

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1088

Chapter 268, Laws of 1995

54th Legislature
1995 Regular Session

SEX OFFENDERS--CLARIFICATION OF SCOPE OF DEFINITION

EFFECTIVE DATE: 7/23/95

Passed by the House April 19, 1995
Yeas 88 Nays 0

CLYDE BALLARD

**Speaker of the
House of Representatives**

Passed by the Senate April 4, 1995
Yeas 46 Nays 0

JOEL PRITCHARD

President of the Senate

Approved May 9, 1995

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1088** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN

Chief Clerk

FILED

May 9, 1995 - 3:30 p.m.

**Secretary of State
State of Washington**

HOUSE BILL 1088

AS AMENDED BY THE SENATE

Passed Legislature - 1995 Regular Session

State of Washington 54th Legislature 1995 Regular Session

By Representatives Hatfield, Ballasiotes, Kessler, Poulsen, Sheldon, Schoesler, Brumsickle, Blanton, Campbell, Pennington, Costa, Sherstad and Benton

Read first time 01/12/95. Referred to Committee on Corrections.

1 AN ACT Relating to sex offenders; amending RCW 9.94A.030,
2 9A.44.130, 9A.44.140, and 13.40.150; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** In order to eliminate a potential ambiguity
5 over the scope of the term "sex offense," this act clarifies that for
6 general purposes the definition of "sex offense" does not include any
7 misdemeanors or gross misdemeanors. For purposes of the registration
8 of sex offenders pursuant to RCW 9A.44.130, however, the definition of
9 "sex offense" is expanded to include those gross misdemeanors that
10 constitute attempts, conspiracies, and solicitations to commit class C
11 felonies.

12 **Sec. 2.** RCW 9.94A.030 and 1994 c 261 s 16 are each amended to read
13 as follows:

14 Unless the context clearly requires otherwise, the definitions in
15 this section apply throughout this chapter.

16 (1) "Collect," or any derivative thereof, "collect and remit," or
17 "collect and deliver," when used with reference to the department of
18 corrections, means that the department is responsible for monitoring

1 and enforcing the offender's sentence with regard to the legal
2 financial obligation, receiving payment thereof from the offender, and,
3 consistent with current law, delivering daily the entire payment to the
4 superior court clerk without depositing it in a departmental account.

5 (2) "Commission" means the sentencing guidelines commission.

6 (3) "Community corrections officer" means an employee of the
7 department who is responsible for carrying out specific duties in
8 supervision of sentenced offenders and monitoring of sentence
9 conditions.

10 (4) "Community custody" means that portion of an inmate's sentence
11 of confinement in lieu of earned early release time served in the
12 community subject to controls placed on the inmate's movement and
13 activities by the department of corrections.

14 (5) "Community placement" means that period during which the
15 offender is subject to the conditions of community custody and/or
16 postrelease supervision, which begins either upon completion of the
17 term of confinement (postrelease supervision) or at such time as the
18 offender is transferred to community custody in lieu of earned early
19 release. Community placement may consist of entirely community
20 custody, entirely postrelease supervision, or a combination of the two.

21 (6) "Community service" means compulsory service, without
22 compensation, performed for the benefit of the community by the
23 offender.

24 (7) "Community supervision" means a period of time during which a
25 convicted offender is subject to crime-related prohibitions and other
26 sentence conditions imposed by a court pursuant to this chapter or RCW
27 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
28 may include crime-related prohibitions and other conditions imposed
29 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
30 for out-of-state supervision of parolees and probationers, RCW
31 9.95.270, community supervision is the functional equivalent of
32 probation and should be considered the same as probation by other
33 states.

34 (8) "Confinement" means total or partial confinement as defined in
35 this section.

36 (9) "Conviction" means an adjudication of guilt pursuant to Titles
37 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
38 acceptance of a plea of guilty.

