

HOUSE BILL REPORT

HB 1881

As Reported by House Committee On:
Criminal Justice & Corrections

Title: An act relating to persistent offenders.

Brief Description: Removing certain assaults and robberies from the list of most serious offenses.

Sponsors: Representatives O'Brien, Lovick, Kagi, Kenney, Darneille, Hunt and Simpson.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 3/5/03 [DP].

Brief Summary of Bill

- Removes second degree robbery and certain elements of second degree assault from the list of most serious offenses under the "Three Strikes and You're Out" Law.
- Authorizes the re-sentencing of certain persistent offenders currently serving prison terms who would have otherwise been eligible for a different sentence had the new persistent offender requirements been in effect at the time of their sentencing.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass. Signed by 4 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Kagi and Lovick.

Minority Report: Do not pass. Signed by 3 members: Representatives Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; and Pearson.

Staff: Yvonne Walker (786-7841).

Background:

Under what is commonly referred to as the "Three Strikes and You're Out" Law, a persistent offender is subject to a sentence of life imprisonment without the possibility of

parole. A person is considered a "persistent offender" if he or she commits three most serious offenses. A "most serious offense" includes any of the following felonies or a felony attempt to commit any of the following felonies:

- any class A felony;
- assault in the second degree;
- assault of a child in the second degree;
- child molestation in the second degree;
- controlled substance homicide;
- extortion in the first degree;
- incest when committed against a child under age 14;
- indecent liberties;
- kidnapping in the second degree;
- leading organized crime;
- manslaughter in the first degree;
- manslaughter in the second degree;
- promoting prostitution in the first degree;
- rape in the third degree;
- robbery in the second degree;
- sexual exploitation;
- certain vehicular assaults and vehicle homicides;
- any other class B felony offense with a finding of sexual motivation;
- any other felony with a deadly weapon verdict; and
- certain indecent liberties convictions.

2nd degree Robbery. The criminal offense of robbery in the second degree is the unlawfully taking of property by use or threat of immediate force, violence, or fear of injury. The offense can increase to robbery in the first degree when: (1) a deadly weapon or firearm is used; (2) the perpetrator inflicts bodily injury upon another; or (3) the offense is a bank robbery. Robbery in the second degree is a seriousness level IV, class B felony. A person with no criminal history would receive a presumptive range of three to nine months in jail.

2nd degree Assault. The criminal offense of assault in the second degree is committed when a person: (1) intentionally assaults another and thereby recklessly inflicts substantial bodily harm; (2) intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; (3) assaults another with a deadly weapon; (4) with intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance; (5) with intent to commit a felony, assaults another; or (6) knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture. Assault in the second degree is a seriousness level IV, class B felony (except that assault in the second degree with a finding of sexual motivation is a class A felony).

Summary of Bill:

The offense of robbery in the second degree is removed from the list of most serious offenses. In addition, certain elements of assault in the second degree are also removed from the list of most serious offenses. If the perpetrator: (a) intentionally assaults a person and thereby recklessly inflicts substantial bodily harm upon him or her; or (b) with intent to commit a felony, happens to assault another, then those two specific second degree assault offenses will no longer be considered a most serious offense. All other elements of assault in the second degree will continue to remain most serious offenses.

The result of removing offenses from the list of most serious offenses means that the crimes will no longer count as strikes under the "Three Strikes and You're Out" Law.

In addition, a provision is added to allow certain offenders, previously convicted under the persistent offender statute (otherwise known as the "Three Strikes and You're Out" Law) to request a re-sentencing hearing. In any criminal case where an offender has been sentenced as a persistent offender, then that offender must have a re-sentencing hearing if his or her current or past conviction was for a robbery in the second degree offense (with the exception of bank robbery crimes); or an assault in the second degree offense which involved: (a) intentionally assaulting a person and thereby recklessly inflicting substantial bodily harm upon him or her; or (b) assaulting another person while he or she happened to be intentionally committing a felony.

