

NO. 34650-1-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MARK C. JACOBS,

Appellant.

BRIEF OF RESPONDENT

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I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellant has raised two issues in this appeal. Those assignments of error can be summarized as follows;

1. The evidence was insufficient to support the conviction for failure to register as a sex offender.
2. The trial court erred in finding Mr. Jacobs guilty because the shed he was living in did not meet the statutory definition of a fixed residence. Conclusions of law No. 1-3, CP 11.

B. ANSWERS TO ASSIGNMENTS OF ERROR.

1. The State supplied sufficient evidence to convict Jacobs as charged.
2. The trial court did not commit error when it found Jacobs guilty beyond a reasonable doubt.

II. STATEMENT OF THE CASE

Jacobs was charged under RCW 9A.44.132(1)(b) Fail to Register as a Sex Offender. The one count information alleged that this crime occurred over the period December 1, 2014 and April 2015. CP 1. This was a felony violation based on two previous convictions of Fail to Register that were not in dispute. RP 137 Jacobs case was tried to the court.

There were several witnesses who testified for the State. The two primary witnesses were Detective Martin of the Yakima County Sheriff's Office and Mr. Clark Haas who was a family member of the owner of the

location of Jacobs registered address and the property on which the shack was located Jacobs alleged he was staying. Mr. Haas was living at the address during the time Jacobs testified he was living in the shack. RP 6-37, 39-64.

Detective Martin testified that he went to Jacobs last registered address to locate Jacobs. When he arrived at the registered address he ascertained that there was no one living at that address, 2102 South 3rd Ave, Unit #2, Union Gap, Washington and the officer was not able to locate Mr. Jacobs at that same address. RP 8, 11-12, 70. The detective testified that he observed a secondary building at that same address but he had no reason to go check that building or shed. RP 30.

Mr. Haas was living on the property at the time that Detective Martin went looking for the defendant. Mr. Haas testified that he was living in a second unit located at the address listed by Jacobs. He spoke to Detective Martin when the detective was at the location looking for Jacobs. RP 42-3. He testified that during the time he lived and worked on the properties there was no one living in the unit where Jacobs was registered. RP 45-7. Haas identified the shed that Jacobs was staying in as being located on the same property but testified that to his knowledge there was never anyone living in the shack while he was living there. RP 47-9, 58-9.

The trial court found Jacobs guilty and set forth findings of fact and conclusions of law supporting the conviction. CP 9-11. (Appendix A.)

III. ARGUMENT.

Jacobs has not challenged any of the findings of fact but he does challenge the conclusions of law. Therefore, this court will treat unchallenged findings of facts as verities on appeal. State v. Stevenson, 128 Wn. App. 179, 193, 114 P.3d 699 (2005). See also, State v. Handburgh, 61 Wn. App. 763, 812 P.2d 131 (1991), rev'd on other grounds, 119 Wn.2d 284, P.2d 641 (1992).

If Jacobs had challenged any of those findings this court's review would still be limited in scope. This court would determine whether substantial evidence supports the challenged findings of fact and, if so, whether the findings support the conclusions of law. Stevenson, 128 Wn. App. at 193.

This court will review challenges to a trial court's conclusions of law de novo. State v. Gatewood, 163 Wn.2d 534, 539, 182 P.3d 426 (2008).

Response to allegation one – The evidence was insufficient to support the conviction for failure to register as a sex offender.

In this appeal Jacobs challenges the sufficiency of the evidence presented and whether that evidence supports the crime

as charged specifically challenging the effective date of the change to RCW 9A.44.128(5) the definition of “fixed residence.”

To determine whether sufficient evidence supports a conviction, this court will view the evidence in the light most favorable to the prosecution and determine whether any rational fact finder could have found the elements of the crime beyond a reasonable doubt. State v. Engel, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009). When a defendant is claiming insufficient evidence, the defendant admits the truth of the State’s evidence and all reasonable inferences that can be drawn from it. State v. Drum, 168 Wn.2d 23, 35, 225 P.3d 237 (2010). This court will not address certain aspects of the trial, deferring to the trier of fact on issues of conflicting testimony, witness credibility, and the persuasiveness of the evidence. State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004). State v. Homan, 181 Wn.2d 102, 105-06, 330 P.3d 182 (2014). “Substantial evidence” is evidence sufficient to persuade a fair-minded person of the truth of the asserted premise. Homan, 181 Wn.2d at 106.

The testimony of the State’s witnesses conflicted with that of Jacobs’ witnesses. As this court ruled in State v. Hill, 83 Wn.2d 558, 520 P.2d 618 (1974), “[t]he Court will still accord an “appropriate and substantial effect” to state court “resolutions of conflicts in evidence as to the occurrence or nonoccurrence of factual events and happenings.” The

reason given for this is the "trial judge and jury are closest to the trial scene and thus afforded the best opportunity to evaluate contradictory testimony." (Citations omitted) State v. Bencivenga, 137 Wn.2d 703, 709, 974 P.2d 832 (1999). "Intent to attempt a crime may be inferred from all the facts and circumstances."

