

No. 83377-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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IN RE THE PERSONAL RESTRAINT PETITION OF:

**HARRY N. CARRIER,**

PETITIONER.

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**REPLY IN SUPPORT OF  
PERSONAL RESTRAINT PETITION**

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09 OCT 29 PM 3:54  
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**ORIGINAL**

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A. INTRODUCTION

Harry Carrier is serving a life sentence as a persistent offender.

The parties agree that Carrier's prior "most serious offense" or "strike," a 1981 Indecent Liberties conviction, was "dismissed and the defendant discharged" pursuant RCW 9.95.240. As the dismissal order states, on April 5, 1985, Carrier was permitted to "withdraw or set aside" the finding of guilt; enter a plea of "not guilty;" and case was dismissed—releasing Carrier from "all penalties and disabilities."

Nevertheless, the State argues that Carrier's life sentence is appropriate and that the inclusion of this dismissed charge is proper because Carrier's prior conviction was not also "vacated." However, because Carrier's charge was dismissed, it does not constitute a "conviction." At best, the SRA is ambiguous about whether a charge that has been dismissed after the successful completion of term of probation can be included as a "conviction" in an offender's "criminal history." In addition, vacation of a pre-SRA conviction was not available until after Carrier was permitted to withdraw his guilty plea and have his case dismissed and his right not to have the charge included as a "conviction" had vested.

As a result, Carrier's judgment is facially invalid. This Court should retain this case, set the matter for oral argument, and grant Carrier's petition—remanding for resentencing.

B. ARGUMENT

1. *The SRA Originally Did Not Provide for Vacation of Pre-SRA Deferred Convictions/Sentences Because Dismissal was Equivalent to Vacation.*

This Court has previously held that the Legislature intended RCW 9.95.240 and former RCW 9.94A.230 (now, 640) to have the “same practical effect.” *State v. Breazeale*, 144 Wn.2d 829, 837, 31 P.3d 1155 (2001). “In adopting the SRA, the Legislature provided a procedure in RCW 9.94A.640 which parallels RCW 9.95.240.” 144 Wn.2d at 835. “We hold that the Legislature intended RCW 9.95.240 to function *in the same manner* as the later statute, [former] RCW 9.94A.230, and that both statutes provide courts with the authority to vacate records of conviction.” *Id.* at 844. This Court concluded that there was virtually no difference between the statutes:

Under the SRA, the same procedure that results in a dismissal under the probation act allows the court to grant dismissal and clear the conviction record. Thus, the later statute differs in only minor respects: the court must apply the tests listed in subsection (2); the statute specifically provides for vacation of the conviction record in the same proceeding; and the statute expressly provides that the person may state that he or she has never been convicted of that crime.

*Id.* at 836.

On the issue of whether a dismissed pre-SRA conviction counts as criminal history, Professor David Boerner (one of the drafters of the SRA) observed, “[v]acation operates to ‘clear the record of conviction’ in the

same manner as did the Probation Act [RCW 9. 95. 240].” David Boerner, *Sentencing in Washington* § 11.6, at 11-7 (1985). This Court has also repeatedly looked to the explanations of the Sentencing Guidelines Commission when interpreting the SRA. *See e.g., State v. Ha'mim*, 132 Wn.2d 834, 844, 940 P.2d 633 (1997); *In re Long*, 117 Wn.2d 292, 301, 815 P.2d 257 (1991). Since its first publication the Wash. Sentencing Guidelines Commission’s *Sentencing Guidelines Implementation Manual* has provided that “vacation of the conviction is analogous to the dismissal obtained under RCW 9. 95. 240.” *See 2008 Manual*, comments following RCW 9.94A.640; *1987 Manual*, comments following RCW 9.94A.230. The comments to the original, current, and every intervening *Manual* expressly state: “A vacated conviction under this section cannot be used as criminal history.” *Id.*

Despite these numerous and obvious similarities, the State nevertheless argues that the statutes differ because RCW 9.95.240 states that a dismissed conviction may be “pleaded and proved” in a subsequent criminal proceeding. In his opening brief, Carrier argued that this language referred to the use of a dismissed conviction as a predicate to a new criminal charge, but that it did not and could not refer to the use of a dismissed conviction as criminal history under the SRA for the simple reasons that the SRA did not exist and the concept of criminal history did not exist when the statute was enacted. *See PRP and Opening Brief*, p. 10.

There is another reason the State's argument on this point fails: the vacation statute contains language that is virtually identical to the "pleaded and proved" language. The vacation statute provides that "(n)othing in this section prevents the use of an offender's prior conviction in a later criminal prosecution." RCW 9.94A.640. The State does not suggest that this language permits a vacated conviction to be used as criminal history. Thus, rather than constituting a difference between the statutes, this is yet another parallel that supports the conclusion that neither a dismissed, nor a vacated charge constitutes "criminal history." Thus, the "pleaded and proved" language does not distinguish "dismissal" from "vacation."

Indeed, this result is entirely consistent with the SRA's definition of "conviction." At the time Carrier was sentenced to life, a "conviction" was defined as "an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty." Former RCW 9.94A.030 (12) (2006). Likewise, the definition of a "persistent offender" requires the offender to have "been convicted." Former RCW 9.94A.030 (33) (2006).

Mr. Carrier's 1981 charge did not end in conviction. Quite the opposite, it ended with dismissal. Further, although it is true that he was once convicted of the crime, the one-time conviction was withdrawn and set aside. It is the final outcome of a case that is relevant—no what

happened at some earlier stage. Otherwise, any conviction, later overturned, could be used as criminal history—even where acquittal followed reversal and remand. Such a result would be absurd. However, that result is no different than the result urged by the State in this case.

Indeed, this Court has previously held, in an analogous context, that a person who has been granted dismissal under RCW 9.95.240 is entitled to assert that he or she has never been convicted. *In re Discipline of Stroh*, 108 Wn.2d 410, 417-18, 739 P.2d 690 (1987). Here, the State argues for just the opposite conclusion.

Certainly, the SRA could have defined “conviction” to include a conviction that had been dismissed under RCW 9.95.040. However, the Legislature did not do so.

The fact that the vacation statute borrows language from and clearly parallels the earlier dismissal statute, coupled with the fact that the Legislature failed to define a “conviction” as including a charge that was dismissed pursuant to RCW 9.95.240, provides strong support for the conclusion that the drafters of the SRA did not intend to include a dismissed charge as criminal history. Indeed, the State’s only argument otherwise is depends entirely on two lower court decisions which analyze only the “pleaded and proved” language. Indeed, although the holding in *State v. Moore*, 75 Wash. App. 166, 876 P.2d 959 (1994), is contrary to Carrier’s argument herein, the decision provides unwitting support for his

argument. After rejecting Moore's claim that his prior dismissed conviction should not count in his offender score, the Court granted Moore's request to withdraw his guilty plea to his current offense noting that both counsel read the statute in the manner advanced by Carrier. Thus, the position of both learned counsel lends support for the conclusion that the statute at least is ambiguous. Thus, the rule of lenity applies, a point Carrier discusses at greater length in subsection 3 below.

This Court's decision in *State v. Berry*, 141 Wn.2d 121, 5 P.3d 658 (2000), provides further additional support for Carrier's position that a dismissed charge is no different than a vacated conviction. In that case, this Court treated a foreign "stayed" conviction as a prior most serious offense, but only because the conviction had not later been dismissed or vacated. This Court clearly indicated that its holding would have been different if the conviction had been *dismissed or vacated* at the time of the persistent offender proceeding—clearly ascribing the same effect to either outcome: "Berry incorrectly characterizes the stayed assaults as dismissed or vacated under California law." Later the Court summarized: "There is no evidence that the assault convictions were ever dismissed or vacated." *Id* at 131 (citing *Johnson v. Mississippi*, 486 U.S. 578, 585-87, 108 S.Ct. 1981, 1986-88, 100 L.Ed.2d 575 (1988) (discussing impropriety of using reversed conviction in habitual offender sentencing)).

Here, there is unchallenged evidence that the charges against Carrier were dismissed. Thus, at the time of the persistent offender proceeding Carrier was not “convicted” of the crime.

2. *The Amendments Which Now Permit Vacation of a Pre-SRA Conviction Did Not Also Make a Dismissed Charge a Conviction Constituting Criminal History.*

At the time that Carrier successfully withdrew his guilty plea and had his charge dismissed, he was not statutorily able to seek vacation. Further, as argued previously, there was no benefit for him to do so.

Recent amendments to the SRA do not change this result. While it is now possible for a “dismissed” conviction to also be “vacated,” there is no corresponding amendment to the definition of “conviction.” In other words, that term has never been amended to include a dismissed charge. Further, the legislative history of the two relevant amendments (RCW 9.95.240 and RCW 9.94A.640) unambiguously reveals that the Legislature did not intend change the SRA on this point.

If the Legislature had intended to amend the SRA to include dismissed convictions unless those charges were also vacated, the obvious way to do so would be to amend the definition of “conviction.” As mentioned previously, the Legislature has never done so.

Just as importantly, the two amendments relied on the State do not use unambiguous language expressing the intent to alter the SRA in that

manner. Indeed, the legislative history clearly reveals completely different intents.

When Mr. Carrier was permitted to withdraw his guilty plea, enter a not guilty plea, and have his case dismissed in 1985, he could not seek vacation because vacation existed only for SRA offenses. Indeed, the first prerequisite to vacation was “discharge under [former] RCW 9.94A.230.” Only those individuals sentenced under the SRA could be discharged under that provision. Thus, consistent with the law in effect at the time, in 1985 Carrier sought and the Court granted him dismissal of the charge against him.

The SRA was amended 17 years later in 2002. The 2002 SRA amendments alter the definition of criminal history (but not “conviction”) by adding that “[a] conviction may be removed from a defendant's criminal history only if it is vacated,” and “[a] prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.” *See* RCW 9.94A.030 (14) (2006). The legislative history to this amendment clearly reveals that it was not intended to revive dismissed convictions. Instead, the intent of the amendment was to properly express the earlier intent to include prior convictions in an offender score in light of judicial

decision that interpreted that earlier intent otherwise. The intent is expressed in the preamble:

The legislature considers the majority opinions in *State v. Cruz*, 139 Wn.2d 186 (1999), and *State v. Smith*, Cause No. 70683-2 (September 6, 2001), to be wrongly decided, since neither properly interpreted legislative intent. When the legislature enacted the sentencing reform act, chapter 9.94A RCW, and each time the legislature has amended the act, the legislature intended that an offender's criminal history and offender score be determined using the statutory provisions that were in effect on the day the current offense was committed.

Although certain prior convictions previously were not counted in the offender score or included in the criminal history pursuant to former versions of RCW 9.94A.525, or RCW 9.94A.030, those prior convictions need not be 'revived' because they were never vacated.

The remainder of the legislative history, which echoes this intent and does not reveal any corresponding intent to change the definition of what constitutes a "conviction" is attached as Appendix A. Indeed, the brief summary of the bill contained in the House *Bill Analysis* simply states that the Bill simply "(c)larifies that amendments to the 'wash out' provisions of the SRA are retroactive." The testimony in favor of the bill before the Senate Judiciary Committee was summarized as: "This language should provide the explicit direction for which the Supreme Court has been searching." The testimony before the House Committee on Criminal Justice and Corrections was even more explicit:

This is not a change in sentencing policy, but rather a clarification to the court.

The State's argument today completely flies in the face of this history.

RCW 9.95.240 was amended in 2003. That amendment provided that an individual whose case was dismissed could also seek vacation, provided he met the requisite tests. The State argues inferentially (because Carrier did not meet the criteria for vacation), the intent of the amendment was to include a dismissed, but not vacated charge as a conviction in an individual's criminal history.

As noted with the previous amendment, the simplest and most direct way to express that intent would be to amend the definition of "conviction." However, because that was not the intent of the 2003 legislation, the Legislature did not amend that section.

Instead, the legislative history clearly indicates that the amendments were made as an attempt to clarify and codify the holding in *Breazeale*:

No statute authorizes pre-SRA felons to respond to an employment application by saying they have never been convicted of an offense. However, the state Supreme Court has recently held that the pre-SRA release from penalties provision is the functional equivalent of the SRA law with respect to vacations of records. The court held that a pre-SRA felon who has been released from all penalties and disabilities following successful completion of probation may respond on an employment application that he or she has not been convicted of the offense. The court also held that the effect of such a release is to direct criminal justice agencies not to release the record of conviction to prospective employers.

*See House Judiciary Committee Bill Report.* Put another way, the bill was intended to address two identified problems: "Two restrictions on the

current release from disabilities provisions for pre-SRA felons are removed. A felon need no longer apply for a release prior to the expiration of the maximum term of sentence, and the statement that a release does not prohibit use of the conviction in a subsequent prosecution is eliminated.” Once a conviction was dismissed and vacated: “The effect of a vacation is also the same as for an SRA felony, including allowing the offender to respond on an employment application that he or she has not been convicted of the crime.” *Id.*

There is no mention anywhere in the legislative history of increasing the burden on an offender whose prior conviction has been dismissed by now requiring him to also vacate that dismissed charge before it can be removed from the offender’s criminal history. Because there is no mention anywhere in any of the reports or discussion of the bill of the State’s claimed intent—to require an individual who has previously obtained dismissal of charges to also obtain vacation before the dismissed charge is eliminated from the person’s criminal history—this Court should not read into the law something that was clearly not intended.

### 3. *The Rule of Lenity*

If this Court concludes that the statutory scheme is ambiguous and subject to more than one reasonable interpretation, then it should apply the rule of lenity.

Questions of statutory interpretation are reviewed *de novo*. *State v.*

*Salavea*, 151 Wn.2d 133, 140, 86 P.3d 125 (2004). “The ‘plain meaning’ of a statutory provision is to be discerned from the ordinary meaning of the language at issue, as well as from the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). If after examination of a statute a court finds that it is subject to more than one reasonable interpretation, the statute is ambiguous. *Id.* at 600-01. However, a statute is not ambiguous merely because more than one interpretation is conceivable. *Agrilink Foods, Inc. v. State Dep’t of Revenue*, 153 Wn.2d 392, 396, 103P.3d 1226 (2005) (citing *State v. Hahn*, 83 Wn. App. 825, 831, 924 P.2d 392 (1996)). If after applying rules of statutory construction this Court concludes that a statute is ambiguous, “the rule of lenity requires us to interpret the statute in favor of the defendant absent legislative intent to the contrary.” *Jacobs*, 154 Wn.2d at 601 (citing *In re Post Sentencing Review of Charles*, 135 Wn.2d 239, 249, 955 P.2d 798 (1998)). The rule states that an ambiguous criminal statute cannot be interpreted to increase the penalty imposed. *State v. Adlington-Kelly*, 95 Wn.2d 917, 920-21, 631 P.2d 954 (1981). See also *City of Seattle v. Winbrenner*, \_\_\_ Wn.2d \_\_\_, \_\_\_ P.3d \_\_\_ (October 29, 2009).

4. *Even Assuming that a Crime Must Now Be Dismissed and Vacated In Order to Remove it From an Offender's Criminal History, that New Rule Should Not Apply Here Because Carrier's Charge Had Already Been Dismissed and Any Subsequent Changes to the SRA Did Not Revive His Dismissed Charge.*

When Carrier's charge was dismissed, he could not seek vacation—at the time, vacation applied only to SRA offenses. Just as importantly, there was no reason to seek vacation, since it did not differ from the relief afforded under RCW 9.95.240.

If the amendments to the vacation and dismissal statutes are construed in the manner advanced by the State, then those statutes retroactively alter the underlying legal consequences of Carrier's previously "dismissed" conviction. As a result, he can claim a vested right in the "dismissed/vacated" status of his prior conviction.

This Court held in *State v. Varga*, 151 Wn.2d 179, 86 P.3d 139 (2004), that the 2002 amendments (discussed above) could not achieve the intended result—that once a conviction washed out it a vested right attached. This Court rejected that argument by distinguishing the statute at issue in *State v. T.K.*, 139 Wn.2d 320, 323-24, 987 P.2d 63 (1999). In *T.K.*, this Court considered whether T.K. had a vested right to expunge his 1993 juvenile conviction from his record after two crime-free years provided that he committed no new offenses. *Id.* at 327. At the time T.K.

committed his juvenile offense, former RCW 13.50.050(11) (1992) required trial courts to expunge such convictions upon filing of a motion. *Id.* at 325, 987 P.2d 63. However, in 1997 the legislature amended RCW 13.50.050(11) to effectively remove T.K.'s ability to petition a court to expunge his record. *Id.* at 324 (Laws of 1997, ch. 338, § 40). This Court concluded that T.K. had a vested right under the former statute to expunge his conviction. because T.K. had met the statutory conditions under the former statute that required courts to expunge his conviction and that T.K. could petition the court to expunge his record. *Id.* at 334. This Court further noted that there are many cases, however, in which a preamendment version of a statute will continue to govern in cases arising prior to the amendment, particularly where vested rights or contractual obligations are affected. *See, e.g., In re F.D. Processing, Inc.*, 119 Wn.2d 452, 461-62, 832 P.2d 1303 (1992) (in action relating to statute extending lien protection to agricultural processors, pre-amendment version of statute governs because amendment to definition of agricultural products affected bank's vested right in a security interest and, therefore, not retroactively applied); *Ashenbrenner v. Department of Labor & Indus.*, 62 Wn.2d 22, 25, 380 P.2d 730 (1963) (rights of workmen's compensation claimants are controlled by law in force at time of injury rather than by law which becomes effective subsequently); *Procter & Gamble Co. v. King County*, 9 Wn.2d 655, 656, 115 P.2d 962 (1941) (in foreign corporation's action to recover taxes paid to

county under protest, court held that rights had accrued and were not modified or terminated by repeal of that statute so that corporation was not required to prove it “had never conducted any business” in the state); *see also* Norman J. Singer, *2 Statutes and Statutory Construction* §§ 41.05-.07 (5th ed.1997).

The issue here is not, as the State misconstrues it, whether Carrier’s right to vacation vested prior to the amendment of the statute. The issue is whether Carrier’s right to have his prior conviction removed from the category of “conviction” vested prior to the 2003 amendments which, according to the State, now require both dismissal and vacation in order to be removed from that category.

The answer is clearly “yes.” Carrier’s case was dismissed. At that juncture he was told that he could claim, to an individual or a court, that he had not been convicted of that offense. It would be hard to imagine a more compelling case of “vesting.”

C. CONCLUSION

Based on the above, this Court should vacate Carrier's persistent offender "life" sentence and remand this case to Pierce County Superior Court for resentencing.

DATED this 31<sup>st</sup> day of October, 2009.

Respectfully Submitted:

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## APPENDIX A

1 (30) "Offender" means a person who has committed a felony  
2 established by state law and is eighteen years of age or older or is  
3 less than eighteen years of age but whose case is under superior court  
4 jurisdiction under RCW 13.04.030 or has been transferred by the  
5 appropriate juvenile court to a criminal court pursuant to RCW  
6 13.40.110. Throughout this chapter, the terms "offender" and  
7 "defendant" are used interchangeably.

8 (31) "Partial confinement" means confinement for no more than one  
9 year in a facility or institution operated or utilized under contract  
10 by the state or any other unit of government, or, if home detention or  
11 work crew has been ordered by the court, in an approved residence, for  
12 a substantial portion of each day with the balance of the day spent in  
13 the community. Partial confinement includes work release, home  
14 detention, work crew, and a combination of work crew and home  
15 detention.

16 (32) "Persistent offender" is an offender who:

17 (a) (i) Has been convicted in this state of any felony considered a  
18 most serious offense; and

19 (ii) Has, before the commission of the offense under (a) of this  
20 subsection, been convicted as an offender on at least two separate  
21 occasions, whether in this state or elsewhere, of felonies that under  
22 the laws of this state would be considered most serious offenses and  
23 would be included in the offender score under RCW 9.94A.525; provided  
24 that of the two or more previous convictions, at least one conviction  
25 must have occurred before the commission of any of the other most  
26 serious offenses for which the offender was previously convicted; or

27 (b) (i) Has been convicted of: (A) Rape in the first degree, rape  
28 of a child in the first degree, child molestation in the first degree,  
29 rape in the second degree, rape of a child in the second degree, or  
30 indecent liberties by forcible compulsion; (B) any of the following  
31 offenses with a finding of sexual motivation: Murder in the first  
32 degree, murder in the second degree, homicide by abuse, kidnapping in  
33 the first degree, kidnapping in the second degree, assault in the first  
34 degree, assault in the second degree, assault of a child in the first  
35 degree, or burglary in the first degree; or (C) an attempt to commit  
36 any crime listed in this subsection (32) (b) (i); and

37 (ii) Has, before the commission of the offense under (b) (i) of this  
38 subsection, been convicted as an offender on at least one occasion,  
39 whether in this state or elsewhere, of an offense listed in (b) (i) of

1 this subsection or any federal or out-of-state offense or offense under  
2 prior Washington law that is comparable to the offenses listed in  
3 (b) (i) of this subsection. A conviction for rape of a child in the  
4 first degree constitutes a conviction under (b) (i) of this subsection  
5 only when the offender was sixteen years of age or older when the  
6 offender committed the offense. A conviction for rape of a child in  
7 the second degree constitutes a conviction under (b) (i) of this  
8 subsection only when the offender was eighteen years of age or older  
9 when the offender committed the offense.

10 (33) "Postrelease supervision" is that portion of an offender's  
11 community placement that is not community custody.

12 (34) "Restitution" means a specific sum of money ordered by the  
13 sentencing court to be paid by the offender to the court over a  
14 specified period of time as payment of damages. The sum may include  
15 both public and private costs.

16 (35) "Risk assessment" means the application of an objective  
17 instrument supported by research and adopted by the department for the  
18 purpose of assessing an offender's risk of reoffense, taking into  
19 consideration the nature of the harm done by the offender, place and  
20 circumstances of the offender related to risk, the offender's  
21 relationship to any victim, and any information provided to the  
22 department by victims. The results of a risk assessment shall not be  
23 based on unconfirmed or unconfirmable allegations.

24 (36) "Serious traffic offense" means:

25 (a) Driving while under the influence of intoxicating liquor or any  
26 drug (RCW 46.61.502), actual physical control while under the influence  
27 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving  
28 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
29 or

30 (b) Any federal, out-of-state, county, or municipal conviction for  
31 an offense that under the laws of this state would be classified as a  
32 serious traffic offense under (a) of this subsection.

33 (37) "Serious violent offense" is a subcategory of violent offense  
34 and means:

35 (a) (i) Murder in the first degree;

36 (ii) Homicide by abuse;

37 (iii) Murder in the second degree;

38 (iv) Manslaughter in the first degree;

39 (v) Assault in the first degree;

1 (vi) Kidnapping in the first degree;  
2 (vii) Rape in the first degree;  
3 (viii) Assault of a child in the first degree; or  
4 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
5 commit one of these felonies; or

6 (b) Any federal or out-of-state conviction for an offense that  
7 under the laws of this state would be a felony classified as a serious  
8 violent offense under (a) of this subsection.

