

Sex Offender Registration and Classification

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The attached memo was prepared for the Office of Housing training: Selecting a Tenant Screening Agency, by Brad A. Meryhew, an attorney in private practice in Seattle who has served on the Washington Sex Offender Policy Board since 2008. The memo addresses the following topics:

A. Ineligibility of dangerous sex offenders for admission to public housing and other federally subsidized housing

B. Sex offender registration

- Lifetime registration
- Indefinite registration
- Automatically expiring registration

C. Community notification risk level classification

- Levy I, II and III notification requirements
- Offense-based classification vs. risk-based classification
- Out of state and federal convictions

D. Low risk offenders

- Juvenile offenses
- Community-based treatment – SSOSA and SODA cases
- Level I offenders

Attachments

1. Federal law related to sex offenders in federally subsidized housing
42 U.S. Code Sec 13663
24 CFR 982.553
2. Offenses requiring sex offender registration in Washington State
3. Youth who commit sex offenses, Facts and Fiction (Justice Policy Institute)
4. The negative impact of registries on you, Why are youth different from adults? (Justice Policy Institute)
5. Sex Offender Sentencing in Washington State: Special Sex Offender Sentencing Alternative Trends (Washington State Institute for Public Policy, January 2006)

LIFETIME SEX OFFENDER REGISTRATION IN WASHINGTON
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Ineligibility of dangerous sex offenders for admission to public housing.

42 U.S. Code § 13663 - Ineligibility of dangerous sex offenders for admission to public housing

(a) In general

Notwithstanding any other provision of law, an owner of federally assisted housing shall prohibit admission to such housing for any household that includes any individual who is **subject to a lifetime registration requirement under a State sex offender registration program.**

24 CFR 982.553 - Denial of admission and termination of assistance for criminals and alcohol abusers.

(2) Prohibiting admission of other criminals—

(i) Mandatory prohibition. The PHA *must* establish standards that prohibit admission to the program **if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program.** In this screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement in the State where the housing is located and in other States where the household members are known to have resided.

(ii) Permissive prohibitions.

(A) The PHA *may* prohibit admission of a household to the program if the PHA determines that any household member is currently engaged in, or has engaged in during a reasonable time before the admission:

(1) Drug-related criminal activity;

(2) Violent criminal activity;

(3) Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or

(4) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent).

42 USC 13661 also permits housing authorities to deny people convicted of criminal activity that would “threaten the health, safety, or right to peaceful enjoyment of the premises of other residents.”

42 U.S. Code § 13661 - Screening of applicants for federally assisted housing.

(c) Authority to deny admission to criminal offenders

Except as provided in subsections (a) and (b) of this section and in addition to any other authority to screen applicants, in selecting among applicants for admission to the program or to federally assisted housing, if the public housing agency or owner of such housing (as applicable) determines that an applicant or any member of the applicant’s household is or was, during a reasonable time preceding the date when the applicant household would otherwise be selected for admission, engaged in any drug-related or violent criminal activity or other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents, **the owner, or public housing agency employees, the public housing agency or owner may—**

- (1) deny such applicant admission to the program or to federally assisted housing; and**
- (2) after the expiration of the reasonable period beginning upon such activity, require the applicant, as a condition of admission to the program or to federally assisted housing, to submit to the public housing agency or owner evidence sufficient (as the Secretary shall by regulation provide) to ensure that the individual or individuals in the applicant’s household who engaged in criminal activity for which denial was made under paragraph (1) have not engaged in any criminal activity during such reasonable period.**

This statute authorizes admission after a specified period of time during which there was no criminal activity. For sex offenders I would recommend that agencies consider establishing a ten year waiting period.

Applicability of these statutes to Existing Participants in Housing Programs?

These statutes have been held to apply of to admissions to federally⁷ assisted housing, but not to those who are already residents and subject to a lifetime sex offender registration requirement. See *Miller v. McCormick*, 605 F.Supp. 2d 296 (2009) (holding that those subject to lifetime sex offender registration who were existing recipient’s of federally assisted housing benefits could not be terminated on that basis, and *Bonseiro v. NY Dep’t of Housing Preservation and Development*, 950 N.Y.S.2d 490 (2012).

What are the ACTUAL restrictions for Federal funded housing, applicable to HUD only or other programs e.g. HOME, LIHTC, etc.?

The statutes talk about public housing agencies as a class, and do not distinguish between individual programs. I believe these regulations apply to all federally funded housing programs.

Lifetime Registration in Washington State?

Attached to this Memorandum are Charts showing which Washington State offenses result in Lifetime Sex Offender registration, which offenses have an indefinite term of registration that can be terminated by the Court, and those that have a term of registration that will expire automatically if they avoid significant criminal convictions for ten or fifteen years. In Washington State only a small number of sex offenders are sentenced to lifetime registration, where they have no ability to be relieved of the duty to register.

RCW 9a.44.142 defines those offenses subject to Lifetime Sex Offender Registration. They are:

- (2)(a) A person may not petition for relief from registration if the person has been:
 - (i) Determined to be a sexually violent predator as defined in RCW 71.09.020;
 - (ii) Convicted as an adult of a sex offense or kidnapping offense that is a class A felony and that was committed with forcible compulsion on or after June 8, 2000.
- These are the only offenders in Washington who are given Lifetime Sex Offender Registration.

Sexually Violent Predators.

Those offenders are those determined to be a Sexually Violent Predators in civil commitment proceedings have lifetime registration regardless of when that adjudication was made.

Class A Sex offenses committed by Adults with “Forcible Compulsion”-

Forcible Compulsion is defined in RCW 9A.44.010 as:

"Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped.

Rape 1, Rape 2 and Indecent Liberties with Forcible Compulsion.

Offenders convicted as adults of Indecent Liberties with Forcible Compulsion, Rape 1 and Rape 2 committed with forcible compulsion, committed AFTER June 8, 2000, also have lifetime registration. These crimes all have the common element of “forcible compulsion,” and are the only Washington state offenses involving this element.

Rape First Degree.

Rape 1 is always committed with Forcible Compulsion, so Rape 1 will always have a lifetime registration duty if committed after June 8, 2000. However, if the date the offense was committed is prior to June 8, 2000 then a person with a Rape 1 conviction has an indefinite term of sex offender registration, but does not have lifetime sex offender registration.

Rape Second Degree and Indecent Liberties.

Rape 2 and Indecent Liberties can both be committed with “forcible compulsion” and without forcible compulsion. You will have to dig deeper into the court records to determine if this individual was convicted of an offense alleging forcible compulsion or

not. To determine if Rape 2 or Indecent Liberties are subject to Lifetime Registration there are a few considerations.

1. **Is the Conviction an Adult Offense?** Offenders convicted on any of these offenses and adjudicated in juvenile court are not subject to lifetime registration. Only those convicted for offenses committed as adults. To determine whether an offense is an adult conviction or a juvenile conviction there are a couple of tools you can use:
 - a. The Title of the Sentencing Order. Is the court's sentencing order called a Judgment and Sentence (Adult) or an Order on Disposition (Juvenile)?
 - b. The Cause Number. Does the offense have a cause number with a 1 or an 8 in the second position after the year of the offense? Juvenile offenses will have an 8, and adult offenses will have a 1. For example:
14-1-56465-8 is an adult offense.
14-8-45632-7 is a juvenile offense.

