

Washington State Sex Offender Policy Board

Review of Criminal & Civil Statutes of Limitations

Sexual Assault Crimes

October 2012

I. Legislative Request & Authorizing Statute¹

Senators Hargrove and Stevens requested the Sex Offender Policy Board (SOPB) convene to “review Washington’s policy on sex offense statute of limitations in the context of best practice and effectiveness.” Specifically, the SOPB was asked to:

- Explore what amendments, if any, could be made to current policy regarding sex offense statute of limitations (9A.04.080 RCW) to appreciably improve the likelihood of successful prosecution of sex crimes against children;
- Review best practices, if any, that facilitate successful prosecution of child sex abuse cases when allegations are made after the victim reaches the age of majority;
- Review available literature and practices in other states regarding the role of successful prosecution and/or speedy prosecution in the deterrence of future offenses; and
- Examine the states’ various statute of limitations in child sex offense cases as they relate to successful civil action by victims.

II. Research & Review

Overview: Criminal Statute of Limitations for Sex Offenses (RCW 9A.04.080)

Most states have enacted statutes which limit the time in which crimes can be prosecuted. These time limits are referred to as “Statute of Limitations.” Once the statute of limitations has expired, there is a bar to prosecution.

In recent years, there have been efforts to eliminate statute of limitations for sex offenses generally and child sex offenses specifically. In general, limitation periods are longer for more serious offenses. In some states, there are no limitation periods for the most serious offenses. Other states take different approaches that include: no statute of limitations on felony offenses, no statute of limitations on sex offenses, no statute of limitations on child sex offenses or extended statute of limitations for sex offenses.

WA Criminal Statute of Limitations by Crime and Age

Washington has no statute of limitations for murder, homicide by abuse, arson if death results, vehicular homicide, and vehicular assault or hit-and-run injury-accident if a death results. For felonies committed by public officers in official duty, and arson (where no death occurs), the statute of limitations is ten years.

¹ Sex Offender Policy Board Authorizing Authority ESSB 5891 (2011) & RCW 9.94A.8673

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Washington approaches sex offense statute of limitations by including factors such as type of offense and the age of the victim and the offender. When compared to other states, these factors are distinctive. In comparison, most other states extend the statute of limitations for all sex offenses or all sex offenses against children.

Arguments FOR and AGAINST Criminal Statute of Limitations²

Supporters for eliminating criminal statute of limitations argue the following:

- Sex offenders pose a continuing threat to society;
- Terrible and lifelong impact of sexual assault on victims;
- No deterrence for future crimes if offenders are allowed to wait out the clock; and
- Victims live in fear until their offender is captured/arrested/tried/convicted.

Arguments for keeping the statute of limitations include:

- In the interest of fairness, a prosecution should be based on recent-and more reliable-evidence;
- Statute of limitations encourage law enforcement and prosecutors to act in a timely fashion in apprehending and bringing wrongdoers to justice;
- Statute of limitations grant repose (closure) to a wrongdoer, which may be appropriate when a focus on the past does not serve current interests;
- Statute of limitations foster... a more stable and forward-looking society. As time goes by, society's interest in retribution may lessen, and it is more appropriate to focus the state's attention on dealing with recent criminal activity; and
- Evidence rebutting assertions of criminal conduct become a casualty of the clock, making successful prosecution much more difficult.

Summary of Other States Criminal Statute of Limitations

According to data compiled by the Washington State Sentencing Guidelines Commission in August, 2008³, the following outlines various states' statute of limitations for sex offenses and sex offenses against children:

- 7 states have no statute of limitations for any felony;
- 17 states specifically have no statute of limitations for the most aggravated forms of rape, sexual abuse, and sexual assault;
- 7 states and federal law have no statute of limitations on child sex abuse;
- 10 states allow prosecutions of child sex abuse for at least 20 years after the victim's 18th birthday;
- 12 states toll statute of limitations until child victim turns "of age;" and
- In addition to Washington, 22 states have DNA tolling provisions.

² Hinchcliffe, Shannon. *Overview: Sex Offense Statutes of Limitation*. Washington State Sentencing Guidelines Commission. August 28, 2008.

