

Lawmakers: Take the final step to give relief to individuals serving long sentences because of a Robbery 2 conviction

Support HB 1108

The Persistent Offender Accountability Act requires a sentence of life without the possibility of parole (LWOP) for individuals convicted sequentially of three Most Serious Offenses (commonly referred to as “strikes” or “strike offenses”).¹

In 2019, the legislature removed the crime of Robbery in the Second Degree from the list of Most Serious Offenses. In 2021, the legislature took a second step, granting retroactive relief to all individuals serving an LWOP sentence predicated in part on a Robbery in the Second Degree conviction. All such individuals were provided resentencings at which non-LWOP sentences were imposed.²

But there is another cohort of individuals still serving exceptionally long sentence because of Robbery in the Second Degree charges who have not been helped by this remedial legislation. These are individuals who were facing a potential third strike (again where one or more predicate strikes was a Robbery in the Second Degree), and rather than go to trial and risk mandatory life imprisonment, they agreed to plea deals involving long exceptional sentences. Because these individuals were not actually sentenced to LWOP, they have no pathway to resentencing.³ The cohort of individuals eligible for resentencing is small.

A driving force behind the 2019 legislation removing Robbery 2 from the list of strike offenses was the fact that the persistent offender laws have been imposed disproportionately upon people of color. Our Supreme Court acknowledged “serious concerns about the racially disproportionate impact” of our three-strikes scheme, noting that “Black defendants appear to receive life without parole sentences at a far greater rate than white defendants.”

The legislature also recognized that there “is racial disparity in how the persistent offender statute is enforced,” as one lawmaker put it. “Four percent of the population [of Washington] is African American, yet a disproportionate number have been convicted as persistent offenders.”

HB 1108 gives lawmakers an opportunity to further limit the disproportionate harm of our three strikes law.

HB 1108 would require resentencing of defendants who agreed to exceptional sentences to avoid persistent offender status predicated on a Robbery in the Second Degree conviction. Today, these individuals would not be facing the risk of life without parole. Thus, the justification originally supporting the imposition of these extraordinary sentences no longer exists.

¹ See RCW 9.94A.030(37) (defining “persistent offender”); RCW 9.94A.570 (requiring imposition of LWOP).

² See SB 5164 (2021) (requiring resentencing for anyone sentenced as a persistent offender “if a current or past conviction for robbery in the second degree was used as a basis for the finding that the offender was a persistent offender”).

³ See RCW 9.94A.647 (codification of SB 5164, providing relief only to those actually “sentenced as a persistent offender”).