
SENATE BILL 6189

State of Washington

55th Legislature

1998 Regular Session

By Senators Oke and Haugen

Read first time 01/13/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to crimes with sexual motivation; amending RCW
2 9.94A.360 and 9A.44.140; reenacting and amending RCW 9A.44.130; adding
3 a new section to chapter 9A.44 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.44 RCW
6 to read as follows:

7 (1) The prosecuting attorney may file a special allegation of
8 sexual motivation in any misdemeanor or gross misdemeanor case.

9 (2) In a misdemeanor or gross misdemeanor case wherein there has
10 been a special allegation the state shall prove beyond a reasonable
11 doubt that the accused committed the crime with a sexual motivation.
12 The court shall make a finding of fact of whether or not a sexual
13 motivation was present at the time of the commission of the crime, or
14 if a jury trial is had, the jury shall, if it finds the defendant
15 guilty, also find a special verdict as to whether or not the defendant
16 committed the crime with a sexual motivation.

17 (3) "Sexual motivation" means that one of the purposes for which
18 the defendant committed the crime was for the purpose of his or her
19 sexual gratification.

1 **Sec. 2.** RCW 9.94A.360 and 1997 c 338 s 5 are each amended to read
2 as follows:

3 The offender score is measured on the horizontal axis of the
4 sentencing grid. The offender score rules are as follows:

5 The offender score is the sum of points accrued under this section
6 rounded down to the nearest whole number.

7 (1) A prior conviction is a conviction which exists before the date
8 of sentencing for the offense for which the offender score is being
9 computed. Convictions entered or sentenced on the same date as the
10 conviction for which the offender score is being computed shall be
11 deemed "other current offenses" within the meaning of RCW 9.94A.400.

12 (2) Class A and sex offense prior felony convictions and prior
13 convictions for misdemeanors or gross misdemeanors with a finding of
14 sexual motivation pursuant to section 1 of this act shall always be
15 included in the offender score. Class B prior felony convictions other
16 than sex offenses shall not be included in the offender score, if since
17 the last date of release from confinement (including full-time
18 residential treatment) pursuant to a felony conviction, if any, or
19 entry of judgment and sentence, the offender had spent ten consecutive
20 years in the community without committing any crime that subsequently
21 results in a conviction. Class C prior felony convictions other than
22 sex offenses shall not be included in the offender score if, since the
23 last date of release from confinement (including full-time residential
24 treatment) pursuant to a felony conviction, if any, or entry of
25 judgment and sentence, the offender had spent five consecutive years in
26 the community without committing any crime that subsequently results in
27 a conviction. Serious traffic convictions shall not be included in the
28 offender score if, since the last date of release from confinement
29 (including full-time residential treatment) pursuant to a felony
30 conviction, if any, or entry of judgment and sentence, the offender
31 spent five years in the community without committing any crime that
32 subsequently results in a conviction. This subsection applies to both
33 adult and juvenile prior convictions.

34 (3) Out-of-state convictions for offenses shall be classified
35 according to the comparable offense definitions and sentences provided
36 by Washington law. Federal convictions for offenses shall be
37 classified according to the comparable offense definitions and
38 sentences provided by Washington law. If there is no clearly
39 comparable offense under Washington law or the offense is one that is

1 usually considered subject to exclusive federal jurisdiction, the
2 offense shall be scored as a class C felony equivalent if it was a
3 felony under the relevant federal statute.

4 (4) Score prior convictions for felony anticipatory offenses
5 (attempts, criminal solicitations, and criminal conspiracies) the same
6 as if they were convictions for completed offenses.

