

W/Revisions
2014

Frequently Asked Questions for Failure to Register (FTR) Cases

I. TYPES OF FAILURE TO REGISTER

Q: How many different types of FTR are there?

A: Five. The distinction is important because different consequences flow from each.

- *Felony Failure to Register as a Sex Offender*
 - Underlying sex offense is a felony
 - Crimes prior to 6/10/10: *Former* 9A.44.130(11)(a)
 - Crimes 6/10/10 and after:
 - First felony- *Class C*- 9A.44.132(1)(a)(i)
 - Second felony- *Class C*- 9A.44.132(1)(a)(ii)
 - Third felony- *Class B*- 9A.44.132(1)(b)
- *Gross Misdemeanor Failure to Register as a Sex Offender*
 - Underlying sex offense is a gross misdemeanor
 - Crimes prior to 6/10/10: *Former* 9A.44.130(11)(b)
 - Crimes 6/10/10 and after: 9A.44.132(2)
- *Felony Failure to Register as a Kidnapping Offender*
 - Underlying kidnapping offense is a felony
 - Class C felony
 - Crimes prior to 6/10/10: *Former* 9A.44.130(12)(a)
 - Crimes 6/10/10 and after: 9A.44.132(3)(a)
- *Gross Misdemeanor Failure to Register as a Kidnapping Offender*
 - Underlying kidnapping offense is a gross misdemeanor
 - Crimes 6/7/06-6/9/10: *Former* 9A.44.130(12)(b)
 - Crimes 6/10/10 and after: 9A.44.132(3)(b)

II. CLASS

Q: Is FTR as a Sex Offender now a class B felony?

A: A third or subsequent felony FTR is now a class B felony for crimes committed on or after 6/10/10. 9A.44.132(1)(b). A first or second felony FTR is still a Class C felony.

Q: Is FTR a felony or a gross misdemeanor and how can I tell?

A: When the underlying sex/kidnapping offense is a felony, an out-of-state felony, or the equivalent of a Washington state felony, then FTR is a felony. When the underlying sex/kidnapping offense is a gross misdemeanor (e.g. most CMIPs, Att. Rape 3, etc.), or a non-felony out-of-state offense, then the FTR is a gross misdemeanor. The RCW 9A.44.130(11)(b) or (12)(b) or 9A.44.132(2) or (3)(b) (for crimes after 6/10/10) should be cited for gross misdemeanor.

When a defendant pleads to the amended charge of Att. Failure to Register, it is typically a gross misdemeanor (unless the defendant has two or more prior felony FTRs in which case the attempt would lower it from a Class B to a Class C).

III. CHARGING

Q: What is the unit of prosecution for failure to register?

A: The unit of prosecution for Failure to Register is one count. State v. Durrett, 150 Wn. App. 402 (2009).

IV. SEX OFFENSE

Q: Is FTR as a Sex Offender a "sex offense"?

A: Sometimes. There are two different definitions of "sex offense." One definition of "sex offense" is contained in the SRA definition section- RCW 9.94A.030(46). The other definition of "sex offense" is contained in the registration statute- RCW 9A.44.128. The registration definition of "sex offense" *includes* the SRA definition and is broader.

A second or subsequent Felony FTR as a Sex Offender is a "sex offense" under RCW 9.94.030(46)(a)(iv). FTR as a Kidnapping Offender (RCW 9A.44.132(3)) is specifically *excluded* from this definition and is never a sex offense.

A first Felony FTR as a Sex Offender, Attempted FTR and Gross Misdemeanor FTR convictions are NOT "sex offenses" under the registration statute.

Authority:

9.94A.030(46) "Sex offense" is defined as:

- (a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.132;
- (ii) A violation of RCW 9A.64.020;
- (iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080;
- (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes; or
- (v) A felony violation of RCW 9A.44.132(1) (failure to register) if the person has been convicted of violating RCW 9A.44.132(1) (failure to register) on at least one prior occasion;
- (b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;
- (c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or
- (d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

Attempted FTR can be a sex offense if predicate FTR = B felony

RCW 9A.44.128(10) "Sex offense" is defined as:

- (a) Any offense defined as a sex offense by RCW 9.94A.030;
- (b) Any violation under RCW 9A.44.096 (sexual misconduct with a minor in the second degree);
- (c) Any violation under RCW 9.68A.090 (communication with a minor for immoral purposes);
- (d) Any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or this subsection;
- (e) Any -of-state conviction for an offense for which the person would be required to register as a sex offender while residing in the state of conviction; or, if not required to register in the state of conviction, an offense that under the laws of this state would be

- see slightly updated statute add Human Trafficking

classified as a sex offense under this subsection unless a court in the person's state of conviction has made an individualized determination that the person should not be required to register; and

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

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

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

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

V. SCORING

Q: Is Felony FTR a ranked offense?

