
SUBSTITUTE HOUSE BILL 1746

State of Washington

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By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Holmquist, O'Brien, Hinkle, Lantz, Woods, Ahern, Cox, Simpson, Sump, Kagi, McDonald, Haler, Newhouse, McCune, Kretz, Serben, Clements, Condotta, Roach, Pearson, Kirby, Bailey, Strow, Williams, Moeller, Kenney and Kristiansen)

READ FIRST TIME 02/25/05.

1 AN ACT Relating to requiring arson offenders to register with the
2 county sheriff; amending RCW 9A.48.010, 10.01.200, 70.48.470, and
3 72.09.330; adding new sections to chapter 9A.48 RCW; adding a new
4 section to chapter 43.43 RCW; creating a new section; and prescribing
5 penalties.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

8 (a) Arsonists often pose a high risk of reoffense; and

9 (b) Law enforcement's efforts to protect our communities, conduct
10 investigations, and quickly apprehend arsonists are impaired by the
11 lack of information available to law enforcement agencies about
12 convicted arsonists who live out in the community.

13 (2) It is therefore the intent of the legislature to:

14 (a) Assist local law enforcement agencies to increase public safety
15 by providing them with another tool for them to use in arson
16 investigations; and

17 (b) Require arson offenders to register with local law enforcement
18 agencies in a regulatory, rather than punitive, manner.

1 **Sec. 2.** RCW 9A.48.010 and 2002 c 32 s 1 are each amended to read
2 as follows:

3 (1) For the purpose of this chapter, unless the context indicates
4 otherwise:

5 (a) "Arson offender" means a person convicted, or found not guilty
6 by reason of insanity, of arson in the first degree or arson in the
7 second degree;

8 (b) "Building" has the definition in RCW 9A.04.110(5), and where a
9 building consists of two or more units separately secured or occupied,
10 each unit shall not be treated as a separate building;

11 ~~((b))~~ (c) "Damages", in addition to its ordinary meaning,
12 includes any charring, scorching, burning, or breaking, or agricultural
13 or industrial sabotage, and shall include any diminution in the value
14 of any property as a consequence of an act;

15 ~~((c))~~ (d) "Property of another" means property in which the actor
16 possesses anything less than exclusive ownership.

17 (2) To constitute arson it is not necessary that a person other
18 than the actor has ownership in the building or structure damaged or
19 set on fire.

20 NEW SECTION. **Sec. 3.** A new section is added to chapter 9A.48 RCW
21 to read as follows:

22 (1)(a) An arson offender who resides, whether or not the offender
23 has a fixed residence, in this state, or who is a student, is employed,
24 or carries on a vocation in this state, shall register with the county
25 sheriff for the county of the person's residence, or if the person is
26 not a resident of this state, the county of the person's school, place
27 of employment or vocation, or as otherwise specified in this section.

28 (b) An arson offender who lacks a fixed residence and is under the
29 supervision of the state department of corrections shall also register
30 in the county of his or her supervision if he or she is not already
31 required to do so under (a) of this subsection.

32 (c) An offender required to register under this section shall do so
33 in person.

34 (2)(a) An offender who has a fixed residence shall provide the
35 following information when registering:

36 (i) Name;

37 (ii) Residential address;

- 1 (iii) Date and place of birth;
- 2 (iv) Place of employment;
- 3 (v) Arson offense for which convicted;
- 4 (vi) Date and location of conviction;
- 5 (vii) Aliases used;
- 6 (viii) Social security number;
- 7 (ix) Photograph; and
- 8 (x) Fingerprints.

9 (b) An offender who lacks a fixed residence shall provide the
10 following information when registering:

- 11 (i) Name;
- 12 (ii) Where he or she plans to stay;
- 13 (iii) Date and place of birth;
- 14 (iv) Place of employment;
- 15 (v) Arson offense for which convicted;
- 16 (vi) Date and location of conviction;
- 17 (vii) Aliases used;
- 18 (viii) Social security number;
- 19 (ix) Photograph; and
- 20 (x) Fingerprints.