7 (5)(a) In the case of multiple prior convictions, for the purpose
8 of computing the offender score, count all convictions separately,
9 except:

10 (i) Prior offenses which were found, under RCW 9.94A.400(1)(a), to
11 encompass the same criminal conduct, shall be counted as one offense,
12 the offense that yields the highest offender score. The current
13 sentencing court shall determine with respect to other prior adult
14 offenses for which sentences were served concurrently or prior juvenile
15 offenses for which sentences were served consecutively, whether those
16 offenses shall be counted as one offense or as separate offenses using
17 the "same criminal conduct" analysis found in RCW 9.94A.400(1)(a), and
18 if the court finds that they shall be counted as one offense, then the
19 offense that yields the highest offender score shall be used. The
20 current sentencing court may presume that such other prior offenses
21 were not the same criminal conduct from sentences imposed on separate
22 dates, or in separate counties or jurisdictions, or in separate
23 complaints, indictments, or informations;

24 (ii) In the case of multiple prior convictions for offenses
25 committed before July 1, 1986, for the purpose of computing the
26 offender score, count all adult convictions served concurrently as one
27 offense, and count all juvenile convictions entered on the same date as
28 one offense. Use the conviction for the offense that yields the
29 highest offender score.

30 (b) As used in this subsection (5), "served concurrently" means
31 that: (i) The latter sentence was imposed with specific reference to
32 the former; (ii) the concurrent relationship of the sentences was
33 judicially imposed; and (iii) the concurrent timing of the sentences
34 was not the result of a probation or parole revocation on the former
35 offense.

36 (6) If the present conviction is one of the anticipatory offenses
37 of criminal attempt, solicitation, or conspiracy, count each prior
38 conviction as if the present conviction were for a completed offense.

1 (7) If the present conviction is for a nonviolent offense and not
2 covered by subsection (11) or (12) of this section, count one point for
3 each adult prior felony conviction and one point for each juvenile
4 prior violent felony conviction and « point for each juvenile prior
5 nonviolent felony conviction.

6 (8) If the present conviction is for a violent offense and not
7 covered in subsection (9), (10), (11), or (12) of this section, count
8 two points for each prior adult and juvenile violent felony conviction,
9 one point for each prior adult nonviolent felony conviction, and «
10 point for each prior juvenile nonviolent felony conviction.

11 (9) If the present conviction is for Murder 1 or 2, Assault 1,
12 Assault of a Child 1, Kidnapping 1, Homicide by Abuse, or Rape 1, count
13 three points for prior adult and juvenile convictions for crimes in
14 these categories, two points for each prior adult and juvenile violent
15 conviction (not already counted), one point for each prior adult
16 nonviolent felony conviction, and « point for each prior juvenile
17 nonviolent felony conviction.

18 (10) If the present conviction is for Burglary 1, count prior
19 convictions as in subsection (8) of this section; however count two
20 points for each prior adult Burglary 2 or residential burglary
21 conviction, and one point for each prior juvenile Burglary 2 or
22 residential burglary conviction.

23 (11) If the present conviction is for a felony traffic offense
24 count two points for each adult or juvenile prior conviction for
25 Vehicular Homicide or Vehicular Assault; for each felony offense or
26 serious traffic offense, count one point for each adult and « point for
27 each juvenile prior conviction.

28 (12) If the present conviction is for a drug offense count three
29 points for each adult prior felony drug offense conviction and two
30 points for each juvenile drug offense. All other adult and juvenile
31 felonies are scored as in subsection (8) of this section if the current
32 drug offense is violent, or as in subsection (7) of this section if the
33 current drug offense is nonviolent.

34 (13) If the present conviction is for Willful Failure to Return
35 from Furlough, RCW 72.66.060, Willful Failure to Return from Work
36 Release, RCW 72.65.070, or Escape from Community Custody, RCW
37 72.09.310, count only prior escape convictions in the offender score.
38 Count adult prior escape convictions as one point and juvenile prior
39 escape convictions as « point.

1 (14) If the present conviction is for Escape 1, RCW 9A.76.110, or
2 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and
3 juvenile prior convictions as « point.

