
HOUSE BILL 2462

State of Washington

60th Legislature

2008 Regular Session

By Representatives Priest and Armstrong

Prefiled 12/14/07. Read first time 01/14/08. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to ensuring that sex offenders receive accurate
2 sentences; amending RCW 9.94A.441, 9.94A.500, 9.94A.530, and 9.94A.585;
3 reenacting and amending RCW 9.94A.525; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** It is the legislature's intent to ensure
6 that sex offenders receive accurate sentences that are based on their
7 actual, complete criminal history. Accurate sentences further the
8 sentencing reform act's goals of:

9 (1) Ensuring that the punishment for a criminal offense is
10 proportionate to the seriousness of the offense and the sex offender's
11 criminal history;

12 (2) Ensuring punishment that is just; and

13 (3) Ensuring that sentences are commensurate with the punishment
14 imposed on others for committing similar offenses.

15 Given the decisions in *In re Cadwallader*, 155 Wn.2d 867 (2005);
16 *State v. Lopez*, 147 Wn.2d 515 (2002); *State v. Ford*, 137 Wn.2d 472
17 (1999); and *State v. McCorkle*, 137 Wn.2d 490 (1999), the legislature
18 finds it is necessary to amend the provisions in RCW 9.94A.441,
19 9.94A.500, 9.94A.525, 9.94A.530, and 9.94A.585 in order to ensure that

1 sentences imposed accurately reflect the sex offender's actual,
2 complete criminal history, whether imposed at sentencing or upon
3 resentencing. These amendments are consistent with the United States
4 supreme court holding in *Monge v. California*, 524 U.S. 721 (1998), that
5 double jeopardy is not implicated at resentencing following an appeal
6 or collateral attack.

7 **Sec. 2.** RCW 9.94A.441 and 1981 c 137 s 10 are each amended to read
8 as follows:

9 The prosecuting attorney and the defendant shall each provide the
10 court with their understanding of what the defendant's criminal history
11 is prior to a plea of guilty pursuant to a plea agreement. If the
12 defendant charged with a sex offense fails to affirmatively set forth
13 his or her understanding of his or her criminal history, he or she
14 shall be deemed to have admitted that the prosecuting attorney's
15 statement of his or her criminal history is correct. All disputed
16 issues as to criminal history shall be decided at the sentencing
17 hearing.

18 **Sec. 3.** RCW 9.94A.500 and 2006 c 339 s 303 are each amended to
19 read as follows:

20 (1) Before imposing a sentence upon a defendant, the court shall
21 conduct a sentencing hearing. The sentencing hearing shall be held
22 within forty court days following conviction. Upon the motion of
23 either party for good cause shown, or on its own motion, the court may
24 extend the time period for conducting the sentencing hearing.

25 Except in cases where the defendant shall be sentenced to a term of
26 total confinement for life without the possibility of release or, when
27 authorized by RCW 10.95.030 for the crime of aggravated murder in the
28 first degree, sentenced to death, the court may order the department to
29 complete a risk assessment report. If available before sentencing, the
30 report shall be provided to the court.

31 Unless specifically waived by the court, the court shall order the
32 department to complete a chemical dependency screening report before
33 imposing a sentence upon a defendant who has been convicted of a
34 violation of the uniform controlled substances act under chapter 69.50
35 RCW, a criminal solicitation to commit such a violation under chapter
36 9A.28 RCW, or any felony where the court finds that the offender has a

1 chemical dependency that has contributed to his or her offense. In
2 addition, the court shall, at the time of plea or conviction, order the
3 department to complete a presentence report before imposing a sentence
4 upon a defendant who has been convicted of a felony sexual offense.
5 The department of corrections shall give priority to presentence
6 investigations for sexual offenders. If the court determines that the
7 defendant may be a mentally ill person as defined in RCW 71.24.025,
8 although the defendant has not established that at the time of the
9 crime he or she lacked the capacity to commit the crime, was
10 incompetent to commit the crime, or was insane at the time of the
11 crime, the court shall order the department to complete a presentence
12 report before imposing a sentence.

13 The court shall consider the risk assessment report and presentence
14 reports, if any, including any victim impact statement and criminal
15 history, and allow arguments from the prosecutor, the defense counsel,
16 the offender, the victim, the survivor of the victim, or a
17 representative of the victim or survivor, and an investigative law
18 enforcement officer as to the sentence to be imposed.

