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SUPREME COURT  
STATE OF WASHINGTON  
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98496-4

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, RESPONDENT

v.

ALAN JENKS, APPELLANT

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APPEAL FROM THE SUPERIOR COURT  
OF SPOKANE COUNTY

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**SUPPLEMENTAL BRIEF OF RESPONDENT**

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LAWRENCE H. HASKELL  
Prosecuting Attorney

Larry Steinmetz  
Deputy Prosecuting Attorney

Brett Pearce  
Deputy Prosecuting Attorney

Attorneys for Respondent

County-City Public Safety Building  
West 1100 Mallon  
Spokane, Washington 99260  
(509) 477-3662

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## I. ISSUES PRESENTED

1. Absent legislative intent that the act repealing second-degree robbery as a “most serious offense” applies retroactively, do RCW 10.01.040 and RCW 9.94A.345 preclude application of penalties other than those in effect at the time Jenks committed his third “most serious offense” in 2014?

2. If Jenks committed his third “most serious offense” in 2014, and was sentenced as a persistent offender in 2017, does Jenks receive the benefit of the 2019 repeal of second-degree robbery on direct review, where it is presumed that statutory repeals apply prospectively and the precipitating or triggering event for application of that repeal is determined when a defendant commits a third “most serious offense”?

3. Does the rule announced in *State v. Ramirez*,<sup>1</sup> that the precipitating event for application of legal financial obligation statutes occurs at the termination of a defendant’s case, apply here if the precipitating or triggering event for application of the repeal of second-degree robbery as a “most serious offense” is different?

## II. STATEMENT OF THE CASE

On December 14, 2014, Alan Jenks was charged in the Spokane County Superior Court with first-degree robbery and first-degree unlawful possession of a firearm, for conduct occurring on December 8, 2014. CP 1-2.<sup>2</sup> The matter proceeded to a jury trial and the defendant was convicted of first-degree robbery on January 12, 2017. CP 73. Jenks was sentenced as a persistent offender on June 22, 2017. CP 112-22. Jenks’ two predicate

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<sup>1</sup> 191 Wn.2d 732, 738, 426 P.3d 714 (2018)

<sup>2</sup> Before trial, the trial court dismissed the charge of first-degree unlawful possession of a firearm for insufficient evidence. RP 24-29.

“most serious” offenses consisted of a 2004 second-degree robbery conviction and a 2010 first-degree robbery conviction. CP 84-96 (second-degree robbery), CP 97-109 (first-degree robbery).

### III. ARGUMENT

#### *Summary of argument.*

The repeal of second-degree robbery as a “most serious offense” is penal in nature and is a substantive change in the law which applies to offenses committed after its effective date of July 28, 2019. Because the amendment is not remedial or curative, it does not apply to Jenks on direct review.<sup>3</sup>

The Legislature did not include a retroactivity clause in the repealing amendment, ESSB 5288;<sup>4</sup> nor did it indicate any intent to apply the amendment retroactively. Indeed, the evolution of ESSB 5288,<sup>5</sup> reflects the

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<sup>3</sup> Jenks also claimed, in his petition, that previous strike offenses should be submitted to a jury. This Court has consistently rejected the defendant’s argument, most recently in *State v. Witherspoon*, 180 Wn.2d 875, 883, 329 P.3d 888 (2014), which held: “Neither the federal nor state constitution requires that previous strike offenses be proved to a jury. Furthermore, the proper standard of proof for prior convictions is by a preponderance of the evidence.” *Witherspoon* is controlling, the alleged issue is well-settled, and the defendant’s argument has no merit. This Court’s order granting review does not clarify whether it is also reviewing that claim.

<sup>4</sup> Engrossed Substitute Senate Bill (ESSB) 5288, Laws of 2019, ch. 187, attached hereto as “Attach. A” and hereinafter referred to as “ESSB 5288.”

<sup>5</sup> See, Senate Bill Report, SB 5288, at 2 (Attach. B); SSB 5288 AMD 161, (Attach. C); Senate Engrossed First Substitute Bill 5288, as passed by the Senate on March 13, 2019, Senate Bill Report, ESSB 5288 (Attach. D).

Legislature’s intent that the statute not apply retroactively, considering the Senate’s removal of language from the bill that would have allowed those defendants sentenced as persistent offenders, with at least one predicate offense of second-degree robbery, to be resentenced. The express language of ESSB 5288 shows that the Legislature did not intend to depart from RCW 10.01.040 and RCW 9.94A.345, which require prospective application of ESSB 5288.

**A. THE LEGISLATURE INTENDED PROSPECTIVE APPLICATION OF ESSB 5288.**

At the time of Jenks’ sentencing on June 22, 2017, RCW 9.94A.030(33) listed Washington’s “most serious offenses,” which included first-degree robbery<sup>6</sup> and second-degree robbery,<sup>7</sup> among others. Jenks was sentenced as a persistent offender according to the law in effect at the time of his criminal sentencing. Two years later, on July 28, 2019, the classification of second-degree robbery as a “most serious offense” was repealed by the Legislature. ESSB 5288.

Jenks suggests that because his case is on direct review, he is now entitled to the benefit of the 2019 legislative amendment repealing second-degree robbery as a “most serious offense.” He asks this Court to remand

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<sup>6</sup> RCW 9.94A.030(33)(a).

<sup>7</sup> Former RCW 9.94A.030(33)(o).

for resentencing without consideration of his second-degree robbery conviction as a strike offense. There is no legal basis to grant Jenks' requested relief.