³ Hinchcliffe, Shannon. *Overview: Sex Offense Statutes of Limitation*. Washington State Sentencing Guidelines Commission. August 28, 2008.

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III. Questions and Findings

Question for SOPB:

Explore what amendments, if any, could be made to current policy regarding sex offense statute of limitations (9A.04.080 RCW) to appreciably improve the likelihood of successful prosecution of sex crimes against children.

Finding:

No studies available at this time specifically address or add information to statute of limitations contributing to the successful prosecution of sex crimes against children. To the contrary, prosecutor experience tends to indicate the more time that exists between the time of the crime and the prosecution of the case; the more difficult the case is to prove.

Question for SOPB:

Review best practices, if any, that facilitate successful prosecution of child sex abuse cases when allegations are made after the victim reaches the age of majority.

Finding:

No studies available at this time specifically address this question.

Question for SOPB:

Review available literature and practices in other states regarding the role of successful prosecution and/or speedy prosecution in the deterrence of future offenses.

Finding:

No studies available at this time specifically address this question.

Despite the lack of literature and studies on the specific questions asked, the SOPB addressed the overarching task assigned; "review Washington's policy on sex offense statute of limitations in the context of best practice and effectiveness." One of the documents the SOPB has referenced over time as a guide for our work to recommend best practices is, the *Center for Sex Offender Management's, The Comprehensive Assessment Protocol: A System-wide Review of Adult and Juvenile Sex Offender Management Strategies (2007)*. www.csom.org.

In response to the directive in the Senators Hargrove and Stevens letter, the SOPB looked specifically at CSOM best practices related to Investigation, Prosecution, and Disposition of sex crimes and found Washington uses many of the identified best practices in the

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“Comprehensive Assessment.” The SOPB concurs with the CSOM observation that “of the multiple facets of a comprehensive and integrated approach to sex offender management, the investigation, prosecution, and disposition components are the most under-represented in the professional literature. As such, practices vary considerably both within and across jurisdictions” (Comprehensive Assessment pg. 33).

Juvenile and adult arrests for sex offenses are relatively small when compared to all other crime types. However, the numbers are nevertheless considerable and require significant amounts of time and resources within our justice system. The weight of managing these cases rests heavily on prosecutors, who bear the primary responsibility for making decisions related to the charges to be filed in these cases, representing the state’s interests, participating in plea negotiations, and offering disposition recommendations to the courts. Following is a brief summary of both the CSOM best practice principles and Washington’s efforts to successfully respond to sex crimes and sex offender management. (Comprehensive Assessment pg. 46).

- Best practices related to INVESTIGATION and Washington’s efforts:
 - Specialized Training
 - Investigation of child sexual abuse — Protocols RCW 26.44.180
 - Community Sexual Assault Program in every county
 - Law Enforcement & Child Welfare Agencies – Criminal Justice Training Center’s Basic Law Enforcement Academy and DSHS Children’s Administration Academy Training
 - Victims’ rights & needs - provided within Child Welfare system
 - Multi-disciplinary coordination - provided within Child Welfare system
 - Victim-Centeredness
 - Crime victim rights RCW 7.69 & 7.69A, which includes investigation components
 - Crime victims compensation RCW 7.68, which requires cooperation with investigation
 - Collaborative Partnerships and Information Sharing
 - Sexual Assault Response Teams
 - Sex Offender Registry
 - Cross-Agency Data Analysis
 - Various agencies in Washington involved in the Investigation phase of sexual assault collect information, but it is not easily shared or disseminated given the multiple data systems and inability to share across those systems.

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- Best practices related to PROSECUTION and Washington's efforts:
 - Pre-Trial Management
 - If the decision is made to release a defendant pre-trial, no contact orders and other restrictions may be put in place to protect alleged victims from pressure, intimidation, or harm.
 - Prosecutorial Practices
 - Specialized Caseload -
 - In general, county prosecutor offices in Washington practice specialized caseload management, while taking into consideration the staffing and resource factors that play into a prosecutor's ability to efficiently manage all cases, not just sex offense crimes.
 - Victim-Centeredness
 - Victim impact statements to court RCW 7.69.030
 - Testimony of child victims via closed circuit TV RCW 9A.44.150
 - Protecting identity of child victims of sexual assault RCW 10.52.100 during investigation
 - Victim /Witness Units in every county
 - Crime victim rights RCW 7.69 & 7.69A
 - Victim statement to court regarding proposed plea agreement RCW 9.94A.431

Rationale for Criminal Statute of Limitations Recommendation:

During the SOPB's lengthy review of Washington's statute of limitations for sex offenses and the historical research previously conducted by the Sentencing Guidelines Commission, as well as the limited empirical best practice research related to successful prosecutions of sex offenses, the SOPB learned there is virtually no research available that reviews the outcomes of a case and it's specific relationship to the statute of limitations.