If the conviction is for an offense adjudicated in juvenile court then the person is not subject to lifetime sex offender registration and is eligible at some point to petition the Court for relief from the duty to register.

2. **Is An Offense Committed on this Date Subject to Lifetime Registration?**

You are looking for the offense date, NOT the date of sentencing or adjudication. This is the date the incident occurred, which will be in the Information and in the Plea Forms, which will be contained in the Court file. The Judicial Information System also shows you offense date. If this date is prior to June 8, 2000 then this offender has an indefinite term of registration, not a lifetime duty, and is eligible to petition the Superior Court for relief from registration once they have been in the community for ten consecutive years without committing any new disqualifying offenses.

3. **Was the Offense Committed with Forcible Compulsion?**

Rape 2 may be committed with Forcible Compulsion but also may not be. There are five other ways to commit Rape 2, which do not involve Forcible Compulsion, so you must look at the language in the Information or the Statement of Defendant on Plea of Guilty to determine if this offense was alleged to involve Forcible Compulsion.

Indecent Liberties can also be committed with or without Forcible Compulsion, so you must look closer to determine whether these offenses are subject to a lifetime registration duty. Indecent Liberties with Forcible Compulsion is a Class A Felony. Indecent Liberties without Forcible Compulsion is a Class B felony and not subject to lifetime registration. For Indecent Liberties, you must look at the Judgment and Sentence, the final Information, the Statement of Defendant on Plea of Guilty, or other court documents to determine if this offense was charged as involving Forcible Compulsion. Indecent Liberties with Forcible Compulsion is a Class A felony. This is often difficult to discern from the Judicial Information System and you must look at the Court file typically to answer this question.

Indefinite Sex Offender Registration Duty.

Offenders who are convicted of Class A sex offenses in adult or juvenile court, or who have been convicted of sex offenses on more than one occasion, have an indefinite term of registration. They are eligible to petition the Superior Court of the County where they were convicted for relief from the duty to register once they have been in the community for the requisite period of time and have not been convicted of certain new offenses.

For adult Offenders. They may petition the Superior Court for relief from the duty to register once they have made it ten consecutive years in the community without committing any new disqualifying offenses. Adult offenders must prove by clear and convincing evidence that they are sufficiently rehabilitated to be relieved of the duty to register.

For Juvenile Offenders Aged 15 or older when they committed a Class A Sex Offenses. They may petition the Superior Court from relief from the duty to register once they have been in the community for **five consecutive years** with no new sex or kidnapping or failure to register offenses. Juvenile offenders must establish by a preponderance of the evidence that they are sufficient rehabilitated to be relieved of the duty to register.

For all Other Juvenile Offenders. For those under 15 at the time they commit their offense, and those convicted of offenses less serious than a Class A, these offenders may petition the Superior Court for relief from registration once they have been in the community **for two consecutive years** without committing any new sex, kidnap or failure to register offenses.

Automatically Expiring Terms of Sex Offender Registration.

Individuals convicted of Class B, Class C and gross misdemeanor sex offenses will have their duty to register expire automatically once they have been in the community for a specified period of years with no new convictions for what are termed "disqualifying offenses." A disqualifying offense is defined in RCW 9A.44.138 as:

"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.

For Class B offenders the Duty To Register expires once they have been in the community for fifteen consecutive years with no new convictions for disqualifying offenses. For Class C and gross misdemeanor offenders, the Duty to Register expires once they have been in the community for ten consecutive years with no new convictions for disqualifying offenses.

"In the community" means the period of time since the person's last incarceration for this offense or any violations of this offense, or the date of sentencing, whichever is later. So look for the date the person was released from jail in order to calculate if their term has expired. If the term has expired the person just needs to write a letter to the Sheriff in the county where they are registered and they will be taken off the list.

COMMUNITY NOTIFICATION RISK LEVEL CLASSIFICATION

What determines the sex offenders' "level", how is level relevant to potential recidivism risk?

Offenders are generally classified by state and federal law based upon their perceived risk to the community for the purposes of setting their community notification risk level. A Level I offender is considered the least likely to pose a risk to the community at large. Level I offenders do not appear on the state website or public registry and neighbors of these offenders do not receive flyers or any other communications when they move into the community. A search for these Level I offenders on the state or any county web sites will not reveal the names of these offenders unless they are homeless or currently out of compliance with the sex offender registration laws.

Most Level I Offenders are Not Publicized through Community Notification

Individual community members may request information about sex offenders in their neighborhood, and in those cases Level I offenders are released in response to specific requests as well as Level II and III offenders. So even if a Level I offender is not on the state web site, and no flyers are mailed to neighbors, there is still a mechanism for those neighbors to learn that the person required to register lives close to them.

Level II and 3 offenders are publicized through Community Notification

Level II offenders are considered to be at moderate risk to the community and do appear on the public web sites and their neighbors typically, but not always, receive a flyer announcing their presence in the community. Level III offenders are considered at high risk to the community, and a larger area of neighbors receive flyers when they enter a community.

The Washington Association of Sheriffs and Police Chiefs Model Policy for Sex Offender Registration

Level I—Low risk to the community

- Offense is committed in a family setting
- Overall the offender is a low risk to the general public

Level II—Moderate risk to the community

- Crime occurred outside the family
- Victim was not a blood relative
- Offender may or may not have successfully completed a treatment program
- Commission of multiple offenses
- Offender poses a risk to the general community who resides in the immediate proximity to the offender
- Offender has predatory tendencies exhibited by involving themselves into families or communities providing opportunity to groom victims.

Level III—High risk to the community

Offender exhibits predatory tendencies as defined in RCW 71.09.020

- Criminal history of repeated sexual offenses/acts may or may not have included violence
- Offender has not completed a treatment program
- Criminal acts directed towards strangers and the general public
- Offender expresses intentions and/or desires to continue committing offenses
- Assessed to meet violent sexual predator criteria
- Criminal acts directed towards individuals with whom a relationship has been established or promoted for the primary purpose of victimization

Offense Based Classification v. Risk Based Classification

Under the Adam Walsh Act and some state laws an offender's community notification risk level classification is based upon the offense they were convicted of. The more serious the offense as classified by the law, the higher the level. Washington risk levels, however, are based on an assessment of that offender's individual risk, which may not correlate with the actual offense of conviction. Washington policymakers have rejected adopting the offense based system of setting levels, and in doing so have refused to become compliant with most of the requirements of the Adam Walsh Act.

Out of State and Federal Convictions

Every State in the United States has its own laws requiring sex offender registration. Under Washington law, any person with an out of state or federal or Indian tribal conviction for an offense that required registration in the jurisdiction that convicted them, or is comparable to a Washington offense that requires registration, may petition the Superior Court in their County of Residence for relief from registration once they have been in the community for 15 years without committing any new disqualifying offenses. Every state has different laws with subtle but important differences. About half of the States have adopted some or all of the Adam Walsh Act SORNA rules, which result in far longer and harsher periods of registration than Washington law required. Nonetheless, those offenders who move to Washington may be relieved of the duty to register after a period of time, and have indefinite rather than lifetime registration.

Are there "low hanging fruit" for admissions regarding sex offenders, Romeo and Juliet situations, cases where the perpetrator was a minor?

