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STATE OF WASHINGTON

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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

GERALD DUAIN ENQUIST, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Katherine M. Stolz, Judge

No. 09-1-02964-6

Brief of Respondent

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Is *State v. Ward*, court precedent finding sex offender registration laws constitutional with respect to *ex post facto* prohibitions, still controlling after the legislative amendments adding requirements for transient offender registration?
2. Do sex offender registration laws appropriately respect a transient offender's right to travel freely within the State and from State to State?

B. STATEMENT OF THE CASE.

1. Procedure

On June 17, 2009, the State charged Gerald Duaine Enquist (defendant) with failure to register as a sex offender. CP 1.

At a bench trial on February 22, 2010, defendant stipulated to certain facts setting forth factual background of the case. RP 3-4. The State also presented other documentary evidence in its case in chief. RP 4-5. At the conclusion of trial, the court found defendant guilty, sentencing him to three months of community custody. RP 70; CP 17-28. The court also issued findings of fact and conclusions of law concerning its finding of guilt. CP 48-51.

Defendant filed a timely notice of appeal on February 22, 2010.

CP 33.

2. Facts

In 1976, defendant was convicted in King County Superior Court of two counts of robbery and two counts of rape in the first degree in 1976. CP 49. The court sentenced him to 30 years confinement on March 9, 1977. *Id.*; RP 9-10. The defendant left custody of the DOC on April 26, 2007, having completed his sentence. CP 48.

On June 16, 2009, Pierce County law enforcement agents arrested defendant for his failure to register as a sex offender. CP 2-3. Within a day of arrest, the court released him on bail after his arraignment. RP 62; RP 66-67. After release, defendant registered as a sex offender in King County. RP 14.

Defendant stated at trial that while in prison, he had conducted legal research regarding released felons and restoration of civil rights. RP 31-33. He also spoke with a Department of Corrections (DOC) contracted attorney concerning his obligation under the sex offender registration statute. RP 29-30. Defendant testified at trial that based on his research and this conversation, he believed that he would not have to register upon release from prison. *Id.*

At trial, defendant admitted that shortly prior to his release, DOC representatives informed him of his obligation to register as a sex offender

pursuant to RCW 9A.44.130¹, and made him sign associated documentation to that effect. CP 48-50; RP 10-11. During cross-examination, the State demonstrated multiple documents which defendant had signed indicating his understanding of the registration requirement. RP 26. The court deemed that this constituted formal notice that the defendant had to register as a sex offender. CP 50.

From April 26, 2007, to June 16, 2009, defendant testified that he did not register as a sex offender with any county sheriff as required by RCW 9A.44.130, as he believed he did not need to do so. CP 49; RP 44. More specifically, defendant testified to his understanding that by completing a maximum sentence, he had no further obligations to the State excepting gun ownership restrictions. RP 13. Despite having signed documents indicating his knowledge of the registration requirement, defendant testified that the hostile environment of the prison did not allow him a chance to properly examine and understand the documents. RP 27. After his release until June 26, 2009, defendant testified that he lived primarily in Pierce County both as a transient person and, at times, as an established residence. CP 49; RP 34-35.

¹ All citations to the sex offender statute, RCW 9A.44.130, reference the 2009 revision, attached as Appendix A.

C. ARGUMENT.

1. THE WASHINGTON SUPREME COURT HAS HELD THAT THE SEX OFFENDER REGISTRATION STATUTE DOES NOT VIOLATE THE PROHIBITION AGAINST EX POST FACTO LAWS; AS SUBSEQUENT LEGISLATIVE AMENDMENTS DO NOT UNDERMINE THIS ESTABLISHED PRECEDENT, DEFENDANT'S CONSTITUTIONAL CHALLENGE SHOULD BE DISMISSED.

Both the Washington constitution and the federal constitution prohibit the creation of *ex post facto* laws. The State constitution states that “[n]o bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.” Const. art. I, § 23. The federal constitution prohibits States from passing such laws using similar language, stating that “[n]o State shall ... pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts.” U.S. Const. art. I, § 10. The Washington Supreme Court has held that same standards apply when analyzing an *ex post facto* claim regardless of whether it falls under the state or federal constitution. *State v. Ward*, 123 Wn.2d 488, 496, 869 P.2d 1062 (1994).

