

Limiting Treatment Options

New SSOSA standards take effect on July 1, 2005.

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Once again, in a seemingly endless upward ratcheting of penalties, our legislature has enacted a new law “providing for enhanced penalties for sex crimes against children.” The rhetoric accompanying HB 2400, passed in 2004, was very base: “if you do the crime, you do the time.”¹ Apparently, the 2004 legislature found this cherished sentiment at odds with the Special Sex Offender Sentencing Alternative (SSOSA), noting “SSOSA has led to sentences for these crimes dramatically below the standard range.... Offenders should get treatment in prison, not in the community.”² Lovely.

The end result was a new law, effective July 1, 2005,³ that restricts SSOSA eligibility, increases the potential unsuspended term of confinement, and makes both the conditions imposed and the court’s supervision thereof more onerous.

Eligibility

Our clients are currently eligible for SSOSA if:

- they are convicted of a sex offense⁴ other than Rape 2 or a serious violent offense,⁵
 - they have no prior sex offense convictions, and
 - their standard range is less than eleven years confinement.⁶
- whether SSOSA is too lenient in light of the offense,
 - whether the offender has additional victims,
 - amenability to treatment, and
 - the risk the offender would present to the community, the victim, or

The new law additionally precludes SSOSA eligibility for clients if they have a prior adult conviction for a violent offense⁷ committed within five years of the current offense,⁸ if the current offense resulted in substantial bodily harm,⁹ or if the offender’s sole connection with the victim was the commission of the crime.¹⁰

In addition to these eligibility criteria, the new law affects other criteria the sentencing court is to consider. Currently, the law directs the sentencing court to consider whether the offender and the community will benefit from a SSOSA and the victim’s opinion about whether the offender should receive a SSOSA.¹¹

Under the new law, the sentencing court must additionally give “great weight” to the victim’s opinion.¹² In this context, *victim* is broadly defined to include any person who has sustained emotional, psychological, physical, or financial injury as a result of the crime — including the parents or guardians of a victim who is a minor child.¹³ If the sentence imposed is contrary to the victim’s opinion, the new statute directs the court to enter written findings stating its reasons for imposing the disposition.¹⁴

The new statute also mandates that the sentencing court consider additional factors:

persons of similar age and circumstances.¹⁵

With respect to treatment amenability, the new law provides that the fact that the offender admits to the offense does not, by itself, constitute amenability.¹⁶

Term of Confinement

Currently, the sentencing court *may* impose up to six months confinement as a condition of a SSOSA.¹⁷

Under the new law, the sentencing court *shall* order *up to 12 months* confinement.¹⁸ Additionally, the sentencing court may impose *more than 12 months* confinement, based on an aggravating circumstance.¹⁹ This term of confinement may be partial²⁰ but is not eligible for any earned early release.²¹

Conditions

Currently, the sentencing court must order treatment for *up to three years’* duration.²² The new scheme increases the allowable treatment duration to *five years*.²³

The new law also provides that the offender’s treatment provider may not be the same person who examined the offender to determine eligibility — or any person who employs, is employed by, or shares profits with that person (unless the court makes written findings that such treatment is in the best interests of the victim and that treatment would otherwise be impractical).²⁴

In addition to the other currently mandatory conditions of SSOSA (community custody and sex offender treatment),²⁵ the new statute requires specific prohibitions and affirmative

conditions relating to known precursor activities or behaviors (as identified in the proposed treatment plan or an annual review).²⁶

Progress and Termination Hearings

Currently, the sentencing court is not generally required to hold regular progress hearings.²⁷ Under the new law, the court must conduct a hearing on the offender's progress in treat-

currently may elect not to terminate treatment and instead to extend it.³⁷ The new statute adds that such extensions shall be imposed in two-year increments.³⁸

Perhaps at some point the apparently endless upward ratcheting of penalties for sex offenders will stop or at least subside. Until then, we need to remain vigilant in the fight to slow the process. In this respect it is worth

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ment at least once a year.²⁸ The victim must be given notice and an opportunity to make statements regarding the offender's supervision and treatment.²⁹ At such hearings, the court may modify the conditions of community custody.³⁰

Currently, the Department of Corrections shall either impose sanctions or refer violations of conditions to the court for revocation.³¹ The revised statute will require that if the violation is "a second violation of the prohibited or affirmative conditions relating to the precursor behaviors or activities," the department shall refer it to the court and recommend revocation.³²

At present, the victim is not statutorily entitled to notice of a treatment termination hearing.³³ As of July 1, 2005, the court is required to give the victim at least 14 days notice and an opportunity to be heard regarding the offender's supervision and treatment.³⁴

Currently, either party may request a second evaluation regarding termination from treatment.³⁵ The new law changes this provision to allow the court to order such an evaluation without either party's request.³⁶

Finally, the sentencing court

noting that the original version of the bill that was passed was far worse and, in the words of one perceptive staffer, would "make sex offenders ineligible for SSOSA."³⁹ In large part, we have WACDL and WDA to thank for lobbying against this troubling prospect.