Juvenile Offenses.

We know that juvenile offenders are very different from adult offenders. They have very low rates of recidivism or reoffense, particularly if they have participated in specialized sex offender treatment. As they age they tend to grow out of these behaviors, yet they are treated like they committed their offense as an adult.

SSOSA and SODA cases.

Washington has the Special Sexual Offender Sentencing Alternative for adults and the Special Sexual Offender Dispositional Alternative for juvenile offenders who are low risk and familial offenders. This is a community based treatment option rather than a long prison sentence. These offenders are carefully and closely supervised, involved in regular polygraphs to monitor their compliance, and have the lowest rates of reoffense of any felons in Washington.

Level I Offenders.

Those offenders deemed at low risk and set as Level I offenders are the least likely to commit another offense or to have problems in the community.

42 U.S. Code § 13663 - Ineligibility of dangerous sex offenders for admission to public housing

(a) In general

Notwithstanding any other provision of law, an owner of federally assisted housing shall prohibit admission to such housing for any household that includes any individual who is subject to a lifetime registration requirement under a State sex offender registration program.

(b) Obtaining information

As provided in regulations issued by the Secretary to carry out this section—

(1) a public housing agency shall carry out criminal history background checks on applicants for federally assisted housing and make further inquiry with State and local agencies as necessary to determine whether an applicant for federally assisted housing is subject to a lifetime registration requirement under a State sex offender registration program; and

(2) State and local agencies responsible for the collection or maintenance of criminal history record information or information on persons required to register as sex offenders shall comply with requests of public housing agencies for information pursuant to this section.

(c) Requests by owners for PHAs to obtain information

A public housing agency may take any action under subsection (b) of this section regarding applicants for, or tenants of, federally assisted housing other than federally assisted housing described in subparagraph (A) or (B) of section 13664 (a)(2) of this title, but only if the housing is located within the jurisdiction of the agency and the owner of such housing has requested that the agency take such action on behalf of the owner. Upon such a request by the owner, the agency shall take the action requested under subsection (b) of this section. The agency may not make any information obtained pursuant to the action under subsection (b) of this section available to the owner but shall perform determinations for the owner regarding screening, lease enforcement, and eviction based on criteria supplied by the owner.

(d) Opportunity to dispute

Before an adverse action is taken with respect to an applicant for federally assisted housing on the basis that an individual is subject to a lifetime registration requirement under a State sex offender registration program, the public housing agency obtaining the record shall provide the tenant or applicant with a copy of the registration information and an opportunity to dispute the accuracy and relevance of that information.

(e) Fee

A public housing agency may be charged a reasonable fee for taking actions under subsection (b) of this section. In the case of a public housing agency taking actions on behalf of another owner of federally assisted housing pursuant to subsection (c) of this section, the agency may pass such fee on to the owner making the request and may charge an additional reasonable fee for making the request on behalf of the owner.

(f) Records management

Each public housing agency shall establish and implement a system of records management that ensures that any criminal record or information regarding a lifetime registration requirement under a State sex offender registration program that is obtained under this section by the public housing agency is—

- (1) maintained confidentially;
- (2) not misused or improperly disseminated; and
- (3) destroyed, once the purpose for which the record was requested has been accomplished.

24 CFR 982.553 - Denial of admission and termination of assistance for criminals and alcohol abusers.

§ 982.553 Denial of admission and termination of assistance for criminals and alcohol abusers.

(a) *Denial of admission—*

(1) *Prohibiting admission of drug criminals.*

(i) The PHA *must* prohibit admission to the program of an applicant for three years from the date of eviction if a household member has been evicted from federally assisted housing for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:

(A) That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or

(B) That the circumstances leading to eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(ii) The PHA must establish standards that prohibit admission if:

(A) The PHA determines that any household member is currently engaging in illegal use of a drug;

(B) The PHA determines that it has reasonable cause to believe that a household member's illegal drug use or a pattern of illegal drug use may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents; or

(C) Any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) *Prohibiting admission of other criminals—(i) Mandatory prohibition.* The PHA *must* establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In this screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement in the State where the housing is located and in other States where the household members are known to have resided.

(ii) *Permissive prohibitions.*

(A) The PHA *may* prohibit admission of a household to the program if the PHA determines that any household member is currently engaged in, or has engaged in during a reasonable time before the admission:

(1) Drug-related criminal activity;

(2) Violent criminal activity;

(3) Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or

(4) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent).

(B) The PHA may establish a period before the admission decision during which an applicant must not to have engaged in the activities specified in paragraph (a)(2)(i) of this section (“reasonable time”).

(C) If the PHA previously denied admission to an applicant because a member of the household engaged in criminal activity, the PHA may reconsider the applicant if the PHA has sufficient evidence that the members of the household are not currently engaged in, and have not engaged in, such criminal activity during a reasonable period, as determined by the PHA, before the admission decision.

(1) The PHA would have “sufficient evidence” if the household member submitted a certification that she or he is not currently engaged in and has not engaged in such criminal activity during the specified period and provided supporting information from such sources as a probation officer, a landlord, neighbors, social service agency workers and criminal records, which the PHA verified.

(2) For purposes of this section, a household member is “currently engaged in” criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current.

(3) *Prohibiting admission of alcohol abusers.* The PHA must establish standards that prohibit admission to the program if the PHA determines that it has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(b) *Terminating assistance—*

(1) *Terminating assistance for drug criminals.*

(i) The PHA *must* establish standards that allow the PHA to terminate assistance for a family under the program if the PHA determines that:

(A) Any household member is currently engaged in any illegal use of a drug; or

(B) A pattern of illegal use of a drug by any household member interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(ii) The PHA *must* immediately terminate assistance for a family under the program if the PHA determines that any member of the household has ever been convicted of drug-

related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(iii) The PHA must establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any family member has violated the family's obligation under § 982.551 not to engage in any drug-related criminal activity.

(2) *Terminating assistance for other criminals.* The PHA must establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any household member has violated the family's obligation under § 982.551 not to engage in violent criminal activity.

(3) *Terminating assistance for alcohol abusers.* The PHA must establish standards that allow termination of assistance for a family if the PHA determines that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(c) *Evidence of criminal activity.* The PHA may terminate assistance for criminal activity by a household member as authorized in this section if the PHA determines, based on a preponderance of the evidence, that the household member has engaged in the activity, regardless of whether the household member has been arrested or convicted for such activity.

(d) *Use of criminal record—*

(1) *Denial.* If a PHA proposes to deny admission for criminal activity as shown by a criminal record, the PHA must provide the subject of the record and the applicant with a copy of the criminal record. The PHA must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with § 982.554. (See part 5, subpart J for provision concerning access to criminal records.)

(2) *Termination of assistance.* If a PHA proposes to terminate assistance for criminal activity as shown by a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the tenant with a copy of the criminal record. The PHA must give the family an opportunity to dispute the accuracy and relevance of that record in accordance with § 982.555.

(3) *Cost of obtaining criminal record.* The PHA may not pass along to the tenant the costs of a criminal records check.

(e) In cases of criminal activity related to domestic violence, dating violence, or stalking, the victim protections of 24 CFR part 5, subpart L, apply.

