STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
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Tom McBride, Executive Secretary
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RE: Special Sex Offender Sentencing Alternative (SSOSA) Judgment & Sentence Problem

Dear Director Marler and Executive Secretary McBride:

It recently came to the Department of Corrections' attention that there is an error in the judgment and sentence form available on the Administrative Office of the Courts' (AOC) website for use with offenders sentenced under the Special Sex Offender Sentencing Alternative (SSOSA), RCW 9.94A.670. The result of the error is that offenders sentenced to the Department of Corrections will ultimately receive a lesser amount of supervision in the community than the SSOSA statute allows, and that the court and parties in the individual cases may have contemplated at the time of sentencing.

As you are aware, the SSOSA statute requires, as conditions of the defendant's suspended sentence, a term of confinement of up to 12 months *plus* a term of community custody *equal to the length of the suspended sentence*. RCW 9.94A.670(5)(a) and (b). The statute requires that the length of the community custody term be the greater of "the suspended sentence," the maximum term imposed for offenders under RCW 9.94A.507 (indeterminate sentences only), or three years.

The problem lies with the standard language in the AOC judgment and sentence form, which is used by many Washington counties. Part 4.1 of that form directs the sentencing court to subtract the defendant's jail term from the underlying prison sentence and to suspend only "the remainder" of the sentence rather than the entire prison sentence.

This is how the relevant language from Part 4.1 of the form reads:

> (c) **Suspension of Sentence**. The court imposes _____ months (up to 12 months of actual confinement or the maximum term of the standard range, whichever is less) and suspends the remainder for the duration of the special sex offender sentencing alternative program.

In effect, the form improperly shortens the length of the suspended sentence for purposes of determining the length of the community custody term, contrary to RCW 9.94A.670. For example, a SSOSA offender who receives a 72-month suspended sentence, with 12 months in jail and community custody, should be on supervision for 72 months – the entire length of the suspended sentence. That is what the SSOSA statute expressly provides and is ordinarily what the court and the parties anticipate will occur with the offender's sentence. However, using the standard language from the AOC form (in which the court "suspends the remainder"), the offender's community custody term would be limited to *60* months, the "remainder" of the offender's suspended sentence. As a result, such an offender will be supervised in the community for 12 months less than the SSOSA statute provides.

To avoid this error in future SSOSA cases, the relevant language in the AOC judgment and sentence form could be amended to read as follows:

> (c) **Suspension of Sentence**. The court suspends the above sentence. As a condition of the suspended sentence, the court imposes _____ months (up to 12 months of actual confinement or the maximum term of the standard range, whichever is less) ~~and suspends the remainder for the duration of the special sex offender sentencing alternative program~~.
> (d) **Community Custody**. As a further condition of the suspended sentence, the court places the defendant on community custody under the charge of DOC for the length of the suspended sentence, the length of the maximum term sentenced under RCW 9.94A.507, or three years, whichever is greater. The defendant shall comply with the community custody conditions in paragraph 4.2.

This proposed language will ensure the SSOSA defendant's term of community custody extends for the entirety of the defendant's suspended sentence.

The Department of Corrections welcomes the opportunity to be of assistance to AOC and our partners in the criminal justice system. If you have any questions, concerns, or need further information, please feel free to contact Anmarie Aylward, Community Corrections Division, Assistant Secretary at (360) 725-8787 or aaylward@doc1.wa.gov.

Sincerely,

Dan Pacholke
Secretary

DP:TL.aa