

# SENATE BILL REPORT

## SHB 1039

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As Reported By Senate Committee On:  
Judiciary, March 27, 2001

**Title:** An act relating to persistent offenders.

**Brief Description:** Clarifying which prior offenses are considered strikes.

**Sponsors:** By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Ballasiotes, O'Brien, Ahern, Morell and Woods).

**Brief History:**

**Committee Activity:** Judiciary: 3/15/01, 3/27/01 [DPA].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended.

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

**Staff:** Lilah Amos (786-7421)

**Background:** A persistent offender is an offender who has either three separate convictions for a strike– offense or two separate convictions for a sex crime strike– offense. A persistent offender must be sentenced to life in prison without possibility of parole. Prior strike– convictions may have occurred in another state. To qualify as a prior sex crime strike– offense, whether occurring in Washington or another jurisdiction, the prior criminal conviction, including attempts, is presently required to be specifically named on the list of strike– offenses. The qualifying crimes include rape in the first or second degree, rape of a child in the first or second degree, and some serious violent felonies found to have been committed with sexual motivation.

Judges are not explicitly authorized to include as strikes– those out-of-state crimes with different names which would be considered strike–offenses in Washington, or Washington convictions for crimes having the same or similar elements but different names. Names of crimes frequently vary between states and have been changed in Washington. For example, in 1988 the Washington crimes of statutory rape in the first and second degree were replaced by the crimes of rape of a child in the first and second degree. The Washington crime of child rape in the first degree corresponds to portions of the Oregon crime of sodomy in the first degree. Confusion about whether to include prior sex offenses in determining an offender's status as persistent– has led to inconsistent application of the two strikes, you're out– law and therefore to inconsistencies in imposition of mandatory life sentences for offenders with similar criminal histories.

**Summary of Amended Bill:** A federal or out-of-state prior sex offense conviction or a conviction under prior Washington law is considered a strike– offense for the purpose of

persistent offender categorization under the two strikes, you're out– law if the crime is comparable to a currently named strike– offense.

**Amended Bill Compared to Original Bill:** The amendment adds federal crimes to those out-of-state and Washington crimes which will be counted as strike offenses if comparable to existing Washington offenses listed as strikes.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** This bill is needed to insure that sex offense convictions from other states are counted as strike offenses for persistent offender status if they are comparable to existing strike offenses. Currently convictions of crimes with different names from Washington or other states could be excluded as prior strike offenses.

**Testimony Against:** An amendment is needed to make sure that only felony offenses are counted as prior strike offenses, and that misdemeanor offenses from other states cannot be strike offenses.

**Testified:** Representative Ballasiotes, prime sponsor; Russell V. Leonard, Washington Assn. of Criminal Defense Lawyers/Washington Defenders Association (recommends amendment); Suzanne Brown, Washington Coalition of Sexual Assault Programs (pro); Tom McBride, Washington Association of Prosecuting Attorneys (pro).