
HOUSE BILL 2290

State of Washington 59th Legislature 2005 Regular Session

By Representatives McDonald, Ahern and Kristiansen

Read first time 03/14/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to drunk driving-related prior offenses; amending
2 RCW 46.61.5055 and 46.61.5058; reenacting and amending RCW 9.94A.525;
3 and prescribing penalties.

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

5 **Sec. 1.** RCW 46.61.5055 and 2004 c 95 s 13 are each amended to read
6 as follows:

7 (1) A person who is convicted of a violation of RCW 46.61.502 or
8 46.61.504 and who has no prior offense within (~~seven~~) ten years shall
9 be punished as follows:

10 (a) In the case of a person whose alcohol concentration was less
11 than 0.15, or for whom for reasons other than the person's refusal to
12 take a test offered pursuant to RCW 46.20.308 there is no test result
13 indicating the person's alcohol concentration:

14 (i) By imprisonment for not less than one day nor more than one
15 year. Twenty-four consecutive hours of the imprisonment may not be
16 suspended or deferred unless the court finds that the imposition of
17 this mandatory minimum sentence would impose a substantial risk to the
18 offender's physical or mental well-being. Whenever the mandatory
19 minimum sentence is suspended or deferred, the court shall state in

1 writing the reason for granting the suspension or deferral and the
2 facts upon which the suspension or deferral is based. In lieu of the
3 mandatory minimum term of imprisonment required under this subsection
4 (1)(a)(i), the court may order not less than fifteen days of electronic
5 home monitoring. The offender shall pay the cost of electronic home
6 monitoring. The county or municipality in which the penalty is being
7 imposed shall determine the cost. The court may also require the
8 offender's electronic home monitoring device to include an alcohol
9 detection breathalyzer, and the court may restrict the amount of
10 alcohol the offender may consume during the time the offender is on
11 electronic home monitoring; and

12 (ii) By a fine of not less than three hundred fifty dollars nor
13 more than five thousand dollars. Three hundred fifty dollars of the
14 fine may not be suspended or deferred unless the court finds the
15 offender to be indigent; or

16 (b) In the case of a person whose alcohol concentration was at
17 least 0.15, or for whom by reason of the person's refusal to take a
18 test offered pursuant to RCW 46.20.308 there is no test result
19 indicating the person's alcohol concentration:

20 (i) By imprisonment for not less than two days nor more than one
21 year. Two consecutive days of the imprisonment may not be suspended or
22 deferred unless the court finds that the imposition of this mandatory
23 minimum sentence would impose a substantial risk to the offender's
24 physical or mental well-being. Whenever the mandatory minimum sentence
25 is suspended or deferred, the court shall state in writing the reason
26 for granting the suspension or deferral and the facts upon which the
27 suspension or deferral is based. In lieu of the mandatory minimum term
28 of imprisonment required under this subsection (1)(b)(i), the court may
29 order not less than thirty days of electronic home monitoring. The
30 offender shall pay the cost of electronic home monitoring. The county
31 or municipality in which the penalty is being imposed shall determine
32 the cost. The court may also require the offender's electronic home
33 monitoring device to include an alcohol detection breathalyzer, and the
34 court may restrict the amount of alcohol the offender may consume
35 during the time the offender is on electronic home monitoring; and

36 (ii) By a fine of not less than five hundred dollars nor more than
37 five thousand dollars. Five hundred dollars of the fine may not be

1 suspended or deferred unless the court finds the offender to be
2 indigent.