Jacobs couches his challenge as one of sufficiency, therefore he is bound by the evidence presented by the State's and all reasonable inferences drawn in favor of the State, with circumstantial evidence and direct evidence considered equally reliable. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The elements of a crime can be established by both direct and circumstantial evidence. State v. Brooks, 45 Wn. App. 824, 826, 727 P.2d 988 (1986). One is no less valuable than the other.

Response to allegation two – The applicable statute was in effect at the time Jacobs committed this criminal act.

The operative period before the trial court and this court is "December 1, 2014 and April 13, 2015" CP 1. This is the period of time during which the State alleged Jacobs had not registered as a sex offender.

Jacobs argued below and again in this appeal that State v. Stratton, 130 Wash. App. 760, 124 P.3d 660 (2005) was indistinguishable from his case. While factually they are very similar this argument fails because the Washington State legislature amended the applicable statute and included

the specific definition which was relied upon by the State and the court prior to the date of Jacobs offense.

Jacobs argues that the effective date for RCW 9A.44.128, the statute in question, which defined “fixed residence” was not effective until July 24, 2015 and thus was outside the charging period of the crime Jacobs was convicted of. This is incorrect.

A review of the history of this section of the law shows that this section of the statute was not modified to include this definition in the RCW’s in 2010. The State of Washington maintains an online database of past statutes. The entirety of the statutes in effect in 2010 can be found at: <http://leg.wa.gov/CodeReviser/RCWArchive/Pages/2010RCWArchive.aspx>

At this page of the Washington State Legislature website this court will find the archive for 2010. Listed as Volume 2 is a PDF which contains all the RCW’s for sections 9 through 17. Within that section the published statutes state “Containing all laws of a general and permanent nature through the 2010 special session which adjourned April 13, 2010.”

At page 248 of this PDF document this court will find RCW 9A.44.128, it is listed as [Title 9A RCW – page 28] and the subsection in question does not include the sub-definition of “fixed residence.”

In this same archive this court will find at the following link

<http://leg.wa.gov/CodeReviser/RCWArchive/Pages/2011RCWArchive.asp>

x the 2011 RCW Supplemental Archive which contains the codification of laws which were enacted during the 2011 legislative year. The specific section in question here is contained within “Volume 11A Supplement: Titles 1 through 42”

At physical page 155 of this PDF document, which is captioned at the bottom [2011 RCW Supp – page 155] this court will find listed RCW 9A.44.128, sections 1-8. The fifth subsection reads as follows:

(5) "Fixed residence" means a building that a person lawfully and habitually uses as living quarters a majority of the week. Uses as living quarters means to conduct activities consistent with the common understanding of residing, such as sleeping; eating; keeping personal belongings; receiving mail; and paying utilities, rent, or mortgage. A nonpermanent structure including, but not limited to, a motor home, travel trailer, camper, or boat may qualify as a residence provided it is lawfully and habitually used as living quarters a majority of the week, primarily kept at one location with a physical address, and the location it is kept at is either owned or rented by the person or used by the person with the permission of the owner or renter. A shelter program may qualify as a residence provided it is a shelter program designed to provide temporary living accommodations for the homeless, provides an offender with a personally assigned living space, and the offender is permitted to store belongings in the living space.

At the end of this RCW the following can be found,
“Application—2010 c 267: "The provisions of this act apply to persons convicted before, on, or after June 10, 2010." [2010 c 267 § 15.”]

Found in the session laws of 2011-2012 (The session law in its entirety is found in Appendix B) which can be found at

<http://leg.wa.gov/CodeReviser/Pages/2011%20Session%20Laws.aspx#>

is the bill that first codified with new definition. It reads, in part, as follows:

SUBSTITUTE SENATE BILL 5203, Chapter 337, Laws of 2011, 62nd Legislature, 2011 Regular Session –

SEX AND KIDNAPPING OFFENDER REGISTRATION

ADMINISTRATION

Passed by the Senate April 15, 2011 - YEAS 48 NAYS 0

BRAD OWEN President of the Senate

Passed by the House April 7, 2011 - YEAS 92 NAYS 0

FRANK CHOPP Speaker of the House of Representatives

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is SUBSTITUTE SENATE BILL 5203 as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN Secretary

Approved May 12, 2011, 2:20 p.m.

CHRISTINE GREGOIRE Governor of the State of Washington

FILED May 13, 2011

Secretary of State, State of Washington

SUBSTITUTE SENATE BILL 5203

AS AMENDED BY THE HOUSE

Passed Legislature - 2011 Regular Session
State of Washington 62nd Legislature 2011 Regular Session
By Senate Human Services & Corrections (originally sponsored by
Senators Regala, Hargrove, Stevens, and Shin)

READ FIRST TIME 02/21/11.