A: A first Felony Failure to Register as a Sex Offender is an unranked offense- 0-12 months of confinement. Felony Failure to Register as a Kidnapping Offender is always unranked- 0-12 months.

A second or subsequent Felony Failure to Register as a Sex Offender is a Level II offense:

| OFFENDER SCORE | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 or more |
|---------------------------|-----------|------------|------------|-------------|-----------------|--------------|--------------|--------------|--------------|--------------|
| STANDARD RANGE (Level II) | 0-90 days | 2-6 months | 3-9 months | 4-12 months | 12+ - 14 months | 14-18 months | 17-22 months | 22-29 months | 33-43 months | 43-57 months |

Authority: RCW 9.94A.515 (seriousness levels)

Q: Can an out-of-state Failure to Register offense serve as the first failure to register when determining if the present Failure to Register is a "second or subsequent" offense?

A: Yes. RCW 9A.44.132 (penalty section) was amended in 2011 by SSB 5203, adding language that includes out-of-state failure to register convictions. RCW 9A.44.132(1)(a), (b)

Q: How do I score a conviction for FTR as a Sex Offender?

Current offense is for a felony sex offense (other than FTR) RCW 9.94A.525(17)

| Crime | Sex Offense under 9.94A.030? | Scores |
|--|------------------------------|---------------|
| A first felony FTR as a Sex Offender | No | 1 |
| A second or subsequent FTR as a Sex Offender | Yes | 3 |
| Attempted FTR (Class C felony) | Yes | 3 |
| Att. FTR (Gross Misdemeanor) | No | Doesn't score |
| Gross Misdemeanor FTR | No | Doesn't score |

Current offense is for a felony FTR as a Sex Offender RCW 9.94A.525(18)

| Crime | Sex Offense under 9.94A.030? | Scores |
|--|------------------------------|---------------|
| Prior underlying sex offense | Yes | 3 |
| A first felony FTR as a Sex Offender | No | 1 |
| A second or subsequent FTR as a Sex Offender | Yes | 1 |
| Attempted FTR (Class C felony) | Yes | 1 |
| Att. FTR (Gross Misdemeanor) | No | Doesn't score |
| Gross Misdemeanor FTR | No | Doesn't score |

VI. COMMUNITY CUSTODY

Q: What statutes govern the conditions of community custody for Felony FTRs?

A: For Felony FTR as a Sex Offender convictions that occurred on or after 6/7/06, RCW 9.94A.703, .704 apply. DOC has authority to impose conditions.

Q: For a Class C FTR, may community custody extend past the statutory maximum (5 years) if the defendant serves a significant prison sentence? Can prison time be reduced to fit within the statutory maximum?

A: No. RCW 9.94A.701(9): "The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021."

The sentencing DPA will have to adjust the community custody range on the J&S to conform to this requirement.

Q: Does FTR as a Sex Offender require community custody? Does DOC supervise offenders if community custody is imposed?

| Crime | Community Custody/ DOC | Statutory Reference |
|---|--|---|
| Gross Misdemeanor FTR | <ul style="list-style-type: none"> • Yes, if imposed by court • DOC will supervise, regardless of risk level | RCW 9.94A.501(1)(a)(iv) |
| Attempted FTR (Gross Misdemeanor) | <ul style="list-style-type: none"> • Court may impose unsupervised probation • DOC will not supervise | RCW 9.94A.501(1)(a)(iv) only references GM FTR |
| First Felony FTR as Sex Offender | <ul style="list-style-type: none"> • Yes, up to 12 months. • DOC will supervise only if high risk on DOC tool. | RCW 9.94A.702(1)(e) RCW 9.94A.501(3) |
| Second or Subsequent Felony FTR as a Sex Offender | <ul style="list-style-type: none"> • Yes, 36 months. • DOC will supervise. | RCW 9.94A.701(1)(a) RCW 9.94A.501(4)(a),(d) |
| Attempted FTR (Class C felony) | <ul style="list-style-type: none"> • Yes, 36 months. • DOC will supervise. | RCW 9.94A.030(46)(a)(v)* RCW 9.94A.701(1)(a) RCW 9.94A.501(4)(a) *This is a sex offense as it is a "felony violation of 9A.44.132(1)" and the offender has a prior felony FTR. |
| FTR as a Kidnapping Offender or Att. FTR Kidnap | <ul style="list-style-type: none"> • No | Specifically excluded from RCW 9.94A.501, 701, 702. |

