



– SSOSA –

Washington's Special Sex Offender Sentencing Alternative



SSOSA: Washington's Special Sex Offender Sentencing Alternative

by David S. Marshall

Washington's Special Sex Offender Sentencing Alternative is a rarity in American law: an opportunity for persons who have committed sex offenses to receive treatment for sexual compulsion in lieu of most of the time behind bars they would otherwise have to serve. For a person who has done more or less what he's charged with doing, exploring this alternative is essential.

Washington lawyers and judges call it "SSOSA" (pronounced with a long O and soft S's).

SSOSA is not available in every Washington sex offense case, and even when the judge is authorized to give it, persuading the judge to do so can be difficult. At the Marshall Defense Firm, we have 25 years of experience advocating for SSOSA for our clients who want it. I'll share some of what we've found makes the difference between getting SSOSA and being denied it, but first, let's look at the history that produced SSOSA and just what SSOSA law requires.

Some History

Over time, Washington State's response to sex offenders has evolved. The first program in Washington to address issues of mental health in sex offenders came about in 1949 with the creation of inpatient treatment programs at Western State Hospital.

Between 1949 and the 1980s, progress ebbed and flowed toward finding a fair system of dealing with sex offenders facing mental health challenges. In 1984, Washington's legislature enacted the Special Sex Offender Sentencing Alternative. This law was inspired both by a concern for victims (particularly child victims related to the offender) and by the public will to explore promising community-based treatment modalities for sex offenders.

Although the law authorizes SSOSA for sex offenders regardless of the ages of their victims, SSOSA has rarely been granted in cases where all victims are adults. Throughout SSOSA's history, most SSOSAs, by far, have been granted when all victims were minors.

In SSOSA's early years, most persons who committed child sex offenses and who wanted SSOSA, got SSOSA. This is no longer the case. Partly this has resulted from amendments to SSOSA statutes. Partly it is because public attitudes, reflected in judicial attitudes, have hardened against sex offenders. Securing a SSOSA now often requires the highest level of legal advocacy.

What Exactly is the Special Sex Offender Sentencing Alternative?



SSOSA allows offenders to live their life with treatment (and other restrictions) instead of an extended prison sentence.

RCW 9.94A.670, the law that codifies the SSOSA, was enacted “in the belief that the behavior of sex offenders is compulsive and likely to continue without treatment.” The legislature also recognized that providing alternatives to confinement leads to increased reporting of sex crimes, particularly in cases of intra-family abuse.

When a court decides to impose SSOSA, it also gives the offender a suspended prison sentence, the length of which must be within the standard sentence range for the case. If the court later revokes SSOSA, the offender will have no trial; instead the offender will go to prison to serve this sentence. To increase the offender’s motivation to follow the SSOSA program rigorously, the court often gives a suspended sentence at the very top of the standard sentence range.

To be eligible for a SSOSA sentence, the offender must meet certain requirements:

- The offender has been convicted of a sex offense other than Rape in the Second Degree or a sex offense that is also a serious violent offense (such as Rape in the First Degree).
- If the offender has entered a guilty plea, he must voluntarily and affirmatively admit he committed all the elements of the crime to which he is pleading guilty.
- The offender must have no prior sex offense convictions or any other felony sex offenses in Washington or any other state.
- The offender must have no prior adult convictions for a violent offense committed within the last five years.
- The offense must not have resulted in substantial bodily harm to the victim.
- The offender must have had an established relationship with, or connection to, the victim such that the crime committed was not the sole connection between the victim and the offender.

The standard prison sentencing range for the charged offense must include the possibility of confinement for less than 11 years.

Even when the offender is not eligible for SSOSA, creative lawyering can sometimes win a sentence that mimics SSOSA. This usually requires the prosecutor’s agreement, so the defense attorney’s primary task in such a situation is to get that agreement.

Do All Offenders Who are Eligible for SSOSA and Who Seek It, Get it?

Definitely not. Eligibility under the law is only the first step toward receiving a SSOSA sentence. Building a case for SSOSA and winning SSOSA from the sentencing judge can take as much effort and legal expertise as winning a trial.

While it is difficult to predict which eligible candidates will obtain a SSOSA, “those convicted of a child sex offense, voyeurism, and cases involving a higher offense seriousness level are more likely to receive a SSOSA.” [Sentencing Reform Act]

Offenders under the age of 26 who have a juvenile court felony conviction on their record are less likely to receive a SSOSA than be sentenced to prison. Most SSOSA offenders are first-time commitments (85%), and all but a few SSOSA sentences are handed down in response to sex offenses involving children (95%).²



If approved for a SSOSA, you will be required to comply with certain conditions but will otherwise be able to live your life as a normal member of the community.

