

HOUSE BILL REPORT

HB 2719

As Amended by the Senate

Title: An act relating to ensuring that offenders receive accurate sentences.

Brief Description: Ensuring that offenders receive accurate sentences.

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

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 1/24/08 [DP].

Floor Activity:

Passed House: 2/12/08, 96-1.

Senate Amended.

Passed Senate: 3/6/08, 49-0.

House Refused to Concur.

Senate Amended.

Passed Senate: 3/12/08, 49-0.

Brief Summary of Bill

- Provides that if a defendant, in a case that was plea bargained, fails to affirmatively state his or her understanding of his or her criminal history, the prosecutor's version is deemed correct.
- Provides that a criminal history summary provided by the prosecutor is prima facie evidence of the existence and validity of the convictions listed therein.
- Provides that if a defendant fails to object to the prosecutor's version of his or her criminal history, the defendant is deemed to have acknowledged the prosecutor's version.
- Allows, in a resentencing hearing, all relevant evidence regarding criminal history, including evidence of offenses not included at the original sentencing.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass. Signed by 7 members: Representatives O'Brien, Chair; Hurst, Vice Chair; Pearson, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Ahern, Goodman and Kirby.

Staff: Jim Morishima (786-7191).

Background:

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 importance 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.

Summary of Bill:

In cases that are plea bargained, if the defendant fails to affirmatively state his or her understanding of his or her criminal history, he or she is deemed to have admitted that the prosecutor's version is correct.

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.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment:

removes provisions that state that in cases that are plea bargained, if the defendant fails to affirmatively state his or her understanding of his or her criminal history, he or she is deemed to have admitted that the prosecutor's version is correct; reorganizes the statutes relating to community custody (state supervision in the community) for felony offenders by consolidating sections, removing terminology, and moving sections relating to other forms of supervision to another chapter; applies the current system of community custody to any offender sentenced after the effective date of the act (July 1, 2010), regardless of when he or she committed his offense, to the extent that it is constitutionally permissible (the Sentencing Guidelines Commission must develop a summary of the circumstances under which retroactive application of the community custody system is constitutionally impermissible); and adds a severability clause.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) The original intent of the SRA was that offenders receive a sentence that their true criminal history earns them. This purpose has been undermined by recent court decisions that give offenders a free pass when all criminal offenses do not come to light at sentencing. This bill makes clarifications to restore the SRA's original intent. Criminal history is difficult to develop. This bill will allow all criminal history to be considered at subsequent proceedings, which will lead to sentences that are fair.

(Opposed) Under the SRA, the accuracy of criminal history is of paramount importance at sentencing. Under this bill, a printout of criminal history serves as proof of the offenses therein. These lists are sometimes inaccurate, which will lead to offenders receiving greater sentences than they deserve. The bill also states that if a defendant does not state his or her own version of criminal history, he or she is deemed to admit that the prosecutor's version is true. This impermissibly shifts the burden of proof from the prosecution to the defendant.

Persons Testifying: (In support) Representative Priest, prime sponsor; and Russ Hauge and Tom McBride, Washington Association of Prosecuting Attorneys.

(Opposed) Amy Muth, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

Persons Signed In To Testify But Not Testifying: None.