

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.

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.

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.

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

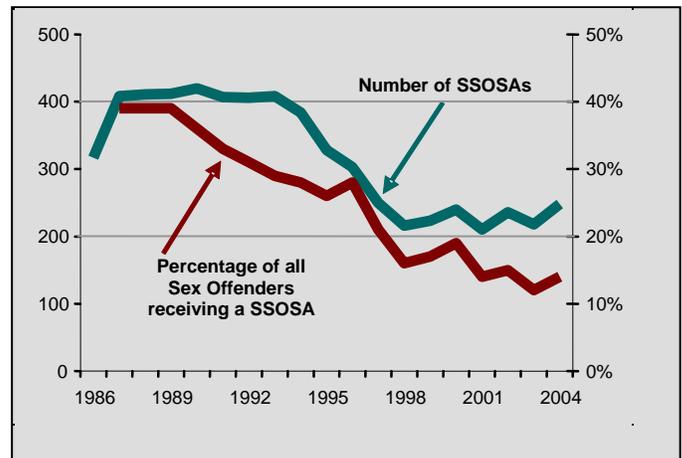
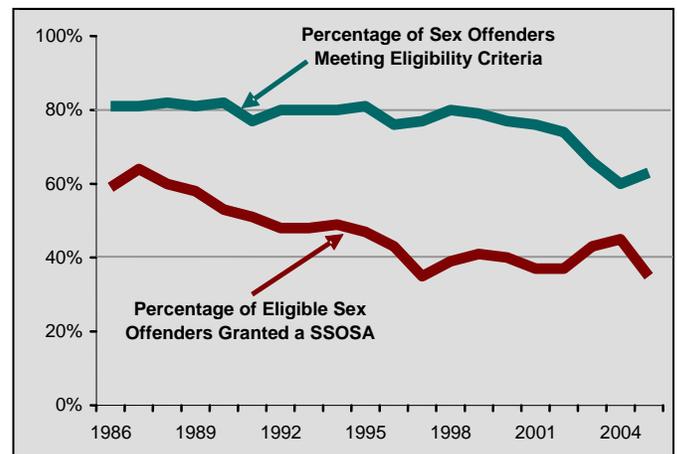


Exhibit 2 displays the percentage of all sex offenders who meet the statutory eligibility criteria for SSOSA (green line). Until the year 2000, 80 percent of all sex offenders met the statutory criteria. Since then, the eligible percentage has been dropping. In 2005, 63 percent met the statutory criteria.

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.

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

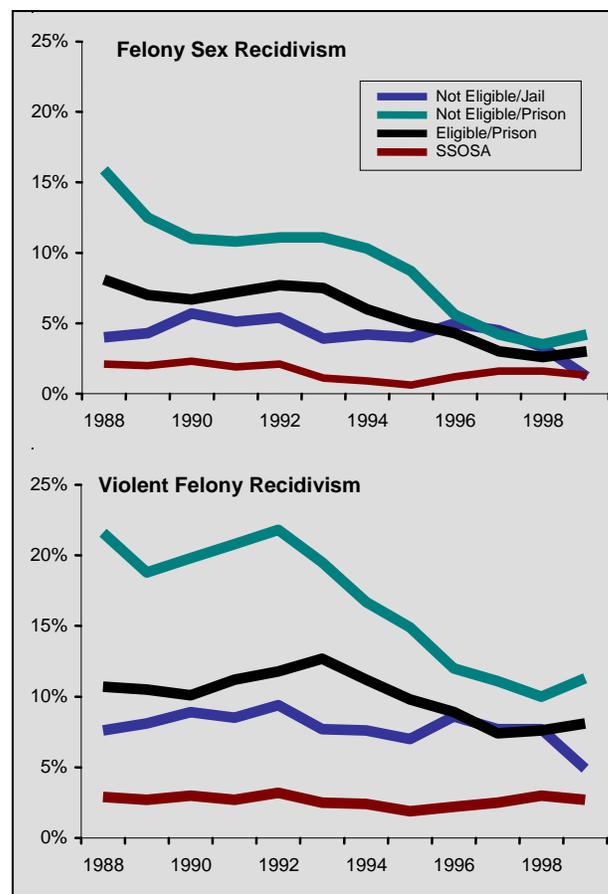
Exhibit 4 shows the three-year weighted moving averages⁸ of recidivism rates for the four types of sex offenders:

- 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



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.

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.

For further information, contact Robert Barnoski at (360) 586-2744 or barney@wsipp.wa.gov

Document No. 06-01-1205



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The Washington State Legislature created the Washington State Institute for Public Policy in 1983. A Board of Directors—representing the legislature, the governor, and public universities—governs the Institute and guides the development of all activities. The Institute's mission is to carry out practical research, at legislative direction, on issues of importance to Washington State.