1 (10) "Court-ordered legal financial obligation" means a sum of
2 money that is ordered by a superior court of the state of Washington
3 for legal financial obligations which may include restitution to the
4 victim, statutorily imposed crime victims' compensation fees as
5 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
6 drug funds, court-appointed attorneys' fees, and costs of defense,
7 fines, and any other financial obligation that is assessed to the
8 offender as a result of a felony conviction. Upon conviction for
9 vehicular assault while under the influence of intoxicating liquor or
10 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
11 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
12 legal financial obligations may also include payment to a public agency
13 of the expense of an emergency response to the incident resulting in
14 the conviction, subject to the provisions in RCW 38.52.430.

15 (11) "Crime-related prohibition" means an order of a court
16 prohibiting conduct that directly relates to the circumstances of the
17 crime for which the offender has been convicted, and shall not be
18 construed to mean orders directing an offender affirmatively to
19 participate in rehabilitative programs or to otherwise perform
20 affirmative conduct.

21 (12)(a) "Criminal history" means the list of a defendant's prior
22 convictions, whether in this state, in federal court, or elsewhere.
23 The history shall include, where known, for each conviction (i) whether
24 the defendant has been placed on probation and the length and terms
25 thereof; and (ii) whether the defendant has been incarcerated and the
26 length of incarceration.

27 (b) "Criminal history" shall always include juvenile convictions
28 for sex offenses and shall also include a defendant's other prior
29 convictions in juvenile court if: (i) The conviction was for an
30 offense which is a felony or a serious traffic offense and is criminal
31 history as defined in RCW 13.40.020(9); (ii) the defendant was fifteen
32 years of age or older at the time the offense was committed; and (iii)
33 with respect to prior juvenile class B and C felonies or serious
34 traffic offenses, the defendant was less than twenty-three years of age
35 at the time the offense for which he or she is being sentenced was
36 committed.

37 (13) "Department" means the department of corrections.

38 (14) "Determinate sentence" means a sentence that states with
39 exactitude the number of actual years, months, or days of total

1 confinement, of partial confinement, of community supervision, the
2 number of actual hours or days of community service work, or dollars or
3 terms of a legal financial obligation. The fact that an offender
4 through "earned early release" can reduce the actual period of
5 confinement shall not affect the classification of the sentence as a
6 determinate sentence.

7 (15) "Disposable earnings" means that part of the earnings of an
8 individual remaining after the deduction from those earnings of any
9 amount required by law to be withheld. For the purposes of this
10 definition, "earnings" means compensation paid or payable for personal
11 services, whether denominated as wages, salary, commission, bonuses, or
12 otherwise, and, notwithstanding any other provision of law making the
13 payments exempt from garnishment, attachment, or other process to
14 satisfy a court-ordered legal financial obligation, specifically
15 includes periodic payments pursuant to pension or retirement programs,
16 or insurance policies of any type, but does not include payments made
17 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
18 or Title 74 RCW.

19 (16) "Drug offense" means:

20 (a) Any felony violation of chapter 69.50 RCW except possession of
21 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
22 controlled substance (RCW 69.50.403);

23 (b) Any offense defined as a felony under federal law that relates
24 to the possession, manufacture, distribution, or transportation of a
25 controlled substance; or

26 (c) Any out-of-state conviction for an offense that under the laws
27 of this state would be a felony classified as a drug offense under (a)
28 of this subsection.

29 (17) "Escape" means:

30 (a) Escape in the first degree (RCW 9A.76.110), escape in the
31 second degree (RCW 9A.76.120), willful failure to return from furlough
32 (RCW 72.66.060), willful failure to return from work release (RCW
33 72.65.070), or willful failure to be available for supervision by the
34 department while in community custody (RCW 72.09.310); or

35 (b) Any federal or out-of-state conviction for an offense that
36 under the laws of this state would be a felony classified as an escape
37 under (a) of this subsection.

38 (18) "Felony traffic offense" means:

1 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
2 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
3 and-run injury-accident (RCW 46.52.020(4)); or

4 (b) Any federal or out-of-state conviction for an offense that
5 under the laws of this state would be a felony classified as a felony
6 traffic offense under (a) of this subsection.

7 (19) "Fines" means the requirement that the offender pay a specific
8 sum of money over a specific period of time to the court.

