

HOUSE BILL REPORT

HB 2320

As Reported By House Committee On:
Corrections

Title: An act relating to persistent offenders.

Brief Description: Making certain sex offenders subject to life imprisonment without parole after two offenses.

Sponsors: Representatives Ballasiotes, Blanton, Radcliff, Backlund, Robertson, Hatfield, Mulliken, Sheldon, Hymes, Kessler, Carlson, Johnson, Thompson, Costa and Boldt.

Brief History:

Committee Activity:

Corrections: 1/19/96, 1/26/96 [DPS].

HOUSE COMMITTEE ON CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Ballasiotes, Chairman; Blanton, Vice Chairman; Quall, Ranking Minority Member; Tokuda, Assistant Ranking Minority Member; Cole; Dickerson; Koster; Radcliff; Schoesler and D. Sommers.

Staff: Rick Neidhardt (786-7841).

Background: Under Washington's "Three Strikes and You're Out" law, an offender who commits three offenses that qualify as "strikes," as long as each strike represents a separate trip through the judicial system, is sentenced as a "persistent offender."

The offenses, including attempts, that qualify as "strikes" are as follows:

- (1) all class A felonies;
- (2) assault in the second degree;
- (3) assault of a child in the second degree;
- (4) child molestation in the second degree;
- (5) controlled substance homicide;
- (6) extortion in the first degree;
- (7) incest when committed against a child under 14;
- (8) indecent liberties;
- (9) kidnapping in the second degree;
- (10) leading organized crime;

- (11) manslaughter in the first degree;
- (12) manslaughter in the second degree;
- (13) promoting prostitution in the first degree;
- (14) rape in the third degree;
- (15) robbery in the second degree;
- (16) sexual exploitation;
- (17) vehicular assault;
- (18) vehicular homicide, when caused by a DWI or recklessness;
- (19) any Class B felonies that were sexually motivated;
- (20) any felony committed with a deadly weapon; or
- (21) any federal or out-of-state convictions for offenses similar to those contained in this list.

The sentence for a persistent offender is life imprisonment without possibility of release. A persistent offender is not eligible for community custody, earned early release time, furlough, home detention, partial confinement, work crew, work release or any other form of early release.

The Department of Corrections provides treatment and counseling services for some of the sex offenders who are confined in the state prison system.

Summary of Substitute Bill: A person shall be sentenced as a persistent offender to life imprisonment without possibility of release if the person has been twice convicted, on separate trips through the judicial system, of any of the following qualifying offenses, including attempts:

- (1) rape in the first degree;
- (2) rape in the second degree;
- (3) indecent liberties by forcible compulsion; or
- (4) any of the following offenses if they were specifically found to have been sexually motivated:
 - (a) murder in the first or second degree;
 - (b) kidnapping in the first or second degree;
 - (c) assault in the first or second degree; or
 - (d) burglary in the first degree.

The first qualifying conviction may have occurred in a jurisdiction other than Washington.

The "Three Strikes and You're Out" law is not supplanted. A person can qualify as a persistent offender either (1) by committing three strikes as under current law, or (2) by committing two of the offenses covered in this substitute bill.

The Department of Corrections is prohibited from providing sex offender treatment or sex offender counseling services to a sex offender sentenced to life imprisonment as a persistent offender.

Substitute Bill Compared to Original Bill: The original bill did not address the issue of sex offender treatment and sex offender counseling.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: The sex offenses covered by this bill are different than the other offenses that are already covered under the existing "Three Strikes and You're Out" law. They merit inclusion in a "Two Strikes" bill. This bill is narrowly tailored. There is a possible chilling effect if the "Two Strikes" bill were to include crimes against children. Cost should not be a major factor in consideration of a "Two Strikes" bill. The bill is intended to complement, not replace, the existing statute allowing for civil commitment of sexually violent predators. This bill will reduce the need for the commitment statute. Prisoners who are put away for life should not be given sex offender treatment or sex offender counseling.

Testimony Against: Current law sufficiently protects the public. Judges can impose exceptional sentences. We also have "Three Strikes and You're Out" and the civil commitment statute for sexually violent predators. The bill will be expensive in future biennia. Judges should have discretion in sentencing sex offenders. A "Two Strikes" bill will deter reporting of offenses. This bill is patterned after the "Three Strikes and You're Out" law, which is currently being challenged in the appellate courts.

Testified: Representative Ida Ballasiotes, prime sponsor; Dan Satterburg, Washington Association of Prosecuting Attorneys (pro); Dick VanWagenen, Sentencing Guidelines Commission (con); Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs (pro); Mike Patrick, Washington State Council of Police Officers (pro); and Richard Tasano, Washington Association of Criminal Defense Lawyers (con).