Division One and Division Two of the Court of Appeals have held that the statutory amendment removing second-degree robbery as a "most serious offense" does not apply retroactively to defendants who are on direct review. *See State v. Molia*, 12 Wn. App. 2d 895, 903, 460 P.3d 1086 (2020), and *State v. Jenks*, 12 Wn. App. 2d 588, 600, 459 P.3d 389, *review granted*, 98496-4, 2020 WL 5412927 (Sept. 9, 2020). This analysis is correct.

*Standard of review.*

This Court reviews questions of statutory interpretation de novo and interprets statutes to give effect to the legislature's intent. *State v. Gray*, 189 Wn.2d 334, 339, 402 P.3d 254 (2017). This Court has recognized that "[o]ur precedent ... clearly establishes that statutes defining punishment fall within the province of the legislature." *State v. Varga*, 151 Wn.2d 179, 193, 86 P.3d 139 (2004). Moreover, the "[f]ixing of penalties or punishments for criminal offenses is a legislative function, and the power of the legislature in that respect is plenary and subject only to constitutional provisions." *Id.*

Whenever a sentencing court concludes an offender is a "persistent offender," the court must impose a life sentence, and the offender is not eligible for early release. RCW 9.94A.570. A "persistent offender" is

someone currently being sentenced for a “most serious offense” who also has two or more prior convictions for “most serious offenses.” Former RCW 9.94A.030(38).

Generally, statutory amendments are presumed to operate prospectively, not retroactively. *In re Flint*, 174 Wn.2d 539, 546, 277 P.3d 657 (2012). Courts disfavor retroactivity. *Densley v. Dep’t of Ret. Sys.*, 162 Wn.2d 210, 223, 173 P.3d 885 (2007). The presumption is overcome only when the legislature explicitly provides for retroactive application or an amendment is curative or remedial.<sup>8</sup> *In re Flint*, 174 Wn.2d at 546.

Federal jurisprudence is in accord. The United States Supreme Court has directed that a federal appellate court begins with the “presumption... deeply rooted in our jurisprudence,” against retroactive application of legislation. *Landgraf v. USI Film Products*, 511 U.S. 244, 265, 114 S.Ct.

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<sup>8</sup> Exceptions are made where retroactivity is expressed or implied in the legislation or where the statute is remedial or curative. *See State v. Jefferson*, 192 Wn.2d 225, 248, 429 P.3d 467 (2018). A remedial statute is one which relates to practice, procedures, and remedies. *In re Flint*, 174 Wn.2d at 546. A legislative amendment is “curative only if it clarifies or technically corrects an ambiguous statute.” *1000 Virginia Ltd. P’ship v. Vertecs Corp.*, 158 Wn.2d 566, 584, 146 P.3d 423 (2006). Jenks makes no plausible claim that ESSB 5288 is remedial or curative. Likewise, Jenks makes no argument, nor could he, that he has a vested right in application of ESSB 5288 to his sentencing in 2017. *See e.g. Varga*, 151 Wn.2d at 195 (the court held the 2002 amendments to the offender calculation under RCW 9.94A.525 and RCW 9.94A.030 of the Sentencing Reform Act were prospective and a defendant did not have a vested right in the “washed out” status of a prior conviction).

1483, 128 L.Ed.2d 229 (1994); *see also Hughes Aircraft Co. v. U.S. ex rel. Schumer*, 520 U.S. 939, 946, 117 S.Ct. 1871, 138 L.Ed.2d 135 (1997). This “principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal.” *Landgraf*, 511 U.S. at 265. (Scalia, J., concurring). “Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted.” *Id.* Application of this presumption requires that statutes not be applied retroactively unless “Congress has clearly manifested its intent to the contrary.” *Hughes Aircraft*, 520 U.S. at 946.

The United States Supreme Court explained the importance of requiring the legislature to clearly indicate the temporal reach of newly enacted legislation:

Because it accords with widely held intuitions about how statutes ordinarily operate, a presumption against retroactivity will generally coincide with legislative and public expectations. Requiring clear intent assures that Congress itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits. Such a requirement allocates to Congress responsibility for fundamental policy judgments concerning the proper temporal reach of statutes, and has the additional virtue of giving legislators a predictable background rule against which to legislate.

*Landgraf*, 511 U.S. at 272-73 (citations omitted).

There is nothing in ESSB 5288 that contains language that fairly expresses or can be reasonably interpreted to imply the legislature’s intent to apply the removal of second-degree robbery as “most serious offense” to offenses committed before its effective date of July 28, 2019. In this regard, Washington’s saving statute, RCW 10.01.040, presumptively “saves” offenses already committed and penalties already incurred from being affected by a substantive amendment or repeal of a criminal statute. *State v. Rose*, 191 Wn. App. 858, 860, 365 P.3d 756 (2015), *review denied*, 185 Wn.2d 1030 (2016). That statute states, in relevant part:

Whenever any criminal or penal statute shall be amended or repealed, all offenses committed or penalties or forfeitures<sup>9</sup> incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendatory or repealing act.

RCW 10.01.040 (footnote added).<sup>10</sup>

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<sup>9</sup> Under “criminal law, the terms penalty and forfeiture are synonymous with punishment.” *State v. Brewster*, 152 Wn. App. 856, 859, 218 P.3d 249 (2009), *review denied*, 168 Wn.2d 1030 (2010) (internal quotation marks and citation removed).

<sup>10</sup> “At common law, where a statute is repealed, all pending litigation must be decided according to the state of the law at the time of the decision. Because RCW 10.01.040 is in derogation of the common law, it must be strictly construed... Thus, courts have held that a repealing statute need not state in express terms an intention to affect pending litigation; rather, the statute must reasonably and fairly convey such intention.” *State v. Lombardo*, 32 Wn. App. 681, 683-84, 649 P.2d 151 (1982). Here, there is no such intention expressed in the repealing statute by the legislature. As discussed later, the legislature considered and rejected such an intention before adopting ESSB 5228.