3 (2) A person who is convicted of a violation of RCW 46.61.502 or
4 46.61.504 and who has one prior offense within (~~seven~~) ten years
5 shall be punished as follows:

6 (a) In the case of a person whose alcohol concentration was less
7 than 0.15, or for whom for reasons other than the person's refusal to
8 take a test offered pursuant to RCW 46.20.308 there is no test result
9 indicating the person's alcohol concentration:

10 (i) By imprisonment for not less than thirty days nor more than one
11 year and sixty days of electronic home monitoring. The offender shall
12 pay for the cost of the electronic monitoring. The county or
13 municipality where the penalty is being imposed shall determine the
14 cost. The court may also require the offender's electronic home
15 monitoring device include an alcohol detection breathalyzer, and may
16 restrict the amount of alcohol the offender may consume during the time
17 the offender is on electronic home monitoring. Thirty days of
18 imprisonment and sixty days of electronic home monitoring may not be
19 suspended or deferred unless the court finds that the imposition of
20 this mandatory minimum sentence would impose a substantial risk to the
21 offender's physical or mental well-being. Whenever the mandatory
22 minimum sentence is suspended or deferred, the court shall state in
23 writing the reason for granting the suspension or deferral and the
24 facts upon which the suspension or deferral is based; and

25 (ii) By a fine of not less than five hundred dollars nor more than
26 five thousand dollars. Five hundred dollars of the fine may not be
27 suspended or deferred unless the court finds the offender to be
28 indigent; or

29 (b) In the case of a person whose alcohol concentration was at
30 least 0.15, or for whom by reason of the person's refusal to take a
31 test offered pursuant to RCW 46.20.308 there is no test result
32 indicating the person's alcohol concentration:

33 (i) By imprisonment for not less than forty-five days nor more than
34 one year and ninety days of electronic home monitoring. The offender
35 shall pay for the cost of the electronic monitoring. The county or
36 municipality where the penalty is being imposed shall determine the
37 cost. The court may also require the offender's electronic home
38 monitoring device include an alcohol detection breathalyzer, and may

1 restrict the amount of alcohol the offender may consume during the time
2 the offender is on electronic home monitoring. Forty-five days of
3 imprisonment and ninety days of electronic home monitoring may not be
4 suspended or deferred unless the court finds that the imposition of
5 this mandatory minimum sentence would impose a substantial risk to the
6 offender's physical or mental well-being. Whenever the mandatory
7 minimum sentence is suspended or deferred, the court shall state in
8 writing the reason for granting the suspension or deferral and the
9 facts upon which the suspension or deferral is based; and

10 (ii) By a fine of not less than seven hundred fifty dollars nor
11 more than five thousand dollars. Seven hundred fifty dollars of the
12 fine may not be suspended or deferred unless the court finds the
13 offender to be indigent.

14 (3) A person who is convicted of a violation of RCW 46.61.502 or
15 46.61.504 and who has two or more prior offenses within (~~seven~~) ten
16 years shall be punished as follows:

17 (a) In the case of a person whose alcohol concentration was less
18 than 0.15, or for whom for reasons other than the person's refusal to
19 take a test offered pursuant to RCW 46.20.308 there is no test result
20 indicating the person's alcohol concentration:

21 (i) By imprisonment for not less than ninety days nor more than one
22 year and one hundred twenty days of electronic home monitoring. The
23 offender shall pay for the cost of the electronic monitoring. The
24 county or municipality where the penalty is being imposed shall
25 determine the cost. The court may also require the offender's
26 electronic home monitoring device include an alcohol detection
27 breathalyzer, and may restrict the amount of alcohol the offender may
28 consume during the time the offender is on electronic home monitoring.
29 Ninety days of imprisonment and one hundred twenty days of electronic
30 home monitoring may not be suspended or deferred unless the court finds
31 that the imposition of this mandatory minimum sentence would impose a
32 substantial risk to the offender's physical or mental well-being.
33 Whenever the mandatory minimum sentence is suspended or deferred, the
34 court shall state in writing the reason for granting the suspension or
35 deferral and the facts upon which the suspension or deferral is based;
36 and

37 (ii) By a fine of not less than one thousand dollars nor more than

1 five thousand dollars. One thousand dollars of the fine may not be
2 suspended or deferred unless the court finds the offender to be
3 indigent; or

4 (b) In the case of a person whose alcohol concentration was at
5 least 0.15, or for whom by reason of the person's refusal to take a
6 test offered pursuant to RCW 46.20.308 there is no test result
7 indicating the person's alcohol concentration:

