

Administrative Policy No. 8.06

Subject:	Law Enforcement Notification Practices for Sexual, Kidnapping, Unlawful Imprisonment, Stalking and Violent Offenders
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Authorizing Source:	Chapters 4.24, 9A.44, 10.77, 13.40, 71.05 & 71.09 RCW
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Approved by:	<u>Original signed by Dana Phelps</u> Assistant Secretary, Services & Enterprise Support

Purpose

This policy establishes procedures for notification by the Department of Social and Health Services (DSHS) to local law enforcement agencies, school departments, and, where specified, victims, witnesses and other persons in the event a client:

- A. Is released, paroled or discharged from custody;
- B. Is transferred to a less restrictive setting or, in the case of Juvenile Rehabilitation program (JR), a minimum security facility;
- C. Has unsupervised authorized leave/furloughs; or
- D. Escapes or leaves without authorization.

Scope

This policy applies to the Rehabilitation Administration's Juvenile Rehabilitation and Special Commitment Center programs, and Behavioral Health Administration. See [Attachment A](#) for list of sex offenses, kidnapping, stalking, unlawful imprisonment and violent offenses.

Definitions

Client means a person who is in custody or confined for evaluation and/or treatment by DSHS as follows:

- A. A juvenile committed for a sex, kidnapping, violent, stalking, unlawful imprisonment offense(s) under [Chapter 13.40 RCW](#);
- B. A client charged with a sex, kidnapping, violent or stalking offense and then committed to the department following an acquittal (Not Guilty by Reason of Insanity), under [Chapter 10.77 RCW](#), Criminally Insane Procedures;
- C. A client who committed a sex, kidnapping, violent, stalking, and/or unlawful imprisonment offense but was found incompetent to stand trial and civilly committed under [Chapter 71.05 RCW](#), Mental Illness;
- D. A person committed under Chapter 71.05 RCW who has sex/kidnapping offender registration requirements (this includes patients that are considered voluntary); or
- E. A client detained or committed to the custody of DSHS under [Chapter 71.09 RCW](#), Sexually Violent Predator.

Custody means the care, confinement, immediate charge and control of clients.

Kidnapping offense means the crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment as defined in [Chapter 9A.40 RCW](#), where the victim is a minor and the offender is not the minor's parent.

Sex offense means specific sex offenses as defined in RCW [9A.44.128](#).

Less Restrictive Setting means a placement which is less restrictive than total confinement.

Policy

DSHS must release relevant information for the purpose of community safety to law enforcement agencies, school districts as applicable, and where specified, victims and witnesses. Notification must be made on [DSHS 09-747A, Notification of Sex Offender Release](#) for sex offenders and on [DSHS 09-947, Notification of Release](#) for all other clients.

A. **Notification of Planned Release, Parole, Discharge, and Authorized Leave/Furloughs**

- 1. The facility Chief Executive Officer, Superintendent, Administrator or designee with jurisdiction of the client must provide written 30-day notification of the client's parole, discharge, conditional release, furlough, release or transfer to a less restrictive setting or authorized leave to:
 - a. The chief of police of the city, the sheriff of the county, and the tribal law enforcement agency (if applicable) where the client will reside;
 - b. The approved private schools and the school district superintendent of the

district (with regard to JR clients) in which:

1. The JR client intends to reside; or
 2. The JR client last attended school; and
- c. The Victim/Witness Program Administrator (if applicable). See [Attachment B](#) for DSHS Victim/Witness Notification Protocol for State Hospitals.
2. Notice must occur at the earliest possible date, but not later than 30 days before the client moves unless otherwise ordered by a court.

B. Notification of Emergency/Medical Leaves

Emergency/medical leaves do **not** require 30-day notification. However, notification to any county and city law enforcement agency having jurisdiction in the area of the client's destination must be done as early as possible prior to the leave ([RCW 10.77.205](#), [13.40.205](#), [71.05.425](#) and [71.09.220](#)).

C. Notification of Escapes/Unauthorized Leaves

1. The facility Chief Executive Officer, Superintendent, Administrator or designee must immediately notify:
 - a. The chief of police of the city, sheriff of the county, the Washington State Patrol, and the tribal law enforcement agency (if applicable) in which the client resides;
 - b. The chief of police of the city, the sheriff of the county, the Washington State Patrol, and the tribal law enforcement agency (if applicable) in which the conviction/adjudication occurred. This notice must be followed with written notification using [DSHS 09-747A, Notification of Sex Offender Release](#) or [DSHS 09-947, Notification of Release](#) as appropriate;
 - c. The Victim/Witness Notification Program Administrator (if applicable);
 - d. The chief of police of the city, sheriff of the county, the Washington State Patrol, and the tribal law enforcement agency (if applicable) in which the client resided immediately before commitment as a sexually violent predator.
2. When the client is apprehended or returned, notify the same agencies and persons as soon as possible, but in any event no later than the next working day following the apprehension or return.

