

Prosecuting and Investigating Failure to Register as a Sex Offender Cases

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Presumptions

I presume we all have some familiarity with the Statutory Scheme. This is not a 101 Course on FTRASO Statutes.

I presume we all care about these cases

Let's work together: bring your own experience here. I'll ask for this often today.

Guidelines

1. Communicate/ Reach out.
2. Plan ahead to the next two steps.
3. Innovate.
4. Assume the law and evidence will change. A lot! Use belts and suspenders.
5. Remember our goal: to track people required to register and keep our registries accurate.

Elements of the Crime

1. Conviction of a Sex Offense that requires registration.
2. That the defendant was the one convicted of that original crime.
3. Knowledge of the Duty to Register.
4. Failure to Comply with the Requirements of Registration.
5. State of Washington.

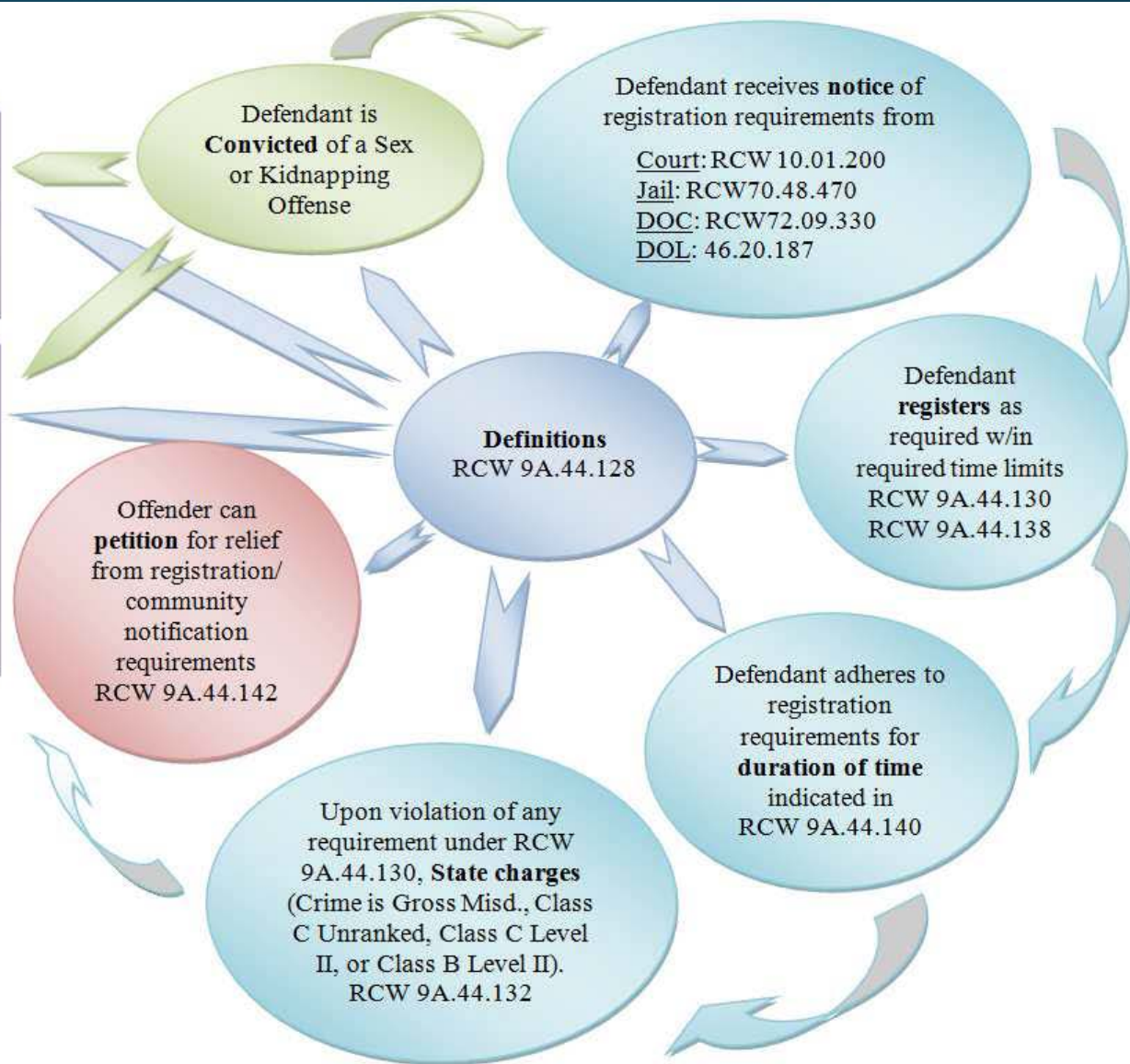
Gives rise to numerous civil actions by **schools** per

1. RCW 28A.225.330
2. RCW 13.04.155
3. 20 USC Sec. 1232g, *et. seq.*

Gives rise to numerous civil actions by **law enforcement** pursuant to

1. RCW 43.43.540
2. RCW 9A.44.135
3. RCW 9A.44.141
4. RCW 9A.44.145
5. RCW 36.28A.230
6. RCW 4.24.550
7. RCW 4.24.555

FMC



Definition of a Sex Offense

1. Those listed in RCW 9A.44.128(10) or RCW 9.94A.030(47)
2. 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;
3. Any federal conviction classified as a sex offense under 42 U.S.C. Sec. 16911 (SORNA);
4. Any federal conviction that would meet the definition of sex offense under RCW 9.94A.030(47);
5. Any military conviction for a sex offense;

Definition of a Sex Offense

6. 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;
7. 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 in the reservation of conviction, an offense that under the laws of this state would be classified as a sex offense under this subsection.
8. A second conviction of FTRASO
9. Any sex offense in effect prior to July 1, 1976, that is comparable to a sex offense listed under RCW 9.94A.030(47). See *Arnold*, 190 Wn.2d 136 (2018).
10. A felony with a Sexual Motivation Finding.