The Victim’s Input

The legislature has given victims a large role in the decision whether an offender’s SSOSA application will be granted. The law requires the sentencing judge to give great weight to the victim’s position, for or against SSOSA. If the judge grants a SSOSA over the victim’s objections, the law requires the judge to formally issue the reasons for doing so in writing. (When the victim is young, the victim’s parent expresses the victim’s position.) Thus, the attorney for a SSOSA applicant tries, before the sentencing hearing, to win support for SSOSA from both the prosecutor and the victim’s family. Winning the support of the victim’s family is quite a delicate matter, since the victim’s family usually refuses direct communication with the defense attorney.

¹ Robert Barnoski, [Predicting the Initial Sentencing Decision](#), Washington State Institute for Public Policy, (September 16, 2005).

² Ibid.

SSOSA Evaluation

Before a SSOSA is granted, a SSOSA evaluation must be done. The purpose of the evaluation is to assist the court in deciding whether a particular eligible offender is amenable to sex offender treatment (that is, is ready and able to learn to from it) and is not too dangerous to be allowed to live out of custody. Only state-certified sex offender treatment providers may administer SSOSA evaluations.

The evaluation aims to determine whether the SSOSA candidate:

- suffers from sexual compulsion
- needs specialized sex offender treatment
- poses only a low or moderate risk to the community
- would benefit from treatment and is willing to do the hard work of treatment
- passes a polygraph examination

During the evaluation, SSOSA candidates may be asked questions about their:

- medical history
- sexual history
- family history
- education and employment
- any past substance abuse
- any criminal record or history of violence
- any prior treatment

The evaluation generally includes extensive psychological testing and often includes penile plethysmograph testing.

The penile plethysmograph test is extremely intrusive and intimate. A band is placed around the penis of a male subject. He is then exposed to audio or drawings of various kinds of sexual activity, such as consenting heterosexual adult sex, forced sex, man-on-boy sex, and man-on-girl sex. As blood flows into the penis, the band expands, measuring sexual stimulation (erection) in each situation.



A state-certified sex offender treatment provider will conduct the evaluation to determine if you are eligible for SSOSA.

After the SSOSA is Granted

If the court grants a SSOSA, the offender will usually still spend some time in jail (up to 12 months). After release, the Department of Corrections continues to supervise the offender, who must:

- maintain employment
- successfully participate in treatment
- comply with other conditions set by the court

Court-ordered treatment under a SSOSA can extend for as much as five years.



Under SSOSA, you may keep your current job or take a new one—so long as the job doesn't require you to do anything prohibited by your SSOSA sentence.

SSOSA Conditions

In addition to treatment, the court may impose certain conditions with a SSOSA. These conditions could require the offender to:

- comply with certain crime-related prohibitions
- devote time to a specific employment or occupation
- remain within certain geographical boundaries
- report from time to time to the court and a community corrections officer pay legal financial obligations
- perform community service work
- reimburse the victim for the cost of any counseling required by the offender's crime

Complying with these conditions, if the court imposes any of them, is extremely important. Failure to do so can result in the revocation of a SSOSA and prison time.

SSOSA Treatment

SSOSA treatment, like SSOSA evaluation, is provided by state-certified Sex Offender Treatment Providers. Some are psychologists.

One of the SSOSA program's great successes is that offenders who receive a SSOSA have one of the lowest recidivism rates of any kind of offender.

Offenders must pay their own treatment and supervision costs. This makes SSOSA unavailable to offenders who cannot pay these costs. SSOSA offenders are also typically required to pay money to support their families and to pay the costs of victim treatment.

As part of a SSOSA offender's treatment, the treatment provider must submit to the court quarterly reports on the offender's progress. Both the offender and the victim are entitled to see these reports. The report must refer to the treatment plan and must include:

- dates of attendance
- the offender's compliance with requirements
- treatment activities
- the offender's relative progress in treatment
- any other material specified by the court at sentencing

The court must conduct a hearing on the offender's progress in treatment at least once a year. At this hearing, the victim has the opportunity to make statements to the court about the offender's supervision and treatment.

At the hearing, the court may modify conditions of community custody (Washington's term for what is elsewhere called probation and parole). Conditions the court may modify include crime-related prohibitions and affirmative conditions connected to activities and behaviors that are part of the offender's "offense cycle."

If the court finds the offender is not complying with SSOSA, the court may revoke the suspended sentence and send the offender to prison.

