
HOUSE BILL 1140

State of Washington 54th Legislature 1995 Regular Session

By Representatives Ballasiotes, Horn, Blanton, Costa and Honeyford

Read first time 01/16/95. Referred to Committee on Corrections.

1 AN ACT Relating to the use of criminal history in sentencing of
2 offenders; amending RCW 9.94A.390; reenacting and amending RCW
3 9.94A.360; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 9.94A.360 and 1992 c 145 s 10 & 1992 c 75 s 4 are each
6 reenacted and amended to read as follows:

7 The offender score is measured on the horizontal axis of the
8 sentencing grid. The offender score rules are as follows:

9 The offender score is the sum of points accrued under this section
10 rounded down to the nearest whole number.

11 (1) A prior conviction is a conviction which exists before the date
12 of sentencing for the offense for which the offender score is being
13 computed. Convictions entered or sentenced on the same date as the
14 conviction for which the offender score is being computed shall be
15 deemed "other current offenses" within the meaning of RCW 9.94A.400.

16 (2) Except as provided in subsection (4) of this section, class A
17 and sex prior felony convictions shall always be included in the
18 offender score. Class B prior felony convictions other than sex
19 offenses shall not be included in the offender score, if since the last

1 date of release from confinement (including full-time residential
2 treatment) pursuant to a felony conviction, if any, or entry of
3 judgment and sentence, the offender had spent ten consecutive years in
4 the community without (~~(being convicted of any felonies)~~) committing
5 any crime. Class C prior felony convictions other than sex offenses
6 shall not be included in the offender score if, since the last date of
7 release from confinement (including full-time residential treatment)
8 pursuant to a felony conviction, if any, or entry of judgment and
9 sentence, the offender had spent five consecutive years in the
10 community without (~~(being convicted of any felonies)~~) committing any
11 crime. Serious traffic convictions shall not be included in the
12 offender score if, since the last date of release from confinement
13 (including full-time residential treatment) pursuant to a felony
14 conviction, if any, or entry of judgment and sentence, the offender
15 spent five years in the community without (~~(being convicted of any~~
16 ~~serious traffic or felony traffic offenses)~~) committing any crime.
17 This subsection applies to both adult and juvenile prior convictions.

18 (3) Out-of-state convictions for offenses shall be classified
19 according to the comparable offense definitions and sentences provided
20 by Washington law. Federal convictions for offenses shall be
21 classified according to the comparable offense definitions and
22 sentences provided by Washington law. If there is no clearly
23 comparable offense under Washington law or the offense is one that is
24 usually considered subject to exclusive federal jurisdiction, the
25 offense shall be scored as a class C felony equivalent if it was a
26 felony under the relevant federal statute.

27 (4) Always include juvenile convictions for sex offenses. Include
28 other class A juvenile felonies only if the offender was 15 or older at
29 the time the juvenile offense was committed. Include other class B and
30 C juvenile felony convictions only if the offender was 15 or older at
31 the time the juvenile offense was committed and the offender was less
32 than 23 at the time the offense for which he or she is being sentenced
33 was committed.

34 (5) Score prior convictions for felony anticipatory offenses
35 (attempts, criminal solicitations, and criminal conspiracies) the same
36 as if they were convictions for completed offenses.

37 (6)(a) In the case of multiple prior convictions, for the purpose
38 of computing the offender score, count all convictions separately,
39 except:

1 (~~(a)~~) (i) Prior adult offenses which were found, under RCW
2 9.94A.400(1)(a), to encompass the same criminal conduct, shall be
3 counted as one offense, the offense that yields the highest offender
4 score. The current sentencing court shall determine with respect to
5 other prior adult offenses for which sentences were served concurrently
6 whether those offenses shall be counted as one offense or as separate
7 offenses using the "same criminal conduct" analysis found in RCW
8 9.94A.400(1)(a), and if the court finds that they shall be counted as
9 one offense, then the offense that yields the highest offender score
10 shall be used. The current sentencing court may presume that such
11 other prior adult offenses were not the same criminal conduct from
12 sentences imposed on separate dates, or in separate counties or
13 jurisdictions, or in separate complaints, indictments, or informations;

14 (~~(b)~~) (ii) Juvenile prior convictions entered or sentenced on the
15 same date shall count as one offense, the offense that yields the
16 highest offender score, except for juvenile prior convictions for
17 violent offenses with separate victims, which shall count as separate
18 offenses; and

19 (~~(c)~~) (iii) In the case of multiple prior convictions for
20 offenses committed before July 1, 1986, for the purpose of computing
21 the offender score, count all adult convictions served concurrently as
22 one offense, and count all juvenile convictions entered on the same
23 date as one offense. Use the conviction for the offense that yields
24 the highest offender score.

