

HOUSE BILL REPORT

EHB 1324

As Amended by the Senate

Title: An act relating to the scoring of prior juvenile offenses in sentencing range calculations.

Brief Description: Concerning the scoring of prior juvenile offenses in sentencing range calculations.

Sponsors: Representatives Hackney, Senn, Simmons, Reed, Lekanoff, Doglio, Pollet and Macri.

Brief History:

Committee Activity:

Community Safety, Justice, & Reentry: 1/23/23, 2/2/23 [DP].

Floor Activity:

Passed House: 3/6/23, 51-45.

Senate Amended.

Passed Senate: 4/11/23, 26-23.

Brief Summary of Engrossed Bill

- Excludes certain juvenile dispositions from offender score calculations.
- Requires courts to grant a resentencing hearing upon the motion of a qualifying person whose sentence was increased by the inclusion of prior juvenile dispositions in the person's offender score calculation.

HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

Majority Report: Do pass. Signed by 6 members: Representatives Goodman, Chair; Simmons, Vice Chair; Davis, Farivar, Fosse and Ramos.

Minority Report: Do not pass. Signed by 2 members: Representatives Mosbrucker, Ranking Minority Member; Graham.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Without recommendation. Signed by 1 member: Representative Griffey, Assistant Ranking Minority Member.

Staff: Michelle Rusk (786-7153).

Background:

The Sentencing Reform Act provides a determinate sentencing system in which sentencing courts generally impose sentences within a standard range. The standard range for a person is determined by reference to a grid, which provides a base sentence according to the person's offender score and the seriousness level of the present offense. The offender score is a point total based on the person's prior dispositions and convictions. Certain prior dispositions and convictions are excluded from offender score calculations if the person remains crime-free in the community for a specified period of time following release.

A person's juvenile disposition records are included in offender score calculations if the person is convicted of a subsequent adult felony. Prior juvenile dispositions are typically worth fewer points than equivalent adult convictions depending on the nature of the prior offense and the severity of the current offense. Most crimes committed by persons under 18 years of age are adjudicated in juvenile court, but certain cases are transferred to adult court. If a person under 18 years of age is convicted in adult court, the conviction is considered an adult conviction for subsequent offender score calculations.

Summary of Engrossed Bill:

A person's prior juvenile dispositions, including out-of-state and federal adjudications, may not be included in the person's offender score calculations for any subsequent adult convictions. References to prior juvenile dispositions are removed from sentencing provisions relating to offender scores, except for provisions dealing with prior juvenile sex offenses.

Upon a person's motion for relief from sentence, a sentencing court must grant an expedited resentencing hearing if the person meets the following four requirements: (1) is currently incarcerated in total confinement; (2) has a release date of January 1, 2025, or later; (3) was sentenced for an offense committed prior to the change in offender score calculations provided in the bill; and (4) has an offender score calculation that was increased by the inclusion of prior juvenile dispositions. At the hearing, the court must resentence the person as if any juvenile dispositions were not part of the person's offender score calculation at the time the original sentence was imposed.

Beginning January 1, 2025, individuals satisfying the four requirements above may move for relief from sentence if they:

1. have release dates scheduled on or after January 1, 2025, and have less than three years remaining on their sentence;

2. would be eligible for release within three years of January 1, 2025, based on an offender score excluding juvenile adjudications; or
3. have served over 15 years, or at least 50 percent, of their sentence.

Beginning January 1, 2026, other individuals meeting the four requirements above, but who do not qualify to move for relief as of January 1, 2025, may motion for relief from sentence.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment:

