

---

SENATE BILL 5711

---

State of Washington                      60th Legislature                      2007 Regular Session

By Senators Parlette, Delvin and Shin

Read first time 01/29/2007. Referred to Committee on Judiciary.

1            AN ACT Relating to the offender score for offenses concerning the  
2 influence of intoxicating liquor or any drug; reenacting and amending  
3 RCW 9.94A.525; providing an effective date; and declaring an emergency.

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

5            **Sec. 1.** RCW 9.94A.525 and 2006 c 128 s 6 and 2006 c 73 s 7 are  
6 each reenacted and amended to read as follows:

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

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

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

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

18            (b) Class B prior felony convictions other than sex offenses shall  
19 not be included in the offender score, if since the last date of

1 release from confinement (including full-time residential treatment)  
2 pursuant to a felony conviction, if any, or entry of judgment and  
3 sentence, the offender had spent ten consecutive years in the community  
4 without committing any crime that subsequently results in a conviction.

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

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

18 (e) If the present conviction is felony driving while under the  
19 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or  
20 felony physical control of a vehicle while under the influence of  
21 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions  
22 of felony driving while under the influence of intoxicating liquor or  
23 any drug, felony physical control of a vehicle while under the  
24 influence of intoxicating liquor or any drug, and serious traffic  
25 offenses shall be included in the offender score if: (i) The prior  
26 convictions were committed within five years since the last date of  
27 release from confinement (including full-time residential treatment) or  
28 entry of judgment and sentence; or (ii) the prior convictions would be  
29 considered "prior offenses within ten years" as defined in RCW  
30 46.61.5055.

31 (f) This subsection applies to both adult and juvenile prior  
32 convictions.

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

1 usually considered subject to exclusive federal jurisdiction, the  
2 offense shall be scored as a class C felony equivalent if it was a  
3 felony under the relevant federal statute.

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

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

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

24 (ii) In the case of multiple prior convictions for offenses  
25 committed before July 1, 1986, for the purpose of computing the  
26 offender score, count all adult convictions served concurrently as one  
27 offense, and count all juvenile convictions entered on the same date as  
28 one offense. Use the conviction for the offense that yields the  
29 highest offender score.

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

36 (6) If the present conviction is one of the anticipatory offenses  
37 of criminal attempt, solicitation, or conspiracy, count each prior

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

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

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

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

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

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

36 (12) If the present conviction is for homicide by watercraft or  
37 assault by watercraft count two points for each adult or juvenile prior  
38 conviction for homicide by watercraft or assault by watercraft; for

1 each felony offense count one point for each adult and 1/2 point for  
2 each juvenile prior conviction; count one point for each adult and 1/2  
3 point for each juvenile prior conviction for driving under the  
4 influence of intoxicating liquor or any drug, actual physical control  
5 of a motor vehicle while under the influence of intoxicating liquor or  
6 any drug, or operation of a vessel while under the influence of  
7 intoxicating liquor or any drug.

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

19 ((+13+)) (14) If the present conviction is for Escape from  
20 Community Custody, RCW 72.09.310, count only prior escape convictions  
21 in the offender score. Count adult prior escape convictions as one  
22 point and juvenile prior escape convictions as 1/2 point.

23 ((+14+)) (15) If the present conviction is for Escape 1, RCW  
24 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as  
25 one point and juvenile prior convictions as 1/2 point.

26 ((+15+)) (16) If the present conviction is for Burglary 2 or  
27 residential burglary, count priors as in subsection (7) of this  
28 section; however, count two points for each adult and juvenile prior  
29 Burglary 1 conviction, two points for each adult prior Burglary 2 or  
30 residential burglary conviction, and one point for each juvenile prior  
31 Burglary 2 or residential burglary conviction.

32 ((+16+)) (17) If the present conviction is for a sex offense, count  
33 priors as in subsections (7) through ((+15+)) (11) and (13) through  
34 (16) of this section; however count three points for each adult and  
35 juvenile prior sex offense conviction.

36 ((+17+)) (18) If the present conviction is for failure to register  
37 as a sex offender under RCW 9A.44.130(10), count priors as in  
38 subsections (7) through ((+15+)) (11) and (13) through (16) of this

1 section; however count three points for each adult and juvenile prior  
2 sex offense conviction, excluding prior convictions for failure to  
3 register as a sex offender under RCW 9A.44.130(10), which shall count  
4 as one point.

5 ~~((18))~~ (19) If the present conviction is for an offense committed  
6 while the offender was under community placement, add one point.

7 ~~((19))~~ (20) The fact that a prior conviction was not included in  
8 an offender's offender score or criminal history at a previous  
9 sentencing shall have no bearing on whether it is included in the  
10 criminal history or offender score for the current offense.  
11 Accordingly, prior convictions that were not counted in the offender  
12 score or included in criminal history under repealed or previous  
13 versions of the sentencing reform act shall be included in criminal  
14 history and shall count in the offender score if the current version of  
15 the sentencing reform act requires including or counting those  
16 convictions.

17 NEW SECTION. **Sec. 2.** This act is necessary for the immediate  
18 preservation of the public peace, health, or safety, or support of the  
19 state government and its existing public institutions, and takes effect  
20 July 1, 2007.

--- END ---