

# HOUSE BILL REPORT

## SSB 6423

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**As Passed House:**

March 6, 2002

**Title:** An act relating to use of criminal history in sentencing decisions.

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

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

**Brief History:**

**Committee Activity:**

Criminal Justice & Corrections: 2/28/02 [DP].

**Floor Activity:**

Passed House: 3/6/02, 93-0.

**Brief Summary of Substitute Bill**

- Clarifies that amendments to the "wash out" provisions of the Sentencing Reform Act (SRA) are retroactive.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass. Signed by 7 members: Representatives O'Brien, Chair; Lovick, Vice Chair; Ballasiotes, Ranking Minority Member; Ahern, Kagi, Kirby and Morell.

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

**Background:**

Under the 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).

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**Summary of Substitute 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 aforementioned provisions only apply when sentencing offenses committed on or after the effective date of the act.

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**Appropriation:** None.

**Fiscal Note:** Not Requested.

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

**Testimony For:** The general rule in sentencing is the law in effect at the time controls.

This is not a change in sentencing policy, but rather a clarification to the court. This is an issue of statutory interpretation and not constitutional law.

**Testimony Against:** None.

**Testified:** Tom McBride, Washington Association of Prosecuting Attorneys.