AN ACT Relating to improving the administration and efficiency of sex and kidnapping offender registration; amending RCW 4.24.550, 9A.44.128, 9A.44.132, 9A.44.141, 9A.44.142, and 43.43.540; reenacting and amending RCW 9A.44.130; and adding a new section to chapter 9A.44 RCW.

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

...

Sec. 2 RCW 9A.44.128 and 2010 c 267 s 1 are each amended to read as follows:

For the purposes of RCW 9A.44.130 through 9A.44.145, 10.01.200, 43.43.540, 70.48.470, and 72.09.330, the following definitions apply:

...

(5) "Fixed residence" means a building that a person lawfully and habitually uses as living quarters a majority of the week. Uses as living quarters means to conduct activities consistent with the common understanding of residing, such as sleeping; eating; keeping personal belongings; receiving mail; and paying utilities, rent, or mortgage. A nonpermanent structure including, but not limited to, a motor home, travel trailer, camper, or boat may qualify as a residence provided it is lawfully and habitually used as living quarters a majority of the week, primarily kept at one location with a physical address, and the location it is kept at is either owned or rented by the person or used by the person with the permission of the owner or renter. A shelter program may qualify as a residence provided it is a shelter program designed to provide temporary living accommodations for the homeless, provides an offender with a personally assigned living space, and the

offender is permitted to store belongings in the living space.

...
(((6))) (9) "Lacks a fixed residence" means the person does not have a living situation that meets the definition of a fixed residence and includes, but is not limited to, a shelter program designed to provide temporary living accommodations for the homeless, an outdoor sleeping location, or locations where the person does not have permission to stay.

(The emphasis above is found in the original document and is set forth in this manner by the Office of the Code Reviser to designate a new section.)

In this same archive maintained by the Washington State

Legislature at the following link;

<http://leg.wa.gov/CodeReviser/RCWArchive/Pages/2012RCWArchive.aspx>

x This court will find the statutes in effect in this state in 2012. Once again, the statute in question contains the definition in dispute in this case.

There is no doubt that on the date of the criminal act charged against Jacobs the RCW with the definition cited by the State in the trial court was in effect. The State in its argument set forth the statute that appeared to be applicable and was.

IV. CONCLUSION

For the reasons set forth above this court should deny allegation and affirm the actions of the trial court.

/

/

Respectfully submitted this day of July 2017,

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APPENDIX A

FINDINGS OF FACT

1. Mark Collin Jacobs was previously convicted on the following crimes Rape of a child in the 3rd degree, 1/22/99, cause number 98-1-01137-3 Felony Failure to Register as a sex offender, 4/26/05 cause number 05-1-00482-2, Felony Failure to Register as a sex offender, 10/22/08 cause number 08-1-00253-1.
2. On 4/12/15 Marc Collin Jacobs was required to register as a sex offender.
3. On 4/12/15, Deputy Brad Martin of the Yakima County Sheriff's Office went to 2102 S 3rd AVE, Unit #2, Union Gap, Washington, to perform routine registered sex offender check on Mark Collin Jacobs. Deputy Martin made contact with Clark Haas while at the residence and was informed that Mark Collin Jacobs did not live at the address. Deputy Martin did not check the shed located on the property to see if Mark Jacobs was present.
4. Mark Collin Jacobs had been living at 2102 S 3rd AVE, Unit #2, Union Gap, Washington, in a trailer home with a friend named Kristen in early December of 2014, until the time Kristen moved out.
5. Mark Collin Jacobs was physically living in a shed at 2102 S 3rd AVE, Unit #2, Union Gap, Washington, from the time Kristen moved out of the trailer home in December of 2014, and was continuing to live in the shed on April 12, 2015. The shed is a physical building structure with four walls, a roof, and a floor. The structure contains no running water or heat.

6. Mark Collin Jacobs intended to stay in the shed at 2102 S 3rd AVE, Unit #2, Union Gap, Washington, because he wanted to be where law enforcement could expect to find him.
7. Deputy Martin of the Yakima County Sheriff's Office had a phone number available for Mark Collin Jacobs and did not call in an attempt to locate Mr. Jacobs. Deputy Martin had no obligation to call Mark Collin Jacobs on the phone.
8. While living at 2102 S 3rd AVE, Unit #2, Union Gap, Washington, in the trailer home, Mark Collin Jacobs compensated the tenant named Kristen in exchange for allowing him to reside at the trailer home until December of 2014.
9. Mark Collin Jacobs had no permission to live in the shed at 2102 S 3rd AVE, Unit #2, Union Gap, Washington, and was not paying rent.