The saving clause applies only to substantive changes, not procedural ones. *State v. Pillatos*, 159 Wn.2d 459, 472, 150 P.3d 1130 (2007); *State v. Hodgson*, 108 Wn.2d 662, 669–70, 740 P.2d 848 (1987) (RCW 10.01.040 saves “all offenses committed or penalties or forfeitures incurred’ from being abated when a criminal statute is repealed”); *State v. Morrow*, 63 Wash. 297, 298-99, 115 P. 161 (1911) (“[u]nder repeated holdings of this court,” a defendant is properly tried under the statute in force at the date of the crime charged); *State v. Lorenzy*, 59 Wash. 308, 309, 109 P. 1064 (1910) (in the absence of a contrary expression from the legislature, all crimes are to be prosecuted under the law existing at the time of their commission); *see also Warden, Lewisburg Penitentiary v. Marrero*, 417 U.S. 653, 660-61, 94 S.Ct. 2532, 2537, 41 L.Ed.2d 383 (1974) (the terms “penalty,” “liability,” and “forfeiture” as used in the federal general saving statute, 1 U.S.C. § 109, are synonymous with “punishment” and therefore, the terms include all forms of punishment for a crime, both ameliorative and harsher. Federal and state saving clauses have “been held to bar application of ameliorative criminal sentencing laws repealing harsher ones in force at the time of the commission of an offense.” “Congress enacted its first general saving provision...to abolish the common-law presumption that the repeal of a criminal statute resulted in

the abatement of ‘all prosecutions which had not reached final disposition in the highest court authorized to review them’’).

Moreover, there is no constitutional requirement that entitles a defendant to be sentenced to a term of imprisonment to the benefit of a subsequent ameliorative amendment. *See Dillon v. U.S.*, 560 U.S. 817, 828, 130 S.Ct. 2683, 177 L.Ed.2d 271 (2010); *U.S. v. Haines*, 855 F.2d 199, 200 (5th Cir. 1988); *U.S. v. Sorondo*, 845 F.2d 945, 948 (11th Cir. 1988). In federal sentencing, after passage of the federal Sentencing Reform Act,<sup>11</sup> “the ordinary practice is to apply new penalties to defendants not yet sentenced, while withholding that change from defendants already sentenced.” *Dorsey v. U.S.*, 567 U.S. 260, 280, 132 S.Ct. 2321, 183 L.Ed.2d 250 (2012).

Washington’s saving statute “is deemed a part of every repealing statute as if expressly inserted therein, and hence renders unnecessary the incorporation of an individual saving clause in each statute which amends or repeals an existing penal statute.” *State v. Ross*, 152 Wn.2d 220, 237, 95 P.3d 1225 (2004). RCW 10.01.040 applies to both repeals and amendments of criminal statutes. *Rivard v. State*, 168 Wn.2d 775, 781, 231 P.3d 186 (2010); *State v. Fenter*, 89 Wn.2d 57, 61, 569 P.2d 67 (1977) (the saving

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<sup>11</sup> Former 18 U.S.C. § 3553(a)(4)(A)(ii).

statute applies to all repealed criminal statutes); *State v. Hanlen*, 193 Wash. 494, 76 P.2d 316 (1938) (same); *State v. Ficklin*, 192 Wash. 575, 74 P.2d 187 (1937) (same); *State v. Hanlen*, 190 Wash. 563, 69 P.2d 806 (1937) (same).

In *State v. Kane*, 101 Wn. App. 607, 617-18, 5 P.3d 741 (2000),

Division One recognized:

The fixing of legal punishments for criminal offenses is a legislative function. *State v. Ammons*, 105 W[n].2d 175, 180, 718 P.2d 796 (1986). The saving statute is a basic principle of construction the Legislature is entitled to rely on when it makes changes to criminal and penal statutes. To ignore the presumption established by the saving statute is to introduce uncertainty into legislation and intrude into legislative prerogatives. For example, an amendatory statute that substitutes treatment for time spent in prison may well require fiscal or administrative adjustments. The Legislature may have decided that such changes should be phased in gradually as new cases arise. Or it may not have thought about timing at all. The Legislature is not obliged to express its thinking on such matters in its criminal and penal statutes. It is entitled to assume that the courts will enforce the saving statute and give prospective application to criminal and penal statutes that do not express a contrary intent.

Courts have repeatedly relied upon the directive of the saving statute in holding that amendments to the sentencing provisions of the SRA do not apply to crimes committed before that amendment. *Ross*, 152 Wn.2d at 237-40 (holding amendment to RCW 9.94A.525(12), which decreased the offender score for most drug offenses, did not apply retroactively); *State v. McCarthy*, 112 Wn. App. 231, 237, 48 P.3d 1014 (2002) (same); *In re Hegney*, 138 Wn. App. 511, 541-42, 158 P.3d 1193 (2007) (holding an

amendment to RCW 9.94A.540, which eliminated mandatory minimum terms for some juveniles tried as adults, did not apply retroactively); *Kane*, 101 Wn. App. at 610-19 (holding an amendment to former RCW 9.94A.120, which expanded eligibility for Drug Offender Sentencing Alternative, did not apply retroactively).

