

**INITIATIVE 938**

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 938 to the People is a true and correct copy as it was received by this office.

1 AN ACT Relating to sex offender monitoring; amending RCW 9A.44.130;  
2 and prescribing penalties.

3 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 9A.44.130 and 2005 c 380 s 1 are each amended to read  
5 as follows:

6 (1)(a) Any adult or juvenile residing whether or not the person has  
7 a fixed residence, or who is a student, is employed, or carries on a  
8 vocation in this state who has been found to have committed or has been  
9 convicted of any sex offense or kidnapping offense, or who has been  
10 found not guilty by reason of insanity under chapter 10.77 RCW of  
11 committing any sex offense or kidnapping offense, shall register with  
12 the county sheriff for the county of the person's residence, or if the  
13 person is not a resident of Washington, the county of the person's  
14 school, or place of employment or vocation, or as otherwise specified  
15 in this section. Where a person required to register under this  
16 section is in custody of the state department of corrections, the state  
17 department of social and health services, a local division of youth  
18 services, or a local jail or juvenile detention facility as a result of  
19 a sex offense or kidnapping offense, the person shall also register at

1 the time of release from custody with an official designated by the  
2 agency that has jurisdiction over the person.

3 (b) Any adult or juvenile who is required to register under (a) of  
4 this subsection:

5 (i) Who is attending, or planning to attend, a public or private  
6 school regulated under Title 28A RCW or chapter 72.40 RCW shall, within  
7 ten days of enrolling or prior to arriving at the school to attend  
8 classes, whichever is earlier, notify the sheriff for the county of the  
9 person's residence of the person's intent to attend the school, and the  
10 sheriff shall promptly notify the principal of the school;

11 (ii) Who is admitted to a public or private institution of higher  
12 education shall, within ten days of enrolling or by the first business  
13 day after arriving at the institution, whichever is earlier, notify the  
14 sheriff for the county of the person's residence of the person's intent  
15 to attend the institution;

16 (iii) Who gains employment at a public or private institution of  
17 higher education shall, within ten days of accepting employment or by  
18 the first business day after commencing work at the institution,  
19 whichever is earlier, notify the sheriff for the county of the person's  
20 residence of the person's employment by the institution; or

21 (iv) Whose enrollment or employment at a public or private  
22 institution of higher education is terminated shall, within ten days of  
23 such termination, notify the sheriff for the county of the person's  
24 residence of the person's termination of enrollment or employment at  
25 the institution.

26 (c) Persons required to register under this section who are  
27 enrolled in a public or private institution of higher education on June  
28 11, 1998, or a public or private school regulated under Title 28A RCW  
29 or chapter 72.40 RCW on September 1, 2006, must notify the county  
30 sheriff immediately.

31 (d) The sheriff shall notify the school's principal or  
32 institution's department of public safety and shall provide that  
33 department with the same information provided to a county sheriff under  
34 subsection (3) of this section.

35 (e)(i) A principal receiving notice under this subsection must  
36 disclose the information received from the sheriff under (b) of this  
37 subsection as follows:

38 (A) If the student who is required to register as a sex offender is  
39 classified as a risk level II or III, the principal shall provide the

1 information received to every teacher of any student required to  
2 register under (a) of this subsection and to any other personnel who,  
3 in the judgment of the principal, supervises the student or for  
4 security purposes should be aware of the student's record;

5 (B) If the student who is required to register as a sex offender is  
6 classified as a risk level I, the principal shall provide the  
7 information received only to personnel who, in the judgment of the  
8 principal, for security purposes should be aware of the student's  
9 record.

10 (ii) Any information received by a principal or school personnel  
11 under this subsection is confidential and may not be further  
12 disseminated except as provided in RCW 28A.225.330, other statutes or  
13 case law, and the family and educational and privacy rights act of  
14 1994, 20 U.S.C. Sec. 1232g et seq.

15 (2) This section may not be construed to confer any powers pursuant  
16 to RCW (~~(4.24.500)~~) 4.24.550 upon the public safety department of any  
17 public or private school or institution of higher education.

18 (3)(a) The person shall provide the following information when  
19 registering: (i) Name; (ii) address; (iii) date and place of birth;  
20 (iv) place of employment; (v) crime for which convicted; (vi) date and  
21 place of conviction; (vii) aliases used; (viii) social security number;  
22 (ix) photograph; and (x) fingerprints.