CONCLUSIONS OF LAW

1. The shed on the property of 2102 S 3rd AVE, Unit #2, Union Gap, Washington, does not meet the definition of fixed residence under RCW 9A.44.128(5), although it was habitually used as a residence, it was not lawfully used as a residence.
2. Mark Collin Jacobs was not lawfully residing in the shed at 2102 S 3rd AVE, Unit #2, Union Gap, Washington.
3. Mark Collin Jacobs is Guilty of the crime of Failure to register as a sex offender.

APPENDIX B

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5203

Chapter 337, Laws of 2011

62nd Legislature
2011 Regular Session

SEX AND KIDNAPPING OFFENDER REGISTRATION
ADMINISTRATION

EFFECTIVE DATE: 07/22/11

Passed by the Senate April 15, 2011
YEAS 48 NAYS 0

CERTIFICATE

BRAD OWEN

President of the Senate
Passed by the House April 7, 2011
YEAS 92 NAYS 0

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5203** as passed by the Senate and the House of Representatives on the dates hereon set forth.

FRANK CHOPP

Speaker of the House of Representatives

THOMAS HOEMANN

Secretary

Approved May 12, 2011, 2:20 p.m.

FILED
May 13, 2011

CHRISTINE GREGOIRE

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5203

AS AMENDED BY THE HOUSE

Passed Legislature - 2011 Regular Session
State of Washington 62nd Legislature 2011 Regular Session

By Senate Human Services & Corrections (originally sponsored by
Senators Regala, Hargrove, Stevens, and Shin)

READ FIRST TIME 02/21/11.

AN ACT Relating to improving the administration and efficiency of sex and kidnapping offender registration; amending RCW 4.24.550, 9A.44.128, 9A.44.132, 9A.44.141, 9A.44.142, and 43.43.540; reenacting and amending RCW 9A.44.130; and adding a new section to chapter 9A.44 RCW.

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

Sec. 1 RCW 4.24.550 and 2008 c 98 s 1 are each amended to read as follows:

(1) In addition to the disclosure under subsection (5) of this section, public agencies are authorized to release information to the public regarding sex offenders and kidnapping offenders when the agency determines that disclosure of the information is relevant and necessary to protect the public and counteract the danger created by the particular offender. This authorization applies to information regarding: (a) Any person adjudicated or convicted of a sex offense as defined in RCW ~~((9A.44.130))~~ 9A.44.128 or a kidnapping offense as defined by RCW ~~((9A.44.130))~~ 9A.44.128; (b) any person under the jurisdiction of the indeterminate sentence review board as the result of a sex offense or kidnapping offense; (c) any person committed as a sexually violent predator under chapter 71.09 RCW or as a sexual psychopath under chapter 71.06 RCW; (d) any person found not guilty of a sex offense or kidnapping offense by reason of insanity under chapter 10.77 RCW; and (e) any person found incompetent to stand trial for a sex offense or kidnapping offense and subsequently committed under chapter 71.05 or

71.34 RCW.

(2) Except for the information specifically required under subsection (5) of this section, the extent of the public disclosure of relevant and necessary information shall be rationally related to: (a) The level of risk posed by the offender to the community; (b) the locations where the offender resides, expects to reside, or is regularly found; and (c) the needs of the affected community members for information to enhance their individual and collective safety.

(3) Except for the information specifically required under subsection (5) of this section, local law enforcement agencies shall consider the following guidelines in determining the extent of a public disclosure made under this section: (a) For offenders classified as risk level I, the agency shall share information with other appropriate law enforcement agencies and, if the offender is a student, the public or private school regulated under Title 28A RCW or chapter 72.40 RCW which the offender is attending, or planning to attend. The agency may disclose, upon request, relevant, necessary, and accurate information to any victim or witness to the offense and to any individual community member who lives near the residence where the offender resides, expects to reside, or is regularly found; (b) for offenders classified as risk level II, the agency may also disclose relevant, necessary, and accurate information to public and private schools, child day care centers, family day care providers, public libraries, businesses and organizations that serve primarily children, women, or vulnerable adults, and neighbors and community groups near the residence where the offender resides, expects to reside, or is regularly found; (c) for offenders classified as risk level III, the agency may also disclose relevant, necessary, and accurate information to the public at large; and (d) because more localized notification is not feasible and homeless and transient offenders may present unique risks to the community, the agency may also disclose relevant, necessary, and accurate information to the public at large for offenders registered as homeless or transient.

(4) The county sheriff with whom an offender classified as risk level III is registered shall cause to be published by legal notice, advertising, or news release a sex offender community notification that conforms to the guidelines established under RCW 4.24.5501 in at least one legal newspaper with general circulation in the area of the sex offender's registered address or location. ~~((The county sheriff shall also cause to be published consistent with this subsection a current list of level III registered sex offenders, twice yearly.))~~ Unless the information is posted on the web site described in subsection (5) of this section, this list shall be

maintained by the county sheriff on a publicly accessible web site and shall be updated at least once per month.

