
SENATE BILL 6423

State of Washington 57th Legislature

2002 Regular Session

By Senators Costa and McCaslin

Read first time 01/17/2002. Referred to Committee on Judiciary.

1 AN ACT Relating to use of criminal history in sentencing decisions;
2 amending RCW 9.94A.525; reenacting and amending RCW 9.94A.030; creating
3 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 considers the majority
6 opinions in *State v. Cruz*, 139 Wn.2d 186 (1999), and *State v. Smith*,
7 Cause No. 70683-2 (September 6, 2001), to be wrongly decided, since
8 neither properly interpreted legislative intent. When the legislature
9 enacted the sentencing reform act, chapter 9.94A RCW, and each time the
10 legislature has amended the act, the legislature intended that an
11 offender's criminal history and offender score be determined using the
12 statutory provisions that were in effect on the day the current offense
13 was committed.

14 Although certain prior convictions previously were not counted in
15 the offender score or included in the criminal history pursuant to
16 former versions of RCW 9.94A.525, or RCW 9.94A.030, those prior
17 convictions need not be "revived" because they were never vacated. As
18 noted in the minority opinions in *Cruz* and *Smith*, such application of
19 the law does not involve retroactive application or violate ex

1 postfacto prohibitions. Additionally, the Washington state supreme
2 court has repeatedly held in the past that the provisions of the
3 sentencing reform act act upon and punish only current conduct; the
4 sentencing reform act does not act upon or alter the punishment for
5 prior convictions. See *In re Personal Restraint Petition of Williams*,
6 111 Wn.2d 353, (1988). The legislature has never intended to create in
7 an offender a vested right with respect to whether a prior conviction
8 is excluded when calculating an offender score or with respect to how
9 a prior conviction is counted in the offender score for a current
10 offense.

11 **Sec. 2.** RCW 9.94A.030 and 2001 2nd sp.s. c 12 s 301, 2001 c 300 s
12 3, and 2001 c 7 s 2 are each reenacted and amended to read as follows:

13 Unless the context clearly requires otherwise, the definitions in
14 this section apply throughout this chapter.

15 (1) "Board" means the indeterminate sentence review board created
16 under chapter 9.95 RCW.

17 (2) "Collect," or any derivative thereof, "collect and remit," or
18 "collect and deliver," when used with reference to the department,
19 means that the department, either directly or through a collection
20 agreement authorized by RCW 9.94A.760, is responsible for monitoring
21 and enforcing the offender's sentence with regard to the legal
22 financial obligation, receiving payment thereof from the offender, and,
23 consistent with current law, delivering daily the entire payment to the
24 superior court clerk without depositing it in a departmental account.

25 (3) "Commission" means the sentencing guidelines commission.

26 (4) "Community corrections officer" means an employee of the
27 department who is responsible for carrying out specific duties in
28 supervision of sentenced offenders and monitoring of sentence
29 conditions.

30 (5) "Community custody" means that portion of an offender's
31 sentence of confinement in lieu of earned release time or imposed
32 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
33 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
34 community subject to controls placed on the offender's movement and
35 activities by the department. For offenders placed on community
36 custody for crimes committed on or after July 1, 2000, the department
37 shall assess the offender's risk of reoffense and may establish and

1 modify conditions of community custody, in addition to those imposed by
2 the court, based upon the risk to community safety.

3 (6) "Community custody range" means the minimum and maximum period
4 of community custody included as part of a sentence under RCW
5 9.94A.715, as established by the commission or the legislature under
6 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

7 (7) "Community placement" means that period during which the
8 offender is subject to the conditions of community custody and/or
9 postrelease supervision, which begins either upon completion of the
10 term of confinement (postrelease supervision) or at such time as the
11 offender is transferred to community custody in lieu of earned release.
12 Community placement may consist of entirely community custody, entirely
13 postrelease supervision, or a combination of the two.

14 (8) "Community service" means compulsory service, without
15 compensation, performed for the benefit of the community by the
16 offender.