VII. PROBATION (FOR MISDEMEANORS)

Q: Is probation permitted for Attempted FTR and Gross Misdemeanor FTR?

A: Yes- for up to 24 months. RCW 9.95.210.

Q: Is the court required to impose probation for gross misdemeanor Failure to Register?

A: No. ESHB 5891, effective 6/15/11, amended the provisions that required the court to impose probation on gross misdemeanor FTRs. It is now optional.

Q: Does DOC supervise probation that is imposed for gross misdemeanor FTRs?

RCW 9.94A.501(1)(a)(iv) requires DOC to supervise probation if the court imposes it for gross misdemeanor FTR. DOC does *not* supervise Att. FTR (gross misdemeanor) cases because 9.94A.501 only references the subsection that pertains to gross misdemeanor FTR.

Q: What conditions may DOC impose on misdemeanor FTR probation?

A: Probationers are on community custody. RCW 9.94A.501(2). DOC has authority to impose conditions under 9.94A.703, .704 just as with offenders on felony community custody. DOC has liberal authority to impose conditions according to need and risk.

VIII. SENTENCING

Q: Is a Presentence Investigation (PSI) report required for Failure to Register cases?

A: No.

Authority: RCW 9.94A.500(1) provides that the sentencing court "shall, at the time of plea or conviction, order the department [of corrections] to complete a presentence report before imposing a sentence upon a defendant who has been convicted of a felony sexual offense." "Sexual offense" is not defined. State v. Nelson, 130 Wn. App. 467 (2005) held that, where left undefined by the legislature, "a 'sexual offense' is an offense involving sexual gratification. Failing to comply with a registration statute does not implicate sexual gratification."

Q: Does the defendant have to submit to HIV testing if convicted of Failure to Register?

A: No, HIV testing is not required for FTR convictions.

Authority: RCW 70.24.340 states: "(1) Local health departments authorized under this chapter shall conduct or cause to be conducted pretest counseling, HIV testing, and posttest counseling of all persons: (a) Convicted of a sexual offense under chapter 9A.44 RCW." State v. Nelson, 130 Wn. App. 467 (2005) (see above discussion).

Q: Is the defendant required to submit a DNA sample for FTR?

A: Yes. RCW 43.43.754 was amended in 2008 to require DNA samples from any offender convicted of Failure to Register and to collect DNA samples from all sex offenders required to register. The defendant is required to provide a DNA sample both because he has been convicted of Failure to Register (43.43.754(1)) and because he is required to register as a sex offender (43.43.754(2)). RCW 43.43.754(6) indicates that the amendment is intended to be retroactive.

Authority: RCW 43.43.754 provides:

(1) A biological sample must be collected for purposes of DNA identification analysis from:

(a) Every adult or juvenile individual convicted of a felony, or any of the following crimes (or equivalent juvenile offenses):

Assault in the fourth degree with sexual motivation (RCW 9A.36.041, 9.94A.835)

Communication with a minor for immoral purposes (RCW 9.68A.090)

Custodial sexual misconduct in the second degree (RCW 9A.44.170)

Failure to register (RCW 9A.44.130)

Harassment (RCW 9A.46.020)

Patronizing a prostitute (RCW 9A.88.110)

Sexual misconduct with a minor in the second degree (RCW 9A.44.096)

Stalking (RCW 9A.46.110)

Violation of a sexual assault protection order granted under chapter 7.90 RCW; and

(b) Every adult or juvenile individual who is required to register under RCW 9A.44.130.