8 (i) By imprisonment for not less than one hundred twenty days nor
9 more than one year and one hundred fifty days of electronic home
10 monitoring. The offender shall pay for the cost of the electronic
11 monitoring. The county or municipality where the penalty is being
12 imposed shall determine the cost. The court may also require the
13 offender's electronic home monitoring device include an alcohol
14 detection breathalyzer, and may restrict the amount of alcohol the
15 offender may consume during the time the offender is on electronic home
16 monitoring. One hundred twenty days of imprisonment and one hundred
17 fifty days of electronic home monitoring may not be suspended or
18 deferred unless the court finds that the imposition of this mandatory
19 minimum sentence would impose a substantial risk to the offender's
20 physical or mental well-being. Whenever the mandatory minimum sentence
21 is suspended or deferred, the court shall state in writing the reason
22 for granting the suspension or deferral and the facts upon which the
23 suspension or deferral is based; and

24 (ii) By a fine of not less than one thousand five hundred dollars
25 nor more than five thousand dollars. One thousand five hundred dollars
26 of the fine may not be suspended or deferred unless the court finds the
27 offender to be indigent.

28 (4) If a person who is convicted of a violation of RCW 46.61.502 or
29 46.61.504 committed the offense while a passenger under the age of
30 sixteen was in the vehicle, the court shall:

31 (a) In any case in which the installation and use of an interlock
32 or other device is not mandatory under RCW 46.20.720 or other law,
33 order the use of such a device for not less than sixty days following
34 the restoration of the person's license, permit, or nonresident driving
35 privileges; and

36 (b) In any case in which the installation and use of such a device
37 is otherwise mandatory, order the use of such a device for an
38 additional sixty days.

1 (5) In exercising its discretion in setting penalties within the
2 limits allowed by this section, the court shall particularly consider
3 the following:

4 (a) Whether the person's driving at the time of the offense was
5 responsible for injury or damage to another or another's property; and

6 (b) Whether at the time of the offense the person was driving or in
7 physical control of a vehicle with one or more passengers.

8 (6) An offender punishable under this section is subject to the
9 alcohol assessment and treatment provisions of RCW 46.61.5056.

10 (7) The license, permit, or nonresident privilege of a person
11 convicted of driving or being in physical control of a motor vehicle
12 while under the influence of intoxicating liquor or drugs must:

13 (a) If the person's alcohol concentration was less than 0.15, or if
14 for reasons other than the person's refusal to take a test offered
15 under RCW 46.20.308 there is no test result indicating the person's
16 alcohol concentration:

17 (i) Where there has been no prior offense within (~~seven~~) ten
18 years, be suspended or denied by the department for ninety days;

19 (ii) Where there has been one prior offense within (~~seven~~) ten
20 years, be revoked or denied by the department for two years; or

21 (iii) Where there have been two or more prior offenses within
22 (~~seven~~) ten years, be revoked or denied by the department for three
23 years;

24 (b) If the person's alcohol concentration was at least 0.15:

25 (i) Where there has been no prior offense within (~~seven~~) ten
26 years, be revoked or denied by the department for one year;

27 (ii) Where there has been one prior offense within (~~seven~~) ten
28 years, be revoked or denied by the department for nine hundred days; or

29 (iii) Where there have been two or more prior offenses within
30 (~~seven~~) ten years, be revoked or denied by the department for four
31 years; or

32 (c) If by reason of the person's refusal to take a test offered
33 under RCW 46.20.308, there is no test result indicating the person's
34 alcohol concentration:

35 (i) Where there have been no prior offenses within (~~seven~~) ten
36 years, be revoked or denied by the department for two years;

37 (ii) Where there has been one prior offense within (~~seven~~) ten
38 years, be revoked or denied by the department for three years; or

1 (iii) Where there have been two or more previous offenses within
2 (~~seven~~) ten years, be revoked or denied by the department for four
3 years.

4 The department shall grant credit on a day-for-day basis for any
5 portion of a suspension, revocation, or denial already served under
6 this subsection for a suspension, revocation, or denial imposed under
7 RCW 46.20.3101 arising out of the same incident.