21 (3)(a) An arson offender shall register with the county sheriff
22 subject to the following deadlines and restrictions:

23 (i) OFFENDERS IN CUSTODY. An arson offender who, on or after the
24 effective date of this act, is in the custody of the United States
25 bureau of prisons or other federal or military correctional agency, the
26 state department of corrections, the state department of social and
27 health services, a local division of youth services, or a local jail or
28 juvenile detention facility, for an arson offense committed before, on,
29 or after the effective date of this act, shall register within twenty-
30 four hours of the time of release with the county sheriff for the
31 county of the offender's residence, or if the person is not a resident
32 of this state, the county of the offender's school or place of
33 employment or vocation. A state or local agency that has jurisdiction
34 over the offender shall provide notice to the offender of the duty to
35 register.

36 (ii) OFFENDERS NOT IN CUSTODY BUT UNDER FEDERAL, STATE, OR LOCAL
37 JURISDICTION. An arson offender who, on the effective date of this
38 act, is not in custody but is under the jurisdiction of the United

1 States bureau of prisons, the United States courts, the United States
2 parole commission, the United States military parole board, the state
3 indeterminate sentence review board, the state department of
4 corrections on active supervision as defined by the state department of
5 corrections, the state department of social and health services, or a
6 local division of youth services, for an arson offense committed
7 before, on, or after the effective date of this act, shall register
8 within thirty days of the effective date of this act. A change in the
9 supervision status of the offender shall not relieve the offender of
10 the duty to register or to reregister following a change in residence.

11 (iii) OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED. An arson
12 offender who is convicted of an arson offense on or after the effective
13 date of this act, but who is not sentenced to serve a term of
14 confinement immediately upon sentencing, shall report to the county
15 sheriff to register immediately upon completion of being sentenced.

16 (iv) OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON
17 RESIDENTS. An arson offender who moves to Washington state from
18 another state or a foreign country who is not under the jurisdiction of
19 the state department of corrections, the indeterminate sentence review
20 board, or the state department of social and health services at the
21 time of moving to Washington must register within ten days of
22 establishing residence or reestablishing residence if the offender is
23 a former Washington resident. An arson offender from another state or
24 a foreign country who, when the offender moves to Washington, is under
25 the jurisdiction of the department of corrections, the indeterminate
26 sentence review board, or the department of social and health services
27 must register within twenty-four hours of moving to Washington. The
28 agency that has jurisdiction over the offender shall notify the
29 offender of the registration requirements before the offender moves to
30 Washington. It is an affirmative defense to a charge that a person
31 failed to register within the deadlines in this subsection (3)(a)(iv)
32 that: (A) The person was not under the jurisdiction of the Washington
33 state department of corrections, the indeterminate sentence review
34 board, or the state department of social and health services at the
35 time of moving to Washington; (B) the person was unaware of his or her
36 duty to register; (C) it was reasonable for the person to be unaware of
37 his or her duty to register; and (D) the person registered within

1 twenty-four hours of receiving notice of his or her duty to register
2 from a law enforcement official. The defendant must establish the
3 defense by a preponderance of the evidence.

4 (v) OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY. An arson
5 offender who has been found not guilty by reason of insanity under
6 chapter 10.77 RCW of committing arson in the first degree or arson in
7 the second degree on, before, or after the effective date of this act
8 and who, on or after the effective date of this act, is in custody, as
9 a result of that finding, of the state department of social and health
10 services must register within twenty-four hours from the time of
11 release with the county sheriff for the county of the person's
12 residence. The state department of social and health services shall
13 provide notice to the arson offender in its custody of the duty to
14 register. An arson offender who has been found not guilty by reason of
15 insanity of committing arson in the first degree or arson in the second
16 degree, but who was released before the effective date of this act,
17 shall register within twenty-four hours of receiving notice of this
18 registration requirement. The state department of social and health
19 services shall make reasonable attempts within available resources to
20 notify arson offenders who were released prior to the effective date of
21 this act.

22 (vi) OFFENDERS WHO LACK A FIXED RESIDENCE. Any arson offender who
23 lacks a fixed residence and leaves the county in which he or she is
24 registered and enters and remains within a new county for twenty-four
25 hours is required to register with the county sheriff not more than
26 twenty-four hours after entering the county and provide the information
27 required in subsection (2)(b) of this section.

28 (vii) OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND
29 SCHOOL IN ANOTHER STATE. An arson offender required to register in
30 Washington, who moves to another state, or who works, carries on a
31 vocation, or attends school in another state shall register a new
32 address, fingerprints, and photograph with the new state within ten
33 days after establishing residence, or after beginning to work, carry on
34 a vocation, or attend school in the new state. The offender must also
35 send written notice within ten days of moving to the new state or to a
36 foreign country to the county sheriff with whom the person last
37 registered in Washington state.