4 (15) If the present conviction is for Burglary 2 or residential
5 burglary, count priors as in subsection (7) of this section; however,
6 count two points for each adult and juvenile prior Burglary 1
7 conviction, two points for each adult prior Burglary 2 or residential
8 burglary conviction, and one point for each juvenile prior Burglary 2
9 or residential burglary conviction.

10 (16) If the present conviction is for a sex offense, count priors
11 as in subsections (7) through (15) of this section; however count three
12 points for each adult and juvenile prior sex offense conviction and
13 count one point for each adult and juvenile prior conviction for a
14 misdemeanor or gross misdemeanor with a finding of sexual motivation
15 pursuant to section 1 of this act.

16 (17) If the present conviction is for an offense committed while
17 the offender was under community placement, add one point.

18 **Sec. 3.** RCW 9A.44.130 and 1997 c 340 s 3 and 1997 c 113 s 3 are
19 each reenacted and amended to read as follows:

20 (1) Any adult or juvenile residing in this state who has been found
21 to have committed or has been convicted of any sex offense or
22 kidnapping offense, or who has been found not guilty by reason of
23 insanity under chapter 10.77 RCW of committing any sex offense or
24 kidnapping offense, shall register with the county sheriff for the
25 county of the person's residence.

26 (2) The person shall provide the county sheriff with the following
27 information when registering: (a) Name; (b) address; (c) date and
28 place of birth; (d) place of employment; (e) crime for which convicted;
29 (f) date and place of conviction; (g) aliases used; and (h) social
30 security number.

31 (3)(a) Offenders shall register within the following deadlines.
32 For purposes of this section the term "conviction" refers to adult
33 convictions and juvenile adjudications for sex offenses or kidnapping
34 offenses:

35 (i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex
36 offense on, before, or after February 28, 1990, and who, on or after
37 July 28, 1991, are in custody, as a result of that offense, of the
38 state department of corrections, the state department of social and

1 health services, a local division of youth services, or a local jail or
2 juvenile detention facility, and (B) kidnapping offenders who on or
3 after July 27, 1997, are in custody of the state department of
4 corrections, the state department of social and health services, a
5 local division of youth services, or a local jail or juvenile detention
6 facility, must register within twenty-four hours from the time of
7 release with the county sheriff for the county of the person's
8 residence. The agency that has jurisdiction over the offender shall
9 provide notice to the offender of the duty to register. Failure to
10 register within twenty-four hours of release constitutes a violation of
11 this section and is punishable as provided in subsection (7) of this
12 section.

13 (ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL
14 JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody
15 but are under the jurisdiction of the indeterminate sentence review
16 board or under the department of correction's active supervision, as
17 defined by the department of corrections, the state department of
18 social and health services, or a local division of youth services, for
19 sex offenses committed before, on, or after February 28, 1990, must
20 register within ten days of July 28, 1991. Kidnapping offenders who,
21 on July 27, 1997, are not in custody but are under the jurisdiction of
22 the indeterminate sentence review board or under the department of
23 correction's active supervision, as defined by the department of
24 corrections, the state department of social and health services, or a
25 local division of youth services, for kidnapping offenses committed
26 before, on, or after July 27, 1997, must register within ten days of
27 July 27, 1997. A change in supervision status of a sex offender who
28 was required to register under this subsection (3)(a)(ii) as of July
29 28, 1991, or a kidnapping offender required to register as of July 27,
30 1997, shall not relieve the offender of the duty to register or to
31 reregister following a change in residence. The obligation to register
32 shall only cease pursuant to RCW 9A.44.140.