17 (9) "Community supervision" means a period of time during which a
18 convicted offender is subject to crime-related prohibitions and other
19 sentence conditions imposed by a court pursuant to this chapter or RCW
20 16.52.200(6) or 46.61.524. Where the court finds that any offender has
21 a chemical dependency that has contributed to his or her offense, the
22 conditions of supervision may, subject to available resources, include
23 treatment. For purposes of the interstate compact for out-of-state
24 supervision of parolees and probationers, RCW 9.95.270, community
25 supervision is the functional equivalent of probation and should be
26 considered the same as probation by other states.

27 (10) "Confinement" means total or partial confinement.

28 (11) "Conviction" means an adjudication of guilt pursuant to Titles
29 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
30 acceptance of a plea of guilty.

31 (12) "Crime-related prohibition" means an order of a court
32 prohibiting conduct that directly relates to the circumstances of the
33 crime for which the offender has been convicted, and shall not be
34 construed to mean orders directing an offender affirmatively to
35 participate in rehabilitative programs or to otherwise perform
36 affirmative conduct. However, affirmative acts necessary to monitor
37 compliance with the order of a court may be required by the department.

1 (13) "Criminal history" means the list of a defendant's prior
2 convictions and juvenile adjudications, whether in this state, in
3 federal court, or elsewhere.

4 (a) The history shall include, where known, for each conviction
5 ~~((a))~~ (i) whether the defendant has been placed on probation and the
6 length and terms thereof; and ~~((b))~~ (ii) whether the defendant has
7 been incarcerated and the length of incarceration.

8 (b) A conviction may be removed from a defendant's criminal history
9 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
10 a similar out-of-state statute, or if the conviction has been vacated
11 pursuant to a governor's pardon.

12 (c) The determination of a defendant's criminal history is distinct
13 from the determination of an offender score. A prior conviction that
14 was not included in an offender score calculated pursuant to a former
15 version of the sentencing reform act remains part of the defendant's
16 criminal history.

17 (14) "Day fine" means a fine imposed by the sentencing court that
18 equals the difference between the offender's net daily income and the
19 reasonable obligations that the offender has for the support of the
20 offender and any dependents.

21 (15) "Day reporting" means a program of enhanced supervision
22 designed to monitor the offender's daily activities and compliance with
23 sentence conditions, and in which the offender is required to report
24 daily to a specific location designated by the department or the
25 sentencing court.

26 (16) "Department" means the department of corrections.

27 (17) "Determinate sentence" means a sentence that states with
28 exactitude the number of actual years, months, or days of total
29 confinement, of partial confinement, of community supervision, the
30 number of actual hours or days of community service work, or dollars or
31 terms of a legal financial obligation. The fact that an offender
32 through earned release can reduce the actual period of confinement
33 shall not affect the classification of the sentence as a determinate
34 sentence.

35 (18) "Disposable earnings" means that part of the earnings of an
36 offender remaining after the deduction from those earnings of any
37 amount required by law to be withheld. For the purposes of this
38 definition, "earnings" means compensation paid or payable for personal
39 services, whether denominated as wages, salary, commission, bonuses, or

1 otherwise, and, notwithstanding any other provision of law making the
2 payments exempt from garnishment, attachment, or other process to
3 satisfy a court-ordered legal financial obligation, specifically
4 includes periodic payments pursuant to pension or retirement programs,
5 or insurance policies of any type, but does not include payments made
6 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
7 or Title 74 RCW.

8 (19) "Drug offender sentencing alternative" is a sentencing option
9 available to persons convicted of a felony offense other than a violent
10 offense or a sex offense and who are eligible for the option under RCW
11 9.94A.660.

12 (20) "Drug offense" means:

13 (a) Any felony violation of chapter 69.50 RCW except possession of
14 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
15 controlled substance (RCW 69.50.403);

16 (b) Any offense defined as a felony under federal law that relates
17 to the possession, manufacture, distribution, or transportation of a
18 controlled substance; or

19 (c) Any out-of-state conviction for an offense that under the laws
20 of this state would be a felony classified as a drug offense under (a)
21 of this subsection.

22 (21) "Earned release" means earned release from confinement as
23 provided in RCW 9.94A.728.

