

FILED  
Court of Appeals  
Division III  
State of Washington  
9/18/2019 10:13 AM

No. 36885-8-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON

Respondent

vs.

GLEN CATHERS

Appellant

---

ON APPEAL FROM THE SUPERIOR COURT FOR KLICKITAT COUNTY  
The Honorable Randall Krog  
Superior Court No. 19—1-00024-20

---

**APPELLANT'S OPENING BRIEF (AMENDED)**

---

MARK W. MUENSTER, WSBA #11228  
1010 Esther Street  
Vancouver, WA 98660  
(360) 694-5085

**TABLE OF CONTENTS**

- I. ASSIGNMENTS OF ERROR..... 1
- II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR..... 1
- III. STATEMENT OF THE CASE..... 1
  - A. Procedural History ..... 1
  - B. Trial testimony ..... 2
- IV. ARGUMENT AND AUTHORITY..... 5
  - A. A person who maintains a “fixed residence” does not violate RCW 9A.44.130 by taking a vacation and being absent from the residence without notice to the county sheriff. .... 5
- V. CONCLUSION..... 12

## TABLE OF AUTHORITIES

### Washington Cases

<i>In re Cross</i> , 99 Wn.2d 373, 379, 662 P.2d 828 (1983).....	6
<i>State v. Bradshaw</i> , 152 Wn.2d 528, 531, 98 P.3d 1190 (2004).....	6
<i>State v. Dollarhyde</i> , No. 36047-4-III (Slip Op. July 2, 2019) .....	12
<i>State v. Flores</i> , 194 Wn.App. 29, 374 P.3d 222 (2016).....	10
<i>State v. Green</i> , 94 Wn. 2d 216, 616 P.2d 628 (1980).....	5
<i>State v. Hoffman</i> , 116 Wn. 2d 51, 804 P.2d 577 (1991).....	5
<i>State v. McGee</i> , 122 Wn.2d 783, 864 P.2d 912 (1993).....	6
<i>State v. Peterson</i> , 168 Wn. 2d 763, 230 P.3d 538 (2010).....	11, 12
<i>State v. Roberts</i> , 117 Wn.2d 576, 586, 817 P.2d 855 (1991).....	6
<i>State v. Sleater</i> , 200 Wn.App. 638, 403 P.3d 84 (2017).....	6
<i>State v. Stratton</i> , 130 Wn. App. 760, 124 P.2d 660, 662 (2005) .....	6, 11
<i>State v. Swanson</i> , 116 Wn.App. 67, 75, 65 P.3d 343 (2003).....	10
<i>Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1</i> , 77 Wn.2d 94, 98, 459 P.2d 633 (1969).....	10

### Statutes

RCW 9A.44.128.....	7, 11
RCW 9A.44.130.....	1, 5
RCW 9A.44.130 (3).....	9
RCW 9A.44.130 (4) (vi)(vii) .....	10
RCW 9A.44.130(6)(b) .....	12

### Other Authorities

WPIC 49C.05.....	4, 8
------------------	------

### Federal Cases

<i>In re Winship</i> , 397 U.S. 358, 90 S. Ct.1068, 25 L.Ed.2d 368 (1970) .....	5
<i>Jackson v. Virginia</i> , 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) 5	

I. ASSIGNMENTS OF ERROR

1. Appellant assigns error to his conviction on insufficient evidence.
2. Appellant assigns error to the denial of his motion for a new trial/arrest of judgment.
3. Appellant assigns error to Conclusions of Law 10, 11, 12 and 13.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Does a person who has registered on an annual basis with the sheriff and who has a “fixed residence” violate any duty imposed by RCW 9A.44.130 by taking a vacation inside the United States without notifying the sheriff’s office of his intention to do so?

III. STATEMENT OF THE CASE

A. Procedural History

Appellant Glen Cathers was charged by information with failure to register as a sex offender, pursuant to RCW 9A.44.130.<sup>1</sup> CP 1. He waived trial by jury, and the matter proceeded to a bench trial on May 22, 2019 before the Honorable Randall Krog. After hearing the evidence, the court recessed until June 3, 2019 to deliver its verdict.

On June 3, the court made an oral finding of “guilty”. RP 51.<sup>2</sup> The court subsequently filed a written ruling. CP 6-12. Appellant filed a

---

<sup>1</sup> The statute is attached in the Appendix.

<sup>2</sup> The verbatim report of proceedings is now in one volume and contains trial proceedings, the oral verdict, given June 3, and the motion for new trial/arrest of judgment and sentencing, held June 17.

motion for a new trial, which was denied. CP 13-19, RP 64. The court entered a judgment and sentence, CP 20-29. Mr. Cathers was sentenced to 30 days in jail. Mr. Cathers filed a timely notice of appeal. CP 30-48. He remains in the community pending this appeal.

B. Trial testimony

Lisa Shupe was a records technician for the Klickitat County Sheriff's Office. RP 7. She took over as the person responsible for sex offender registration in 2003. RP 10. She testified that her office classified sex offenders with a duty to report into three categories. Level one offenders were checked on once a year by her office. RP 8. If an offender changed his address, he was required to come to their office and fill out a change of address form. RP 9.

