

SENATE BILL REPORT

SB 6202

As of January 28, 2020

Title: An act relating to resentencing persistent offenders.

Brief Description: Resentencing persistent offenders with robbery 2 convictions.

Sponsors: Senators Darneille, Nguyen, Salomon, Das and Wilson, C.

Brief History:

Committee Activity: Law & Justice: 1/28/20.

Brief Summary of Bill

- Requires resentencing of offenders previously sentenced to life without parole as a result of a conviction for robbery in the second degree.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Shani Bauer (786-7468)

Background: In Washington, a persistent offender must be sentenced to life in prison without parole when the person is convicted of a most serious offense on three separate occasions or when the person is convicted of certain sex offenses on at least two separate occasions. These offenses are generally referred to as three-strike or two-strike offenses.

In 2019, the Legislature passed ESSB 5288 which removed robbery in the second degree from the definition of a most serious offense, thereby removing the offense as a three-strike offense. A person commits robbery in the second degree when the person unlawfully takes personal property from another by the use, or threatened use, of force in circumstances not amounting to robbery in the first degree. A person is guilty of robbery in the first degree when the person is armed with a deadly weapon or what appears to be a deadly weapon, the person inflicts bodily injury, or when the person commits robbery against a financial institution. Robbery in the second degree is a class B felony.

At the time of passage of ESSB 5288, there were 64 offenders serving life without parole as a result of a conviction for robbery in the second degree.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill: Any offender sentenced prior to July 1, 2019, as a persistent offender when one of the offenses resulting in life without parole was robbery in the second degree shall be entitled to a resentencing hearing. The prosecuting attorney for the county in which any offender was sentenced as a persistent offender must review each sentencing document. At resentencing, the court must sentence the offender as if robbery in the second degree was not a most serious offense at the time the original sentence was imposed.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: Last year the Legislature changed the three-strikes law significantly by removing robbery 2 from the definition of a three-strikes offense. While the law addressed cases going forward, it left 64 offenders behind that are serving a sentence of life without parole (LWOP) due to a robbery 2 offense. Many were swept in—had one or two of their strikes before the initiative passed creating robbery 2 as a three-strikes offense. These individuals did not realize they would be subject to LWOP until they got their third offense.

King and Pierce County have undertaken their own assessment of populations that would have been left out and have found a way to seek resentencing for some of these offenders. We should find fair and appropriate ways to rehabilitate persons who have committed a crime and recognize that change is possible. It is fair to look back on retroactive application of a law where we are clearly stating that it is not a strikable offense.

There are many individuals serving life without the possibility of parole that have turned their life around. This is a difficult path. Many of the educational and programming opportunities that are available to determinate offenders are not available to those serving life without parole. These individuals have found a way to become contributing members of their community by participating in teaching opportunities, mentorship, gardening, education, and apprenticeship programs. Many of these individuals have earned a path to redemption and deserve a second chance.

LWOP has been handed out disproportionately to people with mental health issues, substance abuse issues, and people of color. This disproportionality applies regardless of crime. Two people with identical records could end up with vastly different sentences. Currently 64 people condemned to die in prison as a result of a robbery 2 conviction.

It is not enough to say that we now know better and will do better going forward. We need to correct the past. Initiative 593 was passed at a time when we thought that incarcerating people was the key to public safety. We now know better.

CON: Law enforcement and the prosecutors agreed to the bill removing robbery 2 as a strikable offense with the understanding that it would only apply prospectively. Applying the

provisions retroactively undermines the charging decision of the prosecutor. An in depth look at the cases showed 25 individuals serving LWOP where robbery 2 was the third strike. Of those 25, 19 of those cases were pled down from an original charge of robbery 1. The prosecutor knew the impact of a third strike offense at the time of the charging decision. These cases highlight the need for an expanded clemency process.

OTHER: Initiative 593 that instituted three-strike offense was passed by an overwhelming vote of 75 percent of the people. The people should be given deference. Applying the law retroactively hurts government's relationship with the community and undermines trust.

Persons Testifying: PRO: Senator Jeannie Darneille, Prime Sponsor; Brandy Sincyr, Columbia Legal Services; Noreen Light, citizen; Orlando Ames, citizen; Dwight Griffin, citizen; Jennifer Smith, Washington Association of Criminal Defense Lawyers; Jaime Hawk, ACLU; Virginia Parham, Bridges To Life; Susan Royer, citizen; Kimberly Gordon, Washington Association of Criminal Defense Lawyers and Washington Defender Association; Jo-El Price, citizen; Emijah Smith, citizen.

CON: James McMahan, Washington Association of Sheriffs and Police Chiefs; Russell Brown, Executive Director, Washington Association of Prosecuting Attorneys.

OTHER: Lawrence Haskell, Prosecuting Attorney.

Persons Signed In To Testify But Not Testifying: No one.