

By XX

AN ACT relating to fair and proportional sentencing; and amending RCW 9.94A.525.

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

NEW SECTION. **Sec. 1.** The Legislature declares that this act to ~~restrict when~~ juvenile adjudications ~~can be calculated in~~ adult offender scores is intended to:

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- (1) Give real effect to the juvenile justice system’s express goals of rehabilitation and reintegration.
- (2) Bring Washington in line with the vast majority of states, which do not consider prior juvenile offenses in sentencing range calculations for adults.
- (3) Recognize the expansive body of scientific research on brain development, which shows that adolescent’s perception, judgment, and decision-making differs significantly from that of adults.
- (4) Guarantee Due Process by granting the procedural protections of a criminal proceeding in any adjudication which may be used to determine the severity of a criminal sentence.

Sec. 2. RCW 9.94A.525 is amended as follows:

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

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

(1)

(a) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed “other current offenses” within the meaning of [RCW 9.94A.589](#).

(b) ~~_____~~

Deleted: For the purposes of this section, adjudications of guilt pursuant to Title 13 RCW shall not be included in the offender score, RCW 9.94A.030 notwithstanding

(2)

- (a) Class A and sex prior felony convictions shall always be included in the offender score.
- (b) Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.
- (c) Except as provided in (e) of this subsection, class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.
- (d) Except as provided in (e) of this subsection, serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without committing any crime that subsequently results in a conviction.
- (e) If the present conviction is felony driving while under the influence of intoxicating liquor or any drug (*RCW 46.61.502(6)*) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (*RCW 46.61.504(6)*), all predicate crimes for the offense as defined by [RCW 46.61.5055\(14\)](#) shall be included in the offender score, and prior convictions for felony driving while under the influence of intoxicating liquor or any drug (*RCW 46.61.502(6)*) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (*RCW 46.61.504(6)*) shall always be included in the offender score. All other convictions of the defendant shall be scored according to this section.
- (f) Prior convictions for a repetitive domestic violence offense, as defined in [RCW 9.94A.030](#), shall not be included in the offender score if, since the last date of release from confinement or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.

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

- (3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is no clearly comparable offense under

Deleted: Neither out-of-state convictions for juvenile offenses, nor federal convictions for juvenile offenses shall be included in the offender score.

Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

- (4) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.
- (5)
 - (a) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:
 - (i) Prior offenses which were found, under [RCW 9.94A.589\(1\)\(a\)](#), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently or prior juvenile offenses for which sentences were served consecutively, whether those offenses shall be counted as one offense or as separate offenses using the “same criminal conduct” analysis found in [RCW 9.94A.589\(1\)\(a\)](#), and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used. The current sentencing court may presume that such other prior offenses were not the same criminal conduct from sentences imposed on separate dates, or in separate counties or jurisdictions, or in separate complaints, indictments, or informations;
 - (ii) In the case of multiple prior convictions for offenses committed before July 1, 1986, for the purpose of computing the offender score, count all adult convictions served concurrently as one offense and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.
 - (b) As used in this subsection (5), “served concurrently” means that: (i) The latter sentence was imposed with specific reference to the former; (ii) the concurrent relationship of the sentences was judicially imposed; and (iii) the concurrent timing of the sentences was not the result of a probation or parole revocation on the former offense.
- (6) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense. When these convictions are used as criminal history, score them the same as a completed crime.
- (7) If the present conviction is for a nonviolent offense and not covered by subsection (11), (12), or (13) of this section, count one point for each adult prior felony conviction).

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

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(9) If the present conviction is for a serious violent offense, count three points for prior adult (and juvenile) convictions for crimes in this category, two points for each prior adult (and juvenile) violent conviction (not already counted), one point for each prior (adult) nonviolent felony conviction and half point for each prior juvenile violent felony conviction.

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(10) If the present conviction is for Burglary 1, count prior convictions as in subsection (8) of this section; however count two points for each prior adult Burglary 2 or residential burglary conviction.

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(11) If the present conviction is for a felony traffic offense count two points for each adult prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense count one point for each adult (prior conviction; for each serious traffic offense, other than those used for an enhancement pursuant to [RCW 46.61.520\(2\)](#), count one point for each adult (and 1/2 point for each juvenile) prior conviction; count one point for each adult (prior conviction for operation of a vessel while under the influence of intoxicating liquor or any drug.

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

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

Deleted: ((and two points for each juvenile drug offense))

(14) If the present conviction is for Escape from Community Custody, [RCW 72.09.310](#), count only prior escape convictions in the offender score. Count adult prior escape convictions as one point.

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(15) If the present conviction is for Escape 1, [RCW 9A.76.110](#), or Escape 2, [RCW 9A.76.120](#), count adult prior convictions as one point.

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

(17) If the present conviction is for a sex offense, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult ~~(and juvenile)~~ prior sex offense conviction and one point for each juvenile prior sex offense conviction committed when the juvenile was fifteen years of age or older.

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

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

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

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

- (a) Count two points for each adult prior conviction where domestic violence as defined in [RCW 9.94A.030](#) was plead and proven after August 1, 2011, for the following offenses: A violation of a no-contact order that is a felony offense, a violation of a protection order that is a felony offense, a felony domestic violence harassment offense, a felony domestic violence stalking offense, a domestic violence Burglary 1 offense, a domestic violence Kidnapping 1 offense, a domestic violence Kidnapping 2 offense, a domestic violence unlawful imprisonment offense, a domestic violence Robbery 1 offense, a domestic violence Robbery 2

offense, a domestic violence Assault 1 offense, a domestic violence Assault 2 offense, a domestic violence Assault 3 offense, a domestic violence Arson 1 offense, or a domestic violence Arson 2 offense; and

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

(b) Count one point for each adult prior conviction for a repetitive domestic violence offense as defined in [RCW 9.94A.030](#), where domestic violence as defined in [RCW 9.94A.030](#), was plead and proven after August 1, 2011.

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