

SB 5164 - S AMD 253

By Senator Darneille

ADOPTED 03/01/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) In any criminal case wherein an
4 offender has been sentenced as a persistent offender, the offender
5 must have a resentencing hearing if a current or past conviction for
6 robbery in the second degree was used as a basis for the finding that
7 the offender was a persistent offender. The prosecuting attorney for
8 the county in which any offender was sentenced as a persistent
9 offender shall review each sentencing document. If a current or past
10 conviction for robbery in the second degree was used as a basis for a
11 finding that an offender was a persistent offender, the prosecuting
12 attorney shall, or the offender may, make a motion for relief from
13 sentence to the original sentencing court.

14 (2) The sentencing court shall grant the motion if it finds that
15 a current or past conviction for robbery in the second degree was
16 used as a basis for a finding that the offender was a persistent
17 offender and shall immediately set an expedited date for
18 resentencing. At resentencing, the court shall sentence the offender
19 as if robbery in the second degree was not a most serious offense at
20 the time the original sentence was imposed.

21 (3) Notwithstanding the provisions of RCW 9.94A.345, for purposes
22 of resentencing under this section or sentencing any person as a
23 persistent offender after the effective date of this section, robbery
24 in the second degree shall not be considered a most serious offense
25 regardless of whether the offense was committed before, on, or after
26 the effective date of chapter 187, Laws of 2019.

27 **Sec. 2.** RCW 9.94A.345 and 2000 c 26 s 2 are each amended to read
28 as follows:

29 ~~((Any))~~ Except as otherwise provided in this chapter, any
30 sentence imposed under this chapter shall be determined in accordance
31 with the law in effect when the current offense was committed."

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1 On page 1, line 2 of the title, after "conviction;" strike the
2 remainder of the title and insert "amending RCW 9.94A.345; and
3 creating a new section."

EFFECT: Clarifies that the offense of robbery in the 2nd degree committed prior to the adoption of SB 5288 (2019) may not be considered a most serious offense when sentencing or resentencing a person as a persistent offender notwithstanding statutory provisions requiring application of the law in effect at the time the person committed the crime.

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