(5)(a) When funded by federal grants or other sources, the Washington association of sheriffs and police chiefs shall create and maintain a statewide registered kidnapping and sex offender web site, which shall be available to the public. The web site shall post all level III and level II registered sex offenders, level I registered sex offenders during the time they are out of compliance with registration requirements under RCW 9A.44.130, and all registered kidnapping offenders in the state of Washington.

(i) For level III offenders, the web site shall contain, but is not limited to, the registered sex offender's name, relevant criminal convictions, address by hundred block, physical description, and photograph. The web site shall provide mapping capabilities that display the sex offender's address by hundred block on a map. The web site shall allow citizens to search for registered sex offenders within the state of Washington by county, city, zip code, last name, ~~((type of conviction,))~~ and address by hundred block.

(ii) For level II offenders, and level I sex offenders during the time they are out of compliance with registration requirements under RCW 9A.44.130, the web site shall contain, but is not limited to, the same information and functionality as described in (a)(i) of this subsection, provided that it is permissible under state and federal law. If it is not permissible, the web site shall be limited to the information and functionality that is permissible under state and federal law.

(iii) For kidnapping offenders, the web site shall contain, but is not limited to, the same information and functionality as described in (a)(i) of this subsection, provided that it is permissible under state and federal law. If it is not permissible, the web site shall be limited to the information and functionality that is permissible under state and federal law.

(b) Until the implementation of (a) of this subsection, the Washington association of sheriffs and police chiefs shall create a web site available to the public that provides electronic links to county-operated web sites that offer sex offender registration information.

(6) Local law enforcement agencies that disseminate information pursuant to this section shall: (a) Review available risk level classifications made by the department of corrections, the department of social and health services, and the indeterminate sentence review board; (b) assign risk level classifications to all offenders about whom information will be disseminated; and (c) make a good faith effort to notify the public and residents ~~((at least fourteen days before the offender~~

~~is released from confinement or, where an offender moves from another jurisdiction, as soon as possible after the agency learns of the offender's move, except that in no case may this notification provision be construed to require an extension of an offender's release date))~~ within a reasonable period of time after the offender registers with the agency. The juvenile court shall provide local law enforcement officials with all relevant information on offenders allowed to remain in the community in a timely manner.

(7) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470, or units of local government and its employees, as provided in RCW 36.28A.010, are immune from civil liability for damages for any discretionary risk level classification decisions or release of relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity in this section applies to risk level classification decisions and the release of relevant and necessary information regarding any individual for whom disclosure is authorized. The decision of a local law enforcement agency or official to classify an offender to a risk level other than the one assigned by the department of corrections, the department of social and health services, or the indeterminate sentence review board, or the release of any relevant and necessary information based on that different classification shall not, by itself, be considered gross negligence or bad faith. The immunity provided under this section applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the general public.

(8) Except as may otherwise be provided by law, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section.

(9) Nothing in this section implies that information regarding persons designated in subsection (1) of this section is confidential except as may otherwise be provided by law.

(10) When a local law enforcement agency or official classifies an offender differently than the offender is classified by the end of sentence review committee or the department of social and health services at the time of the offender's release from confinement, the law enforcement agency or official shall notify the end of sentence review committee or the department of social and health services and submit its reasons supporting the change in classification. ~~((Upon implementation of subsection (5)(a) of~~

~~this section, notification of the change shall also be sent to the Washington association of sheriffs and police chiefs.))~~

Sec. 2 RCW 9A.44.128 and 2010 c 267 s 1 are each amended to read as follows:

For the purposes of RCW 9A.44.130 through 9A.44.145, 10.01.200, 43.43.540, 70.48.470, and 72.09.330, the following definitions apply:

(1) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

(2) "Conviction" means any adult conviction or juvenile adjudication for a sex offense or kidnapping offense.

(3) "Disqualifying offense" means a conviction for: Any offense that is a felony; a sex offense as defined in this section; a crime against children or persons as defined in RCW 43.43.830(5) and 9.94A.411(2)(a); an offense with a domestic violence designation as provided in RCW 10.99.020; permitting the commercial sexual abuse of a minor as defined in RCW 9.68A.103; or any violation of chapter 9A.88 RCW.

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

(5) "Fixed residence" means a building that a person lawfully and habitually uses as living quarters a majority of the week. Uses as living quarters means to conduct activities consistent with the common understanding of residing, such as sleeping; eating; keeping personal belongings; receiving mail; and paying utilities, rent, or mortgage. A nonpermanent structure including, but not limited to, a motor home, travel trailer, camper, or boat may qualify as a residence provided it is lawfully and habitually used as living quarters a majority of the week, primarily kept at one location with a physical address, and the location it is kept at is either owned or rented by the person or used by the person with the permission of the owner or renter. A shelter program may qualify as a residence provided it is a shelter program designed to provide temporary living accommodations for the homeless, provides an offender with a personally assigned living space, and the offender is permitted to store belongings in the living space.