33 (iii) OFFENDERS UNDER FEDERAL JURISDICTION. Sex offenders who, on
34 or after July 23, 1995, and kidnapping offenders who, on or after July
35 27, 1997, as a result of that offense are in the custody of the United
36 States bureau of prisons or other federal or military correctional
37 agency for sex offenses committed before, on, or after February 28,
38 1990, or kidnapping offenses committed on, before, or after July 27,
39 1997, must register within twenty-four hours from the time of release

1 with the county sheriff for the county of the person's residence. Sex
2 offenders who, on July 23, 1995, are not in custody but are under the
3 jurisdiction of the United States bureau of prisons, United States
4 courts, United States parole commission, or military parole board for
5 sex offenses committed before, on, or after February 28, 1990, must
6 register within ten days of July 23, 1995. Kidnapping offenders who,
7 on July 27, 1997, are not in custody but are under the jurisdiction of
8 the United States bureau of prisons, United States courts, United
9 States parole commission, or military parole board for kidnapping
10 offenses committed before, on, or after July 27, 1997, must register
11 within ten days of July 27, 1997. A change in supervision status of a
12 sex offender who was required to register under this subsection
13 (3)(a)(iii) as of July 23, 1995, or a kidnapping offender required to
14 register as of July 27, 1997 shall not relieve the offender of the duty
15 to register or to reregister following a change in residence. The
16 obligation to register shall only cease pursuant to RCW 9A.44.140.

17 (iv) OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED. Sex offenders
18 who are convicted of a sex offense on or after July 28, 1991, for a sex
19 offense that was committed on or after February 28, 1990, and
20 kidnapping offenders who are convicted on or after July 27, 1997, for
21 a kidnapping offense that was committed on or after July 27, 1997, but
22 who are not sentenced to serve a term of confinement immediately upon
23 sentencing, shall report to the county sheriff to register immediately
24 upon completion of being sentenced.

25 (v) OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON
26 RESIDENTS. Sex offenders and kidnapping offenders who move to
27 Washington state from another state or a foreign country that are not
28 under the jurisdiction of the state department of corrections, the
29 indeterminate sentence review board, or the state department of social
30 and health services at the time of moving to Washington, must register
31 within thirty days of establishing residence or reestablishing
32 residence if the person is a former Washington resident. The duty to
33 register under this subsection applies to sex offenders convicted under
34 the laws of another state or a foreign country, federal or military
35 statutes, or Washington state for offenses committed on or after
36 February 28, 1990, and to kidnapping offenders convicted under the laws
37 of another state or a foreign country, federal or military statutes, or
38 Washington state for offenses committed on or after July 27, 1997. Sex
39 offenders and kidnapping offenders from other states or a foreign

1 country who, when they move to Washington, are under the jurisdiction
2 of the department of corrections, the indeterminate sentence review
3 board, or the department of social and health services must register
4 within twenty-four hours of moving to Washington. The agency that has
5 jurisdiction over the offender shall notify the offender of the
6 registration requirements before the offender moves to Washington.

7 (vi) OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY. Any adult
8 or juvenile who has been found not guilty by reason of insanity under
9 chapter 10.77 RCW of (A) committing a sex offense on, before, or after
10 February 28, 1990, and who, on or after July 23, 1995, is in custody,
11 as a result of that finding, of the state department of social and
12 health services, or (B) committing a kidnapping offense on, before, or
13 after July 27, 1997, and who on or after July 27, 1997, is in custody,
14 as a result of that finding, of the state department of social and
15 health services, must register within twenty-four hours from the time
16 of release with the county sheriff for the county of the person's
17 residence. The state department of social and health services shall
18 provide notice to the adult or juvenile in its custody of the duty to
19 register. Any adult or juvenile who has been found not guilty by
20 reason of insanity of committing a sex offense on, before, or after
21 February 28, 1990, but who was released before July 23, 1995, or any
22 adult or juvenile who has been found not guilty by reason of insanity
23 of committing a kidnapping offense but who was released before July 27,
24 1997, shall be required to register within twenty-four hours of
25 receiving notice of this registration requirement. The state
26 department of social and health services shall make reasonable attempts
27 within available resources to notify sex offenders who were released
28 before July 23, 1995, and kidnapping offenders who were released before
29 July 27, 1997. Failure to register within twenty-four hours of
30 release, or of receiving notice, constitutes a violation of this
31 section and is punishable as provided in subsection (7) of this
32 section.