In *Harris v. Kastama*, 98 Wn.2d 765, 766, 657 P.2d 1388 (1983), after the defendant's sentencing in 1974, the legislature reduced the maximum penalty for indecent liberties from 20 to 10 years. In 1981, based upon a writ of habeas corpus, the trial court concluded the former 20-year maximum sentence was constitutionally disproportionate, relying on *State v. Fain*, 94 Wn.2d 387, 617 P.2d 720 (1980). In reversing the trial court, this Court held, in pertinent part:

The trial court's reasoning overlooks the savings clause which expressly preserves penalties which were incurred before July 1, 1976. RCW 9A.98.020. This provision leads us to conclude that the Legislature has a rather more complex view of proportionality than that attributed to it by the trial court. If RCW 9A.98.020 is read together with RCW 9A.04.020(1)(d), it appears that the Legislature considers 10 years proportionate to offenses of indecent liberties committed since July 1, 1976, while 20 years is proportionate to such offenses committed prior to that date. The trial court therefore erred in concluding that the 1975 enactments constituted a legislative determination that 10 years is the proportionate sentence for the crime of indecent liberties.

98 Wn.2d at 770.

The legislative history of ESSB 5288 also militates against retroactive application. In determining whether a statute applies retroactively, an appellate court may examine its legislative history, and legislative bill reports. *Barstad v. Stewart Title Guar. Co.*, 145 Wn.2d 528, 537, 39 P.3d 984 (2002). An examination of the legislative history of ESSB 5228 confirms that the legislature did not intend that it apply retroactively. *See State v. Hirschfelder*, 170 Wn.2d 536, 546-47, 242 P.3d 876 (2010) (changes in bill from introduction to enactment evidenced legislative intent). As introduced, the Senate First Substitute Bill would have allowed already-sentenced offenders the opportunity to be resentenced if second-degree robbery had been used as a predicate offense for sentencing those defendants as persistent offenders. Senate Bill Report, SB 5288, at 2 (Attach. B). However, the Senate subsequently removed that provision from the amendment. SSB 5288 AMD 161, at 1 (Attach. C); Senate Engrossed First Substitute Bill 5288, as passed by the Senate on March 13, 2019, Senate Bill Report, ESSB 5288, at 1-4 (Attach. D). As enacted, ESSB 5288 removed second-degree robbery from the list of offenses that qualify as a “most serious offense” when sentencing persistent offenders, which became effective date on July 28, 2019.

**B. THE PROCEDURAL RULE ANNOUNCED IN *STATE v. RAMIREZ* HAS NO APPLICATION HERE.**

Jenks' reliance on the maxim that a new rule of law *announced by an appellate court*<sup>12</sup> may apply retroactively is inapplicable here as discussed above. Nor does the doctrine of finality apply here *where a new rule of conduct for criminal prosecutions* applies to cases pending on direct review or not yet final, as the issue before this Court does not involve a new rule for criminal prosecutions. *See e.g. Matter of St. Pierre*, 118 Wn.2d 321, 326, 823 P.2d 492 (1992).

Similarly, Jenks' reliance on *State v. Heath*, 85 Wn.2d 196, 197, 532 P.2d 621 (1975), is misplaced. In that case, Heath had his driver's license revoked in a 1972 civil proceeding under the Washington Habitual Traffic Offenders Act. That statute was amended and became effective in July 1973. The amendment allowed a trial court to stay a driver's license revocation if the offense involved alcohol and the offender was in treatment. *Id.* at 196. The superior court stayed Heath's revocation order because Heath was in treatment. The State argued on appeal that the new statute should be given only prospective application, but this Court held that the superior court did not err giving the statute retroactive application under

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<sup>12</sup> *See e.g. State v. Atsbeha*, 142 Wn.2d 904, 916, 16 P.3d 626 (2001) (applying a new rule of evidence).

general rules of statutory construction because it was “patently remedial.” *Id.* at 198. Jenks has never argued, nor could he, that passage of ESSB 5228 is remedial.

Thereafter, this Court distinguished *Heath in Ross*, finding “*Heath* did not directly implicate the savings clause since it pertained to amendments governing civil driver license revocations under the Washington Habitual Traffic Offenders Act.” 152 Wn.2d at 239.

Jenks further relies on *State v. Wiley*, 124 Wn.2d 679, 682, 880 P.2d 983 (1994), for the proposition that an amendment to a statute which reduces punishment requires retroactive application. That case is easily distinguished. Jenks arguably focuses on this Court’s statement in *Wiley* that a legislative downgrading of a crime based upon a determination that the conduct is less culpable will ordinarily be given retroactive effect. *See id.* at 688. However, as recognized later and distinguished by this Court in *Ross*, the *Wiley* court did not consider the impact of the saving statute on its decision. *See* 152 Wn.2d at 240.

Moreover, *Wiley*’s comments about retroactivity were based upon a pre-2000 version of the Sentencing Reform Act of 1981 (SRA). In 2000, the legislature clarified its intent regarding retroactivity by enacting RCW 9.94A.345: “Any sentence imposed under this chapter [Sentencing Reform Act] shall be determined in accordance with the law in effect when

the current offense was committed.”<sup>13</sup> Accordingly, under the SRA, a defendant must be sentenced in accordance with the law in effect at the time of his or her offense. *State v. Medina*, 180 Wn.2d 282, 287, 324 P.3d 682 (2014) (the terms of a defendant’s sentence are governed by the version of the SRA in effect when the crime was committed); *In re Carrier*, 173 Wn.2d 791, 808, 272 P.3d 209 (2012) (same); *Varga*, 151 Wn.2d at 191 (same); *State v. Delgado*, 148 Wn.2d 723, 726, 63 P.3d 792 (2003) (same).

