

CERTIFICATION OF ENROLLMENT

SENATE BILL 6408

57th Legislature
2002 Regular Session

Passed by the Senate February 5, 2002
YEAS 46 NAYS 0

President of the Senate

Passed by the House March 5, 2002
YEAS 96 NAYS 0

**Speaker of the
House of Representatives**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6408** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

Approved

FILED

Governor of the State of Washington

Secretary of State
State of Washington

SENATE BILL 6408

Passed Legislature - 2002 Regular Session

State of Washington

57th Legislature

2002 Regular Session

By Senators Costa, Hargrove, Long, Kline, Zarelli, Johnson, Rasmussen and Oke

Read first time 01/16/2002. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to restoring sex offender registration for
2 nonfelony communication with a minor convictions; reenacting and
3 amending RCW 9A.44.130; creating a new section; and declaring an
4 emergency.

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

6 **Sec. 1.** RCW 9A.44.130 and 2001 c 169 s 1 and 2001 c 95 s 2 are
7 each reenacted and amended to read as follows:

8 (1) Any adult or juvenile residing whether or not the person has a
9 fixed residence, or who is a student, is employed, or carries on a
10 vocation in this state who has been found to have committed or has been
11 convicted of any sex offense or kidnapping offense, or who has been
12 found not guilty by reason of insanity under chapter 10.77 RCW of
13 committing any sex offense or kidnapping offense, shall register with
14 the county sheriff for the county of the person's residence, or if the
15 person is not a resident of Washington, the county of the person's
16 school, or place of employment or vocation, or as otherwise specified
17 in this section. Where a person required to register under this
18 section is in custody of the state department of corrections, the state
19 department of social and health services, a local division of youth

1 services, or a local jail or juvenile detention facility as a result of
2 a sex offense or kidnapping offense, the person shall also register at
3 the time of release from custody with an official designated by the
4 agency that has jurisdiction over the person. In addition, any such
5 adult or juvenile who is admitted to a public or private institution of
6 higher education shall, within ten days of enrolling or by the first
7 business day after arriving at the institution, whichever is earlier,
8 notify the sheriff for the county of the person's residence of the
9 person's intent to attend the institution. Persons required to
10 register under this section who are enrolled in a public or private
11 institution of higher education on June 11, 1998, must notify the
12 county sheriff immediately. The sheriff shall notify the institution's
13 department of public safety and shall provide that department with the
14 same information provided to a county sheriff under subsection (3) of
15 this section.

16 (2) This section may not be construed to confer any powers pursuant
17 to RCW 4.24.500 upon the public safety department of any public or
18 private institution of higher education.

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

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

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

34 (i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex
35 offense on, before, or after February 28, 1990, and who, on or after
36 July 28, 1991, are in custody, as a result of that offense, of the
37 state department of corrections, the state department of social and
38 health services, a local division of youth services, or a local jail or
39 juvenile detention facility, and (B) kidnapping offenders who on or

1 after July 27, 1997, are in custody of the state department of
2 corrections, the state department of social and health services, a
3 local division of youth services, or a local jail or juvenile detention
4 facility, must register at the time of release from custody with an
5 official designated by the agency that has jurisdiction over the
6 offender. The agency shall within three days forward the registration
7 information to the county sheriff for the county of the offender's
8 anticipated residence. The offender must also register within twenty-
9 four hours from the time of release with the county sheriff for the
10 county of the person's residence, or if the person is not a resident of
11 Washington, the county of the person's school, or place of employment
12 or vocation. The agency that has jurisdiction over the offender shall
13 provide notice to the offender of the duty to register. Failure to
14 register at the time of release and within twenty-four hours of release
15 constitutes a violation of this section and is punishable as provided
16 in subsection (10) of this section.

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

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

1 before, on, or after July 27, 1997, must register within ten days of
2 July 27, 1997. A change in supervision status of a sex offender who
3 was required to register under this subsection (4)(a)(ii) as of July
4 28, 1991, or a kidnapping offender required to register as of July 27,
5 1997, shall not relieve the offender of the duty to register or to
6 reregister following a change in residence. The obligation to register
7 shall only cease pursuant to RCW 9A.44.140.

