

# HOUSE BILL REPORT

## HB 2921

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**As Reported By House Committee On:**  
Criminal Justice & Corrections  
Appropriations

**Title:** An act relating to residential burglary.

**Brief Description:** Creating first and second degrees of residential burglary.

**Sponsors:** Representatives Cairnes, O'Brien, Carrell, Sullivan and Conway.

**Brief History:**

**Committee Activity:**

Criminal Justice & Corrections: 2/4/98, 2/5/98 [DPA];

Appropriations: 2/7/98 [DPS(APP)].

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass as amended. Signed by 6 members: Representatives Benson, Vice Chairman; O'Brien, Assistant Ranking Minority Member; Cairnes; McCune; Mitchell and Sullivan.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Ballasiotes, Chairman; and Koster, Vice Chairman.

**Staff:** Yvonne Walker (786-7841).

**Background:** Under the Sentencing Reform Act and the Juvenile Justice Act, residential burglary is committed when a person enters or remains unlawfully in a dwelling other than a vehicle with the intent to commit a crime against a person or property.

Under the adult Sentencing Reform Act, residential burglary is a class B felony which carries a maximum penalty of 10 years in prison, a \$20,000 fine, or both. Residential burglary is ranked at seriousness level IV. An offender who does not have any criminal history has a presumptive standard range of three to nine months in jail. The actual sentence a particular offender receives depends on the offender's prior criminal history and other current charges.

Residential burglary is not among the list of crimes that are considered to be "most serious offenses." The most serious offense category includes such items as: aggravated

murder in the first degree, manslaughter in the first and second degree, rape of an adult or child in the first and second degree, murder in the first and second degree, child molestation in the first and second degree, arson in the first degree, etc.

**Summary of Amended Bill:**

Two crimes of residential burglary are created (in the first and second degree) and its designated penalties.

Residential burglary in the first degree is when a person enters or remains unlawfully in a dwelling other than a vehicle when someone other than an accomplice is present with the intent to commit a crime against a person or property. Residential burglary in the first degree is a class B felony and has a seriousness level V under the Sentencing Reform Act. An offender who does not have any criminal history has a presumptive standard range of six to 12 months in jail.

Residential burglary in the second degree is when a person enters or remains unlawfully in a dwelling other than a vehicle when no one other than an accomplice is present with the intent to commit a crime against a person or property. Residential burglary in the second degree is a class B felony and has a serious level IV. An offender who does not have any criminal history has a presumptive standard range of three to nine months in jail. In establishing sentencing guidelines and disposition standards, the sentencing guidelines commission and the juvenile disposition standards commission shall consider residential burglary in the second degree as a more serious offense than second degree burglary.

The category of "most serious offenses" is expanded to include two or more offenses of residential burglary in the first and second degree.

The bill limits the law's effective date to only those offenses that are committed after the effective date of the bill. In addition, if an offender is convicted of two or more counts of any combination of residential burglary in the first or second degree during the same court appearance, the convictions count as only one conviction for the purposes of this bill.

**Amended Bill Compared to Original Bill:**

The amended bill limits the law's effective date to only those offenses that are committed after the effective date of the bill. In addition, if an offender is convicted of two or more counts of any combination of residential burglary in the first or second degree during the same court appearance, the convictions count as only one conviction for the purposes of this bill.

**Appropriation:** None.

**Fiscal Note:** Requested on January 30, 1998.

**Effective Date of Amended Bill:** Section 13 of this act takes effect July 1, 1998 and the remaining sections take effect ninety days after adjournment.

**Testimony For:** For many years offenders who have committed residential burglary, in houses with someone home and in houses that have no one present, have virtually been treated the same. Offenders who commit residential burglary are more likely to commit a more serious or violent crime when they are surprised by an innocent family member who still may be home.

The creation of the two crimes of residential burglary (in the first and second degree) with a harsher penalty for residential burglaries in the first degree will make offenders more self conscious about the consequences of the felony offense they are about to commit.

**Testimony Against:** It is unnecessary to expand the list of three strike offenses to add second or subsequent residential burglary convictions (a nonviolent offense) since it is already a strike to commit a violent burglary. Washington's citizens voted for I-593 in order to punish violent criminals. The law seeks to imprison the worst and most dangerous offenders for life. Expanding the strike list to non-violent burglaries runs counter to the will of the voters.

Current law already provides for appropriate punishment in residential burglary cases and permits judges to sentence offenders to years in prison if the circumstances of the crime merit harsh punishment. In addition, adding repeat, non-violent burglaries to the strike list will broaden the pool of three strikes candidates and significantly increase the number of mandatory life sentences. In addition, the bill does not allow for early release or parole, or for the consideration of individual circumstances.

**Testified:** Representative Jack Cairnes, prime sponsor (pro); and Russell V. Leonard, Washington Association of Criminal Defense Lawyers (con).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Criminal Justice & Corrections be substituted therefor and the substitute bill do pass. Signed by 30 members: Representatives Huff, Chairman; Alexander, Vice Chairman; Clements, Vice Chairman; Wensman, Vice Chairman; H. Sommers, Ranking Minority Member; Doumit, Assistant Ranking Minority Member; Gombosky, Assistant Ranking Minority Member; Benson; Carlson; Chopp; Cody; Cooke; Crouse; Grant; Keiser; Kenney; Kessler; Lambert; Linville; Lisk; Mastin; McMorris; Parlette; Poulsen; Regala; D. Schmidt; Sehlin; Sheahan; Talcott and Tokuda.

**Staff:** Dave Johnson (786-7154).

**Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Criminal Justice & Corrections:** As the bill passed the Criminal Justice and Corrections Committee, second and subsequent residential burglaries would constitute a "most serious offense." A "most serious offense" counts as a "strike" under the three strikes statute. That provision is removed. In addition, a new section was added which makes the bill null and void unless specific funding is provided in the Omnibus Appropriations Act by June 30, 1998.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 8, 1998.

**Effective Date of Substitute Bill:** Section 13 of this act takes effect July 1, 1998, and the remaining sections take effect ninety days after adjournment. However, the bill is null and void unless funded in the budget.

**Testimony For:** None.

**Testimony Against:** None.

**Testified:** None.