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SENATE BILL 6144

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State of Washington                      59th Legislature                      2006 Regular Session

By Senators Stevens, Benton, Carrell, Regala, Benson and Pflug

Read first time 01/09/2006. Referred to Committee on Human Services & Corrections.

1            AN ACT Relating to clarifying the effect of retroactive  
2 registration requirements on sex offenders convicted in Washington who  
3 leave and then return to the state; amending RCW 9A.44.130; and  
4 providing an effective date.

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

6            NEW SECTION.    **Sec. 1.** If any provision of this act or its  
7 application to any person or circumstance is held invalid, the  
8 remainder of the act or the application of the provision to other  
9 persons or circumstances is not affected.

10           **Sec. 2.** RCW 9A.44.130 and 2005 c 380 s 1 are each amended to read  
11 as follows:

12           (1)(a) Any adult or juvenile residing whether or not the person has  
13 a fixed residence, or who is a student, is employed, or carries on a  
14 vocation in this state who has been found to have committed or has been  
15 convicted of any sex offense or kidnapping offense, or who has been  
16 found not guilty by reason of insanity under chapter 10.77 RCW of  
17 committing any sex offense or kidnapping offense, shall register with  
18 the county sheriff for the county of the person's residence, or if the

1 person is not a resident of Washington, the county of the person's  
2 school, or place of employment or vocation, or as otherwise specified  
3 in this section. Where a person required to register under this  
4 section is in custody of the state department of corrections, the state  
5 department of social and health services, a local division of youth  
6 services, or a local jail or juvenile detention facility as a result of  
7 a sex offense or kidnapping offense, the person shall also register at  
8 the time of release from custody with an official designated by the  
9 agency that has jurisdiction over the person.

10 (b) Any adult or juvenile who is required to register under (a) of  
11 this subsection:

12 (i) Who is attending, or planning to attend, a public or private  
13 school regulated under Title 28A RCW or chapter 72.40 RCW shall, within  
14 ten days of enrolling or prior to arriving at the school to attend  
15 classes, whichever is earlier, notify the sheriff for the county of the  
16 person's residence of the person's intent to attend the school, and the  
17 sheriff shall promptly notify the principal of the school;

18 (ii) Who is admitted to a public or private institution of higher  
19 education shall, within ten days of enrolling or by the first business  
20 day after arriving at the institution, whichever is earlier, notify the  
21 sheriff for the county of the person's residence of the person's intent  
22 to attend the institution;

23 (iii) Who gains employment at a public or private institution of  
24 higher education shall, within ten days of accepting employment or by  
25 the first business day after commencing work at the institution,  
26 whichever is earlier, notify the sheriff for the county of the person's  
27 residence of the person's employment by the institution; or

28 (iv) Whose enrollment or employment at a public or private  
29 institution of higher education is terminated shall, within ten days of  
30 such termination, notify the sheriff for the county of the person's  
31 residence of the person's termination of enrollment or employment at  
32 the institution.

33 (c) Persons required to register under this section who are  
34 enrolled in a public or private institution of higher education on June  
35 11, 1998, or a public or private school regulated under Title 28A RCW  
36 or chapter 72.40 RCW on September 1, 2006, must notify the county  
37 sheriff immediately.

1 (d) The sheriff shall notify the school's principal or  
2 institution's department of public safety and shall provide that  
3 department with the same information provided to a county sheriff under  
4 subsection (3) of this section.

5 (e)(i) A principal receiving notice under this subsection must  
6 disclose the information received from the sheriff under (b) of this  
7 subsection as follows:

8 (A) If the student who is required to register as a sex offender is  
9 classified as a risk level II or III, the principal shall provide the  
10 information received to every teacher of any student required to  
11 register under (a) of this subsection and to any other personnel who,  
12 in the judgment of the principal, supervises the student or for  
13 security purposes should be aware of the student's record;

14 (B) If the student who is required to register as a sex offender is  
15 classified as a risk level I, the principal shall provide the  
16 information received only to personnel who, in the judgment of the  
17 principal, for security purposes should be aware of the student's  
18 record.

19 (ii) Any information received by a principal or school personnel  
20 under this subsection is confidential and may not be further  
21 disseminated except as provided in RCW 28A.225.330, other statutes or  
22 case law, and the family and educational and privacy rights act of  
23 1994, 20 U.S.C. Sec. 1232g et seq.