In *Ramirez*, this Court granted review on March 7, 2018, regarding discretionary legal financial obligations imposed at sentencing. 191 Wn.2d 732. On March 17, 2018, the legislature amended various LFO statutes, including prohibiting trial courts from imposing discretionary costs on indigent offenders, which became effective June 7, 2018. *Id.* The *Ramirez* court held that these LFO amendments applied prospectively to cases pending on direct review. *Id.* at 749-50. This Court found that the amendments applied to cases pending on direct review because the imposition of LFOs is governed by the statutes in effect at the termination

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<sup>13</sup> The law was designed to cure any ambiguity as to what law to use when calculating a defendant’s offender score for sentencing and “to clarify the applicability of statutes creating new sentencing alternatives or modifying the availability of existing alternatives.” Laws of 2000, ch. 26, § 1. However, this Court has applied RCW 9.94A.345 to different contexts, including definitions applicable to “community custody” and “community placement,” *Matter of Gronquist*, 192 Wn.2d 309, 314 n.2, 429 P.3d 804 (2018), and determining which classification of a vehicular homicide statute to apply, *Rivard*, 168 Wn.2d at 781 n.3.

of a criminal case, and Ramirez's case was not final at the time the statute was enacted. *Id.* at 749.

This Court relied on *State v. Blank*, 131 Wn.2d 230, 249, 930 P.2d 1213 (1997), for this determination. *Ramirez*, 191 Wn.2d at 749. In *Blank*, this Court found the precipitating event for application of a statute concerning the award of appellate costs is the termination of a criminal case. 131 Wn.2d at 234. *Blank* relied on previous civil and criminal opinions which held that costs and attorney fees are governed by the statute in effect at the termination of a case – presumably when collection takes place. *Id.* at 249.

Ultimately, the *Ramirez* court determined that the defendant was indigent at the time of his original sentencing and the statutory amendment on LFOs barred imposition of discretionary costs at the time of his sentencing. This Court limited its holding to costs imposed on criminal defendants. 191 Wn.2d at 722.

Jenks cites no authority in which a court has applied the above rule outside the context of imposing fees and costs at sentencing on indigent defendants. Applying such a broad application of *Ramirez* and *Blank* to all defendants on direct review would nullify the saving statute, the intent of the legislature, and bring uncertainty and unpredictability into the arena of criminal sentencings and legislative decision-making.

Moreover, it appears the LFO statute, HB 1783, under consideration by the *Ramirez* court, was remedial. As stated by the *Ramirez* court, “House Bill 1783’s amendments modify Washington’s system of LFOs, addressing some of the worst facets of the system that prevent offenders from rebuilding their lives after conviction.” 191 Wn.2d at 747. Remedial statutes “afford a remedy, or better or forward remedies already existing for the enforcement of rights and the redress of injuries.” *Haddenham v. State*, 87 Wn.2d 145, 148, 550 P.2d 9 (1976). Remedial changes are generally enforced as soon as they are effective and can be enforced retroactively. *Pillatos*, 159 Wn.2d at 473. A statute is remedial when it relates to practice, procedure, or remedies, and does not affect a substantive right. *Id.*

The *Ramirez* court found that HB 1783 amended former RCW 10.01.160(3) to prohibit sentencing courts from imposing discretionary costs. 191 Wn.2d at 748-49. This Court stated, “the amendment conclusively establishes that courts do not have discretion to impose such LFOs” on indigent defendants. *Id.* at 749. Regarding the passage of HB 1783 and this Court’s analysis of it, it is apparent the legislature’s intent regarding passage of the bill was to address a perceived problem in former RCW 10.01.160(3) – to remove the debilitating effects of imposing legal financial obligations on indigent offenders. Consequently, the *Ramirez*

court impliedly held HB 1783 was remedial, which applied to Ramirez on direct appeal.

However, “a newly enacted statute...will only be applied to proceedings that occurred far earlier in the case if the ‘triggering event’ to which the new enactment might apply has not yet occurred.” *Jefferson*, 192 Wn. 2d at 246. Regarding the repeal of second-degree robbery as a “most serious offense,” a statute applies prospectively if the precipitating event under the statute occurs after the date of enactment. *See Pillatos*, 159 Wn.2d at 471 To determine what event precipitates or triggers application of a statute, this Court looks to the subject matter regulated by the statute. *In re Carrier*, 173 Wn.2d at 809.

Here, the subject matter is RCW 9.94A.030, which contains definitions for implementation under the Sentencing Reform Act; RCW 9.94A.030(32)<sup>14</sup> states which felonies are defined as “most serious offenses.” The term “most serious offenses” is also used in the definition of “persistent offender.” RCW 9.94A.030(37). A sentencing court applies these provisions when it determines whether a defendant is a “persistent offender” as classified under RCW 9.94A.570.

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<sup>14</sup> In 2017, Jenks sentencing was governed by former RCW 9.94A.030(33) and RCW 9.94A.030(38). Those statutes are presently codified respectively as RCW 9.94A.030(32) and RCW 9.94A.030(37).

RCW 9.94A.030(37)(a)(i) and (ii) state, in pertinent part:

(37) “Persistent offender” is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525.

The phrases “has been convicted of a ‘most serious offense’” and “has, before the commission of the [most recent ‘most serious] offense’” been convicted of two “most serious offenses” is an unambiguous indication that the commission of a third “most serious” offense is the precipitating or triggering event for application of RCW 9.94A.030(32), RCW 9.94A.030(37), and RCW 9.94A.570, not at the termination of a case as with legal financial obligations.

The precipitating event for omitting second-degree robbery as a “most serious offense,” and its omission from the persistent offender calculus, is the effective date of the statute of July 28, 2019. The fact that Jenks’ case was pending direct review when ESSB 5228 was enacted does not alter the triggering event for application of the statute. It only applies to offenders who commit a future “most serious offense” after its effective date on July 28, 2019.