19 A criminal history summary relating to a defendant charged with a
20 sex offense from the prosecuting authority or from a state, federal, or
21 foreign governmental agency shall be prima facie evidence of the
22 existence and validity of the convictions listed therein. The
23 defendant shall be allowed to rebut such proof with competent evidence.

24 If the court is satisfied by a preponderance of the evidence that the
25 defendant has a criminal history, the court shall specify the
26 convictions it has found to exist. All of this information shall be
27 part of the record. Copies of all risk assessment reports and
28 presentence reports presented to the sentencing court and all written
29 findings of facts and conclusions of law as to sentencing entered by
30 the court shall be sent to the department by the clerk of the court at
31 the conclusion of the sentencing and shall accompany the offender if
32 the offender is committed to the custody of the department. Court
33 clerks shall provide, without charge, certified copies of documents
34 relating to criminal convictions requested by prosecuting attorneys.

35 (2) To prevent wrongful disclosure of information related to mental
36 health services, as defined in RCW 71.05.445 and 71.34.345, a court may
37 take only those steps necessary during a sentencing hearing or any
38 hearing in which the department presents information related to mental

1 health services to the court. The steps may be taken on motion of the
2 defendant, the prosecuting attorney, or on the court's own motion. The
3 court may seal the portion of the record relating to information
4 relating to mental health services, exclude the public from the hearing
5 during presentation or discussion of information relating to mental
6 health services, or grant other relief to achieve the result intended
7 by this subsection, but nothing in this subsection shall be construed
8 to prevent the subsequent release of information related to mental
9 health services as authorized by RCW 71.05.445, 71.34.345, or
10 72.09.585. Any person who otherwise is permitted to attend any hearing
11 pursuant to chapter 7.69 or 7.69A RCW shall not be excluded from the
12 hearing solely because the department intends to disclose or discloses
13 information related to mental health services.

14 **Sec. 4.** RCW 9.94A.525 and 2007 c 199 s 8 and 2007 c 116 s 1 are
15 each reenacted and amended to read as follows:

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

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

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

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

27 (b) Class B prior felony convictions other than sex offenses shall
28 not be included in the offender score, if since the last date of
29 release from confinement (including full-time residential treatment)
30 pursuant to a felony conviction, if any, or entry of judgment and
31 sentence, the offender had spent ten consecutive years in the community
32 without committing any crime that subsequently results in a conviction.

33 (c) Except as provided in (e) of this subsection, class C prior
34 felony convictions other than sex offenses shall not be included in the
35 offender score if, since the last date of release from confinement
36 (including full-time residential treatment) pursuant to a felony

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

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

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

23 (f) This subsection applies to both adult and juvenile prior
24 convictions.

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

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

37 (5)(a) In the case of multiple prior convictions, for the purpose

1 of computing the offender score, count all convictions separately,
2 except:

3 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
4 encompass the same criminal conduct, shall be counted as one offense,
5 the offense that yields the highest offender score. The current
6 sentencing court shall determine with respect to other prior adult
7 offenses for which sentences were served concurrently or prior juvenile
8 offenses for which sentences were served consecutively, whether those
9 offenses shall be counted as one offense or as separate offenses using
10 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
11 if the court finds that they shall be counted as one offense, then the
12 offense that yields the highest offender score shall be used. The
13 current sentencing court may presume that such other prior offenses
14 were not the same criminal conduct from sentences imposed on separate
15 dates, or in separate counties or jurisdictions, or in separate
16 complaints, indictments, or informations;

17 (ii) In the case of multiple prior convictions for offenses
18 committed before July 1, 1986, for the purpose of computing the
19 offender score, count all adult convictions served concurrently as one
20 offense, and count all juvenile convictions entered on the same date as
21 one offense. Use the conviction for the offense that yields the
22 highest offender score.

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

29 (6) If the present conviction is one of the anticipatory offenses
30 of criminal attempt, solicitation, or conspiracy, count each prior
31 conviction as if the present conviction were for a completed offense.
32 When these convictions are used as criminal history, score them the
33 same as a completed crime.

