
**Community Safety, Justice, & Reentry
Committee**

HB 1108

Brief Description: Resentencing of individuals sentenced as a persistent offender.

Sponsors: Representatives Hackney, Walen, Fitzgibbon, Simmons and Kloba.

Brief Summary of Bill

- Requires courts to resentence qualifying persons serving exceptional sentences that were based on plea agreements intended for those persons to avoid life sentences under the "three strikes" law.

Hearing Date: 1/23/23

Staff: Martha Wehling (786-7067).

Background:

Robbery.

Robbery is the unlawful taking of personal property from another person against that person's will, through the use or threat of use of immediate force, violence, or fear of physical injury or property injury, to the person or a third party. The person must use force or fear to obtain or retain the property, or to prevent or overcome resistance to its taking. A person commits the crime of Robbery in the first degree, a class A felony, when the robbery involves the use of a deadly weapon, the infliction of bodily injury, or if the robbery is against a financial institution. A person commits the crime of Robbery in the second degree, a class B felony, if the person commits robbery in a manner that does not constitute Robbery in the first degree.

Three Strikes Law.

In 1994 the voters approved Initiative 593, commonly referred to as the "three strikes" law. The

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law requires a sentencing court to impose a sentence of imprisonment without the possibility of release when a person is a "persistent offender." A "persistent offender" is someone convicted of a "most serious offense" and who has at least two prior convictions within a designated period of time.

"Most serious offenses" are also referred to as "strike offenses." These offenses include any class A felony, certain class B felonies, a felony with a deadly weapon verdict, or any equivalent federal or out-of-state offense. Prior to 2019, Robbery in the second degree was a strike offense. However, it was removed from the definition of a "most serious offense" through legislation in 2019. The change did not affect persons serving life imprisonment sentences under the three strikes law based on a Robbery in the second degree offense committed before July 28, 2019. In 2021 the state enacted legislation requiring a resentencing hearing for any person sentenced to life imprisonment without the possibility of release under the three strikes law when the sentence was based on a current or past conviction of Robbery in the second degree. The legislation required the county prosecuting attorney to review each sentencing document to identify whether Robbery in the second degree was used as a basis for the sentence. In those situations, the prosecuting attorney was required to make a motion for relief from the sentence to the court, and the court was required to resentence the person as if Robbery in the second degree was not a most serious offense (a strike offense) at the time the original sentence was imposed.

Exceptional Sentences.

The court may impose a sentence outside the standard range in certain circumstances. The court must make written findings that a substantial and compelling reason justifies an exceptional sentence. Sentences outside the standard range are "determinate sentences." The exceptional sentence may be below the standard range, if mitigating circumstances are established by a preponderance of the evidence, or above the standard range. The court may impose an aggravated exceptional sentence in certain, specified circumstances. Robbery in the second degree is not an aggravating circumstance.

Plea Agreements.

A plea agreement occurs when the prosecutor and the defendant's attorney agree to resolution of the charges. The agreement may include, but is not limited to, dismissal of other charges or counts, recommendation of a particular sentence, a guilty plea for an offense, or limitation on filing of additional charges or counts.

Summary of Bill:

If a person is serving an exceptional sentence in accordance with a plea agreement, where the agreement was intended for the person to avoid a conviction of a third strike with a life sentence, and a current or past strike was or would have been Robbery in the second degree, then the prosecutor must review the sentencing document and file a motion for relief from the sentence. The sentencing court shall grant the motion for relief and immediately set an expedited resentencing. If the person pled guilty in the original sentencing, the guilty plea may not be withdrawn. The person must be resented as charged prior to entering the plea agreement.

During resentencing, the court shall impose a sentence as if Robbery in the second degree was not a most serious offense.

Appropriation: None.

Fiscal Note: Available.

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