

# FINAL BILL REPORT

## SSB 6423

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Synopsis as Enacted

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

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

**Senate Committee on Judiciary**

**House Committee on Criminal Justice & Corrections**

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 Prior convictions not counted in the offender score or included in the criminal history under repealed or previous versions of the SRA must be included in a criminal history and must be counted in the offender's score if the current version of the SRA requires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

**Votes on Final Passage:**

Senate	48 0
House	93 0

**Effective:** June 13, 2002