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SECOND SUBSTITUTE SENATE BILL 6433

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State of Washington

55th Legislature

1998 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Long, Franklin, Zarelli, Winsley and Stevens; by request of Attorney General)

Read first time 02/10/98.

1 AN ACT Relating to registration of individuals who have committed  
2 sex or kidnapping offenses; amending RCW 9A.44.135, 9A.44.140, and  
3 43.43.540; and reenacting and amending RCW 9A.44.130 and 4.24.550.

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

5 **Sec. 1.** RCW 9A.44.130 and 1997 c 340 s 3 and 1997 c 113 s 3 are  
6 each reenacted and amended to read as follows:

7 (1) Any adult or juvenile residing in this state who has been found  
8 to have committed or has been convicted of any sex offense or  
9 kidnapping offense, or who has been found not guilty by reason of  
10 insanity under chapter 10.77 RCW of committing any sex offense or  
11 kidnapping offense, shall register with the county sheriff for the  
12 county of the person's residence. Where a person required to register  
13 under this section is in custody of the state department of  
14 corrections, the state department of social and health services, a  
15 local division of youth services, or a local jail or juvenile detention  
16 facility as a result of a sex offense or kidnapping offense, the person  
17 shall also register at the time of release from custody with an  
18 official designated by the agency that has jurisdiction over the  
19 person.

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

6 (3)(a) Offenders shall register within the following deadlines.  
7 For purposes of this section the term "conviction" refers to adult  
8 convictions and juvenile adjudications for sex offenses or kidnapping  
9 offenses:

10 (i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex  
11 offense on, before, or after February 28, 1990, and who, on or after  
12 July 28, 1991, are in custody, as a result of that offense, of the  
13 state department of corrections, the state department of social and  
14 health services, a local division of youth services, or a local jail or  
15 juvenile detention facility, and (B) kidnapping offenders who on or  
16 after July 27, 1997, are in custody of the state department of  
17 corrections, the state department of social and health services, a  
18 local division of youth services, or a local jail or juvenile detention  
19 facility, must register at the time of release from custody with an  
20 official designated by the agency that has jurisdiction over the  
21 offender. The agency shall within three days forward the registration  
22 information to the county sheriff for the county of the offender's  
23 anticipated residence. The offender must also register within twenty-  
24 four hours from the time of release with the county sheriff for the  
25 county of the person's residence. The agency that has jurisdiction  
26 over the offender shall provide notice to the offender of the duty to  
27 register. Failure to register at the time of release and within  
28 twenty-four hours of release constitutes a violation of this section  
29 and is punishable as provided in subsection (7) of this section.

30 (ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL  
31 JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody  
32 but are under the jurisdiction of the indeterminate sentence review  
33 board or under the department of correction's active supervision, as  
34 defined by the department of corrections, the state department of  
35 social and health services, or a local division of youth services, for  
36 sex offenses committed before, on, or after February 28, 1990, must  
37 register within ten days of July 28, 1991. Kidnapping offenders who,  
38 on July 27, 1997, are not in custody but are under the jurisdiction of  
39 the indeterminate sentence review board or under the department of

1 correction's active supervision, as defined by the department of  
2 corrections, the state department of social and health services, or a  
3 local division of youth services, for kidnapping offenses committed  
4 before, on, or after July 27, 1997, must register within ten days of  
5 July 27, 1997. A change in supervision status of a sex offender who  
6 was required to register under this subsection (3)(a)(ii) as of July  
7 28, 1991, or a kidnapping offender required to register as of July 27,  
8 1997, shall not relieve the offender of the duty to register or to  
9 reregister following a change in residence. The obligation to register  
10 shall only cease pursuant to RCW 9A.44.140.