The Supreme Court of the United States has differentiated between laws that act retrospectively and laws that violate the *ex post facto* prohibition. Regarding *ex post facto* laws, the court held that “any statute which punishes as a crime an act previously committed, which was

innocent when done, which makes more burdensome the punishment for a crime, after its commission, or which deprives one charged with crime of any defense available according to law at the time when the act was committed, is prohibited as ex post facto.” *Beazell v. Ohio*, 269 U.S. 167, 169, 46 S. Ct. 68 (1925), affirming the holding of *Calder v. Bull*, 3 U.S. 386, 3 Dall. 386 (1798); *Collins v. Youngblood*, 497 U.S. 37, 42, 110 S. Ct. 2715 (1990) (quoting *Beazell*).

The Washington Supreme Court, citing *Collins*, restated the three part test: “A law violates the ex post facto clause if it: (1) is substantive, as opposed to merely procedural; (2) is retrospective (applies to events which occurred before its enactment); and (3) disadvantages the person affected by it.” *In re Powell*, 117 Wn.2d 175, 185, 814 P.2d 635 (1991) (citation omitted). Making the rule consistent with the federal rule held in *Collins*, the Washington Supreme Court clarified “disadvantages” to mean “whether the law alters the ‘standard of punishment’ which existed under prior law.” *Id.* at 188.

Defendant now challenges the constitutionality of RCW 9A.44.130, the sex offender registration statute. During trial, defendant argued that RCW 9A.44.130 should not apply because he had fully served his sentence and received a certificate of discharge. RP 48-51. He made no argument in trial regarding the constitutionality of the statute. Defendant now claims on appeal that application of the sex offender registration statute violates *ex post facto* prohibitions of the state and

federal constitutions. App. Br. at 1-2. Despite the failure to raise this claim at trial, defendant may raise this claim for the first time on appeal to the extent that he presents a manifest error affecting a constitutional right. RAP 2.5(a). With some limitations, appellants may raise constitutional challenges to statutes for the first time on appeal. *In re J.R.*, 156 Wn. App. 9, 18, 230 P.3d 1087, 1092 (2010).

An appellate court reviews a challenge to the constitutionality of a statute *de novo*. *City of Redmond v. Moore*, 151 Wn.2d 664, 668, 91 P.3d 875 (2004). Further, “[a] statute is presumed constitutional and the party challenging it has the burden to prove it is unconstitutional beyond a reasonable doubt.” *Ward*, 123 Wn.2d at 496 (citation omitted).

The Washington Supreme Court has already held that the sex offender registration statute does not violate *ex post facto* prohibitions². *Ward*, 123 Wn.2d 488. The registration statute applies to any person “who has been found to have committed or *has been convicted* of any sex offense or kidnapping offense.” RCW 9A.44.130(1)(a) (emphasis added). Sex offenders who committed sex offenses prior to the statute’s enactment can still fall under its influence. *Petition of Estavillo*, 69 Wn. App. 401, 848 P.2d 1335 (1993). The Washington Supreme Court has already concluded that this renders the statute retrospective. *Ward*, 123 Wn.2d at

² The Washington Supreme Court based their analysis on the sex offender statute, RCW 9A.44.130, as it appeared in 1994, prior to the addition of any portions pertaining to transient sex offenders. This revision of the statute has been attached as Appendix B.

498. Furthermore, the court “assume[d] without deciding that [the statute] is substantive.” *Id.* The remaining question before the court in *Ward* pertained to whether the statute “alters the ‘standard of punishment’ which existed under prior law.” See *Powell*, 117 Wn.2d at 188 (citation omitted). When considering the required registration, the court held that “[a]lthough a registrant may be burdened by registration, such burdens are an incident of the underlying conviction and *are not punitive for purposes of ex post facto analysis.*” *Ward*, 123 Wn.2d at 510-511 (emphasis added). Another Washington appellate court rejected the argument that the statute was punitive with respect to restricting change of residence or affecting opportunities for employment. *State v. Taylor*, 67 Wn. App. 350, 357, 835 P.2d 245 (1992).

