

TABLE OF CONTENTS

I.	ASSIGNMENTS OF ERROR.....	1
II.	ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR.....	1
III.	STATEMENT OF THE CASE.....	2
IV.	ARGUMENT & AUTHORITIES.....	4
V.	CONCLUSION	11

TABLE OF AUTHORITIES

CASES

<u>In re Powell</u> , 117 Wn.2d 175, 814 P.2d 635 (1991).....	6
<u>Kent v. Dulles</u> , 357 U.S. 116, 78 S. Ct. 1113, 2 L. Ed. 2d 1204 (1958)	9
<u>Memorial Hosp. v. Maricopa County</u> , 415 U.S. 250, 94 S. Ct. 1076, 39 L. Ed. 2d 306 (1974)	10
<u>Petition of Estavillo</u> , 69 Wn. App. 401, 848 P.2d 1335 (1993)	5
<u>Shapiro v. Thompson</u> , 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969)	9, 10
<u>State v. Taylor</u> , 67 Wn. App. 350, 835 P.2d 245 (1992)	5, 7, 8
<u>State v. Ward</u> , 123 Wn.2d 488, 869 P.2d 1062 (1994).....	6, 7, 9
<u>Weaver v. Graham</u> , 450 U.S. 24, 101 S. Ct. 960, 67 L. Ed. 2d 17 (1981)	6
<u>Williamson v. Gregoire</u> , 151 F.3d 1180, (9th Cir. 1998).....	8

OTHER AUTHORITIES

LAWS OF 1990 CH. 3	5
LAWS OF 1999, 1ST SP. SESS., CH. 6, § 2	8
RCW 9A.44.130(1)	4, 5

RCW 9A.44.130(3)	4, 5
RCW 9A.44.130(4)	4, 5
RCW 9A.44.130(5)	4
RCW 9A.44.130(6)	5, 9
U.S. Const. art. 1, § 10	6
Wash. Const. art. 1, § 23	6

I. ASSIGNMENTS OF ERROR

1. The trial court erred when it concluded that the sex offender registration statute applied to Appellant and as applied did not violate Appellant's constitutional rights.
2. The portions of the sex offender registration statute that apply to registrants without a fixed residence violate the constitutional prohibition on ex post facto laws.
3. The portions of the sex offender registration statute that apply to registrants without a fixed residence violate transient registrants' constitutional right to travel.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Do the portions of the sex offender registration statute that apply to registrants without a fixed residence violate the constitutional prohibition on ex post facto laws, and impose additional punishment on transient registrants, where transient registrants are required to register in person every week and are required to keep and provide upon request a complete accounting of his or her whereabouts during the week? (Assignments of Error 1 & 2)
2. Do the portions of the sex offender registration statute that apply to registrants without a fixed residence violate a

transient registrant's constitutional right to travel, where transient registrants are required to register in person every week and therefore cannot be absent from their registered county or state for more than one week? (Assignments of Error 1 & 3)

III. STATEMENT OF THE CASE

Following a bench trial on stipulated facts, Gerald Duaine Enquist was found guilty of one count of failure to register as a sex offender (RCW 9A.44.130). (CP 1, 48, 50; RP 4-7) The trial court rejected Enquist's argument that the sex offender registration statute did not apply to him. (CP 50; RP 8-9, 47-53, 62)

Enquist was convicted in King County Superior Court in 1976 of two counts of robbery and two counts of rape in the first degree (a felony sex offense). (CP 5) Enquist was sentenced on March 9, 1977 to a maximum term of 30 years confinement. (CP 5; RP 13)

Enquist was scheduled to be released from the Department of Corrections (DOC) on April 26, 2007. (CP 5; RP 10) DOC informed Enquist that upon release he would be required to register as a sex offender and to follow the registration requirements contained in RCW 9A.44.130. (CP 5-6, 49; RP 10, 12) Enquist did

not believe that the registration statute applied to him because he was sentenced before the Sentencing Reform Act and the sex offender registration statute were passed, and because he served the maximum term under the former sentencing statute and was therefore no longer subject to any DOC-imposed terms or conditions. (RP 9-10, 13, 23, 44, 60)

