

SENTENCE MULTIPLIERS

Purpose

The purpose here is not to argue that criminal history pre current offense should not be considered differently for property crimes than it is for crimes against the person. The purpose is to illustrate the complexities of the current methodology of scoring prior offenses and provoke discussion related to a more streamlined and less complex process.

Sentence Multipliers vs Sentence Enhancements

To begin, it is important to differentiate between sentence enhancements and sentence multipliers. Sentence enhancements relate to the circumstances of the current offense and involve a set of statutory criteria which, if met, require the court to add a specified amount of additional time of incarceration onto the standard range sentence for the offense before the court. For example, RCW 9.94A.533(6) adds 24 months to presumptive sentence for drug sales or manufacture that occurred within 1000 feet of a school or bus stop. A class A felony involving the use of a fire arm adds 60 months to the presumptive sentence pursuant to RCW 9.94A.533(4). There are a myriad of these enhancements in our statutes.

Sentence multipliers add additional time to the sentencing range for the current offense, based on criminal history which preceded the offense under adjudication. The sentencing range is increased based upon the way the offender score is calculated when multipliers are brought into play.

Issues with Multipliers

By way of non-exhaustive illustration, I analyze the some of the contexts within which the current multiplier process works.

Assume an offender is convicted of two serious violent offenses resulting from separate and discrete instances of criminal conduct. In that situation, the most serious offense is scored first, using the offender score the defendant carried in with him / her. The second, less serious violent offense (as defined by RCW 9.94A.030(46)) is scored at an offender score of -0-, but runs consecutive to, rather than concurrent with, the more serious offence pursuant to RCW 9.94A.589(1)(b).

Example

An offender shoots and kills a victim under circumstances amounting to Murder second degree. This crime has a seriousness level of XIV. Then, in flight from the murder, the offender jumps in a car, holds the driver at gunpoint and makes the driver help with flight from the crime. This is Kidnapping I, and has a seriousness level of X.

Further assume one prior conviction for Burglary second degree, so a pre existing offender score of 1 as the prior burglary is a nonviolent felony conviction. The murder charge is scored with an offender score of 1, making the standard range 134 – 234 months. The Kidnapping 1 charge, however, is scored with an offender score of -0-, and yields a sentencing range of 51 – 68 months to be served consecutive to the Murder second degree sentence.

Now, add to the mix an additional adult serious violent offense of Manslaughter 1, possibly dating back 18 years but not washed out because of the intervening Burglary 2 conviction. The offender score for the Murder 2 charge is now 4. That occurs because the manslaughter 1 charge offender point is multiplied by 3 pursuant to RCW 9.94A.525(9) and the Burglary 2 point is added. The Murder 2 range is now 165 – 265 months, with the Kidnapping 1 scored as a -0- and the 51 – 68 month sentence run consecutively.

Sex crimes operate in much the same fashion, though the use of multipliers is more expansive than in the preceding serious violent felony analysis. Pursuant to RCW 9.94A.525(17), not only will prior serious violent felonies result in the 3X multiplier, any prior sex offense, whether or not violent (like a status offense) will result in a 3X multiplier.

In addition to multipliers based on prior criminal conduct, the current criminal charge may carry a point multiplier (as opposed to a sentencing enhancement) using a 2X multiplier for each domestic violence offense.

This is not an exhaustive list of criminal sentence multipliers. It is presented to suggest that these complexities are fraught with potential for erroneous sentence calculation, and can sometimes result in a disproportionate result. The hope is to provoke discussion about a better alternative to this system.