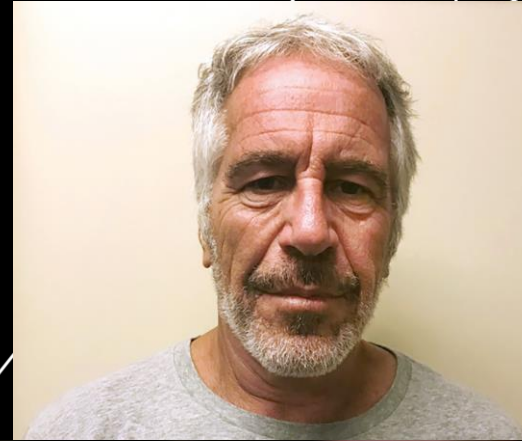


DEFENDING SEX OFFENSES

GUILTY UNTIL PROVEN INNOCENT

Brooke D. Hagara
Hagara Law PLLC
1410 N. Mullan Rd. Ste. 207
Spokane Valley, WA 99206



Initial Meeting

- PC Affidavit and Information
- Exposure
- Bail
- Investigator – time sensitive evidence?
- Listen
- Family members



RCW 9.94A.507

SENTENCING OF SEX OFFENDERS

Applies to convictions for:

Rape 1 or 2

Rape of a Child 1 or 2 (unless def. under 17)

Child Molestation 1 (unless def. under 17)

Indecent Liberties by Forcible Compulsion

An attempt to commit any of these crimes;

With a finding of Sexual Motivation:

Murder 1 or 2

Homicide by Abuse

Kidnapping 1 or 2

Assault 1 or 2

Assault of a Child 1 or 2

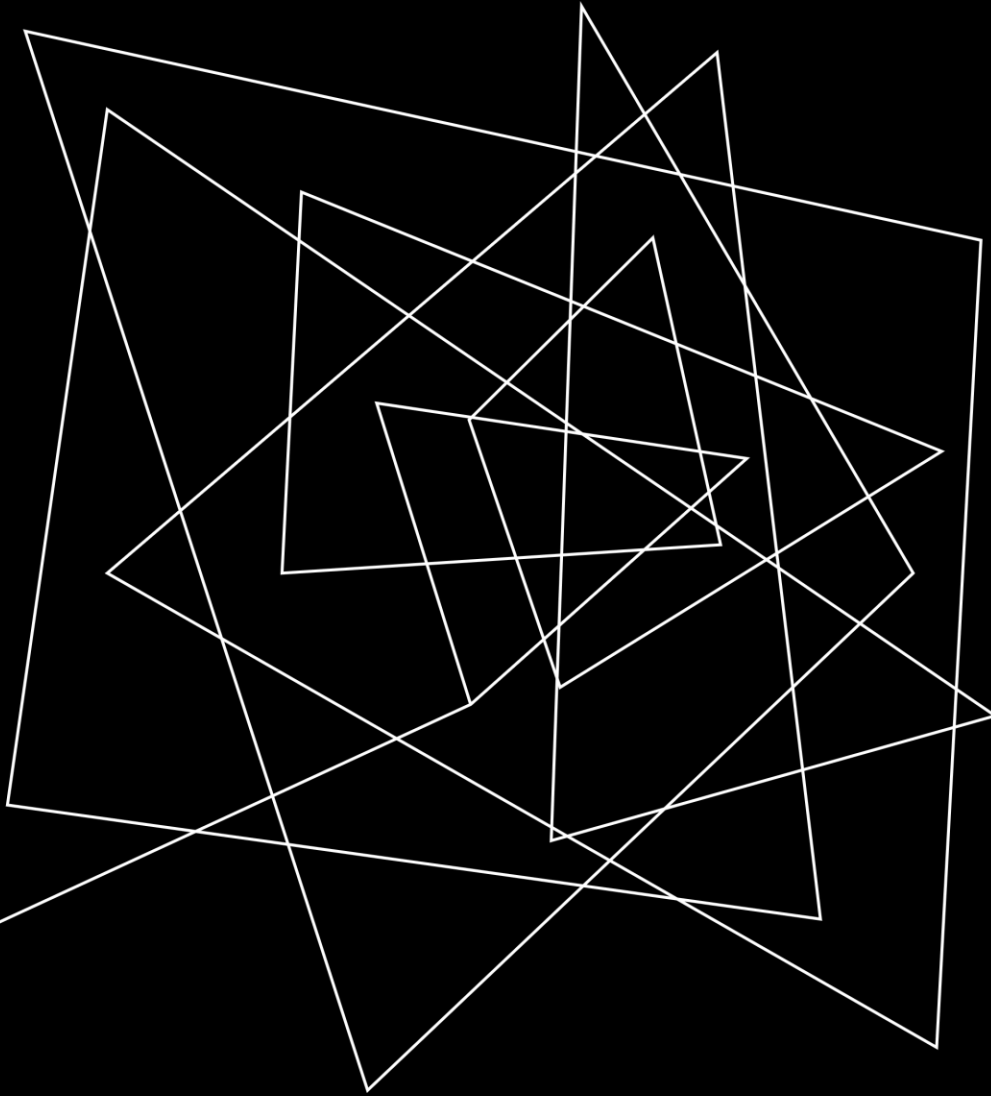
Burglary 1

If prior offense under 9.94A.030(31)(b), ANY sex offense other than FTRSO. (Note: I think this is intended to refer to section (47)).

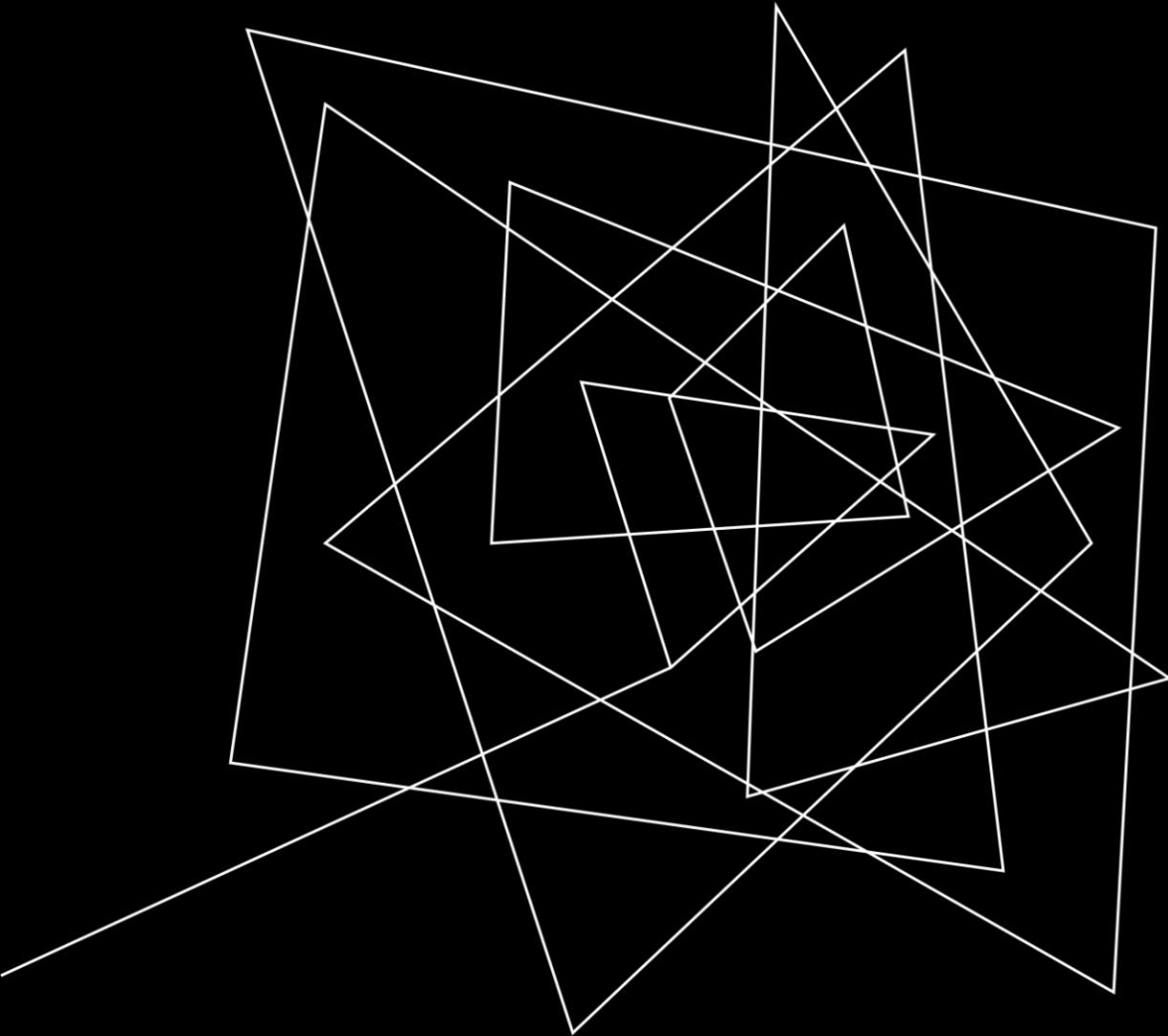
RCW 9.94A.507

INDETERMINATE SENTENCING

REVIEW BOARD



- Standard range is base sentence
- At end of base sentence defendant appears before parole board
- Parole board determines whether “amenable to release”
- Every four years
- Up to statutory maximum for offense
- Even if released, may be returned to custody upon violation of community custody terms



