

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1140**

Chapter 316, Laws of 1995

54th Legislature  
1995 Regular Session

CRIMINAL HISTORY--USE IN SENTENCING

EFFECTIVE DATE: 7/23/95

Passed by the House March 7, 1995  
Yeas 93 Nays 0

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CLYDE BALLARD

**Speaker of the  
House of Representatives**

Passed by the Senate April 20, 1995  
Yeas 47 Nays 0

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JOEL PRITCHARD

**President of the Senate**

Approved May 11, 1995

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MIKE LOWRY

**Governor of the State of Washington**

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1140** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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TIMOTHY A. MARTIN

**Chief Clerk**

FILED

May 11, 1995 - 1:08 p.m.

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 1140**

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Passed Legislature - 1995 Regular Session

**State of Washington                      54th Legislature                      1995 Regular Session**

**By** House Committee on Corrections (originally sponsored by Representatives Ballasiotes, Horn, Blanton, Costa and Honeyford)

Read first time 02/17/95.

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 and 1992 c 75 s 4 are  
6 each 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 that subsequently results in a conviction. Class C prior  
6 felony convictions other than sex offenses shall not be included in the  
7 offender score if, since the last date of release from confinement  
8 (including full-time residential treatment) pursuant to a felony  
9 conviction, if any, or entry of judgment and sentence, the offender had  
10 spent five consecutive years in the community without (~~being convicted~~  
11 ~~of any felonies~~) committing any crime that subsequently results in a  
12 conviction. Serious traffic convictions shall not be included in the  
13 offender score if, since the last date of release from confinement  
14 (including full-time residential treatment) pursuant to a felony  
15 conviction, if any, or entry of judgment and sentence, the offender  
16 spent five years in the community without (~~being convicted of any~~  
17 ~~serious traffic or felony traffic offenses~~) committing any crime that  
18 subsequently results in a conviction. This subsection applies to both  
19 adult and juvenile prior convictions.

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

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

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

1 (6)(a) In the case of multiple prior convictions, for the purpose  
2 of computing the offender score, count all convictions separately,  
3 except:

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

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

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

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

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

37 (8) If the present conviction is for a nonviolent offense and not  
38 covered by subsection (12) or (13) of this section, count one point for  
39 each adult prior felony conviction and one point for each juvenile

1 prior violent felony conviction and 1/2 point for each juvenile prior  
2 nonviolent felony conviction.

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

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

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

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

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

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

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

1 (16) If the present conviction is for Burglary 2 or residential  
2 burglary, count priors as in subsection (8) of this section; however,  
3 count two points for each adult and juvenile prior Burglary 1  
4 conviction, two points for each adult prior Burglary 2 or residential  
5 burglary conviction, and one point for each juvenile prior Burglary 2  
6 or residential burglary conviction.

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

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

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

14 If the sentencing court finds that an exceptional sentence outside  
15 the standard range should be imposed in accordance with RCW  
16 9.94A.120(2), the sentence is subject to review only as provided for in  
17 RCW 9.94A.210(4).

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

22 (1) Mitigating Circumstances

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

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

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

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

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

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

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

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

10 (2) Aggravating Circumstances

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

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

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

19 (i) The current offense involved multiple victims or multiple  
20 incidents per victim;

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

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

25 (iv) The defendant used his or her position of trust, confidence,  
26 or fiduciary responsibility to facilitate the commission of the current  
27 offense.

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

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

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

1 (iii) The current offense involved the manufacture of controlled  
2 substances for use by other parties; (~~or~~)

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

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

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

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

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

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

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

Passed the House March 7, 1995.

Passed the Senate April 20, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.