9 (20)(a) "First-time offender" means any person who is convicted of
10 a felony (i) not classified as a violent offense or a sex offense under
11 this chapter, or (ii) that is not the manufacture, delivery, or
12 possession with intent to manufacture or deliver a controlled substance
13 classified in schedule I or II that is a narcotic drug or the selling
14 for profit of any controlled substance or counterfeit substance
15 classified in schedule I, RCW 69.50.204, except leaves and flowering
16 tops of marihuana, and except as provided in (b) of this subsection,
17 who previously has never been convicted of a felony in this state,
18 federal court, or another state, and who has never participated in a
19 program of deferred prosecution for a felony offense.

20 (b) For purposes of (a) of this subsection, a juvenile adjudication
21 for an offense committed before the age of fifteen years is not a
22 previous felony conviction except for adjudications of sex offenses.

23 (21) "Most serious offense" means any of the following felonies or
24 a felony attempt to commit any of the following felonies, as now
25 existing or hereafter amended:

26 (a) Any felony defined under any law as a class A felony or
27 criminal solicitation of or criminal conspiracy to commit a class A
28 felony;

29 (b) Assault in the second degree;

30 (c) Assault of a child in the second degree;

31 (d) Child molestation in the second degree;

32 (e) Controlled substance homicide;

33 (f) Extortion in the first degree;

34 (g) Incest when committed against a child under age fourteen;

35 (h) Indecent liberties;

36 (i) Kidnapping in the second degree;

37 (j) Leading organized crime;

38 (k) Manslaughter in the first degree;

39 (l) Manslaughter in the second degree;

- 1 (m) Promoting prostitution in the first degree;
- 2 (n) Rape in the third degree;
- 3 (o) Robbery in the second degree;
- 4 (p) Sexual exploitation;
- 5 (q) Vehicular assault;
- 6 (r) Vehicular homicide, when proximately caused by the driving of
7 any vehicle by any person while under the influence of intoxicating
8 liquor or any drug as defined by RCW 46.61.502, or by the operation of
9 any vehicle in a reckless manner;
- 10 (s) Any other class B felony offense with a finding of sexual
11 motivation, as "sexual motivation" is defined under this section;
- 12 (t) Any other felony with a deadly weapon verdict under RCW
13 9.94A.125;
- 14 (u) Any felony offense in effect at any time prior to December 2,
15 1993, that is comparable to a most serious offense under this
16 subsection, or any federal or out-of-state conviction for an offense
17 that under the laws of this state would be a felony classified as a
18 most serious offense under this subsection.
- 19 (22) "Nonviolent offense" means an offense which is not a violent
20 offense.
- 21 (23) "Offender" means a person who has committed a felony
22 established by state law and is eighteen years of age or older or is
23 less than eighteen years of age but whose case has been transferred by
24 the appropriate juvenile court to a criminal court pursuant to RCW
25 13.40.110. Throughout this chapter, the terms "offender" and
26 "defendant" are used interchangeably.
- 27 (24) "Partial confinement" means confinement for no more than one
28 year in a facility or institution operated or utilized under contract
29 by the state or any other unit of government, or, if home detention or
30 work crew has been ordered by the court, in an approved residence, for
31 a substantial portion of each day with the balance of the day spent in
32 the community. Partial confinement includes work release, home
33 detention, work crew, and a combination of work crew and home detention
34 as defined in this section.
- 35 (25) "Persistent offender" is an offender who:
- 36 (a) Has been convicted in this state of any felony considered a
37 most serious offense; and
- 38 (b) Has, before the commission of the offense under (a) of this
39 subsection, been convicted as an offender on at least two separate

1 occasions, whether in this state or elsewhere, of felonies that under
2 the laws of this state would be considered most serious offenses and
3 would be included in the offender score under RCW 9.94A.360; provided
4 that of the two or more previous convictions, at least one conviction
5 must have occurred before the commission of any of the other most
6 serious offenses for which the offender was previously convicted.

7 (26) "Postrelease supervision" is that portion of an offender's
8 community placement that is not community custody.

9 (27) "Restitution" means the requirement that the offender pay a
10 specific sum of money over a specific period of time to the court as
11 payment of damages. The sum may include both public and private costs.
12 The imposition of a restitution order does not preclude civil redress.

