

## **DETERMINING THE OFFENDER SCORE**

The offender score (RCW 9.94A.525), which is one factor affecting a felony sentence, is measured on the horizontal axis of the sentencing guidelines grid. An individual may receive from 0 to 9+ points on that axis. In general, the number of points received depends on five factors: (1) the number of prior criminal convictions or juvenile dispositions; (2) the relationship between any prior offense(s) and the current offense of conviction; (3) the presence of other current convictions; (4) the person's community custody status at the time the crime was committed; and (5) the length of crime-free behavior between offenses.

## **CRIMINAL HISTORY COLLECTION**

Pursuant to RCW 9.94A.030(11), criminal history includes the defendant's prior adult convictions and juvenile court dispositions, whether in this state, in federal court, or elsewhere, and any issued certificates of restoration of opportunity. Although criminal history consists almost exclusively of *felony* convictions, in some instances, it also includes misdemeanors. The effect of criminal history also relates to the felony class of the crime (Class A, Class B or Class C), and the type of offense (i.e., serious violent, violent, nonviolent, sex, etc.). Lists of such felony offenses can be found in Section 4.

### **Adult Criminal History**

The Criminal Justice Information Act (Chapter 10.98 RCW) established the Washington State Patrol Identification and Criminal History Section (the Section) as the primary source of information on state felony conviction histories. The Act directs judges to ensure that felony defendants are fingerprinted, and that arrest and fingerprint forms are transmitted to the Washington State Patrol (RCW 10.98.050(2)). After filing charges, prosecutors contact the Section for a person's Washington criminal history. Prosecutors also obtain out-of-state or federal criminal history information from the Federal Bureau of Investigation or other appropriate sources.

A conviction is defined as a verdict of guilty, a finding of guilty, or an acceptance of a plea of guilty. RCW 9.94A.525(1) defines a prior conviction as one existing before the date of the 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 are deemed "other current offenses" within the meaning of RCW 9.94A.589.

Prior adult convictions should be counted as criminal history unless:

“Wash out” provisions apply; or

A court has previously determined that they constituted “same criminal conduct” as defined by RCW 9.94A.589; or

They were not previously deemed “same criminal conduct”, but their sentences were served concurrently, and a court now determines that they were committed at the same time, in the same place, and involved the same victim; or

The sentences were served concurrently and they were committed before July 1, 1986.

RCW 9.94A.030(11) provides that, when the information is available, criminal history should include the length and terms of any probation and/or incarceration. This information is often collected as part of the Pre-sentence Investigation Report that may be ordered by the court in certain sentences (RCW 9.94A.500 and 9.94A.695).

### **Juvenile Criminal History**

All felony dispositions in juvenile court must be counted as criminal history for purposes of adult sentencing, except under the general “wash-out” provisions that apply to adult offenses. Juvenile offenses sentenced on the same day must be counted separately unless they constitute the “same criminal conduct” as defined in RCW 9.94A.589(1)(a) or unless the date(s) of the offenses were prior to July 1, 1986.

Although juvenile records generally are sealed, RCW 13.50.050(10) provides that after a charge has been filed, juvenile offense records of an adult criminal defendant or witness in an adult criminal proceeding shall be released upon request to the prosecution and defense counsel, subject to the rules of discovery. A charging of an adult felony subsequent to the sealing has the effect of nullifying the sealing order of a juvenile record.

### **"Wash Out" of Certain Prior Felonies**

The rules governing which prior convictions are included in the offender score can be found in RCW 9.94A.525 and are summarized as follows:

Prior Class A and felony sex (juvenile or adult) convictions are always included in the offender score.

Prior Class B (juvenile or adult) felony convictions, other than sex offenses or felony driving while under the influence offenses, are *not* 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 since the entry of judgment and sentence, the person had spent ten consecutive years in the community without committing *any* crime that subsequently results in a conviction.

Prior Class C (juvenile or adult) felony convictions, other than sex offenses and felony physical control of a vehicle while under the influence of intoxicating liquor or any drug, are *not* 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 since the entry of judgment and sentence, the person had spent five consecutive years in the community without committing *any* crime that subsequently results in a conviction.

Prior (juvenile or adult) serious traffic convictions are *not* 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 since the entry of judgment and sentence, the person had spent five years in the community without committing *any* crime that subsequently results in a conviction.

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.

