
SUBSTITUTE HOUSE BILL 1060

State of Washington **63rd Legislature** **2013 Regular Session**

By House Public Safety (originally sponsored by Representative Goodman)

READ FIRST TIME 02/04/13.

1 AN ACT Relating to scoring an offense a class C felony equivalent
2 if the offense was a felony under the relevant out-of-state statute
3 when there is no clearly comparable offense under Washington law;
4 amending RCW 9.94A.525; and prescribing penalties.

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

6 **Sec. 1.** RCW 9.94A.525 and 2011 c 166 s 3 are each amended to read
7 as follows:

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

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

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

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

1 (b) Class B prior felony convictions other than sex offenses shall
2 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 ten consecutive years in the community
6 without committing any crime that subsequently results in a conviction.

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

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

20 (e) If the present conviction is felony driving while under the
21 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
22 felony physical control of a vehicle while under the influence of
23 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions
24 of felony driving while under the influence of intoxicating liquor or
25 any drug, felony physical control of a vehicle while under the
26 influence of intoxicating liquor or any drug, and serious traffic
27 offenses shall be included in the offender score if: (i) The prior
28 convictions were committed within five years since the last date of
29 release from confinement (including full-time residential treatment) or
30 entry of judgment and sentence; or (ii) the prior convictions would be
31 considered "prior offenses within ten years" as defined in RCW
32 46.61.5055.

33 (f) Prior convictions for a repetitive domestic violence offense,
34 as defined in RCW 9.94A.030, shall not be included in the offender
35 score if, since the last date of release from confinement or entry of
36 judgment and sentence, the offender had spent ten consecutive years in
37 the community without committing any crime that subsequently results in
38 a conviction.

1 (g) This subsection applies to both adult and juvenile prior
2 convictions.

3 (3) Out-of-state convictions for offenses shall be classified
4 according to the comparable offense definitions and sentences provided
5 by Washington law. If there is no clearly comparable offense under
6 Washington law, the offense shall be scored as a class C felony
7 equivalent if it was a felony under the relevant out-of-state statute,
8 unless the defendant can establish that his or her actual conduct did
9 not constitute a felony under Washington law. Federal convictions for
10 offenses shall be classified according to the comparable offense
11 definitions and sentences provided by Washington law. If there is no
12 clearly comparable offense under Washington law or the offense is one
13 that is usually considered subject to exclusive federal jurisdiction,
14 the offense shall be scored as a class C felony equivalent if it was a
15 felony under the relevant federal statute.

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

19 (5)(a) In the case of multiple prior convictions, for the purpose
20 of computing the offender score, count all convictions separately,
21 except:

22 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
23 encompass the same criminal conduct, shall be counted as one offense,
24 the offense that yields the highest offender score. The current
25 sentencing court shall determine with respect to other prior adult
26 offenses for which sentences were served concurrently or prior juvenile
27 offenses for which sentences were served consecutively, whether those
28 offenses shall be counted as one offense or as separate offenses using
29 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
30 if the court finds that they shall be counted as one offense, then the
31 offense that yields the highest offender score shall be used. The
32 current sentencing court may presume that such other prior offenses
33 were not the same criminal conduct from sentences imposed on separate
34 dates, or in separate counties or jurisdictions, or in separate
35 complaints, indictments, or informations;

36 (ii) In the case of multiple prior convictions for offenses
37 committed before July 1, 1986, for the purpose of computing the
38 offender score, count all adult convictions served concurrently as one

1 offense, and count all juvenile convictions entered on the same date as
2 one offense. Use the conviction for the offense that yields the
3 highest offender score.

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

10 (6) If the present conviction is one of the anticipatory offenses
11 of criminal attempt, solicitation, or conspiracy, count each prior
12 conviction as if the present conviction were for a completed offense.
13 When these convictions are used as criminal history, score them the
14 same as a completed crime.

15 (7) If the present conviction is for a nonviolent offense and not
16 covered by subsection (11), (12), or (13) of this section, count one
17 point for each adult prior felony conviction and one point for each
18 juvenile prior violent felony conviction and 1/2 point for each
19 juvenile prior nonviolent felony conviction.

