

SUPERIOR COURT OF KITSAP COUNTY

JUVENILE AND FAMILY COURT SERVICES

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WAIVER OF SEX OFFENDER REGISTRATION FOR JUVENILE OFFENSES

(EFFECTIVE AUGUST 30, 2017 AND AFTER)

WARNING: The Kitsap County Superior Court and Juvenile Department can not answer legal questions, give you legal advice, nor advocate on your behalf. The information provided in this document is *not* legal advice. It is meant only to assist you in understanding the process and the minimum requirements necessary to request a judicial waiver of the requirement to register as a sex offender. We recommend you consult with an attorney if you have legal questions or need legal advice.

SECTION 1 - AM I ELIGIBLE TO HAVE MY SEX OFFENSE REGISTRATION WAIVED?

The sex offense conviction for which you request waiver of registration must have been in Kitsap County Juvenile Court. There are different ways under which a person may qualify for waiver. The first involves a special juvenile provision in RCW 9A.44.143 (discussed in section A). However, there are other ways to qualify (discussed in section B).

(A) TWO TO FIVE YEARS FOR JUVENILE SEX OFFENSE CONVICTIONS [RCW 9A.44.143]

Since you were a juvenile at the time you committed the sex offense and the conviction was entered in juvenile court, RCW 9A.44.143 allows the court to waive registration based on your age and type of offense provided you meet the time requirements in the statute and the burden of proof.

- 1) **5 Years for Class "A" Felonies At Age 15 or Older** - If the conviction is for a class "A" sex offense committed at age 15, 16, or 17, then you can petition if all three of the following apply:
 - a) At least **five (5) years** have passed since adjudication and release from confinement;
 - b) You have no additional sex offense or kidnapping convictions or adjudications; and,
 - c) You have no convictions or adjudications for failure to register as a sex offender within five (5) years of filing your petition;
- 2) **2 Years for All Others** - If the conviction is for a class "A" sex or kidnapping offenses committed at age 14 or under, or, for any non-class "A" sex or kidnapping offenses committed under age 18, then you can petition if all three of the following apply:
 - a) At least **two (2) years** have passed since adjudication and release from confinement;
 - b) There are no additional sex offense or kidnapping convictions or adjudications; and,
 - c) There are no convictions or adjudications for failure to register as a sex offender within two (2) years of filing the petition;
- 3) **Burden of Proof is by a "Preponderance" of Evidence** - The law concerning court termination of sex offender registration requires the petitioner prove to the court that registration is no longer necessary by a certain quantum of evidence. This is often referred to as the petitioner's "burden of proof." If the petitioner meets the qualifications for waiver

under two to five year conviction standards for juvenile convictions, the burden of proof is by a “preponderance of evidence” which means the court must find by preponderance that registration is no longer necessary.

In making this determination the court will consider the case and other statutory factors in making the final determination. Those factors include the particular facts of the case, number of victims, length and extent of offense history, compliance with supervision, time since the incident, participation in treatment, input from treatment providers, stability and support in the community, and, any updated reports or polygraphs.¹ You should be prepared to address the court with these matters and any other questions that may arise during the court hearing.

(B) OTHER WAYS TO REMOVE REGISTRATION OR NOTIFICATION [RCW 9A.44.140 and 9A.44.142]

If for some reason you don’t qualify under the juvenile conviction standards discussed above, the law still allows waiver of registration based on other statutory provisions. In addition, even if the court will not remove the registration requirement altogether, there is a way to have the requirement of community notification eliminated.

1) Expiration of Registration for Certain Sex Offenses – If the sex offense is classified as an “A” level offense, the requirement to register continues indefinitely unless otherwise ordered by a court. However, in some cases involving less serious sex offenses the requirement to register as a sex offender will expire over time. Under the provisions of RCW 9A.44.140, the necessity to register expires depending on the offense and amount of time spent in the community. Generally, for class “B” felony sex offenses the duty ends after spending 15 years in the community without a disqualifying offense.² For class “C” felony sex offenses the duty ends after remaining in the community for 10 years without a disqualifying offense.³

The term “disqualifying offense” is defined in RCW 9A.44.128.⁴ Basically a “disqualifying offense” is any conviction involving one or more of the following offenses: any offense that constitutes a felony; a sex offense⁵;

¹ RCW 9A.44.143(5) states: “In determining whether the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders, the following factors are provided as guidance to assist the court in making its determination, to the extent the factors are applicable considering the age and circumstances of the petitioner: (a) The nature of the registrable offense committed including the number of victims and the length of the offense history; (b) Any subsequent criminal history; (c) The petitioner’s compliance with supervision requirements; (d) The length of time since the charged incident(s) occurred; (e) Any input from community corrections officers, juvenile parole or probation officers, law enforcement, or treatment providers; (f) Participation in sex offender treatment; (g) Participation in other treatment and rehabilitative programs; (h) The offender’s stability in employment and housing; (i) The offender’s community and personal support system; (j) Any risk assessments or evaluations prepared by a qualified professional; (k) Any updated polygraph examination; (l) Any input of the victim; (m) Any other factors the court may consider relevant.” RCW 9A.44.143(5).