23 (b) Any person who lacks a fixed residence shall provide the  
24 following information when registering: (i) Name; (ii) date and place  
25 of birth; (iii) place of employment; (iv) crime for which convicted;  
26 (v) date and place of conviction; (vi) aliases used; (vii) social  
27 security number; (viii) photograph; (ix) fingerprints; and (x) where he  
28 or she plans to stay.

29 (4)(a) Offenders shall register with the county sheriff within the  
30 following deadlines. For purposes of this section the term  
31 "conviction" refers to adult convictions and juvenile adjudications for  
32 sex offenses or kidnapping offenses:

33 (i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex  
34 offense on, before, or after February 28, 1990, and who, on or after  
35 July 28, 1991, are in custody, as a result of that offense, of the  
36 state department of corrections, the state department of social and  
37 health services, a local division of youth services, or a local jail or  
38 juvenile detention facility, and (B) kidnapping offenders who on or  
39 after July 27, 1997, are in custody of the state department of

1 corrections, the state department of social and health services, a  
2 local division of youth services, or a local jail or juvenile detention  
3 facility, must register at the time of release from custody with an  
4 official designated by the agency that has jurisdiction over the  
5 offender. The agency shall within three days forward the registration  
6 information to the county sheriff for the county of the offender's  
7 anticipated residence. The offender must also register within twenty-  
8 four hours from the time of release with the county sheriff for the  
9 county of the person's residence, or if the person is not a resident of  
10 Washington, the county of the person's school, or place of employment  
11 or vocation. The agency that has jurisdiction over the offender shall  
12 provide notice to the offender of the duty to register. Failure to  
13 register at the time of release and within twenty-four hours of release  
14 constitutes a violation of this section and is punishable as provided  
15 in subsection (10) of this section.

16 When the agency with jurisdiction intends to release an offender  
17 with a duty to register under this section, and the agency has  
18 knowledge that the offender is eligible for developmental disability  
19 services from the department of social and health services, the agency  
20 shall notify the division of developmental disabilities of the release.  
21 Notice shall occur not more than thirty days before the offender is to  
22 be released. The agency and the division shall assist the offender in  
23 meeting the initial registration requirement under this section.  
24 Failure to provide such assistance shall not constitute a defense for  
25 any violation of this section.

26 (ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL  
27 JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody  
28 but are under the jurisdiction of the indeterminate sentence review  
29 board or under the department of corrections' active supervision, as  
30 defined by the department of corrections, the state department of  
31 social and health services, or a local division of youth services, for  
32 sex offenses committed before, on, or after February 28, 1990, must  
33 register within ten days of July 28, 1991. Kidnapping offenders who,  
34 on July 27, 1997, are not in custody but are under the jurisdiction of  
35 the indeterminate sentence review board or under the department of  
36 corrections' active supervision, as defined by the department of  
37 corrections, the state department of social and health services, or a  
38 local division of youth services, for kidnapping offenses committed  
39 before, on, or after July 27, 1997, must register within ten days of

1 July 27, 1997. A change in supervision status of a sex offender who  
2 was required to register under this subsection (4)(a)(ii) as of July  
3 28, 1991, or a kidnapping offender required to register as of July 27,  
4 1997, shall not relieve the offender of the duty to register or to  
5 reregister following a change in residence. The obligation to register  
6 shall only cease pursuant to RCW 9A.44.140.

7 (iii) OFFENDERS UNDER FEDERAL JURISDICTION. Sex offenders who, on  
8 or after July 23, 1995, and kidnapping offenders who, on or after July  
9 27, 1997, as a result of that offense are in the custody of the United  
10 States bureau of prisons or other federal or military correctional  
11 agency for sex offenses committed before, on, or after February 28,  
12 1990, or kidnapping offenses committed on, before, or after July 27,  
13 1997, must register within twenty-four hours from the time of release  
14 with the county sheriff for the county of the person's residence, or if  
15 the person is not a resident of Washington, the county of the person's  
16 school, or place of employment or vocation. Sex offenders who, on July  
17 23, 1995, are not in custody but are under the jurisdiction of the  
18 United States bureau of prisons, United States courts, United States  
19 parole commission, or military parole board for sex offenses committed  
20 before, on, or after February 28, 1990, must register within ten days  
21 of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not  
22 in custody but are under the jurisdiction of the United States bureau  
23 of prisons, United States courts, United States parole commission, or  
24 military parole board for kidnapping offenses committed before, on, or  
25 after July 27, 1997, must register within ten days of July 27, 1997.  
26 A change in supervision status of a sex offender who was required to  
27 register under this subsection (4)(a)(iii) as of July 23, 1995, or a  
28 kidnapping offender required to register as of July 27, 1997 shall not  
29 relieve the offender of the duty to register or to reregister following  
30 a change in residence, or if the person is not a resident of  
31 Washington, the county of the person's school, or place of employment  
32 or vocation. The obligation to register shall only cease pursuant to  
33 RCW 9A.44.140.