24 (2) This section may not be construed to confer any powers pursuant  
25 to RCW (~~4.24.500~~) 4.24.550 upon the public safety department of any  
26 public or private school or institution of higher education.

27 (3)(a) The person shall provide the following information when  
28 registering: (i) Name; (ii) address; (iii) date and place of birth;  
29 (iv) place of employment; (v) crime for which convicted; (vi) date and  
30 place of conviction; (vii) aliases used; (viii) social security number;  
31 (ix) photograph; and (x) fingerprints.

32 (b) Any person who lacks a fixed residence shall provide the  
33 following information when registering: (i) Name; (ii) date and place  
34 of birth; (iii) place of employment; (iv) crime for which convicted;  
35 (v) date and place of conviction; (vi) aliases used; (vii) social  
36 security number; (viii) photograph; (ix) fingerprints; and (x) where he  
37 or she plans to stay.

1 (4)(a) Offenders shall register with the county sheriff within the  
2 following deadlines. For purposes of this section the term  
3 "conviction" refers to adult convictions and juvenile adjudications for  
4 sex offenses or kidnapping offenses:

5 (i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex  
6 offense on, before, or after February 28, 1990, and who, on or after  
7 July 28, 1991, are in custody, as a result of that offense, of the  
8 state department of corrections, the state department of social and  
9 health services, a local division of youth services, or a local jail or  
10 juvenile detention facility, and (B) kidnapping offenders who on or  
11 after July 27, 1997, are in custody of the state department of  
12 corrections, the state department of social and health services, a  
13 local division of youth services, or a local jail or juvenile detention  
14 facility, must register at the time of release from custody with an  
15 official designated by the agency that has jurisdiction over the  
16 offender. The agency shall within three days forward the registration  
17 information to the county sheriff for the county of the offender's  
18 anticipated residence. The offender must also register within twenty-  
19 four hours from the time of release with the county sheriff for the  
20 county of the person's residence, or if the person is not a resident of  
21 Washington, the county of the person's school, or place of employment  
22 or vocation. The agency that has jurisdiction over the offender shall  
23 provide notice to the offender of the duty to register. Failure to  
24 register at the time of release and within twenty-four hours of release  
25 constitutes a violation of this section and is punishable as provided  
26 in subsection (10) of this section.

27 When the agency with jurisdiction intends to release an offender  
28 with a duty to register under this section, and the agency has  
29 knowledge that the offender is eligible for developmental disability  
30 services from the department of social and health services, the agency  
31 shall notify the division of developmental disabilities of the release.  
32 Notice shall occur not more than thirty days before the offender is to  
33 be released. The agency and the division shall assist the offender in  
34 meeting the initial registration requirement under this section.  
35 Failure to provide such assistance shall not constitute a defense for  
36 any violation of this section.

37 (ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL  
38 JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody

1 but are under the jurisdiction of the indeterminate sentence review  
2 board or under the department of corrections' active supervision, as  
3 defined by the department of corrections, the state department of  
4 social and health services, or a local division of youth services, for  
5 sex offenses committed before, on, or after February 28, 1990, must  
6 register within ten days of July 28, 1991. Kidnapping offenders who,  
7 on July 27, 1997, are not in custody but are under the jurisdiction of  
8 the indeterminate sentence review board or under the department of  
9 corrections' active supervision, as defined by the department of  
10 corrections, the state department of social and health services, or a  
11 local division of youth services, for kidnapping offenses committed  
12 before, on, or after July 27, 1997, must register within ten days of  
13 July 27, 1997. A change in supervision status of a sex offender who  
14 was required to register under this subsection (4)(a)(ii) as of July  
15 28, 1991, or a kidnapping offender required to register as of July 27,  
16 1997, shall not relieve the offender of the duty to register or to  
17 reregister following a change in residence. The obligation to register  
18 shall only cease pursuant to RCW 9A.44.140.