D. Record of Notification

Each DSHS facility with jurisdiction over the client must keep records of notifications made. The records must include:

1. Date and circumstances under which notification was made;
2. Names of agencies and individuals notified, and relationship to client; and

3. The information that was released.

E. Notice to Client

Upon admission, during custody, or while a client is confined for evaluation, the department must advise the client of the department's legal obligation to notify law enforcement under certain conditions. The facility having jurisdiction or supervision must provide each client a written notice that includes relevant information from the following statement:

Please be advised under RCW 10.77.205, 13.40.215, 71.05.425, 71.09.220, 71.09.130, and 4.24.550, DSHS shall notify law enforcement agencies and other persons when you are placed on authorized leave, conditional release, parole, or discharge, or if you escape from, walk away from, or fail to return to the facility. You may consult your attorney for more information.

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Attachment A**

Sex Offenses and Violent Offenses

1. **Sex offense** means any of the following sex offenses as defined in [9A.44.128](#):

RCW	Crime	Classification of Crime
9A.44.040	Rape in the first degree	Class A Felony
9A.44.050	Rape in the second degree	Class A Felony
9A.44.060	Rape in the third degree	Class C Felony
9A.44.073	Rape of a child in the first degree	Class A Felony
9A.44.076	Rape of a child in the second degree	Class A Felony
9A.44.079	Rape of a child in the third degree	Class C Felony
9A.44.083	Child molestation in the first degree	Class A Felony
9A.44.086	Child molestation in the second degree	Class B Felony
9A.44.089	Child molestation in the third degree	Class C Felony
9A.44.093	Sexual misconduct with a minor in the first degree	Class C Felony
9A.44.096	Sexual misconduct with a minor in the second degree	Gross Misdemeanor
9A.44.100(1)(a.)	Indecent liberties w/out Forcible Compulsion	Class B Felony
9A.44.100(2)(b.)	Indecent liberties by Forcible Compulsion	Class A Felony
9A.44.105	Sexually violating human remains	Class C Felony
9A.44.115	Voyeurism	Class C Felony
9A.64.020	Incest	Class B Felony
9.68A.040	Sexual exploitation of a minor	Class B Felony
9.68A.050	Dealing in depictions of minor engaged in sexually explicit conduct	Class C Felony
9.68A.060	Sending, bringing into state depictions of minor engaged in sexually explicit conduct	Class C Felony
9.68A.070(1)(b)	Possession of depictions of minor engaged in sexually explicit conduct in the first degree	Class B Felony
9.68A.070(2)(b)	Possession of depictions of minor engaged in sexually explicit conduct in the second degree	Class C Felony

9.68A.090	Communication with minor for immoral purposes If it is the offender's first sex related offense it is a Gross Misdemeanor . However, the person who communicates with a minor for immoral purposes is guilty of a Class C Felony, if the person has previously been convicted under this section or of a felony sexual offense under Chapters 9.68A, 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or any other state.	Gross Misdemeanor / Class C Felony
9.68A.100	Commercial sexual abuse of a minor	Class B Felony
9.68A.101	Promoting sexual abuse of a minor	Class A Felony
9.68A.102	Promoting travel for commercial sexual abuse of a minor	Class C Felony

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[9A.28.020](#)

Criminal Attempt

An attempt to commit a crime is a:

- a. **Class A felony** when the crime attempted is child molestation in the first degree, indecent liberties by forcible compulsion, rape in the first degree, rape in the second degree, rape of a child in the first degree, or rape of a child in the second degree;
- b. **Class B felony** when the crime attempted is a class A felony other than an offense listed in (a) of this subsection;
- c. **Class C felony** when the crime attempted is a class B felony;
- d. **Gross misdemeanor** when the crime attempted is a class C Felony;
- e. **Misdemeanor** when the crime attempted is a gross misdemeanor or misdemeanor.

[9A.28.030](#)

Criminal Solicitation

Criminal solicitation shall be punished in the same manner as Criminal Attempt under RCW [9A.28.020](#).

