
HOUSE BILL 1896

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66th Legislature

2019 Regular Session

By Representatives Morgan, Jinkins, Ormsby, Tharinger, Davis, Appleton, Fitzgibbon, Robinson, and Frame

Read first time 02/04/19. Referred to Committee on Public Safety.

1 AN ACT Relating to promoting fair and proportional sentencing by
2 modifying scoring provisions in the sentencing reform act; amending
3 RCW 9.94A.525; creating a new section; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature intends to remove juvenile
6 adjudications from the calculation of adult offender scores for the
7 purpose of:

8 (1) Giving real effect to the juvenile justice system's express
9 goals of rehabilitation and reintegration;

10 (2) Bringing Washington in line with the vast majority of states,
11 which do not consider prior juvenile offenses in sentencing range
12 calculations for adults;

13 (3) Recognizing the expansive body of scientific research on
14 brain development, which shows that adolescent's perception,
15 judgment, and decision making differs significantly from that of
16 adults; and

17 (4) Guaranteeing due process by granting the procedural
18 protections of a criminal proceeding in any adjudication which may be
19 used to determine the severity of a criminal sentence.

1 **Sec. 2.** RCW 9.94A.525 and 2017 c 272 s 3 are each amended to
2 read as follows:

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

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

7 (1) (a) A prior conviction is a conviction which exists before the
8 date of sentencing for the offense for which the offender score is
9 being computed. Convictions entered or sentenced on the same date as
10 the conviction for which the offender score is being computed shall
11 be deemed "other current offenses" within the meaning of RCW
12 9.94A.589.

13 (b) For the purposes of this section, the following may not be
14 included in an offender score:

15 (i) Adjudications of guilt under Title 13 RCW;

16 (ii) Convictions for any offenses committed before an offender
17 reached eighteen years of age, except for those offenses listed in
18 RCW 13.04.030(1)(e)(v) at the time of the present conviction; and

19 (iii) Out-of-state and federal adjudications and convictions for
20 juvenile offenses, as provided in subsection (3)(b) of this section.

21 (2) (a) Class A and sex prior felony convictions shall always be
22 included in the offender score.

23 (b) Class B prior felony convictions other than sex offenses
24 shall not be included in the offender score, if since the last date
25 of release from confinement (including full-time residential
26 treatment) pursuant to a felony conviction, if any, or entry of
27 judgment and sentence, the offender had spent ten consecutive years
28 in the community without committing any crime that subsequently
29 results in a conviction.

30 (c) Except as provided in (e) of this subsection, class C prior
31 felony convictions other than sex offenses shall not be included in
32 the offender score if, since the last date of release from
33 confinement (including full-time residential treatment) pursuant to a
34 felony conviction, if any, or entry of judgment and sentence, the
35 offender had spent five consecutive years in the community without
36 committing any crime that subsequently results in a conviction.

37 (d) Except as provided in (e) of this subsection, serious traffic
38 convictions shall not be included in the offender score if, since the
39 last date of release from confinement (including full-time
40 residential treatment) pursuant to a conviction, if any, or entry of

1 judgment and sentence, the offender spent five years in the community
2 without committing any crime that subsequently results in a
3 conviction.

4 (e) If the present conviction is felony driving while under the
5 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
6 felony physical control of a vehicle while under the influence of
7 intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate
8 crimes for the offense as defined by RCW 46.61.5055(14) shall be
9 included in the offender score, and prior convictions for felony
10 driving while under the influence of intoxicating liquor or any drug
11 (RCW 46.61.502(6)) or felony physical control of a vehicle while
12 under the influence of intoxicating liquor or any drug (RCW
13 46.61.504(6)) shall always be included in the offender score. All
14 other convictions of the defendant shall be scored according to this
15 section.

16 (f) Prior convictions for a repetitive domestic violence offense,
17 as defined in RCW 9.94A.030, shall not be included in the offender
18 score if, since the last date of release from confinement or entry of
19 judgment and sentence, the offender had spent ten consecutive years
20 in the community without committing any crime that subsequently
21 results in a conviction.

22 ~~((g) This subsection applies to both adult and juvenile prior
23 convictions.))~~

24 (3) (a) Except as provided in (b) of this subsection, out-of-state
25 convictions for offenses shall be classified according to the
26 comparable offense definitions and sentences provided by Washington
27 law. Federal convictions for offenses shall be classified according
28 to the comparable offense definitions and sentences provided by
29 Washington law. If there is no clearly comparable offense under
30 Washington law or the offense is one that is usually considered
31 subject to exclusive federal jurisdiction, the offense shall be
32 scored as a class C felony equivalent if it was a felony under the
33 relevant federal statute.