24 (22) "Escape" means:

25 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
26 first degree (RCW 9A.76.110), escape in the second degree (RCW
27 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
28 willful failure to return from work release (RCW 72.65.070), or willful
29 failure to be available for supervision by the department while in
30 community custody (RCW 72.09.310); or

31 (b) Any federal or out-of-state conviction for an offense that
32 under the laws of this state would be a felony classified as an escape
33 under (a) of this subsection.

34 (23) "Felony traffic offense" means:

35 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
36 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
37 and-run injury-accident (RCW 46.52.020(4)); or

1 (b) Any federal or out-of-state conviction for an offense that
2 under the laws of this state would be a felony classified as a felony
3 traffic offense under (a) of this subsection.

4 (24) "Fine" means a specific sum of money ordered by the sentencing
5 court to be paid by the offender to the court over a specific period of
6 time.

7 (25) "First-time offender" means any person who has no prior
8 convictions for a felony and is eligible for the first-time offender
9 waiver under RCW 9.94A.650.

10 (26) "Home detention" means a program of partial confinement
11 available to offenders wherein the offender is confined in a private
12 residence subject to electronic surveillance.

13 (27) "Legal financial obligation" means a sum of money that is
14 ordered by a superior court of the state of Washington for legal
15 financial obligations which may include restitution to the victim,
16 statutorily imposed crime victims' compensation fees as assessed
17 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
18 court-appointed attorneys' fees, and costs of defense, fines, and any
19 other financial obligation that is assessed to the offender as a result
20 of a felony conviction. Upon conviction for vehicular assault while
21 under the influence of intoxicating liquor or any drug, RCW
22 46.61.522(1)(b), or vehicular homicide while under the influence of
23 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
24 obligations may also include payment to a public agency of the expense
25 of an emergency response to the incident resulting in the conviction,
26 subject to RCW 38.52.430.

27 (28) "Most serious offense" means any of the following felonies or
28 a felony attempt to commit any of the following felonies:

29 (a) Any felony defined under any law as a class A felony or
30 criminal solicitation of or criminal conspiracy to commit a class A
31 felony;

32 (b) Assault in the second degree;

33 (c) Assault of a child in the second degree;

34 (d) Child molestation in the second degree;

35 (e) Controlled substance homicide;

36 (f) Extortion in the first degree;

37 (g) Incest when committed against a child under age fourteen;

38 (h) Indecent liberties;

39 (i) Kidnapping in the second degree;

1 (j) Leading organized crime;
2 (k) Manslaughter in the first degree;
3 (l) Manslaughter in the second degree;
4 (m) Promoting prostitution in the first degree;
5 (n) Rape in the third degree;
6 (o) Robbery in the second degree;
7 (p) Sexual exploitation;
8 (q) Vehicular assault, when caused by the operation or driving of
9 a vehicle by a person while under the influence of intoxicating liquor
10 or any drug or by the operation or driving of a vehicle in a reckless
11 manner;
12 (r) Vehicular homicide, when proximately caused by the driving of
13 any vehicle by any person while under the influence of intoxicating
14 liquor or any drug as defined by RCW 46.61.502, or by the operation of
15 any vehicle in a reckless manner;
16 (s) Any other class B felony offense with a finding of sexual
17 motivation;
18 (t) Any other felony with a deadly weapon verdict under RCW
19 9.94A.602;
20 (u) Any felony offense in effect at any time prior to December 2,
21 1993, that is comparable to a most serious offense under this
22 subsection, or any federal or out-of-state conviction for an offense
23 that under the laws of this state would be a felony classified as a
24 most serious offense under this subsection;
25 (v)(i) A prior conviction for indecent liberties under RCW
26 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
27 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
28 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
29 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
30 (ii) A prior conviction for indecent liberties under RCW
31 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
32 if: (A) The crime was committed against a child under the age of
33 fourteen; or (B) the relationship between the victim and perpetrator is
34 included in the definition of indecent liberties under RCW
35 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
36 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
37 through July 27, 1997.
38 (29) "Nonviolent offense" means an offense which is not a violent
39 offense.

1 (30) "Offender" means a person who has committed a felony
2 established by state law and is eighteen years of age or older or is
3 less than eighteen years of age but whose case is under superior court
4 jurisdiction under RCW 13.04.030 or has been transferred by the
5 appropriate juvenile court to a criminal court pursuant to RCW
6 13.40.110. Throughout this chapter, the terms "offender" and
7 "defendant" are used interchangeably.