33 (b) Failure to register within the time required under this section
34 constitutes a per se violation of this section and is punishable as
35 provided in subsection (7) of this section. The county sheriff shall
36 not be required to determine whether the person is living within the
37 county.

38 (c) An arrest on charges of failure to register, service of an
39 information, or a complaint for a violation of this section, or

1 arraignment on charges for a violation of this section, constitutes
2 actual notice of the duty to register. Any person charged with the
3 crime of failure to register under this section who asserts as a
4 defense the lack of notice of the duty to register shall register
5 immediately following actual notice of the duty through arrest,
6 service, or arraignment. Failure to register as required under this
7 subsection (c) constitutes grounds for filing another charge of failing
8 to register. Registering following arrest, service, or arraignment on
9 charges shall not relieve the offender from criminal liability for
10 failure to register prior to the filing of the original charge.

11 (d) The deadlines for the duty to register under this section do
12 not relieve any sex offender of the duty to register under this section
13 as it existed prior to July 28, 1991.

14 (4)(a) If any person required to register pursuant to this section
15 changes his or her residence address within the same county, the person
16 must send written notice of the change of address to the county sheriff
17 at least fourteen days before moving. If any person required to
18 register pursuant to this section moves to a new county, the person
19 must send written notice of the change of address at least fourteen
20 days before moving to the county sheriff in the new county of residence
21 and must register with that county sheriff within twenty-four hours of
22 moving. The person must also send written notice within ten days of
23 the change of address in the new county to the county sheriff with whom
24 the person last registered. If any person required to register
25 pursuant to this section moves out of Washington state, the person must
26 also send written notice within ten days of moving to the new state or
27 a foreign country to the county sheriff with whom the person last
28 registered in Washington state.

29 (b) It is an affirmative defense to a charge that the person failed
30 to send a notice at least fourteen days in advance of moving as
31 required under (a) of this subsection that the person did not know the
32 location of his or her new residence at least fourteen days before
33 moving. The defendant must establish the defense by a preponderance of
34 the evidence and, to prevail on the defense, must also prove by a
35 preponderance that the defendant sent the required notice within
36 twenty-four hours of determining the new address.

37 (5) The county sheriff shall obtain a photograph of the individual
38 and shall obtain a copy of the individual's fingerprints.

1 (6) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540,
2 70.48.470, and 72.09.330:

3 (a) "Sex offense" means any offense defined as a sex offense by RCW
4 9.94A.030 and any violation of RCW 9.68A.040 (sexual exploitation of a
5 minor), 9.68A.050 (dealing in depictions of minor engaged in sexually
6 explicit conduct), 9.68A.060 (sending, bringing into state depictions
7 of minor engaged in sexually explicit conduct), 9.68A.090
8 (communication with minor for immoral purposes), 9.68A.100 (patronizing
9 juvenile prostitute), or 9A.44.096 (sexual misconduct with a minor in
10 the second degree), as well as any gross misdemeanor that is, under
11 chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or
12 criminal conspiracy to commit an offense that is classified as a sex
13 offense under RCW 9.94A.030, and any misdemeanor or gross misdemeanor
14 with a finding of sexual motivation pursuant to section 1 of this act.

15 (b) "Kidnapping offense" means the crimes of kidnapping in the
16 first degree, kidnapping in the second degree, and unlawful
17 imprisonment as defined in chapter 9A.40 RCW, where the victim is a
18 minor and the offender is not the minor's parent.

19 (7) A person who knowingly fails to register or who moves without
20 notifying the county sheriff as required by this section is guilty of
21 a class C felony if the crime for which the individual was convicted
22 was a felony or a federal or out-of-state conviction for an offense
23 that under the laws of this state would be a felony. If the crime was
24 other than a felony or a federal or out-of-state conviction for an
25 offense that under the laws of this state would be other than a felony,
26 violation of this section is a gross misdemeanor.