11 (iii) OFFENDERS UNDER FEDERAL JURISDICTION. Sex offenders who, on  
12 or after July 23, 1995, and kidnapping offenders who, on or after July  
13 27, 1997, as a result of that offense are in the custody of the United  
14 States bureau of prisons or other federal or military correctional  
15 agency for sex offenses committed before, on, or after February 28,  
16 1990, or kidnapping offenses committed on, before, or after July 27,  
17 1997, must register within twenty-four hours from the time of release  
18 with the county sheriff for the county of the person's residence. Sex  
19 offenders who, on July 23, 1995, are not in custody but are under the  
20 jurisdiction of the United States bureau of prisons, United States  
21 courts, United States parole commission, or military parole board for  
22 sex offenses committed before, on, or after February 28, 1990, must  
23 register within ten days of July 23, 1995. Kidnapping offenders who,  
24 on July 27, 1997, are not in custody but are under the jurisdiction of  
25 the United States bureau of prisons, United States courts, United  
26 States parole commission, or military parole board for kidnapping  
27 offenses committed before, on, or after July 27, 1997, must register  
28 within ten days of July 27, 1997. A change in supervision status of a  
29 sex offender who was required to register under this subsection  
30 (3)(a)(iii) as of July 23, 1995, or a kidnapping offender required to  
31 register as of July 27, 1997 shall not relieve the offender of the duty  
32 to register or to reregister following a change in residence. The  
33 obligation to register shall only cease pursuant to RCW 9A.44.140.

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

1 sentencing, shall report to the county sheriff to register immediately  
2 upon completion of being sentenced.

3 (v) OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON  
4 RESIDENTS. Sex offenders and kidnapping offenders who move to  
5 Washington state from another state or a foreign country that are not  
6 under the jurisdiction of the state department of corrections, the  
7 indeterminate sentence review board, or the state department of social  
8 and health services at the time of moving to Washington, must register  
9 within ((thirty)) ten days of establishing residence or reestablishing  
10 residence if the person is a former Washington resident. The duty to  
11 register under this subsection applies to sex offenders convicted under  
12 the laws of another state or a foreign country, federal or military  
13 statutes, or Washington state for offenses committed on or after  
14 February 28, 1990, and to kidnapping offenders convicted under the laws  
15 of another state or a foreign country, federal or military statutes, or  
16 Washington state for offenses committed on or after July 27, 1997. Sex  
17 offenders and kidnapping offenders from other states or a foreign  
18 country who, when they move to Washington, are under the jurisdiction  
19 of the department of corrections, the indeterminate sentence review  
20 board, or the department of social and health services must register  
21 within twenty-four hours of moving to Washington. The agency that has  
22 jurisdiction over the offender shall notify the offender of the  
23 registration requirements before the offender moves to Washington.

24 (vi) OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY. Any adult  
25 or juvenile who has been found not guilty by reason of insanity under  
26 chapter 10.77 RCW of (A) committing a sex offense on, before, or after  
27 February 28, 1990, and who, on or after July 23, 1995, is in custody,  
28 as a result of that finding, of the state department of social and  
29 health services, or (B) committing a kidnapping offense on, before, or  
30 after July 27, 1997, and who on or after July 27, 1997, is in custody,  
31 as a result of that finding, of the state department of social and  
32 health services, must register within twenty-four hours from the time  
33 of release with the county sheriff for the county of the person's  
34 residence. The state department of social and health services shall  
35 provide notice to the adult or juvenile in its custody of the duty to  
36 register. Any adult or juvenile who has been found not guilty by  
37 reason of insanity of committing a sex offense on, before, or after  
38 February 28, 1990, but who was released before July 23, 1995, or any  
39 adult or juvenile who has been found not guilty by reason of insanity

1 of committing a kidnapping offense but who was released before July 27,  
2 1997, shall be required to register within twenty-four hours of  
3 receiving notice of this registration requirement. The state  
4 department of social and health services shall make reasonable attempts  
5 within available resources to notify sex offenders who were released  
6 before July 23, 1995, and kidnapping offenders who were released before  
7 July 27, 1997. Failure to register within twenty-four hours of  
8 release, or of receiving notice, constitutes a violation of this  
9 section and is punishable as provided in subsection (7) of this  
10 section.

11 (b) Failure to register within the time required under this section  
12 constitutes a per se violation of this section and is punishable as  
13 provided in subsection (7) of this section. The county sheriff shall  
14 not be required to determine whether the person is living within the  
15 county.

16 (c) An arrest on charges of failure to register, service of an  
17 information, or a complaint for a violation of this section, or  
18 arraignment on charges for a violation of this section, constitutes  
19 actual notice of the duty to register. Any person charged with the  
20 crime of failure to register under this section who asserts as a  
21 defense the lack of notice of the duty to register shall register  
22 immediately following actual notice of the duty through arrest,  
23 service, or arraignment. Failure to register as required under this  
24 subsection (c) constitutes grounds for filing another charge of failing  
25 to register. Registering following arrest, service, or arraignment on  
26 charges shall not relieve the offender from criminal liability for  
27 failure to register prior to the filing of the original charge.

