
SENATE BILL 5326

State of Washington

61st Legislature

2009 Regular Session

By Senator Regala; by request of Sentencing Guidelines Commission

Read first time 01/20/09. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to juvenile sex and kidnapping offender
2 registration; and amending RCW 9A.44.140 and 9A.44.145.

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

4 **Sec. 1.** RCW 9A.44.140 and 2002 c 25 s 1 are each amended to read
5 as follows:

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

7 (a) For a person convicted of a class A felony or an offense listed
8 in subsection (5) of this section, or a person convicted of any sex
9 offense or kidnapping offense who has one or more prior convictions for
10 a sex offense or kidnapping offense: Such person may only be relieved
11 of the duty to register under subsection (3) or (4) of this section.

12 (b) For a person convicted of a class B felony, and the person does
13 not have one or more prior convictions for a sex offense or kidnapping
14 offense and the person's current offense is not listed in subsection
15 (5) of this section: Fifteen years after the last date of release from
16 confinement, if any, (including full-time residential treatment)
17 pursuant to the conviction, or entry of the judgment and sentence, if
18 the person has spent fifteen consecutive years in the community without
19 being convicted of any new offenses.

1 (c) For a person convicted of a class C felony, a violation of RCW
2 9.68A.090 or 9A.44.096, or an attempt, solicitation, or conspiracy to
3 commit a class C felony, and the person does not have one or more prior
4 convictions for a sex offense or kidnapping offense and the person's
5 current offense is not listed in subsection (5) of this section: Ten
6 years after the last date of release from confinement, if any,
7 (including full-time residential treatment) pursuant to the conviction,
8 or entry of the judgment and sentence, if the person has spent ten
9 consecutive years in the community without being convicted of any new
10 offenses.

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

14 (3)(a) Except as provided in (b) of this subsection, any person
15 having a duty to register under RCW 9A.44.130 may petition the superior
16 court to be relieved of that duty, if the person has spent ten
17 consecutive years in the community without being convicted of any new
18 offenses. The petition shall be made to the court in which the
19 petitioner was convicted of the offense that subjects him or her to the
20 duty to register, or, in the case of convictions in other states, a
21 foreign country, or a federal or military court, to the court in
22 Thurston county. The prosecuting attorney of the county shall be named
23 and served as the respondent in any such petition. The court shall
24 consider the nature of the registrable offense committed, and the
25 criminal and relevant noncriminal behavior of the petitioner both
26 before and after conviction, and may consider other factors. Except as
27 provided in subsection (4) of this section, the court may relieve the
28 petitioner of the duty to register only if the petitioner shows, with
29 clear and convincing evidence, that future registration of the
30 petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200,
31 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

32 (b)(i) The court may not relieve a person of the duty to register
33 if the person has been determined to be a sexually violent predator as
34 defined in RCW 71.09.020, or has been convicted of a sex offense or
35 kidnapping offense that is a class A felony and that was committed with
36 forcible compulsion on or after June 8, 2000.

37 (ii) The court may not relieve a person of the duty to register if
38 the person has been convicted of one aggravated offense or more than

1 one sexually violent offense, as defined in subsection (5) of this
2 section, and the offense or offenses were committed on or after March
3 12, 2002.

4 (c) Any person subject to (b) of this subsection or subsection (5)
5 of this section may petition the court to be exempted from any
6 community notification requirements that the person may be subject to
7 fifteen years after the later of the entry of the judgment and sentence
8 or the last date of release from confinement, including full-time
9 residential treatment, pursuant to the conviction, if the person has
10 spent the time in the community without being convicted of any new
11 offense.

