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**SENATE BILL 5475**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Saldaña, Kuderer, Lovelett, Nguyen, and C. Wilson

Read first time 01/19/23. Referred to Committee on Law & Justice.

1 AN ACT Relating to the scoring of prior juvenile offenses in  
2 sentencing range calculations; amending RCW 9.94A.525; adding a new  
3 section to chapter 9.94A RCW; creating a new section; and providing  
4 an expiration date.

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

6 NEW SECTION. **Sec. 1.** The legislature intends to:

7 (1) Give real effect to the juvenile justice system's express  
8 goals of rehabilitation and reintegration;

9 (2) Bring Washington in line with the majority of states, which  
10 do not consider prior juvenile offenses in sentencing range  
11 calculations for adults;

12 (3) Recognize the expansive body of scientific research on brain  
13 development, which shows that adolescent's perception, judgment, and  
14 decision making differs significantly from that of adults;

15 (4) Facilitate the provision of due process by granting the  
16 procedural protections of a criminal proceeding in any adjudication  
17 which may be used to determine the severity of a criminal sentence;  
18 and

19 (5) Recognize how grave disproportionality within the juvenile  
20 legal system may subsequently impact sentencing ranges in adult  
21 court.

1       **Sec. 2.** RCW 9.94A.525 and 2021 c 215 s 100 are each amended to  
2 read as follows:

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

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

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

13       (b) For the purposes of this section, adjudications of guilt  
14 pursuant to Title 13 RCW may not be included in the offender score,  
15 RCW 9.94A.030 notwithstanding.

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  
22 judgment and sentence, the offender had spent ten consecutive years  
23 in the community without committing any crime that subsequently  
24 results in a conviction.

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

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

39       (e) If the present conviction is felony driving while under the  
40 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or

1 felony physical control of a vehicle while under the influence of  
2 intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate  
3 crimes for the offense as defined by RCW 46.61.5055(14) shall be  
4 included in the offender score, and prior convictions for felony  
5 driving while under the influence of intoxicating liquor or any drug  
6 (RCW 46.61.502(6)) or felony physical control of a vehicle while  
7 under the influence of intoxicating liquor or any drug (RCW  
8 46.61.504(6)) shall always be included in the offender score. All  
9 other convictions of the defendant shall be scored according to this  
10 section.

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

17 ~~((g) This subsection applies to both adult and juvenile prior  
18 convictions.))~~

19 (3) Out-of-state convictions for offenses shall be classified  
20 according to the comparable offense definitions and sentences  
21 provided by Washington law. Federal convictions for offenses shall be  
22 classified according to the comparable offense definitions and  
23 sentences provided by Washington law. Neither out-of-state  
24 adjudications or convictions for juvenile offenses, nor federal  
25 convictions for juvenile offenses may be included in the offender  
26 score. If there is no clearly comparable offense under Washington law  
27 or the offense is one that is usually considered subject to exclusive  
28 federal jurisdiction, the offense shall be scored as a class C felony  
29 equivalent if it was a felony under the relevant federal statute.

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

33 (5) (a) In the case of multiple prior convictions, for the purpose  
34 of computing the offender score, count all convictions separately,  
35 except:

36 (i) Prior offenses which were found, under RCW 9.94A.589(1) (a),  
37 to encompass the same criminal conduct, shall be counted as one  
38 offense, the offense that yields the highest offender score. The  
39 current sentencing court shall determine with respect to other prior  
40 ~~((adult))~~ offenses for which sentences were served concurrently ~~((or~~

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

11 (ii) In the case of multiple prior convictions for offenses  
12 committed before July 1, 1986, for the purpose of computing the  
13 offender score, count all (~~adult~~) convictions served concurrently  
14 as one offense (~~(, and count all juvenile convictions entered on the~~  
15 ~~same date as one offense)~~). Use the conviction for the offense that  
16 yields the highest offender score.

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

23 (6) If the present conviction is one of the anticipatory offenses  
24 of criminal attempt, solicitation, or conspiracy, count each prior  
25 conviction as if the present conviction were for a completed offense.  
26 When these convictions are used as criminal history, score them the  
27 same as a completed crime.

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

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

39 (9) If the present conviction is for a serious violent offense,  
40 count three points for prior (~~adult and juvenile~~) convictions for

1 crimes in this category, two points for each prior (~~adult and~~  
2 ~~juvenile~~) violent conviction (not already counted), and one point  
3 for each prior (~~adult~~) nonviolent felony conviction (~~, and 1/2~~  
4 ~~point for each prior juvenile nonviolent felony conviction~~)).

5 (10) If the present conviction is for Burglary 1, count prior  
6 convictions as in subsection (8) of this section; however count two  
7 points for each prior (~~adult~~) Burglary 2 or residential burglary  
8 conviction (~~, and one point for each prior juvenile Burglary 2 or~~  
9 ~~residential burglary conviction~~)).

10 (11) If the present conviction is for a felony traffic offense  
11 count two points for each (~~adult or juvenile~~) prior conviction for  
12 Vehicular Homicide or Vehicular Assault; for each felony offense  
13 count one point for each (~~adult and 1/2 point for each juvenile~~)  
14 prior conviction; for each serious traffic offense, other than those  
15 used for an enhancement pursuant to RCW 46.61.520(2), count one point  
16 for each (~~adult and 1/2 point for each juvenile~~) prior conviction;  
17 count one point for each (~~adult and 1/2 point for each juvenile~~)  
18 prior conviction for operation of a vessel while under the influence  
19 of intoxicating liquor or any drug.