[66 FR 28805, May 24, 2001, as amended at 73 FR 72345, Nov. 28, 2008; 75 FR 66264, Oct. 27, 2010]

OFFENSES REQUIRING SEX OFFENDER REGISTRATION

Sex Offender Registration (9A.44.140)

For further information on duration of registration and relief from registration, refer to RCW 9A.44.140 through RCW 9A.44.143. If the offender is required to register for a federal or out-of-state conviction, when the offender has spent 15 consecutive years in the community without being convicted of a disqualifying offense during that time, the offender may petition the court for relief from registration.

LIFETIME REGISTRATION			
Statute (RCW)	Offense	Class	Seriousness Level
Chapter 71.09 RCW	Determined to be a Sexually Violent Predator	NA	NA
9A.44.100(2)(b)	Indecent Liberties - With Forcible Compulsion	A	X
9A.28.020(3)(a)	Indecent Liberties - With Forcible Compulsion - Criminal Attempt	A	X
9A.28.030(2)	Indecent Liberties - With Forcible Compulsion - Criminal Solicitation	A	X
9A.44.040	Rape 1	A	XII
9A.28.020(3)(a)	Rape 1 - Criminal Attempt	A	XII
9A.28.030(2)	Rape 1 - Criminal Solicitation	A	XII
9A.44.050	Rape 2 (With Forcible Compulsion)	A	XI
9A.28.020(3)(a)	Rape 2 (With Forcible Compulsion) - Criminal Attempt	A	XI
9A.28.030(2)	Rape 2 (With Forcible Compulsion) - Criminal Solicitation	A	XI

ONLY CRIMINAL OFFENSES COMMITTED AFTER JUNE 8, 2000 ARE SUBJECT TO LIFETIME REGISTRATION.

SEXUALLY VIOLENT PREDATORS ARE SUBJECT TO LIFETIME REGISTRATION REGARDLESS OF THE DATE OF THEIR OFFENSES OR ADJUDICATION.

INDEFINITE REGISTRATION

Statute (RCW)	Offense	Class	Seriousness Level
9A.36.021(2)(b)	Assault 2 With a Finding of Sexual Motivation	A	IV
9A.44.083	Child Molestation 1	A	X
9A.28.020(3)(a)	Child Molestation 1 – Criminal Attempt	A	X
9A.28.030(2)	Child Molestation 1 – Criminal Solicitation	A	X
9A.40.030(3)(b)	Kidnapping 2 With a Finding of Sexual Motivation	A	V
9.68A.101	Promoting Commercial Sexual Abuse of a Minor	A	XII
9A.44.050	Rape 2 (Without Forcible Compulsion)	A	XI
9A.28.020(3)(a)	Rape 2 (Without Forcible Compulsion) – Criminal Attempt	A	XI
9A.28.030(2)	Rape 2 (Without Forcible Compulsion) – Criminal Solicitation	A	XI
9A.44.073	Rape of a Child 1	A	XII
9A.28.020(3)(a)	Rape of a Child 1 – Criminal Attempt	A	XII
9A.28.030(2)	Rape of a Child 1 – Criminal Solicitation	A	XII
9A.44.076	Rape of a Child 2	A	XI
9A.28.020(3)(a)	Rape of a Child 2 – Criminal Attempt	A	XI
9A.28.030(2)	Rape of a Child 2 – Criminal Solicitation	A	XI

Any offense listed under RCW 9A.44.142(5)

Any sex or kidnapping offense when the defendant already has one or more prior convictions for a sex or kidnapping offense

15 YEAR REGISTRATION

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.

Statute (RCW)	Offense	Class	Seriousness Level
9A.44.086	Child Molestation 2	B	VII
9.68A.100	Commercial Sexual Abuse of a Minor	B	VIII
9.68A.050(1)	Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 1 (Effective 6/10/2010)	B	VII
9A.44.132(1)(b)	Failure to Register as a Sex Offender (Third or Subsequent Violation Committed on or After 6/10/2010)	B	II
9A.64.020(1)	Incest 1	B	VI
9A.44.100(2)(a)	Indecent Liberties - Without Forcible Compulsion	B	VII
9.68A.070(1)	Possession of Depictions of Minor Engaged in Sexually Explicit Conduct 1	B	VI
9A.88.070	Promoting Prostitution 1*	B	VIII
9.68A.060(1)	Sending, Bringing into the State Depictions of Minor Engaged in Sexually Explicit Conduct 1	B	VII
9.68A.040	Sexual Exploitation of a Minor	B	IX
9.68A.075(1)	Viewing Depictions of Minor Engaged in Sexually Explicit Conduct 1 (Effective 6/10/2010)	B	IV
No prior convictions for a sex or kidnapping offense			
Current offense is not listed in RCW 9A.44.142(5)			

10 YEAR REGISTRATION

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 fifteen consecutive years in the community without being convicted of a disqualifying offense during that time period.

Statute (RCW)	Offense	Class	Seriousness Level
9A.44.089	Child Molestation 3	C	V
9.68A.090(2)	Communication with Minor for Immoral Purposes (Subsequent Violation or Prior Sex Offense Conviction)	C	III
9A.44.196	Criminal Trespass Against Children	C	Unranked
9A.44.160	Custodial Sexual Misconduct 1	C	V
9.68A.050(2)	Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2 (Effective 6/10/2010)	C	V
9A.44.132(1)(a)	Failure to Register as a Sex Offender (Second Violation Committed on or After 6/10/2010)	C	II
9A.64.020(2)	Incest 2	C	V
9.68A.070(2)	Possession of Depictions of Minor Engaged in Sexually Explicit Conduct 2	C	IV
9A.88.080	Promoting Prostitution 2*	C	III
9.68A.102	Promoting Travel for Commercial Sexual Abuse of a Minor	C	Unranked
9A.44.060	Rape 3	C	V
9A.44.079	Rape of a Child 3	C	VI
9.68A.060(2)	Sending, Bringing into the State Depictions of Minor Engaged in Sexually Explicit Conduct 2	C	V
9A.44.093	Sexual Misconduct with a Minor 1	C	V
9A.44.105	Sexually Violating Human Remains	C	V
9.68A.075(2)	Viewing Depictions of Minor Engaged in Sexually Explicit Conduct 2 (6/10/2010)	C	Unranked
9A.44.115	Voyeurism	C	II
Violation of RCW 9.68A.090			
Violation of RCW 9A.44.096			
Attempt, solicitation or conspiracy to commit a class C sex offense			
Current offense is not listed in RCW 9A.44.142(5)			

Indecent liberties.

(1) A person is guilty of indecent liberties when he or she knowingly causes another person who is not his or her spouse to have sexual contact with him or her or another:

(a) By forcible compulsion;

(b) When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless;

(c) When the victim is a person with a developmental disability and the perpetrator is a person who is not married to the victim and who:

(i) Has supervisory authority over the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense;

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual contact occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual contact with the knowledge that the sexual contact was not for the purpose of treatment;

(e) When the victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or

(f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who:

(i) Has a significant relationship with the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense.

(2)(a) Except as provided in (b) of this subsection, indecent liberties is a class B felony.

(b) Indecent liberties by forcible compulsion is a class A felony.

RCW 9A.44.050

Rape in the second degree.

