

SENATE BILL REPORT

ESB 5164

As Passed Senate, March 1, 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: Law & Justice: 2/01/21, 2/04/21 [DP, DNP].

Floor Activity: Passed Senate: 3/1/21, 28-21.

Brief Summary of Engrossed Bill

- Requires resentencing of offenders previously sentenced to life without parole as a result of a conviction for robbery in the second degree.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

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

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; McCune, Assistant Ranking Member; Holy and Wagoner.

Staff: Shani Bauer (786-7468)

Background: In Washington, a persistent offender must be sentenced to life in prison

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.

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.

In 2019, the Legislature passed ESSB 5288 which removed robbery in the second degree from the definition of a most serious offense, thereby removing the offense as a three-strike offense. 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. Robbery in the second degree is a class B felony.

At the time of passage of ESSB 5288, there were 64 offenders serving life without parole as a result of a conviction for robbery in the second degree.

Summary of Engrossed Bill: Any offender sentenced as a persistent offender when one of the offenses resulting in life without parole was robbery in the second degree shall be entitled to a resentencing hearing. The prosecuting attorney for the county in which any offender was sentenced as a persistent offender must review each sentencing document. If robbery in the second degree was used as a basis for the finding of persistent offender, the prosecutor must make a motion for relief from sentence.

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.

Robbery in the second degree may not be considered a most serious offense regardless of whether the offense was committed before, on, or after July 28, 2019.

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: PRO: The Washington Association of Prosecuting Attorneys supports this bill. The Legislature has the power and duty to reform the sentencing scheme when it no longer serves the interest of justice. For offenses that lead to LWOP, robbery 2 is the most common, lowest impact, and racially disproportionate in that list. Sixty-four people are still serving life in prison even though the law has been changed.

This bill takes the measured approach and gives judges the discretion to fashion appropriate

sentences. This is fiscally responsible and racially just. Prosecutors will be able to advise the court of any circumstances that justify an exceptional sentence.

This is an opportunity to undo a policy that has had a disparate impact on the black community. Many of the assumptions behind the three strikes law have been shown to be false. These individuals are capable of reform and becoming productive members of society. There are many examples of offenders who have worked hard in prison to reform and embrace change even with limited opportunities for programming.

Robbery 2 is a nonviolent crime, yet the three strikes law put these offenders in the same class as those who have committed violent murder.

OTHER: While this bill will save money for the state, resentencing these individuals will cost money for the counties. Counties are strapped for cash and struggle to pay for current services. We ask the state to reinvest some of the savings into assisting counties with the cost of resentencing.

Persons Testifying: PRO: Senator Jeannie Darneille, Prime Sponsor; Ramona Brandes, Washington Association of Criminal Defense Lawyers and Washington Defender Association; Danita Parkins; Orlando Ames, Freedom Project; Kymberly Evanson, Seattle Clemency Project; J. Wesley Saint Clair, Sentencing Guidelines Commission, Judge; Dan Satterberg, King County Prosecutor, Washington Association of Prosecuting Attorneys; Alex Bergstrom, Columbia Legal Services; Jennifer Smith, Seattle Clemency Project; Freddie Hampton, Seattle Clemency Project; Cassandra Butler; Susan Royer; Stephanie Beidman, New Beginnings Counseling and Support Services; Michael Fox, retired judge, King County Superior Court; Tulalip Tribal Court; Emijah Smith; Brian Flaherty, King County Department of Public Defense.

OTHER: Juliana Roe, Washington State Association of Counties.

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