

# RSO Legislative and Case Law Update

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# Outline

1. Legislative Changes
2. Case Law Changes
3. Implications for our work

# Legislative Changes

# 2017 Legislative Changes

## Palmpoints

RCW 9A.44.130 (eff. 7/23/17)

## Notice to Victims of Petition for Relief

RCW 9A.44.142/143 (eff. 7/23/17)

# 2018: U-Visas (SHB 1022)

HB 1022: Requires Certifying Agencies to sign U and T Visa Certifications.

"Certifying agency" means

- a state or local law enforcement agency
- Prosecutor
- administrative judge
- hearing office, or
- other authority that has responsibility for the investigation or prosecution of criminal activity.... including, but not limited to, the Washington state patrol, the Washington department of labor and industries, and the Washington department of social and health services.

## 2018: U-Visas (SHB 1022)

Remember this could happen before, during, or *after* prosecution.

*Brady*: FTRASO cases happen *after* sex offense prosecution is completed.

Know your office policy re: U-Visas and records retention.

Coordinate with other agencies.

# 2018: Victims' Employment (HB 2661)

HB 2661: Protects Victims of Sexual Assault from Employment Discrimination.

Victims cannot be

1. Denied hiring
2. Discharged, denied promotion, demoted, suspended, etc.
3. Denied reasonable safety accommodation.

## 2018: Victims' Employment (HB 2661)

Reasonable Safety Accommodation includes

1. Transfer,
2. Reassignment,
3. Modified Schedule,
4. Change of Work Telephone Number
5. Etc.



# 2018: College Admissions (SB 6582)

Facilitates people w/ criminal histories going to college.

## Takeaways

1. School first considers qualifications without criminal history.
2. School then looks at criminal history, but can't automatically/unreasonably deny/limit admission.
3. The relationship test: whether there is a relationship between the criminal history and the program/residency, admission may be denied or residency limited.
4. Sex offenses are specifically mentioned as kinds of history that can be considered.

# Case Law Changes

# Matter of Arnold, 190 Wn.2d 136 (2018)

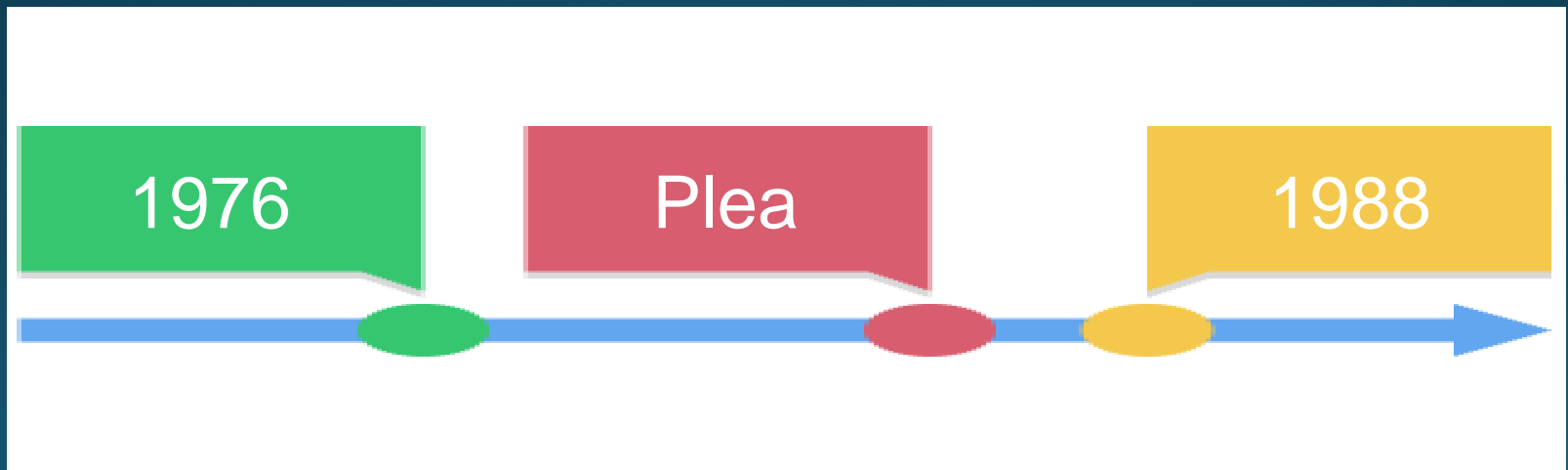
## Facts

1. 1975: Statutory Rape 2nd is codified.
2. 1979: Statutory Rape 2nd is amended only to change the RCW.
3. 1987: Def convicted of Statutory Rape 2nd.
4. 1988: Def pleads guilty to Statutory Rape 2nd.
5. After plea, Statutory Rape is repealed and replaced with Rape of a Child.
6. 2011: Div. I issues *State v. Taylor*, saying that the Statutory Rape was not a sex offense under RCW 9A.030(46)(b), so no duty to register. This created a “gap” of FTRASO coverage.

# Matter of Arnold, 190 Wn.2d 136 (2018)

6. 2011: Div. I issues *State v. Taylor*, saying that the Statutory Rape was not a sex offense under RCW 9A.030(46)(b), so no duty to register. This created a “gap” of FTRASO coverage.