(6) "In the community" means residing outside of confinement or incarceration for a disqualifying offense.

(7) "Institution of higher education" means any public or private

institution dedicated to postsecondary education, including any college, university, community college, trade, or professional school.

(8) "Kidnapping offense" means:

(a) The crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment, as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent;

(b) Any offense that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a kidnapping offense under this subsection; and

(c) Any federal or out-of-state conviction for: An offense for which the person would be required to register as a kidnapping offender (~~while~~) if residing in the state of conviction; or, if not required to register in the state of conviction, an offense that under the laws of this state would be classified as a kidnapping offense under this subsection(~~(, unless a court in the person's state of conviction has made an individualized determination that the person should not be required to register)~~).

~~((6))~~ (9) "Lacks a fixed residence" means the person does not have a living situation that meets the definition of a fixed residence and includes, but is not limited to, a shelter program designed to provide temporary living accommodations for the homeless, an outdoor sleeping location, or locations where the person does not have permission to stay.

(10) "Sex offense" means:

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

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

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

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

(e) Any (~~federal or~~) out-of-state conviction for(~~;~~) an offense for which the person would be required to register as a sex offender while residing in the state of conviction; or, if not required to register in the state of conviction, an offense that under the laws of this state would be classified as a sex offense under this subsection(~~(, unless a court in the person's state of conviction has made an individualized determination that the person should not be required to register; and~~

~~(e) Any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit~~

~~an offense that is classified as a sex offense under RCW 9.94A.030 or this subsection));~~

(f) Any federal conviction classified as a sex offense under 42 U.S.C. Sec. 16911 (SORNA);

(g) Any military conviction for a sex offense. This includes sex offenses under the uniform code of military justice, as specified by the United States secretary of defense;

(h) Any conviction in a foreign country for a sex offense if it was obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations established pursuant to 42 U.S.C. Sec. 16912.

~~((7))~~ (11) "School" means a public or private school regulated under Title 28A RCW or chapter 72.40 RCW.

~~(12) "Student" means a person who is enrolled, on a full-time or part-time basis, in any ((public or private educational institution. An educational institution includes any secondary school, trade or professional institution,))~~ school or institution of higher education.

Sec. 3 RCW 9A.44.130 and 2010 c 267 s 2 and 2010 c 265 s 1 are each reenacted and amended to read as follows:

(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 must give notice to the county sheriff of the county with whom the person is registered within three business days:

(i) Prior to arriving at a school or institution of higher education to attend classes;

(ii) Prior to starting work at an institution of higher education; or

(iii) After any termination of enrollment or employment at a school or institution of higher education.

~~((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)) (2)(a) ((The)) A person ((shall)) required to register under this section must provide the following information when registering: (i) Name and any aliases used; (ii) complete and accurate residential address or, if the person lacks a fixed residence, where he or she plans to stay; (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)) (viii) photograph; and ((x)) (ix) fingerprints.~~

~~(b) ((Any)) A 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)) may be required to update any of the information required in this subsection in conjunction with any address verification conducted by the county sheriff or as part of any notice required by this section.~~

~~(c) A photograph or copy of an individual's fingerprints may be taken at any time to update an individual's file.~~

~~((4)) (3)(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~~

notice 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)~~) (3)(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))~~) (3)(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))~~ (2)(a) 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 RCW 9A.44.132, or arraignment on charges for a violation of RCW 9A.44.132, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under RCW 9A.44.132 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))~~) (3)(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))~~ (4)(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))~~ (5)(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))~~) (2)(a) 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))~~ (3)(a)(vii) or (viii) and ~~((6))~~ (5) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

~~((7))~~ (6) 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))~~ (7) 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.

NEW SECTION. Sec. 4 A new section is added to chapter 9A.44 RCW to read as follows:

(1) Upon receiving notice from a registered person pursuant to RCW 9A.44.130 that the person will be attending a school or institution of higher education or will be employed with an institution of higher education, the sheriff must promptly notify the school district and the school principal or institution's department of public safety and shall provide that school or department with the person's: (a) Name and any aliases used; (b) complete residential address; (c) date and place of birth; (d) place of employment; (e) crime for which convicted; (f) date and place of conviction; (g) social security number; (h) photograph; and (i) risk level classification.

(2) A principal or department receiving notice under this subsection must disclose the information received from the sheriff as follows:

(a) If the student is classified as a risk level II or III, the principal shall provide the information received to every teacher of the student 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 is classified as a risk level I, the principal or department shall provide the information received only to personnel who, in the judgment of the principal or department, for security purposes should be aware of the student's record.