34 (b) Out-of-state convictions for juvenile offenses and federal
35 convictions for juvenile offenses may not be included in the offender
36 score. In addition, any out-of-state or federal conviction may not be
37 included in the offender score if juvenile courts would have
38 exercised exclusive original jurisdiction pursuant to Title 13 RCW
39 had the conviction occurred in Washington state. In evaluating
40 whether juvenile courts would have had exclusive jurisdiction if the

1 offense had occurred in Washington, the court shall rely on the laws
2 governing juvenile court jurisdiction at the time of the present
3 conviction.

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

7 (5) (a) In the case of multiple prior convictions, for the purpose
8 of computing the offender score, count all convictions separately,
9 except:

10 (i) Prior offenses which were found, under RCW 9.94A.589(1) (a),
11 to encompass the same criminal conduct, shall be counted as one
12 offense, the offense that yields the highest offender score. The
13 current sentencing court shall determine with respect to other prior
14 (~~adult~~) offenses for which sentences were served concurrently (~~or~~
15 ~~prior juvenile offenses for which sentences were served~~
16 ~~consecutively~~), whether those offenses shall be counted as one
17 offense or as separate offenses using the "same criminal conduct"
18 analysis found in RCW 9.94A.589(1) (a), and if the court finds that
19 they shall be counted as one offense, then the offense that yields
20 the highest offender score shall be used. The current sentencing
21 court may presume that such other prior offenses were not the same
22 criminal conduct from sentences imposed on separate dates, or in
23 separate counties or jurisdictions, or in separate complaints,
24 indictments, or informations;

25 (ii) In the case of multiple prior convictions for offenses
26 committed before July 1, 1986, for the purpose of computing the
27 offender score, count all (~~adult~~) convictions served concurrently
28 as one offense (~~(, and count all juvenile convictions entered on the~~
29 ~~same date as one offense)~~). Use the conviction for the offense that
30 yields the highest offender score.

31 (b) As used in this subsection (5), "served concurrently" means
32 that: (i) The latter sentence was imposed with specific reference to
33 the former; (ii) the concurrent relationship of the sentences was
34 judicially imposed; and (iii) the concurrent timing of the sentences
35 was not the result of a probation or parole revocation on the former
36 offense.

37 (6) If the present conviction is one of the anticipatory offenses
38 of criminal attempt, solicitation, or conspiracy, count each prior
39 conviction as if the present conviction were for a completed offense.

1 When these convictions are used as criminal history, score them the
2 same as a completed crime.

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

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

14 (9) If the present conviction is for a serious violent offense,
15 count three points for prior ((~~adult and juvenile~~)) convictions for
16 crimes in this category, two points for each prior ((~~adult and~~
17 ~~juvenile~~)) violent conviction (not already counted), and one point
18 for each prior ((~~adult~~)) nonviolent felony conviction(~~(, and 1/2~~
19 ~~point for each prior juvenile nonviolent felony conviction))~~).

20 (10) If the present conviction is for Burglary 1, count prior
21 convictions as in subsection (8) of this section; however count two
22 points for each prior ((~~adult~~)) Burglary 2 or residential burglary
23 conviction(~~(, and one point for each prior juvenile Burglary 2 or~~
24 ~~residential burglary conviction))~~).

25 (11) If the present conviction is for a felony traffic offense
26 count two points for each ((~~adult or juvenile~~)) prior conviction for
27 Vehicular Homicide or Vehicular Assault; for each felony offense
28 count one point for each ((~~adult and 1/2 point for each juvenile~~))
29 prior conviction; for each serious traffic offense, other than those
30 used for an enhancement pursuant to RCW 46.61.520(2), count one point
31 for each ((~~adult and 1/2 point for each juvenile~~)) prior conviction;
32 count one point for each ((~~adult and 1/2 point for each juvenile~~))
33 prior conviction for operation of a vessel while under the influence
34 of intoxicating liquor or any drug.

35 (12) If the present conviction is for homicide by watercraft or
36 assault by watercraft count two points for each ((~~adult or juvenile~~))
37 prior conviction for homicide by watercraft or assault by watercraft;
38 for each felony offense count one point for each ((~~adult and 1/2~~
39 ~~point for each juvenile~~)) prior conviction; count one point for each
40 ((~~adult and 1/2 point for each juvenile~~)) prior conviction for

1 driving under the influence of intoxicating liquor or any drug,
2 actual physical control of a motor vehicle while under the influence
3 of intoxicating liquor or any drug, or operation of a vessel while
4 under the influence of intoxicating liquor or any drug.

5 (13) If the present conviction is for manufacture of
6 methamphetamine count three points for each ~~((adult))~~ prior
7 manufacture of methamphetamine conviction ~~((and two points for each
8 juvenile manufacture of methamphetamine offense))~~. If the present
9 conviction is for a drug offense and the offender has a criminal
10 history that includes a sex offense or serious violent offense, count
11 three points for each ~~((adult))~~ prior felony drug offense conviction
12 ~~((and two points for each juvenile drug offense))~~. All other ~~((adult
13 and juvenile))~~ felonies are scored as in subsection (8) of this
14 section if the current drug offense is violent, or as in subsection
15 (7) of this section if the current drug offense is nonviolent.