Prior convictions for repetitive domestic violence offense, as defined in RCW 9.94A.030, are *not* included in the offender score if the person has spent ten consecutive years in the community without committing any crime resulting in a conviction since the last date of release.

The Sentencing Reform Act permits vacating records of conviction under certain conditions and provides that vacated convictions "shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction." RCW 9.94A.640. Vacation of the conviction record does not affect or prevent the use of a person's prior conviction in a later criminal prosecution.

The eligibility rules for vacation of conviction record are similar to the "wash-out" rules. Because the "wash-out" rules are automatic and do not require court action, an offense will "wash out" before formal record vacation occurs. (The main distinction between vacation of record of conviction and "wash-out" is that, after vacation, a person may indicate on employment forms that he or she was not convicted of that crime.)

### **Federal, Out-of-State or Foreign Convictions**

In order for a prior federal, out-of-state, or foreign conviction to be included in criminal history, and thereby affect the offender score, the elements of the offense in other jurisdictions must be compared with Washington State laws (RCW 9.94A.525(3)). In instances where the foreign conviction is not clearly comparable to an offense under Washington State law, or where the offense is usually considered a felony subject to exclusive federal jurisdiction, the offense is scored as a Class C felony equivalent.

## **SCORING CRIMINAL HISTORY**

Once relevant prior convictions are identified, the portion of the offender score may be calculated. The rules for scoring prior convictions are contained in RCW 9.94A.525. It should be noted that the scoring rules for some offenses are calculated differently, depending upon the category of the offense. Offense scoring forms can be found in Section 7 of this manual and specify the correct number of points for prior convictions depending on the current offense. The forms are intended to provide assistance in most cases but do not cover all permutations of the scoring rules or are provided for all offenses. A thorough understanding of the criminal history rules is important in order to use these forms correctly and to perform calculations not covered by the forms.

General consideration should also be given to often-applicable exceptions to general scoring rules. For instance, misdemeanors generally are not included in score calculations. Exceptions exists in certain circumstances. Where the current conviction is for a felony traffic offense, serious traffic offenses are included in the score<sup>1</sup>; and for felony domestic violence where

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<sup>1</sup> See RCW 9.94A.525(2)(e), (11) and (12).

domestic violence was plead and proven<sup>2</sup>, misdemeanor offenses of repetitive domestic violence are included in the score.

Additionally, with present convictions of anticipatory offenses (criminal attempt, solicitation, or conspiracy) prior convictions of felony anticipatory offenses count the same and are scored as if they were convictions for completed offenses.<sup>3</sup> Exceptions to the general scoring rules also exist for Burglary 1<sup>o</sup><sup>4</sup>, Burglary 2<sup>o</sup> and Residential Burglary,<sup>5</sup> for Manufacturing Methamphetamine and other drug offenses,<sup>6</sup> for Escape offenses,<sup>7</sup> for Failure to Register as a Sex Offender,<sup>8</sup> or for crimes involving the taking, theft, or possession of a stolen motor vehicle<sup>9, 10</sup>.

Prior convictions for felony anticipatory offenses (attempts, solicitations, and conspiracies) are scored as if they were convictions for completed offenses. RCW 9.94A.525(4).

Finally, an exception should also be noted for convictions with a finding of sexual motivation. A finding of sexual motivation changes the underlying offense to a sex offense as defined in RCW 9.94A.030(47), changing the scoring rules and impacting the sentence options. This scoring rule only applies to crimes committed on or after July 1, 1990 (RCW 9.94A.525 (17)).

## **SCORING MULTIPLE CURRENT CONVICTIONS**

Multiple convictions may also affect the offender score. For multiple current offenses, separate sentence calculations are necessary for *each* offense because the law requires that each receive a separate sentence unless the offenses are ruled the same criminal conduct (RCW 9.94A.589).

### **Multiple Offense Scoring Steps**

If the current offenses do *not* include two or more serious violent offenses arising from separate and distinct criminal conduct, apply RCW 9.94A.589(1)(a):

Calculate the score for *each* offense.

For each offense, score the prior adult and juvenile convictions.

For each offense, score the other current offenses on the scoring form line entitled "Other Current Offenses."

The court may find that some or all of the current offenses encompass the same criminal conduct and are to be counted as one crime.