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

31 (4)(a) If any person required to register pursuant to this section  
32 changes his or her residence address within the same county, the person  
33 must send written notice of the change of address to the county sheriff  
34 at least fourteen days before moving. If any person required to  
35 register pursuant to this section moves to a new county, the person  
36 must send written notice of the change of address at least fourteen  
37 days before moving to the county sheriff in the new county of residence  
38 and must register with that county sheriff within twenty-four hours of  
39 moving. The person must also send written notice within ten days of

1 the change of address in the new county to the county sheriff with whom  
2 the person last registered. The county sheriff with whom the person  
3 last registered shall promptly forward the information concerning the  
4 change of address to the county sheriff for the county of the person's  
5 new residence. If any person required to register pursuant to this  
6 section moves out of Washington state, the person must also send  
7 written notice within ten days of moving to the new state or a foreign  
8 country to the county sheriff with whom the person last registered in  
9 Washington state. Within ten days of receipt of notice of change of  
10 address to a new state, the county sheriff shall forward the  
11 information regarding the change of address to the agency designated by  
12 the new state as the state's offender registration agency.

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

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

23 (6) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540,  
24 70.48.470, and 72.09.330:

25 (a) "Sex offense" means any offense defined as a sex offense by RCW  
26 9.94A.030 and any violation of RCW 9.68A.040 (sexual exploitation of a  
27 minor), 9.68A.050 (dealing in depictions of minor engaged in sexually  
28 explicit conduct), 9.68A.060 (sending, bringing into state depictions  
29 of minor engaged in sexually explicit conduct), 9.68A.070 (possession  
30 of depictions of minor engaged in sexually explicit conduct), 9.68A.090  
31 (communication with minor for immoral purposes), 9.68A.100 (patronizing  
32 juvenile prostitute), or 9A.44.096 (sexual misconduct with a minor in  
33 the second degree), as well as any gross misdemeanor that is, under  
34 chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or  
35 criminal conspiracy to commit an offense that is classified as a sex  
36 offense under RCW 9.94A.030.

37 (b) "Kidnapping offense" means the crimes of kidnapping in the  
38 first degree, kidnapping in the second degree, and unlawful

1 imprisonment as defined in chapter 9A.40 RCW, where the victim is a  
2 minor and the offender is not the minor's parent.

3 (7) A person who knowingly fails to register or who moves without  
4 notifying the county sheriff as required by this section is guilty of  
5 a class C felony if the crime for which the individual was convicted  
6 was a felony or a federal or out-of-state conviction for an offense  
7 that under the laws of this state would be a felony. If the crime was  
8 other than a felony or a federal or out-of-state conviction for an  
9 offense that under the laws of this state would be other than a felony,  
10 violation of this section is a gross misdemeanor.

11 **Sec. 2.** RCW 9A.44.135 and 1995 c 248 s 3 are each amended to read  
12 as follows:

13 (1) When ((a-sex)) an offender registers with the county sheriff  
14 pursuant to RCW 9A.44.130, the county sheriff shall make reasonable  
15 attempts to verify that the ((sex)) offender is residing at the  
16 registered address. Reasonable attempts at verifying an address shall  
17 include at a minimum ((sending certified mail, with return receipt  
18 requested, to the sex offender at the registered address, and if the  
19 return receipt is not signed by the sex offender, talking in person  
20 with the residents living at the address))):

21 (a) Each year the county sheriff shall send by certified mail, with  
22 return receipt requested, a nonforwardable verification form to the  
23 offender at the offender's last registered address.

24 (b) The offender must sign the verification form, state on the form  
25 whether he or she still resides at the last registered address, and  
26 return the form to the county sheriff within ten days after receipt of  
27 the form. When returning the form, the offender shall appear at the  
28 office of the county sheriff to provide a copy of his or her  
29 fingerprints and a current photograph.

30 (2) The sheriff shall make reasonable attempts to locate any sex  
31 offender who fails to return the verification form or who cannot be  
32 located at the registered address. If the offender fails to return the  
33 verification form or the offender is not at the last registered  
34 address, the county sheriff shall promptly forward this information to  
35 the Washington state patrol for inclusion in the central registry of  
36 sex offenders.