34 (7) If the present conviction is for a nonviolent offense and not
35 covered by subsection (11), (12), or (13) of this section, count one
36 point for each adult prior felony conviction and one point for each
37 juvenile prior violent felony conviction and 1/2 point for each
38 juvenile prior nonviolent felony conviction.

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

7 (9) If the present conviction is for a serious violent offense,
8 count three points for prior adult and juvenile convictions for crimes
9 in this category, two points for each prior adult and juvenile violent
10 conviction (not already counted), one point for each prior adult
11 nonviolent felony conviction, and 1/2 point for each prior juvenile
12 nonviolent felony conviction.

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

18 (11) If the present conviction is for a felony traffic offense
19 count two points for each adult or juvenile prior conviction for
20 Vehicular Homicide or Vehicular Assault; for each felony offense count
21 one point for each adult and 1/2 point for each juvenile prior
22 conviction; for each serious traffic offense, other than those used for
23 an enhancement pursuant to RCW 46.61.520(2), count one point for each
24 adult and 1/2 point for each juvenile prior conviction; count one point
25 for each adult and 1/2 point for each juvenile prior conviction for
26 operation of a vessel while under the influence of intoxicating liquor
27 or any drug.

28 (12) If the present conviction is for homicide by watercraft or
29 assault by watercraft count two points for each adult or juvenile prior
30 conviction for homicide by watercraft or assault by watercraft; for
31 each felony offense count one point for each adult and 1/2 point for
32 each juvenile prior conviction; count one point for each adult and 1/2
33 point for each juvenile prior conviction for driving under the
34 influence of intoxicating liquor or any drug, actual physical control
35 of a motor vehicle while under the influence of intoxicating liquor or
36 any drug, or operation of a vessel while under the influence of
37 intoxicating liquor or any drug.

1 (13) If the present conviction is for manufacture of
2 methamphetamine count three points for each adult prior manufacture of
3 methamphetamine conviction and two points for each juvenile manufacture
4 of methamphetamine offense. If the present conviction is for a drug
5 offense and the offender has a criminal history that includes a sex
6 offense or serious violent offense, count three points for each adult
7 prior felony drug offense conviction and two points for each juvenile
8 drug offense. All other adult and juvenile felonies are scored as in
9 subsection (8) of this section if the current drug offense is violent,
10 or as in subsection (7) of this section if the current drug offense is
11 nonviolent.

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

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

19 (16) If the present conviction is for Burglary 2 or residential
20 burglary, count priors as in subsection (7) of this section; however,
21 count two points for each adult and juvenile prior Burglary 1
22 conviction, two points for each adult prior Burglary 2 or residential
23 burglary conviction, and one point for each juvenile prior Burglary 2
24 or residential burglary conviction.

25 (17) If the present conviction is for a sex offense, count priors
26 as in subsections (7) through (11) and (13) through (16) of this
27 section; however count three points for each adult and juvenile prior
28 sex offense conviction.

29 (18) If the present conviction is for failure to register as a sex
30 offender under RCW 9A.44.130(~~((+10+))~~) (11), count priors as in
31 subsections (7) through (11) and (13) through (16) of this section;
32 however count three points for each adult and juvenile prior sex
33 offense conviction, excluding prior convictions for failure to register
34 as a sex offender under RCW 9A.44.130(~~((+10+))~~) (11), which shall count
35 as one point.

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

1 (20) If the present conviction is for Theft of a Motor Vehicle,
2 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
3 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
4 priors as in subsections (7) through (18) of this section; however
5 count one point for prior convictions of Vehicle Prowling 2, and three
6 points for each adult and juvenile prior Theft 1 (of a motor vehicle),
7 Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a
8 motor vehicle), Possession of Stolen Property 2 (of a motor vehicle),
9 Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a
10 Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without
11 Permission 2 conviction.

12 (21) The fact that a prior conviction was not included in an
13 offender's offender score or criminal history at a previous sentencing
14 shall have no bearing on whether it is included in the criminal history
15 or offender score for the current offense. ~~((Accordingly,))~~ Prior
16 convictions that were not counted in the offender score or included in
17 criminal history under repealed or previous versions of the sentencing
18 reform act shall be included in criminal history and shall count in the
19 offender score if the current version of the sentencing reform act
20 requires including or counting those convictions. Prior convictions
21 that were not included in criminal history or in the offender score
22 shall be included upon resentencing for a sex offense to ensure
23 imposition of an accurate sentence.