The prosecuting attorney for the county in which any offender was sentenced as a persistent offender shall review each sentencing document. If an offender was charged and convicted of a robbery or assault offense that would no longer be a most serious offense under this act then the prosecuting attorney must, or the offender may, make a motion for relief from sentence to the original sentencing court. The sentencing court must grant the motion if it finds that the offender's current or past conviction, which was used as a basis for finding that the offender was a persistent offender, was for a robbery or assault offense that is no longer a most serious offense under this act. The court must immediately set an expedited date for re-sentencing. At re-sentencing, the court must sentence the offender as if the robbery or specific assault offense was not a most serious offense at the time the original sentence was imposed.

The provision in the act that authorizes the re-sentencing of certain offenders classified as persistent offenders expires July 1, 2005.

Appropriation: None.**Fiscal Note:** Preliminary fiscal note available.

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

Testimony For: The three strikes initiative which passed in 1993, was suppose to be for more serious offenses. Twenty-five other states have three strikes laws, however only three of those such states' laws are as strict as Washington's statute. Washington's Three Strikes Law includes 54 felonies that count as strikes. Many other states, including California which is known to have a very harsh statute, do not include crimes equivalent to second degree robbery or second degree assault as strikes. Judges in Washington do not have judiciary discretion on whether or not to apply the three strikes. The sentence is automatic and judges cannot avoid imposing a life sentence at all to a particular offender. Judges should also have the discretion to impose exceptional sentences.

The most common offense under the three strikes statute is second degree robbery which does not require the offender to have a weapon. Stealing a loaf of bread and pushing a clerk out of the way is assault in the second degree. A bar room brawl or fight is assault in the second degree. A woman robbing a store with a curling iron in her pocket is robbery in the second degree. Out of the nearly 200 individuals that are currently serving life sentences for a strike offense, most were convicted as a persistent offender for fairly minor offenses as compared to the other 54 strikes. The three strikes statute focuses on the most petty offenses and the most petty offenders.

Studies have shown that the Three Strikes Law does nothing to deter the crime. Public safety is not benefitted from the three strikes statute. The national crime rate has declined in all states since 1992, including those states that do not have a Three Strikes Law, which proves that this particular law does not contribute to deterring crime.

The Sentencing Guidelines Commissions calculated the savings to taxpayers of \$5 million if just the current second degree robbery offenders were to be re-sentenced. A suggested amendment to this bill would be to provide for those that are currently serving prison sentences to be re-sentenced upon the passage of the bill. The \$5 million figure does not include the savings in capital costs. This bill will take financial pressure off the general fund.

Mandatory minimum terms for sentencing offenders greatly affect many members of the minority community. Washington's criminal justice system goes way too far and has gone from rehabilitating offenders to strictly punishing offenders. It has been 10 years since the Three Strikes Law was passed and the public was mislead about the ramifications of the original initiative. All legislation and initiatives should be able to pass a test of fairness and the three strikes statute does not pass that test.

It was asked that the Legislature amend it and not end it. This bill will not end the Three Strikes Law, it will just amend it. Please do not turn Washington's prisons into nursing homes.

Testimony Against: None.

Testified: Justice Sanders, Washington Supreme Court; Larry Gosse, King County Council; Dan Merkle, King County Bar Association Drug Policy Project; Russell V. Leonard, Public Defenders, Washington Association of Criminal Defense Lawyers and Washington Defender Association; Julius Debro, University of Washington; Jon Nelson, Lifer Spondon Lutheran Pastor; Edward Prince, Commission on African-American Affairs; Lloyd May, Justice Passage; Anne Harper, King County Office of Public Defenders; Adwyna Griffin, Snohomish County; Della Montgomery-Riggins, citizen; Don Alexander, Multi-Culture Council; and Goldie Holmes; Donauon Cruzey.

(Neutral) Paul Guppy, Washington Policy Center.