At the end of the prescribed treatment period, the court will hold a termination hearing. Before the hearing, both the treatment provider and the community corrections officer (akin to a probation officer) must submit reports to the court about the offender's compliance with treatment and monitoring requirements, along with recommendations for treatment termination and proposed community custody conditions (probationary conditions). As with yearly progress hearings, the victim is entitled to make a statement to the court at the SSOSA termination hearing about the offender's treatment and supervision.

At the termination hearing, taking all this information into consideration, the court may:

- modify conditions of community custody, and either
 - terminate treatment, or
 - extend treatment in two-year increments for up to the remaining period of community custody

Is There a SSOSA Equivalent for Juvenile Offenders?

Is the SSOSA program available to persons under the age of 18 facing sex offense charges? Yes, it is, with some differences.

The Special Sex Offender Disposition Alternative (SSODA) was established as part of the 1990 Community Protection Act. It provides an alternative to sending juvenile offenders to rehabilitation institutions by allowing the court to suspend the disposition (the juvenile court term for “sentence” or “conviction”) and require the offender to receive outpatient sex offender treatment.

In order for a young person to be granted a SSODA:

- the youth must have no previous sex offense disposition
- treatment must be possible while the youth is living at home or in an alternative community placement
- a state-certified treatment provider must be available and willing to provide treatment
- treatment must be possible with minimal risk to the community

Unlike adult offenders, youths seeking SSODAs do not have to pay the costs of SSODA evaluation and treatment. Public funds are available to pay these costs for eligible juveniles.

Each county administers its own SSODA program. The county’s juvenile court or juvenile probation department can provide county-specific SSODA information.

Like a SSOSA, a SSODA comes with conditions. A court may impose some of the following conditions (or others like these) on a youth receiving a SSODA:

- residing only at a court-approved address
- supervision at all times by court-approved supervisors (parents or other authorized adults)
- restricted travel
- regular contact with a probation officer
- regular school or work attendance
- no criminal violations
- no contact with the victim, even through electronic means or third parties
- no guns, firearms, ammunition, or other weapons
- no unsupervised internet use

Under What Circumstances Will a SSODA be Revoked?

As with the SSOSA for adults, the court can also revoke a SSODA in cases where:

- the young person violates any condition of his disposition (sentence)
- the court finds that the young person is failing to make satisfactory progress in treatment

If the court finds that either of these conditions occurred, it can either impose up to 30 days confinement, or revoke the SSODA altogether. When a SSODA is revoked, the original suspended disposition will replace it, meaning the youth will be sent to the Juvenile Rehabilitation Administration (the juvenile counterpart to the prison system), with credit for any time previously served for the underlying offense. The court has the power, when it finds that a youth has violated SSODA conditions, to impose up to 30 days confinement and to revoke the SSODA, but usually a judge does only one or the other.



It's important to attend school or maintain employment to meet the conditions of a SSODA.

Who Should Not Seek SSOSA

Facing a felony sex charge is among the most frightening experiences a person can have. It is only natural to consider every alternative to running the risk of losing at trial and having to serve many years in prison. SSOSA can look attractive even to persons who are innocent but fear that a jury won't recognize their innocence.

Applying for SSOSA, though, is not a suitable course for an innocent defendant. The treatment programs are rigorous. They require the offender's active participation, often in a group setting. If the treatment provider says to the offender, "The group is ready to hear about your crime and your sexual deviance," and the new group member says, "Actually, I don't suffer from sexual deviance, and I didn't commit the crime," the accused should expect to be ejected from treatment and quickly sentenced to the prison term SSOSA was supposed to avoid.

But Can't an Innocent Defendant Fake His Way Through SSOSA?

To fake a problem of sexual compulsion, to perform false but convincing acts of remorse and contrition, to simulate steady progress in sex offender treatment over a period of three, four, or five years . . . these things would be very difficult to accomplish. Attempting them is not something I ever recommend, both because it would be fundamentally dishonest and because it would carry great risk of catastrophic failure.

But for the right defendants, Washington's Special Sex Offender Sentencing Alternative provides an alternative to prison that serves everyone. By providing treatment, it makes it unlikely the defendant will offend again. It spares the defendant and his family the catastrophe of his spending many years in prison. And it gives the victim knowledge that the offender is paying a heavy price (SSOSA is no mere slap on the wrist) and will not likely do it again to anyone.



With SSOSA, you have the chance to continue living your life.



You are not alone.



Aimée Sutton



David S. Marshall

If you or someone you know is interested in SSOSA, contact The Marshall Defense Firm at 206-826-1400, ssosa@marshalldefense.com, or marshalldefense.com.

We have fought to win SSOSA for many defendants, and we'd like to hear about your case.