Mr. Cathers first registered with the sheriff's office in 1988. RP 10. Over the years, he has been compliant. RP 11. He was classified as a Level One offender. RP 10. That meant that once a year, the sheriff's office sent someone to his house to personally check on him at his residence. RP 10.

The sheriff's office sent a deputy out to 123 Jenkins Creek Road in June of 2018 to check on Mr. Cathers's residence. RP 13. The deputy is supposed to attempt to make personal face to face contact with the registrant. RP 13.

Shupe testified that she believed that Mr. Cathers had violated the registration requirement by not notifying the sheriff that he would be going on a vacation. RP 15. She noted that he had always maintained a stable residence, RP 18, and checked in with the Sheriff's office in March of 2019. RP 14. No one in her office had checked on his whereabouts between June of 2018 and March of 2019. RP 20-21.

Shupe thought that a registrant was obligated to notify the sheriff's office if he was going to be absent from the residence for more than three days. RP 18. In answer to a hypothetical question by the prosecutor, she gave her opinion that a registrant who was going on a three week vacation should email the sheriff's office with his agenda for their file in case questions arose from another jurisdiction. RP 20.

Timothy Neher was a patrol deputy for Klickitat County. RP 29-30. He went to check on Mr. Cathers's residence at 123 Jenkins Creek Road in June of 2018. RP 33. No one was home, so he left a business card. RP 33. No one responded to it. RP 33. He attempted to make contact the next day. RP 34. He spoke with Kathy O'Brennan at the house. He did not see Mr. Cathers at the house. RP 35. He did not see any evidence that anyone was packing to leave. No moving boxes were present. There was no moving van. RP 38. He returned on a third occasion, June 27<sup>th</sup>. He was not able to contact Mr. Cathers, so he asked Ms. O'Brennan, who was still at the house on this visit, to fill out a statement for him. RP 36.

Kathleen O'Brennan was a friend of Mr. Cathers and his partner, Naomi Fisher. RP 23. The couple would hire her for pet-sitting when they traveled. RP 23. The couple hired her because they wanted someone their cats would be comfortable around. RP 23. She was pet-sitting for them in June of 2018 for about a 12 day period. RP 24, 26. She was there when the sheriff's deputy came to check on Mr. Cathers. RP 26. Mr. Cathers was not at home at the time. RP 26. The deputy asked her when Mr. Cathers would be back. RP 28. The deputy made her feel there was no need to be alarmed. RP 29.

The state rested after presentation of the deputy's testimony, and the defense presented no evidence. RP 39, 40.

The prosecutor argued that since Mr. Cathers had been absent from his registered address for about 12 days, and had not notified the sheriff's office of his travel plans within 3 days, he had violated the statute. RP 40.

Defense counsel brought to the court's attention the WPIC instruction for a failure to register charge, WPIC 49C.05.<sup>3</sup> The instruction points out a number of ways a person can fail to comply with the duties required in the registration statute. None of them, however, imposed a duty to notify the sheriff's office if the registrant was going on a vacation. RP 42. Defense counsel also pointed out there was a duty to give the sheriff's office an itinerary *if* the registrant were traveling *outside* the United States. RP 42. Since there was no evidence which proved Mr.

---

<sup>3</sup> The instruction, although not offered, is in the Appendix for the convenience of the court.

Cathers had abandoned his “fixed residence,” there was no basis to find he had violated the duty to register. RP 42-43.

The court found that Mr. Cathers had been absent from his residence for a period of between 7 to 12 days. COL 9, CP 10. The court concluded that the statute had to be read as prohibiting a person from going on a two week vacation without notifying the sheriff of his location. COL 10, 12, 13; CP 10-12. In reaching this conclusion the court pointed to the requirement in the statute that a person required to register who was visiting Washington from another state would be required to register while visiting. COL 13; CP 11-12.

#### IV. ARGUMENT AND AUTHORITY

- A. A person who maintains a “fixed residence” does not violate RCW 9A.44.130 by taking a vacation and being absent from the residence without notice to the county sheriff.

In order to sustain a conviction, the state must prove every element of an offense beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 90 S. Ct.1068, 25 L.Ed.2d 368 (1970). The standard of review when a challenge to the sufficiency of the evidence is made on appeal is whether a rational trier of fact could have found all of the elements of the crime beyond a reasonable doubt, giving the benefit of the inferences from the evidence to the non-moving party, the state. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Hoffman*, 116 Wn. 2d

51, 82, 804 P.2d 577 (1991); *State v. Green*, 94 Wn. 2d 216, 616 P.2d 628 (1980).

Because most of the facts in this case are not in dispute, this case presents the related question of whether the trial court's interpretation of the registration statute was correct, namely that a person with a fixed residence must notify the sheriff's office if he plans to travel outside of the county of registration, but within the United States. Questions of statutory interpretation are reviewed *de novo*. *State v. Bradshaw*, 152 Wn.2d 528, 531, 98 P.3d 1190 (2004); *State v. Sleater*, 200 Wn.App. 638, 403 P.3d 84 (2017). Where a statute is ambiguous, the rule of lenity applies and the statute must be construed strictly in favor of the defendant and against a finding of liability. *State v. McGee*, 122 Wn.2d 783, 864 P.2d 912 (1993); *State v. Roberts*, 117 Wn.2d 576, 586, 817 P.2d 855 (1991); *State v. Stratton*, 130 Wn. App. 760, 124 P.2d 660, 662 (2005) Accord, *In re Cross*, 99 Wn.2d 373, 379, 662 P.2d 828 (1983).

