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HOUSE BILL 2194

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State of Washington

63rd Legislature

2014 Regular Session

By Representative Goodman

Prefiled 01/09/14. Read first time 01/13/14. Referred to Committee on Public Safety.

1 AN ACT Relating to domestic violence against a child; and amending  
2 RCW 9.94A.525.

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

4 **Sec. 1.** RCW 9.94A.525 and 2013 2nd sp.s. c 35 s 8 are each amended  
5 to read as follows:

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

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

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

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

17 (b) Class B prior felony convictions other than sex offenses shall  
18 not be included in the offender score, if since the last date of  
19 release from confinement (including full-time residential treatment)

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

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

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

17 (e) If the present conviction is felony driving while under the  
18 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or  
19 felony physical control of a vehicle while under the influence of  
20 intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate  
21 crimes for the offense as defined by RCW 46.61.5055(14) shall be  
22 included in the offender score, and prior convictions for felony  
23 driving while under the influence of intoxicating liquor or any drug  
24 (RCW 46.61.502(6)) or felony physical control of a vehicle while under  
25 the influence of intoxicating liquor or any drug (RCW 46.61.504(6))  
26 shall always be included in the offender score. All other convictions  
27 of the defendant shall be scored according to this section.

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

34 (g) This subsection applies to both adult and juvenile prior  
35 convictions.

36 (3) Out-of-state convictions for offenses shall be classified  
37 according to the comparable offense definitions and sentences provided  
38 by Washington law. Federal convictions for offenses shall be

1 classified according to the comparable offense definitions and  
2 sentences provided by Washington law. If there is no clearly  
3 comparable offense under Washington law or the offense is one that is  
4 usually considered subject to exclusive federal jurisdiction, the  
5 offense shall be scored as a class C felony equivalent if it was a  
6 felony under the relevant federal statute.

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

10 (5)(a) In the case of multiple prior convictions, for the purpose  
11 of computing the offender score, count all convictions separately,  
12 except:

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

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

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

1 (6) If the present conviction is one of the anticipatory offenses  
2 of criminal attempt, solicitation, or conspiracy, count each prior  
3 conviction as if the present conviction were for a completed offense.  
4 When these convictions are used as criminal history, score them the  
5 same as a completed crime.

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

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

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

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

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

1 (12) If the present conviction is for homicide by watercraft or  
2 assault by watercraft count two points for each adult or juvenile prior  
3 conviction for homicide by watercraft or assault by watercraft; for  
4 each felony offense count one point for each adult and 1/2 point for  
5 each juvenile prior conviction; count one point for each adult and 1/2  
6 point for each juvenile prior conviction for driving under the  
7 influence of intoxicating liquor or any drug, actual physical control  
8 of a motor vehicle while under the influence of intoxicating liquor or  
9 any drug, or operation of a vessel while under the influence of  
10 intoxicating liquor or any drug.

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

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

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

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

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

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

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

12 (20) If the present conviction is for Theft of a Motor Vehicle,  
13 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without  
14 Permission 1, or Taking a Motor Vehicle Without Permission 2, count  
15 priors as in subsections (7) through (18) of this section; however  
16 count one point for prior convictions of Vehicle Prowling 2, and three  
17 points for each adult and juvenile prior Theft 1 (of a motor vehicle),  
18 Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a  
19 motor vehicle), Possession of Stolen Property 2 (of a motor vehicle),  
20 Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a  
21 Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without  
22 Permission 2 conviction.

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

27 (a) Count two points for each adult prior conviction where domestic  
28 violence as defined in RCW 9.94A.030 was plead and proven after August  
29 1, 2011, for any of the following offenses: A felony violation of a  
30 no-contact or protection order (~~((that is a felony offense, a violation~~  
31 ~~of a protection order that is a felony offense, a))~~ (RCW 26.50.110),  
32 felony (~~((domestic—violence))~~) Harassment (~~((offense))~~) (RCW  
33 9A.46.020(2)(b)), ((a)) felony (~~((domestic—violence))~~) Stalking  
34 ((offense, a domestic violence)) (RCW 9A.46.110(5)(b)), Burglary 1  
35 ((offense)) (RCW 9A.52.020), ((a domestic violence)) Kidnapping 1  
36 ((offense)) (RCW 9A.40.020), ((a domestic violence)) Kidnapping 2  
37 ((offense)) (RCW 9A.40.030), ((a domestic violence)) Unlawful  
38 imprisonment (~~((offense))~~) (RCW 9A.40.040), ((a domestic violence))

1 Robbery 1 ((~~offense~~)) (RCW 9A.56.200), ((~~a domestic violence~~)) Robbery  
2 2 ((~~offense~~)) (RCW 9A.56.210), ((~~a domestic violence~~)) Assault 1  
3 ((~~offense~~)) (RCW 9A.36.011), ((~~a domestic violence~~)) Assault 2  
4 ((~~offense~~)) (RCW 9A.36.021), ((~~a domestic violence~~)) Assault 3  
5 ((~~offense~~)) (RCW 9A.36.031), ((~~a domestic violence~~)) Arson 1  
6 ((~~offense~~)) (RCW 9A.48.020), or ((~~a domestic violence~~)) Arson 2  
7 ((~~offense~~)) (RCW 9A.48.030);

8 (b) Count two points for each adult prior conviction where domestic  
9 violence as defined in RCW 9.94A.030 was plead and proven after the  
10 effective date of this section, for any of the following offenses:  
11 Assault of a child in the first degree, RCW 9A.36.120; Assault of a  
12 child in the second degree, RCW 9A.36.130; Assault of a child in the  
13 third degree, RCW 9A.36.140; Criminal Mistreatment in the first degree,  
14 RCW 9A.42.020; or Criminal Mistreatment in the second degree, RCW  
15 9A.42.030;

16 (c) Count one point for each second and subsequent juvenile  
17 conviction where domestic violence as defined in RCW 9.94A.030 was  
18 plead and proven after August 1, 2011, for the offenses listed in (a)  
19 of this subsection; and

20 ((~~e~~)) (d) Count one point for each adult prior conviction for a  
21 repetitive domestic violence offense as defined in RCW 9.94A.030, where  
22 domestic violence as defined in RCW 9.94A.030, was plead and proven  
23 after August 1, 2011.

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

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