13 (28) "Serious traffic offense" means:

14 (a) Driving while under the influence of intoxicating liquor or any
15 drug (RCW 46.61.502), actual physical control while under the influence
16 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
17 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
18 or

19 (b) Any federal, out-of-state, county, or municipal conviction for
20 an offense that under the laws of this state would be classified as a
21 serious traffic offense under (a) of this subsection.

22 (29) "Serious violent offense" is a subcategory of violent offense
23 and means:

24 (a) Murder in the first degree, homicide by abuse, murder in the
25 second degree, assault in the first degree, kidnapping in the first
26 degree, or rape in the first degree, assault of a child in the first
27 degree, or an attempt, criminal solicitation, or criminal conspiracy to
28 commit one of these felonies; or

29 (b) Any federal or out-of-state conviction for an offense that
30 under the laws of this state would be a felony classified as a serious
31 violent offense under (a) of this subsection.

32 (30) "Sentence range" means the sentencing court's discretionary
33 range in imposing a nonappealable sentence.

34 (31) "Sex offense" means:

35 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
36 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
37 criminal attempt, criminal solicitation, or criminal conspiracy to
38 commit such crimes;

1 (b) A felony with a finding of sexual motivation under RCW
2 9.94A.127 or 13.40.135; or

3 (c) Any federal or out-of-state conviction for an offense that
4 under the laws of this state would be a felony classified as a sex
5 offense under (a) of this subsection.

6 (32) "Sexual motivation" means that one of the purposes for which
7 the defendant committed the crime was for the purpose of his or her
8 sexual gratification.

9 (33) "Total confinement" means confinement inside the physical
10 boundaries of a facility or institution operated or utilized under
11 contract by the state or any other unit of government for twenty-four
12 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

13 (34) "Transition training" means written and verbal instructions
14 and assistance provided by the department to the offender during the
15 two weeks prior to the offender's successful completion of the work
16 ethic camp program. The transition training shall include instructions
17 in the offender's requirements and obligations during the offender's
18 period of community custody.

19 (35) "Victim" means any person who has sustained emotional,
20 psychological, physical, or financial injury to person or property as
21 a direct result of the crime charged.

22 (36) "Violent offense" means:

23 (a) Any of the following felonies, as now existing or hereafter
24 amended: Any felony defined under any law as a class A felony or an
25 attempt to commit a class A felony, criminal solicitation of or
26 criminal conspiracy to commit a class A felony, manslaughter in the
27 first degree, manslaughter in the second degree, indecent liberties if
28 committed by forcible compulsion, kidnapping in the second degree,
29 arson in the second degree, assault in the second degree, assault of a
30 child in the second degree, extortion in the first degree, robbery in
31 the second degree, vehicular assault, and vehicular homicide, when
32 proximately caused by the driving of any vehicle by any person while
33 under the influence of intoxicating liquor or any drug as defined by
34 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

35 (b) Any conviction for a felony offense in effect at any time prior
36 to July 1, 1976, that is comparable to a felony classified as a violent
37 offense in (a) of this subsection; and

1 (c) Any federal or out-of-state conviction for an offense that
2 under the laws of this state would be a felony classified as a violent
3 offense under (a) or (b) of this subsection.

4 (37) "Work crew" means a program of partial confinement consisting
5 of civic improvement tasks for the benefit of the community of not less
6 than thirty-five hours per week that complies with RCW 9.94A.135. The
7 civic improvement tasks shall have minimal negative impact on existing
8 private industries or the labor force in the county where the service
9 or labor is performed. The civic improvement tasks shall not affect
10 employment opportunities for people with developmental disabilities
11 contracted through sheltered workshops as defined in RCW 82.04.385.
12 Only those offenders sentenced to a facility operated or utilized under
13 contract by a county or the state are eligible to participate on a work
14 crew. Offenders sentenced for a sex offense as defined in subsection
15 (31) of this section are not eligible for the work crew program.

16 (38) "Work ethic camp" means an alternative incarceration program
17 designed to reduce recidivism and lower the cost of corrections by
18 requiring offenders to complete a comprehensive array of real-world job
19 and vocational experiences, character-building work ethics training,
20 life management skills development, substance abuse rehabilitation,
21 counseling, literacy training, and basic adult education.