To overturn established precedent, defendant must have “a clear showing that an established rule is incorrect and harmful before it is abandoned.” *State v. Devin*, 158 Wn.2d 157, 168, 142 P.3d 599 (2006) (internal quotation and citation omitted). In this case, defendant argues that post-*Ward* legislative amendment to the statute requires reexamination of the *ex post facto* analysis conducted by the Washington Supreme Court in *Ward*. Defendant claims that the transient registration requirements “operate to his disadvantage to such an extent that it is in effect an additional punishment.” App. Br. at 6.

To determine whether a retrospective law increases the burden of punishment on a registrant, the Supreme Court looks to legislative intent

for creating the appropriate law. *Smith v. Doe*, 538 U.S. 84, 92, 123 S. Ct. 1140, 155 L.Ed.2d 164 (2003); *Ward*, 123 Wn.2d at 499. A law intended to impose punishment automatically fails. *Smith*, 538 U.S. at 92. However, when legislatures enact laws for legitimate civil purposes, the Court considers whether the system is punitive to the exclusion of any civil benefit. *Id.* Therefore, the Court must consider the intention of the legislature when passing the statute to determine whether or not it represents a legitimate function.

Prior to 1999, transient sex offenders did not have to register since they did not have a residence. *State v. Pickett*, 95 Wn. App. 475, 975 P.2d 584 (1999). When the Washington legislature set forth to revise RCW 9A.44.130, it provided as intention “that all sex and kidnapping offenders whose history requires them to register shall do so regardless of whether the person has a fixed residence.” Laws of 1999, Spec. Sess., ch. 6, §3. Under the revised law, “[t]he legislature intends that persons who lack a residential address shall have an affirmative duty to report to the appropriate county sheriff, based on the level of risk of offending.” Laws of 1999, Spec. Sess., ch. 6, §3. Far from punitive in nature, the statute establishes a method to aid law enforcement by maintaining a list of the residences of convicted sex offenders. This intention is not different than the purpose of the statute analyzed in *Ward*. Rather, it shows intent to expand the scope of the registration laws to include transient offender. It does not show an intent to punish transient sex offenders just as the

preceding statute did not show an intent to punish sex offenders with a fixed residence.

Beyond looking at legislative intent, the *Ward* court also considered whether the statute acted so punitively as to negate the legislature's intent. 123 Wn.2d at 499. Transient offenders must report weekly, in person, to the county sheriff of the county they registered in during normal business hours and keep a log of places stayed during the week. RCW 9A.44.130(6)(b). The burden on the transient sex offender reasonably compares to the burden on a sex offender who changed his permanent residence every week. *Id.*; RCW 9A.44.130(5)(b). Specifically, the extent of the burden rests in the act of registration. "Registration alone imposes no significant additional burden on offenders... We also find that the physical act of registration creates no affirmative disability or restraint." *Ward*, 123 Wn.2d at 500. The weekly reporting requirement of RCW 9A.44.130(6)(b), comparable to the physical registration requirement of the statute already held as non-punitive in *Ward*, does not alter the standard of punishment.

The Supreme Court made clear the burden required of a party attempting to demonstrate such a statute as *ex post facto*. "[B]ecause we ordinarily defer to the legislature's stated intent, only the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty," *Smith v. Doe*, 538 U.S. at 92 (internal quotation marks and citation omitted). With regard to

requiring transients to register, the Legislature demonstrated sufficient intent to create a civil, nonpunitive system of registration for sex offenders for the benefit of the community. The duty imposed serves not as punishment of the transient offenders, but as a means to properly execute the statutory purpose of keeping the community informed.

Given that courts have already held sex offender registration statutes do not violate *ex post facto* prohibitions, the additional requirements of the transient statute do not constitute sufficient excessive burden to warrant change of the analysis. *Id.*; *Estavillo*, 69 Wn. App. 401; *Ward*, 123 Wn.2d 488. Defendant does not show clear proof of undue burden or demonstrable punishment that warrants overriding the lawful legislative act.

Although the sex offender registration statute acts retroactively is presumed to have a substantive effect, it does not burden registrants sufficiently enough to be considered punitive. Considering the three part analysis used by the Washington Supreme Court in *Ward*, coupled with defendant's failure to demonstrate any harmful error, no justifiable reason exists to come to a different conclusion than *Ward*, retreat from *Ward* as precedent, or reverse the trial court's decision.