1       **Sec. 3.** RCW 9A.44.140 and 1997 c 113 s 4 are each amended to read  
2 as follows:

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

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

9       (b) For a person convicted of a class B felony, and the person does  
10 not have one or more prior conviction for a sex offense or kidnapping  
11 offense: Fifteen years after the last date of release from  
12 confinement, if any, (including full-time residential treatment)  
13 pursuant to the conviction, or entry of the judgment and sentence, if  
14 the person has spent fifteen consecutive years in the community without  
15 being convicted of any new offenses.

16       (c) For a person convicted of a class C felony, a violation of RCW  
17 9.68A.090 or 9A.44.096, or an attempt, solicitation, or conspiracy to  
18 commit a class C felony, and the person does not have one or more prior  
19 conviction for a sex offense or kidnapping offense: Ten years after  
20 the last date of release from confinement, if any, (including full-time  
21 residential treatment) pursuant to the conviction, or entry of the  
22 judgment and sentence, if the person has spent ten consecutive years in  
23 the community without being convicted of any new offenses.

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

27       (3) Any person having a duty to register under RCW 9A.44.130 may  
28 petition the superior court to be relieved of that duty, if the person  
29 has spent ten consecutive years in the community without being  
30 convicted of any new offenses. The petition shall be made to the court  
31 in which the petitioner was convicted of the offense that subjects him  
32 or her to the duty to register, or, in the case of convictions in other  
33 states, a foreign country, or a federal or military court, to the court  
34 in Thurston county. The prosecuting attorney of the county shall be  
35 named and served as the respondent in any such petition. The court  
36 shall consider the nature of the registrable offense committed, and the  
37 criminal and relevant noncriminal behavior of the petitioner both  
38 before and after conviction, and may consider other factors. Except as  
39 provided in subsection (4) of this section, the court may relieve the



1 petitioner of the duty to register only if the petitioner shows, with  
2 clear and convincing evidence, that future registration of the  
3 petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200,  
4 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

5 (4) An offender having a duty to register under RCW 9A.44.130 for  
6 a sex offense or kidnapping offense committed when the offender was a  
7 juvenile may petition the superior court to be relieved of that duty.  
8 The court shall consider the nature of the registrable offense  
9 committed, and the criminal and relevant noncriminal behavior of the  
10 petitioner both before and after adjudication, and may consider other  
11 factors. The court may relieve the petitioner of the duty to register  
12 for a sex offense or kidnapping offense that was committed while the  
13 petitioner was fifteen years of age or older only if the petitioner  
14 shows, with clear and convincing evidence, that future registration of  
15 the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200,  
16 43.43.540, 46.20.187, 70.48.470, and 72.09.330. The court may relieve  
17 the petitioner of the duty to register for a sex offense or kidnapping  
18 offense that was committed while the petitioner was under the age of  
19 fifteen if the petitioner (a) has not been adjudicated of any  
20 additional sex offenses or kidnapping offenses during the twenty-four  
21 months following the adjudication for the offense giving rise to the  
22 duty to register, and (b) the petitioner proves by a preponderance of  
23 the evidence that future registration of the petitioner will not serve  
24 the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187,  
25 70.48.470, and 72.09.330.

26 This subsection shall not apply to juveniles prosecuted as adults.

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

30 (6) Nothing in RCW 9.94A.220 relating to discharge of an offender  
31 shall be construed as operating to relieve the offender of his or her  
32 duty to register pursuant to RCW 9A.44.130.

33 **Sec. 4.** RCW 43.43.540 and 1997 c 113 s 6 are each amended to read  
34 as follows:

35 The county sheriff shall forward the information, photographs, and  
36 fingerprints obtained pursuant to RCW 9A.44.130, including any notice  
37 of change of address, to the Washington state patrol within ((five))  
38 three working days. The state patrol shall maintain a central registry

1 of sex offenders and kidnapping offenders required to register under  
2 RCW 9A.44.130 and shall adopt rules consistent with chapters 10.97,  
3 10.98, and 43.43 RCW as are necessary to carry out the purposes of RCW  
4 9A.44.130, 9A.44.140, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and  
5 72.09.330. The Washington state patrol shall reimburse the counties  
6 for the costs of processing the offender registration, including taking  
7 the fingerprints and the photographs.

