



Legislative
Research
Council

MINUTES

Sex Offender Registry Study

Third Meeting
2009 Interim
Monday, September 21, 2009

LCR 1 and 2
State Capitol Building
Pierre, South Dakota

The third meeting of the interim Sex Offender Registry Study Committee was called to order by Senator Gene Abdallah, Chair, at 9:04 a.m. (CDT), on Monday, September 21, 2009, in LCR 1 and 2 of the State Capitol, in Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Gene Abdallah (Chair) and Sandy Jerstad; Representatives Richard Engels, Peggy Gibson, Brian Gosch (Vice Chair), and Jacqueline Sly. Representative Roger Solum was excused.

Staff members present included Reuben Bezpaletz, Chief Analyst for Research and Legal Services; Jacquelyn Storm, Principal Legislative Attorney; and Kris Schneider, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order. This meeting was web cast live. The archived web cast is available at the LRC website at <http://legis.state.sd.us> under "Interim Information – Minutes and Agendas."

Minutes

Senator Jerstad moved, seconded by Representative Engels, to approve the minutes of the August 18, 2009, meeting. Motion prevailed on a voice vote.

Staff Report

Mr. Reuben Bezpaletz distributed correspondence that Representative Sly had received. The information included the following:

- 1) Letter dated September 17, 2009, from Susan, regarding the registry (**Document 1**);
- 2) Letter from "X" – A Registered Sex Offender in South Dakota, regarding the registry (**Document 2**); and
- 3) A Summary of Current Sex Offender Research (**Document 3**).

It was also noted that the committee had received Mr. Ryan Kolbeck's summary of his testimony from the August 18th meeting (**Document 4**).

Mr. Bezpaletz provided an overview of the agenda and discussion points.

Public Testimony

Ms. Tacy Chrispen, Spearfish, testified that there should be educational information provided to parents/families regarding parole provisions. She stressed the need to educate high school kids about the consequences of having sexual relationships.

Mrs. Eileen Thomas, Belle Fourche, asked that the sex registry website be changed so that the risk factor for the offender is easily accessible. She also expressed concerns with the amount of emphasis put on the psycho-sexual assessment, the scientific validity of the assessment, and the cost of same.

Mr. Marvin Thomas, Belle Fourche, a sex offender registrant, testified that any changes made to the registry should be made in small increments. If the tier system is adopted, it should not be an automatic removal from the registry; it should have to be earned.

Mr. Ryan Kolbeck, Sioux Falls, a Minnehaha Public Defender and President of the South Dakota Association of Criminal Defense Lawyers, speaking on his own behalf, provided the committee with his input on a number of the discussion points.

Captain Greg Vandekamp, Sioux Falls Police Department, stated that the current laws work as far as safety zones and compliance issues and asked the committee not to recommend any changes.

Mr. Scott Swier, Assistant Attorney General, and **Mr. John Strohman**, Assistant Attorney General, provided the Attorney General's input on the discussion points. They asked that the committee not recommend changing the felony provision for failing to reregister to a misdemeanor because the felony provision is the reason there is such a high compliance rate.

Committee Discussion/Staff Directives

Chairman Abdallah asked each committee member for their comments regarding the discussion points.

Representative Engels stated he would like to see those that do not pose a threat to the public be able to petition the court for removal from the sex offender registry. The psycho-sexual assessment could be used to place the offender in a tiered system. If an offender moves to South Dakota, he/she should have to follow the tougher laws of the two states. He would also like to see a misdemeanor option as a prosecutorial discretion for a one day late when reregistering.

Representative Sly agreed that low risk offenders (Romeo and Juliet and indecent exposure) should have an opportunity to petition to be removed from the registry. She also thinks that the psycho-sexual assessment could be used in that determination.

Representative Gibson stated that she would like to do some tweaking and provide opportunities to get off the registry. She would like to see safety zones stay, classifications broaden in section 4, the definition of "loitering" tweaked. She would also like to see a misdemeanor option as a prosecutorial discretion for a one day late when reregistering.

Senator Jerstad stated that fairness needs to be looked at as far as the penalty imposed. She would support a tiered system. She would not be in favor of adopting the Adam Walsh Act (AWA) at this time. She suggested a commission be created to review petitions for removal instead of using the courts. She would like to see an indicator on the website as to which sex offenders are really risks to children.

Representative Gosch stated that protecting the public and fairness needs to be integrated into the law. He would like to see more areas be allowed to petition the court for removal from the registry. Areas he would like clarification on include juveniles on the registry, misdemeanors as a registered offense, and the definition of "loitering."

Chair Abdallah stated that he would not support the quarterly registration requirement as it would be a burden on law enforcement. He agreed that the definition of "loitering" should be reviewed. He would not support a misdemeanor as a prosecutorial option.

Mr. Bezpaletz stated the four issues he has received the most comments about are: 1) the prospect of quarterly registration; 2) the desire to permit more people to get off of the registry; 3) substantial rather than full compliance; and 4) concerns about a felony conviction for failure to reregister. He stated that a tiered system would be an option that may allow more people to qualify to apply for removal from the registry. He also stated that over time there has been a blurring of the distinction between felonies and misdemeanors; failing to reregister falls outside of what the definition of a felony has been.

A discussion was held regarding implementing a tier system, similar to the AWA, and the length of time required before an application could be made to the courts for removal from the registry. It was the consensus to have staff draft legislation to set the length of time for Tier I at 10 years, Tier II at 25 years, and Tier III would be lifetime registration. Placement on the tiers would be similar to the AWA.

The committee also discussed the information provided on the sex offender registry website and the importance of having accurate information. It was suggested that there be a sort option, i.e. display only those offenders who have committed crimes against children.

Other components of the AWA were discussed. There was not a consensus on the quarterly registration or requiring 14 years old to register. Changing the number of days from 5 to 3 when moving would be another item to change to be in compliance with AWA.

A discussion was held regarding the criteria for removal as provided in SDCL 22-24B-20 to be more or less than two years to reapply and if substantial rather than full compliance be allowed.

An exception for halfway houses located in safety zones was also discussed.

The Attorney General's office will provide to the committee a preliminary list of the items needed to move South Dakota towards compliance with the AWA.

Next Meeting Date

Chair Abdallah set the next meeting for Monday, October 19, 2009, in Room 413 of the State Capitol, beginning at 9:00 a.m.

Adjournment

Representative Gibson moved, seconded by Representative Gosch, that the meeting be adjourned. Motion prevailed on a voice vote.

The meeting was adjourned at 3:11 p.m.



All Legislative Research Council committee minutes and agendas are available at the South Dakota Legislature's Homepage: <http://legis.state.sd.us>. Subscribe to receive electronic notification of meeting schedules and the availability of agendas and minutes at **MyLRC** (<http://legis.state.sd.us/mylrc/index.aspx>).