34 (iv) OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED. Sex offenders  
35 who are convicted of a sex offense on or after July 28, 1991, for a sex  
36 offense that was committed on or after February 28, 1990, and  
37 kidnapping offenders who are convicted on or after July 27, 1997, for  
38 a kidnapping offense that was committed on or after July 27, 1997, but  
39 who are not sentenced to serve a term of confinement immediately upon

1 sentencing, shall report to the county sheriff to register immediately  
2 upon completion of being sentenced.

3 (v) OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON  
4 RESIDENTS. Sex offenders and kidnapping offenders who move to  
5 Washington state from another state or a foreign country that are not  
6 under the jurisdiction of the state department of corrections, the  
7 indeterminate sentence review board, or the state department of social  
8 and health services at the time of moving to Washington, must register  
9 within thirty days of establishing residence or reestablishing  
10 residence if the person is a former Washington resident. The duty to  
11 register under this subsection applies to sex offenders convicted under  
12 the laws of another state or a foreign country, federal or military  
13 statutes, or Washington state for offenses committed on or after  
14 February 28, 1990, and to kidnapping offenders convicted under the laws  
15 of another state or a foreign country, federal or military statutes, or  
16 Washington state for offenses committed on or after July 27, 1997. Sex  
17 offenders and kidnapping offenders from other states or a foreign  
18 country who, when they move to Washington, are under the jurisdiction  
19 of the department of corrections, the indeterminate sentence review  
20 board, or the department of social and health services must register  
21 within twenty-four hours of moving to Washington. The agency that has  
22 jurisdiction over the offender shall notify the offender of the  
23 registration requirements before the offender moves to Washington.

24 (vi) OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY. Any adult  
25 or juvenile who has been found not guilty by reason of insanity under  
26 chapter 10.77 RCW of (A) committing a sex offense on, before, or after  
27 February 28, 1990, and who, on or after July 23, 1995, is in custody,  
28 as a result of that finding, of the state department of social and  
29 health services, or (B) committing a kidnapping offense on, before, or  
30 after July 27, 1997, and who on or after July 27, 1997, is in custody,  
31 as a result of that finding, of the state department of social and  
32 health services, must register within twenty-four hours from the time  
33 of release with the county sheriff for the county of the person's  
34 residence. The state department of social and health services shall  
35 provide notice to the adult or juvenile in its custody of the duty to  
36 register. Any adult or juvenile who has been found not guilty by  
37 reason of insanity of committing a sex offense on, before, or after  
38 February 28, 1990, but who was released before July 23, 1995, or any  
39 adult or juvenile who has been found not guilty by reason of insanity

1 of committing a kidnapping offense but who was released before July 27,  
2 1997, shall be required to register within twenty-four hours of  
3 receiving notice of this registration requirement. The state  
4 department of social and health services shall make reasonable attempts  
5 within available resources to notify sex offenders who were released  
6 before July 23, 1995, and kidnapping offenders who were released before  
7 July 27, 1997. Failure to register within twenty-four hours of  
8 release, or of receiving notice, constitutes a violation of this  
9 section and is punishable as provided in subsection (10) of this  
10 section.

11 (vii) OFFENDERS WHO LACK A FIXED RESIDENCE. Any person who lacks  
12 a fixed residence and leaves the county in which he or she is  
13 registered and enters and remains within a new county for twenty-four  
14 hours is required to register with the county sheriff not more than  
15 twenty-four hours after entering the county and provide the information  
16 required in subsection (3)(b) of this section.

17 (viii) OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER  
18 SUPERVISION. Offenders who lack a fixed residence and who are under  
19 the supervision of the department shall register in the county of their  
20 supervision.

21 (ix) OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND  
22 SCHOOL IN ANOTHER STATE. Offenders required to register in Washington,  
23 who move to another state, or who work, carry on a vocation, or attend  
24 school in another state shall register a new address, fingerprints, and  
25 photograph with the new state within ten days after establishing  
26 residence, or after beginning to work, carry on a vocation, or attend  
27 school in the new state. The person must also send written notice  
28 within ten days of moving to the new state or to a foreign country to  
29 the county sheriff with whom the person last registered in Washington  
30 state. The county sheriff shall promptly forward this information to  
31 the Washington state patrol.