1 (viii) ALL OTHER OFFENDERS. An arson offender who is not subject
2 to one of the deadlines in (a)(i) through (vii) of this subsection
3 shall register no later than thirty days after the effective date of
4 this act. It is an affirmative defense to a charge of failure to
5 register under this section that (A) the charge of failure to register
6 is based solely on an out-of-state conviction that would require a
7 person to register in Washington if he or she had been convicted in
8 Washington; (B) the person who is charged works, carries on a vocation,
9 or attends school in Washington but resides in another state; (C) the
10 person was unaware of his or her duty to register in Washington; (D) it
11 was reasonable for the person to be unaware of his or her duty to
12 register in Washington; and (E) the person registered in Washington
13 within twenty-four hours of receiving notice of his or her duty to
14 register from a law enforcement official. The defendant must establish
15 the defense by a preponderance of the evidence.

16 (b) Failure to register within the deadlines required under this
17 section constitutes a per se violation of this section and is
18 punishable under subsection (8) of this section. The county sheriff is
19 not required to determine whether the person is living within the
20 county.

21 (c) An arrest on charges of failure to register, service of an
22 information, or a complaint for a violation of this section, or
23 arraignment on charges for a violation of this section, constitutes
24 actual notice of the duty to register. Any person charged with the
25 crime of failure to register under this section who asserts as a
26 defense the lack of notice of the duty to register shall register
27 immediately following actual notice of the duty through arrest,
28 service, or arraignment. Failure to register as required under this
29 subsection (3)(c) constitutes grounds for filing another charge of
30 failing to register. Registering following arrest, service, or
31 arraignment on charges shall not relieve the offender from criminal
32 liability for failure to register prior to the filing of the original
33 charge.

34 (4)(a) If any person required to register pursuant to this section
35 changes his or her residence address within the same county, the person
36 must send written notice of the change of address to the county sheriff
37 within seventy-two hours of moving. If any person required to register
38 pursuant to this section moves to a new county, the person must send

1 written notice of the change of address at least fourteen days before
2 moving to the county sheriff in the new county of residence and must
3 register with that county sheriff within twenty-four hours of moving.
4 The person must also send written notice within ten days of the change
5 of address in the new county to the county sheriff with whom the person
6 last registered. The county sheriff with whom the person last
7 registered shall promptly forward the information concerning the change
8 of address to the county sheriff for the county of the person's new
9 residence. Upon receipt of notice of change of address to a new state,
10 the county sheriff shall promptly forward the information regarding the
11 change of address to the agency designated by the new state as the
12 state's offender registration agency.

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

21 (5)(a) Any person required to register under this section who lacks
22 a fixed residence shall provide written notice to the sheriff of the
23 county where he or she last registered within forty-eight hours
24 excluding weekends and holidays after ceasing to have a fixed
25 residence. The notice shall include the information required by
26 subsection (2)(b) of this section, except the photograph and
27 fingerprints. The county sheriff may, for reasonable cause, require
28 the offender to provide a photograph and fingerprints. The sheriff
29 shall forward this information to the sheriff of the county in which
30 the person intends to reside, if the person intends to reside in
31 another county.

32 (b) A person who lacks a fixed residence must report weekly, in
33 person, to the sheriff of the county where he or she is registered.
34 The weekly report shall be on a day specified by the county sheriff's
35 office and shall occur during normal business hours. The county
36 sheriff's office may require the person to list the locations where the
37 person has stayed during the last seven days.

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 to
4 the sheriff of the county where he or she last registered within forty-
5 eight hours excluding weekends and holidays after ceasing to have a
6 fixed residence and has subsequently complied with the requirements of
7 this subsection and subsection (3)(a)(vii) or (viii) of this section.
8 To prevail, the person must prove the defense by a preponderance of the
9 evidence.

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

26 (7) For the purpose of this section:

27 (a) "Employed" or "carries on a vocation" means employment that is
28 full time or part time for a period of time exceeding fourteen days or
29 for an aggregate period of time exceeding thirty days during any
30 calendar year. A person is employed or carries on a vocation whether
31 the person's employment is financially compensated, volunteered, or for
32 the purpose of government or educational benefit.

33 (b) "Student" means a person who is enrolled, on a full-time or
34 part-time basis, in any public or private educational institution. An
35 educational institution includes any secondary school, trade or
36 professional institution, or institution of higher education.