(3) The sheriff shall notify the applicable school district and school principal or institution's department of public safety whenever a student's risk level classification is changed or the sheriff is notified of a change in the student's address.

(4) Any information received by school or institution 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.

Sec. 5 RCW 9A.44.132 and 2010 c 267 s 3 are each amended to read as follows:

(1) A person commits the crime of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a felony sex offense (~~(as defined in that section)~~) and knowingly fails to comply with any of the requirements of RCW 9A.44.130.

(a) (~~Except as provided in (b) of this subsection,~~) The failure to register as a sex offender pursuant to this subsection is a class C felony if:

(i) It is the person's first conviction for a felony failure to register; or

(ii) The person has previously been convicted of a felony failure to register as a sex offender in this state or pursuant to the laws of another state.

(b) If a person has been convicted (~~(in this state)~~) of a felony failure to register as a sex offender in this state or pursuant to the laws of another state on two or more prior occasions, the failure to register under this subsection is a class B felony.

(2) A person is guilty of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a sex offense other than a felony and knowingly fails to comply with any of the requirements of RCW 9A.44.130. The failure to register as a sex offender under this subsection is a gross misdemeanor.

(3) A person commits the crime of failure to register as a kidnapping offender if the person has a duty to register under RCW 9A.44.130 for a kidnapping offense and knowingly fails to comply with any of the requirements of RCW 9A.44.130.

(a) If the person has a duty to register for a felony kidnapping offense, the failure to register as a kidnapping offender is a class C felony.

(b) If the person has a duty to register for a kidnapping offense other than a felony, the failure to register as a kidnapping offender is a gross misdemeanor.

(4) Unless relieved of the duty to register pursuant to RCW 9A.44.141 and 9A.44.142, a violation of this section is an ongoing offense for purposes of the statute of limitations under RCW 9A.04.080.

Sec. 6 RCW 9A.44.141 and 2010 c 267 s 5 are each amended to read as follows:

(1) Upon the request of a person who is listed in the Washington state patrol central registry of sex offenders and kidnapping offenders, the county sheriff shall investigate whether a person's duty to register has ended by operation of law pursuant to RCW 9A.44.140.

(a) Using available records, the county sheriff shall verify that the offender has spent the requisite time in the community and has not been convicted of a disqualifying offense.

(b) If the county sheriff determines the person's duty to register has ended by operation of law, the county sheriff shall request the Washington state patrol remove the person's name from the central registry.

(2) Nothing in this subsection prevents a county sheriff from investigating, upon his or her own initiative, whether a person's duty to register has ended by operation of law pursuant to RCW 9A.44.140.

(3)(a) A person who is listed in the central registry as the result of a

federal or out-of-state conviction may request the county sheriff to investigate whether the person should be removed from the registry if:

(i) A court in the person's state of conviction has made an individualized determination that the person should not be required to register; and

(ii) The person provides proof of relief from registration to the county sheriff.

(b) If the county sheriff determines the person has been relieved of the duty to register in his or her state of conviction, the county sheriff shall request the Washington state patrol remove the person's name from the central registry.

(4) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470, or units of local government and its employees, as provided in RCW 36.28A.010, are immune from civil liability for damages for removing or requesting the removal of a person from the central registry of sex offenders and kidnapping offenders or the failure to remove or request removal of a person within the time frames provided in RCW 9A.44.140.

Sec. 7 RCW 9A.44.142 and 2010 c 267 s 6 are each amended to read as follows:

(1) A person who is required to register under RCW 9A.44.130 may petition the superior court to be relieved of the duty to register:

(a) If the person has a duty to register for a sex offense or kidnapping offense committed when the offender was a juvenile, regardless of whether the conviction was in this state, as provided in RCW 9A.44.143;

(b) If the person is required to register for a conviction in this state and is not prohibited from petitioning for relief from registration under subsection (2) of this section, when the person has spent ten consecutive years in the community without being convicted of a disqualifying offense during that time period; ~~((and))~~ or

(c) If the person is required to register for a federal or out-of-state conviction, when the person has spent fifteen consecutive years in the community without being convicted of a disqualifying offense during that time period.

(2)(a) A person may not petition for relief from registration if the person has been:

(i) Determined to be a sexually violent predator as defined in RCW 71.09.020;

(ii) Convicted as an adult of a sex offense or kidnapping offense that is a class A felony and that was committed with forcible compulsion on or

after June 8, 2000; or

(iii) Until July 1, 2012, convicted of one aggravated offense or more than one sexually violent offense, as defined in subsection (5) of this section, and the offense or offenses were committed on or after March 12, 2002. After July 1, 2012, this subsection (2)(a)(iii) shall have no further force and effect.