After his release in April of 2007, Enquist was primarily homeless and residing in Pierce County. (CP 6; RP 34-35) He did not formally register with the Pierce County Sheriff's Departments registration unit, but was in contact with DOC and appeared in court regarding a traffic citation. (CP 2, 6; RP 15, 22-23, 37-38, 44) Enquist also had significant trouble finding work, but was eventually hired by a rental car company to retrieve cars left in other areas of the state or region. (RP 18, 19, 20)

Enquist was arrested on June 16, 2009 and charged with failing to register as a sex offender. (CP 1, 3; RP 14) He subsequently registered with the King County Sheriff's Department and began following all the registration statute requirements. (RP 14, 16) Because Enquist is homeless, he is required to appear at the Sheriff's office and account for his whereabouts in person every week. (RP 16) As a result, he lost his job because it was

impossible for him to conduct his travel to and from the location of the rental cars and still comply with the once-a-week registration requirement. (RP 21)

IV. ARGUMENT & AUTHORITIES

The sex offender registration statute requires that any offender convicted of a sex offense must register with his local sheriff's department upon release from confinement. RCW 9A.44.130(1)(a); (4)(a)(i) (a complete copy of the statute is attached in the Appendix). A registrant must "provide the following information when registering: (i) Name; (ii) complete residential address; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) aliases used; (viii) social security number; (ix) photograph; and (x) fingerprints." RCW 9A.44.130(3)(a).

If a registrant changes his or her residence within the county, the offender must notify the sheriff within 72 hours of the change. RCW 9A.44.130(5)(a). If a registrant moves to a new county or new state, the registrant must notify the sheriff of both the former and new residence counties within 72 hours. RCW 9A.44.130(4)(a)(ix), (5)(b). Notification may be accomplished either by mail or in person. RCW 9A.44.130(4)(a)(ix), (5)(a), (5)(b).

But if a registrant is transient or homeless and has no fixed address, the registrant must notify the sheriff's office of his or her transient status within 72 hours, and must thereafter report *weekly* and *in person* on a day specified by the sheriff. RCW 9A.44.130(4)(a)(vii), (6)(a), (6)(b). A transient registrant must also "keep an accurate accounting of where he or she stays during the week and provide it to the county sheriff upon request." RCW 9A.44.130(6)(b).¹

The sex offender registration requirements were passed as part of the Community Protection Act of 1990, after Enquist's 1976 conviction. See LAWS OF 1990 CH. 3. The statute applies retroactively to any person convicted of a sex offense. RCW 9A.44.130(1)(a); Petition of Estavillo, 69 Wn. App. 401, 848 P.2d 1335 (1993); State v. Taylor, 67 Wn. App. 350, 835 P.2d 245 (1992). However, as applied to Enquist, the transient registration requirements operate to his disadvantage to such an extent that it is in effect an additional punishment, and the retroactive application

¹ A transient offender must "provide the following information when registering: (i) Name; (ii) date and place of birth; (iii) place of employment; (iv) crime for which convicted; (v) date and place of conviction; (vi) aliases used; (vii) social security number; (viii) photograph; (ix) fingerprints; and (x) where he or she plans to stay." RCW 9A.44.130(3)(b).

violates the constitutional prohibition on ex post facto laws.²

The ex post facto clauses of the federal and state constitutions forbid the State from enacting any law which imposes punishment for an act which was not punishable when committed or increases the quantum of punishment annexed to the crime when it was committed. U.S. Const. art. 1, § 10; Wash. Const. art. 1, § 23; see Weaver v. Graham, 450 U.S. 24, 28-29, 101 S. Ct. 960, 964, 67 L. Ed. 2d 17 (1981); In re Powell, 117 Wn.2d 175, 184, 814 P.2d 635 (1991).