27 **Sec. 4.** RCW 9A.44.140 and 1997 c 113 s 4 are each amended to read
28 as follows:

29 (1) The duty to register under RCW 9A.44.130 shall end:

30 (a) For a person convicted of a class A felony: Such person may
31 only be relieved of the duty to register under subsection (3) or (4) of
32 this section.

33 (b) For a person convicted of a class B felony: Fifteen years
34 after the last date of release from confinement, if any, (including
35 full-time residential treatment) pursuant to the conviction, or entry
36 of the judgment and sentence, if the person has spent fifteen
37 consecutive years in the community without being convicted of any new
38 offenses.

1 (c) For a person convicted of a class C felony, a violation of RCW
2 9.68A.090 or 9A.44.096, or an attempt, solicitation, or conspiracy to
3 commit a class C felony, or any misdemeanor or gross misdemeanor with
4 a finding of sexual motivation pursuant to section 1 of this act: Ten
5 years after the last date of release from confinement, if any,
6 (including full-time residential treatment) pursuant to the conviction,
7 or entry of the judgment and sentence, if the person has spent ten
8 consecutive years in the community without being convicted of any new
9 offenses.

10 (2) The provisions of subsection (1) of this section shall apply
11 equally to a person who has been found not guilty by reason of insanity
12 under chapter 10.77 RCW of a sex offense or kidnapping offense.

13 (3) Any person having a duty to register under RCW 9A.44.130 may
14 petition the superior court to be relieved of that duty. The petition
15 shall be made to the court in which the petitioner was convicted of the
16 offense that subjects him or her to the duty to register, or, in the
17 case of convictions in other states, a foreign country, or a federal or
18 military court, to the court in Thurston county. The prosecuting
19 attorney of the county shall be named and served as the respondent in
20 any such petition. The court shall consider the nature of the
21 registrable offense committed, and the criminal and relevant
22 noncriminal behavior of the petitioner both before and after
23 conviction, and may consider other factors. Except as provided in
24 subsection (4) of this section, the court may relieve the petitioner of
25 the duty to register only if the petitioner shows, with clear and
26 convincing evidence, that future registration of the petitioner will
27 not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540,
28 46.20.187, 70.48.470, and 72.09.330.

29 (4) An offender having a duty to register under RCW 9A.44.130 for
30 a sex offense or kidnapping offense committed when the offender was a
31 juvenile may petition the superior court to be relieved of that duty.
32 The court shall consider the nature of the registrable offense
33 committed, and the criminal and relevant noncriminal behavior of the
34 petitioner both before and after adjudication, and may consider other
35 factors. The court may relieve the petitioner of the duty to register
36 for a sex offense or kidnapping offense that was committed while the
37 petitioner was fifteen years of age or older only if the petitioner
38 shows, with clear and convincing evidence, that future registration of
39 the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200,

1 43.43.540, 46.20.187, 70.48.470, and 72.09.330. The court may relieve
2 the petitioner of the duty to register for a sex offense or kidnapping
3 offense that was committed while the petitioner was under the age of
4 fifteen if the petitioner (a) has not been adjudicated of any
5 additional sex offenses or kidnapping offenses during the twenty-four
6 months following the adjudication for the offense giving rise to the
7 duty to register, and (b) the petitioner proves by a preponderance of
8 the evidence that future registration of the petitioner will not serve
9 the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187,
10 70.48.470, and 72.09.330.

11 (5) Unless relieved of the duty to register pursuant to this
12 section, a violation of RCW 9A.44.130 is an ongoing offense for
13 purposes of the statute of limitations under RCW 9A.04.080.

14 (6) Nothing in RCW 9.94A.220 relating to discharge of an offender
15 shall be construed as operating to relieve the offender of his or her
16 duty to register pursuant to RCW 9A.44.130.

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