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## **Criminal Justice & Corrections Committee**

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### **SSB 6423**

**Brief Description:** Clarifying how criminal history should be used in sentencing decisions.

**Sponsors:** Senate Committee on Judiciary (originally sponsored by Senators Costa and McCaslin).

<p><b>Brief Summary of Substitute Bill</b></p> <ul style="list-style-type: none"><li>· Clarifies that amendments to the "wash out" provisions of the SRA are retroactive.</li></ul>
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**Hearing Date:** 2/28/02

**Staff:** Jim Morishima (786-7191).

**Background:**

Under the Sentencing Reform Act (SRA), an offender's standard sentence range is determined by his or her offender score, which is calculated using the offender's prior criminal history and the severity of the crime. An offender's criminal history consists of all prior convictions and juvenile adjudications. When figuring an offender's offender score, certain crimes are not considered (or are "washed out") if the offender has had a clean record for a specified amount of time since the offender's release.

In 1990, the Legislature removed the "wash out" provisions for juvenile sex offenses. In 1997, the Legislature removed a similar wash out provision for certain juvenile offenses that were contained in the definition of "criminal history."

In 1994, a court sentenced an offender considering an offense that had washed out prior to 1990. The Washington State Supreme Court ruled that the 1990 legislation that removed the "wash out" provisions for juvenile sex offenses was not retroactive. Therefore, juvenile sex offenses that had washed out prior to 1990 could not be used when calculating an offender's offender score. State v. Cruz, 139 Wn.2d 186 (1999).

In 2000, the Legislature passed legislation that stated, "Any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense

was committed." The intent language to this legislation stated that the legislation was in response to Cruz.

In 2001, several offenders challenged their sentences before the Washington State Supreme Court. The offenders argued that certain juvenile offenses were wrongly considered because the 1997 amendment to the definition of "criminal history" was not retroactive. The state argued that the Legislature's response to Cruz in 2000 made the 1997 amendment retroactive. The Washington State Supreme Court ruled that the 2000 legislation did not make the removal of the "wash out" provisions in 1997 retroactive and that juvenile offenses that had washed out prior to 1997 could therefore not be used when calculating an offender's offender score. State v. Smith, 144 Wn.2d 665 (2001).

**Summary of Bill:**

A conviction may only be removed from a defendant's criminal history if it has been vacated. A prior conviction that was washed out pursuant to a former version of the SRA remains part of the offender's criminal history. Prior convictions that were washed out under a previous version of the SRA must be used when calculating an offender's offender score if the offenses would count under current law.

The afore mentioned provisions only apply when sentencing offenses committed on or after the effective date of the act.

**Appropriation:** None.

**Fiscal Note:** Not Requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.