Q: There is a technical error in the DNA statute (RCW 43.43.754). The prior penalty section is still referenced (RCW 9A.44.130) instead of the newer penalty section (RCW 9A.44.132). Does this mean the court can't require offenders to provide DNA?

A: The technical error in the DNA statute does not prevent the court from imposing the DNA requirement. Judges are not required to interpret the statute in an absurd manner that ignores legislative intent. State v. King, 111 Wn. App. 430 (2002), and RCW 1.12.025 (judge allowed to give effect to the intent of the legislature rather than apply the statute as written); State v. Albright, 144 Wn. App. 566, 572-73 (2008), *rev. denied*, 164 Wn.2d 1028 (2008) (correcting numbering error because it leads to absurd results); State v. Castillo, 144 Wn. App. 584, 590-92 (2008) (same).

Q: Is a \$100 DNA fee required for all types of FTR convictions?

A: Yes. RCW 43.43.7541 was amended by SSHB 1153 to authorize the DNA for felony and misdemeanor crimes. The effective date is 7/22/11 and it may be applied retroactively.

Q: Is a defendant convicted of Failure to Register as a Sex Offender eligible for Electronic Home Detention?

A: Yes, for a First Felony FTR and any gross misdemeanor FTR/ Att. FTR. A defendant is not eligible for any second or subsequent Felony FTR, which are classified as sex offenses under 9.94A.030(46). RCW 9.94A.734.

Q: May the court impose a DOSA or a SSOSA sentence on a Felony FTR conviction?

A: No. The defendant's underlying sex offense disqualifies him. RCW 9.94A.030 (46); 9.94A.660(1)(c); 9.94A.670(2)(b).

Q: May the court impose Enhanced CCAP (King County jail alternative) on a FTR conviction?

A: Yes, for a first time felony FTR or a gross misdemeanor FTR (or Att. FTR). Offenders are eligible under RCW 9.94A.680. Offender must be able to attend classes during the week each day in order to qualify.

Q: How much earned release or "good time" will an offender be eligible for on a Felony FTR conviction resulting in prison time?

A: Earned release time is governed by RCW 9.94A.729. FTR offenders fall within the provision for 1/3 earned release (RCW 9.94A.729(3)(d)). A FTR offender is excluded from 50% earned release because a second or subsequent (prison range) FTR is a "sex offense" under the SRA and because the offender has a prior felony sex offense (RCW 9.94A.729(3)(c)(iii)).

IX. REGISTRATION

Q: Where can an offender register in King County?

A: The only location that an offender can register in King County is at the King County Sheriff's Office located on the 1st floor of the King County Courthouse 516 3rd Avenue, Seattle, WA. Registration is available during business hours, Monday through Friday. Hours are 8:30 AM to 4 PM, M-F. Registration is NOT AVAILABLE AT ANY OTHER LOCATION. Offenders can not register at the RJC or DOC or local police departments. Some mail-in registration is permitted under certain (but not all) circumstances under the statute.

Offenders who are registered as homeless must report weekly to the King County Sheriff's Office at the above address. There is no other location for this weekly check-in.

Questions may be directed to the Registered Sex Offender Unit at the King County Sheriff's Office- phone number 206-205-7948.

Q: Which offenses are registerable offenses?

