

SENATE BILL REPORT

SB 6063

As of January 15, 2024

Title: An act relating to modifying the definition of persistent offender to exclude convictions for offenses committed by someone under the age of 18 and providing for resentencing.

Brief Description: Modifying the definition of persistent offender to exclude convictions for offenses committed by someone under the age of 18 and providing for resentencing.

Sponsors: Senators Frame, Pedersen, Dhingra, Hasegawa, Kuderer, Nguyen, Saldaña, Wellman and Wilson, C..

Brief History:

Committee Activity: Human Services: 1/15/24.

Brief Summary of Bill

- Requires resentencing hearings for persistent offenders with an underlying conviction for a most serious offense committed prior to the person turning 18 years old.
- Modifies the definition of persistent offender by excluding convictions for a most serious offense that occurred when the person was under age 18.

SENATE COMMITTEE ON HUMAN SERVICES

Staff: Kelsey-anne Fung (786-7479)

Background: Three Strikes Law. In 1994, Washington voters approved Initiative 593, commonly referred to as the three strikes law. The law requires courts to impose a sentence of life imprisonment without the possibility of release when a person is deemed to be a persistent offender. A persistent offender is someone convicted of a most serious offense and who has at least two prior and separate convictions for most serious offenses.

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

In 1996, the definition of persistent offenders was amended to include persons convicted of two separate sex offenses that are most serious offenses. This is known as the two strikes law.

Most serious offenses, also referred to as strike offenses, include 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 any equivalent federal or out-of-state offense. Legislation in 2019 removed Robbery in the second degree from the list of most serious offenses so that the crime does not qualify as a strike offense.

Under state law, offender means a person who has committed a felony and is 18 years old, or is less than 18 years old but whose case is under adult court jurisdiction or has been transferred by the juvenile court to adult court.

Juvenile versus Adult Court Jurisdiction. Juvenile courts are a division of the state's superior court system. Juvenile courts have jurisdiction over persons under age 18 who are alleged to have committed a crime. There are several exceptions where state law requires youth to be prosecuted and tried in adult court: discretionary decline, required decline, auto-decline, and when the offenses are charged after the youth turns 18 years old.

Discretionary Decline. The juvenile court may decline jurisdiction and transfer the matter to adult court following a discretionary decline hearing if the person is:

- age 15 or older and charged with a serious violent offense;
- age 14 or younger and charged with Murder in the first or second degree; or
- any age and charged with Custodial Assault and, at the time the respondent is charged, is already serving a minimum juvenile sentence to age 21.

Required Decline. The juvenile court is required to hold a decline hearing in circumstances when the person is charged with escape while serving a minimum juvenile sentence to age 21.

Auto-decline. Adult criminal courts have exclusive jurisdiction over juveniles who are 16 or 17 on the date of the offense and charged with the following offenses:

- a serious violent offense;
- Rape of a Child in the first degree; or
- a violent offense and the juvenile has a history of committing one prior serious violent offense, two or more prior violent offenses, or three or more prior offenses of any combination of class A or B felonies, Vehicular Assault, or Manslaughter in the second degree.

An auto-decline case can be transferred to juvenile court if the prosecutor, youth, and court agree.

Life Sentences for Juveniles. In 2012, in *Miller v. Alabama (Miller)*, the United States Supreme Court held that the Eighth Amendment ban on cruel and unusual punishment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile homicide offenders.

After the *Miller* decision, the Washington State Supreme Court found Article 1, section 14 of the Washington State Constitution prohibited life without parole sentences for juveniles and required courts to exercise complete discretion to consider mitigating circumstances associated with the youthfulness of any juvenile defendant, even when faced with mandatory statutory language. Anyone under the age of 18 at the time of their crimes who was prosecuted and sentenced in adult court may be entitled to a new sentencing hearing.

Juvenile Strikes and Adult Strikes. In 2023, in *State v. Reynolds*, the Washington State Supreme Court found that the three strikes law requires sentencing courts to count all prior adult convictions for most serious offense as strikes, even if one of the adult convictions resulted from a crime committed as a juvenile. According to the court, the three strikes law explicitly bars sentencing courts from counting prior juvenile adjudications in juvenile court as strikes based on the definition of offender but does not differentiate between strikes committed by a juvenile adjudicated in adult court and adult strikes.

Because a three strikes sentence of life in prison without the possibility of release constitutes punishment for the last crime or third strike, and not the first or second strikes, the court held that counting a prior adult conviction for a crime committed as a juvenile as a strike offense for purposes of the three strikes law does not violate the United States or state constitutional protections against cruel and unusual punishment.

Summary of Bill: A resentencing hearing is required if a conviction for an offense that occurred when the offender was under the age of 18 was used as a basis for finding the offender was a persistent offender. The prosecuting attorney for the county where the offender was sentenced as a persistent offender must review each sentencing document, and shall make a motion for relief to the original sentencing court if a conviction for an offense that occurred when the offender was under the age of 18 was used as a basis for finding an offender was a persistent offender. The offender may also make a motion for relief from sentence to the original sentencing court.

The sentencing court must grant the motion if it finds a conviction for an offense committed when the offender was under the age of 18 was used as a basis for a finding that the offender was a persistent offender, and must immediately set an expedited date for resentencing. At resentencing, the court must sentence the offender as if the conviction for an offense occurring under the age of 18 was not a most serious offense at the time the original sentence was imposed.

Notwithstanding the requirement that any sentence imposed be determined based on the law in effect when the current offense was committed, for purposes of resentencing, an offense

occurring when the offender was under the age of 18 shall not be considered a most serious offense regardless whether the offense was committed before, on, or after the effective date of the 2019 law that removed Robbery in the second degree from qualifying as a strike offense.

The definition of persistent offender is modified to require the offender be 18 years of age or older on the offense date for prior convictions for most serious offenses to qualify as strike offenses for purposes of the three strikes law and two strikes law.

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: Courts have already determined that holding young people in prison for life without parole is cruel and unusual punishment. Courts have also said not to count juvenile crimes when they were adjudicated in juvenile court as strikes. This bill will address crimes committed as juveniles but tried in adult court. There have been many changes to the law over the years, and there are only 24 individuals who would be impacted by the retroactive aspect of this bill. For 22 of the 24 individuals, the crimes for which they have a strike are no longer subject to adult court jurisdiction under today's laws. Washington State is in the minority of states that allow crimes committed as young people to count towards an adult strike.

This bill will square the treatment of yesterday's youth with modern laws and hearts. Too many youth from older generations were thrown away and given up on before they had a chance. Washington was the first state to pass a three strikes law. Decades later, the three strikes law has not increased public safety and has driven racial inequality and mass incarceration.

CON: To be a persistent offender, the person must have committed a most serious offense more than once. This means the most recent most serious offense was likely committed as an adult. Community protection is a real and legitimate concern.

Courts are already beyond capacity and additional resentencing would be difficult. There are also victim considerations when a court promises that a person will not be released because of repetitive, violent, and destructive conduct. Resentencing is expensive for counties and takes court time. The state should pay for resentencing at the local level.

Persons Testifying: PRO: Senator Noel Frame, Prime Sponsor; Jessica Levin; Raymond Williams; Dolphy Jordan.

CON: James McMahan, WA Assoc Sheriffs & Police Chiefs; Russell Brown, WA Association of Prosecuting Attorneys; Juliana Roe.

Persons Signed In To Testify But Not Testifying: PRO: Liz Mustin, WA State OPD; Veronica Galván, Minority and Justice Commission; Kari Reardon, WDA/WACDL; Dominique Davis, Community Passageways; Anita Khandelwal, King County Department of Public Defense; Raymond Williams.