8 (31) "Partial confinement" means confinement for no more than one
9 year in a facility or institution operated or utilized under contract
10 by the state or any other unit of government, or, if home detention or
11 work crew has been ordered by the court, in an approved residence, for
12 a substantial portion of each day with the balance of the day spent in
13 the community. Partial confinement includes work release, home
14 detention, work crew, and a combination of work crew and home
15 detention.

16 (32) "Persistent offender" is an offender who:

17 (a)(i) Has been convicted in this state of any felony considered a
18 most serious offense; and

19 (ii) Has, before the commission of the offense under (a) of this
20 subsection, been convicted as an offender on at least two separate
21 occasions, whether in this state or elsewhere, of felonies that under
22 the laws of this state would be considered most serious offenses and
23 would be included in the offender score under RCW 9.94A.525; provided
24 that of the two or more previous convictions, at least one conviction
25 must have occurred before the commission of any of the other most
26 serious offenses for which the offender was previously convicted; or

27 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
28 of a child in the first degree, child molestation in the first degree,
29 rape in the second degree, rape of a child in the second degree, or
30 indecent liberties by forcible compulsion; (B) any of the following
31 offenses with a finding of sexual motivation: Murder in the first
32 degree, murder in the second degree, homicide by abuse, kidnapping in
33 the first degree, kidnapping in the second degree, assault in the first
34 degree, assault in the second degree, assault of a child in the first
35 degree, or burglary in the first degree; or (C) an attempt to commit
36 any crime listed in this subsection (32)(b)(i); and

37 (ii) Has, before the commission of the offense under (b)(i) of this
38 subsection, been convicted as an offender on at least one occasion,
39 whether in this state or elsewhere, of an offense listed in (b)(i) of

1 this subsection or any federal or out-of-state offense or offense under
2 prior Washington law that is comparable to the offenses listed in
3 (b)(i) of this subsection. A conviction for rape of a child in the
4 first degree constitutes a conviction under (b)(i) of this subsection
5 only when the offender was sixteen years of age or older when the
6 offender committed the offense. A conviction for rape of a child in
7 the second degree constitutes a conviction under (b)(i) of this
8 subsection only when the offender was eighteen years of age or older
9 when the offender committed the offense.

10 (33) "Postrelease supervision" is that portion of an offender's
11 community placement that is not community custody.

12 (34) "Restitution" means a specific sum of money ordered by the
13 sentencing court to be paid by the offender to the court over a
14 specified period of time as payment of damages. The sum may include
15 both public and private costs.

16 (35) "Risk assessment" means the application of an objective
17 instrument supported by research and adopted by the department for the
18 purpose of assessing an offender's risk of reoffense, taking into
19 consideration the nature of the harm done by the offender, place and
20 circumstances of the offender related to risk, the offender's
21 relationship to any victim, and any information provided to the
22 department by victims. The results of a risk assessment shall not be
23 based on unconfirmed or unconfirmable allegations.

24 (36) "Serious traffic offense" means:

25 (a) Driving while under the influence of intoxicating liquor or any
26 drug (RCW 46.61.502), actual physical control while under the influence
27 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
28 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
29 or

30 (b) Any federal, out-of-state, county, or municipal conviction for
31 an offense that under the laws of this state would be classified as a
32 serious traffic offense under (a) of this subsection.

33 (37) "Serious violent offense" is a subcategory of violent offense
34 and means:

- 35 (a)(i) Murder in the first degree;
- 36 (ii) Homicide by abuse;
- 37 (iii) Murder in the second degree;
- 38 (iv) Manslaughter in the first degree;
- 39 (v) Assault in the first degree;

1 (vi) Kidnapping in the first degree;
2 (vii) Rape in the first degree;
3 (viii) Assault of a child in the first degree; or
4 (ix) An attempt, criminal solicitation, or criminal conspiracy to
5 commit one of these felonies; or

6 (b) Any federal or out-of-state conviction for an offense that
7 under the laws of this state would be a felony classified as a serious
8 violent offense under (a) of this subsection.