² RCW 9A.44.140(2) states: “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, 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.” RCW 9A.44.140(2).

³ RCW 9A.44.140(3) states: “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, 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.” RCW 9A.44.140(3).

⁴ Per RCW 9A.44.128(3): “‘Disqualifying offense’ means a conviction for: Any offense that is a felony; a sex offense as defined in this section; a crime against children or persons as defined in RCW 43.43.830(7) and 9.94A.411(2)(a); an offense with a domestic violence designation as provided in RCW 10.99.020; permitting the commercial sexual abuse of a minor as defined in RCW 9.68A.103; or any violation of chapter 9A.88 RCW.” RCW 9A.44.128(3)

⁵ “Sex offense” means: (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 9A.40.100(1)(b)(ii) (trafficking); (d) Any violation under RCW 9.68A.090 (communication with a minor for immoral purposes); (e) A violation under RCW 9A.88.070 (promoting prostitution in the first degree) or RCW 9A.88.080 (promoting prostitution in the second degree) if the person has a prior conviction for one of these offenses; (f) Any violation under RCW 9A.40.100(1)(a)(i)(A) (III) or (IV) or (a)(i)(B); (g) 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; (h) 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; (i) Any federal conviction classified as a sex offense under 42 U.S.C. Sec. 16911 (SORNA); (j) 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; (k) 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; (l) 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.” RCW 9A.44.128(10).

an offense against children or persons⁶; a domestic violence offense; and/or the offenses of permitting the commercial sexual abuse of a minor, indecent exposure, or, any prostitution crime.⁷

2) **General Petition after Ten Years in Community without a Disqualifying Offense** – Regardless of whether or not the sex offense was committed as a juvenile, the law allows the court to waive registration based on time spent in the community, however the burden of proof is much higher than the juvenile standards and there are additional requirements. RCW 9A.44.142 allows a person to petition the court for waiver if they have spent at least *ten (10) consecutive years* in the community without being convicted of a “disqualifying offense.”⁸ In addition to ten years without a disqualifying offense, you must establish:

- a) You have never been determined to be a “sexually violent predator”;⁹
- b) You have never been convicted as an adult of class “A” felony sex or kidnapping offense committed with forcible compulsion on or after June 8, 2000;¹⁰ and,
- c) By “clear and convincing evidence you are sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders. Again the court will consider the case and other statutory factors similar to the juvenile provision.”¹¹

SECTION 2 – AN IF I QUALIFY, HOW DO I REQUEST THE WAIVER OF REGISTRATION?

(A) AN ATTORNEY IS RECOMMENDED

Waiver of the requirement to register as a sex offender is discretionary with the judge, therefore it is always **recommended you seek the advice of a qualified attorney to assist you in the process**. An attorney can assist with the application, can provide consultation and legal advice, can answer any questions you may have during the process, and, can assist for you throughout the process including court hearings.

Sex offender registration waiver is a complex decision for the judge and requires the petitioner prove the case. An attorney is in the best position to “make your case” and advocate on your

⁶ “Crime against children or persons” means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnapping; first, second, or third degree assault; fourth degree assault (if a violation of RCW 9A.36.041(3)); first, second, or third degree assault of a child; first, second, or third degree rape; first, second, or third degree rape of a child; first or second degree robbery; first degree arson; first degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; endangerment with a controlled substance; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; first or second degree custodial sexual misconduct; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; commercial sexual abuse of a minor; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; felony indecent exposure; criminal abandonment; or any of these crimes as they may be renamed in the future. See, RCW 9A.44.128(3); and, RCW 43.43.830(7).

⁷ Any violation of RCW 9A.88, which includes: Indecent exposure, prostitution, promoting prostitution in the first or second degree, promoting travel for prostitution, permitting prostitution, or patronizing a prostitute. See, RCW Title 9A.88.

⁸ RCW 9A.44.142(1)(b).