“A law violates the ex post facto clause if it: (1) is substantive, as opposed to merely procedural; (2) is retrospective (applies to events which occurred before its enactment); and (3) disadvantages the person affected by it.” Powell, 117 Wn.2d at 185 (citations omitted). The determination of whether a law is disadvantageous rests on whether the law is punitive and alters the standard of punishment which existed under prior law. State v. Ward, 123 Wn.2d 488, 498, 869 P.2d 1062 (1994).

Appellate courts have found that the registration statute is procedural and retrospective, and have rejected assertions that the

² A statute is presumed constitutional and the party challenging it has the burden to prove it is unconstitutional beyond a reasonable doubt. See State v. Ward, 123 Wn.2d 488, 496, 869 P.2d 1062 (1994).

statute is punitive because it could make the registrant a suspect in every reported sexual offense, could have an overall stigmatic effect greater than would otherwise exist, or that the dissemination of information to the public amounts to a “badge of infamy.” See e.g. Taylor, 67 Wn. App. at 357; Ward, 123 Wn.2d at 500, 509.

Appellate courts have also rejected the assertion that the statute is primarily punitive because it can have the effect of restricting change of residence, can diminish chances of employment, or impact ability to freely travel. For example, the Taylor court held that registration does not affirmatively inhibit or restrain a registrant's movement or activities because “[t]he requirement that the sheriff be kept informed of the registrant's current residence address does not impede or restrict movement in any way. The registrant is free to move wherever and as often as desired.” Taylor 67 Wn. App. at 357. The Ward Court noted that “it is inconceivable that filling out a short form with eight blanks creates an affirmative disability. Registration alone imposes burdens of little, if any, significance.” Ward, 123 Wn.2d at 501.

Similarly, the Ninth Circuit held that a habeas petitioner who had completed his sentence for child molestation but was required to register as a sex offender under Washington law was not “in

custody” for purposes of federal habeas corpus because his liberty was not restrained by the registration requirements. Williamson v. Gregoire, 151 F.3d 1180, 1183-84 (9th Cir. 1998). The Court noted: “The Washington sex offender law does not require Williamson even to personally appear at a sheriff’s office to register; registration can be accomplished by mail. Thus, the law neither targets Williamson’s movement in order to impose special requirements, nor does it demand his physical presence at any time or place.” 151 F.3d at 1184.

The Taylor, Ward and Williamson courts were assessing the impact of registration requirements upon registrants with a fixed address, and were all decided before the Legislature amended the statute to include the specific provisions for registrants who lack a fixed address. See LAWS OF 1999, 1ST SP. SESS., CH. 6, § 2. These cases are therefore not controlling here.

Regardless, the burden of the registration requirements for a person without a fixed address is significant. Because transient registrants must report in person once a week they do not have the freedom to “move wherever and as often as desired.”³ They must

³ Taylor 67 Wn. App. at 357.

be able to appear in person on the day and at the location specified by the sheriff's office in the county where they registered. RCW 9A.44.130(6)(b). Because transient registrants must also report "during normal business hours," the registration requirements potentially impact the ability to find and keep regular employment. RCW 9A.44.130(6)(b). And transient registrants must do more than just complete "a short form with eight blanks."⁴ Instead, transient registrants must keep and provide an "accurate accounting of" all of their movements during the previous week. RCW 9A.44.130(6)(b).

Moreover, the transient registration requirements, as a practical matter, impede Enquist's constitutionally-protected right to travel. See Shapiro v. Thompson, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969)⁵ (the right to travel is protected by the fifth and fourteenth amendments to the United States Constitution). The right to travel, including the right to travel within a state, is a fundamental right subject to strict scrutiny under the United States Constitution. Kent v. Dulles, 357 U.S. 116, 78 S. Ct. 1113, 2 L. Ed. 2d 1204 (1958). A law violates the right to travel if it penalizes migration from state to state, or makes it impossible to move about

⁴ Ward, 123 Wn.2d at 501.