The precipitating or triggering event for application of ESSB 5228 is when an offender has committed at least three qualifying “most serious offenses,” and a sentencing court considers whether a defendant is a persistent offender. After July 28, 2019, a sentencing court can no longer consider second-degree robbery in that computation. In Jenks’ case, in 2017, as discussed above, the sentencing court properly determined that the law in effect when Jenks committed his third “most serious” offense in 2014, included second-degree robbery as a strike offense, and properly applied the former statutes accordingly. Nothing supports the proposition that removal of second-degree robbery as a “most serious offense” applies retroactively to Jenks’ 2014 first-degree robbery, and his subsequent sentencing in 2017, or that it applies to Jenks on direct review. To the contrary, the legislature’s intent, as expressed in RCW 10.01.040 and RCW 9.94A.345, and by omission in ESSB 5228, indicates otherwise.

For example, and by analogy, in *Delgado*, the court addressed the question of whether the former two-strike statute of the Persistent Offender Accountability Act, former RCW 9.94A.030(27)(b)(i-ii) (1998), included a conviction that was not specifically listed. 148 Wn.2d at 725-26. The trial court declined to count a prior “statutory rape” conviction as a “strike” under the then existing two-strike statute because “statutory rape” was not specifically listed as one of the offenses to be counted as a strike under the

version of the statute in effect at the time of Delgado’s current offense. *Id.* at 725.

On appeal, the State asserted that based on Delgado’s previous conviction for “statutory rape” and his current convictions for first-degree rape of a child and first-degree child molestation, Delgado should be sentenced as a persistent offender under the two-strike law. *Id.* During the pendency of the appeal, the legislature had amended the statute to include a comparability analysis, which was lacking when Delgado committed his most current offenses. *Id.* at 725 n.3. To resolve the issue, this Court looked at the statute in effect when Delgado committed his crimes. *Id.* at 726. The court held that because statutory rape was not listed in the two-strike statute and the language of the statute was clear, the trial court did not err in refusing to sentence Delgado as a persistent offender. *Id.* at 732.

An offender is not subject to RCW 9.94A.570 unless he or she commits a third “most serious offense.” The precipitating event for application of RCW 9.94A.570 in Jenks’ case was when he committed a first-degree robbery in 2014. Even at the time of Jenks’ 2017 sentencing, former RCW 9.94A.030(33) listing Washington’s “most serious offenses,” included second-degree robbery.<sup>15</sup> The repeal of second-degree robbery as

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<sup>15</sup> Former RCW 9.94A.030(33)(o).

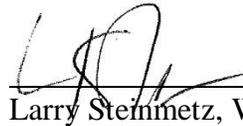
a “most serious offense” has no application to Jenks’ judgment and sentence.

#### IV. CONCLUSION

For the reasons stated above the decision of the Court of Appeals should be affirmed.

Dated this 9 day of October, 2020.

LAWRENCE H. HASKELL  
Prosecuting Attorney



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Larry Steinmetz, WSBA #20635



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Brett Pearce, WSBA #51819

Deputy Prosecuting Attorneys  
Attorneys for Respondent

# ATTACHMENT A

CERTIFICATION OF ENROLLMENT  
ENGROSSED SUBSTITUTE SENATE BILL 5288

Chapter 187, Laws of 2019

66th Legislature  
2019 Regular Session

PERSISTENT OFFENDERS--REMOVING ROBBERY IN THE SECOND DEGREE

EFFECTIVE DATE: July 28, 2019

Passed by the Senate March 13, 2019  
Yeas 29 Nays 20

KAREN KEISER  
President of the Senate

Passed by the House April 16, 2019  
Yeas 53 Nays 45

FRANK CHOPP  
Speaker of the House of Representatives  
Approved April 29, 2019 3:06 PM

JAY INSLEE  
Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE SENATE BILL 5288 as passed by Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON  
Secretary

FILED

April 30, 2019

Secretary of State  
State of Washington

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ENGROSSED SUBSTITUTE SENATE BILL 5288

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Passed Legislature - 2019 Regular Session

State of Washington                      66th Legislature                      2019 Regular Session

By Senate Law & Justice (originally sponsored by Senator Darneille)

READ FIRST TIME 02/22/19.

1            AN ACT Relating to removing robbery in the second degree from the  
2 list of offenses that qualify an individual as a persistent offender;  
3 and amending RCW 9.94A.030.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            **Sec. 1.** RCW 9.94A.030 and 2018 c 166 s 3 are each amended to  
6 read as follows:

7            Unless the context clearly requires otherwise, the definitions in  
8 this section apply throughout this chapter.

9            (1) "Board" means the indeterminate sentence review board created  
10 under chapter 9.95 RCW.

11            (2) "Collect," or any derivative thereof, "collect and remit," or  
12 "collect and deliver," when used with reference to the department,  
13 means that the department, either directly or through a collection  
14 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
15 and enforcing the offender's sentence with regard to the legal  
16 financial obligation, receiving payment thereof from the offender,  
17 and, consistent with current law, delivering daily the entire payment  
18 to the superior court clerk without depositing it in a departmental  
19 account.

20            (3) "Commission" means the sentencing guidelines commission.

1 (4) "Community corrections officer" means an employee of the  
2 department who is responsible for carrying out specific duties in  
3 supervision of sentenced offenders and monitoring of sentence  
4 conditions.

5 (5) "Community custody" means that portion of an offender's  
6 sentence of confinement in lieu of earned release time or imposed as  
7 part of a sentence under this chapter and served in the community  
8 subject to controls placed on the offender's movement and activities  
9 by the department.

10 (6) "Community protection zone" means the area within eight  
11 hundred eighty feet of the facilities and grounds of a public or  
12 private school.

