
**Public Safety & Emergency
Preparedness Committee**

HB 2719

Brief Description: Ensuring that offenders receive accurate sentences.

Sponsors: Representatives Priest, Hurst, Loomis and VanDeWege.

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.

Hearing Date: 1/24/08

Staff: Jim Morishima (786-7191).

Background:

Under the Sentencing Reform Act, 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.

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.

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 Cadwaller*, 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.

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.

Appropriation: None.

Fiscal Note: Not requested.

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