ANTHONY
PARKS
2007

- Convicted of Rape 2
- 78-102 months to life
- Still in prison

Rape First Degree, Completed or Attempt

RCW 9A.44.040 CLASS A – SERIOUS VIOLENT/SEX/CRIMES AGAINST PERSONS ATTEMPT = CLASS A - SERIOUS VIOLENT/SEX OFFENDER SCORING RCW 9.94A.525(17)

If the present conviction is for a felony domestic violence offense where domestic violence was plead and proven, use the General Serious Violent/Sex Offense Where Domestic Violence Has Been Plead and Proven scoring form on page 250.

ADULT HISTORY:

Enter number of sex offense felony convictions x 3 = _____
Enter number of serious violent felony convictions x 3 = _____
Enter number of violent felony convictions x 2 = _____
Enter number of nonviolent felony convictions x 1 = _____

JUVENILE HISTORY:

Enter number of sex offense felony dispositions x 3 = _____
Enter number of serious violent felony dispositions x 3 = _____
Enter number of violent felony dispositions x 2 = _____
Enter number of nonviolent felony dispositions x ½ = _____

OTHER CURRENT OFFENSES:

(Other current offenses that do not encompass the same conduct count in offender score)

Enter number of other sex offense felony convictions x 3 = _____
Enter number of other violent felony convictions x 2 = _____
Enter number of other nonviolent felony convictions x 1 = _____

STATUS:

Was the offender on community custody on the date the current offense was committed? + 1 = _____

Total the last column to get the **Offender Score** (Round down to the nearest whole number)..... _____

SENTENCE RANGE

LEVEL XII	Offender Score									
	0	1	2	3	4	5	6	7	8	9+
	108m	119m	129m	140m	150m	161m	189m	207m	243m	279m
	93 - 123	102 - 136	111 - 147	120 - 160	129 - 171	138 - 184	162 - 216	178 - 236	209 - 277	240 - 318

- ✓ For attempt (RCW 9.94A.595) see page 60 or for gang-related felonies where the court found the offender involved a minor (RCW 9.94A.833) see page 237 for standard range adjustments.
- ✓ For deadly weapon enhancement, see page 243.
- ✓ For sentencing alternatives, see page 225.
- ✓ For community custody eligibility, see page 238.
- ✓ For any applicable enhancements other than deadly weapon enhancement, see page 233.
- ✓ If the offender is not a persistent offender and the current offense was committed on or after 9/1/2001, then the offender is subject to the requirements under RCW 9.94A.507.
- ✓ Multiple current serious violent offenses shall have consecutive sentences imposed per the rules of RCW 9.94A.589(1)(b).
- ✓ Excluding convictions for attempt, the statutory minimum sentence is 60 months per RCW 9.94A.540 and is imposed under the rules of RCW 9.94A.507.
- ✓ Per RCW 9.94A.507(3)(c)(ii), excluding convictions for attempt, the minimum term shall be either the maximum of the standard sentence range for the offense or 25 years, whichever is greater, for a finding that the victim was under the age of 15 at the time of the offense under RCW 9.94A.837 or found to be developmentally disabled, mentally disordered, a frail elder or vulnerable adult at the time of the offense under RCW 9.94A.838.

OTHER SENTENCING ISSUES

- Other current and prior sex offenses are triplers for offender score calculation

OTHER SENTENCING ISSUES

TWO STRIKES

RCW 9.9A.570 – PERSISTENT OFFENDERS LWOP

RCW 9.94A.030(37)(b)

Conviction for:

ROC 1 or 2

CM 1

Rape 1 or 2

Indecent liberties with force

OR

With sexual motivation -

Murder 1 or 2

Homicide by abuse

Kidnapping 1 or 2

Assault 1 or 2

Assault of a Child 1 or 2

Burglary 1

OR

Attempt to commit any of
these crimes.

