

SENATE BILL REPORT

SB 5911

As Reported By Senate Committee On:
Judiciary, February 6, 2004

Title: An act relating to persistent offenders.

Brief Description: Removing robbery 2 from the list of most serious offenses.

Sponsors: Senators Kline, Fairley and Thibaudeau.

Brief History:

Committee Activity: Judiciary: 2/6/04 [DPS, DNP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5911 be substituted therefor, and the substitute bill do pass.

Signed by Senators McCaslin, Chair; Hargrove, Haugen, Kline and Thibaudeau.

Minority Report: Do not pass.

Signed by Senator Esser, Vice Chair.

Staff: Aldo Melchiori (786-7439)

Background: A persistent offender is subject to a sentence of life imprisonment without the possibility of parole. A person is considered a "persistent offender" if he or she commits three most serious offenses. A "most serious offense" includes: any 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 14; certain indecent liberties convictions; 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; certain vehicular assaults and vehicle homicides; any class B felony offense with a finding of sexual motivation; and any felony with a deadly weapon verdict.

A person commits robbery in the second degree by unlawfully taking property by use or threat of immediate force, violence, or fear of injury. Robbery in the second degree is a class B felony ranked at level IV (3-9 months and/or a \$20,000 fine for a first offense). Robbery in the first degree is committed if: a deadly weapon or firearm is used; the perpetrator inflicts bodily injury upon another; or the robbery is against a financial institution. The provision making any robbery of a financial institution a first degree robbery was adopted in 2002.

Summary of Substitute Bill: Robbery in the second degree is taken off the list of most serious offenses and does not count as an offense for purposes of the persistent offender provisions.

In any criminal case during which an offender has been sentenced as a persistent offender prior to the effective date of the act, the offender must have a resentencing hearing if a current or past conviction for robbery in the second degree was used as a basis for the finding. The prosecuting attorney for the county in which any offender was sentenced as a persistent offender must review each sentencing document. If a current or past conviction for robbery in the second degree was used as a basis for a persistent offender finding, the prosecuting attorney must, or the offender may, make a motion for relief from sentence to the original sentencing court.

The sentencing court must grant the motion if it finds that a current or past conviction for robbery in the second degree was used as a basis for a finding that the offender was a persistent offender and immediately set an expedited date for resentencing. 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. This section expires July 1, 2005.

Substitute Bill Compared to Original Bill: The original bill was not considered.

Appropriation: None.

Fiscal Note: Requested on February 4, 2004.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2004.

Testimony For: This is appropriate now because the more serious robbery offenses are now considered robbery in the first degree. Robbery in the second degree is not as serious as any of the other crimes considered most serious offenses.

Testimony Against: None.

Testified: PRO: Darrel Grothaus; Julius Debro, UW; Russell Leonard, WACDL, WDA.