9 (38) "Sex offense" means:

10 (a) (i) A felony that is a violation of chapter 9A.44 RCW other than  
11 RCW 9A.44.130(11);

12 (ii) A violation of RCW 9A.64.020;

13 (iii) A felony that is a violation of chapter 9.68A RCW other than  
14 RCW 9.68A.070 or 9.68A.080; or

15 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
16 criminal solicitation, or criminal conspiracy to commit such crimes;

17 (b) Any conviction for a felony offense in effect at any time prior  
18 to July 1, 1976, that is comparable to a felony classified as a sex  
19 offense in (a) of this subsection;

20 (c) A felony with a finding of sexual motivation under RCW  
21 9.94A.835 or 13.40.135; or

22 (d) Any federal or out-of-state conviction for an offense that  
23 under the laws of this state would be a felony classified as a sex  
24 offense under (a) of this subsection.

25 (39) "Sexual motivation" means that one of the purposes for which  
26 the defendant committed the crime was for the purpose of his or her  
27 sexual gratification.

28 (40) "Standard sentence range" means the sentencing court's  
29 discretionary range in imposing a nonappealable sentence.

30 (41) "Statutory maximum sentence" means the maximum length of time  
31 for which an offender may be confined as punishment for a crime as  
32 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the  
33 crime, or other statute defining the maximum penalty for a crime.

34 (42) "Total confinement" means confinement inside the physical  
35 boundaries of a facility or institution operated or utilized under  
36 contract by the state or any other unit of government for twenty-four  
37 hours a day; or pursuant to RCW 72.64.050 and 72.64.060.

38 (43) "Transition training" means written and verbal instructions  
39 and assistance provided by the department to the offender during the

1 two weeks prior to the offender's successful completion of the work  
2 ethic camp program. The transition training shall include instructions  
3 in the offender's requirements and obligations during the offender's  
4 period of community custody.

5 (44) "Victim" means any person who has sustained emotional,  
6 psychological, physical, or financial injury to person or property as  
7 a direct result of the crime charged.

8 (45) "Violent offense" means:

9 (a) Any of the following felonies:

10 (i) Any felony defined under any law as a class A felony or an  
11 attempt to commit a class A felony;

12 (ii) Criminal solicitation of or criminal conspiracy to commit a  
13 class A felony;

14 (iii) Manslaughter in the first degree;

15 (iv) Manslaughter in the second degree;

16 (v) Indecent liberties if committed by forcible compulsion;

17 (vi) Kidnapping in the second degree;

18 (vii) Arson in the second degree;

19 (viii) Assault in the second degree;

20 (ix) Assault of a child in the second degree;

21 (x) Extortion in the first degree;

22 (xi) Robbery in the second degree;

23 (xii) Drive-by shooting;

24 (xiii) Vehicular assault, when caused by the operation or driving  
25 of a vehicle by a person while under the influence of intoxicating  
26 liquor or any drug or by the operation or driving of a vehicle in a  
27 reckless manner; and

28 (xiv) Vehicular homicide, when proximately caused by the driving of  
29 any vehicle by any person while under the influence of intoxicating  
30 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
31 any vehicle in a reckless manner;

32 (b) Any conviction for a felony offense in effect at any time prior  
33 to July 1, 1976, that is comparable to a felony classified as a violent  
34 offense in (a) of this subsection; and

35 (c) Any federal or out-of-state conviction for an offense that  
36 under the laws of this state would be a felony classified as a violent  
37 offense under (a) or (b) of this subsection.

1 (46) "Work crew" means a program of partial confinement consisting  
2 of civic improvement tasks for the benefit of the community that  
3 complies with RCW 9.94A.725.

4 (47) "Work ethic camp" means an alternative incarceration program  
5 as provided in RCW 9.94A.690 designed to reduce recidivism and lower  
6 the cost of corrections by requiring offenders to complete a  
7 comprehensive array of real-world job and vocational experiences,  
8 character-building work ethics training, life management skills  
9 development, substance abuse rehabilitation, counseling, literacy  
10 training, and basic adult education.

11 (48) "Work release" means a program of partial confinement  
12 available to offenders who are employed or engaged as a student in a  
13 regular course of study at school.

14 **Sec. 3.** RCW 9.94A.525 and 2001 c 264 s 5 are each amended to read  
15 as follows:

16 The offender score is measured on the horizontal axis of the  
17 sentencing grid. The offender score rules are as follows:

18 The offender score is the sum of points accrued under this section  
19 rounded down to the nearest whole number.

20 (1) A prior conviction is a conviction which exists before the date  
21 of sentencing for the offense for which the offender score is being  
22 computed. Convictions entered or sentenced on the same date as the  
23 conviction for which the offender score is being computed shall be  
24 deemed "other current offenses" within the meaning of RCW 9.94A.589.

25 (2) Class A and sex prior felony convictions shall always be  
26 included in the offender score. Class B prior felony convictions other  
27 than sex offenses shall not be included in the offender score, if since  
28 the last date of release from confinement (including full-time  
29 residential treatment) pursuant to a felony conviction, if any, or  
30 entry of judgment and sentence, the offender had spent ten consecutive  
31 years in the community without committing any crime that subsequently  
32 results in a conviction. Class C prior felony convictions other than  
33 sex offenses shall not be included in the offender score if, since the  
34 last date of release from confinement (including full-time residential  
35 treatment) pursuant to a felony conviction, if any, or entry of  
36 judgment and sentence, the offender had spent five consecutive years in  
37 the community without committing any crime that subsequently results in  
38 a conviction. Serious traffic convictions shall not be included in the

1 offender score if, since the last date of release from confinement  
2 (including full-time residential treatment) pursuant to a felony  
3 conviction, if any, or entry of judgment and sentence, the offender  
4 spent five years in the community without committing any crime that  
5 subsequently results in a conviction. This subsection applies to both  
6 adult and juvenile prior convictions.

7 (3) Out-of-state convictions for offenses shall be classified  
8 according to the comparable offense definitions and sentences provided  
9 by Washington law. Federal convictions for offenses shall be  
10 classified according to the comparable offense definitions and  
11 sentences provided by Washington law. If there is no clearly  
12 comparable offense under Washington law or the offense is one that is  
13 usually considered subject to exclusive federal jurisdiction, the  
14 offense shall be scored as a class C felony equivalent if it was a  
15 felony under the relevant federal statute.

16 (4) Score prior convictions for felony anticipatory offenses  
17 (attempts, criminal solicitations, and criminal conspiracies) the same  
18 as if they were convictions for completed offenses.

19 (5) (a) In the case of multiple prior convictions, for the purpose  
20 of computing the offender score, count all convictions separately,  
21 except:

22 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to  
23 encompass the same criminal conduct, shall be counted as one offense,  
24 the offense that yields the highest offender score. The current  
25 sentencing court shall determine with respect to other prior adult  
26 offenses for which sentences were served concurrently or prior juvenile  
27 offenses for which sentences were served consecutively, whether those  
28 offenses shall be counted as one offense or as separate offenses using  
29 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and  
30 if the court finds that they shall be counted as one offense, then the  
31 offense that yields the highest offender score shall be used. The  
32 current sentencing court may presume that such other prior offenses  
33 were not the same criminal conduct from sentences imposed on separate  
34 dates, or in separate counties or jurisdictions, or in separate  
35 complaints, indictments, or informations;

36 (ii) In the case of multiple prior convictions for offenses  
37 committed before July 1, 1986, for the purpose of computing the  
38 offender score, count all adult convictions served concurrently as one  
39 offense, and count all juvenile convictions entered on the same date as

1 one offense. Use the conviction for the offense that yields the  
2 highest offender score.

3 (b) As used in this subsection (5), "served concurrently" means  
4 that: (i) The latter sentence was imposed with specific reference to  
5 the former; (ii) the concurrent relationship of the sentences was  
6 judicially imposed; and (iii) the concurrent timing of the sentences  
7 was not the result of a probation or parole revocation on the former  
8 offense.

9 (6) If the present conviction is one of the anticipatory offenses  
10 of criminal attempt, solicitation, or conspiracy, count each prior  
11 conviction as if the present conviction were for a completed offense.  
12 When these convictions are used as criminal history, score them the  
13 same as a completed crime.

14 (7) If the present conviction is for a nonviolent offense and not  
15 covered by subsection (11) or (12) of this section, count one point for  
16 each adult prior felony conviction and one point for each juvenile  
17 prior violent felony conviction and 1/2 point for each juvenile prior  
18 nonviolent felony conviction.

19 (8) If the present conviction is for a violent offense and not  
20 covered in subsection (9), (10), (11), or (12) of this section, count  
21 two points for each prior adult and juvenile violent felony conviction,  
22 one point for each prior adult nonviolent felony conviction, and 1/2  
23 point for each prior juvenile nonviolent felony conviction.

24 (9) If the present conviction is for a serious violent offense,  
25 count three points for prior adult and juvenile convictions for crimes  
26 in this category, two points for each prior adult and juvenile violent  
27 conviction (not already counted), one point for each prior adult  
28 nonviolent felony conviction, and 1/2 point for each prior juvenile  
29 nonviolent felony conviction.

30 (10) If the present conviction is for Burglary 1, count prior  
31 convictions as in subsection (8) of this section; however count two  
32 points for each prior adult Burglary 2 or residential burglary  
33 conviction, and one point for each prior juvenile Burglary 2 or  
34 residential burglary conviction.

35 (11) If the present conviction is for a felony traffic offense  
36 count two points for each adult or juvenile prior conviction for  
37 Vehicular Homicide or Vehicular Assault; for each felony offense count  
38 one point for each adult and 1/2 point for each juvenile prior  
39 conviction; for each serious traffic offense, other than those used for

1 an enhancement pursuant to RCW 46.61.520(2), count one point for each  
2 adult and 1/2 point for each juvenile prior conviction.

3 (12) If the present conviction is for a drug offense count three  
4 points for each adult prior felony drug offense conviction and two  
5 points for each juvenile drug offense. All other adult and juvenile  
6 felonies are scored as in subsection (8) of this section if the current  
7 drug offense is violent, or as in subsection (7) of this section if the  
8 current drug offense is nonviolent.

9 (13) If the present conviction is for Escape from Community  
10 Custody, RCW 72.09.310, count only prior escape convictions in the  
11 offender score. Count adult prior escape convictions as one point and  
12 juvenile prior escape convictions as 1/2 point.

13 (14) If the present conviction is for Escape 1, RCW 9A.76.110, or  
14 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and  
15 juvenile prior convictions as 1/2 point.

16 (15) If the present conviction is for Burglary 2 or residential  
17 burglary, count priors as in subsection (7) of this section; however,  
18 count two points for each adult and juvenile prior Burglary 1  
19 conviction, two points for each adult prior Burglary 2 or residential  
20 burglary conviction, and one point for each juvenile prior Burglary 2  
21 or residential burglary conviction.

22 (16) If the present conviction is for a sex offense, count priors  
23 as in subsections (7) through (15) of this section; however count three  
24 points for each adult and juvenile prior sex offense conviction.

25 (17) If the present conviction is for an offense committed while  
26 the offender was under community placement, add one point.

27 (18) The fact that a prior conviction was not included in an  
28 offender's offender score or criminal history at a previous sentencing  
29 shall have no bearing on whether it is included in the criminal history  
30 or offender score for the current offense. Accordingly, prior  
31 convictions that were not counted in the offender score or included in  
32 criminal history under repealed or previous versions of the sentencing  
33 reform act shall be included in criminal history and shall count in the  
34 offender score if the current version of the sentencing reform act  
35 requires including or counting those convictions.

36 NEW SECTION. **Sec. 4.** RCW 9.94A.030(13) (b) and (c) and  
37 9.94A.525(18) apply only to current offenses committed on or after the  
38 effective date of this act. No offender who committed his or her

1 current offense prior to the effective date of this act may be subject  
2 to resentencing as a result of this act.

Passed the Senate February 18, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

# SENATE BILL REPORT

## SB 6423

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As Reported By Senate Committee On:  
Judiciary, February 7, 2002

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

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

**Sponsors:** Senators Costa and McCaslin.

**Brief History:**

**Committee Activity:** Judiciary: 2/4/02, 2/7/02 [DPS].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 6423 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Kastama, Vice Chair; Costa, Hargrove, Johnson, Long, McCaslin, Poulsen, Thibaudeau and Zarelli.

**Staff:** Aldo Melchiori (786-7439)

**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 of Substitute Bill:** 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.

**Substitute Bill Compared to Original Bill:** It is clarified that the act applies to crimes committed after its effective date.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** This language should provide the explicit direction for which the Supreme Court has been searching.

**Testimony Against:** None.

**Testified:** PRO: Seth Fine, Snohomish County Prosecuting Attorney's Office; Kit Proctor, Pierce County Prosecuting Attorney's Office

# SENATE BILL REPORT

## SSB 6423

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As Passed Senate, February 18, 2002

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

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

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

**Brief History:**

**Committee Activity:** Judiciary: 2/4/02, 2/7/02 [DPS].

Passed Senate: 2/18/02, 48-0.

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 6423 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Kastama, Vice Chair; Costa, Hargrove, Johnson, Long, McCaslin, Poulsen, Thibaudeau and Zarelli.

**Staff:** Aldo Melchiori (786-7439)

**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 of Bill:** 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.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** This language should provide the explicit direction for which the Supreme Court has been searching.

**Testimony Against:** None.

**Testified:** PRO: Seth Fine, Snohomish County Prosecuting Attorney's Office; Kit Proctor, Pierce County Prosecuting Attorney's Office

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**Criminal Justice & Corrections  
Committee**

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**SSB 6423**

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

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

**Brief Summary of Substitute Bill**

Clarifies that amendments to the "wash out" provisions of the SRA are retroactive.

**Hearing Date:** 2/28/02

**Staff:** Jim Morishima (786-7191).

**Background:**

Under the Sentencing Reform Act (SRA), an offender's standard sentence range is determined by his or her offender score, which is calculated using the offender's prior criminal history and the severity of the crime. An offender's criminal history consists of all prior convictions and juvenile adjudications. When figuring an offender's offender score, certain crimes are not considered (or are "washed out") if the offender has had a clean record for a specified amount of time since the offender's release.

In 1990, the Legislature removed the "wash out" provisions for juvenile sex offenses. In 1997, the Legislature removed a similar wash out provision for certain juvenile offenses that were contained in the definition of "criminal history."

In 1994, a court sentenced an offender considering an offense that had washed out prior to 1990. The Washington State Supreme Court ruled that the 1990 legislation that removed the "wash out" provisions for juvenile sex offenses was not retroactive. Therefore, juvenile sex offenses that had washed out prior to 1990 could not be used when calculating an offender's offender score. State v. Cruz, 139 Wn.2d 186 (1999).

In 2000, the Legislature passed legislation that stated, "Any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense

was committed." The intent language to this legislation stated that the legislation was in response to Cruz.

In 2001, several offenders challenged their sentences before the Washington State Supreme Court. The offenders argued that certain juvenile offenses were wrongly considered because the 1997 amendment to the definition of "criminal history" was not retroactive. The state argued that the Legislature's response to Cruz in 2000 made the 1997 amendment retroactive. The Washington State Supreme Court ruled that the 2000 legislation did not make the removal of the "wash out" provisions in 1997 retroactive and that juvenile offenses that had washed out prior to 1997 could therefore not be used when calculating an offender's offender score. State v. Smith, 144 Wn.2d 665 (2001).

**Summary of Bill:**

A conviction may only be removed from a defendant's criminal history if it has been vacated. A prior conviction that was washed out pursuant to a former version of the SRA remains part of the offender's criminal history. Prior convictions that were washed out under a previous version of the SRA must be used when calculating an offender's offender score if the offenses would count under current law.

The afore mentioned provisions only apply when sentencing offenses committed on or after the effective date of the act.

**Appropriation:** None.

**Fiscal Note:** Not Requested.

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

# HOUSE BILL REPORT

## SSB 6423

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**As Passed House:**

March 6, 2002

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

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

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

**Brief History:**

**Committee Activity:**

Criminal Justice & Corrections: 2/28/02 [DP].

**Floor Activity:**

Passed House: 3/6/02, 93-0.

**Brief Summary of Substitute Bill**

Clarifies that amendments to the "wash out" provisions of the Sentencing Reform Act (SRA) are retroactive.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass. Signed by 7 members: Representatives O'Brien, Chair; Lovick, Vice Chair; Ballasiotes, Ranking Minority Member; Ahern, Kagi, Kirby and Morell.

**Staff:** Jim Morishima (786-7191).

**Background:**

Under the SRA, an offender's standard sentence range is determined by his or her offender score, which is calculated using the offender's prior criminal history and the severity of the crime. An offender's criminal history consists of all prior convictions and juvenile adjudications. When figuring an offender's offender score, certain crimes are not considered (or are "washed out") if the offender has had a clean record for a specified amount of time since the offender's release.

In 1990 the Legislature removed the "wash out" provisions for juvenile sex offenses. In 1997 the Legislature removed a similar wash out provision for certain juvenile offenses that were contained in the definition of "criminal history."

In 1994 a court sentenced an offender considering an offense that had washed out prior to 1990. The Washington State Supreme Court ruled that the 1990 legislation that removed the "wash out" provisions for juvenile sex offenses was not retroactive. Therefore, juvenile sex offenses that had washed out prior to 1990 could not be used when calculating an offender's offender score. State v. Cruz, 139 Wn.2d 186 (1999).

In 2000 the Legislature passed legislation that stated, "Any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed." The intent language to this legislation stated that the legislation was in response to Cruz.

In 2001 several offenders challenged their sentences before the Washington State Supreme Court. The offenders argued that certain juvenile offenses were wrongly considered because the 1997 amendment to the definition of "criminal history" was not retroactive. The state argued that the Legislature's response to Cruz in 2000 made the 1997 amendment retroactive. The Washington State Supreme Court ruled that the 2000 legislation did not make the removal of the "wash out" provisions in 1997 retroactive and that juvenile offenses that had washed out prior to 1997 could therefore not be used when calculating an offender's offender score. State v. Smith, 144 Wn.2d 665 (2001).

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**Summary of Substitute Bill:**

A conviction may only be removed from a defendant's criminal history if it has been vacated. A prior conviction that was washed out pursuant to a former version of the SRA remains part of the offender's criminal history. Prior convictions that were washed out under a previous version of the SRA must be used when calculating an offender's offender score if the offenses would count under current law.

The aforementioned provisions only apply when sentencing offenses committed on or after the effective date of the act.

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**Appropriation:** None.

**Fiscal Note:** Not Requested.

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

**Testimony For:** The general rule in sentencing is the law in effect at the time controls.

This is not a change in sentencing policy, but rather a clarification to the court. This is an issue of statutory interpretation and not constitutional law.

**Testimony Against:** None.

**Testified:** Tom McBride, Washington Association of Prosecuting Attorneys.

# FINAL BILL REPORT

## SSB 6423

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C 107 L 02  
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

6423

Sponsor(s): Senators Costa and McCaslin

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

SB 6423 - DIGEST

(SUBSTITUTED FOR - SEE 1ST SUB)

Considers the majority opinions in *State v. Cruz*, 139 Wn. 2d 186 (1999), and *State v. Smith*, Cause No. 70683-2 (September 6, 2001), to be wrongly decided, since neither properly interpreted legislative intent.

Declares that, when the legislature enacted the sentencing reform act, chapter 9.94A RCW, and each time the legislature has amended the act, the legislature intended that an offender's criminal history and offender score be determined using the statutory provisions that were in effect on the day the current offense was committed.

Declares that the legislature has never intended to create in an offender a vested right with respect to whether a prior conviction is excluded when calculating an offender score or with respect to how a prior conviction is counted in the offender score for a current offense.

6423-S

Sponsor(s): Senate Committee on Judiciary (originally sponsored by Senators Costa and McCaslin)

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

**SB 6423-S - DIGEST**

(DIGEST AS ENACTED)

Considers the majority opinions in *State v. Cruz*, 139 Wn. 2d 186 (1999), and *State v. Smith*, Cause No. 70683-2 (September 6, 2001), to be wrongly decided, since neither properly interpreted legislative intent.

Declares that, when the legislature enacted the sentencing reform act, chapter 9.94A RCW, and each time the legislature has amended the act, the legislature intended that an offender's criminal history and offender score be determined using the statutory provisions that were in effect on the day the current offense was committed.

Declares that the legislature has never intended to create in an offender a vested right with respect to whether a prior conviction is excluded when calculating an offender score or with respect to how a prior conviction is counted in the offender score for a current offense.

Declares that RCW 9.94A.030(13) (b) and (c) and 9.94A.525(18) apply only to current offenses committed on or after the effective date of this act. No offender who committed his or her current offense prior to the effective date of this act may be subject to resentencing as a result of this act.

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SENATE BILL 6423

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State of Washington 57th Legislature

2002 Regular Session

By Senators Costa and McCaslin

Read first time 01/17/2002. Referred to Committee on Judiciary.

1 AN ACT Relating to use of criminal history in sentencing decisions;  
2 amending RCW 9.94A.525; reenacting and amending RCW 9.94A.030; creating  
3 a new section; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. Sec. 1. The legislature considers the majority  
6 opinions in *State v. Cruz*, 139 Wn.2d 186 (1999), and *State v. Smith*,  
7 Cause No. 70683-2 (September 6, 2001), to be wrongly decided, since  
8 neither properly interpreted legislative intent. When the legislature  
9 enacted the sentencing reform act, chapter 9.94A RCW, and each time the  
10 legislature has amended the act, the legislature intended that an  
11 offender's criminal history and offender score be determined using the  
12 statutory provisions that were in effect on the day the current offense  
13 was committed.

14 Although certain prior convictions previously were not counted in  
15 the offender score or included in the criminal history pursuant to  
16 former versions of RCW 9.94A.525, or RCW 9.94A.030, those prior  
17 convictions need not be "revived" because they were never vacated. As  
18 noted in the minority opinions in *Cruz* and *Smith*, such application of  
19 the law does not involve retroactive application or violate ex

1 postfacto prohibitions. Additionally, the Washington state supreme  
2 court has repeatedly held in the past that the provisions of the  
3 sentencing reform act act upon and punish only current conduct; the  
4 sentencing reform act does not act upon or alter the punishment for  
5 prior convictions. See *In re Personal Restraint Petition of Williams*,  
6 111 Wn.2d 353, (1988). The legislature has never intended to create in  
7 an offender a vested right with respect to whether a prior conviction  
8 is excluded when calculating an offender score or with respect to how  
9 a prior conviction is counted in the offender score for a current  
10 offense.