⁵ Overruled on other grounds by Edelman v. Jordan, 415 U.S. 651, 671, 94 S. Ct. 1347, 1360, 39 L. Ed. 2d 662 (1974).

within a state. Memorial Hosp. v. Maricopa County, 415 U.S. 250, 259, 94 S. Ct. 1076, 1082-83, 39 L. Ed. 2d 306 (1974).

For example, in Shapiro, the Supreme Court held that the right to travel was protected by the fifth and fourteenth amendments to the United States Constitution. The Court invalidated state laws that set a one year residency requirement as a condition of eligibility for welfare benefits, on the ground that such a requirement has a chilling effect on that right. 394 U.S. at 631, 89 S. Ct. at 1329.

The weekly in-person reporting requirement has the potential to significantly impede a transient registrant's ability to move within and outside the state of Washington, because the registrant must always return to the registered county within one week and on a specific date. And the impact of the transient registration requirements on Enquist is not speculative. The weekly in-person reporting requirement cost him the only job he was able to find in the three years since his release, because the job required travel away from King County and Washington State, which could not always be completed in time for Enquist to report. (RP 50, 51)

The portions of the registration statute that apply to registrants without a fixed residence should be stricken because

they violate the constitutional prohibition on ex post facto laws, and because they significantly curtail a registrant's constitutional right to travel.

V. CONCLUSION

As written, and as applied to Enquist, the transient registrant portions of the sex offender registration statute are unconstitutional. Enquist's conviction for failing to register as a sex offender should be reversed, and Enquist should not be subject to these reporting requirements in the future.

DATED: June 16, 2010



STEPHANIE C. CUNNINGHAM, WSB #26436
Attorney for Appellant Gerald Duaine Enquist

CERTIFICATE OF MAILING

I certify that on 06/16/2010, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: (1) Kathleen Proctor, DPA, Prosecuting Attorney's Office, 930 Tacoma Ave. S., Rm. 946, Tacoma, WA 98402; and (2) Gerald D. Enquist, 3704 E Spokane St., Tacoma, WA 98404.



STEPHANIE C. CUNNINGHAM, WSBA #26436

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APPENDIX

RCW 9A.44.130

West's Revised Code of Washington Annotated Currentness

Title 9A. Washington Criminal Code (Refs & Annos)

Chapter 9A.44. Sex Offenses (Refs & Annos)

**→ 9A.44.130. Registration of sex offenders and kidnapping offenders--
-Procedures--Definition--Penalties**

(1)(a) Any adult or juvenile residing whether or not the person has a fixed residence, or who is a student, is employed, or carries on a vocation in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation, or as otherwise specified in this section. When a person required to register under this section is in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility as a result of a sex offense or kidnapping offense, the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person.

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

(i) Who is attending, or planning to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW shall, within three business days prior to arriving at the school to attend classes, notify the sheriff for the county of the person's residence of the person's intent to attend the school, and the sheriff shall promptly notify the principal of the school;

(ii) Who is admitted to a public or private institution of higher education shall, within three business days prior to arriving at the institution, notify the sheriff for the county of the person's residence of the person's intent to attend the institution;

(iii) Who gains employment at a public or private institution of higher education shall, within three business days prior to commencing work at the institution, notify the sheriff for the county of the person's residence of the person's employment by the institution; or

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

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

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

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

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

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

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

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

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

(4)(a) Offenders shall register with the county sheriff within the following deadlines:

(i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) kidnapping offenders who on or after July 27, 1997, are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within three business days from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide no-

tice to the offender of the duty to register.

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

(ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of corrections' active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of corrections' active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(ii) as of July 28, 1991, or a kidnapping offender required to register as of July 27, 1997, shall not relieve the offender of the duty to register or to reregister following a change in residence.