8 For purposes of this subsection (7), the department shall refer to
9 the driver's record maintained under RCW 46.52.120 when determining the
10 existence of prior offenses.

11 (8) After expiration of any period of suspension, revocation, or
12 denial of the offender's license, permit, or privilege to drive
13 required by this section, the department shall place the offender's
14 driving privilege in probationary status pursuant to RCW 46.20.355.

15 (9)(a) In addition to any nonsuspendable and nondeferrable jail
16 sentence required by this section, whenever the court imposes less than
17 one year in jail, the court shall also suspend but shall not defer a
18 period of confinement for a period not exceeding five years. The court
19 shall impose conditions of probation that include: (i) Not driving a
20 motor vehicle within this state without a valid license to drive and
21 proof of financial responsibility for the future; (ii) not driving a
22 motor vehicle within this state while having an alcohol concentration
23 of 0.08 or more within two hours after driving; and (iii) not refusing
24 to submit to a test of his or her breath or blood to determine alcohol
25 concentration upon request of a law enforcement officer who has
26 reasonable grounds to believe the person was driving or was in actual
27 physical control of a motor vehicle within this state while under the
28 influence of intoxicating liquor. The court may impose conditions of
29 probation that include nonrepetition, installation of an ignition
30 interlock device on the probationer's motor vehicle, alcohol or drug
31 treatment, supervised probation, or other conditions that may be
32 appropriate. The sentence may be imposed in whole or in part upon
33 violation of a condition of probation during the suspension period.

34 (b) For each violation of mandatory conditions of probation under
35 (a)(i), (ii), or (iii) of this subsection, the court shall order the
36 convicted person to be confined for thirty days, which shall not be
37 suspended or deferred.

1 (c) For each incident involving a violation of a mandatory
2 condition of probation imposed under this subsection, the license,
3 permit, or privilege to drive of the person shall be suspended by the
4 court for thirty days or, if such license, permit, or privilege to
5 drive already is suspended, revoked, or denied at the time the finding
6 of probation violation is made, the suspension, revocation, or denial
7 then in effect shall be extended by thirty days. The court shall
8 notify the department of any suspension, revocation, or denial or any
9 extension of a suspension, revocation, or denial imposed under this
10 subsection.

11 (10) A court may waive the electronic home monitoring requirements
12 of this chapter when:

13 (a) The offender does not have a dwelling, telephone service, or
14 any other necessity to operate an electronic home monitoring system;

15 (b) The offender does not reside in the state of Washington; or

16 (c) The court determines that there is reason to believe that the
17 offender would violate the conditions of the electronic home monitoring
18 penalty.

19 Whenever the mandatory minimum term of electronic home monitoring
20 is waived, the court shall state in writing the reason for granting the
21 waiver and the facts upon which the waiver is based, and shall impose
22 an alternative sentence with similar punitive consequences. The
23 alternative sentence may include, but is not limited to, additional
24 jail time, work crew, or work camp.

25 Whenever the combination of jail time and electronic home
26 monitoring or alternative sentence would exceed three hundred sixty-
27 five days, the offender shall serve the jail portion of the sentence
28 first, and the electronic home monitoring or alternative portion of the
29 sentence shall be reduced so that the combination does not exceed three
30 hundred sixty-five days.

31 (11) An offender serving a sentence under this section, whether or
32 not a mandatory minimum term has expired, may be granted an
33 extraordinary medical placement by the jail administrator subject to
34 the standards and limitations set forth in RCW 9.94A.728(4).