(1) A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person:

(a) By forcible compulsion;

(b) When the victim is incapable of consent by reason of being physically helpless or mentally incapacitated;

(c) When the victim is a person with a developmental disability and the perpetrator is a person who is not married to the victim and who:

(i) Has supervisory authority over the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense;

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual intercourse with the knowledge that the sexual intercourse was not for the purpose of treatment;

(e) When the victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or

(f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who:

(i) Has a significant relationship with the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense.

(2) Rape in the second degree is a class A felony.

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(5)* 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.

CRIMES AGAINST CHILDREN OR PERSONS

*RCW 43.43.830 (7) "Crime against children or other 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; 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.

** RCW 9.94A.411(2)(a): CRIMES AGAINST PERSONS

Aggravated Murder, 1st Degree Murder, 2nd Degree Murder, 1st Degree Manslaughter, 2nd Degree Manslaughter, 1st Degree Kidnapping, 2nd Degree Kidnapping, 1st Degree Assault, 2nd Degree Assault, 3rd Degree Assault, 1st Degree Assault of a Child, 2nd Degree Assault of a Child, 3rd Degree Assault of a Child, 1st Degree Rape, 2nd Degree Rape, 3rd Degree Rape, 1st Degree Rape of a Child, 2nd Degree Rape of a Child, 3rd Degree Rape of a Child, 1st Degree Robbery, 2nd Degree Robbery, 1st Degree Arson, 1st Degree Burglary, 1st Degree Identity Theft, 2nd Degree Identity Theft, 1st Degree Extortion, 2nd Degree Extortion, Indecent Liberties, Incest, Vehicular Homicide, Vehicular Assault, 1st Degree Child Molestation, 2nd Degree Child Molestation, 3rd Degree Child Molestation, 1st Degree Promoting Prostitution, Intimidating a Juror, Communication with a Minor, Intimidating a Witness, Intimidating a Public Servant, Bomb Threat (if against person), Unlawful Imprisonment, Promoting a Suicide Attempt, Riot (if against person), Stalking, Custodial Assault, Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145), Counterfeiting (if a violation of RCW 9.16.035(4)), Felony Driving a Motor Vehicle While Under the Influence of Intoxicating Liquor or Any Drug (RCW 46.61.502(6)), Felony Physical Control of a Motor Vehicle While Under the Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))

In the push to target dangerous individuals and protect children from sexual violence, lawmakers have indiscriminately targeted some youth with legislation that publicly brands them as sexual predators. This is bad policy because public registries not only fail to protect communities, but they hurt young people by stigmatizing them and alienating them from crime-reducing social networks like families, schools and jobs. This fact sheet debunks some of the most common misperceptions about young people convicted of sex offenses.

FICTION: Youth commit a large portion of sex offenses.

FACT: Less than 1 percent of all arrests of youth 17 years of age and younger were for sex offenses.¹ In 2006, youth 17 years of age and younger accounted for 18 percent of arrests for sex offenses. Youth under the age of 15 accounted for 9 percent of sex offense arrests in the same year.

FICTION: Youth convicted of sex offenses will become adults who commit sex offenses.

FACT: Research has shown that a young person who commits a sex offense is unlikely to commit another one.

- Recidivism rates are difficult to ascertain and compare because states and localities often define recidivism differently. However, a few academic studies have attempted to determine recidivism rates generally for youth and specifically for sex offenses. Overall, general recidivism rates for youth convicted of all offenses are higher than recidivism rates for youth convicted of sex offenses.

Recidivism rates for youth convicted of any offense

The Virginia Department of Juvenile Justice² conducted a study in 2005 that reviewed 27 states' juvenile recidivism rates. They calculated recidivism rates based on the different definitions of recidivism used in each state. The results showed that:

- Re-arrest: 55 percent of juveniles released from facilities in Florida, New York and Virginia were rearrested within one year.
- Re-referral to court: 45 percent of youth released from incarceration in Colorado and Maryland were re-referred to Court during the 12-month follow-up period.
- Re-conviction/Re-adjudication: 33 percent of youth released from detention centers in Arkansas, Florida, Georgia, Kentucky, Maryland, North Dakota, Oklahoma and Virginia were reconvicted or re-adjudicated within one year.
- Re-incarceration/Re-confinement: 24 percent of juveniles released from facilities in Florida, Maryland and Virginia were reincarcerated during the 12-month follow-up period.

Recidivism for youth convicted of sex offenses

- A 2002 review of 25 studies concerning juvenile sex offense recidivism rates reveals that youth who commit sex offenses have a 1.8 – 12.8 percent chance of rearrest and a 1.7 – 18.0 percent chance of reconviction for another sex offense.³
- A 2000 study of 96 youth who committed a sex offense in Philadelphia, showed a 3 percent sex reoffense rate.
- A 2006 retrospective study of 300 males on a sex offense registry in Texas who were under age 18 at the time of their first sex offense charge found that 4.3 percent of the sample was rearrested as an adult for another sex offense.⁴

¹ Sex offenses included here do not include forcible rape or prostitution. Federal Bureau of Investigation, "2006 Uniform Crime Report," Arrests by Age, Table 38, 2007, http://www.fbi.gov/ucr/cius2006/data/table_38.html

² Virginia Department of Juvenile Justice. 2005. Juvenile recidivism in Virginia. *DJJ Research Quarterly*. Richmond, VA: VDJJ; cited in Snyder, Howard N. and Melissa Sickmund. 2006. *Juvenile offenders and victims: 2006 national report*. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention.

³ Michael F. Caldwell, "What We Do Not Know About Juvenile Sexual Reoffense Risk," *Child Maltreatment* 7, no. 4 (November 2002): 291-302.

- A 2007 study funded by the MacArthur Foundation reviewed a longitudinal data set of three cohorts of youth in Racine, Wisconsin and found that of men who had contact with police for a sex offense as youth, 8.5 percent had contact with police for a sex offense as adults.⁵

FICTION: Sex offenses committed by youth are deviant and violent.

FACT: Many youth are charged with sex offenses for normative, if inappropriate behavior.

- Youthful sex offenses are not deviant, or violent in nature. Sex offenses committed by youth are not generally abusive or aggressive in nature and occur over shorter periods of time.⁶
- Following the guidelines and definitions in the *Diagnostic and Statistical Manual of Mental Disorders*, most youth do not meet the criteria of pedophilia, which requires that an adult (a person over the age of 18) be the instigator of sexual behavior with a child. In other words, a child can not be a pedophile because he or she is not an adult.⁷
- In most states, intercourse with a child under the age of 14, 15, or 16 is considered sexual assault regardless of consent. However, according to the National Longitudinal Survey of Youth, slightly more than three-quarters of youth in the survey reported having had sexual intercourse. Of those youth, more than 80 percent reported having had sex by age 15.⁸

FICTION: Individuals convicted of sex offenses should be treated the same—regardless of their age.

FACT: All youth are particularly amenable to treatment designed to help end delinquency. Treatment approaches for adults convicted of sex offenses will not work for youth.

- Like youth who commit other offenses, youth who commit sex offenses should receive evidence-based practices that have been shown to effectively intervene in the lives of youth who commit delinquent offenses.⁹ Registration and notification is likely to interfere with the provision of evidence-based interventions.
- Brain development is not completed until a person is in their early 20's, which makes youth more amenable to treatment than adults.¹⁰

FICTION: Notifying the community and putting youth on sex offender registries will make the community safer.