13 (7) "Community restitution" means compulsory service, without  
14 compensation, performed for the benefit of the community by the  
15 offender.

16 (8) "Confinement" means total or partial confinement.

17 (9) "Conviction" means an adjudication of guilt pursuant to Title  
18 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,  
19 and acceptance of a plea of guilty.

20 (10) "Crime-related prohibition" means an order of a court  
21 prohibiting conduct that directly relates to the circumstances of the  
22 crime for which the offender has been convicted, and shall not be  
23 construed to mean orders directing an offender affirmatively to  
24 participate in rehabilitative programs or to otherwise perform  
25 affirmative conduct. However, affirmative acts necessary to monitor  
26 compliance with the order of a court may be required by the  
27 department.

28 (11) "Criminal history" means the list of a defendant's prior  
29 convictions and juvenile adjudications, whether in this state, in  
30 federal court, or elsewhere, and any issued certificates of  
31 restoration of opportunity pursuant to RCW 9.97.020.

32 (a) The history shall include, where known, for each conviction  
33 (i) whether the defendant has been placed on probation and the length  
34 and terms thereof; and (ii) whether the defendant has been  
35 incarcerated and the length of incarceration.

36 (b) A conviction may be removed from a defendant's criminal  
37 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,  
38 9.95.240, or a similar out-of-state statute, or if the conviction has  
39 been vacated pursuant to a governor's pardon.

1 (c) The determination of a defendant's criminal history is  
2 distinct from the determination of an offender score. A prior  
3 conviction that was not included in an offender score calculated  
4 pursuant to a former version of the sentencing reform act remains  
5 part of the defendant's criminal history.

6 (12) "Criminal street gang" means any ongoing organization,  
7 association, or group of three or more persons, whether formal or  
8 informal, having a common name or common identifying sign or symbol,  
9 having as one of its primary activities the commission of criminal  
10 acts, and whose members or associates individually or collectively  
11 engage in or have engaged in a pattern of criminal street gang  
12 activity. This definition does not apply to employees engaged in  
13 concerted activities for their mutual aid and protection, or to the  
14 activities of labor and bona fide nonprofit organizations or their  
15 members or agents.

16 (13) "Criminal street gang associate or member" means any person  
17 who actively participates in any criminal street gang and who  
18 intentionally promotes, furthers, or assists in any criminal act by  
19 the criminal street gang.

20 (14) "Criminal street gang-related offense" means any felony or  
21 misdemeanor offense, whether in this state or elsewhere, that is  
22 committed for the benefit of, at the direction of, or in association  
23 with any criminal street gang, or is committed with the intent to  
24 promote, further, or assist in any criminal conduct by the gang, or  
25 is committed for one or more of the following reasons:

26 (a) To gain admission, prestige, or promotion within the gang;

27 (b) To increase or maintain the gang's size, membership,  
28 prestige, dominance, or control in any geographical area;

29 (c) To exact revenge or retribution for the gang or any member of  
30 the gang;

31 (d) To obstruct justice, or intimidate or eliminate any witness  
32 against the gang or any member of the gang;

33 (e) To directly or indirectly cause any benefit, aggrandizement,  
34 gain, profit, or other advantage for the gang, its reputation,  
35 influence, or membership; or

36 (f) To provide the gang with any advantage in, or any control or  
37 dominance over any criminal market sector, including, but not limited  
38 to, manufacturing, delivering, or selling any controlled substance  
39 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen  
40 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88

1 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual  
2 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter  
3 9.68 RCW).

4 (15) "Day fine" means a fine imposed by the sentencing court that  
5 equals the difference between the offender's net daily income and the  
6 reasonable obligations that the offender has for the support of the  
7 offender and any dependents.

8 (16) "Day reporting" means a program of enhanced supervision  
9 designed to monitor the offender's daily activities and compliance  
10 with sentence conditions, and in which the offender is required to  
11 report daily to a specific location designated by the department or  
12 the sentencing court.

13 (17) "Department" means the department of corrections.

14 (18) "Determinate sentence" means a sentence that states with  
15 exactitude the number of actual years, months, or days of total  
16 confinement, of partial confinement, of community custody, the number  
17 of actual hours or days of community restitution work, or dollars or  
18 terms of a legal financial obligation. The fact that an offender  
19 through earned release can reduce the actual period of confinement  
20 shall not affect the classification of the sentence as a determinate  
21 sentence.

22 (19) "Disposable earnings" means that part of the earnings of an  
23 offender remaining after the deduction from those earnings of any  
24 amount required by law to be withheld. For the purposes of this  
25 definition, "earnings" means compensation paid or payable for  
26 personal services, whether denominated as wages, salary, commission,  
27 bonuses, or otherwise, and, notwithstanding any other provision of  
28 law making the payments exempt from garnishment, attachment, or other  
29 process to satisfy a court-ordered legal financial obligation,  
30 specifically includes periodic payments pursuant to pension or  
31 retirement programs, or insurance policies of any type, but does not  
32 include payments made under Title 50 RCW, except as provided in RCW  
33 50.40.020 and 50.40.050, or Title 74 RCW.

34 (20) "Domestic violence" has the same meaning as defined in RCW  
35 10.99.020 and 26.50.010.

36 (21) "Drug offender sentencing alternative" is a sentencing  
37 option available to persons convicted of a felony offense other than  
38 a violent offense or a sex offense and who are eligible for the  
39 option under RCW 9.94A.660.

