

# SENATE BILL REPORT

## ESSB 5013

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As Passed Senate, March 6, 2001

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

**Brief Description:** Clarifying the definition of "persistent offender."

**Sponsors:** Senate Committee on Judiciary (originally sponsored by Senators McCaslin, Haugen and Long).

**Brief History:**

**Committee Activity:** Judiciary: 1/18/01, 1/29/01 [DPS].

Passed Senate: 3/6/01, 46-0.

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5013 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Constantine, Vice Chair; Costa, Hargrove, Johnson, Kastama, Long, McCaslin, Roach, Thibaudeau and Zarelli.

**Staff:** Lilah Amos (786-7421)

**Background:** A persistent offender is an offender who has either three separate convictions for a "strike" offense or two separate convictions for a sex crime "strike" offense. A persistent offender must be sentenced to life in prison without possibility of parole. Prior "strike" convictions may have occurred in another state. To qualify as a prior sex crime "strike" offense, whether occurring in Washington or another jurisdiction, the prior criminal conviction, including attempts, is presently required to be specifically named on the list of "strike" offenses. The qualifying crimes include rape in the first or second degree, rape of a child in the first or second degree, and some serious violent felonies found to have been committed with sexual motivation.

Judges are not explicitly authorized to include as "strikes" those out-of-state crimes with different names which would be considered "strike" offenses in Washington, or Washington convictions for crimes having the same or similar elements but different names. Names of crimes frequently vary between states and have been changed in Washington. For example, in 1988 the Washington crimes of statutory rape in the first and second degree were replaced by the crimes of rape of a child in the first and second degree. The Washington crime of child rape in the first degree corresponds to portions of the Oregon crime of sodomy in the first degree. Confusion about whether to include prior sex offenses in determining an offender's status as "persistent" has led to inconsistent application of the "two strikes, you're out" law and therefore to inconsistencies in imposition of mandatory life sentences for offenders with similar criminal histories.

**Summary of Bill:** A federal or out-of-state prior sex offense conviction or a conviction under prior Washington law is considered a "strike" offense for the purpose of persistent offender categorization under the "two strikes, you're out" law if the crime is comparable to a currently named "strike" offense.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** Clarification that out-of-state convictions and prior Washington convictions count as strike offenses is necessary because of inconsistent rulings by sentencing judges. The term "comparable" has been defined by case law and is the appropriate term to use. This bill is needed now, even though the issue is before appellate courts, because it will be several years before an answer is received.

**Testimony Against:** None.

**Testified:** Tom McBride, WAPA.