AND prior conviction for any of these offenses or comparable out of state or federal offense.



CLIENT STATEMENTS TO LAW ENFORCEMENT

WHAT AM I
WEDDED TO?



INNOVATION
TESTIFY TO
HAVE A
CHANCE AT
AN
ACQUITTAL

A series of white, overlapping geometric lines on a black background, forming a complex, abstract shape on the left side of the slide.

JURIES WANT
TO HEAR YOUR
CLIENT SAY
“I DIDN'T DO IT”

CLIENT STATEMENTS TO LAW ENFORCEMENT

Confessions

- Suppression
- But still admissible for impeachment unless the statement truly the result of coercive tactics and not just a Miranda or right to counsel violation
- False confessions
 - You need an expert
 - Juror difficulty understanding why someone would confess to something they did not do, much less a sex offense

Other Statements

How does your client present?

Is their statement now consistent with the prior statement? Did they lie in the prior statement?

Does their statement fit with the other evidence?

If your client is going to testify, they need to be prepped. Practice direct and cross, preferably with the most difficult attorney you can find. Do it until you get it right.

ISSUES

(1) CHILD SEX
(COMPLAINING WITNESS
UNDER AGE 10)

(2) OLDER COMPLAINING
WITNESSES STILL UNDER
18

(3) WITHOUT CONSENT –
FORCE OR INTOXICATION

COMPLAINING WITNESS 10 OR UNDER



Child Hearsay – RCW 9A.44.120

- Statements made by a child under the age of 10
- Describing any act of sexual contact or physical abuse resulting in substantial bodily harm

ADMISSIBLE in criminal proceedings not withstanding other statutes or court rules.

Examples: Statements to law enforcement, parents, teachers, friends, child forensic interviewers.

COMPLAINING WITNESS 10 OR UNDER



Procedurally– RCW 9A.44.120

Requires advance notice by the State

“Child hearsay hearing”

- Outside presence of jury – child testifies as well as other witnesses to hearsay statement
- Judge evaluates Ryan factors to determine if statements are “sufficiently reliable”
- Confrontation clause issues? Only non-testimonial statements if child does not testify

CHILDREN DON'T LIE ABOUT SEX ABUSE?



WENATCHEE

- 43 adults arrested and accused of sex abusing 60 children
- Many of the accused were poor, developmentally disabled, and illiterate
- After 1998, Innocence Project took cases of those convicted and incarcerated
- All had verdicts overturned or pled to lesser, unrelated charges



CHILDREN ARE SUGGESTIBLE

Look for:

Interviews of very young children (under 4?)

Leading and/or suggestive questions

Introduction of offense-related information by interviewer

Presence of parent or authority figure

Multiple complaining wits?

Independent expert?

POSSIBLE DEFENSES ON CHILD SEX CASES

- The story was suggested by someone else and the child now believes it is true
- The child is mistaken about the perpetrator
- The child is lying

What do you know about the child? What do you know about the child's circumstances?

Information from your client

Collateral sources – family members/friends

School records

CPS records

Court records (divorce/separation, custody?)

OLDER CHILDREN

No child hearsay

Sometimes more sympathy to
your client from
juries/prosecutor

Look at social media of
complaining witness



ADULT CASES

Possible Defenses

- Consent
 - Buyer's Remorse
 - Attention
-
- Does your client have a compelling narrative?
 - What can you find out about the complaining witness (investigation, social media, etc.)?



PRIOR SEXUAL CONDUCT OF COMPLAINING WITNESS

RCW 9A.44.020 – “Rape Shield”

Evidence of past sexual behavior inadmissible on issue of credibility.

Admissible to prove consent unless:

Prior sexual intercourse between complaining witness and
defendant may be admissible

Notice provided to State that complaining witness's past sexual
behavior is relevant to consent, and why; court conducts
pretrial hearing.

PRIOR SEXUAL CONDUCT OF COMPLAINING WITNESS

Reasons to admit prior sexual behavior of complaining witness:

Injuries or other forensic evidence that must be explained,

Complaining witness is engaging in an act of prostitution, and client alleges that is what occurred in their case.



PLEA BARGAINING – WHAT IS YOUR CLIENT'S BOTTOM LINE?

Registration or Jail/Prison Time

Amend to non-sex offense(s)?

Amend to non-ISRFB offenses or those
with only a 10-year maximum?

SSOSA?

A series of white, overlapping geometric lines and polygons on a black background, located on the left side of the slide.

THANK YOU

Brooke D. Hagara

brooke@hagaralaw.com