

# SENATE BILL REPORT

## SB 5964

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As Reported By Senate Committee On:  
Judiciary, February 28, 2007

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

**Brief Description:** Excluding offenders who have committed only the crimes of assault 2 and robbery 2 from the definition of persistent offender.

**Sponsors:** Senators Kline and Hargrove.

**Brief History:**

**Committee Activity:** Judiciary: 2/23/07, 2/28/07 [DPS].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5964 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Hargrove, Murray and Weinstein.

**Staff:** Juliana Roe (786-7405)

**Background:** There are currently 281 offenders in prison pursuant to a "three strikes sentence;" a sentence of life in prison. Twenty-seven of these prisoners have no current or past conviction of any most serious offense other than assault in the second degree, robbery in the second degree, or an attempt of either.

"Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

- 1) any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;
- 2) assault in the second degree;
- 3) assault of a child in the second degree;
- 4) child molestation in the second degree;
- 5) controlled substance homicide;
- 6) extortion in the first degree;
- 7) incest when committed against a child under age 14;
- 8) indecent liberties;
- 9) kidnapping in the second degree;
- 10) leading organized crime;
- 11) manslaughter in the first degree;

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- 12) manslaughter in the second degree;
- 13) promoting prostitution in the first degree;
- 14) rape in the third degree;
- 15) robbery in the second degree;
- 16) sexual exploitation;
- 17) 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;
- 18) vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;
- 19) any other class B felony offense with a finding of sexual motivation;
- 20) any other felony with a deadly weapon verdict under RCW 9.94A.602;
- 21) any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;
- 22) a) a prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979; RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986; and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
  - b) a prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if:
    - i) the crime was committed against a child under the age of 14; or
    - ii) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

**Summary of Bill:** An offender who has no current or past conviction of any most serious offense other than assault in the second degree or robbery in the second degree, or an attempt of either, is not considered a persistent offender. The court is required to sentence the offender as if the offenses are not most serious offenses.

This law is retroactive. If the offender was sentenced prior to the effective date of this act, the offender is required to have a resentencing hearing if only convictions of assault in the second degree or robbery in the second degree, or an attempt of either, were used as the basis for the finding that the offender was a persistent offender and the offender has no other convictions of felonies considered most serious offenses.

The prosecutor, for the county in which the offender was sentenced as a persistent offender, will review the sentencing documents. The prosecutor is required to, and the offender is allowed to, make a motion for relief from sentencing to the sentencing court if the offender is eligible. The sentencing court is required to grant the motion and set an expedited date for resentencing if it finds that the offender was sentenced as a persistent offender pursuant to being convicted of assault in the second degree or robbery in the second degree, or an attempt of either, and no other most serious felony offense. The court is required to sentence the

offender as if the offenses were not most serious offenses at the time the original sentence was imposed.

The section relating to retroactivity expires July 1, 2009.

**EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Judiciary):** A task force is created to evaluate the inclusion of assault in the second degree and robbery in the second degree, or an attempt of either, within the list of crimes considered most serious offenses and whether these crimes should continue to be classified as most serious offenses for purposes of Washington's three-strikes law. Those sections related to excluding offenders who commit assault in the second degree and robbery in the second degree, or an attempt of either, from being considered as a persistent offender are removed, as is the retroactivity section of the bill. The definition of "most serious offense" is amended to include any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** Yes.

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

**Staff Summary of Public Testimony:** PRO: The three strikes laws have been in effect since 1993. Two of the listed persistent offenses are those of robbery in the second degree and assault in the second degree. These offenses alone do not deserve a sentence of life without parole. This type of sentence means that we have given up on the offender. This is not always the appropriate penalty, especially when the offender is young, commits three robberies in the second degree, and is put away for life, as opposed to the individual who murders someone and is released from prison at age 45. This is not eye for an eye. The sentence needs to fit the crime.

Washington has one of the harshest three strikes laws in the country. It carries a penalty of life in prison which is much harsher than capital punishment. This penalty exceeds that for murder. The system needs to take into account each individual's situation or circumstances because the law is disproportionate as it stands. The crimes of assault in the second degree and robbery in the second degree do not meet the level of seriousness that the law was written to address. For robbery in the second degree, the offender does not have to use a weapon or even touch the victim to be charged. These individuals will still be punished, but not by life in prison. It is unfair to impose life sentences to relatively minor crimes. The current law reflects bad policy and fiscal irresponsibility. Large sums of money are spent to incarcerate these offenders. This money is better off used elsewhere.

CON: Making this bill apply retroactively does not take into account how these cases are charged, negotiated, plead, or tried. Assault in the second degree should not be exempted in this manner. If you look at the individual cases involved in putting away these potentially eligible offenders, you can see that they are serious cases involving violent offenders. Robbery in the second degree is different, but still should not be exempted from the three

strikes laws in this manner. Not all robbers are the same and prosecutors, during charging and negotiations, can look at the entire package and amend down if appropriate.

**Persons Testifying:** PRO: Senator Kline, prime sponsor; Carol Estes, Friends Committee on Washington Public Policy; Sharon Scherer, Sharon Dozier Moffett, Lillian Alexander, citizens; Jonathon Nelson, Pastor Emeritus Central Lutheran Church of Seattle; C. Wesley Richards, Washington Defender's Association, Washington Association of Criminal Defense Lawyers.

CON: Tom McBride, Washington Association of Prosecuting Attorneys.