12 (4)(a) An offender having a duty to register under RCW 9A.44.130
13 for a sex offense or kidnapping offense committed when the offender was
14 a juvenile may petition the superior court to be relieved of that
15 duty (~~-. The court shall consider the nature of the registrable offense~~
16 ~~committed, and the criminal and relevant noncriminal behavior of the~~
17 ~~petitioner both before and after adjudication, and may consider other~~
18 ~~factors.~~

19 (a)) as follows:

20 (i) If the offense was committed while the petitioner was fifteen
21 years of age or older, the court may relieve the petitioner of the duty
22 to register (~~(for a sex offense or kidnapping offense that was~~
23 ~~committed while the petitioner was fifteen years of age or older)) only
24 if the petitioner shows, with clear and convincing evidence, that
25 future registration of the petitioner will not serve the purposes of
26 RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and
27 72.09.330.~~

28 ((b)) (ii) If the offense was committed while the petitioner was
29 under the age of fifteen, the court may relieve the petitioner of the
30 duty to register (~~(for a sex offense or kidnapping offense that was~~
31 ~~committed while the petitioner was under the age of fifteen)) if the
32 petitioner ((i)):~~

33 (A) Has not been adjudicated of any additional sex offenses or
34 kidnapping offenses during the twenty-four months following the
35 adjudication for the offense giving rise to the duty to register((~~τ~~));
36 and ((ii))

37 (B) Proves by a preponderance of the evidence that future

1 registration of the petitioner will not serve the purposes of RCW
2 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

3 (b) A petitioner under this subsection has a right to retain
4 counsel and a right to have counsel appointed if found to be indigent
5 as determined by using the standards found in chapter 10.101 RCW.

6 (c) In determining whether to relieve the petitioner of the duty to
7 register, the court shall consider the nature of the offense committed
8 for which registration is required and the criminal and relevant
9 noncriminal behavior of the petitioner both before and after
10 adjudication, and may consider other factors.

11 (d) This subsection shall not apply to juveniles prosecuted as
12 adults.

13 (5)(a) A person who has been convicted of an aggravated offense, or
14 has been convicted of one or more prior sexually violent offenses or
15 criminal offenses against a victim who is a minor, as defined in (b) of
16 this subsection may only be relieved of the duty to register under
17 subsection (3)(b) of this section. This provision shall apply to
18 convictions for crimes committed on or after July 22, 2001.

19 (b) Unless the context clearly requires otherwise, the following
20 definitions apply only to the federal lifetime registration
21 requirements under this subsection:

22 (i) "Aggravated offense" means an adult conviction that meets the
23 definition of 18 U.S.C. Sec. 2241, which is limited to the following:

24 (A) Any sex offense involving sexual intercourse or sexual contact
25 where the victim is under twelve years of age;

26 (B) RCW 9A.44.040 (rape in the first degree), RCW 9A.44.073 (rape
27 of a child in the first degree), or RCW 9A.44.083 (child molestation in
28 the first degree);

29 (C) Any of the following offenses when committed by forcible
30 compulsion or by the offender administering, by threat or force or
31 without the knowledge or permission of that person, a drug, intoxicant,
32 or other similar substance that substantially impairs the ability of
33 that person to appraise or control conduct: RCW 9A.44.050 (rape in the
34 second degree), RCW 9A.44.100 (indecent liberties), RCW 9A.44.160
35 (custodial sexual misconduct in the first degree), RCW 9A.64.020
36 (incest), or RCW 9.68A.040 (sexual exploitation of a minor);

37 (D) Any of the following offenses when committed by forcible
38 compulsion or by the offender administering, by threat or force or

1 without the knowledge or permission of that person, a drug, intoxicant,
2 or other similar substance that substantially impairs the ability of
3 that person to appraise or control conduct, if the victim is twelve
4 years of age or over but under sixteen years of age and the offender is
5 eighteen years of age or over and is more than forty-eight months older
6 than the victim: RCW 9A.44.076 (rape of a child in the second degree),
7 RCW 9A.44.079 (rape of a child in the third degree), RCW 9A.44.086
8 (child molestation in the second degree), or RCW 9A.44.089 (child
9 molestation in the third degree);

10 (E) A felony with a finding of sexual motivation under RCW
11 9.94A.835 where the victim is under twelve years of age or that is
12 committed by forcible compulsion or by the offender administering, by
13 threat or force or without the knowledge or permission of that person,
14 a drug, intoxicant, or other similar substance that substantially
15 impairs the ability of that person to appraise or control conduct;

16 (F) An offense that is, under chapter 9A.28 RCW, an attempt or
17 solicitation to commit such an offense; or

18 (G) An offense defined by federal law or the laws of another state
19 that is equivalent to the offenses listed in (b)(i)(A) through (F) of
20 this subsection.

