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**SUBSTITUTE HOUSE BILL 2795**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** House Human Services & Early Learning (originally sponsored by Representatives Frame, Senn, Kilduff, Davis, Peterson, Lekanoff, Pollet, and Santos)

READ FIRST TIME 02/07/20.

1 AN ACT Relating to convictions for offenses that were committed  
2 at age sixteen or seventeen and placed in exclusive jurisdiction of  
3 the juvenile court in 2018; amending RCW 9.94A.525; adding a new  
4 section to chapter 9.94A RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** This act provides a mechanism for persons  
7 convicted in adult court for a crime committed at age sixteen or  
8 seventeen between July 1, 1997, and June 7, 2018, of a crime which  
9 was subject to original adult criminal jurisdiction at the time of  
10 conviction, but subsequently transferred to the exclusive  
11 jurisdiction of the juvenile court by chapter 162, Laws of 2018, to  
12 petition for the vacation of their conviction.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.94A  
14 RCW to read as follows:

15 (1)(a) Any person with a conviction under exclusive original  
16 adult criminal jurisdiction between July 1, 1997, and June 7, 2018,  
17 for a crime committed at the age of sixteen or seventeen may apply to  
18 the sentencing court to have the record of the conviction vacated  
19 under the terms of this section if the conviction was for one of the  
20 following offenses:

1 (i) Robbery in the first degree;  
2 (ii) Drive-by shooting;  
3 (iii) Burglary in the first degree when the juvenile had a  
4 criminal history consisting of one or more prior felony, misdemeanor,  
5 or gross misdemeanor offenses; or  
6 (iv) Any violent offense as defined in RCW 9.94A.030 and the  
7 applicant was alleged to have been armed with a firearm.  
8 (b) If the court finds that the applicant meets the requirements  
9 of this section, the court shall vacate the conviction by:  
10 (i) Permitting the applicant to withdraw the plea of guilty and  
11 enter a plea of not guilty, or if the applicant was convicted after a  
12 plea of not guilty, by the court setting aside the verdict of guilty;  
13 and  
14 (ii) Dismissing the information or indictment against the person.  
15 (c) A vacation under this section must be processed in the same  
16 manner and has the same legal effect as provided in RCW 9.94A.640(3).  
17 (2) In order to vacate a record of conviction under this section,  
18 an applicant must have:  
19 (a) For class A offenses, spent at least five consecutive years  
20 in the community without committing any crime or offense that  
21 subsequently results in a conviction since the last date of release  
22 from confinement;  
23 (b) For class B or C offenses, spent at least two consecutive  
24 years in the community without committing any crime or offense that  
25 subsequently results in a conviction since the last date of release  
26 from confinement; and  
27 (c) Paid the full amount of restitution owing to the individual  
28 victim in the restitution order, excluding restitution owed to any  
29 public or private entity providing insurance coverage or health care  
30 coverage.  
31 (3) Once the court vacates a record of conviction under this  
32 section:  
33 (a) The offender shall be released from all penalties and  
34 disabilities resulting from the offense;  
35 (b) For all purposes, including responding to questions on  
36 employment applications, an offender whose conviction has been  
37 vacated may state that he or she has never been convicted of that  
38 crime;  
39 (c) The conviction that has been vacated under this section may  
40 not be disseminated or disclosed by the Washington state patrol or

1 local law enforcement agency to any person, except other criminal  
2 justice agencies;

3 (d) In any subsequent misdemeanor or gross misdemeanor  
4 conviction, the fact that the offender has been convicted of the  
5 offense must not be included in the offender's criminal history for  
6 purposes of determining a sentence;

7 (e) In any subsequent felony conviction, the fact that the  
8 offender has been convicted of the offense may be included in the  
9 offender's criminal history for purposes of determining a sentence,  
10 but the court shall count the vacated conviction as a juvenile  
11 conviction under RCW 9.94A.525; and

12 (f) The conviction that has been vacated may not be treated as a  
13 conviction for purposes of the definition of "persistent offender"  
14 under RCW 9.94A.030.

15 (4) Nothing in this section affects or prevents the use of an  
16 offender's vacated conviction in a later criminal prosecution and  
17 nothing in this section affects the requirements for restoring a  
18 right to possess a firearm under RCW 9.41.040.

19 (5) Any motion for vacation of a conviction or adjudication under  
20 this section must be supported by either a signed and sworn affidavit  
21 or the sworn testimony of the applicant at a court hearing.