11 **Sec. 2.** RCW 9.94A.030 and 2001 2nd sp.s. c 12 s 301, 2001 c 300 s  
12 3, and 2001 c 7 s 2 are each reenacted and amended to read as follows:

13 Unless the context clearly requires otherwise, the definitions in  
14 this section apply throughout this chapter.

15 (1) "Board" means the indeterminate sentence review board created  
16 under chapter 9.95 RCW.

17 (2) "Collect," or any derivative thereof, "collect and remit," or  
18 "collect and deliver," when used with reference to the department,  
19 means that the department, either directly or through a collection  
20 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
21 and enforcing the offender's sentence with regard to the legal  
22 financial obligation, receiving payment thereof from the offender, and,  
23 consistent with current law, delivering daily the entire payment to the  
24 superior court clerk without depositing it in a departmental account.

25 (3) "Commission" means the sentencing guidelines commission.

26 (4) "Community corrections officer" means an employee of the  
27 department who is responsible for carrying out specific duties in  
28 supervision of sentenced offenders and monitoring of sentence  
29 conditions.

30 (5) "Community custody" means that portion of an offender's  
31 sentence of confinement in lieu of earned release time or imposed  
32 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,  
33 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the  
34 community subject to controls placed on the offender's movement and  
35 activities by the department. For offenders placed on community  
36 custody for crimes committed on or after July 1, 2000, the department  
37 shall assess the offender's risk of reoffense and may establish and

1 modify conditions of community custody, in addition to those imposed by  
2 the court, based upon the risk to community safety.

3 (6) "Community custody range" means the minimum and maximum period  
4 of community custody included as part of a sentence under RCW  
5 9.94A.715, as established by the commission or the legislature under  
6 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

7 (7) "Community placement" means that period during which the  
8 offender is subject to the conditions of community custody and/or  
9 postrelease supervision, which begins either upon completion of the  
10 term of confinement (postrelease supervision) or at such time as the  
11 offender is transferred to community custody in lieu of earned release.  
12 Community placement may consist of entirely community custody, entirely  
13 postrelease supervision, or a combination of the two.

14 (8) "Community service" means compulsory service, without  
15 compensation, performed for the benefit of the community by the  
16 offender.

17 (9) "Community supervision" means a period of time during which a  
18 convicted offender is subject to crime-related prohibitions and other  
19 sentence conditions imposed by a court pursuant to this chapter or RCW  
20 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
21 a chemical dependency that has contributed to his or her offense, the  
22 conditions of supervision may, subject to available resources, include  
23 treatment. For purposes of the interstate compact for out-of-state  
24 supervision of parolees and probationers, RCW 9.95.270, community  
25 supervision is the functional equivalent of probation and should be  
26 considered the same as probation by other states.

27 (10) "Confinement" means total or partial confinement.

28 (11) "Conviction" means an adjudication of guilt pursuant to Titles  
29 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
30 acceptance of a plea of guilty.

31 (12) "Crime-related prohibition" means an order of a court  
32 prohibiting conduct that directly relates to the circumstances of the  
33 crime for which the offender has been convicted, and shall not be  
34 construed to mean orders directing an offender affirmatively to  
35 participate in rehabilitative programs or to otherwise perform  
36 affirmative conduct. However, affirmative acts necessary to monitor  
37 compliance with the order of a court may be required by the department.

1 (13) "Criminal history" means the list of a defendant's prior  
2 convictions and juvenile adjudications, whether in this state, in  
3 federal court, or elsewhere.

4 (a) The history shall include, where known, for each conviction  
5 ~~((a))~~ (i) whether the defendant has been placed on probation and the  
6 length and terms thereof; and ~~((b))~~ (ii) whether the defendant has  
7 been incarcerated and the length of incarceration.

8 (b) A conviction may be removed from a defendant's criminal history  
9 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or  
10 a similar out-of-state statute, or if the conviction has been vacated  
11 pursuant to a governor's pardon.

12 (c) The determination of a defendant's criminal history is distinct  
13 from the determination of an offender score. A prior conviction that  
14 was not included in an offender score calculated pursuant to a former  
15 version of the sentencing reform act remains part of the defendant's  
16 criminal history.

17 (14) "Day fine" means a fine imposed by the sentencing court that  
18 equals the difference between the offender's net daily income and the  
19 reasonable obligations that the offender has for the support of the  
20 offender and any dependents.

21 (15) "Day reporting" means a program of enhanced supervision  
22 designed to monitor the offender's daily activities and compliance with  
23 sentence conditions, and in which the offender is required to report  
24 daily to a specific location designated by the department or the  
25 sentencing court.

26 (16) "Department" means the department of corrections.

27 (17) "Determinate sentence" means a sentence that states with  
28 exactitude the number of actual years, months, or days of total  
29 confinement, of partial confinement, of community supervision, the  
30 number of actual hours or days of community service work, or dollars or  
31 terms of a legal financial obligation. The fact that an offender  
32 through earned release can reduce the actual period of confinement  
33 shall not affect the classification of the sentence as a determinate  
34 sentence.

35 (18) "Disposable earnings" means that part of the earnings of an  
36 offender remaining after the deduction from those earnings of any  
37 amount required by law to be withheld. For the purposes of this  
38 definition, "earnings" means compensation paid or payable for personal  
39 services, whether denominated as wages, salary, commission, bonuses, or

1 otherwise, and, notwithstanding any other provision of law making the  
2 payments exempt from garnishment, attachment, or other process to  
3 satisfy a court-ordered legal financial obligation, specifically  
4 includes periodic payments pursuant to pension or retirement programs,  
5 or insurance policies of any type, but does not include payments made  
6 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
7 or Title 74 RCW.

8 (19) "Drug offender sentencing alternative" is a sentencing option  
9 available to persons convicted of a felony offense other than a violent  
10 offense or a sex offense and who are eligible for the option under RCW  
11 9.94A.660.

12 (20) "Drug offense" means:

13 (a) Any felony violation of chapter 69.50 RCW except possession of  
14 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
15 controlled substance (RCW 69.50.403);

16 (b) Any offense defined as a felony under federal law that relates  
17 to the possession, manufacture, distribution, or transportation of a  
18 controlled substance; or

19 (c) Any out-of-state conviction for an offense that under the laws  
20 of this state would be a felony classified as a drug offense under (a)  
21 of this subsection.

22 (21) "Earned release" means earned release from confinement as  
23 provided in RCW 9.94A.728.

24 (22) "Escape" means:

25 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
26 first degree (RCW 9A.76.110), escape in the second degree (RCW  
27 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
28 willful failure to return from work release (RCW 72.65.070), or willful  
29 failure to be available for supervision by the department while in  
30 community custody (RCW 72.09.310); or

31 (b) Any federal or out-of-state conviction for an offense that  
32 under the laws of this state would be a felony classified as an escape  
33 under (a) of this subsection.

34 (23) "Felony traffic offense" means:

35 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
36 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
37 and-run injury-accident (RCW 46.52.020(4)); or

1 (b) Any federal or out-of-state conviction for an offense that  
2 under the laws of this state would be a felony classified as a felony  
3 traffic offense under (a) of this subsection.

4 (24) "Fine" means a specific sum of money ordered by the sentencing  
5 court to be paid by the offender to the court over a specific period of  
6 time.

7 (25) "First-time offender" means any person who has no prior  
8 convictions for a felony and is eligible for the first-time offender  
9 waiver under RCW 9.94A.650.

10 (26) "Home detention" means a program of partial confinement  
11 available to offenders wherein the offender is confined in a private  
12 residence subject to electronic surveillance.

13 (27) "Legal financial obligation" means a sum of money that is  
14 ordered by a superior court of the state of Washington for legal  
15 financial obligations which may include restitution to the victim,  
16 statutorily imposed crime victims' compensation fees as assessed  
17 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,  
18 court-appointed attorneys' fees, and costs of defense, fines, and any  
19 other financial obligation that is assessed to the offender as a result  
20 of a felony conviction. Upon conviction for vehicular assault while  
21 under the influence of intoxicating liquor or any drug, RCW  
22 46.61.522(1)(b), or vehicular homicide while under the influence of  
23 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial  
24 obligations may also include payment to a public agency of the expense  
25 of an emergency response to the incident resulting in the conviction,  
26 subject to RCW 38.52.430.

27 (28) "Most serious offense" means any of the following felonies or  
28 a felony attempt to commit any of the following felonies:

29 (a) Any felony defined under any law as a class A felony or  
30 criminal solicitation of or criminal conspiracy to commit a class A  
31 felony;

32 (b) Assault in the second degree;

33 (c) Assault of a child in the second degree;

34 (d) Child molestation in the second degree;

35 (e) Controlled substance homicide;

36 (f) Extortion in the first degree;

37 (g) Incest when committed against a child under age fourteen;

38 (h) Indecent liberties;

39 (i) Kidnapping in the second degree;

1 (j) Leading organized crime;  
2 (k) Manslaughter in the first degree;  
3 (l) Manslaughter in the second degree;  
4 (m) Promoting prostitution in the first degree;  
5 (n) Rape in the third degree;  
6 (o) Robbery in the second degree;  
7 (p) Sexual exploitation;  
8 (q) Vehicular assault, when caused by the operation or driving of  
9 a vehicle by a person while under the influence of intoxicating liquor  
10 or any drug or by the operation or driving of a vehicle in a reckless  
11 manner;  
12 (r) Vehicular homicide, when proximately caused by the driving of  
13 any vehicle by any person while under the influence of intoxicating  
14 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
15 any vehicle in a reckless manner;  
16 (s) Any other class B felony offense with a finding of sexual  
17 motivation;  
18 (t) Any other felony with a deadly weapon verdict under RCW  
19 9.94A.602;  
20 (u) Any felony offense in effect at any time prior to December 2,  
21 1993, that is comparable to a most serious offense under this  
22 subsection, or any federal or out-of-state conviction for an offense  
23 that under the laws of this state would be a felony classified as a  
24 most serious offense under this subsection;  
25 (v) (i) A prior conviction for indecent liberties under RCW  
26 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
27 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
28 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
29 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;  
30 (ii) A prior conviction for indecent liberties under RCW  
31 9A.44.100(1) (c) as it existed from June 11, 1986, until July 1, 1988,  
32 if: (A) The crime was committed against a child under the age of  
33 fourteen; or (B) the relationship between the victim and perpetrator is  
34 included in the definition of indecent liberties under RCW  
35 9A.44.100(1) (c) as it existed from July 1, 1988, through July 27, 1997,  
36 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
37 through July 27, 1997.  
38 (29) "Nonviolent offense" means an offense which is not a violent  
39 offense.

1 (30) "Offender" means a person who has committed a felony  
2 established by state law and is eighteen years of age or older or is  
3 less than eighteen years of age but whose case is under superior court  
4 jurisdiction under RCW 13.04.030 or has been transferred by the  
5 appropriate juvenile court to a criminal court pursuant to RCW  
6 13.40.110. Throughout this chapter, the terms "offender" and  
7 "defendant" are used interchangeably.

8 (31) "Partial confinement" means confinement for no more than one  
9 year in a facility or institution operated or utilized under contract  
10 by the state or any other unit of government, or, if home detention or  
11 work crew has been ordered by the court, in an approved residence, for  
12 a substantial portion of each day with the balance of the day spent in  
13 the community. Partial confinement includes work release, home  
14 detention, work crew, and a combination of work crew and home  
15 detention.

16 (32) "Persistent offender" is an offender who:

17 (a) (i) Has been convicted in this state of any felony considered a  
18 most serious offense; and

19 (ii) Has, before the commission of the offense under (a) of this  
20 subsection, been convicted as an offender on at least two separate  
21 occasions, whether in this state or elsewhere, of felonies that under  
22 the laws of this state would be considered most serious offenses and  
23 would be included in the offender score under RCW 9.94A.525; provided  
24 that of the two or more previous convictions, at least one conviction  
25 must have occurred before the commission of any of the other most  
26 serious offenses for which the offender was previously convicted; or

27 (b) (i) Has been convicted of: (A) Rape in the first degree, rape  
28 of a child in the first degree, child molestation in the first degree,  
29 rape in the second degree, rape of a child in the second degree, or  
30 indecent liberties by forcible compulsion; (B) any of the following  
31 offenses with a finding of sexual motivation: Murder in the first  
32 degree, murder in the second degree, homicide by abuse, kidnapping in  
33 the first degree, kidnapping in the second degree, assault in the first  
34 degree, assault in the second degree, assault of a child in the first  
35 degree, or burglary in the first degree; or (C) an attempt to commit  
36 any crime listed in this subsection (32) (b) (i); and

37 (ii) Has, before the commission of the offense under (b) (i) of this  
38 subsection, been convicted as an offender on at least one occasion,  
39 whether in this state or elsewhere, of an offense listed in (b) (i) of

1 this subsection or any federal or out-of-state offense or offense under  
2 prior Washington law that is comparable to the offenses listed in  
3 (b)(i) of this subsection. A conviction for rape of a child in the  
4 first degree constitutes a conviction under (b)(i) of this subsection  
5 only when the offender was sixteen years of age or older when the  
6 offender committed the offense. A conviction for rape of a child in  
7 the second degree constitutes a conviction under (b)(i) of this  
8 subsection only when the offender was eighteen years of age or older  
9 when the offender committed the offense.

10 (33) "Postrelease supervision" is that portion of an offender's  
11 community placement that is not community custody.

12 (34) "Restitution" means a specific sum of money ordered by the  
13 sentencing court to be paid by the offender to the court over a  
14 specified period of time as payment of damages. The sum may include  
15 both public and private costs.

16 (35) "Risk assessment" means the application of an objective  
17 instrument supported by research and adopted by the department for the  
18 purpose of assessing an offender's risk of reoffense, taking into  
19 consideration the nature of the harm done by the offender, place and  
20 circumstances of the offender related to risk, the offender's  
21 relationship to any victim, and any information provided to the  
22 department by victims. The results of a risk assessment shall not be  
23 based on unconfirmed or unconfirmable allegations.

24 (36) "Serious traffic offense" means:

25 (a) Driving while under the influence of intoxicating liquor or any  
26 drug (RCW 46.61.502), actual physical control while under the influence  
27 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving  
28 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
29 or

30 (b) Any federal, out-of-state, county, or municipal conviction for  
31 an offense that under the laws of this state would be classified as a  
32 serious traffic offense under (a) of this subsection.

33 (37) "Serious violent offense" is a subcategory of violent offense  
34 and means:

- 35 (a) (i) Murder in the first degree;  
36 (ii) Homicide by abuse;  
37 (iii) Murder in the second degree;  
38 (iv) Manslaughter in the first degree;  
39 (v) Assault in the first degree;

1 (vi) Kidnapping in the first degree;  
2 (vii) Rape in the first degree;  
3 (viii) Assault of a child in the first degree; or  
4 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
5 commit one of these felonies; or

6 (b) Any federal or out-of-state conviction for an offense that  
7 under the laws of this state would be a felony classified as a serious  
8 violent offense under (a) of this subsection.

9 (38) "Sex offense" means:

10 (a) (i) A felony that is a violation of chapter 9A.44 RCW other than  
11 RCW 9A.44.130(11);

12 (ii) A violation of RCW 9A.64.020;

13 (iii) A felony that is a violation of chapter 9.68A RCW other than  
14 RCW 9.68A.070 or 9.68A.080; or

15 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
16 criminal solicitation, or criminal conspiracy to commit such crimes;

17 (b) Any conviction for a felony offense in effect at any time prior  
18 to July 1, 1976, that is comparable to a felony classified as a sex  
19 offense in (a) of this subsection;

20 (c) A felony with a finding of sexual motivation under RCW  
21 9.94A.835 or 13.40.135; or

22 (d) Any federal or out-of-state conviction for an offense that  
23 under the laws of this state would be a felony classified as a sex  
24 offense under (a) of this subsection.

25 (39) "Sexual motivation" means that one of the purposes for which  
26 the defendant committed the crime was for the purpose of his or her  
27 sexual gratification.

28 (40) "Standard sentence range" means the sentencing court's  
29 discretionary range in imposing a nonappealable sentence.

30 (41) "Statutory maximum sentence" means the maximum length of time  
31 for which an offender may be confined as punishment for a crime as  
32 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the  
33 crime, or other statute defining the maximum penalty for a crime.

34 (42) "Total confinement" means confinement inside the physical  
35 boundaries of a facility or institution operated or utilized under  
36 contract by the state or any other unit of government for twenty-four  
37 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

38 (43) "Transition training" means written and verbal instructions  
39 and assistance provided by the department to the offender during the

1 two weeks prior to the offender's successful completion of the work  
2 ethic camp program. The transition training shall include instructions  
3 in the offender's requirements and obligations during the offender's  
4 period of community custody.

5 (44) "Victim" means any person who has sustained emotional,  
6 psychological, physical, or financial injury to person or property as  
7 a direct result of the crime charged.

8 (45) "Violent offense" means:

9 (a) Any of the following felonies:

10 (i) Any felony defined under any law as a class A felony or an  
11 attempt to commit a class A felony;

12 (ii) Criminal solicitation of or criminal conspiracy to commit a  
13 class A felony;

14 (iii) Manslaughter in the first degree;

15 (iv) Manslaughter in the second degree;

16 (v) Indecent liberties if committed by forcible compulsion;

17 (vi) Kidnapping in the second degree;

18 (vii) Arson in the second degree;

19 (viii) Assault in the second degree;

20 (ix) Assault of a child in the second degree;

21 (x) Extortion in the first degree;

22 (xi) Robbery in the second degree;

23 (xii) Drive-by shooting;

24 (xiii) Vehicular assault, when caused by the operation or driving  
25 of a vehicle by a person while under the influence of intoxicating  
26 liquor or any drug or by the operation or driving of a vehicle in a  
27 reckless manner; and

28 (xiv) Vehicular homicide, when proximately caused by the driving of  
29 any vehicle by any person while under the influence of intoxicating  
30 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
31 any vehicle in a reckless manner;

32 (b) Any conviction for a felony offense in effect at any time prior  
33 to July 1, 1976, that is comparable to a felony classified as a violent  
34 offense in (a) of this subsection; and

35 (c) Any federal or out-of-state conviction for an offense that  
36 under the laws of this state would be a felony classified as a violent  
37 offense under (a) or (b) of this subsection.

1 (46) "Work crew" means a program of partial confinement consisting  
2 of civic improvement tasks for the benefit of the community that  
3 complies with RCW 9.94A.725.

4 (47) "Work ethic camp" means an alternative incarceration program  
5 as provided in RCW 9.94A.690 designed to reduce recidivism and lower  
6 the cost of corrections by requiring offenders to complete a  
7 comprehensive array of real-world job and vocational experiences,  
8 character-building work ethics training, life management skills  
9 development, substance abuse rehabilitation, counseling, literacy  
10 training, and basic adult education.

11 (48) "Work release" means a program of partial confinement  
12 available to offenders who are employed or engaged as a student in a  
13 regular course of study at school.

14 **Sec. 3.** RCW 9.94A.525 and 2001 c 264 s 5 are each amended to read  
15 as follows:

16 The offender score is measured on the horizontal axis of the  
17 sentencing grid. The fact that a prior conviction was not included in  
18 an offender's offender score or criminal history at a previous  
19 sentencing shall have no bearing on whether it is included in the  
20 criminal history or offender score for the current offense.  
21 Accordingly, prior convictions that were not counted in the offender  
22 score or included in criminal history under repealed or previous  
23 versions of the sentencing reform act shall be included in criminal  
24 history and shall count in the offender score if the current version of  
25 the sentencing reform act requires including or counting those  
26 convictions. The offender score rules are as follows:

27 The offender score is the sum of points accrued under this section  
28 rounded down to the nearest whole number.

29 (1) A prior conviction is a conviction which exists before the date  
30 of sentencing for the offense for which the offender score is being  
31 computed. Convictions entered or sentenced on the same date as the  
32 conviction for which the offender score is being computed shall be  
33 deemed "other current offenses" within the meaning of RCW 9.94A.589.

34 (2) Class A and sex prior felony convictions shall always be  
35 included in the offender score. Class B prior felony convictions other  
36 than sex offenses shall not be included in the offender score, if since  
37 the last date of release from confinement (including full-time  
38 residential treatment) pursuant to a felony conviction, if any, or

1 entry of judgment and sentence, the offender had spent ten consecutive  
2 years in the community without committing any crime that subsequently  
3 results in a conviction. Class C prior felony convictions other than  
4 sex offenses shall not be included in the offender score if, since the  
5 last date of release from confinement (including full-time residential  
6 treatment) pursuant to a felony conviction, if any, or entry of  
7 judgment and sentence, the offender had spent five consecutive years in  
8 the community without committing any crime that subsequently results in  
9 a conviction. Serious traffic convictions shall not be included in the  
10 offender score if, since the last date of release from confinement  
11 (including full-time residential treatment) pursuant to a felony  
12 conviction, if any, or entry of judgment and sentence, the offender  
13 spent five years in the community without committing any crime that  
14 subsequently results in a conviction. This subsection applies to both  
15 adult and juvenile prior convictions.

16 (3) Out-of-state convictions for offenses shall be classified  
17 according to the comparable offense definitions and sentences provided  
18 by Washington law. Federal convictions for offenses shall be  
19 classified according to the comparable offense definitions and  
20 sentences provided by Washington law. If there is no clearly  
21 comparable offense under Washington law or the offense is one that is  
22 usually considered subject to exclusive federal jurisdiction, the  
23 offense shall be scored as a class C felony equivalent if it was a  
24 felony under the relevant federal statute.

25 (4) Score prior convictions for felony anticipatory offenses  
26 (attempts, criminal solicitations, and criminal conspiracies) the same  
27 as if they were convictions for completed offenses.

28 (5) (a) In the case of multiple prior convictions, for the purpose  
29 of computing the offender score, count all convictions separately,  
30 except:

31 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to  
32 encompass the same criminal conduct, shall be counted as one offense,  
33 the offense that yields the highest offender score. The current  
34 sentencing court shall determine with respect to other prior adult  
35 offenses for which sentences were served concurrently or prior juvenile  
36 offenses for which sentences were served consecutively, whether those  
37 offenses shall be counted as one offense or as separate offenses using  
38 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and  
39 if the court finds that they shall be counted as one offense, then the

1 offense that yields the highest offender score shall be used. The  
2 current sentencing court may presume that such other prior offenses  
3 were not the same criminal conduct from sentences imposed on separate  
4 dates, or in separate counties or jurisdictions, or in separate  
5 complaints, indictments, or informations;

6 (ii) In the case of multiple prior convictions for offenses  
7 committed before July 1, 1986, for the purpose of computing the  
8 offender score, count all adult convictions served concurrently as one  
9 offense, and count all juvenile convictions entered on the same date as  
10 one offense. Use the conviction for the offense that yields the  
11 highest offender score.