The state's own evidence proved that Mr. Cathers had been registered at his fixed residence of 123 Jenkins Creek Road in Klickitat County since 1988. There was no evidence he had moved to another residence, either in Klickitat County or elsewhere. The only thing the state proved at trial was that during a 7-12 day period during June of 2018, he was not at his home when the sheriff came to make his annual check. However, Mr. Cathers' cat sitter, Ms. O'Brennan, was around on both occasions when the deputy came by to check.

The prosecutor argued, and the trial court agreed, that Mr. Cathers' mere absence from his fixed residence for a 7-12 day period was sufficient for him to be guilty of a violation of the duties imposed by the statute. Significantly, nowhere in its findings or conclusions did the trial court ever specify what portion of the statute, or what duty under it Mr. Cathers had violated. The trial court's interpretation of the statute, which creates a duty to inform the police of a registrant's domestic travel plans out of whole cloth, is clearly erroneous should be rejected by this court.

A "fixed residence" is defined by RCW 9A.44.128 as follows:<sup>4</sup>

(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.

Based upon the evidence presented, it would be a reasonable conclusion that 123 Jenkins Creek Road was Mr. Cathers's "fixed

---

<sup>4</sup> The trial court entered a conclusion of law (#11) that the statute has no definition of residence, and borrowed one from the dictionary. The dictionary definition was used in *State v. Stratton*, 130 Wn. App. 760 124 P.3d 660 (2005) which was decided before the "fixed residence" definition was added to the statute in 2011.

residence.” This was the place he had been registered since 1988. There was also no evidence that he had changed his fixed residence, or moved away from it. The presence of Mr. Cather’s cat-sitter, Ms. O’Brennan, on two of the three occasions when the sheriff’s deputy visited the house, proved that Mr. Cathers still lived at his fixed address even though he was temporarily absent from it for a vacation. There was likewise no physical evidence that indicated or suggested he had moved, or planned to move.

A review of the various alternative methods of violating a duty imposed by the statute is instructive. These are set out in WPIC 49 C.05, which parallels the statute, and were discussed by trial counsel for Mr. Cather.

Mr. Cathers had registered with the sheriff since 1988, and was a resident of Washington, eliminating the first two paragraphs and the other non-resident based duties as a basis for liability. (Paragraphs 10,12). He was not newly released from custody. (Paragraphs 3, 7, 8, 9). He was not attending school or a new job in Washington. (Paragraph 4). There was no evidence he had not supplied the information required by Paragraphs 5 or 6. He had not been newly sentenced for a sex offense. (Paragraph 11). He had not traveled *outside* the United States. (Paragraph 13). He had not been in the custody of DSHS as a result of an insanity finding. (Paragraph 14). He did not lack a fixed residence as that term is defined. (Paragraphs 15 and 16, 21, 22, 23). He was not establishing a residence or work place in a new state. (Paragraph17). He had not moved to a new residence in the

same county. (Paragraph 18.) He had not moved to a new county elsewhere in Washington. (Paragraphs 19 and 20). He had not tried to change his name. (Paragraph 24, 25). He had not moved from his registered address. (Paragraph 26). He was not a transient visitor to Washington from another state. (Paragraph 27). In short, none of the specified duties of registration, with their associated time limits, were violated by Mr. Cathers taking a vacation and being temporarily absent from his fixed residence.

One of the duties in the statute, and in the instruction, is the duty to notify the sheriff if a person is *leaving the United States* for a period of time. RCW 9A.44.130 (3) provides as follows:

(3) Any person required to register under this section **who intends to travel outside the United States** must provide, by certified mail, with return receipt requested, or in person, signed written notice of the plan to travel **outside the country** to the county sheriff of the county with whom the person is registered at least twenty-one days prior to travel. The notice shall include the following information: (a) Name; (b) passport number and country; (c) destination; (d) itinerary details including departure and return dates; (e) means of travel; and (f) purpose of travel. If the offender subsequently cancels or postpones travel outside the United States, the offender must notify the county sheriff not later than three days after cancellation or postponement of the intended travel **outside the United States** or on the departure date provided in the notification, whichever is earlier. The county sheriff shall notify the United States marshals service as soon as practicable after receipt of the notification. In cases of unexpected travel due to family or work emergencies, or for offenders who travel routinely across international borders for work-related purposes, the notice must be submitted in person at least twenty-four hours prior to travel to the sheriff of the county where such offenders are registered with a written explanation of the circumstances that make compliance with this subsection (3) impracticable. (Emphasis added)

This section, which prescribes the specific kinds of notice required if a person plans to travel **outside** the United States, demonstrates that there is

no such duty for travel *within* the United States. It also refutes the interpretation of the statute used by the trial court.