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Notes

1. ESHB 2400, House Bill Report.
2. Id.
3. ESHB 2400, § 9.
4. For this purpose, a "sex offense" is defined as: Rape, Rape of a Child, Child Molestation, Sexual Misconduct with a Minor 1, Indecent Liberties, Sexually Violating Human Remains, Voyeurism, Custodial Sexual Misconduct 1, Incest, Sexual Exploitation of a Minor, Dealing in Child Pornography, Sending or Bringing Child Pornography into the State, Communicating with a Minor for Immoral Purposes (with a prior sex offense conviction), Patronizing a Juvenile Prostitute, a felony attempt, solicitation, or conspiracy to commit one of the above, a felony with a finding of sexual motivation, and/or any comparable federal or out-of-state conviction. RCW § 9.94A.030(38).
5. A "serious violent sex offense" is: Murder 1 or 2, Homicide by Abuse, Manslaughter 1,

Assault 1, Kidnapping 1, or Assault of a Child 1 if accompanied by a finding of sexual motivation; Rape 1; an attempt, solicitation, or conspiracy to commit one of the above; and/or any comparable federal or out-of-state conviction. RCW § 9.94A.030(37).

⁶ RCW §§ 9.94A.670(2)(a)-(c); *see also*, RCW §§ 9.94A.670(2)(a)-(b), (f) (effective 07/01/05).

⁷ A "violent offense" is: any Class A felony, an attempted Class A felony, Manslaughter 1 or 2, Indecent Liberties with Forcible Compulsion, Kidnapping 2, Arson 2, Assault 2, Assault of a Child 2, Extortion 1, Robbery 2, Drive-by Shooting, Vehicular Assault or Homicide (DUI or reckless), any comparable offense in effect prior to July 1, 1976, and/or any comparable federal or out-of-state conviction. RCW § 9.94A.030(45).

⁸ RCW § 9.94A.670(2)(c) (eff. 07/01/05).

⁹ RCW § 9.94A.670(2)(d) (eff. 07/01/05). The statute defines substantial bodily harm as bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any body part or organ or that causes a fracture of any body part or organ. RCW § 9.94A.670(1)(b) (eff. 07/01/05).

¹⁰ RCW § 9.94A.670(2)(e) (eff. 07/01/05).

¹¹ RCW § 9.94A.670(4).

¹² RCW § 9.94A.670(4) (eff. 07/01/05).

¹³ RCW § 9.94A.670(1)(b); RCW § 9.94A.670(1)(c) (eff. 07/01/05).

¹⁴ RCW § 9.94A.670(4) (eff. 07/01/05).

¹⁵ Id.

¹⁶ Id.

¹⁷ RCW § 9.94A.670(5)(a).

¹⁸ RCW § 9.94A.670(4)(a) (eff. 07/01/05).

¹⁹ Id. The definition of aggravating circumstances in RCW § 9.94A.535(2) applies (RCW § 9.94A.670(4)(a) (eff. 07/01/05)) and includes, in part, that the offense was part of an ongoing pattern of sexual abuse of the same minor victim and/or resulted in the pregnancy of a child victim of rape. RCW §§ 9.94A.535(2)(g), (k).

²⁰ RCW § 9.94A.670(4)(a) (eff. 07/01/05).

²¹ Id.

²² RCW § 9.94A.670(4)(b).

²³ RCW § 9.94A.670(4)(c) (eff. 07/01/05).

²⁴ RCW § 9.94A.670(11) (eff. 07/01/05).

²⁵ *See* RCW §§ 9.94A.670(4)(a)-(b).

²⁶ RCW § 9.94A.670(4)(d) (eff. 07/01/05).

²⁷ *See*, RCW §§ 9.94A.670(6)-(12).

²⁸ RCW § 9.94A.670(7)(b) (eff. 07/01/05).

²⁹ Id.

³⁰ Id.

³¹ RCW § 9.94A.670(9).

³² RCW § 9.94A.670(9)(b) (eff. 07/01/05).

³³ *See*, RCW § 9.94A.670(8).

³⁴ RCW § 9.94A.670(8) (eff. 07/01/05).

³⁵ RCW § 9.94A.670(8).

³⁶ RCW § 9.94A.670(8) (eff. 07/01/05).

³⁷ RCW § 9.94A.670(8).

³⁸ RCW § 9.94A.670(8)(c).

³⁹ ESHB 2400, House Bill Report.