**SEX OFFENDER REGISTRATION FOR AGGRAVATED OFFENSES**

When reading through the Failure to Register Statute, the provisions contained in RCW 9A.44.140 and .142 regarding Aggravated Offenses, Sexually Violent Offenses and Criminal Offenses against a Victim who is Minor are particularly confusing. At first glance, it appears that ANY one offense- aggravated, sexually violent or criminal offense against a victim who is a minor requires lifetime registration. Only when one understands the legislative history and context of the amendments does the statute become clear. The legislature intended to require lifetime registration for offenders with aggravated offenses and for recidivists with *more than one* sexually violent offense or criminal offense against a victim who is minor.

The provisions of RCW 9A.44.140 regarding lifetime supervision were amended several times between 1998 and 2001 to come into compliance with the federal Jacob Wetterling Act, 42 U.S.C. §14071 (1994). In 2001, the legislature amended RCW 9A.44.140 (2001 c. 170 §2), as follows:

“For a person convicted of a class A felony <<+or **an** offense listed in subsection (5) of this section+>>, or a person convicted of any sex offense or kidnapping offense who has one or more prior convictions for a sex offense or kidnapping offense: Such person may only be relieved of the duty to register under subsection (3) or (4) of this section.”

Subsection 5 then indicates the following: (5)<<+(a) A person who has been convicted of an aggravated offense, or has been convicted of one or more **prior** sexually violent offenses or criminal offenses against a victim who is a minor, as defined in (b) of this subsection may only be relieved of the duty to register under subsection (3) or (4) of this section. This provision shall apply to convictions for crimes committed on or after the effective date of this act.+>> (Emphasis added by author.)

The wording in this amendment is badly convoluted. The first subsection refers to “an offense listed in subsection (5)”, suggesting that ANY ONE offense categorized as an Aggravated Offense, Sexually Violent Offense or Criminal Offenses Against a Minor requires lifetime registration. However, subsection (5) suggests that only offenders with one Aggravated Offense or a *prior (as in more than one)* Sexually Violent Offense, or Criminal Offenses Against a Minor should have to register for life. Only by referring to legislative reports and the Jacob Wetterling Act can you determine what was intended by this amendment.

The Senate Bill Report for House bill 2086 explains the reasons for the amendment:

“Summary of Amended Bill: The Legislature intends to amend the registration times so that the statute is narrowly tailored to meet the requirements of the Wetterling Act. Persons convicted of an aggravated offense or two or more sexually violent offenses or criminal offenses against a minor, as defined, are subject to lifetime registration.” WA S. B. Rep., 2001 Reg. Sess. H.B. 2086 (March 30, 2001).

The Final Bill Report for House Bill 2086 explains the intent of the bill:

“In 1994 Congress passed the Jacob Wetterling Act. The act contains a financial incentive to encourage states to adopt registration procedures for all persons convicted of sex offenses and kidnaping offenses where the victim is a minor. The act has been amended several times, imposing new requirements relating to sex offender registration. Those requirements include the following:

• requiring all offenders classified as sexually violent predators to register for life;

• requiring all offenders convicted of an aggravated sex offense to register for life; and

• requiring all sex offenders who have one prior conviction for a sexually violent offense or an offense against a minor in their criminal history to register for life upon conviction for a new offense.” WA F. B. Rep., 2001 Reg. Sess. H.B. 2086 (June 7, 2001).

Therefore, the rule as applied should be: Aggravated Offenses committed on or after 7/22/01 require lifetime registration. More than one sex or kidnapping offense requires lifetime registration. There is no reason to determine which offenses are Sexually Violent or Criminal Offenses Against a Minor because these are included in the broader rule regarding more than one sex or kidnapping offense.

Most aggravated offenses are already classified as Class A offenses with lifetime supervision. There are some offenses that are typically class C or B offenses that could fall under the definition of an aggravated offense in RCW 9A.44.142(5) due to other facts and circumstances that would typically be found in the certification for probable cause or in the police reports, such as the victim’s age being under 12 years old, that there was a drug/ intoxicant administered by the offender, forcible compulsion being used, etc. Arguably, the court can look past the facts admitted at plea or proven at trial because registration is regulatory and not a direct consequence of conviction. See State v. Ward, 123 Wn.2d 488 (1994). It is possible that a defendant could argue that looking beyond the conviction elements is a due process violation. However, there is not case law directly addressing this issue.