2. PROVISIONS OF THE SEX OFFENDER STATUTE
SPECIFIC TO TRANSIENT OFFENDERS DO NOT
RESTRICT AN OFFENDER'S ABILITY TO TRAVEL.

The Supreme Court of the United States has repeatedly recognized a constitutional right to travel. Justice Douglas stated “that the right of persons to move freely from State to State occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel and coal across state lines.” *Edwards v. People of State of California*, 314 U.S. 160, 169, 62 S. Ct. 164, 86 L.Ed. 119 (1941) (Douglas, J., concurring); *U.S. v. Guest*, 383 U.S. 745, 757, 86 S. Ct. 1170, 16 L.Ed.2d 239 (1966) (conspiracy to specifically deprive people the use of highways and travel from state to state violates the constitutionally protected right to travel); *Shapiro v. Thompson*, 394 U.S. 618, 629, 89 S. Ct. 1322, 22 L.Ed.2d 600 (1968) (statute that makes welfare recipients wait a year for benefits when moving to a new state unlawfully restricts the right to travel). A law that interferes by penalizing or preventing travel from state to state violates this fundamental right. *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 257, 94 S. Ct. 1076, 39 L.Ed.2d 306 (1974) (general hospital that denies service to indigents with less than one year residence in county impinges on right to travel).

The Supreme Court finds laws that directly impede passage of persons across State borders as unacceptable on their face. *Edwards*, 314 U.S. 160; *Kent v Dulles*, 357 U.S. 116, 78 S. Ct. 1113, 2 L.Ed.2d 1204 (1958) (Secretary of State cannot promulgate regulations denying passports to members of specific political groups). Laws that penalize free transit, such as limitation of benefits or denial of health services, have also been viewed as inhibitive of the right to travel due to the prohibitive effect of the limitations. *Shapiro*, 394 U.S. 618; *Memorial Hospital*, 415 U.S. 250. The Supreme Court considers these types of laws as having a “chilling effect on the right to travel.” *Shapiro*, 394 U.S. at 623 (citation omitted).

Defendant challenges the constitutionality of RCW 9A.44.130, arguing that it impedes his constitutional right to travel. Defendant made no claim regarding his constitutional right to travel at trial. Although the Court of Appeals may consider an issue involving manifest error affecting a constitutional right, defendant must show from the record below that the error is “manifest” and that the error prejudiced him. RAP 2.5(a); *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). “If the facts necessary to adjudicate the claimed error are not in the record on appeal, no actual prejudice is shown and the error is not manifest.” *McFarland*, 127 Wn.2d at 333. Given that defendant did not raise the issue at trial, the State did not have the opportunity to present evidence or challenge defendant’s claim that his right to travel has been impeded. Since the

record was not developed as to the specific facts of defendant's claim, the only claim that is "manifest" would be a facial challenge to the statute.

Issues of statutory construction and constitutional challenges both require review *de novo*. *City of Redmond v. Moore*, 151 Wn.2d 664, 668, 91 P.3d 875 (2004). As a facial challenge to the statute, defendant must demonstrate that there exist no set of circumstances where the statute, as currently written, can be constitutionally applied. *Id.* at 669. Furthermore, defendant must demonstrate this beyond a reasonable doubt. *Citizens for Responsible Wildlife Management v. State*, 149 Wn.2d 622, 631, 71 P.3d 644 (2003).

The Washington sex offender registration statute, which requires transient offenders to check in with the county sheriff, does not restrict travel directly, as in *Edwards*, nor indirectly, as in *Shapiro*. The sex offender statute requires that offenders register with the local county sheriff, with transients having the additional burden of checking in weekly after the initial registration. RCW 9A.44.130(4)(a)(i) - (ix); RCW 9A.44.130(6)(b). Defendant argues that these requirements, specific to transient offenders, impinge on his right to travel. Although the Supreme Court has recognized the right to travel, unlawful impositions on that right come from laws that either directly restrict travel or unduly penalize people for traveling. RCW 9A.44.130 contains no provisions that restrict

offender's travel either directly, or through application of such a penalty. Therefore, sex offender registration does not violate a transient offender's right to travel.