In cases of Vehicular Homicide or Vehicular Assault with multiple victims, offenses against each victim may be charged as separate offenses, even if the victims occupied the same vehicle. The resulting multiple convictions need not be scored as constituting the same criminal conduct.

Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed are scored as "Other Current Offenses."

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<sup>2</sup> See RCW 9.94A.525(21).

<sup>3</sup> See RCW 9.94A.525(4)-(6).

<sup>4</sup> See RCW 9.94A.525(10).

<sup>5</sup> See RCW 9.94A.525 (16).

<sup>6</sup> See RCW 9.94A.525(13).

<sup>7</sup> See RCW 9.94A.525 (14) and (15).

<sup>8</sup> See RCW 9.94A.525(18).

<sup>9</sup> See RCW 9.94A.525 (20).

<sup>10</sup> See RCW 9.94A.525(21).

**Example:** Assume that a person is convicted of one count of Theft in the First Degree and one count of Forgery, with both offenses arising from separate and distinct criminal conduct, and that the person had criminal history consisting of one conviction for Burglary in the Second Degree. In this case, the rules in RCW 9.94A.589(1)(a) apply, and the theft and forgery must be separately scored. The prior burglary and the current forgery are included in the offender score for the theft, resulting in a score of two and a sentence range of 3 to 9 months. The prior burglary and the current theft are included in the offender score for the forgery, resulting in a score of two and a sentence range of 2 to 5 months. The sentence for each offense will run concurrently.

**Example:** Assume that a person is convicted of one count of Theft in the Second Degree and one count of Possession of Stolen Property in the Second Degree in a circumstance where both counts encompassed the same criminal conduct, and that the person had no criminal history. In this case, the other current offense is not counted in the offender score because under RCW 9.94A.589(1)(a) where current offenses are found to encompass the same criminal conduct, those current offenses shall be counted as one crime. Therefore, the theft and possession would both be scored with scores of zero, with a sentence range for each crime of 0 to 60 days. The sentence for each offense will run concurrently.

**Example:** Assume that a person is convicted on one count of Assault in the Third Degree, with a criminal history consisting of adult convictions for Theft in the Second Degree and Forgery and a single adjudication of Assault in the Second Degree as a juvenile. Pursuant to RCW 9.94A.589(1)(a), the prior Theft in the Second Degree and Forgery are included in the offender score as one point each, and the juvenile Assault in the Second Degree also scores as one point, resulting in a score of three points. The sentence range is 9 to 12 months.

If the current offenses include two or more serious violent offenses arising from separate and distinct conduct, apply RCW 9.94A.589(1)(b):

Calculate the score for *each* offense.

Identify the serious violent offense with the *highest* seriousness level. Calculate the sentence for that crime using the person's prior adult and juvenile convictions. Do not include any other current serious violent offenses as part of the offender score but do include other current offenses that are not serious violent offenses.

Score all remaining serious violent current offenses, calculating the sentence for the crime using an offender score of *zero*.

For any current offenses that are not serious violent offenses, score according to the rules in (A) above.

**Example:** Assume that a person is convicted of two counts of Kidnapping in the First Degree and one count of Assault in the First Degree. These offenses are classified as serious violent offenses. Assume further that these offenses arose from separate and distinct criminal conduct and that the person's criminal history consists of one Assault in the Third Degree conviction. The scoring for these offenses follows the rules in RCW 9.94A.589(1)(b). First, the crime with the highest seriousness level must be identified and scored. Since Assault in the First

Degree is more serious (Level XII) than Kidnapping in the First Degree (Level X), that offense is scored by counting the prior Assault in the Third Degree as part of the adult criminal history. This calculation results in a score of one and a sentence range of 102 to 136 months. The Kidnapping in the First Degree convictions are scored using a criminal history of zero. These calculations result in two sentence ranges of 51 to 68 months. The three sentences will run *consecutively*.

If the current offenses include Unlawful Possession of a Firearm in the First or Second Degree and one, or both, of the felony crimes of Theft of a Firearm or Possession of a Stolen Firearm, score according to the rules in RCW 9.94A.589(1)(c).

### **SCORING STATUS WHILE ON COMMUNITY CUSTODY**

The offender score also reflects whether the offense was committed while the person was under community custody. An additional point is added to the offender score for crimes committed on or after July 1, 1988, while the person was on community custody. RCW 9.94A.525(19). Community custody includes community placement and post-release supervision as defined in RCW 9.94A.030.