" to restrict certain released sex offenders from living within 800 feet of a school.²³ This law was given a July 2006 expiration date, with the expectation for review by the Joint Task Force on Sex Offender Management.

Courts must prohibit offenders convicted for the first time of the most serious sex offenses against minors from residing in a community protection zone after release from prison.²⁴

Discretionary decisions by law enforcement agencies and DOC are immune from civil liability for damages, as long as officials exercise good faith.

Finally, the 2005 Legislature created a Joint Task Force on Sex Offender Management to further examine issues of community safety and the management of sex offenders in the community.²⁵

The task force was asked to make recommendations to the governor and the legislature on the following subjects:

- The effectiveness of community protection zones and other strategies to promote community safety, including recommendations on proactive and reactive approaches to sex offender residence locations and any statutory, constitutional, or

¹⁸ Connecticut Dept. of Public Safety v. John Doe, 01-1231.

¹⁹ Otte v. Doe, 01-729.

²⁰ HB 1338, Chapter 228, Laws of 2005.

²¹ HB 1161, Chapter 99, Laws of 2005.

²² HB 2101, Chapter 380, Laws of 2005.

²³ SHB 1147, Chapter 436, Laws of 2005.

²⁴ During community custody status.

²⁵ SHB 1147, Sec. 4, Chapter 436, Laws of 2005.

practical limitations on the state's ability to address sex offender housing requirements;

- Standardization of the community sex offender notification process;
- Applicability of the public disclosure act to sex offender information sharing;
- The training of law enforcement, criminal justice staff, and school personnel to increase community safety in relationship to sex offender notification and management strategies; and
- The impact and advisability of pre-notification of local government officials related to sex offender residence location.

Summary

Since Washington became the first state to enact a sex offender notification law in 1990, extensive amendments have made the law more specific and encompassing. Time frames for dissemination of information regarding released sex offenders have been instituted. Amendments have addressed the issue of restricting where offenders may live following their release, culminating in the establishment of community protection zones in 2005.

The process of assessing risk levels has become more refined with the development of the Sex Offender Risk Level Classification Tool, and model policies for the distribution of information based on offender risk level. The scope of the law has been broadened to include additional categories of offenders such as kidnapping offenders and those who are in the state temporarily because of education or employment.

Registration and notification procedures for homeless and transient offenders have been refined. A statewide sex offender website is maintained by WASPC where citizens can easily learn the location of Level II and III registered sex offenders.

State policy regarding registration and notification of sex offenders has evolved significantly over the last 15 years. It is reasonable to expect this evolutionary process to continue.

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For further information, contact Roxanne Lieb at (360) 586-2768 or liebr@wsipp.wa.gov.