22 (39) "Work release" means a program of partial confinement
23 available to offenders who are employed or engaged as a student in a
24 regular course of study at school. Participation in work release shall
25 be conditioned upon the offender attending work or school at regularly
26 defined hours and abiding by the rules of the work release facility.

27 (40) "Home detention" means a program of partial confinement
28 available to offenders wherein the offender is confined in a private
29 residence subject to electronic surveillance. Home detention may not
30 be imposed for offenders convicted of a violent offense, any sex
31 offense, any drug offense, reckless burning in the first or second
32 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
33 degree as defined in RCW 9A.36.031, assault of a child in the third
34 degree, unlawful imprisonment as defined in RCW 9A.40.040, or
35 harassment as defined in RCW 9A.46.020. Home detention may be imposed
36 for offenders convicted of possession of a controlled substance (RCW
37 69.50.401(d)) or forged prescription for a controlled substance (RCW
38 69.50.403) if the offender fulfills the participation conditions set
39 forth in this subsection and is monitored for drug use by treatment

1 alternatives to street crime (TASC) or a comparable court or agency-
2 referred program.

3 (a) Home detention may be imposed for offenders convicted of
4 burglary in the second degree as defined in RCW 9A.52.030 or
5 residential burglary conditioned upon the offender: (i) Successfully
6 completing twenty-one days in a work release program, (ii) having no
7 convictions for burglary in the second degree or residential burglary
8 during the preceding two years and not more than two prior convictions
9 for burglary or residential burglary, (iii) having no convictions for
10 a violent felony offense during the preceding two years and not more
11 than two prior convictions for a violent felony offense, (iv) having no
12 prior charges of escape, and (v) fulfilling the other conditions of the
13 home detention program.

14 (b) Participation in a home detention program shall be conditioned
15 upon: (i) The offender obtaining or maintaining current employment or
16 attending a regular course of school study at regularly defined hours,
17 or the offender performing parental duties to offspring or minors
18 normally in the custody of the offender, (ii) abiding by the rules of
19 the home detention program, and (iii) compliance with court-ordered
20 legal financial obligations. The home detention program may also be
21 made available to offenders whose charges and convictions do not
22 otherwise disqualify them if medical or health-related conditions,
23 concerns or treatment would be better addressed under the home
24 detention program, or where the health and welfare of the offender,
25 other inmates, or staff would be jeopardized by the offender's
26 incarceration. Participation in the home detention program for medical
27 or health-related reasons is conditioned on the offender abiding by the
28 rules of the home detention program and complying with court-ordered
29 restitution.

30 **Sec. 3.** RCW 9A.44.130 and 1994 c 84 s 2 are each amended to read
31 as follows:

32 (1) Any adult or juvenile residing in this state who has been found
33 to have committed or has been convicted of any sex offense shall
34 register with the county sheriff for the county of the person's
35 residence.

36 (2) The person shall provide the county sheriff with the following
37 information when registering: (a) Name; (b) address; (c) date and
38 place of birth; (d) place of employment; (e) crime for which convicted;

1 (f) date and place of conviction; (g) aliases used; and (h) social
2 security number.

3 (3)(a) Sex offenders shall register within the following deadlines.
4 For purposes of this section the term "conviction" refers to adult
5 convictions and juvenile adjudications for sex offenses:

6 (i) SEX OFFENDERS IN CUSTODY. Sex offenders who committed a sex
7 offense on, before, or after February 28, 1990, and who, on or after
8 July 28, 1991, are in custody, as a result of that offense, of the
9 state department of corrections, the state department of social and
10 health services, a local division of youth services, or a local jail or
11 juvenile detention facility, must register within twenty-four hours
12 from the time of release with the county sheriff for the county of the
13 person's residence. The agency that has jurisdiction over the offender
14 shall provide notice to the sex offender of the duty to register.
15 Failure to register within twenty-four hours of release constitutes a
16 violation of this section and is punishable as provided in subsection
17 (7) of this section.

