

# HOUSE BILL REPORT

## HB 1039

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**As Reported by House Committee On:**  
Criminal Justice & Corrections

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

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

**Sponsors:** Representatives Ballasiotes, O'Brien, Ahern, Morell and Woods.

**Brief History:**

**Committee Activity:**

Criminal Justice & Corrections: 1/26/01, 1/31/01 [DPS].

**Brief Summary of Substitute Bill**

- Clarifies that certain prior offenses, despite where the offense and conviction took place, will be used to determine whether an offender meets the definition of a persistent offender.

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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 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Ahern, Republican Vice Chair; Lovick, Democratic Vice Chair; Cairnes, Kagi, Kirby and Morell.

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

**Background:**

Under what is commonly referred to as the Two Strikes and You're Out– law, a person is considered a persistent offender– if the person has been convicted of any one of the following sex offenses on at least one prior separate and distinct occasion:

- rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; or
- murder in the first or second degree, homicide by abuse, kidnaping in the first or

second degree, assault in the first or second degree, assault of a child in the first degree, or burglary in the first degree, when those offenses are committed with sexual motivation; or

- an attempt to commit any of the crimes listed above.

Persistent offenders– are sentenced to life imprisonment without possibility of parole.

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.

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### **Summary of Substitute Bill:**

The act is intended to clarify the Legislature’s intent that out-of-state convictions for comparable sex offenses and prior Washington convictions for comparable sex offenses are to be used to determine whether an offender meets the definition of a persistent offender.

Under what is referred to as the Two Strikes and You’re Out– Law, a person is considered a persistent offender if the offender is convicted of two or more offenses, whether in Washington or any other state, that under the laws of Washington would be classified as a felony offense under the persistent offender statute. In addition, all felony convictions under prior Washington law, that are comparable to an offense currently listed under the persistent offender statute, are considered a strike– under the Two Strikes and You’re Out– Law.

### **Substitute Bill Compared to Original Bill:**

The amendment clarifies that only certain out-of-state felony convictions are considered strikes in Washington and not misdemeanors or gross misdemeanor offenses.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** It was always thought that the language as written in Washington’s persistent offender statute regarding prior convictions in this state or elsewhere– include those convictions taking place in other states or in federal courts. Some judges do not

agree. Although the language of the bill needs to be amended to insure that misdemeanors and gross misdemeanors are not counted as potential strikes, the bill is intended to clearly define what can now be counted as a strike. Also, in 1998 the Legislature changed the name of the crime of statutory rape, to rape of a child, both which are strikes under the Two Strikes and You're Out- Law. However, due to the name change, some courts do not recognize statutory rape as being the same as rape of a child. The intention of this bill is also to clarify this issue.

**Testimony Against:** The current version of the bill -- apparently intended to count serious sex offenses from out-of-state or under prior Washington law as "strikes" -- would allow a prosecutor to use a misdemeanor conviction from this state or elsewhere as a first strike. Using misdemeanors as first strikes will broaden the number of people being struck out. An amendment should be adopted to clarify that only an out-of-state felony offense or a felony offense under prior Washington law that is comparable to the offenses listed under the persistent offender statute, should be referenced as a strike under the Two Strikes and You're Out- Law.

**Testified:** (In support) Tom McBride, Washington Association of Prosecuting Attorneys; and Suzanne Brown, Washington Coalition of Sexual Assault Programs.

(Opposed) Susan Craighead, Washington Association of Criminal Defense Lawyers.