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**SENATE BILL 5035**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senators Dhingra and Nguyen

Prefiled 12/24/20.

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) Except for the crimes of manufacturing, delivering, or  
20 possessing with intent to manufacture, a controlled substance under  
21 chapter 69.50 RCW or any comparable out-of-state conviction, any  
22 conviction for a violation of the uniform controlled substances act  
23 under chapter 69.50 RCW, or any out-of-state conviction for an  
24 offense that under the laws of this state would be a violation of  
25 chapter 69.50 RCW may not be included in the offender score if it has  
26 been more than 10 years since the entry of judgment and sentence.

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

39 (~~(f)~~) (g) Prior convictions for a repetitive domestic violence  
40 offense, as defined in RCW 9.94A.030, shall not be included in the

1 offender score if, since the last date of release from confinement or  
2 entry of judgment and sentence, the offender had spent (~~(ten)~~) 10  
3 consecutive years in the community without committing any crime that  
4 subsequently results in a conviction.

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

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

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

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

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

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

1 date as one offense. Use the conviction for the offense that yields  
2 the highest offender score.

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

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

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

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

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

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

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

1 for an enhancement pursuant to RCW 46.61.520(2), count one point for  
2 each adult and 1/2 point for each juvenile prior conviction; count  
3 one point for each adult and 1/2 point for each juvenile prior  
4 conviction for operation of a vessel while under the influence of  
5 intoxicating liquor or any drug.

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

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

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

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

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

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

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

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

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

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

31 (a) Count two points for each adult prior conviction where  
32 domestic violence as defined in RCW 9.94A.030 was pleaded and proven  
33 after August 1, 2011, for any of the following offenses: A felony  
34 violation of a no-contact or protection order RCW 26.50.110, felony  
35 Harassment (RCW 9A.46.020(2)(b)), felony Stalking (RCW  
36 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020), Kidnapping 1 (RCW  
37 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful imprisonment (RCW  
38 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2 (RCW 9A.56.210),  
39 Assault 1 (RCW 9A.36.011), Assault 2 (RCW 9A.36.021), Assault 3 (RCW  
40 9A.36.031), Arson 1 (RCW 9A.48.020), or Arson 2 (RCW 9A.48.030);

1 (b) Count two points for each adult prior conviction where  
2 domestic violence as defined in RCW 9.94A.030 was pleaded and proven  
3 after July 23, 2017, for any of the following offenses: Assault of a  
4 child in the first degree, RCW 9A.36.120; Assault of a child in the  
5 second degree, RCW 9A.36.130; Assault of a child in the third degree,  
6 RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW  
7 9A.42.020; or Criminal Mistreatment in the second degree, RCW  
8 9A.42.030;

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

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

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

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