

# SENATE BILL REPORT

## SB 6423

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As Reported By Senate Committee On:  
Judiciary, February 7, 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:** Senators Costa and McCaslin.

**Brief History:**

**Committee Activity:** Judiciary: 2/4/02, 2/7/02 [DPS].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 6423 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Kastama, Vice Chair; Costa, Hargrove, Johnson, Long, McCaslin, Poulsen, Thibaudeau and Zarelli.

**Staff:** Aldo Melchiori (786-7439)

**Background:** Provisions within the Sentencing Reform Act (SRA) have been amended nearly every year since it was enacted. In 1999, the Washington Supreme Court held that a 1990 amendment eliminating sex offenses from the washout provisions applied prospectively only. The court stated that legislative intent for retroactive application must be clearly found within the statute's language. In response, the Legislature passed a separate section in the SRA simply stating that "any sentence imposed under this chapter shall be determined in accordance with the law in effect when the offense was committed." In *State v. Smith*, 144 Wn.2D 665 (2001), the Washington Supreme Court found this language insufficient to express an explicit legislative command that a 1997 amendment to the SRA, providing that all prior juvenile adjudications are included in a defender's criminal history, must be used when sentencing offenders for current crimes.

**Summary of Substitute Bill:** It is clearly stated that the intent of the Legislature is to provide that an offender's criminal history and offender score are determined using the statutory provisions that are in effect on the day the current offense was committed. The definition of "criminal history" is amended to explicitly provide that a conviction may only be removed if it is vacated, that the determination of a defendant's criminal history is distinct from the determination of the offender's score, and that a prior conviction not included in the offender score under a prior version of the SRA remains part of the offender's criminal history.

Additionally, it is clearly stated that the fact that a prior conviction was not included in an offender's score or criminal history at a prior sentencing must have no bearing on whether it is included in the criminal history or offender score for the current offense. Prior

convictions not counted in the offender score or included in the criminal history under repealed or previous versions of the SRA must be included in a criminal history and must be counted in the offender's score if the current version of the SRA requires their inclusion.

**Substitute Bill Compared to Original Bill:** It is clarified that the act applies to crimes committed after its effective date.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** This language should provide the explicit direction for which the Supreme Court has been searching.

**Testimony Against:** None.

**Testified:** PRO: Seth Fine, Snohomish County Prosecuting Attorney's Office; Kit Proctor, Pierce County Prosecuting Attorney's Office