12 (b) As used in this subsection (5), "served concurrently" means  
13 that: (i) The latter sentence was imposed with specific reference to  
14 the former; (ii) the concurrent relationship of the sentences was  
15 judicially imposed; and (iii) the concurrent timing of the sentences  
16 was not the result of a probation or parole revocation on the former  
17 offense.

18 (6) If the present conviction is one of the anticipatory offenses  
19 of criminal attempt, solicitation, or conspiracy, count each prior  
20 conviction as if the present conviction were for a completed offense.  
21 When these convictions are used as criminal history, score them the  
22 same as a completed crime.

23 (7) If the present conviction is for a nonviolent offense and not  
24 covered by subsection (11) or (12) of this section, count one point for  
25 each adult prior felony conviction and one point for each juvenile  
26 prior violent felony conviction and 1/2 point for each juvenile prior  
27 nonviolent felony conviction.

28 (8) If the present conviction is for a violent offense and not  
29 covered in subsection (9), (10), (11), or (12) of this section, count  
30 two points for each prior adult and juvenile violent felony conviction,  
31 one point for each prior adult nonviolent felony conviction, and 1/2  
32 point for each prior juvenile nonviolent felony conviction.

33 (9) If the present conviction is for a serious violent offense,  
34 count three points for prior adult and juvenile convictions for crimes  
35 in this category, two points for each prior adult and juvenile violent  
36 conviction (not already counted), one point for each prior adult  
37 nonviolent felony conviction, and 1/2 point for each prior juvenile  
38 nonviolent felony conviction.

1 (10) If the present conviction is for Burglary 1, count prior  
2 convictions as in subsection (8) of this section; however count two  
3 points for each prior adult Burglary 2 or residential burglary  
4 conviction, and one point for each prior juvenile Burglary 2 or  
5 residential burglary conviction.

6 (11) If the present conviction is for a felony traffic offense  
7 count two points for each adult or juvenile prior conviction for  
8 Vehicular Homicide or Vehicular Assault; for each felony offense count  
9 one point for each adult and 1/2 point for each juvenile prior  
10 conviction; for each serious traffic offense, other than those used for  
11 an enhancement pursuant to RCW 46.61.520(2), count one point for each  
12 adult and 1/2 point for each juvenile prior conviction.

13 (12) If the present conviction is for a drug offense count three  
14 points for each adult prior felony drug offense conviction and two  
15 points for each juvenile drug offense. All other adult and juvenile  
16 felonies are scored as in subsection (8) of this section if the current  
17 drug offense is violent, or as in subsection (7) of this section if the  
18 current drug offense is nonviolent.

19 (13) If the present conviction is for Escape from Community  
20 Custody, RCW 72.09.310, count only prior escape convictions in the  
21 offender score. Count adult prior escape convictions as one point and  
22 juvenile prior escape convictions as 1/2 point.

23 (14) If the present conviction is for Escape 1, RCW 9A.76.110, or  
24 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and  
25 juvenile prior convictions as 1/2 point.

26 (15) If the present conviction is for Burglary 2 or residential  
27 burglary, count priors as in subsection (7) of this section; however,  
28 count two points for each adult and juvenile prior Burglary 1  
29 conviction, two points for each adult prior Burglary 2 or residential  
30 burglary conviction, and one point for each juvenile prior Burglary 2  
31 or residential burglary conviction.

32 (16) If the present conviction is for a sex offense, count priors  
33 as in subsections (7) through (15) of this section; however count three  
34 points for each adult and juvenile prior sex offense conviction.

35 (17) If the present conviction is for an offense committed while  
36 the offender was under community placement, add one point.

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SUBSTITUTE SENATE BILL 6423

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State of Washington      57th Legislature      2002 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators  
Costa and McCaslin)

READ FIRST TIME 02/08/2002.

1            AN ACT Relating to use of criminal history in sentencing decisions;  
2 amending RCW 9.94A.525; reenacting and amending RCW 9.94A.030; creating  
3 new sections; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.**    The legislature considers the majority  
6 opinions in *State v. Cruz*, 139 Wn.2d 186 (1999), and *State v. Smith*,  
7 Cause No. 70683-2 (September 6, 2001), to be wrongly decided, since  
8 neither properly interpreted legislative intent. When the legislature  
9 enacted the sentencing reform act, chapter 9.94A RCW, and each time the  
10 legislature has amended the act, the legislature intended that an  
11 offender's criminal history and offender score be determined using the  
12 statutory provisions that were in effect on the day the current offense  
13 was committed.

14            Although certain prior convictions previously were not counted in  
15 the offender score or included in the criminal history pursuant to  
16 former versions of RCW 9.94A.525, or RCW 9.94A.030, those prior  
17 convictions need not be "revived" because they were never vacated. As  
18 noted in the minority opinions in *Cruz* and *Smith*, such application of  
19 the law does not involve retroactive application or violate ex

1 postfacto prohibitions. Additionally, the Washington state supreme  
2 court has repeatedly held in the past that the provisions of the  
3 sentencing reform act act upon and punish only current conduct; the  
4 sentencing reform act does not act upon or alter the punishment for  
5 prior convictions. See *In re Personal Restraint Petition of Williams*,  
6 111 Wn.2d 353, (1988). The legislature has never intended to create in  
7 an offender a vested right with respect to whether a prior conviction  
8 is excluded when calculating an offender score or with respect to how  
9 a prior conviction is counted in the offender score for a current  
10 offense.

11 **Sec. 2.** RCW 9.94A.030 and 2001 2nd sp.s. c 12 s 301, 2001 c 300 s  
12 3, and 2001 c 7 s 2 are each reenacted and amended to read as follows:

13 Unless the context clearly requires otherwise, the definitions in  
14 this section apply throughout this chapter.

15 (1) "Board" means the indeterminate sentence review board created  
16 under chapter 9.95 RCW.

17 (2) "Collect," or any derivative thereof, "collect and remit," or  
18 "collect and deliver," when used with reference to the department,  
19 means that the department, either directly or through a collection  
20 agreement authorized by RCW 9.94A.760; is responsible for monitoring  
21 and enforcing the offender's sentence with regard to the legal  
22 financial obligation, receiving payment thereof from the offender, and,  
23 consistent with current law, delivering daily the entire payment to the  
24 superior court clerk without depositing it in a departmental account.

25 (3) "Commission" means the sentencing guidelines commission.

26 (4) "Community corrections officer" means an employee of the  
27 department who is responsible for carrying out specific duties in  
28 supervision of sentenced offenders and monitoring of sentence  
29 conditions.

30 (5) "Community custody" means that portion of an offender's  
31 sentence of confinement in lieu of earned release time or imposed  
32 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,  
33 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the  
34 community subject to controls placed on the offender's movement and  
35 activities by the department. For offenders placed on community  
36 custody for crimes committed on or after July 1, 2000, the department  
37 shall assess the offender's risk of reoffense and may establish and

1 modify conditions of community custody, in addition to those imposed by  
2 the court, based upon the risk to community safety.

3 (6) "Community custody range" means the minimum and maximum period  
4 of community custody included as part of a sentence under RCW  
5 9.94A.715, as established by the commission or the legislature under  
6 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

7 (7) "Community placement" means that period during which the  
8 offender is subject to the conditions of community custody and/or  
9 postrelease supervision, which begins either upon completion of the  
10 term of confinement (postrelease supervision) or at such time as the  
11 offender is transferred to community custody in lieu of earned release.  
12 Community placement may consist of entirely community custody, entirely  
13 postrelease supervision, or a combination of the two.

14 (8) "Community service" means compulsory service, without  
15 compensation, performed for the benefit of the community by the  
16 offender.

17 (9) "Community supervision" means a period of time during which a  
18 convicted offender is subject to crime-related prohibitions and other  
19 sentence conditions imposed by a court pursuant to this chapter or RCW  
20 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
21 a chemical dependency that has contributed to his or her offense, the  
22 conditions of supervision may, subject to available resources, include  
23 treatment. For purposes of the interstate compact for out-of-state  
24 supervision of parolees and probationers, RCW 9.95.270, community  
25 supervision is the functional equivalent of probation and should be  
26 considered the same as probation by other states.

27 (10) "Confinement" means total or partial confinement.

28 (11) "Conviction" means an adjudication of guilt pursuant to Titles  
29 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
30 acceptance of a plea of guilty.

31 (12) "Crime-related prohibition" means an order of a court  
32 prohibiting conduct that directly relates to the circumstances of the  
33 crime for which the offender has been convicted, and shall not be  
34 construed to mean orders directing an offender affirmatively to  
35 participate in rehabilitative programs or to otherwise perform  
36 affirmative conduct. However, affirmative acts necessary to monitor  
37 compliance with the order of a court may be required by the department.

1 (13) "Criminal history" means the list of a defendant's prior  
2 convictions and juvenile adjudications, whether in this state, in  
3 federal court, or elsewhere.

4 (a) The history shall include, where known, for each conviction  
5 ~~((a))~~ (i) whether the defendant has been placed on probation and the  
6 length and terms thereof; and ~~((b))~~ (ii) whether the defendant has  
7 been incarcerated and the length of incarceration.

8 (b) A conviction may be removed from a defendant's criminal history  
9 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or  
10 a similar out-of-state statute, or if the conviction has been vacated  
11 pursuant to a governor's pardon.

12 (c) The determination of a defendant's criminal history is distinct  
13 from the determination of an offender score. A prior conviction that  
14 was not included in an offender score calculated pursuant to a former  
15 version of the sentencing reform act remains part of the defendant's  
16 criminal history.

17 (14) "Day fine" means a fine imposed by the sentencing court that  
18 equals the difference between the offender's net daily income and the  
19 reasonable obligations that the offender has for the support of the  
20 offender and any dependents.

21 (15) "Day reporting" means a program of enhanced supervision  
22 designed to monitor the offender's daily activities and compliance with  
23 sentence conditions, and in which the offender is required to report  
24 daily to a specific location designated by the department or the  
25 sentencing court.

26 (16) "Department" means the department of corrections.

27 (17) "Determinate sentence" means a sentence that states with  
28 exactitude the number of actual years, months, or days of total  
29 confinement, of partial confinement, of community supervision, the  
30 number of actual hours or days of community service work, or dollars or  
31 terms of a legal financial obligation. The fact that an offender  
32 through earned release can reduce the actual period of confinement  
33 shall not affect the classification of the sentence as a determinate  
34 sentence.

35 (18) "Disposable earnings" means that part of the earnings of an  
36 offender remaining after the deduction from those earnings of any  
37 amount required by law to be withheld. For the purposes of this  
38 definition, "earnings" means compensation paid or payable for personal  
39 services, whether denominated as wages, salary, commission, bonuses, or

1 otherwise, and, notwithstanding any other provision of law making the  
2 payments exempt from garnishment, attachment, or other process to  
3 satisfy a court-ordered legal financial obligation, specifically  
4 includes periodic payments pursuant to pension or retirement programs,  
5 or insurance policies of any type, but does not include payments made  
6 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
7 or Title 74 RCW.

8 (19) "Drug offender sentencing alternative" is a sentencing option  
9 available to persons convicted of a felony offense other than a violent  
10 offense or a sex offense and who are eligible for the option under RCW  
11 9.94A.660.

12 (20) "Drug offense" means:

13 (a) Any felony violation of chapter 69.50 RCW except possession of  
14 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
15 controlled substance (RCW 69.50.403);

16 (b) Any offense defined as a felony under federal law that relates  
17 to the possession, manufacture, distribution, or transportation of a  
18 controlled substance; or

19 (c) Any out-of-state conviction for an offense that under the laws  
20 of this state would be a felony classified as a drug offense under (a)  
21 of this subsection.

22 (21) "Earned release" means earned release from confinement as  
23 provided in RCW 9.94A.728.

24 (22) "Escape" means:

25 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
26 first degree (RCW 9A.76.110), escape in the second degree (RCW  
27 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
28 willful failure to return from work release (RCW 72.65.070), or willful  
29 failure to be available for supervision by the department while in  
30 community custody (RCW 72.09.310); or

31 (b) Any federal or out-of-state conviction for an offense that  
32 under the laws of this state would be a felony classified as an escape  
33 under (a) of this subsection.

34 (23) "Felony traffic offense" means:

35 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
36 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
37 and-run injury-accident (RCW 46.52.020(4)); or

1 (b) Any federal or out-of-state conviction for an offense that  
2 under the laws of this state would be a felony classified as a felony  
3 traffic offense under (a) of this subsection.

4 (24) "Fine" means a specific sum of money ordered by the sentencing  
5 court to be paid by the offender to the court over a specific period of  
6 time.

7 (25) "First-time offender" means any person who has no prior  
8 convictions for a felony and is eligible for the first-time offender  
9 waiver under RCW 9.94A.650.

10 (26) "Home detention" means a program of partial confinement  
11 available to offenders wherein the offender is confined in a private  
12 residence subject to electronic surveillance.

13 (27) "Legal financial obligation" means a sum of money that is  
14 ordered by a superior court of the state of Washington for legal  
15 financial obligations which may include restitution to the victim,  
16 statutorily imposed crime victims' compensation fees as assessed  
17 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,  
18 court-appointed attorneys' fees, and costs of defense, fines, and any  
19 other financial obligation that is assessed to the offender as a result  
20 of a felony conviction. Upon conviction for vehicular assault while  
21 under the influence of intoxicating liquor or any drug, RCW  
22 46.61.522(1)(b), or vehicular homicide while under the influence of  
23 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial  
24 obligations may also include payment to a public agency of the expense  
25 of an emergency response to the incident resulting in the conviction,  
26 subject to RCW 38.52.430.

27 (28) "Most serious offense" means any of the following felonies or  
28 a felony attempt to commit any of the following felonies:

29 (a) Any felony defined under any law as a class A felony or  
30 criminal solicitation of or criminal conspiracy to commit a class A  
31 felony;

32 (b) Assault in the second degree;

33 (c) Assault of a child in the second degree;

34 (d) Child molestation in the second degree;

35 (e) Controlled substance homicide;

36 (f) Extortion in the first degree;

37 (g) Incest when committed against a child under age fourteen;

38 (h) Indecent liberties;

39 (i) Kidnapping in the second degree;

1 (j) Leading organized crime;  
2 (k) Manslaughter in the first degree;  
3 (l) Manslaughter in the second degree;  
4 (m) Promoting prostitution in the first degree;  
5 (n) Rape in the third degree;  
6 (o) Robbery in the second degree;  
7 (p) Sexual exploitation;  
8 (q) Vehicular assault, when caused by the operation or driving of  
9 a vehicle by a person while under the influence of intoxicating liquor  
10 or any drug or by the operation or driving of a vehicle in a reckless  
11 manner;  
12 (r) Vehicular homicide, when proximately caused by the driving of  
13 any vehicle by any person while under the influence of intoxicating  
14 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
15 any vehicle in a reckless manner;  
16 (s) Any other class B felony offense with a finding of sexual  
17 motivation;  
18 (t) Any other felony with a deadly weapon verdict under RCW  
19 9.94A.602;  
20 (u) Any felony offense in effect at any time prior to December 2,  
21 1993, that is comparable to a most serious offense under this  
22 subsection, or any federal or out-of-state conviction for an offense  
23 that under the laws of this state would be a felony classified as a  
24 most serious offense under this subsection;  
25 (v) (i) A prior conviction for indecent liberties under RCW  
26 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
27 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
28 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
29 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;  
30 (ii) A prior conviction for indecent liberties under RCW  
31 9A.44.100(1) (c) as it existed from June 11, 1986, until July 1, 1988,  
32 if: (A) The crime was committed against a child under the age of  
33 fourteen; or (B) the relationship between the victim and perpetrator is  
34 included in the definition of indecent liberties under RCW  
35 9A.44.100(1) (c) as it existed from July 1, 1988, through July 27, 1997,  
36 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
37 through July 27, 1997.  
38 (29) "Nonviolent offense" means an offense which is not a violent  
39 offense.

1 (30) "Offender" means a person who has committed a felony  
2 established by state law and is eighteen years of age or older or is  
3 less than eighteen years of age but whose case is under superior court  
4 jurisdiction under RCW 13.04.030 or has been transferred by the  
5 appropriate juvenile court to a criminal court pursuant to RCW  
6 13.40.110. Throughout this chapter, the terms "offender" and  
7 "defendant" are used interchangeably.

8 (31) "Partial confinement" means confinement for no more than one  
9 year in a facility or institution operated or utilized under contract  
10 by the state or any other unit of government, or, if home detention or  
11 work crew has been ordered by the court, in an approved residence, for  
12 a substantial portion of each day with the balance of the day spent in  
13 the community. Partial confinement includes work release, home  
14 detention, work crew, and a combination of work crew and home  
15 detention.

16 (32) "Persistent offender" is an offender who:

17 (a) (i) Has been convicted in this state of any felony considered a  
18 most serious offense; and

19 (ii) Has, before the commission of the offense under (a) of this  
20 subsection, been convicted as an offender on at least two separate  
21 occasions, whether in this state or elsewhere, of felonies that under  
22 the laws of this state would be considered most serious offenses and  
23 would be included in the offender score under RCW 9.94A.525; provided  
24 that of the two or more previous convictions, at least one conviction  
25 must have occurred before the commission of any of the other most  
26 serious offenses for which the offender was previously convicted; or

27 (b) (i) Has been convicted of: (A) Rape in the first degree, rape  
28 of a child in the first degree, child molestation in the first degree,  
29 rape in the second degree, rape of a child in the second degree, or  
30 indecent liberties by forcible compulsion; (B) any of the following  
31 offenses with a finding of sexual motivation: Murder in the first  
32 degree, murder in the second degree, homicide by abuse, kidnapping in  
33 the first degree, kidnapping in the second degree, assault in the first  
34 degree, assault in the second degree, assault of a child in the first  
35 degree, or burglary in the first degree; or (C) an attempt to commit  
36 any crime listed in this subsection (32) (b) (i); and

37 (ii) Has, before the commission of the offense under (b) (i) of this  
38 subsection, been convicted as an offender on at least one occasion,  
39 whether in this state or elsewhere, of an offense listed in (b) (i) of

1 this subsection or any federal or out-of-state offense or offense under  
2 prior Washington law that is comparable to the offenses listed in  
3 (b)(i) of this subsection. A conviction for rape of a child in the  
4 first degree constitutes a conviction under (b)(i) of this subsection  
5 only when the offender was sixteen years of age or older when the  
6 offender committed the offense. A conviction for rape of a child in  
7 the second degree constitutes a conviction under (b)(i) of this  
8 subsection only when the offender was eighteen years of age or older  
9 when the offender committed the offense.

10 (33) "Postrelease supervision" is that portion of an offender's  
11 community placement that is not community custody.

12 (34) "Restitution" means a specific sum of money ordered by the  
13 sentencing court to be paid by the offender to the court over a  
14 specified period of time as payment of damages. The sum may include  
15 both public and private costs.

16 (35) "Risk assessment" means the application of an objective  
17 instrument supported by research and adopted by the department for the  
18 purpose of assessing an offender's risk of reoffense, taking into  
19 consideration the nature of the harm done by the offender, place and  
20 circumstances of the offender related to risk, the offender's  
21 relationship to any victim, and any information provided to the  
22 department by victims. The results of a risk assessment shall not be  
23 based on unconfirmed or unconfirmable allegations.

24 (36) "Serious traffic offense" means:

25 (a) Driving while under the influence of intoxicating liquor or any  
26 drug (RCW 46.61.502); actual physical control while under the influence  
27 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving  
28 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
29 or

30 (b) Any federal, out-of-state, county, or municipal conviction for  
31 an offense that under the laws of this state would be classified as a  
32 serious traffic offense under (a) of this subsection.

33 (37) "Serious violent offense" is a subcategory of violent offense  
34 and means:

35 (a)(i) Murder in the first degree;  
36 (ii) Homicide by abuse;  
37 (iii) Murder in the second degree;  
38 (iv) Manslaughter in the first degree;  
39 (v) Assault in the first degree;

1 (vi) Kidnapping in the first degree;  
2 (vii) Rape in the first degree;  
3 (viii) Assault of a child in the first degree; or  
4 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
5 commit one of these felonies; or  
6 (b) Any federal or out-of-state conviction for an offense that  
7 under the laws of this state would be a felony classified as a serious  
8 violent offense under (a) of this subsection.  
9 (38) "Sex offense" means:  
10 (a) (i) A felony that is a violation of chapter 9A.44 RCW other than  
11 RCW 9A.44.130(11);  
12 (ii) A violation of RCW 9A.64.020;  
13 (iii) A felony that is a violation of chapter 9.68A RCW other than  
14 RCW 9.68A.070 or 9.68A.080; or  
15 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
16 criminal solicitation, or criminal conspiracy to commit such crimes;  
17 (b) Any conviction for a felony offense in effect at any time prior  
18 to July 1, 1976, that is comparable to a felony classified as a sex  
19 offense in (a) of this subsection;  
20 (c) A felony with a finding of sexual motivation under RCW  
21 9.94A.835 or 13.40.135; or  
22 (d) Any federal or out-of-state conviction for an offense that  
23 under the laws of this state would be a felony classified as a sex  
24 offense under (a) of this subsection.  
25 (39) "Sexual motivation" means that one of the purposes for which  
26 the defendant committed the crime was for the purpose of his or her  
27 sexual gratification.  
28 (40) "Standard sentence range" means the sentencing court's  
29 discretionary range in imposing a nonappealable sentence.  
30 (41) "Statutory maximum sentence" means the maximum length of time  
31 for which an offender may be confined as punishment for a crime as  
32 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the  
33 crime, or other statute defining the maximum penalty for a crime.  
34 (42) "Total confinement" means confinement inside the physical  
35 boundaries of a facility or institution operated or utilized under  
36 contract by the state or any other unit of government for twenty-four  
37 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.  
38 (43) "Transition training" means written and verbal instructions  
39 and assistance provided by the department to the offender during the

1 two weeks prior to the offender's successful completion of the work  
2 ethic camp program. The transition training shall include instructions  
3 in the offender's requirements and obligations during the offender's  
4 period of community custody.

5 (44) "Victim" means any person who has sustained emotional,  
6 psychological, physical, or financial injury to person or property as  
7 a direct result of the crime charged.