This policy recommendation, in lieu of clear and convincing evidence, is based on relatively recent research that provides a better understanding of child brain development, which is not complete until approximately 25 years of age. Further, research indicates most often children who are sexually abused are done so by a parent or other family member. The child victim is not necessarily sufficiently independent at age 21 to make decisions, nor have the wherewithal to pursue and fully participate in a criminal case for child sexual abuse.

Such knowledge leads the SOPB to recommend the following:

- *all statute of limitations for victims of sexual assault, but under 18 years of age (or age of majority), is ten (10) years plus the age of majority, or up until the 28th birthday, whichever is longer.*

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In addition, given the lack of research specific to successful outcomes related to statute of limitations timeframes, and interest continues to further analyze the correlation, if any, between successful prosecutions for minor victims of sexual assault and current statute of limitations timeframes, the SOPB would require further authority and resources to acquire the necessary data and staff to conduct such a lengthy analysis of a variety of state court data.

Question for SOPB:

Examine the states' various statute of limitations in child sex offense cases as they relate to successful civil action by victims.

Finding:

Much like criminal statute of limitations for sexual assault, laws vary greatly among states regarding civil statute of limitations as well. There is no overwhelming body of evidence available to date indicating a particular age, or number of years after a crime occurs, that lends to an increase in successful remedies in civil court. Many of the same arguments in support of, as well as against criminal statute of limitations for sex offenses, apply to the extension of the civil statute debate.

Rationale for Recommendation:

In Washington, the statute of limitations for torts is three (3) years. With that said, the SOPB does recommend a revision to the civil statute of limitations for sexual assault crimes, based on policy alone, rather than in combination with clear and convincing research.

This policy recommendation is based on relatively recent research that provides a better understanding of child brain development, which is not complete until approximately 25 years of age. Further, research indicates most often children who are sexually abused are done so by a parent or other family member. The child victim is not necessarily sufficiently independent at age 21 to make decisions nor have the wherewithal to pursue and fully participate in a criminal case for child sexual abuse. Such knowledge leads the SOPB to conclude that a longer timeframe in which to pursue civil action for a sexual assault that occurred before the age of 18 is appropriate, and to recommend the following:

- *all statute of limitations for victims of sexual assault, but under 18 years of age (or age of majority), is ten (10) years plus the age of majority, or up until the 28th birthday, whichever is longer.*

The SOPB acknowledges and notes that such a change may bring the statute of limitations for other torts into question.

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In addition, given the lack of research specific to successful outcomes related to statute of limitations timeframes, and interest continues to further analyze the correlation, if any, between successful prosecutions for minor victims of sexual assault and current statute of limitations timeframes, the SOPB would require further authority and resources to acquire the necessary data and staff to conduct such a lengthy analysis of a variety of state court data.

Summary:

During the course of this review and the SOPB's work over time, a few themes have emerged which are relevant to this specific request, as well as other work undertaken. The three major themes are:

- the importance, value, and effectiveness of multi-disciplinary teams;
- resources for training people in all components of the sex offender management system; and
- the value and effectiveness of victim advocacy services.

The composition and products of the SOPB highlight the value and effectiveness of multi-disciplinary teams. The SOPB is a multi-disciplinary team at the state level and the recommendations are a product of the different perspectives, areas of expertise, diverse opinions and experience represented by the membership on the SOPB.

The second theme highlights the fact that once a good management system is established, as it has been in Washington, a critical element is the availability of resources for training professionals who have responsibility for some element of sex offender management.

The third theme is the value and importance of high quality victim services being available throughout Washington. All components of the sex offender management system are well served and enhanced when victim services are a contributor to that component.