35 (12) For purposes of this section:

36 (a) A "prior offense" means any of the following:

37 (i) A conviction for a violation of RCW 46.61.502 or an equivalent
38 local ordinance;

1 (ii) A conviction for a violation of RCW 46.61.504 or an equivalent
2 local ordinance;

3 (iii) A conviction for a violation of RCW 46.61.520 committed while
4 under the influence of intoxicating liquor or any drug;

5 (iv) A conviction for a violation of RCW 46.61.522 committed while
6 under the influence of intoxicating liquor or any drug;

7 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
8 9A.36.050 or an equivalent local ordinance, if the conviction is the
9 result of a charge that was originally filed as a violation of RCW
10 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
11 46.61.520 or 46.61.522;

12 (vi) An out-of-state conviction for a violation that would have
13 been a violation of (a)(i), (ii), (iii), (iv), or (v) of this
14 subsection if committed in this state;

15 (vii) A deferred prosecution under chapter 10.05 RCW granted in a
16 prosecution for a violation of RCW 46.61.502, 46.61.504, or an
17 equivalent local ordinance; or

18 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
19 prosecution for a violation of RCW 46.61.5249, or an equivalent local
20 ordinance, if the charge under which the deferred prosecution was
21 granted was originally filed as a violation of RCW 46.61.502 or
22 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
23 46.61.522; and

24 (b) "Within (~~seven~~) ten years" means that the arrest for a prior
25 offense occurred within (~~seven~~) ten years of the arrest for the
26 current offense.

27 **Sec. 2.** RCW 46.61.5058 and 1998 c 207 s 2 are each amended to read
28 as follows:

29 (1) Upon the arrest of a person or upon the filing of a complaint,
30 citation, or information in a court of competent jurisdiction, based
31 upon probable cause to believe that a person has violated RCW 46.61.502
32 or 46.61.504 or any similar municipal ordinance, if such person has a
33 prior offense within (~~seven~~) ten years as defined in RCW 46.61.5055,
34 and where the person has been provided written notice that any
35 transfer, sale, or encumbrance of such person's interest in the vehicle
36 over which that person was actually driving or had physical control
37 when the violation occurred, is unlawful pending either acquittal,

1 dismissal, sixty days after conviction, or other termination of the
2 charge, such person shall be prohibited from encumbering, selling, or
3 transferring his or her interest in such vehicle, except as otherwise
4 provided in (a), (b), and (c) of this subsection, until either
5 acquittal, dismissal, sixty days after conviction, or other termination
6 of the charge. The prohibition against transfer of title shall not be
7 stayed pending the determination of an appeal from the conviction.

8 (a) A vehicle encumbered by a bona fide security interest may be
9 transferred to the secured party or to a person designated by the
10 secured party;

11 (b) A leased or rented vehicle may be transferred to the lessor,
12 rental agency, or to a person designated by the lessor or rental
13 agency; and

14 (c) A vehicle may be transferred to a third party or a vehicle
15 dealer who is a bona fide purchaser or may be subject to a bona fide
16 security interest in the vehicle unless it is established that (i) in
17 the case of a purchase by a third party or vehicle dealer, such party
18 or dealer had actual notice that the vehicle was subject to the
19 prohibition prior to the purchase, or (ii) in the case of a security
20 interest, the holder of the security interest had actual notice that
21 the vehicle was subject to the prohibition prior to the encumbrance of
22 title.

23 (2) On conviction for a violation of either RCW 46.61.502 or
24 46.61.504 or any similar municipal ordinance where the person convicted
25 has a prior offense within (~~seven~~) ten years as defined in RCW
26 46.61.5055, the motor vehicle the person was driving or over which the
27 person had actual physical control at the time of the offense, if the
28 person has a financial interest in the vehicle, is subject to seizure
29 and forfeiture pursuant to this section.

30 (3) A vehicle subject to forfeiture under this chapter may be
31 seized by a law enforcement officer of this state upon process issued
32 by a court of competent jurisdiction. Seizure of a vehicle may be made
33 without process if the vehicle subject to seizure has been the subject
34 of a prior judgment in favor of the state in a forfeiture proceeding
35 based upon this section.