Division I concluded that, had the legislature failed to create a duty to register for people convicted of crimes that existed prior to 1976, but for which they were convicted after 1976, creating a gap:



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7. 2013: Def is charged with FTRASO and pleads guilty. He is later told by letter from Sheriff’s Dept. that he is not required to register due to *Taylor*.
8. He moves to withdraw his plea → PRP. Div. III: We disagree with Div. I, but feel we are bound by their ruling, inventing *Horizontal Stare Decisis*.

# *Matter of Arnold*, 190 Wn.2d 136 (2018)

Issue: is Statutory Rape 2nd committed in 1980 a sex offense under RCW 9.94A.030(46)(b)?

Holdings: *Taylor* is overruled.

1. Horizontal Stare Decisis isn't a thing.
2. Defendant was required to register: Statutory Rape (a) was in effect prior to 7/1/1976 and (b) comparable to a current offense in RCW 9.94A.030(46)(a)(i): "A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.132".

# Matter of Arnold, 190 Wn.2d 136 (2018): Comparability Analysis

Statutory Rape Second Degree	Comparable Felonies
(1) A person over sixteen years of age is guilty of statutory rape in the second degree when such person engages in sexual intercourse with another person, not married to the perpetrator, who is eleven years of age or older, but less than fourteen years old.	Rape Child First Degree Rape Child Second Degree Rape Child Third Degree  Child Molest First Degree Child Molest Second Degree Child Molest Third Degree

Washington State Supreme Court: “[T]here is no set of facts that would support a conviction under [the Statutory Rape Second Degree Statute] that would not also support a conviction of some felony under current chapter 9A.44 RCW”

# *Matter of Arnold*, 190 Wn.2d 136 (2018)

## Takeaways

1. You may have to rescind/revise letters relieving people of their duty.
2. That means you will have to *prove* that you have given them notice of the duty. The knowledge element will be tricky here.
3. Update your records.
4. Defense attorneys: advise your clients they may *now* have a duty to register. This avoids arrest, etc.
5. Consider how Petitions for Relief may be affected.
6. Other thoughts?



*State v. Tash*, 43 P.3d 1069  
(Div. II 2018)

Defendant argued that he did not have to register within 3 days of release from DOC confinement because he was only confined for a DOC violation.

Holding: the plain language requires registration whenever the defendant is released from custody for any reason.

# *State v. Valencia* , 2 Wn. App. 2d 121 (Div. II 2018)

## Facts

1. 2010: Defendant commits a sex offense in Oregon requiring registration.
2. Dec 2-4, 2014: Defendant commits FTRASO after moving to Thurston County and failing to register within 3 days. He is charged by the State with FTRASO that month.
3. Feb 2015: Def registers as transient in Thurston County.
4. Mar 18-31, 2015: Def FTRASO by failing to report weekly. He is later charged.
5. Nov 2015: Def pleads guilty to both charges and is sentenced that day to a concurrent sentence with an offender score which included both convictions.
6. Defendant appeals, arguing they are same criminal conduct, so they shouldn't count against each other.

# *State v. Valencia*, 2 Wn. App. 2d 121 (Div. II 2018)

Primary issue: did the crimes occur at the same time?

## Holdings

1. The two crimes, one in 2014 and one in 2015, were not same criminal conduct. They were not at the same time.
2. The 2 crimes were not a continuing course of conduct because
  - (a) Double jeopardy and separate criminal conduct analysis is different. This case deals with separate criminal conduct.
  - (b) These two crimes involved different reporting requirements: 3 day rule v. weekly reporting rule.
  - (c) The 2014 conviction was not a repeating rule; it occurs only once at one discreet time.
  - (d) There were two events that occurred between the two charging periods: the defendant was charged with the first crime and his residential status changed.

# *State v. Lambert*, 1 Wn. App. 2d 313 (Div. I 2017)

## Facts

1. 1986: Defendant is convicted of Statutory Rape Third. At the time, the crime could later be vacated in the discretion of the court after discharge + 5 years.
2. 1987: Statutory Rape Third Degree is redefined as a crime against a person which can't be vacated.
3. 1988: The Legislature repeals Statutory Rape and replaces it with Rape of a Child. Rape of a Child Third cannot be vacated b/c it is a crime against a person.
4. 2016: Def moves to vacate his 1986 conviction, arguing that it can still be vacated and the 1988 amendments have no effect on his prior conviction.
5. Trial court rules his conviction is a crime against a person and cannot be vacated.

# *State v. Lambert*, 1 Wn. App. 2d 313 (Div. I 2017)

Holding: The crime is a crime against a nonvacatable person.

1. In 1987, the Legislature specifically said that Statutory Rape Third Degree as it “may be renamed in the future,” was a nonvacatable crime against a person.
2. This is supported by the Legislative Report of 1988, which specifically said that the crime of Statutory Rape was renamed to Rape of a Child.
3. Defendant did not have a vested right in getting to vacate his conviction when the 1987 amendments occurred. He wouldn't have been eligible until at least 1994 (5 years after discharge of conditions).

## *State v. Lambert*, 1 Wn. App. 2d 313 (Div. I 2017)

Interesting note: The defense in *Lambert* tried to rely on Div. I's *Taylor* ruling – now overruled in *Arnold* - to argue that Statutory Rape and Rape of a Child should be treated differently after 1988.

Div. I rejected this argument because *Lambert* didn't rest on the definition of "sex offense" in the FTRASO statutes.

Additional Implications?

Questions?

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