20 (12) If the present conviction is for homicide by watercraft or  
21 assault by watercraft count two points for each (~~adult or juvenile~~)  
22 prior conviction for homicide by watercraft or assault by watercraft;  
23 for each felony offense count one point for each (~~adult and 1/2~~  
24 ~~point for each juvenile~~) prior conviction; count one point for each  
25 (~~adult and 1/2 point for each juvenile~~) prior conviction for  
26 driving under the influence of intoxicating liquor or any drug,  
27 actual physical control of a motor vehicle while under the influence  
28 of intoxicating liquor or any drug, or operation of a vessel while  
29 under the influence of intoxicating liquor or any drug.

30 (13) If the present conviction is for manufacture of  
31 methamphetamine count three points for each (~~adult~~) prior  
32 manufacture of methamphetamine conviction (~~and two points for each~~  
33 ~~juvenile manufacture of methamphetamine offense~~). If the present  
34 conviction is for a drug offense and the offender has a criminal  
35 history that includes a sex offense or serious violent offense, count  
36 three points for each (~~adult~~) prior felony drug offense conviction  
37 (~~and two points for each juvenile drug offense~~). All other (~~adult~~  
38 ~~and juvenile~~) felonies are scored as in subsection (8) of this  
39 section if the current drug offense is violent, or as in subsection  
40 (7) of this section if the current drug offense is nonviolent.

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

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

8 (16) If the present conviction is for Burglary 2 or residential  
9 burglary, count priors as in subsection (7) of this section; however,  
10 count two points for each ~~((adult and juvenile))~~ prior Burglary 1  
11 conviction, and two points for each ~~((adult))~~ prior Burglary 2 or  
12 residential burglary conviction~~((, and one point for each juvenile  
13 prior Burglary 2 or residential burglary conviction))~~.

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

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

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

29 (20) If the present conviction is for Theft of a Motor Vehicle,  
30 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without  
31 Permission 1, or Taking a Motor Vehicle Without Permission 2, count  
32 priors as in subsections (7) through (18) of this section; however  
33 count one point for prior convictions of Vehicle Prowling 2, and  
34 three points for each ~~((adult and juvenile))~~ prior Theft 1 (of a  
35 motor vehicle), Theft 2 (of a motor vehicle), Possession of Stolen  
36 Property 1 (of a motor vehicle), Possession of Stolen Property 2 (of  
37 a motor vehicle), Theft of a Motor Vehicle, Possession of a Stolen  
38 Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a  
39 Motor Vehicle Without Permission 2 conviction.

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

5 (a) Count two points for each (~~adult~~) prior conviction where  
6 domestic violence as defined in RCW 9.94A.030 was pleaded and proven  
7 after August 1, 2011, for any of the following offenses: A felony  
8 violation of a no-contact or protection order (RCW 7.105.450 or  
9 former RCW 26.50.110), felony Harassment (RCW 9A.46.020(2)(b)),  
10 felony Stalking (RCW 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020),  
11 Kidnapping 1 (RCW 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful  
12 imprisonment (RCW 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2  
13 (RCW 9A.56.210), Assault 1 (RCW 9A.36.011), Assault 2 (RCW  
14 9A.36.021), Assault 3 (RCW 9A.36.031), Arson 1 (RCW 9A.48.020), or  
15 Arson 2 (RCW 9A.48.030);

16 (b) Count two points for each (~~adult~~) prior conviction where  
17 domestic violence as defined in RCW 9.94A.030 was pleaded and proven  
18 after July 23, 2017, for any of the following offenses: Assault of a  
19 child in the first degree, RCW 9A.36.120; Assault of a child in the  
20 second degree, RCW 9A.36.130; Assault of a child in the third degree,  
21 RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW  
22 9A.42.020; or Criminal Mistreatment in the second degree, RCW  
23 9A.42.030; and

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

28 ~~(d))~~ Count one point for each (~~adult~~) prior conviction for a  
29 repetitive domestic violence offense as defined in RCW 9.94A.030,  
30 where domestic violence as defined in RCW 9.94A.030, was pleaded and  
31 proven after August 1, 2011.

32 (22) The fact that a prior conviction was not included in an  
33 offender's offender score or criminal history at a previous  
34 sentencing shall have no bearing on whether it is included in the  
35 criminal history or offender score for the current offense. Prior  
36 convictions that were not counted in the offender score or included  
37 in criminal history under repealed or previous versions of the  
38 sentencing reform act shall be included in criminal history and shall  
39 count in the offender score if the current version of the sentencing  
40 reform act requires including or counting those convictions. Prior

1 convictions that were not included in criminal history or in the  
2 offender score shall be included upon any resentencing to ensure  
3 imposition of an accurate sentence.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.94A  
5 RCW to read as follows:

6 (1) Any offender sentenced for an offense committed prior to the  
7 effective date of this section, and whose offender score for that  
8 offense was increased due to any juvenile adjudications, is entitled  
9 to a resentencing hearing upon the offender's motion for relief from  
10 sentence to the original sentencing court.

11 (2) The sentencing court shall grant the motion if it finds that  
12 the previous offender score was increased due to any juvenile  
13 adjudications and shall immediately set an expedited date for  
14 resentencing. At resentencing, the court shall sentence the offender  
15 as if any juvenile adjudications were not part of the offender score  
16 at the time the original sentence was imposed.

17 (3) This section expires July 1, 2025.

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