Courts seeking to interpret the meaning and reach of a statute often resort to the maxim of construction, *expressio unius est exclusio alterius*. This maxim of construction declares that, when a statute specifically designates the things or classes of things on which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature. *State v. Swanson*, 116 Wn.App. 67, 75, 65 P.3d 343 (2003); *State v. Flores*, 194 Wn.App. 29, 374 P.3d 222 (2016). Another court has described the maxim this way:

*Expressio unius est exclusio alterius*, a common maxim of statutory construction, also aids our decision. The maxim holds that, “[w]here a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature.”

*Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1*, 77 Wn.2d 94, 98, 459 P.2d 633 (1969).

The registration statute specifies a number of specific duties, with specific timelines for their accomplishment by a registrant. The duty for intended travel outside the United States set out in paragraph 3 is an example. It tells a registrant what he must do if he plans to travel *outside* the country. Had the Legislature intended that a registrant have a similar duty to give the sheriff his agenda for travel *within* the United States, it would surely have done so. Consequently, the statute cannot be inferred to have created

such a duty for travel outside of Washington but within the United States, as the trial court here hypothesized.<sup>5</sup>

The trial court relied in part on *State v. Peterson*, 168 Wn. 2d 763, 230 P.3d 538 (2010). This reliance was misplaced. Peterson had registered, and then became homeless. The statute required him as a homeless person to register within three days of losing his residence. RCW 9A.44.130 (4) (vi)(vii). He did not do so. The Supreme Court held that since the evidence showed Peterson had failed to register within the applicable deadline for a homeless person, his conviction should be affirmed.

In the present case, there was no evidence that Mr. Cathers had become homeless or had abandoned his fixed residence at all. Rather, the evidence that he had a trusted friend looking after his cats while on vacation, and confirmed his residence with the sheriff in March of 2019 proves he did not change his address or residence at all.

In *State v. Stratton, supra*, the court reversed a conviction for failing to register. After registering at an address in Longview, Stratton was unable to make his house payments. He began living out of his car, which was parked on the premises, and used the telephone service attached to the house. When the police checked the address, they did not find him there, saw a “for sale” sign, and noticed no belongings in the

---

<sup>5</sup> The definitional section of 9A.44.128 has been amended six times since 2010, including the amendment which added the definition of “fixed residence” in 2011.

house. A prosecution was initiated. The Court of Appeals reversed the conviction. In discussing *Stratton*, the *Peterson* court noted:

Because the offender had never moved in the first place, the duty to register was not triggered and no crime had been committed. [*Stratton*]. at 766-67, 124 P.3d 660.  
*Peterson* at 230 P.3d 593.

Like *Stratton*, Mr. Cathers had never moved in the first place, and no additional duty was triggered under the statute.

This court has recently reviewed and reversed a conviction under the registration statute in *State v. Dollarhyde*, No. 36047-4-III (Slip Op. July 2, 2019). The court reversed the conviction, holding that a strict construction of the statute required the state to prove that it had requested an “accurate accounting” of a homeless registrant’s whereabouts pursuant to RCW 9A.44.130(6)(b). There was no evidence to support the conclusion the sheriff had done so.

The trial court’s construction of the statute in the present case, which conjured a new “duty” to register out of thin air, is demonstrably incorrect based both on the rule of lenity, and the maxim of *expressio unius est exclusio alterius*. Unlike a traveler leaving the United States, Mr. Cathers had no statutory duty to inform the police of his travel plans inside the United States.

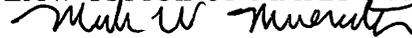
## V. CONCLUSION

The state proved at trial that Mr. Cathers had been registering with the sheriff’s office since 1988 and had been compliant with their office.

The evidence showed no indication that he had moved from his fixed residence. In his short tem absence, his house and belongings were being watched over by a close friend (Ms. O'Brennan) who was taking care of his pets. There is no support for the trial court's conclusion that his failure to notify the police of his travel itinerary within the United States was a violation of the statute. This court should reverse the trial court, and remand for a vacation and dismissal of the conviction, with prejudice.

Dated this 18<sup>th</sup> day of SEPTEMBER, 2019

LAW OFFICE OF MARK W. MUENSTER



Mark W. Muenster, WSBA 11228

Attorney for Glen Cathers

**APPENDIX**

WPIC 49C.05

Court's Ruling, dated June 7, 2019

[Home Table of Contents](#)

*WPIC49C.05 Requirements of Sex and Kidnapping Offender Registration Under RCW 9A.44.130—Definiti...* 11  
WAPRAC

WPIC 49C.05  
Washington Practice Series TM  
Washington Pattern Jury Instructions—Criminal  
11 Wash. Prac., Pattern Jury Instr. Crim. WPIC 49C.05 (4th Ed)

**Washington Practice Series TM**

**Washington Pattern Jury Instructions--Criminal**  
October 2016 Update

Washington State Supreme Court Committee on Jury Instructions

**Part VII. Sex Crimes**

**WPIC CHAPTER 49C. Failure to Register as a Sex or Kidnapping Offender for Crimes on or After July 22, 2011**

**WPIC 49C.05 Requirements of Sex and Kidnapping Offender Registration Under RCW 9A.44.130—Definition**

A person who is required to register as a [sex] [kidnapping] offender must comply with certain requirements of registration, including the following:

- (1) [the requirement that the defendant register with the county sheriff for the defendant's county of residence] (RCW 9A.44.130(1)(a))
- (2) [the requirement that the defendant, who is not a resident of Washington, register with the county sheriff of the county where the defendant's school, place of employment, or place of vocation is located] (RCW 9A.44.130(1)(a))
- (3) [the requirement that the defendant, who was in custody for a [sex] [kidnapping] offense, register [at the time of release from custody] [at the time of transfer to partial confinement] with an official designated by the agency that has jurisdiction over the defendant] (RCW 9A.44.130(1)(a), RCW 9A.44.130(4)(a)(i))
- (4) [the requirement that the defendant give notice to the sheriff for the county with whom the defendant is registered within three business days [prior to arriving at a school to attend classes] [prior to arriving at an institution of higher education to attend classes] [prior to starting work at an institution of higher education] [or] [after any termination of enrollment or employment at a school or institution of higher education]] (RCW 9A.44.130(1)(b))
- (5) [the requirement that the defendant provide the following information when registering: name; any aliases used; complete and accurate residential address [, or if the defendant lacks a fixed residence, where the defendant plans to stay]; date and place of birth; place of employment; crime for which convicted; date and place of conviction; social security number; photograph; and fingerprints] (RCW 9A.44.130(2)(a))
- (6) [the requirement that, in conjunction with an address verification by the county sheriff, the defendant update the following information: name; any aliases used; residential address [, or if the defendant lacks a fixed residence, where the defendant plans to stay]; date and place of birth; place of employment; crime for which convicted; date and place of conviction; social security number; photograph; and fingerprints] (RCW 9A.44.130(2)(b))
- (7) [the requirement that the defendant, who was in custody for a [sex] [kidnapping] offense, register with the county sheriff for the county of residence within three business days of release from a facility operated by the state department of corrections, a facility operated by the state department of social and health services, a facility operated by a local division of youth services, a local jail, or a local juvenile detention facility] (RCW 9A.44.130(4)(a)(i))
- (8) [the requirement that the defendant, who was in custody for a [sex] [kidnapping] offense and who is not a resident of Washington, register with the county sheriff for the county of the defendant's school, or place of employment or vocation within three business days of release from a facility operated by the state department of corrections, a facility operated by the state department of social and health services, a facility operated by local division of youth services, a local jail, or a local juvenile detention facility] (RCW 9A.44.130(4)(a)(i))

- (9) [the requirement that the defendant, who was in custody for a [sex] [kidnapping] offense, register with the county sheriff for defendant's county of residence within three business days of release from a facility operated by the United States Bureau of Prisons or operated by another federal or military correctional agency] (RCW 9A.44.130(4)(a)(ii))
- (10) [the requirement that the defendant, who is not a resident of Washington, register with the county sheriff for the county of the defendant's school, or place of employment or vocation within three business days of release from a facility operated by the United States Bureau of Prisons or operated by another federal or military correctional agency] (RCW 9A.44.130(4)(a)(ii))
- (11) [the requirement that the defendant register with the county sheriff within three business days of being sentenced for a [sex] [kidnapping] offense] (RCW 9A.44.130(4)(a)(iii))
- (12) [the requirement that the defendant, upon moving to Washington, register with the county sheriff within three business days of establishing residence or reestablishing residence if the person is a former Washington resident] (RCW 9A.44.130(4)(a)(iv))
- (13) [the requirement that the defendant, intending to travel outside the United States, provide written notice of details of travel plans to the sheriff of the county where the person is registered. This notice must be provided at least 21 days before travel outside of the United States. It must be provided in person or sent by certified mail with return receipt requested.] (RCW 9A.44.130(3) (See Comment))
- (14) [the requirement that the defendant, having been in the custody of the state department of social and health services as a result of a finding of not guilty by reason of insanity, register with the sheriff for the county of the defendant's residence within three business days of [release from a department of social and health services facility] [receiving notice of the registration requirements] (RCW 9A.44.130(4)(a)(v))
- (15) [the requirement that the defendant, lacking a fixed residence, and registered with the county sheriff of a county, upon entering and remaining in a new county for twenty-four hours, register with the county sheriff of the new county not more than three business days after entering the new county] (RCW 9A.44.130(4)(a)(vi))
- (16) [the requirement that the defendant, lacking a fixed residence and under the supervision of the department of corrections, register with the county sheriff of the county of the defendant's supervision] (RCW 9A.44.130(4)(a)(vii))
- (17) [the requirement that the defendant send written notice to the county sheriff with whom the defendant last registered in Washington within three business days of [establishing a residence in a new state] [beginning to work in a new state] [carrying on a vocation in a new state] [attending school in a new state]] (RCW 9A.44.130(4)(a)(viii))
- (18) [the requirement that the defendant provide, in person or by certified mail with return receipt requested, signed written notice of a change of address to the county sheriff within three business days of moving to a new residence within the same county] (RCW 9A.44.130(5)(a))
- (19) [the requirement that the defendant, upon moving to a new county, register within three business days of moving with the county sheriff of the new county of residence] (RCW 9A.44.130(5)(b))
- (20) [the requirement that the defendant, upon moving to a new county, provide in person or by certified mail with return receipt requested, signed written notice within three business days of the change of address to the county sheriff with whom the defendant last registered] (RCW 9A.44.130(5)(b))
- (21) [the requirement that the defendant, who had a fixed residence but later lacked one, provide signed written notice to the sheriff of the county where the defendant last registered within three business days after ceasing to have a fixed residence] (RCW 9A.44.130(6)(a))
- (22) [the requirement that the defendant, lacking a fixed residence, report weekly on a day specified by the county sheriff's office and during normal business hours, in person, to the sheriff of the county where the defendant is registered] (RCW 9A.44.130(6)(b))
- (23) [the requirement that the defendant, lacking a fixed residence, comply with a request from the county sheriff for an accurate accounting of where the defendant stayed during the week] (RCW 9A.44.130(6)(b))
- (24) the requirement that the defendant, having applied to change his or her name, submit a copy of the application to change his or her name to the county sheriff of the county of the defendant's residence and to the Washington state patrol not fewer than five days before the entry of an order granting the name change] (RCW 9A.44.130(7))
- (25) [the requirement that the defendant submit a copy of any order changing the defendant's name to the county sheriff of the county of the person's residence and to the Washington state patrol within three business days of the entry of the order] (RCW 9A.44.130(7))
- (26) [the requirement that the defendant provide signed written notice of [his] [her] change of address to the county sheriff within three business days of moving from the registered address]. (See Comment.)
- (27) [the requirement that the defendant, who is visiting Washington state and intends to reside or be present in the state for ten days or more, register [his] [her] temporary address or where [he] [she] plans to stay with the county sheriff of each county where the