22 **Sec. 3.** RCW 9.94A.525 and 2017 c 272 s 3 are each amended to  
23 read as follows:

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

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

28 (1) A prior conviction is a conviction which exists before the  
29 date of sentencing for the offense for which the offender score is  
30 being computed. Convictions entered or sentenced on the same date as  
31 the conviction for which the offender score is being computed shall  
32 be deemed "other current offenses" within the meaning of RCW  
33 9.94A.589.

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

36 (b) Class B prior felony convictions other than sex offenses  
37 shall not be included in the offender score, if since the last date  
38 of release from confinement (including full-time residential  
39 treatment) pursuant to a felony conviction, if any, or entry of

1 judgment and sentence, the offender had spent ten consecutive years  
2 in the community without committing any crime that subsequently  
3 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  
6 the offender score if, since the last date of release from  
7 confinement (including full-time residential treatment) pursuant to a  
8 felony conviction, if any, or entry of judgment and sentence, the  
9 offender had spent five consecutive years in the community without  
10 committing any 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  
14 residential treatment) pursuant to a conviction, if any, or entry of  
15 judgment and sentence, the offender spent five years in the community  
16 without committing any crime that subsequently results in a  
17 conviction.

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

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

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

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

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

34 (b) As used in this subsection (5), "served concurrently" means  
35 that: (i) The latter sentence was imposed with specific reference to  
36 the former; (ii) the concurrent relationship of the sentences was  
37 judicially imposed; and (iii) the concurrent timing of the sentences  
38 was not the result of a probation or parole revocation on the former  
39 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  
19 crimes in this category, two points for each prior adult and juvenile  
20 violent conviction (not already counted), one point for each prior  
21 adult nonviolent felony conviction, and 1/2 point for each prior  
22 juvenile 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  
31 count one point for each adult and 1/2 point for each juvenile prior  
32 conviction; for each serious traffic offense, other than those used  
33 for an enhancement pursuant to RCW 46.61.520(2), count one point for  
34 each adult and 1/2 point for each juvenile prior conviction; count  
35 one point for each adult and 1/2 point for each juvenile prior  
36 conviction for operation of a vessel while under the influence of  
37 intoxicating liquor or any drug.

38 (12) If the present conviction is for homicide by watercraft or  
39 assault by watercraft count two points for each adult or juvenile  
40 prior conviction for homicide by watercraft or assault by watercraft;

1 for each felony offense count one point for each adult and 1/2 point  
2 for each juvenile prior conviction; count one point for each adult  
3 and 1/2 point for each juvenile prior conviction for driving under  
4 the influence of intoxicating liquor or any drug, actual physical  
5 control of a motor vehicle while under the influence of intoxicating  
6 liquor or any drug, or operation of a vessel while under the  
7 influence of intoxicating liquor or any drug.

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

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

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

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

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

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

1 register as a sex offender under RCW (~~9A.44.130 or~~) 9A.44.132,  
2 which shall count as one point.

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

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

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

22 (a) Count two points for each adult prior conviction where  
23 domestic violence as defined in RCW 9.94A.030 was pleaded and proven  
24 after August 1, 2011, for any of the following offenses: A felony  
25 violation of a no-contact or protection order RCW 26.50.110, felony  
26 Harassment (RCW 9A.46.020(2)(b)), felony Stalking (RCW  
27 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020), Kidnapping 1 (RCW  
28 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful imprisonment (RCW  
29 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2 (RCW 9A.56.210),  
30 Assault 1 (RCW 9A.36.011), Assault 2 (RCW 9A.36.021), Assault 3 (RCW  
31 9A.36.031), Arson 1 (RCW 9A.48.020), or Arson 2 (RCW 9A.48.030);

32 (b) Count two points for each adult prior conviction where  
33 domestic violence as defined in RCW 9.94A.030 was pleaded and proven  
34 after July 23, 2017, for any of the following offenses: Assault of a  
35 child in the first degree, RCW 9A.36.120; Assault of a child in the  
36 second degree, RCW 9A.36.130; Assault of a child in the third degree,  
37 RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW  
38 9A.42.020; or Criminal Mistreatment in the second degree, RCW  
39 9A.42.030;



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

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

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

21 (23) Any conviction that was previously vacated under section 2  
22 of this act may be used for purposes of determining an offender's  
23 criminal history for purposes of determining a sentence in any  
24 subsequent felony conviction, but the conviction must be counted as a  
25 juvenile conviction under this section.

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