21 (ii) "Sexually violent offense" means an adult conviction that
22 meets the definition of 42 U.S.C. Sec. 14071(a)(1)(A), which is limited
23 to the following:

24 (A) An aggravated offense;

25 (B) An offense that is not an aggravated offense but meets the
26 definition of 18 U.S.C. Sec. 2242, which is limited to RCW 9A.44.050(1)
27 (b) through (f) (rape in the second degree) and RCW 9A.44.100(1) (b)
28 through (f) (indecent liberties);

29 (C) A felony with a finding of sexual motivation under RCW
30 9.94A.835 where the victim is incapable of appraising the nature of the
31 conduct or physically incapable of declining participation in, or
32 communicating unwillingness to engage in, the conduct;

33 (D) An offense that is, under chapter 9A.28 RCW, an attempt or
34 solicitation to commit such an offense; or

35 (E) An offense defined by federal law or the laws of another state
36 that is equivalent to the offenses listed in (b)(ii)(A) through (D) of
37 this subsection.

1 (iii) "Criminal offense against a victim who is a minor" means, in
2 addition to any aggravated offense or sexually violent offense where
3 the victim was under eighteen years of age, an adult conviction for the
4 following offenses where the victim is under eighteen years of age:

5 (A) RCW 9A.44.060 (rape in the third degree), RCW 9A.44.076 (rape
6 of a child in the second degree), RCW 9A.44.079 (rape of a child in the
7 third degree), RCW 9A.44.086 (child molestation in the second degree),
8 RCW 9A.44.089 (child molestation in the third degree), RCW 9A.44.093
9 (sexual misconduct with a minor in the first degree), RCW 9A.44.096
10 (sexual misconduct with a minor in the second degree), RCW 9A.44.160
11 (custodial sexual misconduct in the first degree), RCW 9A.64.020
12 (incest), RCW 9.68A.040 (sexual exploitation of a minor), RCW 9.68A.090
13 (communication with a minor for immoral purposes), or RCW 9.68A.100
14 (~~((patronizing a juvenile prostitute))~~) (commercial sexual abuse of a
15 minor);

16 (B) RCW 9A.40.020 (kidnapping in the first degree), RCW 9A.40.030
17 (kidnapping in the second degree), or RCW 9A.40.040 (unlawful
18 imprisonment), where the victim is a minor and the offender is not the
19 minor's parent;

20 (C) A felony with a finding of sexual motivation under RCW
21 9.94A.835 where the victim is a minor;

22 (D) An offense that is, under chapter 9A.28 RCW, an attempt or
23 solicitation to commit such an offense; or

24 (E) An offense defined by federal law or the laws of another state
25 that is equivalent to the offenses listed in (b)(iii)(A) through (D) of
26 this subsection.

27 (6) Unless relieved of the duty to register pursuant to this
28 section, a violation of RCW 9A.44.130 is an ongoing offense for
29 purposes of the statute of limitations under RCW 9A.04.080.

30 (7) Nothing in RCW 9.94A.637 relating to discharge of an offender
31 shall be construed as operating to relieve the offender of his or her
32 duty to register pursuant to RCW 9A.44.130.

33 (8) For purposes of determining whether a person has been convicted
34 of more than one sex offense, failure to register as a sex offender or
35 kidnapping offender is not a sex or kidnapping offense.

36 **Sec. 2.** RCW 9A.44.145 and 1998 c 139 s 2 are each amended to read
37 as follows:

1 The state patrol shall notify:

2 (1) Registered sex and kidnapping offenders of any change to the
3 registration requirements; and

4 (2) No less than annually, an offender having a duty to register
5 under RCW 9A.44.130 for a sex offense or kidnapping offense committed
6 when the offender was a juvenile of their ability to petition for
7 relief from registration as provided in RCW 9A.44.140.

--- END ---