37 (8)(a) A person who knowingly fails to register with the county

1 sheriff or notify the county sheriff, or who changes his or her name
2 without notifying the county sheriff and the state patrol, as required
3 by this section is guilty of a class C felony.

4 (b) Unless the person is relieved of the duty to register under
5 section 4 of this act, a violation of this section is an ongoing
6 offense for purposes of the statute of limitations under RCW 9A.04.080.

7 NEW SECTION. **Sec. 4.** A new section is added to chapter 9A.48 RCW
8 to read as follows:

9 (1) An arson offender may only be relieved of the duty to register
10 imposed under section 3 of this act by petitioning the superior court
11 under subsection (2) or (3) of this section.

12 (2) An offender having a duty to register under section 3 of this
13 act for an offense committed when the offender was an adult may
14 petition the superior court to be relieved of that duty, if the person
15 has spent ten consecutive years in the community without being
16 convicted of any new offenses. The court shall consider the nature of
17 the registrable offense committed, and the criminal and relevant
18 noncriminal behavior of the petitioner both before and after
19 conviction, and may consider other factors.

20 (a) The petition shall be made to the court in which the petitioner
21 was convicted, or found not guilty by reason of insanity, of the
22 offense that subjects him or her to the duty to register, or, in the
23 case of convictions in other states, a foreign country, or a federal or
24 military court, to the court in Thurston county. The prosecuting
25 attorney of the county shall be named and served as the respondent in
26 any such petition.

27 (b) The court may relieve the petitioner of the duty to register
28 only if the petitioner shows, with clear and convincing evidence, that
29 future registration of the petitioner will not serve the purposes of
30 this act.

31 (3) An offender having a duty to register under section 3 of this
32 act for an offense committed when the offender was a juvenile may
33 petition the superior court to be relieved of that duty. The court
34 shall consider the nature of the registrable offense committed, and the
35 criminal and relevant noncriminal behavior of the petitioner both
36 before and after adjudication, and may consider other factors.

1 (a) The petition must be made in the manner required by subsection
2 (2)(a) of this section.

3 (b) The court may relieve the petitioner of the duty to register
4 for an offense that was committed while the petitioner was fifteen
5 years of age or older only if the petitioner shows, with clear and
6 convincing evidence, that future registration of the petitioner will
7 not serve the purposes of this act.

8 (c) The court may relieve the petitioner of the duty to register
9 for an offense that was committed while the petitioner was under the
10 age of fifteen if the petitioner:

11 (i) Has not been adjudicated of arson in the first degree or arson
12 in the second degree during the twenty-four months following the
13 adjudication for the offense giving rise to the duty to register; and

14 (ii) Proves by a preponderance of the evidence that future
15 registration of the petitioner will not serve the purposes of this act.

16 (d) This subsection shall not apply to juveniles prosecuted as
17 adults.

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.43 RCW
19 to read as follows:

20 (1) The county sheriff shall forward the information, photographs,
21 and fingerprints obtained pursuant to section 3 of this act, including
22 any notice of change of address, to the Washington state patrol within
23 five working days.

24 (2) The state patrol shall maintain a central registry of arson
25 offenders required to register under section 3 of this act.

26 (a) The state patrol shall grant access to the registry to law
27 enforcement agencies.

28 (b) The state patrol and the entities receiving information under
29 (a) of this subsection may not disclose the information obtained from
30 the registry to any other person or entity.

31 (3) The state patrol shall adopt rules consistent with chapters
32 10.97, 10.98, and 43.43 RCW as are necessary to carry out the purposes
33 of this act.

34 (4) The state patrol shall reimburse the counties for the cost of
35 processing the offender registration, including taking the fingerprints
36 and photographs.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 9A.48 RCW
2 to read as follows:

3 (1) When an offender registers with the county sheriff pursuant to
4 section 3 of this act, the county sheriff shall notify the chief law
5 enforcement officer, if any, of the jurisdiction in which the offender
6 has registered to live. If the offender registers to live in an
7 unincorporated area of the county, the sheriff shall make reasonable
8 attempts to verify that the offender is residing at the registered
9 address. If the offender registers to live in an incorporated city or
10 town, the chief law enforcement officer of the city or town shall make
11 reasonable attempts to verify that the offender is residing at the
12 registered address.