24 **Sec. 5.** RCW 9.94A.530 and 2005 c 68 s 2 are each amended to read
25 as follows:

26 (1) The intersection of the column defined by the offender score
27 and the row defined by the offense seriousness score determines the
28 standard sentence range (see RCW 9.94A.510, (Table 1) and RCW
29 9.94A.517, (Table 3)). The additional time for deadly weapon findings
30 or for other adjustments as specified in RCW 9.94A.533 shall be added
31 to the entire standard sentence range. The court may impose any
32 sentence within the range that it deems appropriate. All standard
33 sentence ranges are expressed in terms of total confinement.

34 (2) In determining any sentence other than a sentence above the
35 standard range, the trial court may rely on no more information than is
36 admitted by the plea agreement, or admitted, acknowledged, or proved in
37 a trial or at the time of sentencing, or proven pursuant to RCW

1 9.94A.537. Acknowledgment includes not objecting to information stated
2 in the presentence reports and, in the case of a defendant convicted of
3 a sex offense, not objecting to criminal history presented at the time
4 of sentencing. Where the defendant disputes material facts, the court
5 must either not consider the fact or grant an evidentiary hearing on
6 the point. The facts shall be deemed proved at the hearing by a
7 preponderance of the evidence, except as otherwise specified in RCW
8 9.94A.537. On remand for resentencing following appeal, or collateral
9 attack, on a conviction for a sex offense, the parties shall have the
10 opportunity to present and the court to consider all relevant evidence
11 regarding criminal history, including criminal history not previously
12 presented.

13 (3) In determining any sentence above the standard sentence range,
14 the court shall follow the procedures set forth in RCW 9.94A.537.
15 Facts that establish the elements of a more serious crime or additional
16 crimes may not be used to go outside the standard sentence range except
17 upon stipulation or when specifically provided for in RCW
18 9.94A.535(~~(+2)~~) (3) (d), (e), (g), and (h).

19 **Sec. 6.** RCW 9.94A.585 and 2002 c 290 s 19 are each amended to read
20 as follows:

21 (1) A sentence within the standard sentence range, under RCW
22 9.94A.510 or 9.94A.517, for an offense shall not be appealed. For
23 purposes of this section, a sentence imposed on a first-time offender
24 under RCW 9.94A.650 shall also be deemed to be within the standard
25 sentence range for the offense and shall not be appealed.

26 (2) A sentence outside the standard sentence range for the offense
27 is subject to appeal by the defendant or the state. In order to raise
28 any issue regarding sentencing for a sex offense on appeal, the issue
29 must first have been raised at the trial court level. The appeal shall
30 be to the court of appeals in accordance with rules adopted by the
31 supreme court.

32 (3) Pending review of the sentence, the sentencing court or the
33 court of appeals may order the defendant confined or placed on
34 conditional release, including bond.

35 (4) To reverse a sentence which is outside the standard sentence
36 range, the reviewing court must find: (a) Either that the reasons
37 supplied by the sentencing court are not supported by the record which

1 was before the judge or that those reasons do not justify a sentence
2 outside the standard sentence range for that offense; or (b) that the
3 sentence imposed was clearly excessive or clearly too lenient.

4 (5) A review under this section shall be made solely upon the
5 record that was before the sentencing court. Written briefs shall not
6 be required and the review and decision shall be made in an expedited
7 manner according to rules adopted by the supreme court.

8 (6) The court of appeals shall issue a written opinion in support
9 of its decision whenever the judgment of the sentencing court is
10 reversed and may issue written opinions in any other case where the
11 court believes that a written opinion would provide guidance to
12 sentencing courts and others in implementing this chapter and in
13 developing a common law of sentencing within the state.

14 (7) The department may petition for a review of a sentence
15 committing an offender to the custody or jurisdiction of the
16 department. The review shall be limited to errors of law. Such
17 petition shall be filed with the court of appeals no later than ninety
18 days after the department has actual knowledge of terms of the
19 sentence. The petition shall include a certification by the department
20 that all reasonable efforts to resolve the dispute at the superior
21 court level have been exhausted.

22 NEW SECTION. **Sec. 7.** Sections 3 and 4 of this act apply to all
23 sentencings and resentencings for sex offenses commenced before, on, or
24 after the effective date of this section.

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