

# SENATE BILL REPORT

## SHB 1140

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As Reported By Senate Committee On:  
Law & Justice, March 27, 1995

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

**Brief Description:** Revising procedures for using criminal history in sentencing of offenders.

**Sponsors:** House Committee on Corrections (originally sponsored by Representatives Ballasiotes, Horn, Blanton, Costa and Honeyford).

**Brief History:**

**Committee Activity:** Law & Justice: 3/22/95, 3/27/95 [DPA].

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass as amended.

Signed by Senators Smith, Chair; Hargrove, Haugen, Johnson, Long, McCaslin and Schow.

**Staff:** Susan Carlson (786-7418)

**Background:** Under the Sentencing Reform Act (SRA), a defendant's standard range is determined by the seriousness level of the offense and the offender score. The offender score is calculated by assigning points to prior convictions. However, prior class C felonies do not count if the offender has spent five years in the community without being convicted of any felonies. Class B felonies do not count if ten years have elapsed without any new felony convictions. Serious traffic offenses are not counted if five years have elapsed without any new convictions for a serious traffic or felony traffic offense. Defendants receive the benefit of these "wash out" provisions even if they have had numerous misdemeanor convictions during the relevant period. It has been suggested that offenses should wash out only if, for the relevant period of time, the defendant does not commit any crimes at all.

Out-of-state convictions are also counted in the offender score and are classified according to comparable offenses in Washington law. Many federal felonies do not have comparable Washington counterparts, such as federal crimes relating to the postal service, customs, and immigration. Without comparable Washington crimes, felony convictions for these types of federal crimes cannot be counted in the offender score.

When counting prior offenses that were served concurrently, the offenses count as one if they were specifically found by the sentencing court to encompass the same criminal conduct. Otherwise, the court has discretion whether to count the offenses separately or as one. A concern exists that some guidelines should be placed on this discretion and that the term "concurrently served" should be defined.

A judge can impose an exceptional sentence above the standard range if the sentence is justified by aggravating circumstances. Washington courts have held that prior unscored misdemeanor offenses can justify a sentence longer than the standard range. It has been suggested that this be included in the SRA's illustrative list of aggravating circumstances.

**Summary of Amended Bill:** Offenses may not wash out if the defendant commits any gross misdemeanor or felony crime that results in a conviction during the period specified.

A federal felony that does not have a clearly comparable Washington offense, or is an offense that is usually considered subject to exclusive federal jurisdiction, is included in a defendant's criminal history as a class C felony.

When scoring prior concurrently served offenses that the prior sentencing judge did not specifically determine encompassed the same criminal conduct, the current sentencing judge must determine whether the offenses count as one or separately by applying the "same criminal conduct" analysis. The judge may presume that prior offenses did not arise from the same criminal conduct if the sentences are imposed on separate dates or in separate jurisdictions, or the offenses are charged in separate complaints.

Concurrently served sentences are defined to mean sentences where a judge specifically identifies each sentence and orders them to run concurrently. The definition excludes sentences that are served concurrently as a result of parole or probation revocations.

A judge may impose an exceptional sentence if the standard range sentence is clearly too lenient when considering a defendant's prior unscored misdemeanor or foreign criminal history.

**Amended Bill Compared to Substitute Bill:** Under the substitute bill, offenses could not wash out if the defendant committed any crime that resulted in a conviction during the specified period. The effect of the amendment is that misdemeanor offenses will not preclude wash out of a prior felony.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** The bill makes clarifying and policy amendments to the rules for calculating the offender score. These changes will assist the court in determining the offender score and assure that a person's prior criminal history is appropriately considered by the sentencing judge.

**Testimony Against:** None.

**Testified:** Tom McBride, WA Assoc. of Prosecuting Attorneys (pro).