16 (14) If the present conviction is for Escape from Community
17 Custody, RCW 72.09.310, count only prior escape convictions in the
18 offender score. Count ~~((adult))~~ prior escape convictions as one point
19 ~~((and juvenile prior escape convictions as 1/2 point))~~.

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

23 (16) If the present conviction is for Burglary 2 or residential
24 burglary, count priors as in subsection (7) of this section; however,
25 count two points for each ~~((adult and juvenile))~~ prior Burglary 1
26 conviction~~((7))~~ and two points for each ~~((adult))~~ prior Burglary 2 or
27 residential burglary conviction~~((7 and one point for each juvenile
28 prior Burglary 2 or residential burglary conviction))~~.

29 (17) If the present conviction is for a sex offense, count priors
30 as in subsections (7) through (11) and (13) through (16) of this
31 section; however count three points for each ~~((adult and juvenile))~~
32 prior sex offense conviction.

33 (18) If the present conviction is for failure to register as a
34 sex offender under RCW ~~((9A.44.130 or))~~ 9A.44.132, count priors as in
35 subsections (7) through (11) and (13) through (16) of this section;
36 however count three points for each ~~((adult and juvenile))~~ prior sex
37 offense conviction, excluding prior convictions for failure to
38 register as a sex offender under RCW ~~((9A.44.130 or))~~ 9A.44.132,
39 which shall count as one point.

1 (19) If the present conviction is for an offense committed while
2 the offender was under community custody, add one point. For purposes
3 of this subsection, community custody includes community placement or
4 postrelease supervision, as defined in chapter 9.94B RCW.

5 (20) If the present conviction is for Theft of a Motor Vehicle,
6 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
7 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
8 priors as in subsections (7) through (18) of this section; however
9 count one point for prior convictions of Vehicle Prowling 2, and
10 three points for each (~~adult and juvenile~~) prior Theft 1 (of a
11 motor vehicle), Theft 2 (of a motor vehicle), Possession of Stolen
12 Property 1 (of a motor vehicle), Possession of Stolen Property 2 (of
13 a motor vehicle), Theft of a Motor Vehicle, Possession of a Stolen
14 Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a
15 Motor Vehicle Without Permission 2 conviction.

16 (21) If the present conviction is for a felony domestic violence
17 offense where domestic violence as defined in RCW 9.94A.030 was
18 pleaded and proven, count priors as in subsections (7) through (20)
19 of this section; however, count points as follows:

20 (a) Count two points for each (~~adult~~) prior conviction where
21 domestic violence as defined in RCW 9.94A.030 was pleaded and proven
22 after August 1, 2011, for any of the following offenses: A felony
23 violation of a no-contact or protection order RCW 26.50.110, felony
24 Harassment (RCW 9A.46.020(2)(b)), felony Stalking (RCW
25 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020), Kidnapping 1 (RCW
26 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful imprisonment (RCW
27 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2 (RCW 9A.56.210),
28 Assault 1 (RCW 9A.36.011), Assault 2 (RCW 9A.36.021), Assault 3 (RCW
29 9A.36.031), Arson 1 (RCW 9A.48.020), or Arson 2 (RCW 9A.48.030);

30 (b) Count two points for each (~~adult~~) prior conviction where
31 domestic violence as defined in RCW 9.94A.030 was pleaded and proven
32 after July 23, 2017, for any of the following offenses: Assault of a
33 child in the first degree, RCW 9A.36.120; Assault of a child in the
34 second degree, RCW 9A.36.130; Assault of a child in the third degree,
35 RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW
36 9A.42.020; or Criminal Mistreatment in the second degree, RCW
37 9A.42.030; and

38 (~~(c) ((Count one point for each second and subsequent juvenile
39 conviction where domestic violence as defined in RCW 9.94A.030 was~~

1 ~~pleaded and proven after August 1, 2011, for the offenses listed in~~
2 ~~(a) of this subsection; and~~

3 ~~(d))~~ Count one point for each ~~((adult))~~ prior conviction for a
4 repetitive domestic violence offense as defined in RCW 9.94A.030,
5 where domestic violence as defined in RCW 9.94A.030, was pleaded and
6 proven after August 1, 2011.

7 (22) The fact that a prior conviction was not included in an
8 offender's offender score or criminal history at a previous
9 sentencing shall have no bearing on whether it is included in the
10 criminal history or offender score for the current offense. Prior
11 convictions that were not counted in the offender score or included
12 in criminal history under repealed or previous versions of the
13 sentencing reform act shall be included in criminal history and shall
14 count in the offender score if the current version of the sentencing
15 reform act requires including or counting those convictions. Prior
16 convictions that were not included in criminal history or in the
17 offender score shall be included upon any resentencing to ensure
18 imposition of an accurate sentence.

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