

# HOUSE BILL REPORT

## ESB 5164

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**As Passed House:**

April 7, 2021

**Title:** An act relating to resentencing of individuals sentenced as a persistent offender due to a robbery in the second degree conviction.

**Brief Description:** Resentencing of individuals sentenced as a persistent offender due to a robbery in the second degree conviction.

**Sponsors:** Senators Darneille, Das, Kuderer, Hasegawa, Lias, Saldaña, Salomon and Wilson, C..

**Brief History:**

**Committee Activity:**

Public Safety: 3/19/21, 3/25/21 [DP].

**Floor Activity:**

Passed House: 4/7/21, 52-46.

**Brief Summary of Engrossed Bill**

- Requires a court to resentence a person serving a sentence of life imprisonment without the possibility of release under the "three strikes law" where the basis for the sentence is a conviction of Robbery in the second degree.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** Do pass. Signed by 8 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Davis, Hackney, Lovick, Orwall, Ramos and Simmons.

**Minority Report:** Do not pass. Signed by 1 member: Representative Klippert, Assistant Ranking Minority Member.

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*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.*

**Minority Report:** Without recommendation. Signed by 4 members: Representatives Mosbrucker, Ranking Minority Member; Graham, Griffey and Young.

**Staff:** Kelly Leonard (786-7147).

**Background:**

Initiative Measure No. 593, approved by the voters in 1994 (also referred to as the "three strikes law"), requires a sentencing court to impose a sentence of imprisonment without the possibility of release if a person is deemed to be a "persistent offender." A person is a "persistent offender" if he or she is convicted of a "most serious offense" and has at least two prior convictions for "most serious offenses" within a certain period of time. Alternatively, a person may be considered a "persistent offender" if he or she is convicted of certain serious sex offenses on at least two separate occasions.

A "most serious offense," also referred to as "strike offense," includes 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.

In 2019 the state passed legislation removing Robbery in the second degree as a "most serious offense," meaning the offense is no longer a strike offense. This change was prospective and did not affect persons serving sentences of life imprisonment under the "three strikes law" predicated on a Robbery in the second degree offense committed before July 28, 2019.

Robbery is the unlawful taking of personal property from the person of another or in the presence of another against his or her will, through the use or threat of immediate force, violence, or infliction of fear of physical injury or injury to property of the victim or another person. In order to commit the offense, the force or fear must be used to obtain or retain the property or to prevent or overcome resistance to its taking. A person commits the crime of Robbery in the first degree, a class A felony, when the robbery involves the use of a deadly weapon or the infliction of bodily injury, or if the robbery is against a financial institution. A person commits the crime of Robbery in the second degree, a class B felony, if the person commits robbery in a manner that does not constitute Robbery in the first degree.

**Summary of Bill:**

Any person sentenced to life imprisonment without the possibility of release under the "three strikes law" based on a current or past conviction of Robbery in the second degree is entitled to a resentencing hearing. The county prosecuting attorney must review each sentencing document. If Robbery in the second degree was used as a basis for the sentence, the prosecuting attorney must make a motion for relief from the sentence to the sentencing court. At resentencing, the court must resentence the person as if Robbery in the second

degree was not a most serious offense (a "strike offense") at the time the original sentence was imposed.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The Legislature has already removed Robbery in the second degree from the list of possible three-strike offenses, but it has yet to provide relief for persons who are still serving life sentences under the prior law. This bill requires retroactive resentencing of these persons. This will address critical issues of fairness and disproportionality, and is important for advancing the interests of justice. This change will allow judges to conduct an individualized analysis of each case and determine a just sentence. There is broad support for this change amongst prosecutors, practitioners, and advocates.

Last year the Legislature passed Senate Bill 6164 in order to allow prosecutors to seek resentencing of persons in certain instances. Legislators and stakeholders hoped that Senate Bill 6164 would allow persons serving life sentences for Robbery in the second degree under the three-strikes law to see relief and resentencing. However, the legislation has had significant implementation issues. The legislation did not expressly allow a judge to impose a different sentence than the one required under the three-strikes law—this creates a circular problem. The state needs to be responsive to this very serious issue.

It is important to understand that these persons will not necessarily be let out of prison right away. They would still be required to serve a sentence in accordance with the requirements under the Sentencing Reform Act. Prosecutors can still make recommendations for significant sentences under the Sentencing Reform Act, and judges will still have discretion to determine an appropriate sentence.

Retroactively addressing this problem does not violate "truth in sentencing" principles. This wisdom of former times is not timeless. The "tough on crime" laws of the 1980s and 1990s profoundly affected Black communities in Washington, especially when combined with over-policing and other policies. This bill is an important step towards remedying the legacy of these policies. This is about healing. This about doing what is right. Importantly, adjusting sentences will not only address issues of fairness, but it will also give these persons hope for the future and a reason to give back to the community.

(Opposed) The framework in Senate Bill 6164, which was passed last year, is a better approach for addressing this issue. It provides prosecutors with discretion to seek

resentencing when it is appropriate. The Legislature should fix the implementation issues in that framework. Not all Robbery in the second degree cases are the same. Some of these cases involved conduct that was actually Robbery in the first degree, which means resentencing may not be appropriate.

**Persons Testifying:** (In support) Senator Darneille, prime sponsor; Danita Parkins; Cassandra Butler; Kari Reardon and Ramona Brandes, Washington Defenders Association and Washington Association of Criminal Defense Lawyers; Emijah Smith; Adam Cornell, Washington Association of Prosecuting Attorneys; Jennifer Smith, Brooke Williams, and Freddie Hampton, Seattle Clemency Project; Kari Reardon, Cowlitz County Office of Public Defense; and Michael Fox.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

**Persons Signed In To Testify But Not Testifying:** None.