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

31 (iii) SEX OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED. Sex
32 offenders who are convicted of a sex offense on or after July 28, 1991,
33 for a sex offense that was committed on or after February 28, 1990, but
34 who are not sentenced to serve a term of confinement immediately upon
35 sentencing, shall report to the county sheriff to register immediately
36 upon completion of being sentenced.

37 (iv) SEX OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON
38 RESIDENTS. Sex offenders who move to Washington state from another
39 state that are not under the jurisdiction of the state department of

1 corrections, the indeterminate sentence review board, or the state
2 department of social and health services at the time of moving to
3 Washington, must register within thirty days of establishing residence
4 or reestablishing residence if the person is a former Washington
5 resident. The duty to register under this subsection applies to sex
6 offenders convicted under the laws of another state, federal statutes,
7 or Washington state for offenses committed on or after February 28,
8 1990. Sex offenders from other states who, when they move to
9 Washington, are under the jurisdiction of the department of
10 corrections, the indeterminate sentence review board, or the department
11 of social and health services must register within twenty-four hours of
12 moving to Washington. The agency that has jurisdiction over the
13 offender shall notify the offender of the registration requirements
14 before the offender moves to Washington.

15 (b) Failure to register within the time required under this section
16 constitutes a per se violation of this section and is punishable as
17 provided in subsection (7) of this section. The county sheriff shall
18 not be required to determine whether the person is living within the
19 county.

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

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

35 (4) If any person required to register pursuant to this section
36 changes his or her residence address within the same county, the person
37 must send written notice of the change of address to the county sheriff
38 within ten days of establishing the new residence. If any person
39 required to register pursuant to this section moves to a new county,

1 the person must register with the county sheriff in the new county
2 within ten days of establishing the new residence. The person must
3 also send written notice within ten days of the change of address in
4 the new county to the county sheriff with whom the person last
5 registered.

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

8 (6) "Sex offense" for the purpose of RCW 9A.44.130, 10.01.200,
9 43.43.540, 70.48.470, and 72.09.330 means any offense defined as a sex
10 offense by RCW 9.94A.030 as well as any gross misdemeanor that is,
11 under 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.

14 (7) A person who knowingly fails to register as required by this
15 section is guilty of a class C felony if the crime for which the
16 individual was convicted was a class A felony or a federal or out-of-
17 state conviction for an offense that under the laws of this state would
18 be a class A felony. If the crime was other than a class A felony or
19 a federal or out-of-state conviction for an offense that under the laws
20 of this state would be a class A felony, violation of this section is
21 a gross misdemeanor.

22 **Sec. 4.** RCW 9A.44.140 and 1991 c 274 s 3 are each amended to read
23 as follows:

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

25 (a) For a person convicted of a class A felony: Such person may
26 only be relieved of the duty to register under subsection (2) or (3) of
27 this section.

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

34 (c) For a person convicted of a class C felony or an attempt,
35 solicitation, or conspiracy to commit a class C felony: Ten years
36 after the last date of release from confinement, if any, (including
37 full-time residential treatment) pursuant to the conviction, or entry

1 of the judgment and sentence, if the person has spent ten consecutive
2 years in the community without being convicted of any new offenses.

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

18 (3) An offender having a duty to register under RCW 9A.44.130 for
19 a sex offense committed when the offender was a juvenile may petition
20 the superior court to be relieved of that duty. The court shall
21 consider the nature of the registrable offense committed, and the
22 criminal and relevant noncriminal behavior of the petitioner both
23 before and after adjudication, and may consider other factors. The
24 court may relieve the petitioner of the duty to register for a sex
25 offense that was committed while the petitioner was fifteen years of
26 age or older only if the petitioner shows, with clear and convincing
27 evidence, that future registration of the petitioner will not serve the
28 purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470,
29 and 72.09.330. The court may relieve the petitioner of the duty to
30 register for a sex offense that was committed while the petitioner was
31 under the age of fifteen if the petitioner (a) has not been adjudicated
32 of any additional sex offenses during the twenty-four months following
33 the adjudication for the sex offense giving rise to the duty to
34 register, and (b) the petitioner proves by a preponderance of the
35 evidence that future registration of the petitioner will not serve the
36 purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470,
37 and 72.09.330.

