

Sex Offenders - Sentencing Laws

Current Sentencing Laws

In 2001, the Legislature created a separate sentencing structure to address the problem of dangerous sex offenders returning to the community after completing their prison sentences. Under the old sentencing structure, a judge was required to give a sentence that had a determinate minimum and maximum sentence under the standard range. Once the offender reached his maximum sentence he had to be released from prison, regardless of whether he was still a threat to society.

Under Washington's "Persistent Offender" law, enacted by voters in 1993, three convictions of certain specified crimes sent the offender to prison for life. In 1996, the Legislature strengthened this law for sex offenses. Now, two convictions of any of certain sex offenses will send the offender to prison for life without parole. The definition of persistent offender includes both "Three Strike" offenders and "Two Strike" sex offenders.

To qualify as a persistent sex offender, an offender must have two separate convictions of specified sex offenses. The specific offenses qualifying as "Two Strikes" are enumerated in RCW 9.94A.030(32)(b) and include 1st Degree Rape, 2nd Degree Rape, Indecent Liberties by Forcible Compulsion, 1st Degree Rape of a Child (where the offender was age 16 or older at the time of the offense), 2nd Degree Rape of a Child (where the offender was 18 or older at the time the offense), 1st Degree Child Molestation, and 2nd Degree Assault of a Child with Sexual Motivation. It also includes the following crimes committed with a finding of sexual motivation: 1st Degree Murder, 2nd Degree Murder, 1st Degree Kidnapping, 2nd Degree Kidnapping, 1st Degree Assault, 2nd Degree Assault, 1st Degree Burglary, 1st Degree Homicide by Abuse, and 1st Degree Assault of a Child, and any attempt to commit any of these crimes. An offender convicted of one of these offenses who has at least one previous conviction for one of these offenses must be sentenced to life in prison without the possibility of release.

Sex offenders who commit a first "two-strike" offense after September 2001 and those who committed one "two-strike" offense prior to September 2001 and subsequently commit any non-strike sex offense are subject to determinate-plus sentencing. Rather than a sentence of a definite number of days, a determinate-plus sentence consists of a minimum and maximum term of confinement. The minimum term is generally set within the standard sentencing range, which takes into account the seriousness of the offense and the offender score. The maximum term is equal to the statutory maximum for the offense. Statutory maximums are life in prison for a Class A felony, 10 years for a Class B felony, and five years for a class C felony.

After serving their minimum term, offenders are subject to the jurisdiction of the Indeterminate Sentence Review Board (ISRB) through the end of the maximum term. An offender will be released from custody after serving the minimum term unless the ISRB finds the offender is more likely than not to commit a future sex offense. When the offender is released, he or she will be in community custody until the expiration of the maximum term. The term "community custody" refers to the period following release from total confinement in which an offender is supervised by the DOC. Community custody is that portion of an offender's sentence served in the community, subject to conditions imposed by the sentencing court and the DOC. The obligations of community custody include certain conditions, such as reporting to a community corrections officer and obtaining residence approval from the DOC.

An offender may be sanctioned administratively by the DOC for violating his or her conditions of release. The DOC assesses an offender's risk of re-offense, and may modify or impose conditions of community custody in addition to those imposed by the court, provided they do not contravene or decrease the court's order. For example, the DOC may require an offender to participate in rehabilitative programs or perform or abstain from certain conduct depending on the offender's risk of re-offense. An offender accused of violating a condition of community custody is entitled to a hearing before the DOC before sanctions are imposed. If an offender is found to be in violation of a condition of community custody, the DOC may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any time actually spent in community custody.

During 2005-06 the Legislature passed the following bills:

HB 3277, for purposes of imposing a determinate-plus sentence, increased the minimum terms for child molestation in the first degree, indecent liberties with forcible compulsion, kidnapping in the first degree with sexual motivation, rape in the first degree, rape in the second degree, rape of a child in the first degree and rape of a child in the second degree, as follows:

- Twenty-five years or the maximum of the standard range, whichever is greater, for child molestation in the first degree, rape of a child in the first degree, or rape of a child in the second degree, when the offense was "predatory." "Predatory" is defined as situations where (1) the perpetrator was a stranger to the victim (unknown to the victim 24 hours prior to the offense); (2) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization was a significant reason the relationship was established; (3) the perpetrator was a teacher, counselor, volunteer or other person in authority and the victim was a student of the school under the perpetrator's authority or supervision; (4) the perpetrator was a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in that activity under his or her authority or supervision; or (5) the perpetrator was a pastor, elder, volunteer or other person in authority in any church or religious organization and the victim was a member or participant of the organization under the perpetrator's authority.
- Twenty-five years or the maximum of the standard range, whichever is greater, for indecent liberties with forcible compulsion, kidnapping in the first degree with sexual motivation, rape in the first degree, or rape in the second degree, when the victim was under the age of 15 at the time of the offense.
- Twenty-five years or the maximum of the standard range, whichever is greater, for indecent liberties with forcible compulsion, kidnapping in the first degree with sexual motivation, rape in the first degree, or rape in the second degree with forcible compulsion, when the victim was a person with a developmental disability, a mentally disordered person, or a frail elder or vulnerable adult.

A process was established for purposes of determining whether the offense was predatory, whether the victim was under the age of 15 at the time of the offense, or whether the victim was a person with a developmental disability, a mentally disordered person, or a frail elder or vulnerable adult. The prosecutor, when sufficient admissible evidence exists, must file a special allegation that the offense was predatory, the victim was under the age of 15 at the time of the offense, or the victim was a person with a developmental disability, a mentally disordered person, or a frail elder or vulnerable

adult. The prosecutor has the burden of proving the special allegation beyond a reasonable doubt. The prosecutor may not withdraw a special allegation without the permission of the court. The prosecuting attorney does not have to bring a special allegation that would lead to a 25-year minimum sentence if he or she determines, after consulting with a victim, that filing a special allegation is likely to interfere with the ability to obtain a conviction. The 25-year minimum sentences do not apply to a juvenile tried as an adult.

SSB 5042 changed the date on which the statute of limitations for a sex offense begins to run to the date when the crime was committed, or one year after the date upon which the identity of the suspect is conclusively established through DNA testing, whichever is later.

2SSB 6172 increased the penalty for voyeurism and possession of depictions of a minor engaged in sexually explicit conduct, increased the penalty for communicating with a minor for immoral purposes when the communication was made via an electronic communication, and designated possession of depictions of a minor engaged in sexually explicit conduct as a sex offense.

SSB 6406 added assault of a child in the second degree with sexual motivation to the list of "two-strike" offenses.

2SSB 6460 imposed sentencing enhancements for felonies committed with sexual motivation.

During 2007-08 the Legislature passed SSB 6933, which provided that in criminal actions charging a sex offense, evidence of the defendant's commission of other sex offenses is admissible at the discretion of the court, notwithstanding certain court rules to the contrary.

The following House Republican bills failed to pass during 2007-08:

HB 2443 mandated that when a court sentenced a sex offender to a term of community custody, the court must require the sex offender as a condition of community custody to submit to random, unannounced inspections, required the DOC to allow community corrections officers, based on an officer's professional judgment and discretion, to perform random, unannounced inspections of sex offenders who had been classified as a risk level III, had been convicted of a sex offense against a minor, or had a prior conviction for failure to register.

HB 2462 provided that when sex offenders were sentenced, a full and accurate criminal history of the offender's past convictions must be before the sentencing judge, while giving defendants sufficient opportunity to challenge the validity of their criminal histories.