8 (45) "Violent offense" means:

9 (a) Any of the following felonies:

10 (i) Any felony defined under any law as a class A felony or an  
11 attempt to commit a class A felony;

12 (ii) Criminal solicitation of or criminal conspiracy to commit a  
13 class A felony;

14 (iii) Manslaughter in the first degree;

15 (iv) Manslaughter in the second degree;

16 (v) Indecent liberties if committed by forcible compulsion;

17 (vi) Kidnapping in the second degree;

18 (vii) Arson in the second degree;

19 (viii) Assault in the second degree;

20 (ix) Assault of a child in the second degree;

21 (x) Extortion in the first degree;

22 (xi) Robbery in the second degree;

23 (xii) Drive-by shooting;

24 (xiii) Vehicular assault, when caused by the operation or driving  
25 of a vehicle by a person while under the influence of intoxicating  
26 liquor or any drug or by the operation or driving of a vehicle in a  
27 reckless manner; and

28 (xiv) Vehicular homicide, when proximately caused by the driving of  
29 any vehicle by any person while under the influence of intoxicating  
30 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
31 any vehicle in a reckless manner;

32 (b) Any conviction for a felony offense in effect at any time prior  
33 to July 1, 1976, that is comparable to a felony classified as a violent  
34 offense in (a) of this subsection; and

35 (c) Any federal or out-of-state conviction for an offense that  
36 under the laws of this state would be a felony classified as a violent  
37 offense under (a) or (b) of this subsection.

1 (46) "Work crew" means a program of partial confinement consisting  
2 of civic improvement tasks for the benefit of the community that  
3 complies with RCW 9.94A.725.

4 (47) "Work ethic camp" means an alternative incarceration program  
5 as provided in RCW 9.94A.690 designed to reduce recidivism and lower  
6 the cost of corrections by requiring offenders to complete a  
7 comprehensive array of real-world job and vocational experiences,  
8 character-building work ethics training, life management skills  
9 development, substance abuse rehabilitation, counseling, literacy  
10 training, and basic adult education.

11 (48) "Work release" means a program of partial confinement  
12 available to offenders who are employed or engaged as a student in a  
13 regular course of study at school.

14 **Sec. 3.** RCW 9.94A.525 and 2001 c 264 s 5 are each amended to read  
15 as follows:

16 The offender score is measured on the horizontal axis of the  
17 sentencing grid. The offender score rules are as follows:

18 The offender score is the sum of points accrued under this section  
19 rounded down to the nearest whole number.

20 (1) A prior conviction is a conviction which exists before the date  
21 of sentencing for the offense for which the offender score is being  
22 computed. Convictions entered or sentenced on the same date as the  
23 conviction for which the offender score is being computed shall be  
24 deemed "other current offenses" within the meaning of RCW 9.94A.589.

25 (2) Class A and sex prior felony convictions shall always be  
26 included in the offender score. Class B prior felony convictions other  
27 than sex offenses shall not be included in the offender score, if since  
28 the last date of release from confinement (including full-time  
29 residential treatment) pursuant to a felony conviction, if any, or  
30 entry of judgment and sentence, the offender had spent ten consecutive  
31 years in the community without committing any crime that subsequently  
32 results in a conviction. Class C prior felony convictions other than  
33 sex offenses shall not be included in the offender score if, since the  
34 last date of release from confinement (including full-time residential  
35 treatment) pursuant to a felony conviction, if any, or entry of  
36 judgment and sentence, the offender had spent five consecutive years in  
37 the community without committing any crime that subsequently results in  
38 a conviction. Serious traffic convictions shall not be included in the

1 offender score if, since the last date of release from confinement  
2 (including full-time residential treatment) pursuant to a felony  
3 conviction, if any, or entry of judgment and sentence, the offender  
4 spent five years in the community without committing any crime that  
5 subsequently results in a conviction. This subsection applies to both  
6 adult and juvenile prior convictions.

7 (3) Out-of-state convictions for offenses shall be classified  
8 according to the comparable offense definitions and sentences provided  
9 by Washington law. Federal convictions for offenses shall be  
10 classified according to the comparable offense definitions and  
11 sentences provided by Washington law. If there is no clearly  
12 comparable offense under Washington law or the offense is one that is  
13 usually considered subject to exclusive federal jurisdiction, the  
14 offense shall be scored as a class C felony equivalent if it was a  
15 felony under the relevant federal statute.

16 (4) Score prior convictions for felony anticipatory offenses  
17 (attempts, criminal solicitations, and criminal conspiracies) the same  
18 as if they were convictions for completed offenses.

19 (5) (a) In the case of multiple prior convictions, for the purpose  
20 of computing the offender score, count all convictions separately,  
21 except:

22 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to  
23 encompass the same criminal conduct, shall be counted as one offense,  
24 the offense that yields the highest offender score. The current  
25 sentencing court shall determine with respect to other prior adult  
26 offenses for which sentences were served concurrently or prior juvenile  
27 offenses for which sentences were served consecutively, whether those  
28 offenses shall be counted as one offense or as separate offenses using  
29 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and  
30 if the court finds that they shall be counted as one offense, then the  
31 offense that yields the highest offender score shall be used. The  
32 current sentencing court may presume that such other prior offenses  
33 were not the same criminal conduct from sentences imposed on separate  
34 dates, or in separate counties or jurisdictions, or in separate  
35 complaints, indictments, or informations;

36 (ii) In the case of multiple prior convictions for offenses  
37 committed before July 1, 1986, for the purpose of computing the  
38 offender score, count all adult convictions served concurrently as one  
39 offense, and count all juvenile convictions entered on the same date as

1 one offense. Use the conviction for the offense that yields the  
2 highest offender score.

3 (b) As used in this subsection (5), "served concurrently" means  
4 that: (i) The latter sentence was imposed with specific reference to  
5 the former; (ii) the concurrent relationship of the sentences was  
6 judicially imposed; and (iii) the concurrent timing of the sentences  
7 was not the result of a probation or parole revocation on the former  
8 offense.

9 (6) If the present conviction is one of the anticipatory offenses  
10 of criminal attempt, solicitation, or conspiracy, count each prior  
11 conviction as if the present conviction were for a completed offense.  
12 When these convictions are used as criminal history, score them the  
13 same as a completed crime.

14 (7) If the present conviction is for a nonviolent offense and not  
15 covered by subsection (11) or (12) of this section, count one point for  
16 each adult prior felony conviction and one point for each juvenile  
17 prior violent felony conviction and 1/2 point for each juvenile prior  
18 nonviolent felony conviction.

19 (8) If the present conviction is for a violent offense and not  
20 covered in subsection (9), (10), (11), or (12) of this section, count  
21 two points for each prior adult and juvenile violent felony conviction,  
22 one point for each prior adult nonviolent felony conviction, and 1/2  
23 point for each prior juvenile nonviolent felony conviction.

24 (9) If the present conviction is for a serious violent offense,  
25 count three points for prior adult and juvenile convictions for crimes  
26 in this category, two points for each prior adult and juvenile violent  
27 conviction (not already counted), one point for each prior adult  
28 nonviolent felony conviction, and 1/2 point for each prior juvenile  
29 nonviolent felony conviction.

30 (10) If the present conviction is for Burglary 1, count prior  
31 convictions as in subsection (8) of this section; however count two  
32 points for each prior adult Burglary 2 or residential burglary  
33 conviction, and one point for each prior juvenile Burglary 2 or  
34 residential burglary conviction.

35 (11) If the present conviction is for a felony traffic offense  
36 count two points for each adult or juvenile prior conviction for  
37 Vehicular Homicide or Vehicular Assault; for each felony offense count  
38 one point for each adult and 1/2 point for each juvenile prior  
39 conviction; for each serious traffic offense, other than those used for

1 an enhancement pursuant to RCW 46.61.520(2), count one point for each  
2 adult and 1/2 point for each juvenile prior conviction.

3 (12) If the present conviction is for a drug offense count three  
4 points for each adult prior felony drug offense conviction and two  
5 points for each juvenile drug offense. All other adult and juvenile  
6 felonies are scored as in subsection (8) of this section if the current  
7 drug offense is violent, or as in subsection (7) of this section if the  
8 current drug offense is nonviolent.

9 (13) If the present conviction is for Escape from Community  
10 Custody, RCW 72.09.310, count only prior escape convictions in the  
11 offender score. Count adult prior escape convictions as one point and  
12 juvenile prior escape convictions as 1/2 point.

13 (14) If the present conviction is for Escape 1, RCW 9A.76.110, or  
14 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and  
15 juvenile prior convictions as 1/2 point.

16 (15) If the present conviction is for Burglary 2 or residential  
17 burglary, count priors as in subsection (7) of this section; however,  
18 count two points for each adult and juvenile prior Burglary 1  
19 conviction, two points for each adult prior Burglary 2 or residential  
20 burglary conviction, and one point for each juvenile prior Burglary 2  
21 or residential burglary conviction.

22 (16) If the present conviction is for a sex offense, count priors  
23 as in subsections (7) through (15) of this section; however count three  
24 points for each adult and juvenile prior sex offense conviction.

25 (17) If the present conviction is for an offense committed while  
26 the offender was under community placement, add one point.

27 (18) The fact that a prior conviction was not included in an  
28 offender's offender score or criminal history at a previous sentencing  
29 shall have no bearing on whether it is included in the criminal history  
30 or offender score for the current offense. Accordingly, prior  
31 convictions that were not counted in the offender score or included in  
32 criminal history under repealed or previous versions of the sentencing  
33 reform act shall be included in criminal history and shall count in the  
34 offender score if the current version of the sentencing reform act  
35 requires including or counting those convictions.

36 NEW SECTION. **Sec. 4.** RCW 9.94A.030(13) (b) and (c) and  
37 9.94A.525(18) apply only to current offenses committed on or after the  
38 effective date of this act. No offender who committed his or her

- 1 current offense prior to the effective date of this act may be subject
- 2 to resentencing as a result of this act.

--- END ---

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6423

57th Legislature  
2002 Regular Session

Passed by the Senate February 18, 2002  
YEAS 48 NAYS 0

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President of the Senate

Passed by the House March 6, 2002  
YEAS 93 NAYS 0

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Speaker of the  
House of Representatives

Approved

---

Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is SUBSTITUTE SENATE BILL 6423 as passed by the Senate and the House of Representatives on the dates hereon set forth.

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Secretary

FILED

Secretary of State  
State of Washington

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SUBSTITUTE SENATE BILL 6423

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Passed Legislature - 2002 Regular Session

State of Washington

57th Legislature

2002 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Costa and McCaslin)

READ FIRST TIME 02/08/2002.

1 AN ACT Relating to use of criminal history in sentencing decisions;  
2 amending RCW 9.94A.525; reenacting and amending RCW 9.94A.030; creating  
3 new sections; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. Sec. 1. The legislature considers the majority  
6 opinions in *State v. Cruz*, 139 Wn.2d 186 (1999), and *State v. Smith*,  
7 Cause No. 70683-2 (September 6, 2001), to be wrongly decided, since  
8 neither properly interpreted legislative intent. When the legislature  
9 enacted the sentencing reform act, chapter 9.94A RCW, and each time the  
10 legislature has amended the act, the legislature intended that an  
11 offender's criminal history and offender score be determined using the  
12 statutory provisions that were in effect on the day the current offense  
13 was committed.

14 Although certain prior convictions previously were not counted in  
15 the offender score or included in the criminal history pursuant to  
16 former versions of RCW 9.94A.525, or RCW 9.94A.030, those prior  
17 convictions need not be "revived" because they were never vacated. As  
18 noted in the minority opinions in *Cruz* and *Smith*, such application of  
19 the law does not involve retroactive application or violate ex

1 postfacto prohibitions. Additionally, the Washington state supreme  
2 court has repeatedly held in the past that the provisions of the  
3 sentencing reform act act upon and punish only current conduct; the  
4 sentencing reform act does not act upon or alter the punishment for  
5 prior convictions. See *In re Personal Restraint Petition of Williams*,  
6 111 Wn.2d 353, (1988). The legislature has never intended to create in  
7 an offender a vested right with respect to whether a prior conviction  
8 is excluded when calculating an offender score or with respect to how  
9 a prior conviction is counted in the offender score for a current  
10 offense.

11 **Sec. 2.** RCW 9.94A.030 and 2001 2nd sp.s. c 12 s 301, 2001 c 300 s  
12 3, and 2001 c 7 s 2 are each reenacted and amended to read as follows:

13 Unless the context clearly requires otherwise, the definitions in  
14 this section apply throughout this chapter.

15 (1) "Board" means the indeterminate sentence review board created  
16 under chapter 9.95 RCW.

17 (2) "Collect," or any derivative thereof, "collect and remit," or  
18 "collect and deliver," when used with reference to the department,  
19 means that the department, either directly or through a collection  
20 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
21 and enforcing the offender's sentence with regard to the legal  
22 financial obligation, receiving payment thereof from the offender, and,  
23 consistent with current law, delivering daily the entire payment to the  
24 superior court clerk without depositing it in a departmental account.

25 (3) "Commission" means the sentencing guidelines commission.

26 (4) "Community corrections officer" means an employee of the  
27 department who is responsible for carrying out specific duties in  
28 supervision of sentenced offenders and monitoring of sentence  
29 conditions.

30 (5) "Community custody" means that portion of an offender's  
31 sentence of confinement in lieu of earned release time or imposed  
32 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,  
33 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the  
34 community subject to controls placed on the offender's movement and  
35 activities by the department. For offenders placed on community  
36 custody for crimes committed on or after July 1, 2000, the department  
37 shall assess the offender's risk of reoffense and may establish and

1 modify conditions of community custody, in addition to those imposed by  
2 the court, based upon the risk to community safety.

3 (6) "Community custody range" means the minimum and maximum period  
4 of community custody included as part of a sentence under RCW  
5 9.94A.715, as established by the commission or the legislature under  
6 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

7 (7) "Community placement" means that period during which the  
8 offender is subject to the conditions of community custody and/or  
9 postrelease supervision, which begins either upon completion of the  
10 term of confinement (postrelease supervision) or at such time as the  
11 offender is transferred to community custody in lieu of earned release.  
12 Community placement may consist of entirely community custody, entirely  
13 postrelease supervision, or a combination of the two.

14 (8) "Community service" means compulsory service, without  
15 compensation, performed for the benefit of the community by the  
16 offender.

17 (9) "Community supervision" means a period of time during which a  
18 convicted offender is subject to crime-related prohibitions and other  
19 sentence conditions imposed by a court pursuant to this chapter or RCW  
20 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
21 a chemical dependency that has contributed to his or her offense, the  
22 conditions of supervision may, subject to available resources, include  
23 treatment. For purposes of the interstate compact for out-of-state  
24 supervision of parolees and probationers, RCW 9.95.270, community  
25 supervision is the functional equivalent of probation and should be  
26 considered the same as probation by other states.

27 (10) "Confinement" means total or partial confinement.

28 (11) "Conviction" means an adjudication of guilt pursuant to Titles  
29 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
30 acceptance of a plea of guilty.

31 (12) "Crime-related prohibition" means an order of a court  
32 prohibiting conduct that directly relates to the circumstances of the  
33 crime for which the offender has been convicted, and shall not be  
34 construed to mean orders directing an offender affirmatively to  
35 participate in rehabilitative programs or to otherwise perform  
36 affirmative conduct. However, affirmative acts necessary to monitor  
37 compliance with the order of a court may be required by the department.

1 (13) "Criminal history" means the list of a defendant's prior  
2 convictions and juvenile adjudications, whether in this state, in  
3 federal court, or elsewhere.

4 (a) The history shall include, where known, for each conviction  
5 ~~((a))~~ (i) whether the defendant has been placed on probation and the  
6 length and terms thereof; and ~~((b))~~ (ii) whether the defendant has  
7 been incarcerated and the length of incarceration.

8 (b) A conviction may be removed from a defendant's criminal history  
9 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or  
10 a similar out-of-state statute, or if the conviction has been vacated  
11 pursuant to a governor's pardon.

12 (c) The determination of a defendant's criminal history is distinct  
13 from the determination of an offender score. A prior conviction that  
14 was not included in an offender score calculated pursuant to a former  
15 version of the sentencing reform act remains part of the defendant's  
16 criminal history.

17 (14) "Day fine" means a fine imposed by the sentencing court that  
18 equals the difference between the offender's net daily income and the  
19 reasonable obligations that the offender has for the support of the  
20 offender and any dependents.

21 (15) "Day reporting" means a program of enhanced supervision  
22 designed to monitor the offender's daily activities and compliance with  
23 sentence conditions, and in which the offender is required to report  
24 daily to a specific location designated by the department or the  
25 sentencing court.

26 (16) "Department" means the department of corrections.

27 (17) "Determinate sentence" means a sentence that states with  
28 exactitude the number of actual years, months, or days of total  
29 confinement, of partial confinement, of community supervision, the  
30 number of actual hours or days of community service work, or dollars or  
31 terms of a legal financial obligation. The fact that an offender  
32 through earned release can reduce the actual period of confinement  
33 shall not affect the classification of the sentence as a determinate  
34 sentence.

35 (18) "Disposable earnings" means that part of the earnings of an  
36 offender remaining after the deduction from those earnings of any  
37 amount required by law to be withheld. For the purposes of this  
38 definition, "earnings" means compensation paid or payable for personal  
39 services, whether denominated as wages, salary, commission, bonuses, or

1 otherwise, and, notwithstanding any other provision of law making the  
2 payments exempt from garnishment, attachment, or other process to  
3 satisfy a court-ordered legal financial obligation, specifically  
4 includes periodic payments pursuant to pension or retirement programs,  
5 or insurance policies of any type, but does not include payments made  
6 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
7 or Title 74 RCW.

8 (19) "Drug offender sentencing alternative" is a sentencing option  
9 available to persons convicted of a felony offense other than a violent  
10 offense or a sex offense and who are eligible for the option under RCW  
11 9.94A.660.

12 (20) "Drug offense" means:

13 (a) Any felony violation of chapter 69.50 RCW except possession of  
14 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
15 controlled substance (RCW 69.50.403);

16 (b) Any offense defined as a felony under federal law that relates  
17 to the possession, manufacture, distribution, or transportation of a  
18 controlled substance; or

19 (c) Any out-of-state conviction for an offense that under the laws  
20 of this state would be a felony classified as a drug offense under (a)  
21 of this subsection.

22 (21) "Earned release" means earned release from confinement as  
23 provided in RCW 9.94A.728.

24 (22) "Escape" means:

25 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
26 first degree (RCW 9A.76.110), escape in the second degree (RCW  
27 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
28 willful failure to return from work release (RCW 72.65.070), or willful  
29 failure to be available for supervision by the department while in  
30 community custody (RCW 72.09.310); or

31 (b) Any federal or out-of-state conviction for an offense that  
32 under the laws of this state would be a felony classified as an escape  
33 under (a) of this subsection.

34 (23) "Felony traffic offense" means:

35 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
36 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
37 and-run injury-accident (RCW 46.52.020(4)); or

1 (b) Any federal or out-of-state conviction for an offense that  
2 under the laws of this state would be a felony classified as a felony  
3 traffic offense under (a) of this subsection.

4 (24) "Fine" means a specific sum of money ordered by the sentencing  
5 court to be paid by the offender to the court over a specific period of  
6 time.

7 (25) "First-time offender" means any person who has no prior  
8 convictions for a felony and is eligible for the first-time offender  
9 waiver under RCW 9.94A.650.

10 (26) "Home detention" means a program of partial confinement  
11 available to offenders wherein the offender is confined in a private  
12 residence subject to electronic surveillance.

13 (27) "Legal financial obligation" means a sum of money that is  
14 ordered by a superior court of the state of Washington for legal  
15 financial obligations which may include restitution to the victim,  
16 statutorily imposed crime victims' compensation fees as assessed  
17 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,  
18 court-appointed attorneys' fees, and costs of defense, fines, and any  
19 other financial obligation that is assessed to the offender as a result  
20 of a felony conviction. Upon conviction for vehicular assault while  
21 under the influence of intoxicating liquor or any drug, RCW  
22 46.61.522(1)(b), or vehicular homicide while under the influence of  
23 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial  
24 obligations may also include payment to a public agency of the expense  
25 of an emergency response to the incident resulting in the conviction,  
26 subject to RCW 38.52.430.

27 (28) "Most serious offense" means any of the following felonies or  
28 a felony attempt to commit any of the following felonies:

29 (a) Any felony defined under any law as a class A felony or  
30 criminal solicitation of or criminal conspiracy to commit a class A  
31 felony;

32 (b) Assault in the second degree;

33 (c) Assault of a child in the second degree;

34 (d) Child molestation in the second degree;

35 (e) Controlled substance homicide;

36 (f) Extortion in the first degree;

37 (g) Incest when committed against a child under age fourteen;

38 (h) Indecent liberties;

39 (i) Kidnapping in the second degree;

1 (j) Leading organized crime;  
2 (k) Manslaughter in the first degree;  
3 (l) Manslaughter in the second degree;  
4 (m) Promoting prostitution in the first degree;  
5 (n) Rape in the third degree;  
6 (o) Robbery in the second degree;  
7 (p) Sexual exploitation;  
8 (q) Vehicular assault, when caused by the operation or driving of  
9 a vehicle by a person while under the influence of intoxicating liquor  
10 or any drug or by the operation or driving of a vehicle in a reckless  
11 manner;  
12 (r) Vehicular homicide, when proximately caused by the driving of  
13 any vehicle by any person while under the influence of intoxicating  
14 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
15 any vehicle in a reckless manner;  
16 (s) Any other class B felony offense with a finding of sexual  
17 motivation;  
18 (t) Any other felony with a deadly weapon verdict under RCW  
19 9.94A.602;  
20 (u) Any felony offense in effect at any time prior to December 2,  
21 1993, that is comparable to a most serious offense under this  
22 subsection, or any federal or out-of-state conviction for an offense  
23 that under the laws of this state would be a felony classified as a  
24 most serious offense under this subsection;  
25 (v) (i) A prior conviction for indecent liberties under RCW  
26 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
27 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
28 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
29 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;  
30 (ii) A prior conviction for indecent liberties under RCW  
31 9A.44.100(1) (c) as it existed from June 11, 1986, until July 1, 1988,  
32 if: (A) The crime was committed against a child under the age of  
33 fourteen; or (B) the relationship between the victim and perpetrator is  
34 included in the definition of indecent liberties under RCW  
35 9A.44.100(1) (c) as it existed from July 1, 1988, through July 27, 1997,  
36 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
37 through July 27, 1997.  
38 (29) "Nonviolent offense" means an offense which is not a violent  
39 offense.

1 (30) "Offender" means a person who has committed a felony  
2 established by state law and is eighteen years of age or older or is  
3 less than eighteen years of age but whose case is under superior court  
4 jurisdiction under RCW 13.04.030 or has been transferred by the  
5 appropriate juvenile court to a criminal court pursuant to RCW  
6 13.40.110. Throughout this chapter, the terms "offender" and  
7 "defendant" are used interchangeably.