[9A.28.040](#)

Criminal Conspiracy to commit any of the crimes listed as qualifying as sex offense crimes.

Criminal conspiracy is a:

- (a) **Class B felony** when an object of the conspiratorial agreement is a class A felony;
- (b) **Class C felony** when an object of the conspiratorial agreement is a class B felony;
- (c) **Gross misdemeanor** when an object of the conspiratorial agreement is a class C felony;
- (d) **Misdemeanor** when an object of the conspiratorial agreement is a gross misdemeanor or misdemeanor.

[9.94A.835](#)

A felony with a finding of sexual motivation.

"**Sexual motivation**" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

13.40.135 **Sexual motivation special allegation** as “when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably consistent defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact-finder.”

- a. Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense.
- b. Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense listed.

2. **Kidnapping offense** means any of the following offenses as defined in RCW [9A.40](#) where the victim is a minor (17 and under) and the offender is not the minor's parent:

RCW	CRIME	Classification of Crime
9A.40.020	Kidnapping in the first degree	Class A Felony
9A.40.030	Kidnapping in the second degree	Class B Felony
9A.40.040	Unlawful imprisonment	Class C Felony
9A.28	Any offense that is a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a kidnapping offense as identified in this section B.II.; or Any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a kidnapping offense as identified in this section B.II.	

Note: **Luring** ([9A.40.090](#)) is a Class C Felony, but is not a registerable offense.

3. **Felony harassment (including stalking)** means any of the following offenses as defined in RCW 9A.46.060:

RCW	CRIME	Classification of Crime
9A.46.020	Harassment	Class C Felony
9A.36.080	Malicious harassment	Class C Felony
9.61.230	Telephone harassment	Class C Felony
9A.36.011	Assault in the first degree	Class A Felony
9A.36.120	Assault of a child in the first degree	Class A Felony

9A.36.021	Assault in the second degree	Class B Felony
	Assault in the second degree with sexual motivation	Class A Felony
9A.36.130	Assault of a child in the second degree	Class C Felony
9A.56.120	Extortion in the first degree	Class B Felony
9A.56.130	Extortion in the second degree	Class C Felony
9A.52.020	Burglary in the first degree	Class A Felony
9A.52.030	Burglary in the second degree	Class B Felony
9A.48.070	Malicious mischief in the first degree	Class B Felony
9A.48.080	Malicious mischief in the second degree	Class C Felony
9A.40.020	Kidnapping in the first degree	Class A Felony
9A.40.030	Kidnapping in the second degree	Class B Felony
	Kidnapping in the second degree with sexual motivation	Class A Felony
9A.40.040	Unlawful imprisonment	Class C Felony
9A.44.040	Rape in the first degree	Class A Felony
9A.44.050	Rape in the second degree	Class A Felony
9A.44.060	Rape in the third degree	Class C Felony
9A.44.100(a)	Indecent liberties by forcible compulsion	Class A Felony
9A.44.100	Indecent liberties	Class B Felony
9A.44.073	Rape of a child in the first degree	Class A Felony
9A.44.076	Rape of a child in the second degree	Class A Felony
9A.44.079	Rape of a child in the third degree	Class C Felony
9A.44.083	Child molestation in the first degree	Class A Felony
9A.44.086	Child molestation in the second degree	Class B Felony
9A.44.089	Child molestation in the third degree	Class C Felony
9A.46.110	Stalking	G/M or Class C
9.61.260	Cyberstalking	G/M or Class C
9A.52.025	Residential burglary	Class B Felony
	Violation of a temporary or permanent protective order issued pursuant to Chapters 9A.46 , 10.14 , 10.99 , 26.09 , or 26.50 RCW.	
9A.49.020	Unlawful discharge of a laser in the first degree	Class C Felony

4. **Violent offense** means any of the following offenses as defined in RCW [9.94A.030](#) (55). Any felony defined under any law as a Class A felony or an attempt to commit a Class A felony; or Criminal solicitation of or criminal conspiracy to commit a Class A Felony; and