8 (iii) OFFENDERS UNDER FEDERAL JURISDICTION. Sex offenders who, on
9 or after July 23, 1995, and kidnapping offenders who, on or after July
10 27, 1997, as a result of that offense are in the custody of the United
11 States bureau of prisons or other federal or military correctional
12 agency for sex offenses committed before, on, or after February 28,
13 1990, or kidnapping offenses committed on, before, or after July 27,
14 1997, must register within twenty-four hours from the time of release
15 with the county sheriff for the county of the person's residence, or if
16 the person is not a resident of Washington, the county of the person's
17 school, or place of employment or vocation. Sex offenders who, on July
18 23, 1995, are not in custody but are under the jurisdiction of the
19 United States bureau of prisons, United States courts, United States
20 parole commission, or military parole board for sex offenses committed
21 before, on, or after February 28, 1990, must register within ten days
22 of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not
23 in custody but are under the jurisdiction of the United States bureau
24 of prisons, United States courts, United States parole commission, or
25 military parole board for kidnapping offenses committed before, on, or
26 after July 27, 1997, must register within ten days of July 27, 1997.
27 A change in supervision status of a sex offender who was required to
28 register under this subsection (4)(a)(iii) as of July 23, 1995, or a
29 kidnapping offender required to register as of July 27, 1997 shall not
30 relieve the offender of the duty to register or to reregister following
31 a change in residence, or if the person is not a resident of
32 Washington, the county of the person's school, or place of employment
33 or vocation. The obligation to register shall only cease pursuant to
34 RCW 9A.44.140.

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

1 who are not sentenced to serve a term of confinement immediately upon
2 sentencing, shall report to the county sheriff to register immediately
3 upon completion of being sentenced.

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

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

1 adult or juvenile who has been found not guilty by reason of insanity
2 of committing a kidnapping offense but who was released before July 27,
3 1997, shall be required to register within twenty-four hours of
4 receiving notice of this registration requirement. The state
5 department of social and health services shall make reasonable attempts
6 within available resources to notify sex offenders who were released
7 before July 23, 1995, and kidnapping offenders who were released before
8 July 27, 1997. Failure to register within twenty-four hours of
9 release, or of receiving notice, constitutes a violation of this
10 section and is punishable as provided in subsection (10) of this
11 section.

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

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

22 (ix) OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND
23 SCHOOL IN ANOTHER STATE. Offenders required to register in Washington,
24 who move to another state, or who work, carry on a vocation, or attend
25 school in another state shall register a new address, fingerprints, and
26 photograph with the new state within ten days after establishing
27 residence, or after beginning to work, carry on a vocation, or attend
28 school in the new state. The person must also send written notice
29 within ten days of moving to the new state or to a foreign country to
30 the county sheriff with whom the person last registered in Washington
31 state. The county sheriff shall promptly forward this information to
32 the Washington state patrol.

33 (b) Failure to register within the time required under this section
34 constitutes a per se violation of this section and is punishable as
35 provided in subsection (10) of this section. The county sheriff shall
36 not be required to determine whether the person is living within the
37 county.

38 (c) An arrest on charges of failure to register, service of an
39 information, or a complaint for a violation of this section, or

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

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

15 (5)(a) If any person required to register pursuant to this section
16 changes his or her residence address within the same county, the person
17 must send written notice of the change of address to the county sheriff
18 within seventy-two hours of moving. If any person required to register
19 pursuant to this section moves to a new county, the person must send
20 written notice of the change of address at least fourteen days before
21 moving to the county sheriff in the new county of residence and must
22 register with that county sheriff within twenty-four hours of moving.
23 The person must also send written notice within ten days of the change
24 of address in the new county to the county sheriff with whom the person
25 last registered. The county sheriff with whom the person last
26 registered shall promptly forward the information concerning the change
27 of address to the county sheriff for the county of the person's new
28 residence. Upon receipt of notice of change of address to a new state,
29 the county sheriff shall promptly forward the information regarding the
30 change of address to the agency designated by the new state as the
31 state's offender registration agency.