32 (b) Failure to register within the time required under this section  
33 constitutes a per se violation of this section and is punishable as  
34 provided in subsection (10) of this section. The county sheriff shall  
35 not be required to determine whether the person is living within the  
36 county.

37 (c) An arrest on charges of failure to register, service of an  
38 information, or a complaint for a violation of this section, or  
39 arraignment on charges for a violation of this section, constitutes

1 actual notice of the duty to register. Any person charged with the  
2 crime of failure to register under this section who asserts as a  
3 defense the lack of notice of the duty to register shall register  
4 immediately following actual notice of the duty through arrest,  
5 service, or arraignment. Failure to register as required under this  
6 subsection (4)(c) constitutes grounds for filing another charge of  
7 failing to register. Registering following arrest, service, or  
8 arraignment on charges shall not relieve the offender from criminal  
9 liability for failure to register prior to the filing of the original  
10 charge.

11 (d) The deadlines for the duty to register under this section do  
12 not relieve any sex offender of the duty to register under this section  
13 as it existed prior to July 28, 1991.

14 (5)(a) If any person required to register pursuant to this section  
15 changes his or her residence address within the same county, the person  
16 must send written notice of the change of address to the county sheriff  
17 within seventy-two hours of moving. If any person required to register  
18 pursuant to this section moves to a new county, the person must send  
19 written notice of the change of address at least fourteen days before  
20 moving to the county sheriff in the new county of residence and must  
21 register with that county sheriff within twenty-four hours of moving.  
22 The person must also send written notice within ten days of the change  
23 of address in the new county to the county sheriff with whom the person  
24 last registered. The county sheriff with whom the person last  
25 registered shall promptly forward the information concerning the change  
26 of address to the county sheriff for the county of the person's new  
27 residence. Upon receipt of notice of change of address to a new state,  
28 the county sheriff shall promptly forward the information regarding the  
29 change of address to the agency designated by the new state as the  
30 state's offender registration agency.

31 (b) It is an affirmative defense to a charge that the person failed  
32 to send a notice at least fourteen days in advance of moving as  
33 required under (a) of this subsection that the person did not know the  
34 location of his or her new residence at least fourteen days before  
35 moving. The defendant must establish the defense by a preponderance of  
36 the evidence and, to prevail on the defense, must also prove by a  
37 preponderance that the defendant sent the required notice within  
38 twenty-four hours of determining the new address.



1 (6)(a) Any person required to register under this section who lacks  
2 a fixed residence shall provide written notice to the sheriff of the  
3 county where he or she last registered within forty-eight hours  
4 excluding weekends and holidays after ceasing to have a fixed  
5 residence. The notice shall include the information required by  
6 subsection (3)(b) of this section, except the photograph and  
7 fingerprints. The county sheriff may, for reasonable cause, require  
8 the offender to provide a photograph and fingerprints. The sheriff  
9 shall forward this information to the sheriff of the county in which  
10 the person intends to reside, if the person intends to reside in  
11 another county.

12 (b) A person who lacks a fixed residence must report weekly, in  
13 person, to the sheriff of the county where he or she is registered.  
14 The weekly report shall be on a day specified by the county sheriff's  
15 office, and shall occur during normal business hours. The county  
16 sheriff's office may require the person to list the locations where the  
17 person has stayed during the last seven days. The lack of a fixed  
18 residence is a factor that may be considered in determining an  
19 offender's risk level and shall make the offender subject to disclosure  
20 of information to the public at large pursuant to RCW 4.24.550.

21 (c) If any person required to register pursuant to this section  
22 does not have a fixed residence, it is an affirmative defense to the  
23 charge of failure to register, that he or she provided written notice  
24 to the sheriff of the county where he or she last registered within  
25 forty-eight hours excluding weekends and holidays after ceasing to have  
26 a fixed residence and has subsequently complied with the requirements  
27 of subsections (4)(a)(vii) or (viii) and (6) of this section. To  
28 prevail, the person must prove the defense by a preponderance of the  
29 evidence.