8 (31) "Partial confinement" means confinement for no more than one  
9 year in a facility or institution operated or utilized under contract  
10 by the state or any other unit of government, or, if home detention or  
11 work crew has been ordered by the court, in an approved residence, for  
12 a substantial portion of each day with the balance of the day spent in  
13 the community. Partial confinement includes work release, home  
14 detention, work crew, and a combination of work crew and home  
15 detention.

16 (32) "Persistent offender" is an offender who:

17 (a) (i) Has been convicted in this state of any felony considered a  
18 most serious offense; and

19 (ii) Has, before the commission of the offense under (a) of this  
20 subsection, been convicted as an offender on at least two separate  
21 occasions, whether in this state or elsewhere, of felonies that under  
22 the laws of this state would be considered most serious offenses and  
23 would be included in the offender score under RCW 9.94A.525; provided  
24 that of the two or more previous convictions, at least one conviction  
25 must have occurred before the commission of any of the other most  
26 serious offenses for which the offender was previously convicted; or

27 (b) (i) Has been convicted of: (A) Rape in the first degree, rape  
28 of a child in the first degree, child molestation in the first degree,  
29 rape in the second degree, rape of a child in the second degree, or  
30 indecent liberties by forcible compulsion; (B) any of the following  
31 offenses with a finding of sexual motivation: Murder in the first  
32 degree, murder in the second degree, homicide by abuse, kidnapping in  
33 the first degree, kidnapping in the second degree, assault in the first  
34 degree, assault in the second degree, assault of a child in the first  
35 degree, or burglary in the first degree; or (C) an attempt to commit  
36 any crime listed in this subsection (32) (b) (i); and

37 (ii) Has, before the commission of the offense under (b) (i) of this  
38 subsection, been convicted as an offender on at least one occasion,  
39 whether in this state or elsewhere, of an offense listed in (b) (i) of

1 this subsection or any federal or out-of-state offense or offense under  
2 prior Washington law that is comparable to the offenses listed in  
3 (b)(i) of this subsection. A conviction for rape of a child in the  
4 first degree constitutes a conviction under (b)(i) of this subsection  
5 only when the offender was sixteen years of age or older when the  
6 offender committed the offense. A conviction for rape of a child in  
7 the second degree constitutes a conviction under (b)(i) of this  
8 subsection only when the offender was eighteen years of age or older  
9 when the offender committed the offense.

10 (33) "Postrelease supervision" is that portion of an offender's  
11 community placement that is not community custody.

12 (34) "Restitution" means a specific sum of money ordered by the  
13 sentencing court to be paid by the offender to the court over a  
14 specified period of time as payment of damages. The sum may include  
15 both public and private costs.

16 (35) "Risk assessment" means the application of an objective  
17 instrument supported by research and adopted by the department for the  
18 purpose of assessing an offender's risk of reoffense, taking into  
19 consideration the nature of the harm done by the offender, place and  
20 circumstances of the offender related to risk, the offender's  
21 relationship to any victim, and any information provided to the  
22 department by victims. The results of a risk assessment shall not be  
23 based on unconfirmed or unconfirmable allegations.

24 (36) "Serious traffic offense" means:

25 (a) Driving while under the influence of intoxicating liquor or any  
26 drug (RCW 46.61.502), actual physical control while under the influence  
27 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving  
28 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
29 or

30 (b) Any federal, out-of-state, county, or municipal conviction for  
31 an offense that under the laws of this state would be classified as a  
32 serious traffic offense under (a) of this subsection.

33 (37) "Serious violent offense" is a subcategory of violent offense  
34 and means:

- 35 (a) (i) Murder in the first degree;  
36 (ii) Homicide by abuse;  
37 (iii) Murder in the second degree;  
38 (iv) Manslaughter in the first degree;  
39 (v) Assault in the first degree;

1 (vi) Kidnapping in the first degree;  
2 (vii) Rape in the first degree;  
3 (viii) Assault of a child in the first degree; or  
4 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
5 commit one of these felonies; or  
6 (b) Any federal or out-of-state conviction for an offense that  
7 under the laws of this state would be a felony classified as a serious  
8 violent offense under (a) of this subsection.  
9 (38) "Sex offense" means:  
10 (a) (i) A felony that is a violation of chapter 9A.44 RCW other than  
11 RCW 9A.44.130(11);  
12 (ii) A violation of RCW 9A.64.020;  
13 (iii) A felony that is a violation of chapter 9.68A RCW other than  
14 RCW 9.68A.070 or 9.68A.080; or  
15 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
16 criminal solicitation, or criminal conspiracy to commit such crimes;  
17 (b) Any conviction for a felony offense in effect at any time prior  
18 to July 1, 1976, that is comparable to a felony classified as a sex  
19 offense in (a) of this subsection;  
20 (c) A felony with a finding of sexual motivation under RCW  
21 9.94A.835 or 13.40.135; or  
22 (d) Any federal or out-of-state conviction for an offense that  
23 under the laws of this state would be a felony classified as a sex  
24 offense under (a) of this subsection.  
25 (39) "Sexual motivation" means that one of the purposes for which  
26 the defendant committed the crime was for the purpose of his or her  
27 sexual gratification.  
28 (40) "Standard sentence range" means the sentencing court's  
29 discretionary range in imposing a nonappealable sentence.  
30 (41) "Statutory maximum sentence" means the maximum length of time  
31 for which an offender may be confined as punishment for a crime as  
32 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the  
33 crime, or other statute defining the maximum penalty for a crime.  
34 (42) "Total confinement" means confinement inside the physical  
35 boundaries of a facility or institution operated or utilized under  
36 contract by the state or any other unit of government for twenty-four  
37 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.  
38 (43) "Transition training" means written and verbal instructions  
39 and assistance provided by the department to the offender during the

1 two weeks prior to the offender's successful completion of the work  
2 ethic camp program. The transition training shall include instructions  
3 in the offender's requirements and obligations during the offender's  
4 period of community custody.

5 (44) "Victim" means any person who has sustained emotional,  
6 psychological, physical, or financial injury to person or property as  
7 a direct result of the crime charged.

8 (45) "Violent offense" means:

9 (a) Any of the following felonies:

10 (i) Any felony defined under any law as a class A felony or an  
11 attempt to commit a class A felony;

12 (ii) Criminal solicitation of or criminal conspiracy to commit a  
13 class A felony;

14 (iii) Manslaughter in the first degree;

15 (iv) Manslaughter in the second degree;

16 (v) Indecent liberties if committed by forcible compulsion;

17 (vi) Kidnapping in the second degree;

18 (vii) Arson in the second degree;

19 (viii) Assault in the second degree;

20 (ix) Assault of a child in the second degree;

21 (x) Extortion in the first degree;

22 (xi) Robbery in the second degree;

23 (xii) Drive-by shooting;

24 (xiii) Vehicular assault, when caused by the operation or driving  
25 of a vehicle by a person while under the influence of intoxicating  
26 liquor or any drug or by the operation or driving of a vehicle in a  
27 reckless manner; and

28 (xiv) Vehicular homicide, when proximately caused by the driving of  
29 any vehicle by any person while under the influence of intoxicating  
30 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
31 any vehicle in a reckless manner;

32 (b) Any conviction for a felony offense in effect at any time prior  
33 to July 1, 1976, that is comparable to a felony classified as a violent  
34 offense in (a) of this subsection; and

35 (c) Any federal or out-of-state conviction for an offense that  
36 under the laws of this state would be a felony classified as a violent  
37 offense under (a) or (b) of this subsection.

1 (46) "Work crew" means a program of partial confinement consisting  
2 of civic improvement tasks for the benefit of the community that  
3 complies with RCW 9.94A.725.

4 (47) "Work ethic camp" means an alternative incarceration program  
5 as provided in RCW 9.94A.690 designed to reduce recidivism and lower  
6 the cost of corrections by requiring offenders to complete a  
7 comprehensive array of real-world job and vocational experiences,  
8 character-building work ethics training, life management skills  
9 development, substance abuse rehabilitation, counseling, literacy  
10 training, and basic adult education.

11 (48) "Work release" means a program of partial confinement  
12 available to offenders who are employed or engaged as a student in a  
13 regular course of study at school.

14 **Sec. 3.** RCW 9.94A.525 and 2001 c 264 s 5 are each amended to read  
15 as follows:

16 The offender score is measured on the horizontal axis of the  
17 sentencing grid. The offender score rules are as follows:

18 The offender score is the sum of points accrued under this section  
19 rounded down to the nearest whole number.

20 (1) A prior conviction is a conviction which exists before the date  
21 of sentencing for the offense for which the offender score is being  
22 computed. Convictions entered or sentenced on the same date as the  
23 conviction for which the offender score is being computed shall be  
24 deemed "other current offenses" within the meaning of RCW 9.94A.589.

25 (2) Class A and sex prior felony convictions shall always be  
26 included in the offender score. Class B prior felony convictions other  
27 than sex offenses shall not be included in the offender score, if since  
28 the last date of release from confinement (including full-time  
29 residential treatment) pursuant to a felony conviction, if any, or  
30 entry of judgment and sentence, the offender had spent ten consecutive  
31 years in the community without committing any crime that subsequently  
32 results in a conviction. Class C prior felony convictions other than  
33 sex offenses shall not be included in the offender score if, since the  
34 last date of release from confinement (including full-time residential  
35 treatment) pursuant to a felony conviction, if any, or entry of  
36 judgment and sentence, the offender had spent five consecutive years in  
37 the community without committing any crime that subsequently results in  
38 a conviction. Serious traffic convictions shall not be included in the

1 offender score if, since the last date of release from confinement  
2 (including full-time residential treatment) pursuant to a felony  
3 conviction, if any, or entry of judgment and sentence, the offender  
4 spent five years in the community without committing any crime that  
5 subsequently results in a conviction. This subsection applies to both  
6 adult and juvenile prior convictions.

7 (3) Out-of-state convictions for offenses shall be classified  
8 according to the comparable offense definitions and sentences provided  
9 by Washington law. Federal convictions for offenses shall be  
10 classified according to the comparable offense definitions and  
11 sentences provided by Washington law. If there is no clearly  
12 comparable offense under Washington law or the offense is one that is  
13 usually considered subject to exclusive federal jurisdiction, the  
14 offense shall be scored as a class C felony equivalent if it was a  
15 felony under the relevant federal statute.

16 (4) Score prior convictions for felony anticipatory offenses  
17 (attempts, criminal solicitations, and criminal conspiracies) the same  
18 as if they were convictions for completed offenses.

19 (5) (a) In the case of multiple prior convictions, for the purpose  
20 of computing the offender score, count all convictions separately,  
21 except:

22 (i) Prior offenses which were found, under RCW 9.94A.589(1) (a), to  
23 encompass the same criminal conduct, shall be counted as one offense,  
24 the offense that yields the highest offender score. The current  
25 sentencing court shall determine with respect to other prior adult  
26 offenses for which sentences were served concurrently or prior juvenile  
27 offenses for which sentences were served consecutively, whether those  
28 offenses shall be counted as one offense or as separate offenses using  
29 the "same criminal conduct" analysis found in RCW 9.94A.589(1) (a), and  
30 if the court finds that they shall be counted as one offense, then the  
31 offense that yields the highest offender score shall be used. The  
32 current sentencing court may presume that such other prior offenses  
33 were not the same criminal conduct from sentences imposed on separate  
34 dates, or in separate counties or jurisdictions, or in separate  
35 complaints, indictments, or informations;

36 (ii) In the case of multiple prior convictions for offenses  
37 committed before July 1, 1986, for the purpose of computing the  
38 offender score, count all adult convictions served concurrently as one  
39 offense, and count all juvenile convictions entered on the same date as

1 one offense. Use the conviction for the offense that yields the  
2 highest offender score.

3 (b) As used in this subsection (5), "served concurrently" means  
4 that: (i) The latter sentence was imposed with specific reference to  
5 the former; (ii) the concurrent relationship of the sentences was  
6 judicially imposed; and (iii) the concurrent timing of the sentences  
7 was not the result of a probation or parole revocation on the former  
8 offense.

9 (6) If the present conviction is one of the anticipatory offenses  
10 of criminal attempt, solicitation, or conspiracy, count each prior  
11 conviction as if the present conviction were for a completed offense.  
12 When these convictions are used as criminal history, score them the  
13 same as a completed crime.

14 (7) If the present conviction is for a nonviolent offense and not  
15 covered by subsection (11) or (12) of this section, count one point for  
16 each adult prior felony conviction and one point for each juvenile  
17 prior violent felony conviction and 1/2 point for each juvenile prior  
18 nonviolent felony conviction.

19 (8) If the present conviction is for a violent offense and not  
20 covered in subsection (9), (10), (11), or (12) of this section, count  
21 two points for each prior adult and juvenile violent felony conviction,  
22 one point for each prior adult nonviolent felony conviction, and 1/2  
23 point for each prior juvenile nonviolent felony conviction.

24 (9) If the present conviction is for a serious violent offense,  
25 count three points for prior adult and juvenile convictions for crimes  
26 in this category, two points for each prior adult and juvenile violent  
27 conviction (not already counted), one point for each prior adult  
28 nonviolent felony conviction, and 1/2 point for each prior juvenile  
29 nonviolent felony conviction.

30 (10) If the present conviction is for Burglary 1, count prior  
31 convictions as in subsection (8) of this section; however count two  
32 points for each prior adult Burglary 2 or residential burglary  
33 conviction, and one point for each prior juvenile Burglary 2 or  
34 residential burglary conviction.

35 (11) If the present conviction is for a felony traffic offense  
36 count two points for each adult or juvenile prior conviction for  
37 Vehicular Homicide or Vehicular Assault; for each felony offense count  
38 one point for each adult and 1/2 point for each juvenile prior  
39 conviction; for each serious traffic offense, other than those used for

1 an enhancement pursuant to RCW 46.61.520(2), count one point for each  
2 adult and 1/2 point for each juvenile prior conviction.

3 (12) If the present conviction is for a drug offense count three  
4 points for each adult prior felony drug offense conviction and two  
5 points for each juvenile drug offense. All other adult and juvenile  
6 felonies are scored as in subsection (8) of this section if the current  
7 drug offense is violent, or as in subsection (7) of this section if the  
8 current drug offense is nonviolent.

9 (13) If the present conviction is for Escape from Community  
10 Custody, RCW 72.09.310, count only prior escape convictions in the  
11 offender score. Count adult prior escape convictions as one point and  
12 juvenile prior escape convictions as 1/2 point.

13 (14) If the present conviction is for Escape 1, RCW 9A.76.110, or  
14 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and  
15 juvenile prior convictions as 1/2 point.

16 (15) If the present conviction is for Burglary 2 or residential  
17 burglary, count priors as in subsection (7) of this section; however,  
18 count two points for each adult and juvenile prior Burglary 1  
19 conviction, two points for each adult prior Burglary 2 or residential  
20 burglary conviction, and one point for each juvenile prior Burglary 2  
21 or residential burglary conviction.

22 (16) If the present conviction is for a sex offense, count priors  
23 as in subsections (7) through (15) of this section; however count three  
24 points for each adult and juvenile prior sex offense conviction.

25 (17) If the present conviction is for an offense committed while  
26 the offender was under community placement, add one point.

27 (18) The fact that a prior conviction was not included in an  
28 offender's offender score or criminal history at a previous sentencing  
29 shall have no bearing on whether it is included in the criminal history  
30 or offender score for the current offense. Accordingly, prior  
31 convictions that were not counted in the offender score or included in  
32 criminal history under repealed or previous versions of the sentencing  
33 reform act shall be included in criminal history and shall count in the  
34 offender score if the current version of the sentencing reform act  
35 requires including or counting those convictions.

36 NEW SECTION. **Sec. 4.** RCW 9.94A.030(13) (b) and (c) and  
37 9.94A.525(18) apply only to current offenses committed on or after the  
38 effective date of this act. No offender who committed his or her

1 current offense prior to the effective date of this act may be subject  
2 to resentencing as a result of this act.

--- END ---

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 6423**

Chapter 107, Laws of 2002

57th Legislature  
2002 Regular Session

SENTENCING--CRIMINAL HISTORY

EFFECTIVE DATE: 6/13/02

Passed by the Senate February 18, 2002  
YEAS 48 NAYS 0

BRAD OWEN  
President of the Senate

Passed by the House March 6, 2002  
YEAS 93 NAYS 0

FRANK CHOPP  
Speaker of the  
House of Representatives

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6423** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK  
Secretary

Approved March 22, 2002

FILED

March 22, 2002 - 1:04 p.m.

GARY LOCKE  
Governor of the State of Washington

Secretary of State  
State of Washington

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SUBSTITUTE SENATE BILL 6423

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Passed Legislature - 2002 Regular Session

State of Washington                      57th Legislature                      2002 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators  
Costa and McCaslin)

READ FIRST TIME 02/08/2002.

1            AN ACT Relating to use of criminal history in sentencing decisions;  
2 amending RCW 9.94A.525; reenacting and amending RCW 9.94A.030; creating  
3 new sections; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.**    The legislature considers the majority  
6 opinions in *State v. Cruz*, 139 Wn.2d 186 (1999), and *State v. Smith*,  
7 Cause No. 70683-2 (September 6, 2001), to be wrongly decided, since  
8 neither properly interpreted legislative intent. When the legislature  
9 enacted the sentencing reform act, chapter 9.94A RCW, and each time the  
10 legislature has amended the act, the legislature intended that an  
11 offender's criminal history and offender score be determined using the  
12 statutory provisions that were in effect on the day the current offense  
13 was committed.

14            Although certain prior convictions previously were not counted in  
15 the offender score or included in the criminal history pursuant to  
16 former versions of RCW 9.94A.525, or RCW 9.94A.030, those prior  
17 convictions need not be "revived" because they were never vacated. As  
18 noted in the minority opinions in *Cruz* and *Smith*, such application of  
19 the law does not involve retroactive application or violate ex

1 postfacto prohibitions. Additionally, the Washington state supreme  
2 court has repeatedly held in the past that the provisions of the  
3 sentencing reform act act upon and punish only current conduct; the  
4 sentencing reform act does not act upon or alter the punishment for  
5 prior convictions. See *In re Personal Restraint Petition of Williams*,  
6 111 Wn.2d 353, (1988). The legislature has never intended to create in  
7 an offender a vested right with respect to whether a prior conviction  
8 is excluded when calculating an offender score or with respect to how  
9 a prior conviction is counted in the offender score for a current  
10 offense.

11 **Sec. 2.** RCW 9.94A.030 and 2001 2nd sp.s. c 12 s 301, 2001 c 300 s  
12 3, and 2001 c 7 s 2 are each reenacted and amended to read as follows:

13 Unless the context clearly requires otherwise, the definitions in  
14 this section apply throughout this chapter.

15 (1) "Board" means the indeterminate sentence review board created  
16 under chapter 9.95 RCW.

17 (2) "Collect," or any derivative thereof, "collect and remit," or  
18 "collect and deliver," when used with reference to the department,  
19 means that the department, either directly or through a collection  
20 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
21 and enforcing the offender's sentence with regard to the legal  
22 financial obligation, receiving payment thereof from the offender, and,  
23 consistent with current law, delivering daily the entire payment to the  
24 superior court clerk without depositing it in a departmental account.

25 (3) "Commission" means the sentencing guidelines commission.

26 (4) "Community corrections officer" means an employee of the  
27 department who is responsible for carrying out specific duties in  
28 supervision of sentenced offenders and monitoring of sentence  
29 conditions.

30 (5) "Community custody" means that portion of an offender's  
31 sentence of confinement in lieu of earned release time or imposed  
32 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,  
33 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the  
34 community subject to controls placed on the offender's movement and  
35 activities by the department. For offenders placed on community  
36 custody for crimes committed on or after July 1, 2000, the department  
37 shall assess the offender's risk of reoffense and may establish and

1 modify conditions of community custody, in addition to those imposed by  
2 the court, based upon the risk to community safety.

3 (6) "Community custody range" means the minimum and maximum period  
4 of community custody included as part of a sentence under RCW  
5 9.94A.715, as established by the commission or the legislature under  
6 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

7 (7) "Community placement" means that period during which the  
8 offender is subject to the conditions of community custody and/or  
9 postrelease supervision, which begins either upon completion of the  
10 term of confinement (postrelease supervision) or at such time as the  
11 offender is transferred to community custody in lieu of earned release.  
12 Community placement may consist of entirely community custody, entirely  
13 postrelease supervision, or a combination of the two.

14 (8) "Community service" means compulsory service, without  
15 compensation, performed for the benefit of the community by the  
16 offender.

17 (9) "Community supervision" means a period of time during which a  
18 convicted offender is subject to crime-related prohibitions and other  
19 sentence conditions imposed by a court pursuant to this chapter or RCW  
20 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
21 a chemical dependency that has contributed to his or her offense, the  
22 conditions of supervision may, subject to available resources, include  
23 treatment. For purposes of the interstate compact for out-of-state  
24 supervision of parolees and probationers, RCW 9.95.270, community  
25 supervision is the functional equivalent of probation and should be  
26 considered the same as probation by other states.

27 (10) "Confinement" means total or partial confinement.

28 (11) "Conviction" means an adjudication of guilt pursuant to Titles  
29 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
30 acceptance of a plea of guilty.

31 (12) "Crime-related prohibition" means an order of a court  
32 prohibiting conduct that directly relates to the circumstances of the  
33 crime for which the offender has been convicted, and shall not be  
34 construed to mean orders directing an offender affirmatively to  
35 participate in rehabilitative programs or to otherwise perform  
36 affirmative conduct. However, affirmative acts necessary to monitor  
37 compliance with the order of a court may be required by the department.

1 (13) "Criminal history" means the list of a defendant's prior  
2 convictions and juvenile adjudications, whether in this state, in  
3 federal court, or elsewhere.

4 (a) The history shall include, where known, for each conviction  
5 (~~(a)~~) (i) whether the defendant has been placed on probation and the  
6 length and terms thereof; and (~~(b)~~) (ii) whether the defendant has  
7 been incarcerated and the length of incarceration.

8 (b) A conviction may be removed from a defendant's criminal history  
9 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or  
10 a similar out-of-state statute, or if the conviction has been vacated  
11 pursuant to a governor's pardon.

12 (c) The determination of a defendant's criminal history is distinct  
13 from the determination of an offender score. A prior conviction that  
14 was not included in an offender score calculated pursuant to a former  
15 version of the sentencing reform act remains part of the defendant's  
16 criminal history.

17 (14) "Day fine" means a fine imposed by the sentencing court that  
18 equals the difference between the offender's net daily income and the  
19 reasonable obligations that the offender has for the support of the  
20 offender and any dependents.

21 (15) "Day reporting" means a program of enhanced supervision  
22 designed to monitor the offender's daily activities and compliance with  
23 sentence conditions, and in which the offender is required to report  
24 daily to a specific location designated by the department or the  
25 sentencing court.

26 (16) "Department" means the department of corrections.