13 (2)(a) For purposes of this section, "reasonable attempts" shall
14 include at a minimum sending by certified mail, with return receipt
15 requested, a nonforwardable annual verification form to the offender at
16 the offender's last registered address.

17 (b) The offender must sign the verification form, state on the form
18 whether he or she still resides at the last registered address, and
19 return the form to the chief law enforcement officer of the
20 jurisdiction where the offender is registered to live within ten days
21 after receipt of the form.

22 (3) The chief law enforcement officer of the jurisdiction where the
23 offender has registered to live, or the county sheriff if the offender
24 has registered in an unincorporated area, shall make reasonable
25 attempts to locate any arson offender who fails to return the
26 verification form or who cannot be located at the registered address.

27 (4) When an offender notifies the county sheriff of a change to his
28 or her residence address pursuant to section 3 of this act, and the new
29 address is in a different law enforcement jurisdiction, the county
30 sheriff shall notify the chief law enforcement officer of the
31 jurisdiction from which the offender has moved.

32 **Sec. 7.** RCW 10.01.200 and 1997 c 113 s 5 are each amended to read
33 as follows:

34 The court shall provide written notification to any defendant
35 charged with a sex offense or kidnapping offense of the registration
36 requirements of RCW 9A.44.130. The court shall provide written notice
37 to any defendant charged with arson in the first degree or arson in the

1 second degree of the registration requirements of section 3 of this
2 act. Such notice shall be included on any guilty plea forms and
3 judgment and sentence forms provided to the defendant.

4 **Sec. 8.** RCW 70.48.470 and 2000 c 91 s 4 are each amended to read
5 as follows:

6 (1)(a) A person having charge of a jail shall:

7 (i) Notify in writing any confined person who is in the custody of
8 the jail for a conviction of a sex offense as defined in RCW 9.94A.030
9 or a kidnapping offense as defined in RCW 9A.44.130 of the registration
10 requirements of RCW 9A.44.130 at the time of the inmate's release from
11 confinement, and shall obtain written acknowledgment of such
12 notification; and

13 (ii) Notify in writing any confined person who is in the custody of
14 the jail for a conviction of arson in the first degree or arson in the
15 second degree of the registration requirements of section 3 of this act
16 at the time of the inmate's release from confinement, and shall obtain
17 written acknowledgment of such notification.

18 (b) The person having charge of the jail shall also obtain from the
19 inmate the county of the inmate's residence upon release from jail and,
20 where applicable, the city.

21 (2)(a) When a sex offender or a person convicted of a kidnapping
22 offense as defined in RCW 9A.44.130 under local government jurisdiction
23 will reside in a county other than the county of conviction upon
24 discharge or release, the chief law enforcement officer of the jail or
25 his or her designee shall give notice of the inmate's discharge or
26 release to the sheriff of the county and, where applicable, to the
27 police chief of the city where the offender will reside.

28 (b) When an offender convicted of arson in the first degree or
29 arson in the second degree under local government jurisdiction will
30 reside in a county other than the county of conviction upon discharge
31 or release, the chief law enforcement officer of the jail or his or her
32 designee shall give notice of the inmate's discharge or release to the
33 sheriff of the county where the offender will reside.

34 **Sec. 9.** RCW 72.09.330 and 1997 c 113 s 8 are each amended to read
35 as follows:

36 (1) The department shall:

1 (a) Provide written notification to an inmate convicted of a sex
2 offense or kidnapping offense of the registration requirements of RCW
3 9A.44.130 at the time of the inmate's release from confinement and
4 shall receive and retain a signed acknowledgement of receipt; and

5 (b) Provide written notification to an inmate convicted of arson in
6 the first degree or arson in the second degree of the registration
7 requirements of section 3 of this act at the time of the inmate's
8 release from confinement and shall receive and retain a signed
9 acknowledgement of receipt.

10 (2) The department shall:

11 (a) Provide written notification to an individual convicted of a
12 sex offense or kidnapping offense from another state of the
13 registration requirements of RCW 9A.44.130 at the time the department
14 accepts supervision and has legal authority of the individual under the
15 terms and conditions of the interstate compact agreement under RCW
16 9.95.270; and

17 (b) Provide written notification to an individual convicted of
18 arson in the first degree or arson in the second degree from another
19 state of the registration requirements of section 3 of this act at the
20 time the department accepts supervision and has legal authority of the
21 individual under the terms and conditions of the interstate compact
22 agreement under RCW 9.95.270.

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