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

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

12 (b) A person who lacks a fixed residence must report weekly, in
13 person, to the sheriff of the county where he or she is registered.
14 The weekly report shall be on a day specified by the county sheriff's
15 office, and shall occur during normal business hours. The county
16 sheriff's office may require the person to list the locations where the
17 person has stayed during the last seven days. The lack of a fixed
18 residence is a factor that may be considered in determining an
19 offender's risk level and shall make the offender subject to disclosure
20 of information to the public at large pursuant to RCW 4.24.550.

21 (c) If any person required to register pursuant to this section
22 does not have a fixed residence, it is an affirmative defense to the
23 charge of failure to register, that he or she provided written notice
24 to the sheriff of the county where he or she last registered within
25 forty-eight hours excluding weekends and holidays after ceasing to have
26 a fixed residence and has subsequently complied with the requirements
27 of subsections (4)(a)(vii) or (viii) and (6) of this section. To
28 prevail, the person must prove the defense by a preponderance of the
29 evidence.

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

1 cultural reasons or in recognition of marriage or dissolution of
2 marriage. A sex offender under the requirement to register under this
3 section who receives an order changing his or her name shall submit a
4 copy of the order to the county sheriff of the county of the person's
5 residence and to the state patrol within five days of the entry of the
6 order.

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

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

11 (a) "Sex offense" means:

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

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

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

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

20 (~~(iv)~~) (v) Any gross misdemeanor that is, under chapter 9A.28
21 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy
22 to commit an offense that is classified as a sex offense under RCW
23 9.94A.030 or this subsection.

24 (b) "Kidnapping offense" means: (i) The crimes of kidnapping in
25 the first degree, kidnapping in the second degree, and unlawful
26 imprisonment, as defined in chapter 9A.40 RCW, where the victim is a
27 minor and the offender is not the minor's parent; (ii) any offense that
28 is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation,
29 or criminal conspiracy to commit an offense that is classified as a
30 kidnapping offense under this subsection (9)(b); and (iii) any federal
31 or out-of-state conviction for an offense that under the laws of this
32 state would be classified as a kidnapping offense under this subsection
33 (9)(b).

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

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

5 (10) A person who knowingly fails to register with the county
6 sheriff or notify the county sheriff, or who changes his or her name
7 without notifying the county sheriff and the state patrol, as required
8 by this section is guilty of a class C felony if the crime for which
9 the individual was convicted was a felony sex offense as defined in
10 subsection (9)(a) of this section or a federal or out-of-state
11 conviction for an offense that under the laws of this state would be a
12 felony sex offense as defined in subsection (9)(a) of this section. If
13 the crime was other than a felony or a federal or out-of-state
14 conviction for an offense that under the laws of this state would be
15 other than a felony, violation of this section is a gross misdemeanor.

16 (11) A person who knowingly fails to register or who moves within
17 the state without notifying the county sheriff as required by this
18 section is guilty of a class C felony if the crime for which the
19 individual was convicted was a felony kidnapping offense as defined in
20 subsection (9)(b) of this section or a federal or out-of-state
21 conviction for an offense that under the laws of this state would be a
22 felony kidnapping offense as defined in subsection (9)(b) of this
23 section. If the crime was other than a felony or a federal or out-of-
24 state conviction for an offense that under the laws of this state would
25 be other than a felony, violation of this section is a gross
26 misdemeanor.

27 NEW SECTION. **Sec. 2.** This act applies to all persons convicted of
28 communication with a minor either on, before, or after July 1, 2001,
29 unless otherwise relieved of the duty to register under RCW 9A.44.140.

30 NEW SECTION. **Sec. 3.** If any provision of this act or its
31 application to any person or circumstance is held invalid, the
32 remainder of the act or the application of the provision to other
33 persons or circumstances is not affected.

34 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
35 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 immediately.

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