

Sex Offender Law & Policy in Washington

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Part One: **Sex Offender Sentencing**



Introduction

- In 1981, the legislature passed the Sentencing Reform Act (SRA) which imposed determinate sentencing for offenders, including sex offenders, who committed a crime on or after July 1, 1984.
- The SRA also authorized the Special Sex Offender Sentencing Alternative (SSOSA) as an alternative sentence.

Introduction

Determinate sentencing is still the basis of sex offender sentencing in Washington. However, several law changes since the SRA have strengthened Washington's response to sex offenders:

- 1990 – Community Protection Act
- 1993 – Three Strikes law
- 1996 – Two Strikes law
- 2001 – Determinate-Plus Sentencing
- 2006 – 25 yr. Minimum Term for Determinate-Plus Offenders Under Certain Circumstances.

Introduction

- The ex post facto clause of the federal and state constitutions prohibit the retroactive application of laws that would impose a greater criminal penalty for crimes committed before the law took effect.
- For this reason, harsher penalties for sex offender laws will only apply to crimes committed after a law takes effect.
- Note – this concept applies to the retroactive application of laws that would invoke punishment. The courts have specifically found that registration requirements do not constitute punishment.

Determinate Sentencing

Under determinate sentencing, the court must sentence an offender to a specific number of years within a standard range.

The standard range is determined by referencing a sentencing grid using the offender's criminal history score and a rank based on the seriousness level of the crime.

Determinate Sentencing

- The legislature has assigned seriousness levels to most felonies in RCW 9.94A.515.
- An offender's offender score measures his or her criminal history.
 - In general, one prior offense = one point
 - Special scoring applies to certain offenses
 - Some types of offenses (non-violent juvenile) may only count for ½
 - Some offenses (violent or serious violent) may be double or triple scored

SENTENCING GRID FOR CRIMES COMMITTED AFTER JULY 24, 1999										
Seriousness Level	Offender Score									
	0	1	2	3	4	5	6	7	8	9+
Σ	5y 51-68	5y 6m 57-75	6y 62-82	6y 6m 67-89	7y 72-96	7y 6m 77-102	9y 6m 98-130	10y 6m 108-144	12y 6m 129-171	14y 6m 149-198
IX	3y 31-41	3y 6m 36-48	4y 41-54	4y 6m 46-61	5y 51-68	5y 6m 57-75	7y 6m 77-102	8y 6m 87-116	10y 6m 108-144	12y 6m 129-171
VIII	2y 21-27	2y 6m 26-34	3y 31-41	3y 6m 36-48	4y 41-54	5y 6m 57-75	6y 6m 67-89	7y 6m 77-102	8y 6m 87-116	10y 6m 108-144

Special Sex Offender Sentencing Alternative

The Special Sex Offender Sentencing Alternative was adopted in 1984 as an alternative sentence.

A SSOSA sentence consists of:

- a suspended sentence;
- incarceration for up to 12 months;
- treatment for up to 5 years; and
- a term of community custody.

Special Sex Offender Sentencing Alternative

- Prior to 2004, an offender was eligible for SSOSA if:
 - The offender was convicted of a sex offense other than Rape 1 or Rape 2;
 - The offender had no prior convictions for felony sex offenses in this or any other state; and
 - The standard sentence range for the offense includes the possibility of confinement for less than 11 years.

Special Sex Offender Sentencing Alternative

- After 2004, in order for an offender to be eligible for a SSOSA, the following criteria also apply:
 - The offender has no prior violent offenses within five years of the current offense;
 - The current offense did not cause substantial bodily harm to the victim; and
 - The offender has an established relationship or connection to the victim.
 - The victim's opinion must be given great weight in considering whether to grant a SSOSA.

Community Protection Act

In 1990, the Community Protection Act made several changes to sex offender sentencing laws and most notably created the first sex offender registration and notification law in the country.

Sentencing law changes:

- Increased statutory maximum prison sentences for sex offenses;
- Increased penalties for crimes committed with sexual motivation;
- Reduced amount of earned early release time that could be earned by a sex offender;

Community Protection Act

Civil commitment of sexually violent predators.

