

# SENATE BILL REPORT

## ESSB 5288

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As Passed Senate, March 13, 2019

**Title:** An act relating to removing robbery in the second degree from the list of offenses that qualify an individual as a persistent offender.

**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:** Law & Justice: 2/14/19, 2/21/19 [DPS, DNP].

**Floor Activity:**

Passed Senate: 3/13/19, 29-20.

**Brief Summary of Engrossed First Substitute Bill**

- Removes robbery in the second degree from the list of three-strike offenses requiring a life sentence without parole.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5288 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Kuderer and Salomon.

**Minority Report:** Do not pass.

Signed by Senators Padden, Ranking Member; Holy and Wilson, L..

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

**Background:** 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:

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- 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;
- 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.

Assault in the second degree is a class B felony and includes circumstances not amounting to assault in the first degree—intent to inflict great bodily harm—and where the person intentionally assaults another and recklessly inflicts substantial bodily harm.

Robbery in the second degree is a Class B felony. A person commits robbery in the second degree when the person unlawfully takes personal property from another by the use or threatened use of force in circumstances not amounting to robbery in the first degree. A person is guilty of robbery in the first degree when the person is armed with a deadly weapon

or what appears to be a deadly weapon, the person inflicts bodily injury, or when the person commits robbery against a financial institution.

**Summary of Engrossed First Substitute Bill:** Robbery in the second degree is deleted from the definition of a most serious offense, thereby removing the offense as a three strike offense.

**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 on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: There have been several movements over time to address the three-strikes law. I-593 in 1993 came about when there was a concern about a very high crime rate. Research has not shown that laws such as these make a difference in the crime rate.

Offenders should be held accountable, but should not have to spend their entire life in prison. Fifty-three percent of those serving life for a three-strike offense are over the age of fifty and have a reduced recidivism rate.

There is racial disparity in how the persistent offender statute is enforced. Four percent of the population is African American yet a disproportionate number have been convicted as persistent offenders. Several offenders could be resentenced with a significant cost savings for taxpayers.

CON: These two offenses are especially serious and significant for the person who is a victim. This is not the second time they have committed these serious offenses, but the third. There needs to be a point where we protect the community from these individuals.

OTHER: We are generally opposed to the bill as drafted, but amenable to looking at robbery 2. Assault 2 runs the gamut from a fist fight to strangulation. Assault 2 is also regularly plead down from an assault 1.

This could potentially require a large number of offenders to be brought back for resentencing which would be a cost for local government. We should not forget that many of these individuals were involved in crimes that involved victims. While victims may not be here to testify, it is the prosecutor who will hear from the victim when the offender is granted resentencing. The prosecutor has discretion whether to seek a third strike which already prevents egregious cases.

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

CON: James McMahan, Washington Association Sheriffs and Police Chiefs.

OTHER: Russell Brown, Washington Association of Prosecuting Attorneys.

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