offender will be staying. This registration must be made within three business days of arrival.] (RCW 9A.44.130(4)(a)(iv))

#### NOTE ON USE

Use this instruction with WPIC 49C.02 (Failure to Register as Sex or Kidnapping Offender—Elements), when there are multiple registration requirements at issue. If only a single requirement is at issue, then incorporate the applicable requirement directly into the to-convict instruction instead of using this instruction.

The statutory citation at the end of each numbered registration requirement is included exclusively for ease of reference, and should not be included in the instruction given to the jury.

As necessary, use WPIC 49C.10 (Sex Offense—Definition), WPIC 49C.11 (Kidnapping Offense—Definition), WPIC 49C.12 (Conviction—Definition), WPIC 49C.13 (Residence—Definition), and WPIC 49C.15 (Business Day—Definition).

Use the bracketed material as applicable.

Revise this instruction based on the facts of the case, when doing so will aid in juror understanding or simplify the instruction. If necessary, revise this instruction in conformance with any “Old Chief” stipulation.

See the Comment for additional information about paragraphs (22) and (26).

When the charge is based on a person's failure to register within three business days of receiving actual notice of the duty to register by way of arrest, service, or arraignment on charges of failing to register, as set forth in RCW 9A.44.130(3)(c), use WPIC 49C.06 (Failure to Register—Notice). See the Comment for additional information.

#### COMMENT

RCW 9A.44.130. This instruction has been modified for this edition to reflect changes made to the statute in 2015. Laws of 2015, Chapter 261, § 3 (effective July 24, 2015).

The statute sets forth the various circumstances that create an obligation for a sex or kidnapping offender to register within a certain period of time. The committee has reorganized the statutory registration requirements so that each is separated into its own bracketed clause in the instruction.

Practitioners may need to modify the statutory language to fit the facts of a particular case. In *State v. Peterson*, 168 Wn.2d 763, 767, 230 P.3d 588 (2010), the jury was not instructed with a list of the requirements that the defendant had allegedly violated. Rather, the jury was instructed more generally that the requirement at issue was whether the defendant had “provide[d] written notice to the county sheriff within 72 hours after ceasing to reside” at his previous residence. The defendant argued that the instruction was erroneous because the State had a duty to prove which particular statutory deadline was violated, and thus had to prove the defendant's residential status, inasmuch as residential status determines the applicable deadline. The Supreme Court rejected the defendant's argument, pointing out that:

[The defendant] registered outside of *any deadline* contained in the statute. It was therefore unnecessary to show his particular residential status in order to prove a violation of the statute.

*State v. Peterson*, 168 Wn.2d at 772 (emphasis in original).

Paragraph (22) in the instruction has been modified to more closely track the statute to include the requirement that the defendant report during normal business hours on a day specified by the sheriff. RCW 9A.44.130(5)(b).

Paragraph (26) in the instruction combines several of the earlier paragraphs into a single provision that can be used for the common circumstances when a defendant has changed residences. Paragraph (26) combines paragraphs (19), (20), (23), and (24). This approach is supported by *State v. Peterson*, 168 Wn.2d 763, 230 P.3d 588 (2010), in which the trial court similarly combined several statutory requirements into a single provision.