- Only sex offenders who are found beyond a reasonable doubt to meet the legal definition of a sexually violent predator may be civilly committed.
- A sexually violent predator is defined as:
 - A person who has been convicted of, found not guilty by reason of insanity, or found to be incompetent to stand trial for a crime of sexual violence; and
 - Suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory acts of sexual violence if not confined to a secure facility.

Community Protection Act

Civil Commitment (continued)

- Sexually violent predators are committed to the custody of DSHS. Most are confined at the Special Commitment Center on McNeil Island.
- By law, the state must provide continuing treatment to offenders who have been civilly committed and offenders are entitled to an annual evaluation hearing.
- Currently, 261 sex offenders are committed to a Special Commitment Center in Washington. 16 offenders have been ordered moved to less restrictive alternatives.

Two and Three Strikes Laws

- In 1993, the voters passed Initiative 593, making certain felonies a “strike” under a new “three-strikes” law that requires a life sentence without possibility of release upon conviction of the third strike.
- In 1996, the legislature passed a “two-strikes” law to impose a life sentence without the possibility of release on an offender convicted of two or more serious sex crimes.

Two and Three Strikes Laws

➤ Three Strikes:

- 292 offenders have been sentenced under the three-strikes law.*
 - 77 offenders have a sex offense as one of their three strikes.

➤ Two Strikes:

- 67 offenders have been sentenced under the two-strikes law.*
 - 64% with a current child sex crime,
 - 26% with a current adult sex crime, and
 - 10% with a current other sex crime.

*As reported by the Sentencing Guidelines Commission as of March 2007.

Determinate-Plus Sentencing

In 2001, the legislature added determinate-plus sentencing for certain sex offenders. Determinate-plus offenders are sentenced to both a **minimum** and a **maximum** sentence.

Determinate-Plus Sentencing

- The minimum term is generally equal to the term under the standard range in the sentencing grid.
- The maximum term is the statutory maximum sentence for the crime:
 - Life for Class A felonies
 - 10 years for Class B felonies
 - 5 years for Class C felonies

Determinate Plus Sentencing

- A determinate-plus offender is subject to the jurisdiction of the Indeterminate Sentence Review Board (ISRB)
- Prior to the expiration of an offender's minimum term, the ISRB will evaluate the offender.
- Upon expiration of the minimum term, the ISRB must release the offender unless the offender is likelier than not to commit a sex offense.
 - If not released, ISRB must re-evaluate at least every five years.
 - If released, offender on community custody status for remainder of maximum term.

Determinate Plus Sentencing

Applies to:

- Any person convicted of a first “two-strikes” sex offense committed after September 1, 2001; and
- Any person who has a prior first “two-strikes” sex offense and who is then convicted of any other felony sex offense committed after September 1, 2001.

TWO STRIKE OFFENSES:

Rape 1 and 2

Rape of a child 1 and 2

Child molestation 1

Indecent liberties by forcible compulsion

Attempt to commit any of the above

Murder 1 and 2*

Homicide by abuse*

Kidnapping 1 and 2*

Assault/Assault of a child 1 and 2*

Burglary 1*

*If committed with sexual motivation

25-Year Minimum Sentences

- In 2006, the Legislature authorized 25-year minimum sentences for determinate plus offenses under certain circumstances:
 - When the crime is predatory and the crime is Rape of a child 1 or 2, or Child molestation 1. “Predatory” is defined as situations where the perpetrator:
 - Was unknown to the child 24 hours before the offense;
 - Established the relationship with the child for the purpose of participating in the sexual conduct;
 - Has a special relationship with the child such as teacher/student, coach/athlete, or church elder/member.

25-Year Minimum Sentences

- 25-Year Sentences Authorized (cont.)
 - When the victim is under 15 or a vulnerable adult and the crime is Indecent liberties with forcible compulsion, Kidnapping 1 with sexual motivation, Rape 1 or Rape 2 with forcible compulsion.
- The prosecutor must make a special allegation that must be individually proven for the enhanced sentence to apply.

Part Two: Sex Offenders Released to the Community



Community Custody

- Community Custody is that portion of an offender's sentence spent in the community under the supervision of DOC.
- DOC required to supervise all sex offenders on community custody.

