FINAL BILL REPORT
HB 2719

C 231 L 08
Synopsis as Enacted

Brief Description: Ensuring that offenders receive accurate sentences.

Sponsors: By Representatives Priest, Hurst, Loomis and VanDeWege.

House Committee on Public Safety & Emergency Preparedness
Senate Committee on Judiciary

Background:

Determining Criminal History.
Under the Sentencing Reform Act (SRA), the prosecutor has the burden of proving an offender's criminal history to the court by a preponderance of the evidence. An offender's criminal history is used for a variety of purposes, including calculating the offender's standard sentence range and determining whether the offender is a persistent offender under the "three strikes" and "two strikes" laws.

Because of the significance of an offender's criminal history for purposes of sentencing, there are many cases determining how and when an offender may appeal the calculation of his or her criminal history. For example, in *State v. Ford*, 137 Wn.2d 472 (1999), the Washington Supreme Court ruled that a defendant's failure to object to offenses included in his criminal history at sentencing did not waive the defendant's ability to raise the issue on appeal. The Washington Supreme Court indicated that the defendant is not obliged to disprove the state's position until the state has met its primary burden of proof.

In *State v. Lopez*, 147 Wn.2d 515 (2002), the Washington Supreme Court ruled that the prosecution may not, in a resentencing hearing, introduce evidence to prove the existence of prior convictions when the defendant objected to the existence of the prior convictions at trial and the issue was argued at sentencing. Similarly, in *In re the Personal Restraint of Cadwallader*, 155 Wn.2d 867 (2005), the Washington Supreme Court ruled that the prosecution may not, on collateral review, introduce evidence to prove the existence of prior convictions that were not alleged at the original sentencing. The court also ruled that the defendant's acknowledgment of his criminal history at sentencing did not waive his ability to raise the issue on appeal.

Supervision of Offenders in the Community.
Felony offenders may be subject to supervision in the community under a variety of circumstances. Over time, the methods and terminology associated with this supervision has changed. For example, prior to 2000, a felony offender could be sentenced to a term of "community placement," which consisted of both "community custody" and "post-release supervision." If the offender violated the terms of his or her community placement, he or she

would be sanctioned by either the Department of Corrections (DOC) or the sentencing court, depending on whether the offender was on community custody (DOC) or post-release supervision (sentencing court) at the time of the violation.

In 1999 the Legislature passed E2SSB 5421, otherwise known as the "Offender Accountability Act" (OAA). The OAA changed all supervision in the community to community custody for offenders who committed their offenses on or after July 1, 2000. Not only did the OAA change the terminology for all supervision in the community to community custody, it also gave the DOC the exclusive authority to sanction all violations. The old community placement regime, however, stayed in place for offenders convicted of offenses committed prior to July 1, 2000.

In 2007 the Legislature passed ESSB 6157, which created the Legislative Task Force (Task Force) on Community Custody and Community Supervision. The Task Force was required, among other things, to recommend changes to the community custody and supervision laws that would allow the DOC and its community corrections officers to more easily identify requirements relating to an offender's term of community custody or supervision. As a byproduct of the Task Force's processes, the Sentencing Guidelines Commission (SGC) convened a work group to develop legislation that would simplify and reorganize the community custody and supervision statutes.

Summary:

Determining Criminal History.
In a sentencing hearing, a criminal history summary relating to the defendant from the prosecuting attorney or from a state, federal, or foreign governmental agency is *prima facie* evidence of the existence and validity of the convictions listed therein. A defendant's failure to object to criminal history presented at sentencing is deemed acknowledgment of the information therein.

When an offender is resentenced, both parties may present, and the court may consider, all relevant evidence regarding criminal history. This includes prior convictions that were not originally included in the offender's criminal history or offender score.

Supervision of Offenders in the Community.
The statutes relating to the supervision of offenders in the community are reorganized. All supervision in the community is called "community custody." Provisions relating to the conditions of an offender's supervision are consolidated into one section. Provisions relating to older forms of supervision are moved to a new chapter in Title 9 RCW.

The OAA is made to apply retroactively to offenders who committed their offenses prior to July 1, 2000, to the extent that it is constitutionally permissible. The sentencing court must specify which conditions are constitutionally impermissible when it sentences an offender. The SGC is required to develop a list of conditions that are constitutionally impermissible to apply retroactively.

The Code Reviser is required to report to the 2009 Legislature on any amendments necessary to accomplish the purposes of the act.

Votes on Final Passage:

House	96	1	
Senate	49	0	(Senate amended)
House			(House refused to concur)
Senate	49	0	(Senate amended)
House	97	0	(House concurred)

Effective: June 12, 2008
August 1, 2009 (Sections 6-60)