Defendant claims that "[t]he weekly in-person reporting requirement has the potential to significantly impede a transient registrant's ability to move within and outside the state of Washington, because the registrant must always return to the registered county within one week and on a specific date." App. Br. at 10. In fact, the statute not only allows transient sex offenders the opportunity to travel, it provides specific guidance as to how to accomplish said travel.

Contrary to defendant's claim, a transient offender who travels to a different county for more than a day has no requirement to "report, in person, to the sheriff of the county where he or she is [currently] registered" because the statute requires that the offender register in the new county. RCW 9A.44.130(6)(b); RCW 9A.44.130(4)(a)(vii). Regarding sex offenders with fixed residences, the Washington Supreme Court stated that "[they] are free to move within their community or from one community to another, provided they comply with the statute's registration requirements." *Ward*, 123 Wn.2d at 500. The same holds true for transient offenders; just as a sex offender with fixed residence must re-register upon changing residence to a new county, a transient sex offender must re-register upon spending more than 24 hours in a new county. RCW 9A.44.130(4)(a)(vii). The statute also provides direction for

offenders who move to different States or choose to work in a different State, requiring only that the offender register appropriately with the new State within three business days of relocating. RCW 9A.44.130(4)(a)(ix). No parts of the statute infringe on an offender's right to travel within the State or from State to State.

RCW 9A.44.130 creates a set of requirements for sex offenders that serve to keep the community informed, a legitimate civil function. The statute does not attempt to limit or disrupt the offender's right to travel freely. When properly followed and administered, the statute does not impinge on the recognized and protected right to travel. Facial challenges to statutes must demonstrate unconstitutionality beyond a reasonable doubt. *Citizens*, 149 Wn.2d at 631. Defendant has not demonstrated the sex offender registration statute unconstitutional.

D. CONCLUSION.

As the Court has previously determined, the sex offender registration statute does not violate the prohibitions against passage of *ex post facto* laws. Even considering the changes made for transient offenders, the burden does not constitute additional punishment as to make

it unconstitutional. Further, the statute does not inhibit defendant's right to travel within the State or within the United States. For the reasons argued, the State respectfully requests that defendant's judgment be affirmed.

DATED: August 2, 2010.

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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

8/2/10 Theresa K.
Date Signature

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APPENDIX “A”

Appendix A

Revised Code of Washington 9A.44.130, 2009

RCW 9A.44.130 Registration of sex offenders and kidnapping offenders— Procedures—Definition--Penalties.

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

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

(i) Who is attending, or planning to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW shall, within ten days of enrolling or prior to arriving at the school to attend classes, whichever is earlier, 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 ten days of enrolling or by the first business day after arriving at the institution, whichever is earlier, 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 ten days of accepting employment or by the first business day after commencing work at the institution, whichever is earlier, 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 ten 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) Persons required to register under this section who are enrolled in a public or private institution of higher education on June 11, 1998, or a public or private school regulated

under Title 28A RCW or chapter 72.40 RCW on September 1, 2006, must notify the county sheriff immediately.

(d) 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.

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

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

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

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

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

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

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

(4)(a) Offenders shall register with the county sheriff within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses or kidnapping offenses:

(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 twenty-four hours 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. Failure to register at the time of release and within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (11) of this section.

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

(ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of corrections' active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of corrections' active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(ii) as of July 28, 1991, or a kidnapping offender required to register as of July 27, 1997, shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(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 twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. Sex offenders who, on July 23, 1995, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(iii) as of July 23, 1995, or a kidnapping offender required to register as of July 27, 1997 shall not relieve the offender of the duty to register or to reregister following a change in residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(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 immediately upon completion 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 twenty-four hours 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 twenty-four hours 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 twenty-four hours of receiving notice of this registration requirement. The state department of social and health services shall make reasonable attempts within available resources to notify sex offenders who were released before July 23, 1995, and kidnapping offenders who were released before July 27, 1997. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection (11) of this section.

(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 twenty-four hours after entering the county and provide the information required in subsection (3)(b) of this section.

