

# SENATE BILL REPORT

## SB 5491

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As of February 15, 2019

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

**Brief Description:** Sentencing for persistent offenders who committed crimes as juveniles.

**Sponsors:** Senators Darneille, Saldaña, Wilson, C. and Keiser.

**Brief History:**

**Committee Activity:** Law & Justice: 2/14/19.

**Brief Summary of Bill**

- Removes any conviction for a crime committed by an offender prior to turning eighteen years of age from counting as a three-strike or two-strike offense for purposes of determining whether the offender is a persistent offender.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Shani Bauer (786-7468)

**Background:** Persistent Offenders. 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.

Three-strike offenses—most serious offenses—include:

- any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a 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 fourteen;

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- 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;
- vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;
- vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug, or by the operation of any vehicle in a reckless manner;
- any other class B felony offense with a finding of sexual motivation; and
- any other felony with a deadly weapon verdict.

Two-strike offenses include:

- rape in the first degree;
- rape of a child in the first degree;
- child molestation in the first degree;
- rape in the second degree;
- rape of a child in the second degree;
- indecent liberties by forcible compulsion;
- any of the following when committed with sexual motivation: murder in the first or second degree, homicide by abuse, kidnapping in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, or burglary in the second degree; and
- an attempt to commit any of the above crimes.

Juvenile Transfer to Adult Jurisdiction. When a person commits a crime under the age of eighteen, the person will generally be adjudicated in juvenile court. Some circumstances require transfer to adult court. In other circumstances, the juvenile court may have a decline hearing to determine whether the juvenile court should decline jurisdiction and transfer the case to adult court.

The adult court will have exclusive jurisdiction when a juvenile is sixteen or seventeen on the date of the offense and charged with:

- a serious violent offense;
- a violent offense and the juvenile has a criminal history consisting of a serious violent offense, two or more violent offenses, or three of a number of specified felony offenses; and
- rape of a child in the first degree.

A decline hearing may be held to determine whether jurisdiction should be transferred to adult court when:

- a juvenile is at least age fifteen and charged with a felony that is a serious violent offense; and
- a juvenile is age fourteen or younger and charged with murder 1 or murder 2.

The categories for mandatory and discretionary transfer to adult jurisdiction were significantly modified in 2018. Prior to that change, substantially more categories of juvenile offenders were required to be transferred to adult court or were required to have a decline hearing. For example, any juvenile age sixteen or seventeen and charged with a class A felony was required to have a decline hearing.

**Summary of Bill:** A conviction for any crime committed by an offender prior to turning eighteen years of age does not constitute a conviction for purposes of determining whether an offender is a persistent offender.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**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: Many criminal justice laws have changed how we deal with juveniles because of new research into juvenile brain development and recognizing that their judgment does not fully develop until age twenty-six. Until that time, juveniles have more challenges with impulsivity and problem solving. Ten percent of 289 people serving as a persistent offender committed a crime as a juvenile. This bill would apply well established science to our law and allow these individuals to take advantage of the reform and rehabilitation that our system can provide.

Juvenile adjudication should only be used for the purposes of rehabilitating people and not for the purpose of elevating an adult offense. Washington is one of the only states that allow juvenile adjudications to be used in calculating an offender score for the purpose of sentencing. Immature brain development places juveniles at a disadvantage in making decisions.

CON: This bill would remove any juvenile crime, no matter what level, even heinous crimes such as murder or significant sex crimes. If the range of crimes were more narrowly drawn, an amendment along these lines may be acceptable.

This is not the first time this person has been convicted of a significant crime. For the victims of these crimes, it is not much consolation that the person was a juvenile at the time the offense was committed.

**Persons Testifying:** PRO: Senator Jeannie Darneille, Prime Sponsor; Adam Paczkowski, Washington Defenders Association.

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

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