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

26 (9) If the present conviction is for a serious violent offense,
27 count three points for prior adult and juvenile convictions for crimes
28 in this category, two points for each prior adult and juvenile violent
29 conviction (not already counted), one point for each prior adult
30 nonviolent felony conviction, and 1/2 point for each prior juvenile
31 nonviolent felony conviction.

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

37 (11) If the present conviction is for a felony traffic offense
38 count two points for each adult or juvenile prior conviction for

1 Vehicular Homicide or Vehicular Assault; for each felony offense count
2 one point for each adult and 1/2 point for each juvenile prior
3 conviction; for each serious traffic offense, other than those used for
4 an enhancement pursuant to RCW 46.61.520(2), count one point for each
5 adult and 1/2 point for each juvenile prior conviction; count one point
6 for each adult and 1/2 point for each juvenile prior conviction for
7 operation of a vessel while under the influence of intoxicating liquor
8 or any drug.

9 (12) If the present conviction is for homicide by watercraft or
10 assault by watercraft count two points for each adult or juvenile prior
11 conviction for homicide by watercraft or assault by watercraft; for
12 each felony offense count one point for each adult and 1/2 point for
13 each juvenile prior conviction; count one point for each adult and 1/2
14 point for each juvenile prior conviction for driving under the
15 influence of intoxicating liquor or any drug, actual physical control
16 of a motor vehicle while under the influence of intoxicating liquor or
17 any drug, or operation of a vessel while under the influence of
18 intoxicating liquor or any drug.

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

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

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

37 (16) If the present conviction is for Burglary 2 or residential
38 burglary, count priors as in subsection (7) of this section; however,

1 count two points for each adult and juvenile prior Burglary 1
2 conviction, two points for each adult prior Burglary 2 or residential
3 burglary conviction, and one point for each juvenile prior Burglary 2
4 or residential burglary conviction.

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

9 (18) If the present conviction is for failure to register as a sex
10 offender under RCW 9A.44.130 or 9A.44.132, count priors as in
11 subsections (7) through (11) and (13) through (16) of this section;
12 however count three points for each adult and juvenile prior sex
13 offense conviction, excluding prior convictions for failure to register
14 as a sex offender under RCW 9A.44.130 or 9A.44.132, which shall count
15 as one point.

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

20 (20) If the present conviction is for Theft of a Motor Vehicle,
21 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
22 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
23 priors as in subsections (7) through (18) of this section; however
24 count one point for prior convictions of Vehicle Prowling 2, and three
25 points for each adult and juvenile prior Theft 1 (of a motor vehicle),
26 Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a
27 motor vehicle), Possession of Stolen Property 2 (of a motor vehicle),
28 Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a
29 Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without
30 Permission 2 conviction.

31 (21) If the present conviction is for a felony domestic violence
32 offense where domestic violence as defined in RCW 9.94A.030 was plead
33 and proven, count priors as in subsections (7) through (20) of this
34 section; however, count points as follows:

35 (a) Count two points for each adult prior conviction where domestic
36 violence as defined in RCW 9.94A.030 was plead and proven after August
37 1, 2011, for the following offenses: A violation of a no-contact order
38 that is a felony offense, a violation of a protection order that is a

1 felony offense, a felony domestic violence harassment offense, a felony
2 domestic violence stalking offense, a domestic violence Burglary 1
3 offense, a domestic violence Kidnapping 1 offense, a domestic violence
4 Kidnapping 2 offense, a domestic violence unlawful imprisonment
5 offense, a domestic violence Robbery 1 offense, a domestic violence
6 Robbery 2 offense, a domestic violence Assault 1 offense, a domestic
7 violence Assault 2 offense, a domestic violence Assault 3 offense, a
8 domestic violence Arson 1 offense, or a domestic violence Arson 2
9 offense;

10 (b) Count one point for each second and subsequent juvenile
11 conviction where domestic violence as defined in RCW 9.94A.030 was
12 plead and proven after August 1, 2011, for the offenses listed in (a)
13 of this subsection; and

14 (c) Count one point for each adult prior conviction for a
15 repetitive domestic violence offense as defined in RCW 9.94A.030, where
16 domestic violence as defined in RCW 9.94A.030, was plead and proven
17 after August 1, 2011.

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

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