

HOUSE BILL REPORT

ESSB 5288

As Passed House:
April 16, 2019

Title: An act relating to persistent offenders.

Brief Description: Removing robbery in the second degree from the list of offenses that qualify an individual as a persistent offender.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senator Darneille).

Brief History:

Committee Activity:

Public Safety: 3/26/19, 4/1/19 [DP].

Floor Activity:

Passed House: 4/16/19, 53-45.

Brief Summary of Engrossed Substitute Bill

- Removes the crime of Robbery in the second degree from the definition of "most serious offense," which is used in establishing persistent (or "three strike") offender status requiring a life sentence without the possibility of release, and in imposing other restrictions and requirements.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass. Signed by 7 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, Lovick, Orwall, Pellicciotti and Pettigrew.

Minority Report: Do not pass. Signed by 3 members: Representatives Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Griffey.

Minority Report: Without recommendation. Signed by 1 member: Representative Graham.

Staff: Omeara Harrington (786-7136).

Background:

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.

Most Serious Offenses.

The Sentencing Reform Act defines "most serious offense" as including any class A felony, various class B felonies—which are primarily assault, sex, or kidnapping-related offenses—as well as any felony with a deadly weapon verdict, and federal or out-of-state offenses that are equivalent to any most serious offense.

Voters approved Initiative 593, the "three strikes" law, in 1993. The law established the penalty of life in prison without the possibility of release for offenders deemed to be "persistent offenders." A persistent offender is an offender who is convicted of a most serious offense and who has at least two prior convictions for most serious offenses that would be included in the offender score for purposes of sentence calculation. In order to establish persistent offender status, at least one of the two or more previous convictions must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted.

The definition of most serious offense is used in other contexts as well. Among other applications, the conviction of a most serious offense carries a monetary penalty assessment and restricts record sealing in juvenile cases, and places certain public records requirements on plea agreements and sentences.

Robbery.

Robbery is the unlawful taking of personal property from the person of another or in the presence of another against his or her will, through the use or threat of immediate force, violence, or infliction of fear of physical injury or injury to property of the victim or another person. In order to commit the offense, the force or fear must be used to obtain or retain the property or to prevent or overcome resistance to its taking.

A person commits the crime of Robbery in the first degree, a class A felony, when the robbery involves the use of a deadly weapon or the infliction of bodily injury, or if the robbery is against a financial institution. A person commits the crime of Robbery in the second degree, a class B felony, if the person commits robbery in a manner that does not constitute Robbery in the first degree.

Summary of Bill:

The crime of Robbery in the second degree is removed from the list of most serious offenses. As a result, the crime does not qualify as a strike offense, nor is it subject to other restrictions and requirements that apply to most serious offenses.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Washington was the first state to pass a "three strikes" law. The initiative was retrospective, so some people became persistent offenders shortly thereafter, as prior offenses could count toward establishing persistent offender status. This bill reduces the list of strike offenses by removing Robbery in the second degree. There is no weapon, bodily injury, or financial institution involved in this offense, and its inclusion as a most serious offense is not in line with original intent of the law. Though prosecutors report taking a different approach with this offense, currently 62 persons are serving three-strike life sentences today with Robbery in the second degree supporting their persistent offender status. This bill is reasonable, mirrors current practice in many counties, and is in line with the intent of initiative.

There are many reasons to take Robbery in the second degree off of the strike offense list. It is disproportionate to other offenses on the list. There are geographic disparities in terms of how prosecutors' offices handle these cases, when there should be consistency in the application of sentencing laws. There are racial disproportionality issues in application, and this policy is not a deterrent. It is also expensive to house this aging population, and resources should be allocated to rehabilitative programs. It would be better to apply the policy retroactively. It takes courage to admit that there was an error in the underlying policy. Amends should be made for prior cases.

(Opposed) Robbery in the second degree is not an accident or a mistake, and three offenses are required for a person to be deemed a persistent offender. By the third conviction, there is a demonstrated need for community protection. Prosecutors already carefully approach these charges due to the three-strikes law. More data is needed to look into the facts of these cases and determine whether there are people truly receiving life sentences without the possibility of release for stealing candy or struggling with a security guard. It is likely some of these offenses were pled down from more serious charges.

(Other) Robbery in the second degree should not be on the list of strike offenses. It is usually a shoplifting-related offense, and the force involved is often from struggling in an effort to get away. Often it is committed by young people, and having them spend life incarcerated is not in the best interest of the child or consistent with the intent of the original law. Though punitive sentencing measures are purportedly made on behalf of victims, the actual desires of victims are not always listened to. The three-strikes policy is applied disproportionately, affecting certain populations more than others. Some communities are affected by mass incarceration. The bill should apply retroactively and allow for resentencing. The judge should be able to take certain factors into account, like the use of violence. People serving life sentences should have an opportunity to return to society. Many people serving these sentences are aging, which comes at an expense to the state.

Persons Testifying: (In support) Senator Darneille, prime sponsor; Ramona Brandes, Washington Defender Association and Washington Association of Criminal Defense Lawyers; and Noreen Light.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Other) Emijah Smith; Devitta Briscoe; Jolyn GC; and Alex Bergstrom, Columbia Legal Services.

Persons Signed In To Testify But Not Testifying: None.