
SUBSTITUTE SENATE BILL 5035

State of Washington

67th Legislature

2021 Regular Session

By Senate Law & Justice (originally sponsored by Senators Dhingra, Nguyen, Billig, Carlyle, Darneille, Das, Hasegawa, Kuderer, Lias, Lovelett, Mullet, Pedersen, Rolfes, Saldaña, Salomon, Stanford, Wellman, and Wilson, C.)

READ FIRST TIME 01/29/21.

1 AN ACT Relating to offender scoring of drug offenses; and
2 amending RCW 9.94A.525.

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

4 **Sec. 1.** RCW 9.94A.525 and 2017 c 272 s 3 are each amended to
5 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
9 section rounded down to the nearest whole number.

10 (1) A prior conviction is a conviction which exists before the
11 date of sentencing for the offense for which the offender score is
12 being computed. Convictions entered or sentenced on the same date as
13 the conviction for which the offender score is being computed shall
14 be deemed "other current offenses" within the meaning of RCW
15 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
19 shall not be included in the offender score, if since the last date
20 of release from confinement (including full-time residential
21 treatment) pursuant to a felony conviction, if any, or entry of

1 judgment and sentence, the offender had spent (~~(ten)~~) 10 consecutive
2 years in the community without committing any crime that subsequently
3 results in a conviction.

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

12 (d) Except as provided in (~~(e)~~) (f) of this subsection, serious
13 traffic convictions shall not be included in the offender score if,
14 since the last date of release from confinement (including full-time
15 residential treatment) pursuant to a 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
18 conviction.

19 (e) Any conviction: (i) Under RCW 69.50.4013 for the crime of
20 simple possession or solicitation, conspiracy, or attempt to possess;
21 or (ii) under RCW 9A.28.020 through 9A.28.040 for the crime of
22 solicitation, conspiracy, or attempt to deliver may not be included
23 in the offender score if it has been more than five years since the
24 entry of judgment and sentence.

25 (f) If the present conviction is felony driving while under the
26 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
27 felony physical control of a vehicle while under the influence of
28 intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate
29 crimes for the offense as defined by RCW 46.61.5055(14) shall be
30 included in the offender score, and prior convictions for felony
31 driving while under the influence of intoxicating liquor or any drug
32 (RCW 46.61.502(6)) or felony physical control of a vehicle while
33 under the influence of intoxicating liquor or any drug (RCW
34 46.61.504(6)) shall always be included in the offender score. All
35 other convictions of the defendant shall be scored according to this
36 section.

37 (~~(f)~~) (g) Prior convictions for a repetitive domestic violence
38 offense, as defined in RCW 9.94A.030, shall not be included in the
39 offender score if, since the last date of release from confinement or
40 entry of judgment and sentence, the offender had spent (~~(ten)~~) 10

1 consecutive years in the community without committing any crime that
2 subsequently results in a conviction.

3 ~~((g))~~ (h) This subsection applies to both adult and juvenile
4 prior convictions.

5 (3) Out-of-state convictions for offenses shall be classified
6 according to the comparable offense definitions and sentences
7 provided by Washington law. Federal convictions for offenses shall be
8 classified according to the comparable offense definitions and
9 sentences provided by Washington law. If there is no clearly
10 comparable offense under Washington law or the offense is one that is
11 usually considered subject to exclusive federal jurisdiction, the
12 offense shall be scored as a class C felony equivalent if it was a
13 felony under the relevant federal statute.

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

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

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

35 (ii) In the case of multiple prior convictions for offenses
36 committed before July 1, 1986, for the purpose of computing the
37 offender score, count all adult convictions served concurrently as
38 one offense, and count all juvenile convictions entered on the same
39 date as one offense. Use the conviction for the offense that yields
40 the highest offender score.

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

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

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

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

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

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

34 (11) If the present conviction is for a felony traffic offense
35 count two points for each adult or juvenile prior conviction for
36 Vehicular Homicide or Vehicular Assault; for each felony offense
37 count one point for each adult and 1/2 point for each juvenile prior
38 conviction; for each serious traffic offense, other than those used
39 for an enhancement pursuant to RCW 46.61.520(2), count one point for
40 each adult and 1/2 point for each juvenile prior conviction; count

1 one point for each adult and 1/2 point for each juvenile prior
2 conviction for operation of a vessel while under the influence of
3 intoxicating liquor or any drug.

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

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

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

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

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

38 (17) If the present conviction is for a sex offense, count priors
39 as in subsections (7) through (11) and (13) through (16) of this

1 section; however, count three points for each adult and juvenile
2 prior sex offense conviction.

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

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

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

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

29 (a) Count two points for each adult prior conviction where
30 domestic violence as defined in RCW 9.94A.030 was pleaded and proven
31 after August 1, 2011, for any of the following offenses: A felony
32 violation of a no-contact or protection order RCW 26.50.110, felony
33 Harassment (RCW 9A.46.020(2)(b)), felony Stalking (RCW
34 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020), Kidnapping 1 (RCW
35 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful imprisonment (RCW
36 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2 (RCW 9A.56.210),
37 Assault 1 (RCW 9A.36.011), Assault 2 (RCW 9A.36.021), Assault 3 (RCW
38 9A.36.031), Arson 1 (RCW 9A.48.020), or Arson 2 (RCW 9A.48.030);

39 (b) Count two points for each adult prior conviction where
40 domestic violence as defined in RCW 9.94A.030 was pleaded and proven

1 after July 23, 2017, for any of the following offenses: Assault of a
2 child in the first degree, RCW 9A.36.120; Assault of a child in the
3 second degree, RCW 9A.36.130; Assault of a child in the third degree,
4 RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW
5 9A.42.020; or Criminal Mistreatment in the second degree, RCW
6 9A.42.030;

7 (c) Count one point for each second and subsequent juvenile
8 conviction where domestic violence as defined in RCW 9.94A.030 was
9 pleaded and proven after August 1, 2011, for the offenses listed in
10 (a) of this subsection; and

11 (d) Count one point for each adult prior conviction for a
12 repetitive domestic violence offense as defined in RCW 9.94A.030,
13 where domestic violence as defined in RCW 9.94A.030, was pleaded and
14 proven after August 1, 2011.

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

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