⁹ See, RCW 9A.44.142(2)(a)(i). The term “sexually violent predator” is defined in RCW 71.09.020 as: “[A]ny person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.” RCW 71.09.020(18).

¹⁰ See, RCW 9A.44.142(2)(a)(ii).

¹¹ See, RCW 9A.44.142(4)(a). RCW 9A.44.142(4)(b) states: “In determining whether the petitioner is sufficiently rehabilitated to warrant removal from the registry, the following factors are provided as guidance to assist the court in making its determination: (i) The nature of the registrable offense committed including the number of victims and the length of the offense history; (ii) Any subsequent criminal history; (iii) The petitioner’s compliance with supervision requirements; (iv) The length of time since the charged incident(s) occurred; (v) Any input from community corrections officers, law enforcement, or treatment providers; (vi) Participation in sex offender treatment; (vii) Participation in other treatment and rehabilitative programs; (viii) The offender’s stability in employment and housing; (ix) The offender’s community and personal support system; (x) Any risk assessments or evaluations prepared by a qualified professional; (xi) Any updated polygraph examination; (xii) Any input of the victim; (xiii) Any other factors the court may consider relevant.” RCW 9A.44.142(4)(b).

behalf. An attorney can also determine the appropriate method by which to remove the registration requirement and/or community notification.

The Kitsap County Juvenile Department (hereinafter “Department”) can not answer legal questions, give you legal advice, nor advocate on your behalf. **The information provided in this document is *not* legal advice.** It is meant only to assist you in understanding the process and the minimum requirements necessary to make application for waiver. You should consult with an attorney if you have legal questions or need legal advice.

(B) DEPARTMENTAL ASSISTANCE WITH FORMS FOR JUVENILE CASES UNDER RCW 9A.44.143

For juvenile sex offenses that qualify for waiver under RCW 9.44.143, the Kitsap County Juvenile Department can assist you by providing the necessary forms and notification for a seventy-five dollar (\$75) processing fee. Be aware that the fee is non-refundable and not dependent on whether or not your petition is successful. An attorney is not required for this “self-help” option, but we recommend you at least consult with an attorney first before proceeding.

Upon payment of the fee the Department will assist you in filling out the forms and making the necessary notifications to other agencies, including the registrar of the county in which you are currently registered if that county is within Washington State.¹²

Upon completing the application you will be given a court date to have the waiver request heard. You must appear for court and bring the necessary paperwork with you. You are required to prepare for the hearing on your own and be expected to answer any questions the judge may have for you.

The Department cannot assist you with any legal questions, nor can the Department assist in any of the alternative ways to obtain waiver or sex offender registration or notification outside of the juvenile standards in RCW 9A.44.143.

SECTION 3 – FREQUENTLY ASKED QUESTIONS:

- (A) WHAT IF THE CONVICTION IS OUTSIDE KITSAP COUNTY?:** If outside Kitsap County but still within Washington State, the petition must be filed in the county in which the petitioner was convicted. If outside Washington State, or, is in a federal or military court, or foreign country, then the petition must be filed in Thurston County.

If you are registered as the result of a federal or out-of-state conviction, you may request the county sheriff removal of your name from the central registry if: (i) a court in your state of conviction has made an individualized determination that you should not be required to register; and, (ii) you provide proof of relief from registration to the county sheriff. If the county sheriff determines you have been relieved of the duty to register in your state of conviction, the county sheriff shall request the Washington State Patrol remove your name from the central registry.

- (B) CAN I REQUEST AN EXEMPTION FROM NOTIFICATION EVEN IF I DON’T QUALIFY FOR WAIVER?:** Yes. Even if you do not qualify to petition the court for relief of the duty to register, you may still petition the court to be exempted from any community notification requirements so long as you have spent at least fifteen (15) years in the community since entry of judgment and sentence, or, the last date of release from confinement, whichever is later, without being convicted of a disqualifying offense.¹³ If you wish to seek exemption from notification you should contact an attorney.

¹² If you are currently registered outside Washington State and the court orders your registration or notification waived, it will be your responsibility to notify the registrar in the jurisdiction in which you are registered.

¹³ RCW 9A.44.142(2)(b) states: “Any person who may not be relieved of the duty to register may petition the court to be exempted from any community notification requirements that the person may be subject to fifteen years after the later of the entry of the judgment and sentence or the last date of release from confinement, including full-time residential treatment, pursuant to the conviction, if the person has spent the time in the community without being convicted of a disqualifying offense.” RCW 9A.44.142(2)(b).