36 (4) Seizure under subsection (3) of this section automatically
37 commences proceedings for forfeiture. The law enforcement agency under
38 whose authority the seizure was made shall cause notice of the seizure

1 and intended forfeiture of the seized vehicle to be served within
2 fifteen days after the seizure on the owner of the vehicle seized, on
3 the person in charge of the vehicle, and on any person having a known
4 right or interest in the vehicle, including a community property
5 interest. The notice of seizure may be served by any method authorized
6 by law or court rule, including but not limited to service by certified
7 mail with return receipt requested. Service by mail is complete upon
8 mailing within the fifteen-day period after the seizure. Notice of
9 seizure in the case of property subject to a security interest that has
10 been perfected on a certificate of title shall be made by service upon
11 the secured party or the secured party's assignee at the address shown
12 on the financing statement or the certificate of title.

13 (5) If no person notifies the seizing law enforcement agency in
14 writing of the person's claim of ownership or right to possession of
15 the seized vehicle within forty-five days of the seizure, the vehicle
16 is deemed forfeited.

17 (6) If a person notifies the seizing law enforcement agency in
18 writing of the person's claim of ownership or right to possession of
19 the seized vehicle within forty-five days of the seizure, the law
20 enforcement agency shall give the person or persons a reasonable
21 opportunity to be heard as to the claim or right. The hearing shall be
22 before the chief law enforcement officer of the seizing agency or the
23 chief law enforcement officer's designee, except where the seizing
24 agency is a state agency as defined in RCW 34.12.020, the hearing shall
25 be before the chief law enforcement officer of the seizing agency or an
26 administrative law judge appointed under chapter 34.12 RCW, except that
27 any person asserting a claim or right may remove the matter to a court
28 of competent jurisdiction. Removal may only be accomplished according
29 to the rules of civil procedure. The person seeking removal of the
30 matter must serve process against the state, county, political
31 subdivision, or municipality that operates the seizing agency, and any
32 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,
33 within forty-five days after the person seeking removal has notified
34 the seizing law enforcement agency of the person's claim of ownership
35 or right to possession. The court to which the matter is to be removed
36 shall be the district court when the aggregate value of the vehicle is
37 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
38 before the seizing agency and any appeal therefrom shall be under Title

1 34 RCW. In a court hearing between two or more claimants to the
2 vehicle involved, the prevailing party shall be entitled to a judgment
3 for costs and reasonable attorneys' fees. The burden of producing
4 evidence shall be upon the person claiming to be the legal owner or the
5 person claiming to have the lawful right to possession of the vehicle.
6 The seizing law enforcement agency shall promptly return the vehicle to
7 the claimant upon a determination by the administrative law judge or
8 court that the claimant is the present legal owner under Title 46 RCW
9 or is lawfully entitled to possession of the vehicle.

10 (7) When a vehicle is forfeited under this chapter the seizing law
11 enforcement agency may sell the vehicle, retain it for official use, or
12 upon application by a law enforcement agency of this state release the
13 vehicle to that agency for the exclusive use of enforcing this title;
14 provided, however, that the agency shall first satisfy any bona fide
15 security interest to which the vehicle is subject under subsection
16 (1)(a) or (c) of this section.

17 (8) When a vehicle is forfeited, the seizing agency shall keep a
18 record indicating the identity of the prior owner, if known, a
19 description of the vehicle, the disposition of the vehicle, the value
20 of the vehicle at the time of seizure, and the amount of proceeds
21 realized from disposition of the vehicle.

22 (9) Each seizing agency shall retain records of forfeited vehicles
23 for at least seven years.

24 (10) Each seizing agency shall file a report including a copy of
25 the records of forfeited vehicles with the state treasurer each
26 calendar quarter.

27 (11) The quarterly report need not include a record of a forfeited
28 vehicle that is still being held for use as evidence during the
29 investigation or prosecution of a case or during the appeal from a
30 conviction.

31 (12) By January 31st of each year, each seizing agency shall remit
32 to the state treasurer an amount equal to ten percent of the net
33 proceeds of vehicles forfeited during the preceding calendar year.
34 Money remitted shall be deposited in the public safety and education
35 account.

36 (13) The net proceeds of a forfeited vehicle is the value of the
37 forfeitable interest in the vehicle after deducting the cost of
38 satisfying a bona fide security interest to which the vehicle is

1 subject at the time of seizure; and in the case of a sold vehicle,
2 after deducting the cost of sale, including reasonable fees or
3 commissions paid to independent selling agents.