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

(ix) OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE. Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and photograph with the new state within ten 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 ten 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) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (11) of this section. 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 this section, or arraignment on charges for a violation of this section,

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

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

(5)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send signed written notice of the change of address to the county sheriff within seventy-two hours of moving. If any person required to register pursuant to this section moves to a new county, the person must send signed written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of moving. The person must also send signed written notice within ten days 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.

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

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

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

during the last seven days. 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 forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (4)(a)(vii) or (viii) and (6) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(7) All offenders who are required to register pursuant to this section who have a fixed residence and who are designated as a risk level II or III must report, in person, every ninety days to the sheriff of the county where he or she is registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. An offender who complies with the ninety-day reporting requirement with no violations for a period of at least five years in the community may petition the superior court to be relieved of the duty to report every ninety days. The petition shall be made to the superior court in the county where the offender resides or reports under this section. The prosecuting attorney of the county shall be named and served as respondent in any such petition. The court shall relieve the petitioner of the duty to report if the petitioner shows, by a preponderance of the evidence, that the petitioner has complied with the reporting requirement for a period of at least five years and that the offender has not been convicted of a criminal violation of this section for a period of at least five years, and the court determines that the reporting no longer serves a public safety purpose. Failure to report, as specified, constitutes a violation of this section and is punishable as provided in subsection (11) of this section.

(8) 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 five days of the entry of the order.

(9) 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.

(10) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330:

(a) "Sex offense" means:

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

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

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

(iv) Any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a sex offense under this subsection; and

(v) 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.

(b) "Kidnapping offense" means: (i) 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; (ii) 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 (10)(b); and (iii) any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a kidnapping offense under this subsection (10)(b).

(c) "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.

(d) "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, or institution of higher education.

(11)(a) A person who knowingly fails to comply with any of the requirements of this section is guilty of a class B felony if the crime for which the individual was convicted was a felony sex offense as defined in subsection (10)(a) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony sex offense as defined in subsection (10)(a) of this section.

(b) If the crime for which the individual was convicted was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor.

(12)(a) A person who knowingly fails to comply with any of the requirements of this section is guilty of a class C felony if the crime for which the individual was convicted was a felony kidnapping offense as defined in subsection (10)(b) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony kidnapping offense as defined in subsection (10)(b) of this section.

(b) If the crime for which the individual was convicted was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor.

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

CREDIT(S)

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

APPENDIX “B”

Appendix B

Revised Code of Washington 9A.44.130, 1994

RCW 9A.44.130. Registration of sex offenders—Procedures—Sex offense defined—Penalties

(1) Any adult or juvenile residing in this state who has been found to have committed or has been convicted of any sex offense shall register with the county sheriff for the county of the person's residence.

(2) The person shall provide the county sheriff with the following information when registering: (a) Name; (b) address; (c) date and place of birth; (d) place of employment; (e) crime for which convicted; (f) date and place of conviction; (g) aliases used; and (h) social security number.

(3)(a) Sex offenders shall register within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses:

(i) **Sex Offenders in Custody.** 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, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The agency that has jurisdiction over the offender shall provide notice to the sex offender of the duty to register. Failure to register within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (7) of this section.

(ii) **Sex Offenders Not in Custody but under State or Local Jurisdiction.** Sex offenders, who, July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the active supervision of the state 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.

(iii) **Sex 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, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

(iv) **Sex Offenders who are New Residents or Returning Washington Residents.** Sex offenders who move to Washington state from another state 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 thirty 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, federal statutes, or Washington state for offenses committed on or after February 28, 1990. Sex offenders from other states 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 twenty-four hours 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.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (7) of this section. 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 this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (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.

(4) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff within ten days of establishing the new residence. If any person required to register pursuant to this section moves to a new county, the person must register with the county sheriff in the new county within ten days of establishing the new residence. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered.

(5) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(6) "Sex offense" for the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330 means any offense defined as a sex offense by RCW 9.94A.030.

(7) A person who knowingly fails to register as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a class A felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a class A felony. If the crime was other than a class A felony or a federal or out-of-state

conviction for an offense that under the laws of this state would be a class A felony, violation of this section is a gross misdemeanor.

Enacted by Laws 1990, ch. 3, § 402, eff. Feb. 28, 1990. Amended by Laws 1991, ch. 274, § 2.