1. restores current law providing for the inclusion of points in the offender score for juvenile adjudications for Murder in the first degree, Murder in the second degree, and class A felony sex offenses;
2. restores current law providing that both prior adult convictions and prior juvenile adjudications are subject to provisions concerning how long certain offenses must be included in the offender score;
3. modifies the exclusion of federal and out-of-state juvenile convictions and adjudications from the offender score to instead include in the offender score out-of-state or federal convictions which would have been presumptively adjudicated in juvenile court under Washington law that are comparable to Murder in the first degree, Murder in the second degree, or class A felony sex offenses;
4. restores current law providing that, in the case of multiple prior convictions for which a finding has not been made that they encompassed the same criminal conduct, the court shall determine whether prior juvenile offenses for which sentences were served consecutively shall be counted as one or separate offenses;
5. specifies that, when there are multiple prior convictions for offenses committed before July 1, 1986, for purposes of computing the offender score, all convictions or adjudications served concurrently shall be counted as one offense; and
6. removes provisions entitling persons currently incarcerated, and whose offender scores were increased due to juvenile adjudications, to a resentencing hearing.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Washington is in a minority of states that auto-sentence people to longer sentences because of offenses they committed as children. This is based on the myth of child super-predators. The science has been debunked, but these bad laws remain on the books. Juveniles are less mature, have a harder time using their judgement, and juvenile

points are a significant contributor to racially disproportionate sentencing and incarceration. Youth of color are more likely to be caught up in the juvenile system, and more likely to be automatically sentenced to longer sentences because of juvenile dispositions. The most common age when children are experiencing these dispositions is 14 years old, and as young as 11 years old, with a majority of the offenses being property crimes. This state has decided to automatically give people longer sentences as adults because of property crimes from youth.

The current process is simply not fair, and this policy asks for the remedy to be retroactive because it is the right thing to do. This policy takes into account the lack of judgment and self-control persons have as youths. People should be held accountable in the adult system for offenses committed as an adult. Some offenses committed while a juvenile, like murder, would be declined to adult court, so those offenses would continue to be counted in an offender score calculation. This policy will create additional case load, but that should not dissuade anyone. Courts are capable and parties are able to address large case loads. Taking no action compounds injustices, inequities, and racial disproportionalities of the juvenile system.

Some young people have experiences in the juvenile system where they are encouraged to take some type of deal to avoid time in confinement, and don't realize that they're putting themselves in a situation later on to have felony convictions and longer sentences as a result of actions they took as youth. The focus should be on addressing issues that lead young people to commit offenses in the first place.

(Opposed) Context is important, and a juvenile only accumulates points for an adjudication that is equivalent to a felony, were they an adult. Prior juvenile dispositions only come into play when a person is subsequently convicted of another felony offense. The text of this policy ignores someone who commits a pattern of offenses over a number of years. Just like in the adult system, prior dispositions wash out for juveniles too, if there is an extended time period without criminal activity, and most juvenile points count for half of what the adult points count as.

The court system is beyond a breaking point of what it is able to do. There is an enormous amount of work for the courts, including from *State v. Blake (Blake)*, other numerous resentencing requirements, and also a COVID-19 backlog of cases. Retroactively applying this policy and resentencing individuals is a non-starter. The estimate for the number of impacted cases is above 8,000, and there is just no capacity. There is not enough money or people to do the work required by this policy, and there is no appropriation accompanying this bill. At least for the *Blake* cases the state appropriated money. Additionally, scoring works different in different types of sentencing schemes. Scoring differently may make sense in a parole system. This state has worked hard to limit the number of cases that can be moved into adult court, done so partly on the understanding that if you have repeat conduct, those juvenile points will then score. There is value in scoring repeat conduct. It is appreciated that this bill excludes sex offenses, but otherwise this bill is unsupportable

right now.

The intent of the policy states that the purpose is to bring Washington in line with a majority of states, which do not consider prior juvenile offenses in sentencing range calculations. But that is incorrect; only two states have been found that do not consider juvenile points for adult sentencing purposes.

Persons Testifying: (In support) Representative David Hackney, prime sponsor; Christopher Blackwell; Devennice Gaines; Chelsea Moore, American Civil Liberties Union of Washington; George Yeannakis, Office of Public Defense; Katie Hurley, King County Department of Public Defense; André Peñalver, Pierce County Superior Court; Devon Adams, Collective Justice; and Sean Goode.

(Opposed) Russell Brown, Washington Association of Prosecuting Attorneys; James McMahan, Washington Association of Sheriffs and Police Chiefs; and Sean O'Donnell, Superior Court Judges' Association.

Persons Signed In To Testify But Not Testifying: Jeffrey Ellis, Redemption Project of Washington; Mikala Grozier; and Juliana Roe, Washington State Association of Counties.