9 (38) "Sex offense" means:

10 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
11 RCW 9A.44.130(11);

12 (ii) A violation of RCW 9A.64.020;

13 (iii) A felony that is a violation of chapter 9.68A RCW other than
14 RCW 9.68A.070 or 9.68A.080; or

15 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
16 criminal solicitation, or criminal conspiracy to commit such crimes;

17 (b) Any conviction for a felony offense in effect at any time prior
18 to July 1, 1976, that is comparable to a felony classified as a sex
19 offense in (a) of this subsection;

20 (c) A felony with a finding of sexual motivation under RCW
21 9.94A.835 or 13.40.135; or

22 (d) Any federal or out-of-state conviction for an offense that
23 under the laws of this state would be a felony classified as a sex
24 offense under (a) of this subsection.

25 (39) "Sexual motivation" means that one of the purposes for which
26 the defendant committed the crime was for the purpose of his or her
27 sexual gratification.

28 (40) "Standard sentence range" means the sentencing court's
29 discretionary range in imposing a nonappealable sentence.

30 (41) "Statutory maximum sentence" means the maximum length of time
31 for which an offender may be confined as punishment for a crime as
32 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
33 crime, or other statute defining the maximum penalty for a crime.

34 (42) "Total confinement" means confinement inside the physical
35 boundaries of a facility or institution operated or utilized under
36 contract by the state or any other unit of government for twenty-four
37 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

38 (43) "Transition training" means written and verbal instructions
39 and assistance provided by the department to the offender during the

1 two weeks prior to the offender's successful completion of the work
2 ethic camp program. The transition training shall include instructions
3 in the offender's requirements and obligations during the offender's
4 period of community custody.

5 (44) "Victim" means any person who has sustained emotional,
6 psychological, physical, or financial injury to person or property as
7 a direct result of the crime charged.

8 (45) "Violent offense" means:

9 (a) Any of the following felonies:

10 (i) Any felony defined under any law as a class A felony or an
11 attempt to commit a class A felony;

12 (ii) Criminal solicitation of or criminal conspiracy to commit a
13 class A felony;

14 (iii) Manslaughter in the first degree;

15 (iv) Manslaughter in the second degree;

16 (v) Indecent liberties if committed by forcible compulsion;

17 (vi) Kidnapping in the second degree;

18 (vii) Arson in the second degree;

19 (viii) Assault in the second degree;

20 (ix) Assault of a child in the second degree;

21 (x) Extortion in the first degree;

22 (xi) Robbery in the second degree;

23 (xii) Drive-by shooting;

24 (xiii) Vehicular assault, when caused by the operation or driving
25 of a vehicle by a person while under the influence of intoxicating
26 liquor or any drug or by the operation or driving of a vehicle in a
27 reckless manner; and

28 (xiv) Vehicular homicide, when proximately caused by the driving of
29 any vehicle by any person while under the influence of intoxicating
30 liquor or any drug as defined by RCW 46.61.502, or by the operation of
31 any vehicle in a reckless manner;

32 (b) Any conviction for a felony offense in effect at any time prior
33 to July 1, 1976, that is comparable to a felony classified as a violent
34 offense in (a) of this subsection; and

35 (c) Any federal or out-of-state conviction for an offense that
36 under the laws of this state would be a felony classified as a violent
37 offense under (a) or (b) of this subsection.

1 (46) "Work crew" means a program of partial confinement consisting
2 of civic improvement tasks for the benefit of the community that
3 complies with RCW 9.94A.725.

4 (47) "Work ethic camp" means an alternative incarceration program
5 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
6 the cost of corrections by requiring offenders to complete a
7 comprehensive array of real-world job and vocational experiences,
8 character-building work ethics training, life management skills
9 development, substance abuse rehabilitation, counseling, literacy
10 training, and basic adult education.

11 (48) "Work release" means a program of partial confinement
12 available to offenders who are employed or engaged as a student in a
13 regular course of study at school.