Community Custody

- Mandatory terms of community custody for sex offenses:
 - If incarceration greater than 1 year, court must impose term of 36-48 months (different for determinate-plus offenders)
 - If incarceration less than 1 year, court authorized to impose term up to 1 year.

Community Custody

- Conditions of community custody courts must impose:
 - Reporting to community corrections officer
 - Working at DOC-approved education, employment, or community restitution;
 - Refraining from controlled substances;
 - Paying supervision fees;
 - Obtaining residence approval from DOC.

Community Custody

- Conditions of community custody courts may impose:
 - Geographic boundary restrictions;
 - Refraining from contact with victim;
 - Refraining from alcohol.
- DOC may set other conditions, including electronic monitoring.

Community Custody

- DOC is prohibited from approving the residence of a sex offender whose victim was a minor if the residence:
 - Includes the minor victim or a child of similar age likely to be put at risk; or
 - Is near the victim's residence.
- DOC is authorized to reject residences near schools, child care centers, or facilities where children of similar age or circumstance to the victim might be present.

Community Custody

➤ Community Protection Zones

- An offender may not reside within 880 feet of a public or private school if the offender:
 - Was convicted after July 2005 of a first "two strikes" sex offense against a minor victim; and
 - Is on community custody.

Community Notification

- Process by which members of the public are informed about sex offender and kidnapping offenders living in the community.
- In 1990, Washington became the first state to authorize the release of information regarding sex offenders to the public.
- The amount of notification provided about an offender is dependent on the level of risk that the offender poses to the community at large.

Community Notification

There are 3 risk level classifications:

- **Risk Level 1** offenders present the lowest risk to the community. Likelihood to re-offend is considered minimal. Many are first-time offenders. They usually know, live with, or are related to their victims.
- **Risk Level 2** offenders present a moderate risk to the community. Higher likelihood of re-offending than level 1 offenders. Considered a higher risk to re-offend because of the nature of their previous crime(s) and lifestyle (drug and alcohol abuse and other criminal activity).

Community Notification

- **Risk Level 3** offenders potentially pose a higher risk to the community and are a threat to re-offend if given the opportunity. Most have prior sex crime convictions as well as other criminal convictions. Their lifestyles and choices place them in this classification. Some have predatory characteristics and may seek out victims. These offenders commonly have clear indications of a personality disorder.

Community Notification

- Presumptive risk level is set by the End of Sentence Review Committee (ESRC). ESRC also notifies local law enforcement of sex offender's pending release.
- Local sheriff where offender registers may change risk level based on new information or information that was not available to the ESRC.

Community Notification

Information provided to the public:

- Generally includes the offender's name, relevant criminal convictions, risk level, address by hundred block, physical description and photograph.

Type of notification:

- **Risk level 1** - information is shared with other law enforcement agencies. Upon request, may be released to victims or witnesses to the offense and to community members who live near the residence where the offender resides.

Community Notification

What type of notification is provided (continued)?

- **Risk level 2** - information may be released to schools, day care centers, other organizations that serve primarily children, women, or vulnerable adults, and neighbors in community groups near offender's residence. Information may also be generally released to the public.
- **Risk level 3** - information may be generally released to the public. Also includes news media releases.

Registration

- A person convicted of a sex or kidnapping offense must register with the county sheriff of the county in which he or she resides and must provide a variety of information including:
 - Name, address, date and place of birth, place of employment, crime of conviction, date and place of conviction, aliases, social security number, photograph, and fingerprints.
 - If he or she is enrolled in public or private school or an institution of higher education.

Registration

- Homeless offenders must report to the county sheriff once a week.
- Level 2 and 3 offenders (who are not homeless) must report to the county sheriff every 90 days.
- Last year, the legislature increased the penalties for failure to register, which may result in a 0-12 month sentence for a first offense and prison time for subsequent offenses.

Part Three

2006 Legislation



2006 Legislation

A Sex Offender Task Force met during the 2005 interim and recommended several law changes to address sex offenders. Over 20 pieces of legislation were passed in response to those recommendations.

2006 Legislation

➤ Sentencing

- Statute of limitations runs from date identity of suspect is established by DNA;
- Increased penalties for voyeurism, possession of child pornography, and communicating with a minor for immoral purposes;
- Sentencing enhancements for crimes committed with sexual motivation.

