

# FINAL BILL REPORT

## ESB 5164

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Synopsis as Enacted

**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..

**Senate Committee on Law & Justice**  
**House Committee on Public Safety**

**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.

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:** 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

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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.

**Votes on Final Passage:**

Senate	28	21
House	52	46

**Effective:** July 25, 2021