

# HOUSE BILL REPORT

## HB 1176

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### As Reported By House Committee On:

Criminal Justice & Corrections

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

**Brief Description:** Adding child rape to the two strikes list.

**Sponsors:** Representatives Koster, Boldt, Smith, Backlund, Dunn, McMorris, Schoesler, Sheldon, Johnson, DeBolt and Mulliken.

### Brief History:

#### Committee Activity:

Criminal Justice & Corrections: 2/25/97, 2/26/97 [DPS].

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## HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Ballasiotes, Chairman; Benson, Vice Chairman; Koster, Vice Chairman; O'Brien, Assistant Ranking Minority Member; Blalock; Cairnes; Delvin; Dickerson; Hickel; Mitchell; Robertson and Sullivan.

**Staff:** Yvonne Walker (786-7841) House Committee on Criminal Justice and Corrections

Trudes Hutcheson (786-7384) House Committee on Law and Justice

**Background:** Under what is commonly referred to as the Two Strikes and You're Out- law, a person is considered a persistent offender- if:

- (1) the person has been convicted of any of the following sex offenses:
  - (a) rape in the first degree;
  - (b) rape in the second degree;
  - (c) indecent liberties by forcible compulsion;
  - (d) murder in the first or second degree, kidnaping in the first or second degree, assault in the first or second degree, or burglary in the first degree when those offenses are committed with sexual motivation; or
  - (e) an attempt to commit any of those sex offenses; and

(2) the person has been convicted on at least one prior separate and distinct occasion of any one of the listed sex offenses.

The commission of the offense and the conviction for that offense count as a strike,– and both must occur before the next commission and conviction of an offense can count as another strike.–

Persistent offenders– are sentenced to life imprisonment without possibility of parole. RCW 9.94A.120(4). Persistent offenders– are not eligible for community custody, earned early release time, furlough, home detentions, partial confinement, work crew, work release, or any other form of early release. RCW 9.94A.120(4).

A person commits rape of a child in the first degree when the person has sexual intercourse with a child who is less than 12 years old and not married to the perpetrator, and the perpetrator is at least two years older than the child.

A person commits rape of a child in the second degree when the person has sexual intercourse with a child who is at least 12 years old, but less than 14 years old and not married to the perpetrator, and the perpetrator is at least three years older than the child.

Rape of a child in the first degree and rape of a child in the second degree are not included in the two strikes– list of sex offenses.

**Summary of Substitute Bill:** Rape of a child in the first degree and rape of a child in the second degree are added to the sex offenses listed in the Two Strikes and You're Out– law, which classifies a person as a persistent offender– when the person is twice convicted, on two separate occasions, of any of the sex offenses listed. In addition, some age restrictions are placed on counting rape of a child in the first degree and second degree as strikes. An offender convicted of rape of a child in the first degree has to be at least 16 when the offender committed the offense and an offender convicted of rape of a child in the second degree has to be at least 18 years old.

**Substitute Bill Compared to Original Bill:** Some age restrictions are placed on counting rape of a child in the first degree and second degree as strikes. An offender convicted of rape of a child in the first degree has to be at least 16 when the offender committed the offense. An offender convicted of rape of a child in the second degree has to be at least 18 years old.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** There are a number of repeat offenders that commit sex offenses with children. The addition of rape of a child in the first and second degree to the persistent sex offender list will reduce the number of repeat offenders. However, there may be cases of teenage love– where a youth under age 17 is found guilty of rape in the second degree with a 13 year-old youth. In this instance, the 17 year-old youth could technically receive a strike– under the Two Strikes Your Out– law.

**Testimony Against:** None.

**Testified:** Representative John Koster, prime sponsor (pro); Mike Patrick, Washington State Council of Police officers (pro); and Tom McBride, Washington Association of Prosecuting Attorneys (pro).