

“Sexually Violent Offense” (SVO) as defined in RCW 71.09.020(17)

Essentially, there are two types of Sexually Violent Offenses:

1) **Offenses that, by their very title, are sexual in nature:**

- Rape 1st degree
- Rape 2nd degree, only if it was charged as having been committed with "forcible compulsion"
 - NOTE: Many crimes, including Rape 2nd, can be charged as having been committed by various means. For example, Rape 2nd can be charged as having been committed with forcible compulsion, or as having been committed against a victim who was incapable of consenting to the sexual contact because the victim is physically helpless (i.e. paraplegic) or mentally incapacitated.
- Rape of a Child in the 1st degree
- Rape of a Child in the 2nd degree
- Child Molestation in the 1st degree
- Child Molestation in the 2nd degree
- Statutory Rape 1st or 2nd Degree
- Indecent Liberties, only if it was charged as having been committed with "forcible compulsion" or against a child under age 14
- Incest, only if it was charged as having been committed against a child under age 14.

2) **Offenses that are not, by their title, sexual in nature, but are committed with sexual motivation:**

- Some violent felonies that are not “sex offenses” by title may be SVO’s if they are sexually motivated.
 - Under RCW 9.94A.030(47), “sexual motivation” means that one of the purposes for which the offender committed the crime was for the purpose of his/her sexual gratification.
- An explicit finding by the sentencing court that an offense was committed with sexual motivation is not needed to determine whether the offense was sexually motivated. Prosecutors consider all of the circumstances surrounding the offense and the offender’s history to determine whether the crime was sexually motivated.
 - The “sexual motivation” enhancement was not created by the Legislature until 1990, so any crime that occurred before that date could not have been officially found to have been sexually motivated.
 - Even since 1990, prosecutors have often failed to charge that a crime was sexually motivated even where it clearly was. The prosecutor may not have known about the ability to charge sexual motivation as an enhancement, or the sexual motivation enhancement may have been used as a bargaining tool during plea negotiations. ***Even if the prosecutor did not charge the offense as having been sexually motivated, or the sexual motivation language was later dropped, you should do an independent evaluation of the facts of the offense to determine if it appears to have been sexually motivated.***

Offenses that are SVO’s if they are committed with “sexual motivation” include:

- Murder in the 1st and 2nd degree
- Assault in the 1st and 2nd degree
- Assault of a Child in the 1st and 2nd degree
- Kidnapping in the 1st and 2nd degree
- Burglary in the 1st degree
- Residential Burglary
- Unlawful Imprisonment.

Any of the above offenses are also SVOs if the person is convicted of attempting, soliciting, or conspiring to commit them. For example, Att. Rape 1st or Att. Assault 2nd with sexual motivation can be an SVO.

A federal or out-of-state conviction for a felony offense which is comparable to any of the above described SVOs is an SVO. The comparability analysis is a legal one, to be determined by the prosecuting authority.