27 (17) "Determinate sentence" means a sentence that states with  
28 exactitude the number of actual years, months, or days of total  
29 confinement, of partial confinement, of community supervision, the  
30 number of actual hours or days of community service work, or dollars or  
31 terms of a legal financial obligation. The fact that an offender  
32 through earned release can reduce the actual period of confinement  
33 shall not affect the classification of the sentence as a determinate  
34 sentence.

35 (18) "Disposable earnings" means that part of the earnings of an  
36 offender remaining after the deduction from those earnings of any  
37 amount required by law to be withheld. For the purposes of this  
38 definition, "earnings" means compensation paid or payable for personal  
39 services, whether denominated as wages, salary, commission, bonuses, or

1 otherwise, and, notwithstanding any other provision of law making the  
2 payments exempt from garnishment, attachment, or other process to  
3 satisfy a court-ordered legal financial obligation, specifically  
4 includes periodic payments pursuant to pension or retirement programs,  
5 or insurance policies of any type, but does not include payments made  
6 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
7 or Title 74 RCW.

8 (19) "Drug offender sentencing alternative" is a sentencing option  
9 available to persons convicted of a felony offense other than a violent  
10 offense or a sex offense and who are eligible for the option under RCW  
11 9.94A.660.

12 (20) "Drug offense" means:

13 (a) Any felony violation of chapter 69.50 RCW except possession of  
14 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
15 controlled substance (RCW 69.50.403);

16 (b) Any offense defined as a felony under federal law that relates  
17 to the possession, manufacture, distribution, or transportation of a  
18 controlled substance; or

19 (c) Any out-of-state conviction for an offense that under the laws  
20 of this state would be a felony classified as a drug offense under (a)  
21 of this subsection.

22 (21) "Earned release" means earned release from confinement as  
23 provided in RCW 9.94A.728.

24 (22) "Escape" means:

25 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
26 first degree (RCW 9A.76.110), escape in the second degree (RCW  
27 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
28 willful failure to return from work release (RCW 72.65.070), or willful  
29 failure to be available for supervision by the department while in  
30 community custody (RCW 72.09.310); or

31 (b) Any federal or out-of-state conviction for an offense that  
32 under the laws of this state would be a felony classified as an escape  
33 under (a) of this subsection.

34 (23) "Felony traffic offense" means:

35 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
36 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
37 and-run injury-accident (RCW 46.52.020(4)); or

1 (b) Any federal or out-of-state conviction for an offense that  
2 under the laws of this state would be a felony classified as a felony  
3 traffic offense under (a) of this subsection.

4 (24) "Fine" means a specific sum of money ordered by the sentencing  
5 court to be paid by the offender to the court over a specific period of  
6 time.

7 (25) "First-time offender" means any person who has no prior  
8 convictions for a felony and is eligible for the first-time offender  
9 waiver under RCW 9.94A.650.

10 (26) "Home detention" means a program of partial confinement  
11 available to offenders wherein the offender is confined in a private  
12 residence subject to electronic surveillance.

13 (27) "Legal financial obligation" means a sum of money that is  
14 ordered by a superior court of the state of Washington for legal  
15 financial obligations which may include restitution to the victim,  
16 statutorily imposed crime victims' compensation fees as assessed  
17 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,  
18 court-appointed attorneys' fees, and costs of defense, fines, and any  
19 other financial obligation that is assessed to the offender as a result  
20 of a felony conviction. Upon conviction for vehicular assault while  
21 under the influence of intoxicating liquor or any drug, RCW  
22 46.61.522(1)(b), or vehicular homicide while under the influence of  
23 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial  
24 obligations may also include payment to a public agency of the expense  
25 of an emergency response to the incident resulting in the conviction,  
26 subject to RCW 38.52.430.

27 (28) "Most serious offense" means any of the following felonies or  
28 a felony attempt to commit any of the following felonies:

29 (a) Any felony defined under any law as a class A felony or  
30 criminal solicitation of or criminal conspiracy to commit a class A  
31 felony;

32 (b) Assault in the second degree;

33 (c) Assault of a child in the second degree;

34 (d) Child molestation in the second degree;

35 (e) Controlled substance homicide;

36 (f) Extortion in the first degree;

37 (g) Incest when committed against a child under age fourteen;

38 (h) Indecent liberties;

39 (i) Kidnapping in the second degree;

1 (j) Leading organized crime;  
2 (k) Manslaughter in the first degree;  
3 (l) Manslaughter in the second degree;  
4 (m) Promoting prostitution in the first degree;  
5 (n) Rape in the third degree;  
6 (o) Robbery in the second degree;  
7 (p) Sexual exploitation;  
8 (q) Vehicular assault, when caused by the operation or driving of  
9 a vehicle by a person while under the influence of intoxicating liquor  
10 or any drug or by the operation or driving of a vehicle in a reckless  
11 manner;  
12 (r) Vehicular homicide, when proximately caused by the driving of  
13 any vehicle by any person while under the influence of intoxicating  
14 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
15 any vehicle in a reckless manner;  
16 (s) Any other class B felony offense with a finding of sexual  
17 motivation;  
18 (t) Any other felony with a deadly weapon verdict under RCW  
19 9.94A.602;  
20 (u) Any felony offense in effect at any time prior to December 2,  
21 1993, that is comparable to a most serious offense under this  
22 subsection, or any federal or out-of-state conviction for an offense  
23 that under the laws of this state would be a felony classified as a  
24 most serious offense under this subsection;  
25 (v)(i) A prior conviction for indecent liberties under RCW  
26 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
27 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
28 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
29 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;  
30 (ii) A prior conviction for indecent liberties under RCW  
31 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
32 if: (A) The crime was committed against a child under the age of  
33 fourteen; or (B) the relationship between the victim and perpetrator is  
34 included in the definition of indecent liberties under RCW  
35 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
36 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
37 through July 27, 1997.  
38 (29) "Nonviolent offense" means an offense which is not a violent  
39 offense.

## APPENDIX B

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HOUSE BILL 1346

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State of Washington

58th Legislature

2003 Regular Session

By Representatives Lovick, Cairnes, Rockefeller, Campbell, Moeller, Clibborn, Cooper, Flannigan, Simpson, Kagi, Pettigrew and Chase

Read first time 01/23/2003. Referred to Committee on Judiciary.

1 AN ACT Relating to vacation of records of conviction for pre-  
2 sentencing reform act felony offenses; and amending RCW 9.95.240 and  
3 9.92.066.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 9.95.240 and 1957 c 227 s 7 are each amended to read  
6 as follows:

7 (1) Every defendant who has fulfilled the conditions of his or her  
8 probation for the entire period thereof, or who shall have been  
9 discharged from probation prior to the termination of the period  
10 thereof, may at any time (~~prior to the expiration of the maximum~~  
11 ~~period of punishment for the offense for which he has been convicted~~)  
12 be permitted in the discretion of the court to withdraw his or her plea  
13 of guilty and enter a plea of not guilty, or if he or she has been  
14 convicted after a plea of not guilty, the court may in its discretion  
15 set aside the verdict of guilty; and in either case, the court may  
16 thereupon dismiss the information or indictment against such defendant,  
17 who shall thereafter be released from all penalties and disabilities  
18 resulting from the offense or crime of which he or she has been  
19 convicted. (~~The probationer shall be informed of this right in his~~

1 ~~probation papers: PROVIDED, That in any subsequent prosecution, for~~  
2 ~~any other offense, such prior conviction may be pleaded and proved, and~~  
3 ~~shall have the same effect as if probation had not been granted, or the~~  
4 ~~information or indictment dismissed.))~~ The order of dismissal shall  
5 have the effect of restoring all civil rights lost by operation of law  
6 upon conviction, and the order of dismissal shall so state.

7 (2)(a) The court may also, in its discretion, enter an order  
8 vacating the judgment and sentence as provided in RCW 9.94A.640. Once  
9 a court vacates a record of conviction under this section, the fact  
10 that the offender has been convicted of the offense shall not be  
11 included in the offender's criminal history for purposes of determining  
12 a sentence in any subsequent conviction. For all purposes, including  
13 responding to questions on employment applications, an offender whose  
14 conviction has been vacated under this section may state that the  
15 offender has never been convicted of that crime.

16 (b) The clerk of the court in which the vacation order is entered  
17 shall immediately transmit the order vacating the conviction to the  
18 Washington state patrol identification section and to the local police  
19 agency, if any, which holds criminal history information for the person  
20 who is the subject of the conviction. The Washington state patrol and  
21 any such local police agency shall immediately update their records to  
22 reflect the vacation of the conviction, and shall transmit the order  
23 vacating the conviction to the federal bureau of investigation. A  
24 conviction that has been vacated under this section may not be  
25 disseminated or disclosed by the state patrol or local law enforcement  
26 agency to any person, except other criminal justice enforcement  
27 agencies.

28 **Sec. 2.** RCW 9.92.066 and 1971 ex.s. c 188 s 3 are each amended to  
29 read as follows:

30 (1) Upon termination of any suspended sentence under RCW 9.92.060  
31 or 9.95.210, such person may apply to the court for restoration of his  
32 or her civil rights, and an order vacating the judgment and sentence as  
33 provided in RCW 9.94A.640. Once a court vacates a record of conviction  
34 under this section, the fact that the offender has been convicted of  
35 the offense shall not be included in the offender's criminal history  
36 for purposes of determining a sentence in any subsequent conviction.  
37 For all purposes, including responding to questions on employment

1 applications, an offender whose conviction has been vacated under this  
2 section may state that the offender has never been convicted of that  
3 crime. Thereupon the court may in its discretion enter an order  
4 directing that, when such an order vacating the judgment and sentence  
5 is entered, such defendant shall thereafter be released from all  
6 penalties and disabilities resulting from the offense or crime of which  
7 he or she has been convicted.

8 (2) The clerk of the court in which the vacation order is entered  
9 shall immediately transmit the order vacating the conviction to the  
10 Washington state patrol identification section and to the local police  
11 agency, if any, which holds criminal history information for the person  
12 who is the subject of the conviction. The Washington state patrol and  
13 any such local police agency shall immediately update their records to  
14 reflect the vacation of the conviction, and shall transmit the order  
15 vacating the conviction to the federal bureau of investigation. A  
16 conviction that has been vacated under this section may not be  
17 disseminated or disclosed by the state patrol or local law enforcement  
18 agency to any person, except other criminal justice enforcement  
19 agencies.

--- END ---

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SUBSTITUTE HOUSE BILL 1346

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State of Washington

58th Legislature

2003 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Lovick, Cairnes, Rockefeller, Campbell, Moeller, Clibborn, Cooper, Flannigan, Simpson, Kagi, Pettigrew and Chase)

READ FIRST TIME 02/28/03.

1 AN ACT Relating to vacation of records of conviction for pre-  
2 sentencing reform act felony offenses; and amending RCW 9.95.240 and  
3 9.92.066.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 9.95.240 and 1957 c 227 s 7 are each amended to read  
6 as follows:

7 (1) Every defendant who has fulfilled the conditions of his or her  
8 probation for the entire period thereof, or who shall have been  
9 discharged from probation prior to the termination of the period  
10 thereof, may at any time prior to the expiration of the maximum period  
11 of punishment for the offense for which he or she has been convicted be  
12 permitted in the discretion of the court to withdraw his or her plea of  
13 guilty and enter a plea of not guilty, or if he or she has been  
14 convicted after a plea of not guilty, the court may in its discretion  
15 set aside the verdict of guilty; and in either case, the court may  
16 thereupon dismiss the information or indictment against such defendant,  
17 who shall thereafter be released from all penalties and disabilities  
18 resulting from the offense or crime of which he or she has been  
19 convicted. The probationer shall be informed of this right in his or

1 her probation papers: PROVIDED, That in any subsequent prosecution,  
2 for any other offense, such prior conviction may be pleaded and proved,  
3 and shall have the same effect as if probation had not been granted, or  
4 the information or indictment dismissed.

5 (2) (a) After the period of probation has expired, the defendant may  
6 apply to the sentencing court for a vacation of the defendant's record  
7 of conviction under RCW 9.94A.640. The court may, in its discretion,  
8 clear the record of conviction if it finds the defendant has met the  
9 equivalent of the tests in RCW 9.94A.640(2) as those tests would be  
10 applied to a person convicted of a crime committed before July 1, 1984.

11 (b) The clerk of the court in which the vacation order is entered  
12 shall immediately transmit the order vacating the conviction to the  
13 Washington state patrol identification section and to the local police  
14 agency, if any, which holds criminal history information for the person  
15 who is the subject of the conviction. The Washington state patrol and  
16 any such local police agency shall immediately update their records to  
17 reflect the vacation of the conviction, and shall transmit the order  
18 vacating the conviction to the federal bureau of investigation. A  
19 conviction that has been vacated under this section may not be  
20 disseminated or disclosed by the state patrol or local law enforcement  
21 agency to any person, except other criminal justice enforcement  
22 agencies.

23 **Sec. 2.** RCW 9.92.066 and 1971 ex.s. c 188 s 3 are each amended to  
24 read as follows:

25 (1) Upon termination of any suspended sentence under RCW 9.92.060  
26 or 9.95.210, such person may apply to the court for restoration of his  
27 or her civil rights. Thereupon the court may in its discretion enter  
28 an order directing that such defendant shall thereafter be released  
29 from all penalties and disabilities resulting from the offense or crime  
30 of which he or she has been convicted.

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34 court may, in its discretion, clear the record of conviction if it  
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10 disseminated or disclosed by the state patrol or local law enforcement  
11 agency to any person, except other criminal justice enforcement  
12 agencies.

--- END ---

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1346**

58th Legislature  
2003 Regular Session

Passed by the House March 13, 2003  
Yeas 96 Nays 0

---

Speaker of the House of Representatives

Passed by the Senate April 9, 2003  
Yeas 45 Nays 0

---

President of the Senate

Approved

---

Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1346** as passed by the House of Representatives and the Senate on the dates hereon set forth.

---

Chief Clerk

FILED

Secretary of State  
State of Washington

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**SUBSTITUTE HOUSE BILL 1346**

---

Passed Legislature - 2003 Regular Session

**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Lovick, Cairnes, Rockefeller, Campbell, Moeller, Clibborn, Cooper, Flannigan, Simpson, Kagi, Pettigrew and Chase)

READ FIRST TIME 02/28/03.

1       AN ACT Relating to vacation of records of conviction for pre-  
2 sentencing reform act felony offenses; and amending RCW 9.95.240 and  
3 9.92.066.

4       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5       **Sec. 1.** RCW 9.95.240 and 1957 c 227 s 7 are each amended to read  
6 as follows:

7       (1) Every defendant who has fulfilled the conditions of his or her  
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9 discharged from probation prior to the termination of the period  
10 thereof, may at any time prior to the expiration of the maximum period  
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12 permitted in the discretion of the court to withdraw his or her plea of  
13 guilty and enter a plea of not guilty, or if he or she has been  
14 convicted after a plea of not guilty, the court may in its discretion  
15 set aside the verdict of guilty; and in either case, the court may  
16 thereupon dismiss the information or indictment against such defendant,  
17 who shall thereafter be released from all penalties and disabilities  
18 resulting from the offense or crime of which he or she has been  
19 convicted. The probationer shall be informed of this right in his or

1 her probation papers: PROVIDED, That in any subsequent prosecution,  
2 for any other offense, such prior conviction may be pleaded and proved,  
3 and shall have the same effect as if probation had not been granted, or  
4 the information or indictment dismissed.

5 (2)(a) After the period of probation has expired, the defendant may  
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8 clear the record of conviction if it finds the defendant has met the  
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25 (1) Upon termination of any suspended sentence under RCW 9.92.060  
26 or 9.95.210, such person may apply to the court for restoration of his  
27 or her civil rights. Thereupon the court may in its discretion enter  
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12 agencies.

--- END ---

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1346**

Chapter 66, Laws of 2003

58th Legislature  
2003 Regular Session

VACATION OF RECORDS OF CONVICTION

EFFECTIVE DATE: 7/27/03

Passed by the House March 13, 2003  
Yeas 96 Nays 0

FRANK CHOPP

\_\_\_\_\_  
Speaker of the House of Representatives

Passed by the Senate April 9, 2003  
Yeas 45 Nays 0

BRAD OWEN

\_\_\_\_\_  
President of the Senate

Approved April 18, 2003.

GARY LOCKE

\_\_\_\_\_  
Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1346** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER

\_\_\_\_\_  
Chief Clerk

FILED

April 18, 2003 - 3:41 p.m.

Secretary of State  
State of Washington

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**SUBSTITUTE HOUSE BILL 1346**

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Passed Legislature - 2003 Regular Session

**State of Washington                      58th Legislature                      2003 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Lovick, Cairnes, Rockefeller, Campbell, Moeller, Clibborn, Cooper, Flannigan, Simpson, Kagi, Pettigrew and Chase)

READ FIRST TIME 02/28/03.

1            AN ACT Relating to vacation of records of conviction for pre-  
2 sentencing reform act felony offenses; and amending RCW 9.95.240 and  
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4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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7            (1) Every defendant who has fulfilled the conditions of his or her  
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12 permitted in the discretion of the court to withdraw his or her plea of  
13 guilty and enter a plea of not guilty, or if he or she has been  
14 convicted after a plea of not guilty, the court may in its discretion  
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10 disseminated or disclosed by the state patrol or local law enforcement  
11 agency to any person, except other criminal justice enforcement  
12 agencies.

Passed by the House March 13, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor April 18, 2003.

Filed in Office of Secretary of State April 18, 2003.

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**Judiciary Committee**

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**HB 1346**

**Title:** An act relating to vacation of records of conviction for pre-sentencing reform act felony offenses.

**Brief Description:** Changing provisions relating to vacation of records of conviction for pre-sentencing reform act felony offenses.

**Sponsors:** Representatives Lovick, Cairnes, Rockefeller, Campbell, Moeller, Clibborn, Cooper, Flannigan, Simpson, Kagi, Pettigrew and Chase.

**Brief Summary of Bill**

- Allows records of convictions for certain pre-Sentencing Reform Act felonies to be vacated in the same way as felonies under the Sentencing Reform Act (SRA).
- Provides, as does the SRA, that vacation of the record of conviction allows the offender to reply on a job application that he or she has not been convicted of the crime.
- Directs, as does the SRA, that law enforcement agencies are not to disseminate vacated records of convictions except to other law enforcement agencies.

**Hearing Date:** 2/6/03

**Staff:** Bill Perry (786-7123).

**Background:**

Vacation of Records of Felony Convictions under the Sentencing Reform Act.

Under the Sentencing Reform Act (SRA) an offender may be able to have his or her record of a felony conviction vacated after a certain amount of time has passed. Vacation of the record has the effect of removing "all penalties and disabilities" that resulted from the offense. It also prevents the offense from being used as "criminal history" for purposes of establishing the offender score in sentencing for a subsequent offense under the SRA. Finally, vacation of the record allows the offender to respond on an employment application that he or she has never been convicted of that crime. Once a felony record has been

vacated under the SRA and is no longer a part of criminal history, the state patrol and other law enforcement agencies may not disseminate the record except to other law enforcement agencies.

However, the vacation of a record of conviction does not prevent that conviction from being used in a later criminal prosecution to impeach a witness or to establish an element of a crime. For instance, it is still possible to use a vacated prior conviction in a prosecution for a crime that becomes a more serious offense on a second or subsequent conviction.

Vacation of a felony record is at the discretion of a judge, with the following limitations:

- No vacation is possible for any class A felony, any violent offense, or any "crime against persons." (These categories cover many crimes, including all murders, all felony sex offenses, all assaults, and many other crimes that are covered by the Washington State Patrol's background check authority regarding prospective employees who may have contact with children.)
- No vacation is possible if the offender has any criminal charges pending.
- No vacation is possible if the offender has been convicted of any other crime since completion of his or her sentence for the offense for which vacation is being sought.
- At least 10 years must have passed since completion of the sentence if the offense was a class B felony.
- At least five years must have passed since completion of the sentence if the offense was a class C felony.

These vacation of record provisions apply only to offenders sentenced under the SRA. The SRA applies only to felonies committed on or after July 1, 1984.

#### Pre-SRA Records of Felony Convictions.

For felonies committed before the July 1, 1984, there are no statutory provisions expressly authorizing the vacation of records.

However, for pre-SRA felons who have successfully completed parole after a prison sentence, the Indeterminate Sentence Review Board (ISRB) may issue a certificate of discharge if the ISRB determines that the person's final release "is not incompatible with the best interests of society and the welfare of the paroled individual." A certificate of discharge has the effect of "restoring all civil rights." (RCW 9.96.050)

Some pre-SRA felons were not sentenced to prison, but instead served suspended sentences and a period of probation. If a felon successfully completed the period of probation he or she could be "released from all penalties and disabilities" that resulted from conviction. However, a release does not prevent the record of conviction from being used in a subsequent prosecution. An application for release must be made "prior to the expiration of

the maximum period of punishment for the offense." (RCW 9.95.210 and 9.95.240) Under another provision, a pre-SRA felon who received a suspended sentence may apply for "restoration of his civil rights." (RCW 9.92.066)

Convictions for certain crimes do not qualify for this restoration of rights. (RCW 9.92.060) These crimes are:

- murder;
- burglary in the first degree;
- arson in the first degree;
- robbery;
- rape; and
- rape of a child.

No statute authorizes pre-SRA felons to respond to an employment application by saying they have never been convicted of an offense. However, the state Supreme Court has recently held that the pre-SRA release from penalties provision is the functional equivalent of the SRA law with respect to vacations of records. The court held that a pre-SRA felon who has been released from all penalties and disabilities following successful completion of probation may respond on an employment application that he or she has not been convicted of the offense. The court also held that the effect of such a release is to direct criminal justice agencies not to release the record of conviction to prospective employers. (State v. Breazeale)

#### **Summary of Bill:**

Two restrictions on the current release from disabilities provisions for pre-SRA felons are removed. A felon need no longer apply for a release prior to the expiration of the maximum term of sentence, and the statement that a release does not prohibit use of the conviction in a subsequent prosecution is eliminated.

In addition to seeking a release from disabilities or a restoration of civil rights under the existing law, a pre-SRA felon who has successfully completed a suspended sentence and probation may apply for a vacation of the record of his or her conviction. The application for and granting of the vacation are subject to the same conditions and restrictions as apply to SRA felony convictions.

The effect of a vacation is also the same as for an SRA felony, including allowing the offender to respond on an employment application that he or she has not been convicted of the crime.

The same directions are given to law enforcement agencies regarding the treatment of vacated records as apply in the case of SRA vacations.

**Appropriation:** None.

**Fiscal Note:** Requested on January 29, 2003.

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

# HOUSE BILL REPORT

## HB 1346

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to vacation of records of conviction for pre-sentencing reform act felony offenses.