Paragraph (13) has been added because of the amendment to RCW 9A.44.130 (3) adding requirements to register before undertaking international travel.

Lack of notice of the duty to register as a sex or kidnapping offender is a defense to the charge. RCW 9A.44.130(3)(c).  
[Current as of December 2015.]

Westlaw © 2015 Thomson Reuters. No Claim to Orig. U.S. Govt. Works

END OF DOCUMENT

© 2019 Thomson Reuters. No claim to original U.S. Government Works.



1 one time per year address verification. In June 2018, Cathers was registered at 123  
2 Jenkins Creek Road, Klickitat County, WA.

3 3. In June 2018, Lisa Schupe, criminal records technician for Klickitat  
4 County Sheriff's Office, who is responsible for sex offender registrations and address  
5 verifications, assigned an address check for Glen Cathers to Deputy Timothy Neher,  
6 Klickitat County deputy.

7 4. Kathleen O'Brennan has known Cathers for approximately 8 years.  
8 Kathleen O' Brennan has provided pet-sitting for Cathers over the years, while Cathers  
9 would be away from his residence. Cathers residence was 123 Jenkins Creed Road,  
10 Klickitat County, WA.

11 5. In June 2018, Kathleen O'Brennan cared for Cathers' cats while he was  
12 away from his residence. O'Brennan recalls being at the property for approximately 12  
13 day. Cathers was gone during time she cared for the cats..

14 6. Approximately 2-3 days after arrived at Cathers' residence an officer  
15 stopped by looking for Cathers. Approximately 2-3 days after the officer's first visit to  
16 the property, the officer returned looking for Cathers again. Cathers was not at the  
17 property during either visit nor at any time between the visits.

18 6. Deputy Timothy Neher knew Cathers and had spoken to him on a few  
19 occasions.

20 7. On June 20, 2019, Deputy Neher went to 123 Jenkins Creek Road to  
21 conduct an address verification on Cathers as requested by Lisa Schupe. Deputy Neher  
22 arrived at residence after 5 pm and no one was present at the residence. Deputy Neher  
23 left a business card in the door of the residence.

24 8. On June 21, 2019, Deputy Neher returned to 123 Jenkins Creek Road,  
25 Klickitat County, WA. Deputy Neher contacted Kathleen O'Brennan. Deputy Neher  
26 did not see Cathers at the residence. Cathers was not at the residence.



1           4. Pursuant to stipulations of the parties at trial, prior to June 8, 2019,  
2 Cathers was convicted of an offense that required him to register as a sex offender.

3           5. Pursuant to stipulations of the parties at trial, prior to June 8, 2019 and  
4 through June 27, 2019, Cathers was required to register as a sex offender in Klickitat  
5 County, State of Washington.

6           6. A person's residential status is not an element of the crime of failure to  
7 register. *State v. Peterson*, 168 Wash.2d 763, 774, 230 P.3d. 588 (2010).

8           7. The purpose of the sex offender registration statute is to assist law  
9 enforcement agencies' efforts to protect their communities against sex offenders who re-  
10 offend. *State v. Pray*, 96 Wash.App. 25, 28, 980 P.2d 240 (1999) (citing Laws of 1990,  
11 ch. 3, § 401). Specifically, registration provides law enforcement agencies with an  
12 address where they can contact a sex offender. *Pray*, 96 Wash.App. at 28–29, 980 P.2d  
13 240 (emphasis added).

14           8. RCW 9A.44.130 requires amongst other things that (a) person required  
15 to register must send written notice to county sheriff with whom the offender last  
16 registered in Washington within 3 business days of establishing a residence in a new  
17 state or (b) that the person required to register provide, in person or by certified mail  
18 with return receipt requested, signed written notice of a change of address to the county  
19 sheriff within three business days of moving to a new residence within the same county  
20 or (c) that the defendant, upon moving to a new county, provide in person or by  
21 certified mail with return receipt requested, signed written notice within three business  
22 days of the change of address to the county sheriff with whom the defendant last  
23 registered or (d) that the person required to register provide signed written notice of his  
24 change of address to the county sheriff within three business days of moving from the  
25 registered address. See also *WPIC 49C.05*.

1           9.     Cathers was gone from his residence between 7 days at a minimum as  
2 testified to by Deputy Neher and at least up to the 12 days as testified to by Kathleen  
3 O'Brennan.

4           10.    Cathers argument that since he did not change his address nor failed to  
5 have a fixed address since he did not move, he did not need to keep the sheriff's office  
6 apprised of his whereabouts when he was not present at his address for periods of up to  
7 12 days at a time. Essentially this argument would allow a person to maintain a fixed  
8 residence at an address and never use (or even rarely used) the fixed address and allow  
9 him to continually to be gone for significant period of time essentially thwarting law  
10 enforcements ability to know the whereabouts of convicted sex offenders. Courts  
11 cannot construe statutes in a matter that renders them absurd. *State v. Peterson*, 145  
12 Wash.App. 672, 677, 186 P.3d 1179 (citing *State v. Ammons*, 136 Wash.2d 453, 457,  
13 963 P.2d 812 (1998)).