FACT: Registries and public notification impede a youth's ability to participate in social networks and access education and employment opportunities, which in turn, increase the chance that a youth will participate in criminal or delinquent behavior in the future.

- No evidence suggests that registries and notification systems for people convicted of sex offenses are effective ways of improving public safety or deterring sexual violence. For youth, registries and notification systems cut youth off from beneficial social networks, creating social stigma and isolation,¹¹ increasing the risk of suicide, alienating a youth from school and community, and raising barriers to successful participation in society.¹²

⁴ Donna M. Vandiver, "A Prospective Analysis of Juvenile Male Sex Offenders: Characteristics and Recidivism Rates as Adults," *Journal of Interpersonal Violence* 21, no. 5(May 2006): 673-688.

⁵ Franklin E. Zimring, Alex Piquero, and Wesley Jennings, "Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?," *Criminology and Public Policy* 6, no. 3 (2007): 507-534., p. 523, Figure 7.

⁶ National Center on Sexual Behavior of Youth, "What Research Shows About Adolescent Sex Offenders," *NCSBY Factsheet* no. 1 (July 2003).

⁷ National Center on Sexual Behavior of Youth, "What Research Shows About Adolescent Sex Offenders," *NCSBY Factsheet* no. 1 (July 2003).

⁸ Michael F. Caldwell, "What We Do Not Know About Juvenile Sexual Reoffense Risk," *Child Maltreatment* 7, no. 4 (November 2002): 291-302.

⁹ Elizabeth Letourneau and Michael Miner, "Juvenile Sex Offenders: A Case Against the Legal and Clinical Status Quo," *Sexual Abuse: A Journal of Research and Treatment* 17, no. 3 (July 2005): 293-312.

¹⁰ Association for the Treatment of Sexual Abusers (ATSA). (2000, March 11). The effective legal management of juvenile sex offender. Retrieved from <http://www.atsa.com/ppjuvenile.html>

¹¹ Franklin E. Zimring and others, "Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?" *Criminology and Public Policy* 6, no.3 (2007): 507-534.

¹² Sarah Tofte, *No Easy Answers* (New York: Human Rights Watch, 2007).

The federal Sex Offender Registration and Notification Act (SORNA),¹ which mandates a national registry of people convicted of sex offenses and expands the type of offenses for which a person must register, applies to both adults and children. Although 31 states already post young people on their sex offender registries,² SORNA imposes additional burdens on these states by requiring community notification and prohibiting any process that allows a state to eventually remove a rehabilitated youth from the registry. By publicizing the names of youth, SORNA undermines state's rights to implement many developmentally appropriate practices in youth court. This practice erodes youth court confidentiality—a cornerstone of the rehabilitative process. Youth are different from adults because their developing brains are highly amenable to treatment. A registry system designed for adults could carry lifelong consequences, and should not apply to youth.

Adolescent brains are not as developed as those of adults

Youth are biologically incapable of making decisions in the same way as an adult.³ In particular, the part of a youth's brain that deals with judgment and risk assessment is not fully formed. Since their brains are still developing, youth are even more susceptible to appropriate and effective treatment.⁴

Placement on a registry can be extremely detrimental to a young person's development, making it difficult to progress through school and to participate in appropriate adolescent activities. Youth who are labeled sex offenders often experience rejection from peer groups and adults and are, therefore, more likely to associate with delinquent or troubled peers and less likely to be attached to social institutions such as schools and churches.⁵

Youth are not sexual predators

According to the National Center on Sexual Behavior of Youth, youth sex offenses are not intended to be sexual. Youth do not eroticize aggression and are not aroused by child sex stimuli. Mental health professionals do not deem this behavior as predatory.⁶ Many of the behaviors reported are status offenses, including things such as "parking" and "necking," which would not be a crime if committed by an adult.⁷ National data that disaggregates sex offenses by type or seriousness are not available; however the observations of organizations who work with youth who commit sex offenses generally report relatively non-serious acts and many statutory offenses.

¹ SORNA is Title 1 of the Adam Walsh Act.

² State by State Registration Survey 2007.

³ National Institute of Mental Health, *Adolescent Brains Show Lower Activity in Areas That Control Risky Choices* (Washington, D.C.: National Institute of Mental Health) <http://www.nimh.nih.gov/science-news/2007/adolescent-brains-show-lower-activity-in-areas-that-control-risky-choices.shtml>

⁴ Association for the Treatment of Sexual Abusers, *The Effective Legal Management of Juvenile Sex Offender* (Beaverton, Oregon: Association for the Treatment of Sexual Abusers, 2000). <http://www.atsa.com/ppjuvenile.html>

⁵ Franklin E. Zimring and others, "Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?" *Criminology and Public Policy* 6, no.3 (2007): 507-534.

⁶ J.A. Hunter, D.W. Goodwin, and J.V. Becker, "The Relationship between Phallometrically Measured Deviant Sexual Arousal and Clinical Characteristics in Juvenile Sexual Offenders," *Behavioral Research and Therapy* 32 (1994): 533-538; J.V. Becker, J.A. Hunter, R.M. Stein, and M.S. Kaplan, "Factors Associated with Erection in Adolescent Sex Offenders," *Journal of Psychopathology & Behavioral Assessment* 11 (1989): 353-363; American Psychiatric Association, *Diagnostic and statistical manual of mental disorders* (4th ed.) (Washington, D.C.: American Psychiatric Association, 1994).

⁷ Michael H. Miner, "Reaction Essay: The Fallacy of Juvenile Sex Offender Risk," *Criminology and Public Policy* 6, no.3 (2007): 565-572.

There have been numerous stories publicized in the media of youth as young as age 6 being labeled a sex offender for behaviors such as hugging or kissing other youth.⁸ These youth should not be forced to carry a sexual predator label for life. These zero-tolerance attitudes and policies towards common youth behavior do not increase public safety, but rather alienate youth, disconnect them from communities, education, and jobs, aggravating the likelihood that they may engage in future delinquency.

Recidivism rates of youth who commit sex offenses are low and youth are more amenable to treatment

Youth who have committed a sex offense are no more likely to commit a future sex offense than other delinquent youth, and “would likely benefit from similar interventions.”⁹ Research finds that putting youth on sex offender registries “would have little effect on the prevention of sex crimes and, thus, do little to protect the public.”¹⁰ Additionally, the threat of life-long marginalization from schools, jobs and communities may prevent families and youth from seeking interventions that could help stop youth from engaging in inappropriate sexual behavior.

Mounting evidence and research points to programs and interventions proven to reduce youth delinquency. Evidence-based practices such as Multisystemic Therapy have been empirically evaluated and proven to lower the risk that a youth will become involved in delinquent or criminal behavior.¹¹ Implementing these model programs with youth who have been convicted of sex offenses can help the young person turn their life around, and benefit the family and community. Whereas exhorting severe punishments has proven to be ineffective and may in fact exacerbate crime, evidence-based programs can help young people make different choices, and enhance community safety.

SORNA undermines the juvenile justice system, which is better able to provide developmentally appropriate sanctions and change delinquent behavior

The juvenile justice system was founded on the premise that youth are different from adults and need to be held accountable in appropriate ways. Juvenile court judges are more experienced in assessing the culpability and rehabilitative potential of young people. Youth involved in the juvenile justice system typically receive more treatment and rehabilitative services than they would if they were treated as adults. The sex offender registry undermines rehabilitation by labeling a young person a sex offender, thereby stigmatizing them and closing available doors for treatment and involvement in the community.