19 (iii) OFFENDERS UNDER FEDERAL JURISDICTION. Sex offenders who, on  
20 or after July 23, 1995, and kidnapping offenders who, on or after July  
21 27, 1997, as a result of that offense are in the custody of the United  
22 States bureau of prisons or other federal or military correctional  
23 agency for sex offenses committed before, on, or after February 28,  
24 1990, or kidnapping offenses committed on, before, or after July 27,  
25 1997, must register within twenty-four hours from the time of release  
26 with the county sheriff for the county of the person's residence, or if  
27 the person is not a resident of Washington, the county of the person's  
28 school, or place of employment or vocation. Sex offenders who, on July  
29 23, 1995, are not in custody but are under the jurisdiction of the  
30 United States bureau of prisons, United States courts, United States  
31 parole commission, or military parole board for sex offenses committed  
32 before, on, or after February 28, 1990, must register within ten days  
33 of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not  
34 in custody but are under the jurisdiction of the United States bureau  
35 of prisons, United States courts, United States parole commission, or  
36 military parole board for kidnapping offenses committed before, on, or  
37 after July 27, 1997, must register within ten days of July 27, 1997.  
38 A change in supervision status of a sex offender who was required to

1 register under this subsection (4)(a)(iii) as of July 23, 1995, or a  
2 kidnapping offender required to register as of July 27, 1997 shall not  
3 relieve the offender of the duty to register or to reregister following  
4 a change in residence, or if the person is not a resident of  
5 Washington, the county of the person's school, or place of employment  
6 or vocation. The obligation to register shall only cease pursuant to  
7 RCW 9A.44.140.

8 (iv) OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED. Sex offenders  
9 who are convicted of a sex offense on or after July 28, 1991, for a sex  
10 offense that was committed on or after February 28, 1990, and  
11 kidnapping offenders who are convicted on or after July 27, 1997, for  
12 a kidnapping offense that was committed on or after July 27, 1997, but  
13 who are not sentenced to serve a term of confinement immediately upon  
14 sentencing, shall report to the county sheriff to register immediately  
15 upon completion of being sentenced.

16 (v) OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON  
17 RESIDENTS. Sex offenders and kidnapping offenders who move to  
18 Washington state from another state or a foreign country that are not  
19 under the jurisdiction of the state department of corrections, the  
20 indeterminate sentence review board, or the state department of social  
21 and health services at the time of moving to Washington, must register  
22 within thirty days of establishing residence or reestablishing  
23 residence if the person is a former Washington resident. The duty to  
24 register under this subsection applies to sex offenders convicted under  
25 the laws of another state or a foreign country, federal or military  
26 statutes for offenses committed on or after February 28, 1990, or  
27 Washington state for offenses committed before, on, or after February  
28 28, 1990, and to kidnapping offenders convicted under the laws of  
29 another state or a foreign country, federal or military statutes, or  
30 Washington state for offenses committed on or after July 27, 1997. Sex  
31 offenders and kidnapping offenders from other states or a foreign  
32 country who, when they move to Washington, are under the jurisdiction  
33 of the department of corrections, the indeterminate sentence review  
34 board, or the department of social and health services must register  
35 within twenty-four hours of moving to Washington. The agency that has  
36 jurisdiction over the offender shall notify the offender of the  
37 registration requirements before the offender moves to Washington.

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

27 (vii) OFFENDERS WHO LACK A FIXED RESIDENCE. Any person who lacks  
28 a fixed residence and leaves the county in which he or she is  
29 registered and enters and remains within a new county for twenty-four  
30 hours is required to register with the county sheriff not more than  
31 twenty-four hours after entering the county and provide the information  
32 required in subsection (3)(b) of this section.

33 (viii) OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER  
34 SUPERVISION. Offenders who lack a fixed residence and who are under  
35 the supervision of the department shall register in the county of their  
36 supervision.

37 (ix) OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND  
38 SCHOOL IN ANOTHER STATE. Offenders required to register in Washington,

1 who move to another state, or who work, carry on a vocation, or attend  
2 school in another state shall register a new address, fingerprints, and  
3 photograph with the new state within ten days after establishing  
4 residence, or after beginning to work, carry on a vocation, or attend  
5 school in the new state. The person must also send written notice  
6 within ten days of moving to the new state or to a foreign country to  
7 the county sheriff with whom the person last registered in Washington  
8 state. The county sheriff shall promptly forward this information to  
9 the Washington state patrol.