25 (b) As used in this subsection (6), "served concurrently" means
26 that: (i) The latter sentence was imposed with specific reference to
27 the former; (ii) the concurrent relationship of the sentences was
28 judicially imposed; and (iii) the concurrent timing of the sentences
29 was not the result of a probation or parole revocation on the former
30 offense.

31 (7) If the present conviction is one of the anticipatory offenses
32 of criminal attempt, solicitation, or conspiracy, count each prior
33 conviction as if the present conviction were for a completed offense.

34 (8) If the present conviction is for a nonviolent offense and not
35 covered by subsection (12) or (13) of this section, count one point for
36 each adult prior felony conviction and one point for each juvenile
37 prior violent felony conviction and 1/2 point for each juvenile prior
38 nonviolent felony conviction.

1 (9) If the present conviction is for a violent offense and not
2 covered in subsection (10), (11), (12), or (13) of this section, count
3 two points for each prior adult and juvenile violent felony conviction,
4 one point for each prior adult nonviolent felony conviction, and 1/2
5 point for each prior juvenile nonviolent felony conviction.

6 (10) If the present conviction is for Murder 1 or 2, Assault 1,
7 Assault of a Child 1, Kidnaping 1, Homicide by Abuse, or Rape 1, count
8 three points for prior adult and juvenile convictions for crimes in
9 these categories, two points for each prior adult and juvenile violent
10 conviction (not already counted), one point for each prior adult
11 nonviolent felony conviction, and 1/2 point for each prior juvenile
12 nonviolent felony conviction.

13 (11) If the present conviction is for Burglary 1, count prior
14 convictions as in subsection (9) of this section; however count two
15 points for each prior adult Burglary 2 or residential burglary
16 conviction, and one point for each prior juvenile Burglary 2 or
17 residential burglary conviction.

18 (12) If the present conviction is for a felony traffic offense
19 count two points for each adult or juvenile prior conviction for
20 Vehicular Homicide or Vehicular Assault; for each felony offense or
21 serious traffic offense, count one point for each adult and 1/2 point
22 for each juvenile prior conviction.

23 (13) If the present conviction is for a drug offense count three
24 points for each adult prior felony drug offense conviction and two
25 points for each juvenile drug offense. All other adult and juvenile
26 felonies are scored as in subsection (9) of this section if the current
27 drug offense is violent, or as in subsection (8) of this section if the
28 current drug offense is nonviolent.

29 (14) If the present conviction is for Willful Failure to Return
30 from Furlough, RCW 72.66.060, Willful Failure to Return from Work
31 Release, RCW 72.65.070, or Escape from Community Custody, RCW
32 72.09.310, count only prior escape convictions in the offender score.
33 Count adult prior escape convictions as one point and juvenile prior
34 escape convictions as 1/2 point.

35 (15) If the present conviction is for Escape 1, RCW 9A.76.110, or
36 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and
37 juvenile prior convictions as 1/2 point.

38 (16) If the present conviction is for Burglary 2 or residential
39 burglary, count priors as in subsection (8) of this section; however,

1 count two points for each adult and juvenile prior Burglary 1
2 conviction, two points for each adult prior Burglary 2 or residential
3 burglary conviction, and one point for each juvenile prior Burglary 2
4 or residential burglary conviction.

5 (17) If the present conviction is for a sex offense, count priors
6 as in subsections (8) through (16) of this section; however count three
7 points for each adult and juvenile prior sex offense conviction.

8 (18) If the present conviction is for an offense committed while
9 the offender was under community placement, add one point.

10 **Sec. 2.** RCW 9.94A.390 and 1990 c 3 s 603 are each amended to read
11 as follows:

12 If the sentencing court finds that an exceptional sentence outside
13 the standard range should be imposed in accordance with RCW
14 9.94A.120(2), the sentence is subject to review only as provided for in
15 RCW 9.94A.210(4).