Proving the Sex Offense Conviction

In State is relatively easy.

Out of State: requires more research and certified copies.

Foreign country is even harder.

Requires Proof of Due Process.

Proving the Sex Offense Conviction

Remember you have to prove identity
TWICE:

1. That it was the defendant who was convicted of the Sex Offense, AND
2. That it was the defendant who failed to register as required.

Proving the Sex Offense Conviction

What are your tips here?

Have you had any difficult proof situations?

Can ICAOS/CCOs help here?

Proving Notice and Knowledge

Statutorily Required

1. Court
2. Jail
3. DOC
4. DOL

Other Resources Arrest/Charging

Civilians Officials
(like school
officials)

Civilian
Witnesses

Proving Notice and Knowledge

What else?

Proving WHAT They know

You need to prove they knew about the specific duty they have now violated

1. 3-Day limits
2. No Fixed Residence
3. School Duties

Proving WHAT they know: Types of Evidence

Registration packets

Judgment and Sentence

CCO reports/notes

School/work policies and records

Interviews/other statements of defendant

Which Duty applies: Investigating Unique Situations

Truckers

Homeless Shelters

What else?

Takeaway: Get all the details you can.

Registration Compliance Checks

Treat each check as an investigation.

Document the check: Offender Watch and/or your own reporting system.

A note on registration checks as overtime opportunities.

Proving the Violation of the Duty

Fixed Residence: remember to prove at least four days.

No Fixed Resident: Easier to prove, but more sympathetic.

Mixed Fixed/Transient: investigate for both.

Proving the Violation of the Duty

Remember what good evidence looks like:

1. Unbiased Witnesses
2. Collateral Witnesses
3. Pictures: booking and at scene
4. State Records: SSI, DOL vehicle
5. registrations, etc.
6. Maps and diagrams
7. Certified Copies of Driver's License
8. Can prove where they were *or* where they weren't. Do both.

Review before Referring

Before you refer, ask yourself:

1. Should I register rather than refer? Is a warning more appropriate?
2. Have I proved each element?
3. Do the timeframes all add up: was the defendant supposed to register at the time of the incident dates?
4. Is any of this evidence shaky? If a piece of evidence goes away, can we still prove the case?

Charging Standards

1. Consider whether a warning is more appropriate.
2. Consider evidence that will change
 - Get Handwritten Statements FIRST.
 - Think about who the "impartial" witness is (e.g. the house manager who will not show up for court).
3. Consider that the LAW will change.
4. Give people a chance to register: don't file if they register.
5. Check Offender Watch.

Charging Standards

6. Charge quickly. See *State v. Valencia* , 2 Wn. App. 2d 121 (Div. II 2018)
7. Pay attention to dates and times: the length of the registration duty, the charging period you choose if it is a repeat offense, etc.
8. Communicate your standards to everyone
 - Law Enforcement: Investigatory and CCOs
 - RSO Coordinators
 - Defense Attorneys

Negotiation

1. Be creative – remember to seek Justice and accomplish the goals of RSO prosecution.
 - Tip: Learn the Static-99 and similar tools to better understand how what increases and decreases an offender's likelihood of re-offense.
2. Have clear standards that are consistent and make sense.
 - Communicate them to defense attorneys.
3. Resolve as often as possible.

Negotiation

4. Add conditions – especially on the first conviction – that make future FTRASO prosecution less likely and easier to prove:
 - Reward them for getting a job, doing treatment, and doing other things that decrease the likelihood they will reoffend.
 - Prohibit them from living with an enabling relative who will hide them from police (BUT remember not to aggravate the situation).
 - Secure a stipulation that they understand the duty to register, that a particular out of state sex offense is comparable, etc.

Trial

1. Visit all locations: the records custodian's file room, etc.
2. Meet with your detective
3. Use Trial Briefs – every time.
4. Seek Stipulations to everything: not just to prior sex offenses:
 - Foundation for documents.
 - Accuracy of signatures.
 - Knowledge as to duty to register.
 - Etc.
5. Subpoena EVERYONE, even the registration checks.
6. Voir Dire: prep your jury for a paperwork case.

Petitions for Relief from Duty

1. Remember our **goal**: let's remove people who shouldn't be in the registry. Goes for all RSO Coordinators, too.
2. Make sure you get **notice and prep** a month ahead of time.
3. Make a **discovery demand** for all exhibits and for the latest treatment reports/polygraphs.
4. Seek **victim input**, and make it easy for them: provide a form with the perjury language, lay out the steps for getting it back to you.
5. Seek **Law Enforcement Input**: CCO and original detective(s).
6. Look at the file from the **original sex offense**.

Relief from Duty

7. Contact the **AG's SVP** unit to see if the defendant has been an SVP.
8. **Don't oppose** every petition. Some people should be relieved of the duty.
9. Know the **Static-99**.
10. Run a **Criminal History** check.
11. Call the offender's **Treatment Provider and polygrapher**.
12. **File a brief** that clearly lays out the burden of proof and the civil standard.

Relief from Duty

Questions?

Thoughts?

Problems to Share?

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