

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- **unranked 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 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.

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(47). 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.

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)	No	1
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)	No	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	<ul style="list-style-type: none"> • Yes, 36 months. 	RCW 9.94A.701(1)(a)

FTR as a Sex Offender	• DOC will supervise.	RCW 9.94A.501(4)(a),(d)
Attempted FTR (Class C felony)	• No. DOC will not supervise	RCW 9.94A.030(47)(a)(v)* RCW 9.94A.701(1)(a) RCW 9.94A.501(4)(a)
FTR as a Kidnapping Offender or Att. FTR Kidnap	• No	Specifically excluded from RCW 9.94A.501, 701, 702.

VII. PROBATION (FOR MISDEMEANORS)

Q: Is probation permitted for Gross Misdemeanor FTR?

A: Yes- for up to 12 months of reporting. RCW 9.95.210 was recently amended by ESSB 6204 (effective 8/1/12). The statute still permits suspending the sentence up to two years, however now only permits 12 months of reporting. RCW 9.95.210(4) was amended as follows: "In granting probation, the superior court may order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of the probation to follow the instructions of the secretary for up to twelve months."

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. 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.

B: RCW 9A.44.132(4) states that a person is guilty of regusing to provide a DNA sample if the person has a duty to register and the person willfully refuses to comply with a legal request as required under RCW 43.43.754(1)(b). The refusal to provide DNA is a gross misdemeanor.

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

A: Yes, except for attempted failure to register convictions that are gross misdemeanors. 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 EHD?

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 206-263-2120.

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 Prostitution 1 or 2 (with a prior offense for Promoting Prostitution 1 or 2) RCW 9A.88.070, ..080
- 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
- Trafficking 1..... RCW 9A.40.100(1)(b)(ii),
100(1)(a)(i)(A)(III), (IV) or (a)(i)(B)

- 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.
- Any Tribal conviction for an offense for which the person would be required to register as a sex offender while residing in the reservation of conviction, or, if not required to register, an offense that under the laws of this state would be classified as a sex offense under this subsection.

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)
- A first offense of Promoting Prostitution 1 or 2 (9A.88.070, .080) *If an offender has a prior conviction for Promoting 1 or 2 and is convicted of a second Promoting 1 or 2 offense, it is registerable.*
- 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)
- Human Trafficking (RCW 9A.40.100)

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	Yes	15 years*	Yes

FTR as a Sex Offender			
Attempted FTR (<i>Class C felony</i>)	No	N/A	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 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 has not been determined to be SVP, 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 has not been deemed SVP, 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 **tribal, federal, or out-of-state conviction**, the duty to register shall continue **indefinitely**.

Q. Can an offender be relieved of his/her duty to register before the statutory timelines discussed above?

A: Yes: Despite the presumptive timelines for registration, Washington State law permits an offender to petition for relief from registration.

- 1.) Conviction occurred in adult court:
 - a. Adult offenders who have been deemed SVP or were convicted of a Class A felony that was committed with forcible compulsion on or after June 8, 2000, **cannot** petition.
 - b. If the conviction occurred in WA State: They can petition if they spend 10 consecutive years without a disqualifying conviction. RCW 9A.44.142(1)(b).

- c. If the underlying conviction is for a federal, tribal, or out-of-state conviction: Can petition if they spend 15 consecutive years without a disqualifying conviction.
 - d. The Court may relieve a petitioner of the duty to register only if the petitioner shows by *clear and convincing* evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders. RCW 9A.44.142 (factors the Court considers are listed)
- 2.) Adjudication occurred in Juvenile Court or Adult Conviction but crime committed prior to age 18 and juvenile jurisdiction lost only by passage of time (not because of decline):
- a. If the crime was a Class A felony and offender was age 15 years or older: they can petition if 60 months have passed since adjudication or release from confinement, whichever is later; no failure to register, additional sex, or kidnapping convictions/adjudications within 60 months of filing petition; and have not been deemed SVP
 - b. If the offender was under the age of 15 or if the petitioner was 15 years or older and crime was not a Class A: Can petition if 24 months have passed since adjudication and release from confinement, whichever is later; have no FTR, additional sex, or kidnapping convictions/adjudications within 60 months of filing petition; and have not been deemed SVP.
 - c. The Court may relieve a petitioner of the duty to register only if the petitioner shows by a *preponderance* of the evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.
 - d. RCW 9A.44.143 for details