(iii) OFFENDERS UNDER FEDERAL JURISDICTION. Sex offenders who, on or after July 23, 1995, and kidnapping offenders who, on or after July 27, 1997, as a result of that offense are in the custody of the United States bureau of prisons or other federal or military correctional agency for sex offenses committed before, on, or after February 28, 1990, or kidnapping offenses committed on, before, or after July 27, 1997, must register within three business days from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. Sex offenders who, on July 23, 1995, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(iii) as of July 23, 1995, or a kidnapping offender required to register as of July 27, 1997 shall not relieve the offender of the duty to register or to reregister following a change in residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation.

(iv) OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED. Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, and kidnapping offenders who are convicted on or after July 27, 1997, for a kidnapping offense that was committed on or after July 27, 1997, but who are not sentenced to serve a term of confinement immediately upon sentencing,

shall report to the county sheriff to register within three business days of being sentenced.

(v) **OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS.** Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within three business days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes for offenses committed before, on, or after February 28, 1990, or Washington state for offenses committed before, on, or after February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed before, on, or after July 27, 1997. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within three business days of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) **OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY.** Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of (A) committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, is in custody, as a result of that finding, of the state department of social and health services, must register within three business days from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within three business days of receiving notice of this registration requirement.

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

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

(ix) **OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE.** Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and photograph with

the new state within three business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within three business days of moving to the new state or to a foreign country to the county sheriff with whom the person last registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

(b) The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of section 3 of this act, or arraignment on charges for a violation of section 3 of this act, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under section 3 of this act who asserts as a defense the lack of notice of the duty to register shall register within three business days following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (4)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

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

(5)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address to the county sheriff within three business days of moving.

(b) If any person required to register pursuant to this section moves to a new county, the person must register with that county sheriff within three business days of moving. Within three business days, the person must also provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address in the new county to the county sheriff with whom the person last registered. The county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county sheriff for the county of the person's new residence. Upon receipt of notice of change of address to a new state, the county sheriff shall promptly forward the information regarding the change of address to the agency designated by the new state as the state's offender registration agency.

(6)(a) Any person required to register under this section who lacks a fixed residence shall provide signed written notice to the sheriff of the county where he or she last registered within three business days after ceasing to have a fixed residence. The notice shall include the information required by subsection (3)(b) of this section, except the photograph and fingerprints. The county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The sheriff shall forward this information to the sheriff of the county in which the person intends to reside, if the person intends to reside in another county.

(b) A person who lacks a fixed residence must report weekly, in person, to the sheriff of the county where he or she is registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur

during normal business hours. The person must keep an accurate accounting of where he or she stays during the week and provide it to the county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within three business days of ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (4)(a)(vii) or (viii) and (6) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

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

(8) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints. A photograph may be taken at any time to update an individual's file.

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

CREDIT(S)

[2010 c 267 § 2, eff. June 10, 2010; 2010 c 265 § 1, eff. June 10, 2010; 2008 c 230 § 1, eff. June 10, 2010. Prior: 2006 c 129 § 2, eff. Sept. 1, 2006; (2006 c 129 § 1 expired September 1, 2006); 2006 c 128 § 2, eff. Sept. 1, 2006; (2006 c 128 § 1 expired September 1, 2006); 2006 c 127 § 2, eff. Sept. 1, 2006; 2006 c 126 § 2, eff. Sept. 1, 2006; (2006 c 126 § 1 expired September 1, 2006); 2005 c 380 § 1, eff. Sept. 1, 2006; prior: 2003 c 215 § 1, eff. July 27, 2003; 2003 c 53 § 68, eff. July 1, 2004; 2002 c 31 § 1; prior: 2001 c 169 § 1; 2001 c 95 § 2; 2000 c 91 § 2; prior: 1999 sp.s. c 6 § 2; 1999 c 352 § 9; prior: 1998 c 220 § 1; 1998 c 139 § 1; prior: 1997 c 340 § 3; 1997 c 113 § 3; 1996 c 275 § 11; prior: 1995 c 268 § 3; 1995 c 248 § 1; 1995 c 195 § 1; 1994 c 84 § 2; 1991 c 274 § 2; 1990 c 3 § 402.]

Current with 2010 Legislation effective through June 10, 2010