**Brief Description:** Changing provisions relating to vacation of records of conviction for pre-sentencing reform act felony offenses.

**Sponsors:** Representatives Lovick, Cairnes, Rockefeller, Campbell, Moeller, Clibborn, Cooper, Flannigan, Simpson, Kagi, Pettigrew and Chase.

**Brief History:**

**Committee Activity:**

Judiciary: 2/6/03, 2/25/03 [DPS].

**Brief Summary of Substitute Bill**

- Allows records of convictions for certain pre-Sentencing Reform Act felonies to be vacated in the same way as felonies under the Sentencing Reform Act (SRA):
- Provides, as does the SRA, that vacation of the record of conviction allows the offender to reply on a job application that he or she has not been convicted of the crime.
- Directs, as does the SRA, that law enforcement agencies are not to disseminate vacated records of convictions except to other law enforcement agencies.

---

**HOUSE COMMITTEE ON JUDICIARY**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

**Staff:** Bill Perry (786-7123).

**Background:**

### Vacation of Records of Felony Convictions under the SRA.

Under the SRA an offender may be able to have his or her record of a felony conviction vacated after a certain amount of time has passed. Vacation of the record has the effect of removing "all penalties and disabilities" that resulted from the offense. It also prevents the offense from being used as "criminal history" for purposes of establishing the offender score in sentencing for a subsequent offense under the SRA. Finally, vacation of the record allows the offender to respond on an employment application that he or she has never been convicted of that crime. Once a felony record has been vacated under the SRA and is no longer a part of criminal history, the state patrol and other law enforcement agencies may not disseminate the record except to other law enforcement agencies.

However, the vacation of a record of conviction does not prevent that conviction from being used in a later criminal prosecution to impeach a witness or to establish an element of a crime. For instance, it is still possible to use a vacated prior conviction in a prosecution for a crime that becomes a more serious offense on a second or subsequent conviction.

Vacation of a felony record is at the discretion of a judge, with the following limitations:

- No vacation is possible for any class A felony, any violent offense, or any "crime against persons." (These categories cover many crimes, including all murders, all felony sex offenses, all assaults, and many other crimes that are covered by the Washington State Patrol's background check authority regarding prospective employees who may have contact with children.)
- No vacation is possible if the offender has any criminal charges pending.
- No vacation is possible if the offender has been convicted of any other crime since completion of his or her sentence for the offense for which vacation is being sought.
- At least 10 years must have passed since completion of the sentence if the offense was a class B felony.
- At least five years must have passed since completion of the sentence if the offense was a class C felony.

These vacation of record provisions apply only to offenders sentenced under the SRA. The SRA applies only to felonies committed on or after July 1, 1984.

### Pre-SRA Records of Felony Convictions.

For felonies committed before July 1, 1984, there are no statutory provisions expressly authorizing the vacation of records.

However, for pre-SRA felons who have successfully completed parole after a prison sentence, the Indeterminate Sentence Review Board (ISRB) may issue a certificate of discharge if the ISRB determines that the person's final release "is not incompatible with the best interests of society and the welfare of the paroled individual." A certificate of discharge has the effect of "restoring all civil rights" (RCW 9.96.050).

Some pre-SRA felons were not sentenced to prison, but instead served suspended sentences and a period of probation. If a felon successfully completed the period of probation he or she could be "released from all penalties and disabilities" that resulted from conviction. However, a release does not prevent the record of conviction from being used in a subsequent prosecution. An application for release must be made "prior to the expiration of the maximum period of punishment for the offense" (RCW 9.95.210 and 9.95.240). Under another provision, a pre-SRA felon who received a suspended sentence may apply for "restoration of his civil rights" (RCW 9.92.066).

Convictions for certain crimes do not qualify for this restoration of rights. (RCW 9.92.060) These crimes are:

- murder;
- burglary in the first degree;
- arson in the first degree;
- robbery;
- rape; and
- rape of a child.

No statute authorizes pre-SRA felons to respond to an employment application by saying they have never been convicted of an offense. However, the state Supreme Court has recently held that the pre-SRA release from penalties provision is the functional equivalent of the SRA law with respect to vacations of records. The court held that a pre-SRA felon who has been released from all penalties and disabilities following successful completion of probation may respond on an employment application that he or she has not been convicted of the offense. The court also held that the effect of such a release is to direct criminal justice agencies not to release the record of conviction to prospective employers. (State v. Breazeale)

**Summary of Substitute Bill:**

A pre-SRA felon who has successfully completed a suspended sentence and probation may apply for a vacation of the record of his or her conviction. The application for and granting of the vacation are subject to the same conditions and restrictions as apply to SRA felony convictions.

The effect of a vacation is also the same as for an SRA felony, including allowing the offender to respond on an employment application that he or she has not been convicted of the crime.

The same directions are given to law enforcement agencies regarding the treatment of vacated records as apply in the case of SRA vacations.

**Substitute Bill Compared to Original Bill:**

The substitute removes changes that the original bill would have made to existing provisions on dismissal of indictments, release from disability, and restoration of rights for pre-SRA felonies.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** Every saint has a past and every sinner has a future. The bill is just a matter of fairness since SRA felons are able to get some convictions vacated. In fact, this bill will grant this same opportunity to those with the longest track record of good behavior since their offenses.

**Testimony Against:** The bill should not change existing provisions that apply to dismissing indictments or restoring rights. The bill should just do for pre-SRA felons what current law already allows for SRA felons.

**Testified:** (In support) Representative Lovick, prime sponsor; and Mark Muenster, Washington Association of Criminal Defense Lawyers.

(In support with amendments) Tom McBride, Washington Association of Prosecuting Attorneys.

# HOUSE BILL REPORT

## SHB 1346

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### As Passed Legislature

**Title:** An act relating to vacation of records of conviction for pre-sentencing reform act felony offenses.

**Brief Description:** Changing provisions relating to vacation of records of conviction for pre-sentencing reform act felony offenses.

**Sponsors:** By House Committee on Judiciary (originally sponsored by Representatives Lovick, Cairnes, Rockefeller, Campbell, Moeller, Clibborn, Cooper, Flannigan, Simpson, Kagi, Pettigrew and Chase).

**Brief History:**

**Committee Activity:**

Judiciary: 2/6/03, 2/25/03 [DPS].

**Floor Activity:**

Passed House: 3/13/03, 96-0.

Passed Senate: 4/9/03, 45-0.

Passed Legislature.

### Brief Summary of Substitute Bill

- Allows records of convictions for certain pre-Sentencing Reform Act felonies to be vacated in the same way as felonies under the Sentencing Reform Act (SRA).
- Provides, as does the SRA, that vacation of the record of conviction allows the offender to reply on a job application that he or she has not been convicted of the crime.
- Directs, as does the SRA, that law enforcement agencies are not to disseminate vacated records of convictions except to other law enforcement agencies.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

**Staff:** Bill Perry (786-7123).

**Background:**

Vacation of Records of Felony Convictions under the SRA.

Under the SRA an offender may be able to have his or her record of a felony conviction vacated after a certain amount of time has passed. Vacation of the record has the effect of removing "all penalties and disabilities" that resulted from the offense. It also prevents the offense from being used as "criminal history" for purposes of establishing the offender score in sentencing for a subsequent offense under the SRA. Finally, vacation of the record allows the offender to respond on an employment application that he or she has never been convicted of that crime. Once a felony record has been vacated under the SRA and is no longer a part of criminal history, the state patrol and other law enforcement agencies may not disseminate the record except to other law enforcement agencies.

However, the vacation of a record of conviction does not prevent that conviction from being used in a later criminal prosecution to impeach a witness or to establish an element of a crime. For instance, it is still possible to use a vacated prior conviction in a prosecution for a crime that becomes a more serious offense on a second or subsequent conviction.

Vacation of a felony record is at the discretion of a judge, with the following limitations:

- No vacation is possible for any class A felony, any violent offense, or any "crime against persons." (These categories cover many crimes, including all murders, all felony sex offenses, all assaults, and many other crimes that are covered by the Washington State Patrol's background check authority regarding prospective employees who may have contact with children.)
- No vacation is possible if the offender has any criminal charges pending.
- No vacation is possible if the offender has been convicted of any other crime since completion of his or her sentence for the offense for which vacation is being sought.
- At least 10 years must have passed since completion of the sentence if the offense was a class B felony.
- At least five years must have passed since completion of the sentence if the offense was a class C felony.

These vacation of record provisions apply only to offenders sentenced under the SRA.

The SRA applies only to felonies committed on or after July 1, 1984.

Pre-SRA Records of Felony Convictions.

For felonies committed before July 1, 1984, there are no statutory provisions expressly authorizing the vacation of records.

However, for pre-SRA felons who have successfully completed parole after a prison sentence, the Indeterminate Sentence Review Board (ISRB) may issue a certificate of discharge if the ISRB determines that the person's final release "is not incompatible with the best interests of society and the welfare of the paroled individual." A certificate of discharge has the effect of "restoring all civil rights" (RCW 9.96.050).

Some pre-SRA felons were not sentenced to prison, but instead served suspended sentences and a period of probation. If a felon successfully completed the period of probation he or she could be "released from all penalties and disabilities" that resulted from conviction. However, a release does not prevent the record of conviction from being used in a subsequent prosecution. An application for release must be made "prior to the expiration of the maximum period of punishment for the offense" (RCW 9.95.210 and 9.95.240). Under another provision, a pre-SRA felon who received a suspended sentence may apply for "restoration of his civil rights" (RCW 9.92.066).

Convictions for certain crimes do not qualify for this restoration of rights. (RCW 9.92.060) These crimes are:

- murder;
- burglary in the first degree;
- arson in the first degree;
- robbery;
- rape; and
- rape of a child.

No statute authorizes pre-SRA felons to respond to an employment application by saying they have never been convicted of an offense. However, the state Supreme Court has recently held that the pre-SRA release from penalties provision is the functional equivalent of the SRA law with respect to vacations of records. The court held that a pre-SRA felon who has been released from all penalties and disabilities following successful completion of probation may respond on an employment application that he or she has not been convicted of the offense. The court also held that the effect of such a

release is to direct criminal justice agencies not to release the record of conviction to prospective employers. (State v. Breazeale)

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**Summary of Substitute Bill:**

A pre-SRA felon who has successfully completed a suspended sentence and probation may apply for a vacation of the record of his or her conviction. The application for and granting of the vacation are subject to the same conditions and restrictions as apply to SRA felony convictions.

The effect of a vacation is also the same as for an SRA felony, including allowing the offender to respond on an employment application that he or she has not been convicted of the crime.

The same directions are given to law enforcement agencies regarding the treatment of vacated records as apply in the case of SRA vacations.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** Every saint has a past and every sinner has a future. The bill is just a matter of fairness since SRA felons are able to get some convictions vacated. In fact, this bill will grant this same opportunity to those with the longest track record of good behavior since their offenses.

**Testimony Against:** (Original Bill) The bill should not change existing provisions that apply to dismissing indictments or restoring rights. The bill should just do for pre-SRA felons what current law already allows for SRA felons.

**Testified:** (In support) Representative Lovick, prime sponsor; and Mark Muenster, Washington Association of Criminal Defense Lawyers.

(In support with amendments) Tom McBride, Washington Association of Prosecuting Attorneys.

# SENATE BILL REPORT

## SHB 1346

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As Reported By Senate Committee On:  
Judiciary, March 27, 2003

**Title:** An act relating to vacation of records of conviction for pre-sentencing reform act felony offenses.

**Brief Description:** Changing provisions relating to vacation of records of conviction for pre-sentencing reform act felony offenses.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Lovick, Cairnes, Rockefeller, Campbell, Moeller, Clibborn, Cooper, Flannigan, Simpson, Kagi, Pettigrew and Chase).

**Brief History:**

**Committee Activity:** Judiciary: 3/26/03, 3/27/03 [DP].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Hargrove, Haugen, Johnson, Kline, Roach and Thibaudeau.

**Staff:** Aldo Melchiori (786-7439)

**Background:** For felony convictions after July 1, 1984, the Sentencing Reform Act (SRA) allows an offender to have his or her record of a felony conviction vacated if at least 10 years have passed since completion of the sentence for a class B felony or at least five years have passed since completion of the sentence for a class C felony. The judge has the discretion to vacate the conviction, except that vacation is not possible: (1) for any class A felony, any "violent offense," or any "crime against persons;" (2) if the offender has any criminal charges pending; or (3) if the offender has been convicted of any other crime since completion of the sentence for the offense for which vacation is being sought.

Vacation of the record has the effect of removing all penalties and disabilities that resulted from the offense. However, it is unclear whether vacation of a conviction entitles an offender to possess a firearm since there is no specific finding of rehabilitation (federal law precludes possession). Vacation of the record prevents the offense from being used as criminal history for purposes of establishing the offender score in sentencing for a subsequent offense and allows the offender to respond on an employment application that he or she has never been convicted of that crime. Once a felony record has been vacated, the State Patrol and other law enforcement agencies may not disseminate the record except to other law enforcement agencies. Vacation of a conviction does not prevent it from being used to impeach a witness or to establish an element of a crime whose classification as a felony requires proof of a prior conviction.

For felonies sentenced before July 1, 1984, there are no statutory provisions expressly authorizing the vacation of records. For pre-SRA felons who have successfully completed parole after a prison sentence, the Indeterminate Sentence Review Board (ISRB) may issue a certificate of discharge if the ISRB determines that the person's final release "is not incompatible with the best interests of society and the welfare of the paroled individual." A certificate of discharge has the effect of restoring the right to vote, but does not entitle the offender to possess a firearm.

Some pre-SRA felons were not sentenced to prison, but instead served suspended sentences and a period of probation (convictions for murder; burglary in the first degree; arson in the first degree; robbery; rape; and rape of a child may not be suspended). If a felon successfully completed the period of probation, he or she could be "released from all penalties and disabilities" that resulted from conviction. The release does not prevent the record of conviction from being used in a subsequent prosecution. An application for release must be made "prior to the expiration of the maximum period of punishment for the offense." A pre-SRA felon who received a suspended sentence may apply for restoration of the right to vote.

No statute authorizes pre-SRA felons to respond to an employment application by saying they have never been convicted of an offense. However, the state Supreme Court has recently held that the pre-SRA release from penalties provision is the functional equivalent of the SRA provision with respect to vacation of records. The court held that a pre-SRA felon who has been released from all penalties and disabilities following successful completion of probation may respond on an employment application that he or she has not been convicted of the offense. The court also held that the effect of such a release is to direct criminal justice agencies not to release the record of conviction to prospective employers.

**Summary of Bill:** A felon convicted before July 1, 1984, who has successfully completed a suspended sentence and probation may apply for a vacation of the record of his or her conviction. The application for and granting of the vacation are subject to the same conditions and restrictions used under the SRA. After the conviction is vacated, the offender may respond on an employment application that he or she has not been convicted of the crime. The records are treated the same by law enforcement agencies.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** Pre-SRA and post-SRA offenders should be treated consistently. Offenders who show that they can live in the community without reoffending should be allowed to go on with their lives. This is not an issue of leniency, it is an issue of fairness.

**Testimony Against:** None.

**Testified:** PRO: Representative O'Brien; Tom McBride, WAPA; Mark Muenster, WACDL.

# FINAL BILL REPORT

## SHB 1346

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C 66 L 03  
Synopsis as Enacted

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**Brief Description:** Changing provisions relating to vacation of records of conviction for pre-sentencing reform act felony offenses.

**Sponsors:** By House Committee on Judiciary (originally sponsored by Representatives Lovick, Cairnes, Rockefeller, Campbell, Moeller, Clibborn, Cooper, Flannigan, Simpson, Kagi, Pettigrew and Chase).

**House Committee on Judiciary**  
**Senate Committee on Judiciary**

### **Background:**

#### Vacation of Records of Felony Convictions under the Sentencing Reform Act (SRA).

Under the SRA an offender may be able to have his or her record of a felony conviction vacated after a certain amount of time has passed. Vacation of the record has the effect of removing "all penalties and disabilities" that resulted from the offense. It also prevents the offense from being used as "criminal history" for purposes of establishing the offender score in sentencing for a subsequent offense under the SRA. Finally, vacation of the record allows the offender to respond on an employment application that he or she has never been convicted of that crime. Once a felony record has been vacated under the SRA and is no longer a part of criminal history, the Washington State Patrol and other law enforcement agencies may not disseminate the record except to other law enforcement agencies.

The vacation of a record of conviction does not, however, prevent that conviction from being used in a later criminal prosecution to impeach a witness or to establish an element of a crime. For instance, it is still possible to use a vacated prior conviction in a prosecution for a crime that becomes a more serious offense on a second or subsequent conviction.

Vacation of a felony record is at the discretion of a judge, with the following limitations:

- No vacation is possible for any class A felony, any violent offense, or any "crime against persons." (These categories cover many crimes, including all murders, all felony sex offenses, all assaults, and many other crimes that are covered by the Washington State Patrol's background check authority regarding prospective employees who may have contact with children.)

- No vacation is possible if the offender has any criminal charges pending.
- No vacation is possible if the offender has been convicted of any other crime since completion of his or her sentence for the offense for which vacation is being sought.
- At least 10 years must have passed since completion of the sentence if the offense was a class B felony.
- At least five years must have passed since completion of the sentence if the offense was a class C felony.

These vacation of record provisions apply only to offenders sentenced under the SRA. The SRA applies only to felonies committed on or after July 1, 1984.

#### Pre-SRA Records of Felony Convictions.

For felonies committed before July 1, 1984, there are no statutory provisions expressly authorizing the vacation of records.

However, for pre-SRA felons who have successfully completed parole after a prison sentence, the Indeterminate Sentence Review Board (ISRB) may issue a certificate of discharge if the ISRB determines that the person's final release "is not incompatible with the best interests of society and the welfare of the paroled individual." A certificate of discharge has the effect of "restoring all civil rights.—

Some pre-SRA felons were not sentenced to prison, but instead served suspended sentences and a period of probation. If a felon has successfully completed the period of probation he or she may be "released from all penalties and disabilities" that resulted from conviction. However, a release does not prevent the record of conviction from being used in a subsequent prosecution. An application for release must be made "prior to the expiration of the maximum period of punishment for the offense.— Under another provision, a pre-SRA felon who received a suspended sentence may apply for "restoration of his civil rights."

Convictions for certain crimes do not qualify for this restoration of rights. These crimes are

murder, burglary in the first degree, arson in the first degree, robbery, rape, and rape of a child.

No statute authorizes pre-SRA felons to respond to an employment application by saying they have never been convicted of an offense. However, the Washington Supreme Court has held that the pre-SRA release from penalties provision is the functional equivalent of

the SRA law with respect to vacations of records. The Court held that a pre-SRA felon who has been released from all penalties and disabilities following successful completion of probation may respond on an employment application that he or she has not been convicted of the offense. The Court also held that the effect of such a release is to direct criminal justice agencies not to release the record of conviction to prospective employers.

**Summary:**

A pre-SRA felon who has successfully completed a suspended sentence and probation may apply for a vacation of the record of his or her conviction. The application for and granting of the vacation are subject to the same conditions and restrictions as apply to SRA felony convictions.

The effect of a vacation is also the same as for an SRA felony, including allowing the offender to respond on an employment application that he or she has not been convicted of the crime.

The same directions are given to law enforcement agencies regarding the treatment of vacated records as apply in the case of SRA vacations.

**Votes on Final Passage:**

House 96 0  
Senate 45 0

**Effective:** July 27, 2003

1346

Sponsor(s): Representatives Lovick, Cairnes, Rockefeller, Campbell, Moeller, Clibborn, Cooper, Flannigan, Simpson, Kagi, Pettigrew and Chase

Brief Description: Changing provisions relating to vacation of records of conviction for pre-sentencing reform act felony offenses.

**HB 1346 - DIGEST**

(SUBSTITUTED FOR - SEE 1ST SUB)

Revises provisions relating to vacation of records of conviction for pre-sentencing reform act felony offenses.

1346-S

Sponsor(s): House Committee on Judiciary (originally sponsored by Representatives Lovick, Cairnes, Rockefeller, Campbell, Moeller, Clibborn, Cooper, Flannigan, Simpson, Kagi, Pettigrew and Chase)

Brief Description: Changing provisions relating to vacation of records of conviction for pre-sentencing reform act felony offenses.

**HB 1346-S - DIGEST**

(DIGEST AS ENACTED)

Revises provisions relating to vacation of records of conviction for pre-sentencing reform act felony offenses.

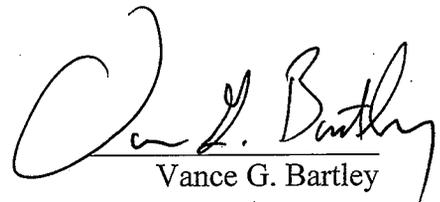
Provides that, after the period of probation has expired, the defendant may apply to the sentencing court for a vacation of the defendant's record of conviction under RCW 9.94A.640. The court may, in its discretion, clear the record of conviction if it finds the defendant has met the equivalent of the tests in RCW 9.94A.640(2) as those tests would be applied to a person convicted of a crime committed before July 1, 1984.

**CERTIFICATE OF SERVICE**

I, Vance G. Bartley, Paralegal for the Law Offices of Ellis, Holmes & Witchley, PLLC, certify that on October 30, 2009 I served the parties listed below with a copy of *Reply In Support of Personal Restraint Petition* as follows:

Karen Watson  
Deputy Prosecuting Attorney  
930 Tacoma Ave. S Rm. 946  
Tacoma, WA 98402-2171

10-30-09 Sea, WA  
Date and Place

  
Vance G. Bartley

## OFFICE RECEPTIONIST, CLERK

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Thursday, October 29, 2009 3:52 PM  
**To:** 'Jeff Ellis'; pcpatcecf@co.pierce.wa.us  
**Subject:** RE: PRP of Carrier, No. 83377-0

Reply in support of petition has been filed, please mail the attachments separately and they will be attached when received. They are over are attachment limit for e-mail filing (25 pages).

Thank you.

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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**From:** Jeff Ellis [mailto:jeffreyerwinellis@gmail.com]  
**Sent:** Thursday, October 29, 2009 3:47 PM  
**To:** OFFICE RECEPTIONIST, CLERK; pcpatcecf@co.pierce.wa.us  
**Subject:** Re: PRP of Carrier, No. 83377-0

Attached please find for filing Mr. Carrier's reply, along with two appendices (A and B). I have served the Pierce County Pros office by simultaenously sending this email and its attachments and will also mail a copy to DPA Karen Watson.

--

Jeff Ellis  
Law Offices of Ellis, Holmes  
& Witchley, PLLC  
705 Second Ave., Ste 401  
Seattle, WA 98104  
206/262-0300 (o)  
206/262-0335 (f)  
206/218-7076 (c)