10 (b) Failure to register within the time required under this section  
11 constitutes a per se violation of this section and is punishable as  
12 provided in subsection (10) of this section. The county sheriff shall  
13 not be required to determine whether the person is living within the  
14 county.

15 (c) An arrest on charges of failure to register, service of an  
16 information, or a complaint for a violation of this section, or  
17 arraignment on charges for a violation of this section, constitutes  
18 actual notice of the duty to register. Any person charged with the  
19 crime of failure to register under this section who asserts as a  
20 defense the lack of notice of the duty to register shall register  
21 immediately following actual notice of the duty through arrest,  
22 service, or arraignment. Failure to register as required under this  
23 subsection (4)(c) constitutes grounds for filing another charge of  
24 failing to register. Registering following arrest, service, or  
25 arraignment on charges shall not relieve the offender from criminal  
26 liability for failure to register prior to the filing of the original  
27 charge.

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

31 (5)(a) If any person required to register pursuant to this section  
32 changes his or her residence address within the same county, the person  
33 must send written notice of the change of address to the county sheriff  
34 within seventy-two hours of moving. If any person required to register  
35 pursuant to this section moves to a new county, the person must send  
36 written notice of the change of address at least fourteen days before  
37 moving to the county sheriff in the new county of residence and must  
38 register with that county sheriff within twenty-four hours of moving.

1 The person must also send written notice within ten days of the change  
2 of address in the new county to the county sheriff with whom the person  
3 last registered. The county sheriff with whom the person last  
4 registered shall promptly forward the information concerning the change  
5 of address to the county sheriff for the county of the person's new  
6 residence. Upon receipt of notice of change of address to a new state,  
7 the county sheriff shall promptly forward the information regarding the  
8 change of address to the agency designated by the new state as the  
9 state's offender registration agency.

10 (b) It is an affirmative defense to a charge that the person failed  
11 to send a notice at least fourteen days in advance of moving as  
12 required under (a) of this subsection that the person did not know the  
13 location of his or her new residence at least fourteen days before  
14 moving. The defendant must establish the defense by a preponderance of  
15 the evidence and, to prevail on the defense, must also prove by a  
16 preponderance that the defendant sent the required notice within  
17 twenty-four hours of determining the new address.

18 (6)(a) Any person required to register under this section who lacks  
19 a fixed residence shall provide written notice to the sheriff of the  
20 county where he or she last registered within forty-eight hours  
21 excluding weekends and holidays after ceasing to have a fixed  
22 residence. The notice shall include the information required by  
23 subsection (3)(b) of this section, except the photograph and  
24 fingerprints. The county sheriff may, for reasonable cause, require  
25 the offender to provide a photograph and fingerprints. The sheriff  
26 shall forward this information to the sheriff of the county in which  
27 the person intends to reside, if the person intends to reside in  
28 another county.

29 (b) A person who lacks a fixed residence must report weekly, in  
30 person, to the sheriff of the county where he or she is registered.  
31 The weekly report shall be on a day specified by the county sheriff's  
32 office, and shall occur during normal business hours. The county  
33 sheriff's office may require the person to list the locations where the  
34 person has stayed during the last seven days. The lack of a fixed  
35 residence is a factor that may be considered in determining an  
36 offender's risk level and shall make the offender subject to disclosure  
37 of information to the public at large pursuant to RCW 4.24.550.

1 (c) If any person required to register pursuant to this section  
2 does not have a fixed residence, it is an affirmative defense to the  
3 charge of failure to register, that he or she provided written notice  
4 to the sheriff of the county where he or she last registered within  
5 forty-eight hours excluding weekends and holidays after ceasing to have  
6 a fixed residence and has subsequently complied with the requirements  
7 of subsections (4)(a)(vii) or (viii) and (6) of this section. To  
8 prevail, the person must prove the defense by a preponderance of the  
9 evidence.