- Child Molestation 1, 2 or 3 RCW 9A.44.083, 086, 089
- Commercial Sexual Abuse of a Minor (formerly Patr. Juvenile Prostitute) RCW 9.68A.100
- Communication with a Minor for Immoral Purposes RCW 9.68A.090
- Criminal Trespass against Children RCW 9A.44.196
- Custodial Sexual Misconduct 1 RCW 9A.44.160
- Dealing in Depictions of a Minor
- Engaged in Sexually Explicit Conduct 1 or 2..... RCW 9.68A.050
- Failure to Register as a Sex Offender (second felony conviction) RCW 9A.44.130, .132
- Incest 1 or 2 RCW 9A.64.020(1) & (2)
- Indecent Liberties RCW 9A.44.100
- Kidnapping 1 or 2
- (If victim is a minor and offender is not the minor's parent) RCW 9A.40.020, .030
- Possession of Depictions of a Minor 1 or 2..... RCW 9.68A.070
- Promoting Commercial Sexual Abuse of a Minor RCW 9.68A.101
- Promoting Travel for Commercial Sexual Abuse of a Minor RCW 9.68A.102
- Rape 1, 2, or 3 RCW 9A.44.040, .050, .060
- Rape of a Child 1, 2, or 3..... RCW 9A.44.073, .076, .079
- Sending, Bringing Into State Depictions of a Minor 1 or 2..... RCW 9.68A.060
- Sexual Exploitation of a Minor RCW 9.68A.040
- Sexual Misconduct With A Minor 1 or 2 RCW 9A.44.093, .096
- Unlawful Imprisonment
- (If victim is a minor and offender is not the minor's parent)..... RCW 9A.40.040
- Viewing Depictions of a Minor 1 or 2..... RCW 9.68A.075
- Voyeurism RCW 9A.44.115
- Any felony with a finding of sexual motivation under RCW 9.94A.127, RCW 9.94A.835 (2001) or RCW 13.40.135.
- Any gross misdemeanor that is under RCW 9A.28, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex or kidnapping offense under RCW 9.94A.030 or RCW 9A.44.128.
- Any out-of-state conviction for an offense for which the person would be required to register as a sex offender while residing in the state of conviction; or, if not required to register in the state of conviction, an offense that under the laws of this state would be classified as a sex offense under this subsection;
- Any federal conviction classified as a sex offense under 42 U.S.C. Sec. 16911 (SORNA);
- Any military conviction for a sex offense. This includes sex offenses under the uniform code of military justice, as specified by the United State secretary of defense;
- Any conviction in a foreign country for a sex offense if it was obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations established pursuant to 42 U.S.C. Sec. 16912.

* Trafficking (human) 9A.40.100 (1)(b)(2) + 9A.40.100 (1)(a)(A)

III or IV
 or (a) (1)(B)

Q: Which offenses are NOT registerable offenses?

A: The following sex-related offenses are **NOT** registerable offenses unless they are felonies with sexual motivation or attempted felonies with sexual motivation (see above):

- Indecent Exposure (9A.88.010)
- Luring (9A.40.090)
- Assault 4 with Sexual Motivation (9A.36.041)
- Bigamy (9A.64.010)
- Child Buying and Selling (9A.64.030)
- Promoting Pornography (9.68.140)
- Promoting Prostitution 1 or 2 (9A.88.070, .080)
- Sale, Distribution or Exhibit of Erotic Material to a Minor (9.68.060)
- Patronizing a Prostitute (9A.88.110)
- Prostitution (9A.88.030)
- Unlawful Display of Sexually Explicit Material (9.68.130)
- Allowing Minor on Premises of Live Erotic Performances (9.68A.150)
- *Permitting Commercial Sexual Abuse of a Minor* (9.68A.103)

Q: How do I determine if an offender with an older conviction is required to register?

A: Our registration scheme first went into effect February 28, 1990. At that time, only sex offenders who were in custody, on supervision or convicted of a crime that was committed on or after 2/28/90 were required to register. It was not made retroactive for offenders previously convicted, but no longer on supervision or in custody.

In 1991, the statute was drastically amended to include a number of deadlines (typically the July 28, 1991 date you see throughout the statute). This made the statute rather confusing and may even seem to exclude some offenders who were previously required to register. RCW 9A.44.130(4)(d) clarifies: "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." So, in order to determine registration for some offenders, you may need to look at the original law- 1990 ch. 3 § 402. One must also consult RCW 9A.44.140 to make sure that registration period has not elapsed.

For sex offenses, one of these must apply:

- In custody for underlying sex offense on or after 2/28/90 (this includes probation violations for that offense); or
- On supervision with DOC or DSHS for underlying sex offense on or after 2/28/90
 - Supervision must be ACTIVE supervision, not just MONETARY; or
- Under jurisdiction of the ISRB or local division of youth services for underlying sex offense on or after July 28, 1991; or
- Convicted of a sex offense that was committed on or after 2/28/90; or
- Convicted of a sex offense that was committed before, on or after 2/28/90, and the person moved/ returned to Washington State from another state or a foreign country; or
- If found NGRI of a sex offense- is in custody of DSHS as a result of that finding on or after 7/23/95

For kidnapping offenses, one of these must apply:

- In custody for underlying kidnapping offense on or after 7/27/97 (this includes probation violations for that offense); or
- On supervision with DOC (or under jurisdiction of the ISRB, DSHS, or local division of youth services) for underlying kidnapping offense on or after 7/27/97
 - Supervision must be ACTIVE supervision, not just MONETARY; or
- Convicted of a kidnapping offense that was committed on or after 7/27/97; or
- Convicted of a kidnapping offense that was committed before, on or after 7/27/97, and the person moved/ returned to Washington State from another state or a foreign country
- If found NGRI of a kidnapping offense- is in custody of DSHS as a result of that finding on or after 7/27/97

Authority: RCW 9A.44.130(3) and former 9A.44.130 (Laws 1990 ch. 3 § 402); RCW 9A.44.140(duration of registration); State v. Liden, 118 Wn. App. 734 (2003) (must be on active supervision).

Q: Does a FTR conviction carry its own *independent* requirement to register? Does it restart the duration of registration on the underlying sex offense?

A: It depends on what type of FTR it is.

| Crime | Does Conviction Carry Independent Registration Requirement? | Duration of Registration Requirement | Disqualifying offense that restarts registration time? |
|---|---|--------------------------------------|--|
| Prior underlying sex offense | Yes | Varies- 10 years* to life | N/A |
| Att. FTR (Gross Misdemeanor) | No | N/A | No |
| Gross Misdemeanor FTR | No | N/A | No |
| A first felony FTR as a Sex Offender | No | N/A | Yes |
| A second FTR as a Sex Offender | Yes | 10 years* | Yes |
| A third or subsequent FTR as a Sex Offender | Yes | 15 years* | Yes |
| Attempted FTR (Class C felony) | Yes | 10 years* | Yes |
| Kidnapping FTR (any type) | No | N/A | No |

* Years are consecutive years in the community without being convicted of a disqualifying offense. "In the community" means residing outside of confinement or incarceration for a disqualifying offense. RCW 9A.44.128(6).

Q: How long does an offender have to register?

A: The answer is found in RCW 9A.44.140. The duty to register under RCW 9A.44.130 shall continue for the duration provided in this section.

(1) For a person convicted in this state of a **class A felony** or an offense listed in RCW 9A.44.142(5), or a person convicted in this state of any sex offense or kidnapping offense who has one or more prior convictions for a sex offense or kidnapping offense, the duty to register shall continue **indefinitely**.

(2) For a person convicted in this state of a **class B felony** who does not have one or more prior convictions for a sex offense or kidnapping offense and whose current offense is not listed in RCW 9A.44.142(5), the duty to register shall end fifteen years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent **fifteen consecutive years** in the community without being convicted of a disqualifying offense during that time period.

(3) For a person convicted in this state of a **class C felony**, a violation of RCW 9.68A.090 or 9A.44.096, or an attempt, solicitation, or conspiracy to commit a class C felony, and the person does not have one or more prior convictions for a sex offense or kidnapping offense and the person's current offense is not listed in RCW 9A.44.142(5), the duty to register shall end ten years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent **ten consecutive years** in the community without being convicted of a disqualifying offense during that time period.

(4) For a person required to register for a **federal or out-of-state conviction**, the duty to register shall continue **indefinitely**.

* In 2001, the legislature amended the provisions governing length of registration to comply with the provisions of the federal Jacob Wetterling Act. This created lifetime registration for a many (if not most) sex offenses committed by adults on or after July 22, 2001. Look carefully at RCW 9A.44.142(5) to determine if lifetime registration applies.

X. STATUTORY ERRORS

Q: In the past, there have been numbering errors in the SRA due to the amendment of the registration statute. What is the effect of this?

A: From time to time, due to frequent amendment of the registration statute, the SRA provisions reference the wrong subsection in the registration statute. Judges are not required to interpret the statute in an absurd manner that ignores legislative intent. There are several cases on point. All involved numbering errors in the registration and SRA statutes.

- State v. King, 111 Wn. App. 430 (2002), and RCW 1.12.025 allow the judge to give effect to the intent of the legislature rather than apply the statute as written.
- State v. Albright, 144 Wn. App. 566, 572-73 (2008), *review denied*, 164 Wn.2d 1028 (2008) (correcting numbering error because it leads to absurd results)
- State v. Castillo, 144 Wn. App. 584, 590-92 (2008) (same).