16 The following are illustrative factors which the court may consider
17 in the exercise of its discretion to impose an exceptional sentence.
18 The following are illustrative only and are not intended to be
19 exclusive reasons for exceptional sentences.

20 (1) Mitigating Circumstances

21 (a) To a significant degree, the victim was an initiator, willing
22 participant, aggressor, or provoker of the incident.

23 (b) Before detection, the defendant compensated, or made a good
24 faith effort to compensate, the victim of the criminal conduct for any
25 damage or injury sustained.

26 (c) The defendant committed the crime under duress, coercion,
27 threat, or compulsion insufficient to constitute a complete defense but
28 which significantly affected his or her conduct.

29 (d) The defendant, with no apparent predisposition to do so, was
30 induced by others to participate in the crime.

31 (e) The defendant's capacity to appreciate the wrongfulness of his
32 or her conduct or to conform his or her conduct to the requirements of
33 the law, was significantly impaired (voluntary use of drugs or alcohol
34 is excluded).

35 (f) The offense was principally accomplished by another person and
36 the defendant manifested extreme caution or sincere concern for the
37 safety or well-being of the victim.

1 (g) The operation of the multiple offense policy of RCW 9.94A.400
2 results in a presumptive sentence that is clearly excessive in light of
3 the purpose of this chapter, as expressed in RCW 9.94A.010.

4 (h) The defendant or the defendant's children suffered a continuing
5 pattern of physical or sexual abuse by the victim of the offense and
6 the offense is a response to that abuse.

7 (2) Aggravating Circumstances

8 (a) The defendant's conduct during the commission of the current
9 offense manifested deliberate cruelty to the victim.

10 (b) The defendant knew or should have known that the victim of the
11 current offense was particularly vulnerable or incapable of resistance
12 due to extreme youth, advanced age, disability, or ill health.

13 (c) The current offense was a major economic offense or series of
14 offenses, so identified by a consideration of any of the following
15 factors:

16 (i) The current offense involved multiple victims or multiple
17 incidents per victim;

18 (ii) The current offense involved attempted or actual monetary loss
19 substantially greater than typical for the offense;

20 (iii) The current offense involved a high degree of sophistication
21 or planning or occurred over a lengthy period of time; or

22 (iv) The defendant used his or her position of trust, confidence,
23 or fiduciary responsibility to facilitate the commission of the current
24 offense.

25 (d) The current offense was a major violation of the Uniform
26 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
27 trafficking in controlled substances, which was more onerous than the
28 typical offense of its statutory definition: The presence of ANY of
29 the following may identify a current offense as a major VUCSA:

30 (i) The current offense involved at least three separate
31 transactions in which controlled substances were sold, transferred, or
32 possessed with intent to do so; ((or))

33 (ii) The current offense involved an attempted or actual sale or
34 transfer of controlled substances in quantities substantially larger
35 than for personal use; ((or))

36 (iii) The current offense involved the manufacture of controlled
37 substances for use by other parties; ((or))

1 (iv) The circumstances of the current offense reveal the offender
2 to have occupied a high position in the drug distribution hierarchy;
3 (~~or~~)

4 (v) The current offense involved a high degree of sophistication or
5 planning or occurred over a lengthy period of time or involved a broad
6 geographic area of disbursement; or

7 (vi) The offender used his or her position or status to facilitate
8 the commission of the current offense, including positions of trust,
9 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
10 other medical professional)(~~or~~).

11 (e) The current offense included a finding of sexual motivation
12 pursuant to RCW 9.94A.127(~~or~~).

13 (f) The offense was part of an ongoing pattern of sexual abuse of
14 the same victim under the age of eighteen years manifested by multiple
15 incidents over a prolonged period of time(~~or~~).

16 (g) The operation of the multiple offense policy of RCW 9.94A.400
17 results in a presumptive sentence that is clearly too lenient in light
18 of the purpose of this chapter, as expressed in RCW 9.94A.010.

19 (h) The defendant's prior unscored misdemeanor or prior unscored
20 foreign criminal history results in a presumptive sentence that is
21 clearly too lenient in light of the purpose of this chapter as
22 expressed in RCW 9.94A.010.

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