➤ Determinate Plus Sentencing

- The ISRB must make reasonable efforts to allow victim input when deciding to release offender;
- Imposes 25-year minimum sentences for certain determinate-plus offenders;

2006 Legislation

➤ **Community Custody**

- Authorized DOC to impose electronic monitoring for any sex offender under supervision.

➤ **Persistent Offenders**

- Adds Assault of a Child 2 to list of “two strikes” offenses.

➤ **SSOSA**

- Requires offender receiving SSOSA without a criminal trial to admit guilt of underlying crime (no Alford plea).

➤ **Civil Commitment**

- Allows law enforcement officer to arrest conditionally released sexually violent predator pursuant to request of DSHS employee.

2006 Legislation

➤ **Registration/Community Notification**

- Tightens timeframes and information to be provided for registration.
- Clarifies that any knowing non-compliance with the registration statute is a crime.
- Requires WASPC to revise model policy on registration and notification;
- Provides funding to WASPC to establish victim notification system;
- Requires level 2 and 3 sex offenders to re-register every 90 days;

2006 Legislation

➤ New Crimes

- Allows public and private facilities that provides services to children to exclude certain registered sex offenders; makes it a crime for excluded offender to remain or return to premises.

➤ Other

- Makes communications made between sexual assault victim and sexual assault advocate privileged;
- Establishes procedures for sexual assault protection orders.
- Prohibits the Dept. of Health from certifying convicted sex offenders as treatment providers;
- Codifies the Community Protection Program which provides services to persons with developmental disabilities who have demonstrated violent or sexually violent behaviors.

Part Four

Facts & Trends



Facts & Trends

- Since 1991, at the direction of the legislature, the Washington State Institute for Public Policy (WSIPP) has published over 50 reports related to sex offenders.
- WSIPP's analyses have identified key findings and trends that help guide law and policymaking in Washington.

Facts & Trends

➤ Incarceration

- Sex offenders are more likely to be given prison sentences than other types of offenders;
- On average, sex offenders are incarcerated longer than any other class of offenders except those convicted of homicide;
- In 2005, 7% of prison admissions were for sex offenses.
- In 1986, about 30% of the sex offense sentences were for child sex crimes, compared to 80% in 2004.

Facts & Trends

➤ Determinate Plus Offenders

- 45% of the sex offenders admitted to prison in 2006 are determinate plus offenders.
- Approximately 35% of all incarcerated sex offenders are determinate plus offenders.
- Between 2003 and 2007, 80 determinate plus offenders have been released by the ISRB, 31 of which were deported or are pending deportation.

Facts & Trends

➤ SSOSA

- The number of sex offenders with a SSOSA sentence reached a peak of 420 offenders in 1990, and has declined to approximately 250 per year since 1997.
- As a percentage of all sex offenders sentenced, SSOSA's have decreased from 40% in 1986 to 15% in 2004;
- The five-year felony sex and violent felony recidivism rates for offenders granted a SSOSA have remained consistently lower than the rates for other types of sex offenders (less than 3% for felony sex recidivism and 4 percent for violent felony recidivism).

Facts & Trends

➤ SSOSA (cont.)

- In a recent study of child victims and their parents:
 - Most victims and their parents expressed satisfaction with the case whether or not a SSOSA was granted.
 - The child victims expressed strong support for a treatment-oriented sentence for sex offenders; in contrast, the majority of parents did not support this option.

Facts & Trends

➤ Recidivism

- When compared with other felony offenders, sex offenders have the lowest recidivism rates for felony offenses (13%) and violent felony offenses (6.7%).
- Sex offenders who victimize children have the lowest felony recidivism rates as well as the lowest sex (2.3%) and violent felony (5.7%) recidivism rates.
- Rapists have the highest sex (3.9%) and violent felony (9.5%) recidivism rates.
- The relatively low “base rate” of recidivism makes it a challenge to predict re-offending.

Facts & Trends

➤ Failure to Register

- Almost one-fifth of sex offenders required to register are convicted of failure to register;
- The percentage of sex offenders convicted of failure to register has steadily increased since 1990 when the law was established;
- Sex offenders with a conviction for failure to register have recidivism rates 50% higher than those without a conviction.

Facts & Trends

Sources:

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