Registries put youth at risk

There have been numerous reports of vigilantism against people on the sex offender registry, including harassment, threats and even assaults.¹² Additionally, youth who are on public registries have their home and school addresses, as well as other personal information and pictures, displayed for everyone to see, including those who may wish to prey on youth.

⁸ Brigid Schulte, “For Little Children, Grown-Up Labels as Sexual Harassers,” *Washington Post*, April 3, 2008.

⁹ Michael H. Miner, 2007.

¹⁰ Franklin E. Zimring and others, 2007; Michael H. Miner, 2007.

¹¹ Center for the Study and Prevention of Violence, “Blueprints for Violence Prevention Overview,” <http://www.colorado.edu/cspv/blueprints/>

¹² Richard Tewksbury, “Collateral Consequences of Sex Offender Registration,” *Journal of Contemporary Criminal Justice* 21 No. 1 (February 2005): 67-81

SEX OFFENDER SENTENCING IN WASHINGTON STATE: SPECIAL SEX OFFENDER SENTENCING ALTERNATIVE TRENDS

The 2004 Legislature directed the Washington State Institute for Public Policy (Institute) to conduct a comprehensive analysis and evaluation of the impact and effectiveness of current sex offender sentencing policies.¹ Because this is an extensive topic, we are publishing a series of reports.

Washington State's sentencing guidelines include an alternative for offenders convicted of a felony sex offense called the Special Sex Offender Sentencing Alternative (SSOSA). A SSOSA may be granted in lieu of a prison sentence under certain conditions, and requires some jail time with outpatient treatment and supervision.

A previous report examined how SSOSA offenders differ from other sex offenders.² Approximately 95 percent of SSOSA offenders are child molesters, compared with 73 percent for sex offenders imprisoned. Another report found it is possible to determine with high certainty which sex offenders **will not** be granted a SSOSA based on the statutory eligibility criteria.³ However, there is less ability to predict who **will** receive a SSOSA. A third report found that SSOSA offenders have substantially lower recidivism rates than other sex offenders.⁴

This report first examines trends in granting SSOSAs. The report then compares recidivism rate trends for those granted a SSOSA to sex offenders not granted a SSOSA.

¹ ESHB 2400, Chapter 176, Laws of 2004.

² R. Barnoski, 2005, Sex Offender Sentencing in Washington State: Initial Sentencing Decision, Olympia: Washington State Institute for Public Policy, Document No. 05-09-1202.

³ R. Barnoski, 2005, Sex Offender Sentencing in Washington State: Predicting the Initial Sentencing Decision, Olympia: Washington State Institute for Public Policy, Document No. 05-09-1203.

⁴ R. Barnoski, 2005, Sex Offender Sentencing in Washington State: Recidivism Rates, Olympia: Washington State Institute for Public Policy, Document No. 05-08-1203.

SUMMARY

Washington State's sentencing laws include a treatment option for sex offenders under the Special Sex Offender Sentencing Alternative (SSOSA). A SSOSA may be granted in lieu of a prison sentence under certain conditions, and requires some jail time with outpatient treatment and supervision. This report examines trends in SSOSA sentences and the recidivism rates of those offenders who received a SSOSA.

Findings

- 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, SSOSAs have decreased from 40 percent in 1986 to 15 percent in 2004.
- This decline in SSOSA sentences is a combination of a decrease in the percentage of sex offenders meeting statutory eligibility criteria and a decrease in eligible offenders receiving the option.
- Sex offenders who meet eligibility criteria and receive a SSOSA have lower risk characteristics than those meeting the criteria but sentenced to prison.
- The five-year felony sex and violent felony recidivism rates for offenders granted a SSOSA have remain consistently lower than the rates for the other types of sex offenders; less than 3 percent for felony sex recidivism and less than 4 percent for violent felony recidivism.
- The recidivism rates of those statutorily eligible for a SSOSA but sentenced to prison are higher than the rates of those receiving SSOSA.

Although this report finds that SSOSA offenders continue to have lower violent felony and felony sex recidivism rates, the use of a valid sex offender risk assessment instrument could aid in ensuring that sex offenders with the lowest risk characteristics are eligible and granted a SSOSA.

The SSOSA decision is made by the court. The decision involves statutory eligibility criteria, as well as an expert's assessment of the offender's amenability to treatment, and the offender's ability to pay for the diagnostic and treatment costs. The statutory eligibility criteria through 2004 were:

- Convicted of a sex offense other than Rape 1 or Rape 2; and
- No prior convictions for felony sex offenses in this or any other state; and
- Standard sentence range for the offense includes the possibility of confinement for less than 11 years.

The 2004 Legislature added the following additional eligibility criteria:

- No prior violent offenses within five years of the current offense; and
- 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 2004 Legislature also expanded what the judge is to consider in the SSOSA decision:

- An examination report provided by a treatment provider.
- The opinion of the victim.
- Whether the offender and the community will benefit from the SSOSA.
- Whether the offender had multiple victims.
- Whether the offender is amenable to treatment.
- The risk the offender poses.
- Whether the SSOSA is too lenient in light of the circumstances.

Exhibit 1 displays the number of sex offenders sentenced to SSOSA from 1986 until 2004 (green line). The number of SSOSAs reached a peak of 420 offenders in 1990 and started to decline to between 200 and 250 per year since 1997. As a percentage of all sex offenders sentenced each year, SSOSAs have declined from nearly 40 percent in 1986 to slightly less than 15 percent (red line) since 2001. That is, the SSOSA is being used less often. We next investigate whether this decline is caused by fewer sex offenders meeting the SSOSA statutory eligibility criteria.

Exhibit 1
Trend in Number of SSOSA Participants

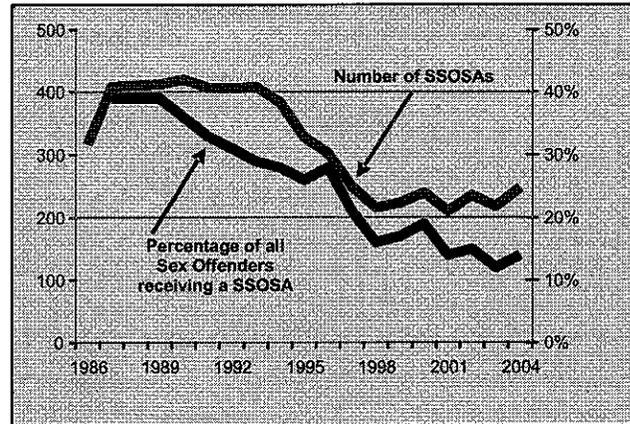
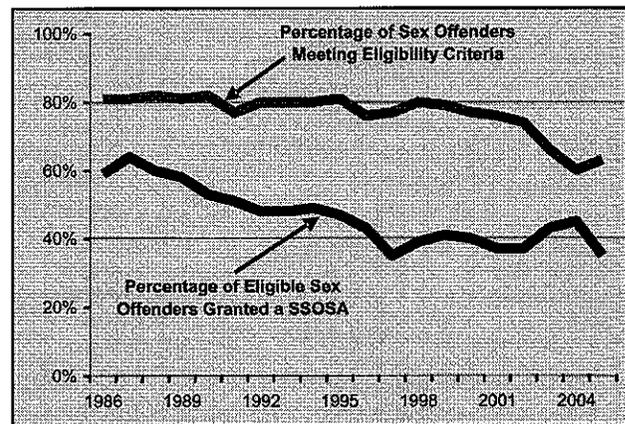


Exhibit 2 displays the percentage of all sex offenders who meet the statutory eligibility criteria for SSOSA (green line). Until the year 2000, 80 percent of all sex offenders met the statutory criteria. Since then, the eligible percentage has been dropping. In 2005, 63 percent met the statutory criteria.