RCW	CRIME	Classification of Crime
9A.32.060	Manslaughter in the first degree	Class B Felony
9A.32.070	Manslaughter in the second degree	Class B Felony
9A.44.100(a)	Indecent liberties if committed by forcible compulsion	Class A Felony
9A.40.030	Kidnapping in the second degree	Class B Felony
9A.48.030	Arson in the second degree	Class B Felony
9A.36.021	Assault in the second degree	Class B Felony
9A.36.130	Assault of a child in the second degree	Class B Felony
9A.56.120	Extortion in the first degree	Class B Felony
9A.56.210	Robbery in the second degree	Class B Felony
9A.36.045	Drive-by shooting	Class B Felony
46.61.522	Vehicular assault , when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner.	Class B Felony
46.61.520	Vehicular homicide , when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 , or by the operation of any vehicle in a reckless manner.	Class A Felony

*Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a **violent offense** in a. of this subsection; or*

*Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a **violent offense** under a. or b. of this subsection ([RCW 9.94A.030](#)).*

DSHS Administrative Policy 8.06 Attachment B

Victim/Witness Notification Protocol For State Hospitals Who is to be Notified

The DSHS V/W Program Administrator makes the decision on who qualifies to enroll for notification. The V/W Program receives enrollment forms from victims or witnesses who would like notification and/or whom the Prosecutor's office has referred to DSHS. The decision is based on strict criteria defined in [RCW 71.05.425\(1\)\(b\)](#), [RCW 10.77.205\(1\)\(b\)](#) and [RCW 71.05.390\(10\)](#). DSHS employees, with a need to be notified, may enroll in the program. In addition, the V/W Program continues notification for any enrollees who were being notified about an offender who had been under the authority of a Department of Corrections facility and upon release gets directly committed to one of the state hospitals.

When to Notify

1. **For patients committed under Chapter 10.77 RCW**, the V/W Program requires a 35 day notice prior to any "less restrictive placement." The RCW requires 30 days notice to the victim/witness prior to unescorted furloughs, conditional release, or final discharge. The state hospitals must provide notification to the V/W Program 35 days before any hearing that may possibly result in immediate (or possibly less than 30 days) "less restrictive movement." Immediate notice of the outcome of those hearings to the V/W Program is required. Each state hospital has a liaison to the V/W Program as a point of contact. Hospital employees should always notify their liaison, who will ensure that the required notifications take place.
2. At Western State Hospital (WSH), patients who are conditionally released under Chapter 10.77 RCW to the hospital's Community Program, and/or move from the Community Program into the community, an additional 35 day notice to the V/W Program is required since this is considered a less restrictive placement.
3. A 35 day notification prior to a patient receiving a final discharge is required (end of WSH/ESH legal authority). For patients who are in the state hospitals for restoration of competency, notification should be made as soon as possible when the patient is to be transferred back to jail, and/or is returned to the hospital from jail.
4. For patients committed under Chapter 71.05 RCW, a 35 day notice is required for Less Restrictive Alternative (LRA), civil Conditional Release (CR) placements, or final discharge. If a patient is returned to the state hospital from the LRA/CR, notify the V/W Program as soon as possible. If the patient is revoked at that point, a 35 day notice to the V/W Program will be required when the patient is either sent out again on a LRA/CR, or prior to final discharge.

5. **For patients committed under Chapters 71.05 or 10.77 RCW**, escapes and unauthorized leaves require immediate notification to the V/W Program, as does the patient's return from escape or unauthorized leave status. This means 24 hours/day, 7 days/week. The state hospital liaisons have 24/7 contact information for the V/W Program designee.

When do notification requirements end?

For a patient committed under Chapter 10.77 RCW, the notification requirement ends at the sentence maximum date or at the point of final discharge, when the court ends legal authority. Again, this requires a 35 day prior notification.

For patients committed under Chapter 71.05 RCW (including Chapter 10.77 RCW conversions), notification requirements end at final discharge or the final expiration of any LRA/CR while residing in a DSHS facility. If the patient is revoked back to the state hospital, notification requirements continue until final discharge or the patient leaves on a LRA/CR and remains out of the hospital until that LRA order expires. While on a LRA/CR to the community, notification is limited to notice of the expiration of the LRA/CR or if the patient is returned to the hospital for revocation.

When considering a patient for voluntary status, notification to the V/W Program should be made 35 days prior to having the voluntary commitment agreement signed. If a patient is dismissed by the court and subsequently signs as voluntary, immediate notification must be made. In either case, the program will notify the victim/witness of this change in legal status and clarify that once the patient signs "voluntary," notification will only be made at the point the patient is discharged and that a discharge can occur at any time.

When patients with V/W notification requirements are admitted under Chapter [71.05 RCW](#), the V/W Program sends a letter to the victim/witness notifying them that the patient will have the ability to earn unescorted authorized leaves and they will not be notified of each individual leave.