10 (7) A sex offender subject to registration requirements under this  
11 section who applies to change his or her name under RCW 4.24.130 or any  
12 other law shall submit a copy of the application to the county sheriff  
13 of the county of the person's residence and to the state patrol not  
14 fewer than five days before the entry of an order granting the name  
15 change. No sex offender under the requirement to register under this  
16 section at the time of application shall be granted an order changing  
17 his or her name if the court finds that doing so will interfere with  
18 legitimate law enforcement interests, except that no order shall be  
19 denied when the name change is requested for religious or legitimate  
20 cultural reasons or in recognition of marriage or dissolution of  
21 marriage. A sex offender under the requirement to register under this  
22 section who receives an order changing his or her name shall submit a  
23 copy of the order to the county sheriff of the county of the person's  
24 residence and to the state patrol within five days of the entry of the  
25 order.

26 (8) The county sheriff shall obtain a photograph of the individual  
27 and shall obtain a copy of the individual's fingerprints.

28 (9) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540,  
29 70.48.470, and 72.09.330:

30 (a) "Sex offense" means:

31 (i) Any offense defined as a sex offense by RCW 9.94A.030;

32 (ii) Any violation under RCW 9A.44.096 (sexual misconduct with a  
33 minor in the second degree);

34 (iii) Any violation under RCW 9.68A.090 (communication with a minor  
35 for immoral purposes);

36 (iv) Any federal or out-of-state conviction for an offense that  
37 under the laws of this state would be classified as a sex offense under  
38 this subsection; and

1 (v) Any gross misdemeanor that is, under chapter 9A.28 RCW, a  
2 criminal attempt, criminal solicitation, or criminal conspiracy to  
3 commit an offense that is classified as a sex offense under RCW  
4 9.94A.030 or this subsection.

5 (b) "Kidnapping offense" means: (i) The crimes of kidnapping in  
6 the first degree, kidnapping in the second degree, and unlawful  
7 imprisonment, as defined in chapter 9A.40 RCW, where the victim is a  
8 minor and the offender is not the minor's parent; (ii) any offense that  
9 is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation,  
10 or criminal conspiracy to commit an offense that is classified as a  
11 kidnapping offense under this subsection (9)(b); and (iii) any federal  
12 or out-of-state conviction for an offense that under the laws of this  
13 state would be classified as a kidnapping offense under this subsection  
14 (9)(b).

15 (c) "Employed" or "carries on a vocation" means employment that is  
16 full-time or part-time for a period of time exceeding fourteen days, or  
17 for an aggregate period of time exceeding thirty days during any  
18 calendar year. A person is employed or carries on a vocation whether  
19 the person's employment is financially compensated, volunteered, or for  
20 the purpose of government or educational benefit.

21 (d) "Student" means a person who is enrolled, on a full-time or  
22 part-time basis, in any public or private educational institution. An  
23 educational institution includes any secondary school, trade or  
24 professional institution, or institution of higher education.

25 (10)(a) A person who knowingly fails to register with the county  
26 sheriff or notify the county sheriff, or who changes his or her name  
27 without notifying the county sheriff and the state patrol, as required  
28 by this section is guilty of a class C felony if the crime for which  
29 the individual was convicted was a felony sex offense as defined in  
30 subsection (9)(a) of this section or a federal or out-of-state  
31 conviction for an offense that under the laws of this state would be a  
32 felony sex offense as defined in subsection (9)(a) of this section.

33 (b) If the crime for which the individual was convicted was other  
34 than a felony or a federal or out-of-state conviction for an offense  
35 that under the laws of this state would be other than a felony,  
36 violation of this section is a gross misdemeanor.

37 (11)(a) A person who knowingly fails to register or who moves  
38 within the state without notifying the county sheriff as required by

1 this section is guilty of a class C felony if the crime for which the  
2 individual was convicted was a felony kidnapping offense as defined in  
3 subsection (9)(b) of this section or a federal or out-of-state  
4 conviction for an offense that under the laws of this state would be a  
5 felony kidnapping offense as defined in subsection (9)(b) of this  
6 section.

7 (b) If the crime for which the individual was convicted was other  
8 than a felony or a federal or out-of-state conviction for an offense  
9 that under the laws of this state would be other than a felony,  
10 violation of this section is a gross misdemeanor.

11 (12) Except as may otherwise be provided by law, nothing in this  
12 section shall impose any liability upon a peace officer, including a  
13 county sheriff, or law enforcement agency, for failing to release  
14 information authorized under this section.

15 NEW SECTION. **Sec. 3.** This act takes effect September 1, 2006.

--- END ---