8 **Sec. 5.** RCW 4.24.550 and 1997 c 364 s 1 and 1997 c 113 s 2 are  
9 each reenacted and amended to read as follows:

10 (1) Public agencies are authorized to release information to the  
11 public regarding sex offenders and kidnapping offenders when the agency  
12 determines that disclosure of the information is relevant and necessary  
13 to protect the public and counteract the danger created by the  
14 particular offender. This authorization applies to information  
15 regarding: (a) Any person adjudicated or convicted of a sex offense as  
16 defined in RCW (~~9.94A.030~~) 9A.44.130 or a kidnapping offense as  
17 defined by RCW 9A.44.130; (b) any person under the jurisdiction of the  
18 indeterminate sentence review board as the result of a sex offense or  
19 kidnapping offense; (c) any person committed as a sexually violent  
20 predator under chapter 71.09 RCW or as a sexual psychopath under  
21 chapter 71.06 RCW; (d) any person found not guilty of a sex offense or  
22 kidnapping offense by reason of insanity under chapter 10.77 RCW; and  
23 (e) any person found incompetent to stand trial for a sex offense or  
24 kidnapping offense and subsequently committed under chapter 71.05 or  
25 71.34 RCW.

26 (2) The extent of the public disclosure of relevant and necessary  
27 information shall be rationally related to: (a) The level of risk  
28 posed by the offender to the community; (b) the locations where the  
29 offender resides, expects to reside, or is regularly found; and (c) the  
30 needs of the affected community members for information to enhance  
31 their individual and collective safety.

32 (3) Local law enforcement agencies shall consider the following  
33 guidelines in determining the extent of a public disclosure made under  
34 this section: (a) For offenders classified as risk level I, the agency  
35 shall share information with other appropriate law enforcement agencies  
36 and may disclose, upon request, relevant, necessary, and accurate  
37 information to any victim or witness to the offense and to any  
38 individual community member who lives near the residence where the

1 offender resides, expects to reside, or is regularly found; (b) for  
2 offenders classified as risk level II, the agency may also disclose  
3 relevant, necessary, and accurate information to public and private  
4 schools, child day care centers, family day care providers, businesses  
5 and organizations that serve primarily children, women, or vulnerable  
6 adults, and neighbors and community groups near the residence where the  
7 offender resides, expects to reside, or is regularly found; and (c) for  
8 offenders classified as risk level III, the agency may also disclose  
9 relevant, necessary, and accurate information to the public at large.

10 (4) Local law enforcement agencies that disseminate information  
11 pursuant to this section shall: (a) Review available risk level  
12 classifications made by the department of corrections, the department  
13 of social and health services, and the indeterminate sentence review  
14 board; (b) assign risk level classifications to all (~~sex~~) offenders  
15 about whom information will be disseminated; and (c) make a good faith  
16 effort to notify the public and residents at least fourteen days before  
17 the offender is released from confinement or, where an offender moves  
18 from another jurisdiction, as soon as possible after the agency learns  
19 of the offender's move, except that in no case may this notification  
20 provision be construed to require an extension of an offender's release  
21 date. The juvenile court shall provide local law enforcement officials  
22 with all relevant information on offenders allowed to remain in the  
23 community in a timely manner.

24 (5) An appointed or elected public official, public employee, or  
25 public agency as defined in RCW 4.24.470 is immune from civil liability  
26 for damages for any discretionary risk level classification decisions  
27 or release of relevant and necessary information, unless it is shown  
28 that the official, employee, or agency acted with gross negligence or  
29 in bad faith. The immunity in this section applies to risk level  
30 classification decisions and the release of relevant and necessary  
31 information regarding any individual for whom disclosure is authorized.  
32 The decision of a local law enforcement agency or official to classify  
33 (~~a sex~~) an offender to a risk level other than the one assigned by  
34 the department of corrections, the department of social and health  
35 services, or the indeterminate sentence review board, or the release of  
36 any relevant and necessary information based on that different  
37 classification shall not, by itself, be considered gross negligence or  
38 bad faith. The immunity provided under this section applies to the  
39 release of relevant and necessary information to other public

1 officials, public employees, or public agencies, and to the general  
2 public.

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

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

10 (8) When a local law enforcement agency or official classifies ((a  
11 ~~sex~~) an offender differently than the offender is classified by the  
12 department of corrections, the department of social and health  
13 services, or the indeterminate sentence review board, the law  
14 enforcement agency or official shall notify the appropriate department  
15 or the board and submit its reasons supporting the change in  
16 classification.

17 NEW SECTION. **Sec. 6.** If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected.

--- END ---