14 **Sec. 3.** RCW 9.94A.525 and 2001 c 264 s 5 are each amended to read
15 as follows:

16 The offender score is measured on the horizontal axis of the
17 sentencing grid. The fact that a prior conviction was not included in
18 an offender's offender score or criminal history at a previous
19 sentencing shall have no bearing on whether it is included in the
20 criminal history or offender score for the current offense.
21 Accordingly, prior convictions that were not counted in the offender
22 score or included in criminal history under repealed or previous
23 versions of the sentencing reform act shall be included in criminal
24 history and shall count in the offender score if the current version of
25 the sentencing reform act requires including or counting those
26 convictions. The offender score rules are as follows:

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

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

34 (2) Class A and sex prior felony convictions shall always be
35 included in the offender score. Class B prior felony convictions other
36 than sex offenses shall not be included in the offender score, if since
37 the last date of release from confinement (including full-time
38 residential treatment) pursuant to a felony conviction, if any, or

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

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

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

28 (5)(a) In the case of multiple prior convictions, for the purpose
29 of computing the offender score, count all convictions separately,
30 except:

31 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
32 encompass the same criminal conduct, shall be counted as one offense,
33 the offense that yields the highest offender score. The current
34 sentencing court shall determine with respect to other prior adult
35 offenses for which sentences were served concurrently or prior juvenile
36 offenses for which sentences were served consecutively, whether those
37 offenses shall be counted as one offense or as separate offenses using
38 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
39 if the court finds that they shall be counted as one offense, then the

1 offense that yields the highest offender score shall be used. The
2 current sentencing court may presume that such other prior offenses
3 were not the same criminal conduct from sentences imposed on separate
4 dates, or in separate counties or jurisdictions, or in separate
5 complaints, indictments, or informations;

6 (ii) In the case of multiple prior convictions for offenses
7 committed before July 1, 1986, for the purpose of computing the
8 offender score, count all adult convictions served concurrently as one
9 offense, and count all juvenile convictions entered on the same date as
10 one offense. Use the conviction for the offense that yields the
11 highest offender score.

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

18 (6) If the present conviction is one of the anticipatory offenses
19 of criminal attempt, solicitation, or conspiracy, count each prior
20 conviction as if the present conviction were for a completed offense.
21 When these convictions are used as criminal history, score them the
22 same as a completed crime.

23 (7) If the present conviction is for a nonviolent offense and not
24 covered by subsection (11) or (12) of this section, count one point for
25 each adult prior felony conviction and one point for each juvenile
26 prior violent felony conviction and 1/2 point for each juvenile prior
27 nonviolent felony conviction.

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

33 (9) If the present conviction is for a serious violent offense,
34 count three points for prior adult and juvenile convictions for crimes
35 in this category, two points for each prior adult and juvenile violent
36 conviction (not already counted), one point for each prior adult
37 nonviolent felony conviction, and 1/2 point for each prior juvenile
38 nonviolent felony conviction.

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

6 (11) If the present conviction is for a felony traffic offense
7 count two points for each adult or juvenile prior conviction for
8 Vehicular Homicide or Vehicular Assault; for each felony offense count
9 one point for each adult and 1/2 point for each juvenile prior
10 conviction; for each serious traffic offense, other than those used for
11 an enhancement pursuant to RCW 46.61.520(2), count one point for each
12 adult and 1/2 point for each juvenile prior conviction.

13 (12) If the present conviction is for a drug offense count three
14 points for each adult prior felony drug offense conviction and two
15 points for each juvenile drug offense. All other adult and juvenile
16 felonies are scored as in subsection (8) of this section if the current
17 drug offense is violent, or as in subsection (7) of this section if the
18 current drug offense is nonviolent.

19 (13) If the present conviction is for Escape from Community
20 Custody, RCW 72.09.310, count only prior escape convictions in the
21 offender score. Count adult prior escape convictions as one point and
22 juvenile prior escape convictions as 1/2 point.

23 (14) If the present conviction is for Escape 1, RCW 9A.76.110, or
24 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and
25 juvenile prior convictions as 1/2 point.

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

32 (16) If the present conviction is for a sex offense, count priors
33 as in subsections (7) through (15) of this section; however count three
34 points for each adult and juvenile prior sex offense conviction.

35 (17) If the present conviction is for an offense committed while
36 the offender was under community placement, add one point.

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