

HOUSE BILL REPORT

HB 1108

As Reported by House Committee On:
Community Safety, Justice, & Reentry

Title: An act relating to resentencing of individuals sentenced as a persistent offender, or sentenced to an exceptional sentence pursuant to a plea agreement intended to avoid a persistent offender sentence, due to a robbery in the second degree conviction.

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

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

Brief History:

Committee Activity:

Community Safety, Justice, & Reentry: 1/23/23, 2/2/23 [DPS].

Brief Summary of Substitute 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.

HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Goodman, Chair; Simmons, Vice Chair; Davis, Farivar, Fosse and Ramos.

Minority Report: Do not pass. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Graham.

Staff: Martha Wehling (786-7067).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

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 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 Substitute 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 resentenced 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.

The Administrative Office of the Courts and the Department of Corrections (DOC) are required to provide plea agreement data to the Office of Public Defense for charges for Robbery in the second degree. The Office of Public Defense will review the data, identify individuals eligible for resentencing, and provide that information to county public defenders and prosecutors.

Substitute Bill Compared to Original Bill:

Requires the Administrative Office of the Courts and the DOC to provide plea agreement data to the Office of Public Defense, and requires the Office of Public Defense to identify individuals eligible for resentencing.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The Legislature previously decided that Robbery in the second degree is not a strike offense and provided relief from life without parole for Robbery in the second degree charges. This bill gives the same relief to defendants who entered into a plea agreement and

reduces unnecessary incarceration. Prisons are full of people serving excessively long sentences because of the prosecutors' ability to lengthen sentences to avoid life sentences. Defendants bear the responsibility for crimes, but individuals who accepted plea agreements are facing extraordinary sentences that are longer than would have been required, even though a plea agreement saves the taxpayers money that would have been spent on trial and spares victims from the trial proceedings. The bill provides a benefit to the government, by avoiding the time and expense associated with a trial, and a benefit to the defendant, by providing equal treatment and fairness and proportionality in charging and sentencing. The funding from *State v. Blake (Blake)* provides capacity to triage these cases. Based on public records requests and other estimates, it is likely that 20 to 100 individuals will be affected by the bill. The individuals affected may be disproportionately black. The Redemption Project is willing to identify all individuals affected by the bill in order to ensure they receive assistance from counsel, even if they are located in a county with fewer resources. Justice requires relief for the individuals who were left behind and undoes the harm caused by considering Robbery in the second degree a strike offense.

(Opposed) The number of prosecutors and defense attorneys available to provide representation for current caseloads is inadequate; there are not enough to also resentence prior cases. The bill is a luxury that courts and counties do not have the capacity to handle. Resentencing impacts court time in a system that is already backlogged. When new administrative burdens are created, the State should appropriate resources for the additional costs, like it has done for the *Blake* expenses. Local government costs are not always reflected because they are not a state impact. The bill is also not constitutionally sound because it requires a person to plea to something that they were not charged with. It will be challenging to find all the individuals affected by the bill, particularly if Robbery in the second degree is not identified in the plea document. The bill does not address charges for Robbery in the first degree or multiple charges.

Persons Testifying: (In support) Representative David Hackney, prime sponsor; Jeffrey Ellis, Redemption Project of Washington; Jacob Schmitt, Washington Department of Corrections; Larry Jefferson, Washington State Office of Public Defense; David Trieweiler, Washington Association of Criminal Defense Lawyers and Washington Defenders Association; and Anita Khandelwal, King County Department of Public Defense.

(Opposed) Russell Brown, Washington Association of Prosecuting Attorneys; and Juliana Roe, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying: Judge Sean O'Donnell, Superior Court Judges' Association; Vidal Vincent; Eugene Youngblood; and Dyneeca Adams.