14           11.    Residence is not defined in RCW 9A.44 and, therefore, one must look at  
15 the standard dictionary definition, which is defined as amongst other things as follows:  
16 "the act ... of abiding or dwelling in a place for some time: an act of making one's home  
17 in a place ...; the place where one actually lives or has his home distinguished from his  
18 technical domicile; ... a temporary or permanent dwelling place, abode, or habitation to  
19 which one intends to return as distinguished from a place of temporary sojourn or  
20 transient visit ...; a building used as a home." Webster's Third New International  
21 Dictionary, at 1931 (1969).

22           12.    In *State v. Stratton*, the court found that the defendant, Michael Stratton,  
23 who moved from the physical building, at the address wherein he was registered, to his  
24 vehicle, which he kept parked at the same location and returned to each evening, was  
25 not a change of residence requiring notification to the county sheriff. *State v. Stratton*,  
26 130 Wash.App. 760, 124 P.3d 660 (2005). The court went on to hold that because

1 Stratton continued to receive his mail at that address and had telephone service at that  
2 address and returned to that address daily to sleep at that address (albeit in his vehicle in  
3 driveway not in the building) he still had a fixed residence and, therefore, no need to  
4 notify the county sheriff since the county sheriff could locate and contact Statton at that  
5 address. This situation contrasts greatly with the facts in the present case, wherein  
6 Cathers was and could be gone for very significant period of times (and was gone for at  
7 least 12 days) and, therefore, be unavailable for contact. Cathers disappearance for up  
8 to at least 12 days at a time would thwart the failing to register statute if it was read to  
9 allow for significant periods of time wherein a person required to register was absent  
10 from the address wherein they are registered. In the present case, Cathers being gone  
11 for more than 10 days is in excess of any period of time wherein a person is required to  
12 register under RCW 9A.44.130. Again the purpose of the sex offender registration  
13 statute is to assist law enforcement agencies' efforts to protect their communities against  
14 sex offenders who re-offend. *State v. Pray*, 96 Wash.App. 25, 28, 980 P.2d 240 (1999)  
15 (citing Laws of 1990, ch. 3, § 401). Specifically, registration provides law enforcement  
16 agencies with an address where they can contact a sex offender. *Pray*, 96 Wash.App. at  
17 28-29, 980 P.2d 240 (emphasis added). Furthermore, Courts cannot construe statutes  
18 in a matter that renders them absurd and allowing a situation wherein a person required  
19 to register an address and then being absent from that address for significant periods of  
20 time of at least 12 days at a time just because the registrant claims they have not moved  
21 from the residence would result in an absurd reading of the statute. *State v. Peterson*,  
22 145 Wash.App. 672, 677, 186 P.3d 1179 (citing *State v. Ammons*, 136 Wash.2d 453,  
23 457, 963 P.2d 812 (1998)).

24 13. It is also interesting to note that RCW 9A.44.130 requires that registered  
25 sex offenders visiting Washington State for more than 10 days must register with  
26 county sheriff of each county that the registrant will be staying within 3 business days

1 of arrival. Allowing Washington residents to leave the State or not be present at their  
2 registered address for more than 10 days would seem incongruent with the purpose  
3 underlying the registration statute that requires registrants to provide an address wherein  
4 law enforcement is able to locate and contact registered sex offenders in an effort to  
5 keep the community safe.

6 14. Any finding of fact that should be a conclusion of law shall be deemed a  
7 conclusion of law. Any conclusion of law that should be considered a finding of fact  
8 shall be considered a finding of fact.

9 **III. FINAL ORDER**

10 Based on these Findings of Facts and Conclusions of Law, the Court hereby  
11 declares the State of Washington has proven beyond a reasonable doubt that the  
12 defendant, Glen Lindsay Cathers, committed the crime of Failure to Register as a Sex  
13 Offender .

14  
15 DATED this 5 day of June, 2019.

16  
17 

18 \_\_\_\_\_  
19 SUPERIOR COURT JUDGE  
20  
21  
22  
23  
24  
25  
26

September 18, 2019 - 10:13 AM

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 36885-8  
**Appellate Court Case Title:** State of Washington v. Glen Lindsay Cathers  
**Superior Court Case Number:** 19-1-00024-6

**The following documents have been uploaded:**

- 368858\_Briefs\_20190918100326D3154099\_1864.pdf  
This File Contains:  
Briefs - Appellants - Modifier: Amended  
*The Original File Name was Amended brief scan 2.pdf*
- 368858\_State\_of\_Arrangements\_20190918100326D3154099\_8513.pdf  
This File Contains:  
Statement of Arrangements - Modifier: Amended  
*The Original File Name was 3rd statement of ARR.pdf*

**A copy of the uploaded files will be sent to:**

- chrislanz16@yahoo.com
- davidq@klickitatcounty.org
- paapeals@klickitatcounty.org

**Comments:**

---

Sender Name: Mark Muenster - Email: markmuen@ix.netcom.com  
Address:  
1010 ESTHER ST  
VANCOUVER, WA, 98660-3028  
Phone: 360-694-5085

**Note: The Filing Id is 20190918100326D3154099**