1 (4) Unless relieved of the duty to register pursuant to this
2 section, a violation of RCW 9A.44.130 is an ongoing offense for
3 purposes of the statute of limitations under RCW 9A.04.080.

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

7 **Sec. 5.** RCW 13.40.150 and 1992 c 205 s 109 are each amended to
8 read as follows:

9 (1) In disposition hearings all relevant and material evidence,
10 including oral and written reports, may be received by the court and
11 may be relied upon to the extent of its probative value, even though
12 such evidence may not be admissible in a hearing on the information.
13 The youth or the youth's counsel and the prosecuting attorney shall be
14 afforded an opportunity to examine and controvert written reports so
15 received and to cross-examine individuals making reports when such
16 individuals are reasonably available, but sources of confidential
17 information need not be disclosed. The prosecutor and counsel for the
18 juvenile may submit recommendations for disposition.

19 (2) For purposes of disposition:

20 (a) Violations which are current offenses count as misdemeanors;

21 (b) Violations may not count as part of the offender's criminal
22 history;

23 (c) In no event may a disposition for a violation include
24 confinement.

25 (3) Before entering a dispositional order as to a respondent found
26 to have committed an offense, the court shall hold a disposition
27 hearing, at which the court shall:

28 (a) Consider the facts supporting the allegations of criminal
29 conduct by the respondent;

30 (b) Consider information and arguments offered by parties and their
31 counsel;

32 (c) Consider any predisposition reports;

33 (d) Consult with the respondent's parent, guardian, or custodian on
34 the appropriateness of dispositional options under consideration and
35 afford the respondent and the respondent's parent, guardian, or
36 custodian an opportunity to speak in the respondent's behalf;

37 (e) Allow the victim or a representative of the victim and an
38 investigative law enforcement officer to speak;

1 (f) Determine the amount of restitution owing to the victim, if
2 any;

3 (g) Determine whether the respondent is a serious offender, a
4 middle offender, or a minor or first offender;

5 (h) Consider whether or not any of the following mitigating factors
6 exist:

7 (i) The respondent's conduct neither caused nor threatened serious
8 bodily injury or the respondent did not contemplate that his or her
9 conduct would cause or threaten serious bodily injury;

10 (ii) The respondent acted under strong and immediate provocation;

11 (iii) The respondent was suffering from a mental or physical
12 condition that significantly reduced his or her culpability for the
13 offense though failing to establish a defense;

14 (iv) Prior to his or her detection, the respondent compensated or
15 made a good faith attempt to compensate the victim for the injury or
16 loss sustained; and

17 (v) There has been at least one year between the respondent's
18 current offense and any prior criminal offense;

19 (i) Consider whether or not any of the following aggravating
20 factors exist:

21 (i) In the commission of the offense, or in flight therefrom, the
22 respondent inflicted or attempted to inflict serious bodily injury to
23 another;

24 (ii) The offense was committed in an especially heinous, cruel, or
25 depraved manner;

26 (iii) The victim or victims were particularly vulnerable;

27 (iv) The respondent has a recent criminal history or has failed to
28 comply with conditions of a recent dispositional order or diversion
29 agreement;

30 (v) The current offense included a finding of sexual motivation
31 pursuant to RCW ((~~9.94A.127~~)) 13.40.135;

32 (vi) The respondent was the leader of a criminal enterprise
33 involving several persons; and

34 (vii) There are other complaints which have resulted in diversion
35 or a finding or plea of guilty but which are not included as criminal
36 history.

37 (4) The following factors may not be considered in determining the
38 punishment to be imposed:

39 (a) The sex of the respondent;

1 (b) The race or color of the respondent or the respondent's family;

2 (c) The creed or religion of the respondent or the respondent's
3 family;

4 (d) The economic or social class of the respondent or the
5 respondent's family; and

6 (e) Factors indicating that the respondent may be or is a dependent
7 child within the meaning of this chapter.

8 (5) A court may not commit a juvenile to a state institution solely
9 because of the lack of facilities, including treatment facilities,
10 existing in the community.

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