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HOUSE BILL 1593

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State of Washington

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2009 Regular Session

By Representatives Appleton and Roberts

Read first time 01/26/09. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to the use of juvenile prior offenses in the  
2 offender score; and amending RCW 9.94A.525.

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

4 **Sec. 1.** RCW 9.94A.525 and 2008 c 231 s 3 are each amended to read  
5 as follows:

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

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

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

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

17 (b) Class B prior felony convictions other than sex offenses shall  
18 not be included in the offender score, if since the last date of  
19 release from confinement (including full-time residential treatment)

1 pursuant to a felony conviction, if any, or entry of judgment and  
2 sentence, the offender had spent ten consecutive years in the community  
3 without committing any crime that subsequently results in a conviction.

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

11 (d) Except as provided in (e) of this subsection, serious traffic  
12 convictions shall not be included in the offender score if, since the  
13 last date of release from confinement (including full-time residential  
14 treatment) pursuant to a felony conviction, if any, or entry of  
15 judgment and sentence, the offender spent five years in the community  
16 without committing any crime that subsequently results in a conviction.

17 (e) If the present conviction is felony driving while under the  
18 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or  
19 felony physical control of a vehicle while under the influence of  
20 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions  
21 of felony driving while under the influence of intoxicating liquor or  
22 any drug, felony physical control of a vehicle while under the  
23 influence of intoxicating liquor or any drug, and serious traffic  
24 offenses shall be included in the offender score if: (i) The prior  
25 convictions were committed within five years since the last date of  
26 release from confinement (including full-time residential treatment) or  
27 entry of judgment and sentence; or (ii) the prior convictions would be  
28 considered "prior offenses within ten years" as defined in RCW  
29 46.61.5055.

30 (f) This subsection applies to both adult prior convictions and  
31 juvenile prior convictions of serious violent and sex offenses. Other  
32 juvenile prior convictions shall not be considered in the offender  
33 score.

34 (3) Out-of-state convictions for offenses shall be classified  
35 according to the comparable offense definitions and sentences provided  
36 by Washington law. Federal convictions for offenses shall be  
37 classified according to the comparable offense definitions and  
38 sentences provided by Washington law. If there is no clearly

1 comparable offense under Washington law or the offense is one that is  
2 usually considered subject to exclusive federal jurisdiction, the  
3 offense shall be scored as a class C felony equivalent if it was a  
4 felony under the relevant federal statute.

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

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

11 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to  
12 encompass the same criminal conduct, shall be counted as one offense,  
13 the offense that yields the highest offender score. The current  
14 sentencing court shall determine with respect to other prior adult  
15 offenses for which sentences were served concurrently or prior juvenile  
16 offenses for which sentences were served consecutively, whether those  
17 offenses shall be counted as one offense or as separate offenses using  
18 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and  
19 if the court finds that they shall be counted as one offense, then the  
20 offense that yields the highest offender score shall be used. The  
21 current sentencing court may presume that such other prior offenses  
22 were not the same criminal conduct from sentences imposed on separate  
23 dates, or in separate counties or jurisdictions, or in separate  
24 complaints, 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 as one  
28 offense, and count all juvenile convictions entered on the same date as  
29 one offense. Use the conviction for the offense that yields the  
30 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

1 conviction as if the present conviction were for a completed offense.  
2 When these convictions are used as criminal history, score them the  
3 same as a completed crime.

4 (7) If the present conviction is for a nonviolent offense and not  
5 covered by subsection (11), (12), or (13) of this section, count one  
6 point for each adult prior felony conviction and one point for each  
7 juvenile prior serious violent and sex offense felony conviction (~~and~~  
8 ~~1/2 point for each juvenile prior nonviolent felony conviction~~)).

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

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

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

27 (11) If the present conviction is for a felony traffic offense  
28 count two points for each adult or juvenile prior conviction for  
29 Vehicular Homicide or Vehicular Assault; for each felony offense count  
30 one point for each adult prior conviction and 1/2 point for each  
31 juvenile prior conviction of a serious violent or sex offense; for each  
32 serious traffic offense, other than those used for an enhancement  
33 pursuant to RCW 46.61.520(2), count one point for each adult prior  
34 conviction and 1/2 point for each juvenile prior conviction of a  
35 serious violent or sex offense; count one point for each adult (~~and~~  
36 ~~1/2 point for each juvenile~~) prior conviction for operation of a  
37 vessel while under the influence of intoxicating liquor or any drug.

1 (12) If the present conviction is for homicide by watercraft or  
2 assault by watercraft count two points for each adult or juvenile prior  
3 conviction for homicide by watercraft or assault by watercraft; for  
4 each felony offense count one point for each adult prior conviction and  
5 1/2 point for each juvenile prior conviction of a serious violent or  
6 sex offense; count one point for each adult (~~and 1/2 point for each~~  
7 ~~juvenile~~) prior conviction for driving under the influence of  
8 intoxicating liquor or any drug, actual physical control of a motor  
9 vehicle while under the influence of intoxicating liquor or any drug,  
10 or operation of a vessel while under the influence of intoxicating  
11 liquor or any drug.

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

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

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

30 (16) If the present conviction is for Burglary 2 or residential  
31 burglary, count priors as in subsection (7) of this section; however,  
32 count two points for each adult (~~and juvenile~~) prior Burglary 1  
33 conviction, and two points for each adult prior Burglary 2 or  
34 residential burglary conviction(~~, and one point for each juvenile~~  
35 ~~prior Burglary 2 or residential burglary conviction~~).

36 (17) If the present conviction is for a sex offense, count priors  
37 as in subsections (7) through (11) and (13) through (16) of this

1 section; however count three points for each adult and juvenile prior  
2 sex offense conviction.

3 (18) If the present conviction is for failure to register as a sex  
4 offender under RCW 9A.44.130(11), count priors as in subsections (7)  
5 through (11) and (13) through (16) of this section; however count three  
6 points for each adult and juvenile prior sex offense conviction,  
7 excluding prior convictions for failure to register as a sex offender  
8 under RCW 9A.44.130(11), which shall count as one point.

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

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

24 (21) The fact that a prior conviction was not included in an  
25 offender's offender score or criminal history at a previous sentencing  
26 shall have no bearing on whether it is included in the criminal history  
27 or offender score for the current offense. Prior convictions that were  
28 not counted in the offender score or included in criminal history under  
29 repealed or previous versions of the sentencing reform act shall be  
30 included in criminal history and shall count in the offender score if  
31 the current version of the sentencing reform act requires including or  
32 counting those convictions. Prior convictions that were not included  
33 in criminal history or in the offender score shall be included upon any  
34 resentencing to ensure imposition of an accurate sentence.

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