Exhibit 2
Trend in Percentage Meeting the SSOSA
Statutory Eligibility Criteria and Percentage of
Eligible Granted a SSOSA



In 1986, 59 percent of sex offenders meeting the statutory criteria were granted a SSOSA (red line). By 1997, that percentage dropped to approximately 40 percent. In 2005, 35 percent meeting the statutory criteria received a SSOSA.

Thus, both the percentage of sex offenders meeting the statutory eligibility criteria and the percentage of the eligible offenders receiving a SSOSA have decreased since the mid 1990s. The end result is that 15 percent of convicted sex offenders currently receive a SSOSA.

We now examine how sex offenders who meet the statutory eligibility criteria and are granted a SSOSA differ from those who meet the criteria but are sentenced to prison. The sample consists of sex offenders sentenced since 1997, the year when the percentage of offenders receiving a SSOSA became stable.

Exhibit 3 compares several measures of risk for reoffense for these two groups of SSOSA-eligible sex offenders. The risk scores are empirically based measures being developed by the Institute for DOC and will be described in future reports on predicting recidivism.⁵ The scores summarize an offender's record of convictions; higher scores are associated with persons historically found to have higher rates of recidivism.

Exhibit 3

Measures of Risk for Reoffense for Statutorily Eligible Offenders Granted a SSOSA and Eligible Offenders Sentenced to Prison

Risk Score	Prison	SSOSA
Felony Risk Score	45.4	39.3
Violent Felony Risk Score	26.8	23.6
Not-Child Sex Risk Score	9.5	8.6
Child Sex Risk Score	9.4	9.0
Prior Violent Felony (Not Sex)	7.7%	1.0%
Prior Violent Misdemeanor (Not Sex)	14.1%	8.5%

All differences are statistically significant at the .05 probability level.

For example, SSOSA-eligible offenders sentenced to prison have an average felony risk score of 45.4 points compared to 39.3 points for those granted a SSOSA. Sex offenders who meet statutory eligibility criteria and are granted a SSOSA have lower risk scores than those meeting the criteria but sentenced to prison. This implies that the recidivism rates for those sentenced to prison would be higher than the rates of those granted a SSOSA.

We now examine changes in recidivism rates. Measuring sex offender recidivism requires a five-year period in the community, and one additional year for processing in the courts.⁶ As a result, trends in sex offender five-year recidivism rates can be calculated for offenders placed in the community as late as 1999.

⁵ Statistical techniques are used to combine variables to produce a score that is optimally predictive of recidivism.

⁶ R. Barnoski, 2005, *Sex Offender Sentencing in Washington State: Measuring Recidivism*, Olympia: Washington State Institute for Public Policy, Document No. 05-08-1202.

We display two types of recidivism: a conviction in Washington State for (1) any new felony sex offense, and (2) any new violent felony offense.⁷

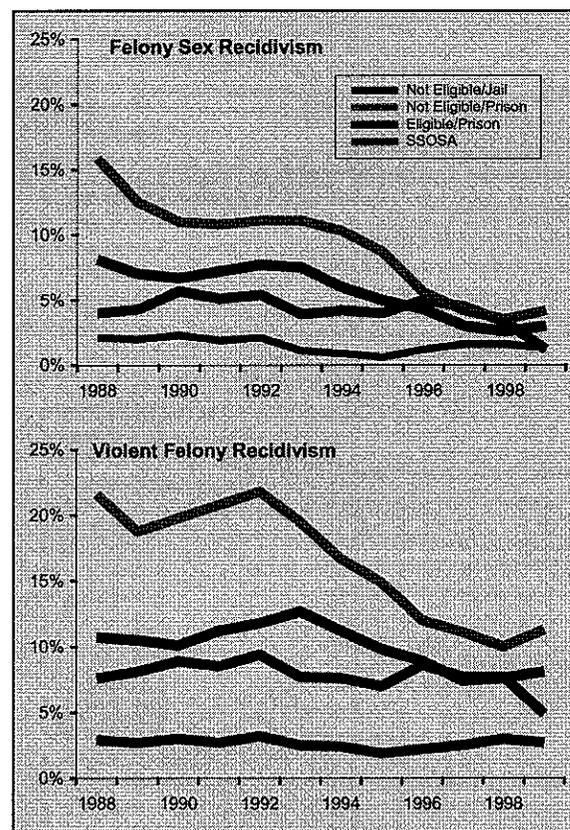
Exhibit 4 shows the three-year weighted moving averages⁸ of recidivism rates for the four types of sex offenders:

- those not statutorily eligible for SSOSA and sentenced to jail and/or community supervision,
- those not statutorily eligible for SSOSA and sentenced to prison,
- those statutorily eligible for SSOSA but sentenced to prison, and
- those granted a SSOSA.

The recidivism rates of sex offenders not eligible for a SSOSA provide baselines for the comparison of trends.

Exhibit 4

Three Year Moving Average of Felony Sex Recidivism for Four Types of Sex Offenders



⁷ Violent felony recidivism includes homicide, sex, robbery, assault, and weapon offenses. Felony sex recidivism is also included in violent felony recidivism.

⁸ Three-year weighted moving averages are used to smooth out year-to-year variation to more clearly display the trend over time.

The felony sex recidivism rates for sex offenders released from prison, both those eligible for SSOSA and those not, have generally been decreasing. The felony sex recidivism rates for those released from jail were constant until a substantial decrease in recent years. In contrast, the felony sex recidivism rates for SSOSA offenders have remained consistently below 3 percent, which is much lower than the rates for the other types of sex offenders.

The violent felony recidivism rates follow a similar trend; the rates for those receiving a SSOSA remain consistently lower than the rates for the other types of sex offenders—less than 4 percent.

In summary, both the felony sex and violent felony recidivism rates of those granted a SSOSA remain consistently low. The recidivism rates of those statutorily eligible for a SSOSA, but sentenced to prison, are higher than rates for those receiving SSOSA.

The decreases in recidivism rates for sex offenders sentenced to jail and community supervision and those sentenced to prison may be attributed to other changes such as the registration and notification statutes, longer sentences, demographics, and other societal influences.

Discussion

This report is not an outcome evaluation of SSOSA, since there is no comparable group of sex offenders who were not granted a SSOSA. That is, it is not possible to determine whether the lower recidivism rates for those granted a SSOSA arise from the SSOSA selection process or from treatment.

Although this report finds that SSOSA offenders continue to have lower violent felony and felony sex recidivism rates, the use of a valid sex offender risk assessment may aid in ensuring that only low risk sex offenders are eligible and granted a SSOSA.

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