30 (7) A sex offender subject to registration requirements under this  
31 section who applies to change his or her name under RCW 4.24.130 or any  
32 other law shall submit a copy of the application to the county sheriff  
33 of the county of the person's residence and to the state patrol not  
34 fewer than five days before the entry of an order granting the name  
35 change. No sex offender under the requirement to register under this  
36 section at the time of application shall be granted an order changing  
37 his or her name if the court finds that doing so will interfere with  
38 legitimate law enforcement interests, except that no order shall be  
39 denied when the name change is requested for religious or legitimate

1 cultural reasons or in recognition of marriage or dissolution of  
2 marriage. A sex offender under the requirement to register under this  
3 section who receives an order changing his or her name shall submit a  
4 copy of the order to the county sheriff of the county of the person's  
5 residence and to the state patrol within five days of the entry of the  
6 order.

7 (8) The county sheriff shall obtain a photograph of the individual  
8 and shall obtain a copy of the individual's fingerprints.

9 (9) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540,  
10 70.48.470, and 72.09.330:

11 (a) "Sex offense" means:

12 (i) Any offense defined as a sex offense by RCW 9.94A.030;

13 (ii) Any violation under RCW 9A.44.096 (sexual misconduct with a  
14 minor in the second degree);

15 (iii) Any violation under RCW 9.68A.090 (communication with a minor  
16 for immoral purposes);

17 (iv) Any federal or out-of-state conviction for an offense that  
18 under the laws of this state would be classified as a sex offense under  
19 this subsection; and

20 (v) Any gross misdemeanor that is, under chapter 9A.28 RCW, a  
21 criminal attempt, criminal solicitation, or criminal conspiracy to  
22 commit an offense that is classified as a sex offense under RCW  
23 9.94A.030 or this subsection.

24 (b) "Kidnapping offense" means: (i) The crimes of kidnapping in  
25 the first degree, kidnapping in the second degree, and unlawful  
26 imprisonment, as defined in chapter 9A.40 RCW, where the victim is a  
27 minor and the offender is not the minor's parent; (ii) any offense that  
28 is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation,  
29 or criminal conspiracy to commit an offense that is classified as a  
30 kidnapping offense under this subsection (9)(b); and (iii) any federal  
31 or out-of-state conviction for an offense that under the laws of this  
32 state would be classified as a kidnapping offense under this subsection  
33 (9)(b).

34 (c) "Employed" or "carries on a vocation" means employment that is  
35 full-time or part-time for a period of time exceeding fourteen days, or  
36 for an aggregate period of time exceeding thirty days during any  
37 calendar year. A person is employed or carries on a vocation whether  
38 the person's employment is financially compensated, volunteered, or for  
39 the purpose of government or educational benefit.

1 (d) "Student" means a person who is enrolled, on a full-time or  
2 part-time basis, in any public or private educational institution. An  
3 educational institution includes any secondary school, trade or  
4 professional institution, or institution of higher education.

5 (10)(a) A person who knowingly fails to register with the county  
6 sheriff or notify the county sheriff, or who changes his or her name  
7 without notifying the county sheriff and the state patrol, as required  
8 by this section is guilty of a class C felony if the crime for which  
9 the individual was convicted was a felony sex offense as defined in  
10 subsection (9)(a) of this section or a federal or out-of-state  
11 conviction for an offense that under the laws of this state would be a  
12 felony sex offense as defined in subsection (9)(a) of this section.

13 (b) If the crime for which the individual was convicted was other  
14 than a felony or a federal or out-of-state conviction for an offense  
15 that under the laws of this state would be other than a felony,  
16 violation of this section is a gross misdemeanor.

17 (11)(a) A person who knowingly fails to register or who moves  
18 within the state without notifying the county sheriff as required by  
19 this section is guilty of a class C felony if the crime for which the  
20 individual was convicted was a felony kidnapping offense as defined in  
21 subsection (9)(b) of this section or a federal or out-of-state  
22 conviction for an offense that under the laws of this state would be a  
23 felony kidnapping offense as defined in subsection (9)(b) of this  
24 section.

25 (b) If the crime for which the individual was convicted was other  
26 than a felony or a federal or out-of-state conviction for an offense  
27 that under the laws of this state would be other than a felony,  
28 violation of this section is a gross misdemeanor.

29 (12) Except as may otherwise be provided by law, nothing in this  
30 section shall impose any liability upon a peace officer, including a  
31 county sheriff, or law enforcement agency, for failing to release  
32 information authorized under this section.

33 (13) Any sex offender who:

34 (a) Is convicted of failure to register as a sex offender;

35 (b) Is classified as risk level III; or

36 (c) Registers as "transient" or with "no known address"

37 shall be required to submit to electronic monitoring using a global  
38 positioning system for the entire duration of registration. The system

1 must actively monitor, identify, and timely report the offender's  
2 location.

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