4 (14) The value of a sold forfeited vehicle is the sale price. The
5 value of a retained forfeited vehicle is the fair market value of the
6 vehicle at the time of seizure, determined when possible by reference
7 to an applicable commonly used index, such as the index used by the
8 department of licensing. A seizing agency may, but need not, use an
9 independent qualified appraiser to determine the value of retained
10 vehicles. If an appraiser is used, the value of the vehicle appraised
11 is net of the cost of the appraisal.

12 **Sec. 3.** RCW 9.94A.525 and 2002 c 290 s 3 and 2002 c 107 s 3 are
13 each reenacted and amended to read as follows:

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

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

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

23 (2) Class A and sex prior felony convictions shall always be
24 included in the offender score. Class B prior felony convictions other
25 than sex offenses shall not be included in the offender score, if since
26 the last date of release from confinement (including full-time
27 residential treatment) pursuant to a felony conviction, if any, or
28 entry of judgment and sentence, the offender had spent ten consecutive
29 years in the community without committing any crime that subsequently
30 results in a conviction. Convictions of driving while under the
31 influence of intoxicating liquor or any drug (RCW 46.61.502) or actual
32 physical control while under the influence of intoxicating liquor or
33 any drug (RCW 46.61.504) shall not be included in the offender score
34 if, since the last date of release from confinement, including full-
35 time residential treatment, pursuant to a felony conviction, if any, or
36 entry of judgment and sentence, the offender spent ten years in the
37 community without committing any crime that subsequently results in a

1 conviction. Class C prior felony convictions other than sex offenses
2 shall not be included in the offender score if, since the last date of
3 release from confinement (including full-time residential treatment)
4 pursuant to a felony conviction, if any, or entry of judgment and
5 sentence, the offender had spent five consecutive years in the
6 community without committing any crime that subsequently results in a
7 conviction. (~~Serious traffic~~) Convictions of reckless driving (RCW
8 46.61.500) or hit-and-run involving an attended vehicle (RCW
9 46.52.020(5)) shall not be included in the offender score if, since the
10 last date of release from confinement (including full-time residential
11 treatment) pursuant to a felony conviction, if any, or entry of
12 judgment and sentence, the offender spent five years in the community
13 without committing any crime that subsequently results in a conviction.
14 This subsection applies to both adult and juvenile prior convictions.

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

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

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

30 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
31 encompass the same criminal conduct, shall be counted as one offense,
32 the offense that yields the highest offender score. The current
33 sentencing court shall determine with respect to other prior adult
34 offenses for which sentences were served concurrently or prior juvenile
35 offenses for which sentences were served consecutively, whether those
36 offenses shall be counted as one offense or as separate offenses using
37 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
38 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 manufacture of
14 methamphetamine count three points for each adult prior manufacture of
15 methamphetamine conviction and two points for each juvenile manufacture
16 of methamphetamine offense. If the present conviction is for a drug
17 offense and the offender has a criminal history that includes a sex
18 offense or serious violent offense, count three points for each adult
19 prior felony drug offense conviction and two points for each juvenile
20 drug offense. All other adult and juvenile felonies are scored as in
21 subsection (8) of this section if the current drug offense is violent,
22 or as in subsection (7) of this section if the current drug offense is
23 nonviolent.

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

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

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

37 (16) If the present conviction is for a sex offense, count priors

1 as in subsections (7) through (15) of this section; however count three
2 points for each adult and juvenile prior sex offense conviction.

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

5 (18) The fact that a prior conviction was not included in an
6 offender's offender score or criminal history at a previous sentencing
7 shall have no bearing on whether it is included in the criminal history
8 or offender score for the current offense. Accordingly, prior
9 convictions that were not counted in the offender score or included in
10 criminal history under repealed or previous versions of the sentencing
11 reform act shall be included in criminal history and shall count in the
12 offender score if the current version of the sentencing reform act
13 requires including or counting those convictions.

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