(b) Any person who may not be relieved of the duty to register may petition the court to be exempted from any community notification requirements that the person may be subject to fifteen years after the later of the entry of the judgment and sentence or the last date of release from confinement, including full-time residential treatment, pursuant to the conviction, if the person has spent the time in the community without being convicted of a disqualifying offense.

(3) A petition for relief from registration or exemption from notification under this section shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register or, in the case of convictions in other states, a foreign country, or a federal or military court, to the court in ~~((Thurston))~~ the county where the person is registered at the time the petition is sought. The prosecuting attorney of the county shall be named and served as the respondent in any such petition.

(4)(a) The court may relieve a petitioner of the duty to register only if the petitioner shows by clear and convincing evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.

(b) In determining whether the petitioner is sufficiently rehabilitated to warrant removal from the registry, the following factors are provided as guidance to assist the court in making its determination:

(i) The nature of the registrable offense committed including the number of victims and the length of the offense history;

(ii) Any subsequent criminal history;

(iii) The petitioner's compliance with supervision requirements;

(iv) The length of time since the charged incident(s) occurred;

(v) Any input from community corrections officers, law enforcement, or treatment providers;

(vi) Participation in sex offender treatment;

(vii) Participation in other treatment and rehabilitative programs;

(viii) The offender's stability in employment and housing;

(ix) The offender's community and personal support system;

(x) Any risk assessments or evaluations prepared by a qualified professional;

- (xi) Any updated polygraph examination;
- (xii) Any input of the victim;
- (xiii) Any other factors the court may consider relevant.

(5)(a) A person who has been convicted of an aggravated offense, or has been convicted of one or more prior sexually violent offenses or criminal offenses against a victim who is a minor, as defined in (b) of this subsection:

- (i) Until July 1, 2012, may not be relieved of the duty to register;
- (ii) After July 1, 2012, may petition the court to be relieved of the duty to register as provided in this section;
- (iii) This provision shall apply to convictions for crimes committed on or after July 22, 2001.

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

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

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

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

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

(D) Any of the following offenses when committed by forcible compulsion or by the offender administering, by threat or force or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that person to appraise or control conduct, if the victim is twelve years of age or over but under sixteen years of age and the offender is eighteen years of age or over and is more than forty-eight months older than the victim: RCW 9A.44.076 (rape of a child in the second degree), RCW 9A.44.079 (rape of a child in the third degree), RCW 9A.44.086 (child molestation in the second degree), or RCW 9A.44.089 (child molestation in the third degree);

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

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

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

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

(A) An aggravated offense;

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

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

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

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

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

(A) RCW 9A.44.060 (rape in the third degree), RCW 9A.44.076 (rape of a child in the second degree), RCW 9A.44.079 (rape of a child in the third degree), RCW 9A.44.086 (child molestation in the second degree), RCW 9A.44.089 (child molestation in the third degree), RCW 9A.44.093 (sexual misconduct with a minor in the first degree), RCW 9A.44.096 (sexual misconduct with a minor in the second degree), RCW 9A.44.160 (custodial sexual misconduct in the first degree), RCW 9A.64.020 (incest), RCW 9.68A.040 (sexual exploitation of a minor), RCW 9.68A.090 (communication with a minor for immoral purposes), or RCW 9.68A.100

(commercial sexual abuse of a minor);

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

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

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

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

Sec. 8 RCW 43.43.540 and 2006 c 136 s 1 are each amended to read as follows:

(1) The county sheriff shall ~~((the))~~ forward ~~((the))~~ registration information, photographs, and fingerprints obtained pursuant to RCW 9A.44.130, including the sex offender's risk level classification and any notice of change of address, to the Washington state patrol within five working days~~((; and))~~.

(2) Upon implementation of RCW 4.24.550(5)(a), the Washington state patrol ~~((will forward the information necessary to operate the registered sex offender web site described in RCW 4.24.550(5)(a) to the Washington association of sheriffs and police chiefs within five working days of receiving the information, including any notice of change of address or change in risk level notification. The state patrol))~~ shall maintain a central registry of sex offenders and kidnapping offenders required to register under RCW 9A.44.130 and shall adopt rules consistent with chapters 10.97, 10.98, and 43.43 RCW as are necessary to carry out the purposes of RCW 9A.44.130, 9A.44.140, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330. The Washington state patrol shall reimburse the counties for the costs of processing the offender registration, including taking the offender's fingerprints and ~~((the))~~ photograph~~((s))~~.

Passed by the Senate April 15, 2011.

Passed by the House April 7, 2011.

Approved by the Governor May 12, 2011.

Filed in Office of Secretary of State May 13, 2011.

I, David B. Trefry state that on July 12, 2017, I emailed a copy, by agreement of the parties, of the Respondent's Brief, to Mr. David Gasch at gaschlaw@msn.com

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 12th day of July, 2017 at Spokane, Washington.

s/ David B. Trefry
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