40 (22) "Drug offense" means:

1 (a) Any felony violation of chapter 69.50 RCW except possession  
2 of a controlled substance (RCW 69.50.4013) or forged prescription for  
3 a controlled substance (RCW 69.50.403);

4 (b) Any offense defined as a felony under federal law that  
5 relates to the possession, manufacture, distribution, or  
6 transportation of a controlled substance; or

7 (c) Any out-of-state conviction for an offense that under the  
8 laws of this state would be a felony classified as a drug offense  
9 under (a) of this subsection.

10 (23) "Earned release" means earned release from confinement as  
11 provided in RCW 9.94A.728.

12 (24) "Electronic monitoring" means tracking the location of an  
13 individual, whether pretrial or posttrial, through the use of  
14 technology that is capable of determining or identifying the  
15 monitored individual's presence or absence at a particular location  
16 including, but not limited to:

17 (a) Radio frequency signaling technology, which detects if the  
18 monitored individual is or is not at an approved location and  
19 notifies the monitoring agency of the time that the monitored  
20 individual either leaves the approved location or tampers with or  
21 removes the monitoring device; or

22 (b) Active or passive global positioning system technology, which  
23 detects the location of the monitored individual and notifies the  
24 monitoring agency of the monitored individual's location.

25 (25) "Escape" means:

26 (a) Sexually violent predator escape (RCW 9A.76.115), escape in  
27 the first degree (RCW 9A.76.110), escape in the second degree (RCW  
28 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
29 willful failure to return from work release (RCW 72.65.070), or  
30 willful failure to be available for supervision by the department  
31 while in community custody (RCW 72.09.310); or

32 (b) Any federal or out-of-state conviction for an offense that  
33 under the laws of this state would be a felony classified as an  
34 escape under (a) of this subsection.

35 (26) "Felony traffic offense" means:

36 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
37 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
38 run injury-accident (RCW 46.52.020(4)), felony driving while under  
39 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)),

1 or felony physical control of a vehicle while under the influence of  
2 intoxicating liquor or any drug (RCW 46.61.504(6)); or

3 (b) Any federal or out-of-state conviction for an offense that  
4 under the laws of this state would be a felony classified as a felony  
5 traffic offense under (a) of this subsection.

6 (27) "Fine" means a specific sum of money ordered by the  
7 sentencing court to be paid by the offender to the court over a  
8 specific period of time.

9 (28) "First-time offender" means any person who has no prior  
10 convictions for a felony and is eligible for the first-time offender  
11 waiver under RCW 9.94A.650.

12 (29) "Home detention" is a subset of electronic monitoring and  
13 means a program of partial confinement available to offenders wherein  
14 the offender is confined in a private residence twenty-four hours a  
15 day, unless an absence from the residence is approved, authorized, or  
16 otherwise permitted in the order by the court or other supervising  
17 agency that ordered home detention, and the offender is subject to  
18 electronic monitoring.

19 (30) "Homelessness" or "homeless" means a condition where an  
20 individual lacks a fixed, regular, and adequate nighttime residence  
21 and who has a primary nighttime residence that is:

22 (a) A supervised, publicly or privately operated shelter designed  
23 to provide temporary living accommodations;

24 (b) A public or private place not designed for, or ordinarily  
25 used as, a regular sleeping accommodation for human beings; or

26 (c) A private residence where the individual stays as a transient  
27 invitee.

28 (31) "Legal financial obligation" means a sum of money that is  
29 ordered by a superior court of the state of Washington for legal  
30 financial obligations which may include restitution to the victim,  
31 statutorily imposed crime victims' compensation fees as assessed  
32 pursuant to RCW 7.68.035, court costs, county or interlocal drug  
33 funds, court-appointed attorneys' fees, and costs of defense, fines,  
34 and any other financial obligation that is assessed to the offender  
35 as a result of a felony conviction. Upon conviction for vehicular  
36 assault while under the influence of intoxicating liquor or any drug,  
37 RCW 46.61.522(1)(b), or vehicular homicide while under the influence  
38 of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal  
39 financial obligations may also include payment to a public agency of

1 the expense of an emergency response to the incident resulting in the  
2 conviction, subject to RCW 38.52.430.

3 (32) "Minor child" means a biological or adopted child of the  
4 offender who is under age eighteen at the time of the offender's  
5 current offense.

6 (33) "Most serious offense" means any of the following felonies  
7 or a felony attempt to commit any of the following felonies:

8 (a) Any felony defined under any law as a class A felony or  
9 criminal solicitation of or criminal conspiracy to commit a class A  
10 felony;

11 (b) Assault in the second degree;

12 (c) Assault of a child in the second degree;

13 (d) Child molestation in the second degree;

14 (e) Controlled substance homicide;

15 (f) Extortion in the first degree;

16 (g) Incest when committed against a child under age fourteen;

17 (h) Indecent liberties;

18 (i) Kidnapping in the second degree;

19 (j) Leading organized crime;

20 (k) Manslaughter in the first degree;

21 (l) Manslaughter in the second degree;

22 (m) Promoting prostitution in the first degree;

23 (n) Rape in the third degree;

24 (o) ~~((Robbery in the second degree;~~

25 ~~(p))~~ Sexual exploitation;

26 ~~((q))~~ (p) Vehicular assault, when caused by the operation or  
27 driving of a vehicle by a person while under the influence of  
28 intoxicating liquor or any drug or by the operation or driving of a  
29 vehicle in a reckless manner;

30 ~~((r))~~ (q) Vehicular homicide, when proximately caused by the  
31 driving of any vehicle by any person while under the influence of  
32 intoxicating liquor or any drug as defined by RCW 46.61.502, or by  
33 the operation of any vehicle in a reckless manner;

34 ~~((s))~~ (r) Any other class B felony offense with a finding of  
35 sexual motivation;

36 ~~((t))~~ (s) Any other felony with a deadly weapon verdict under  
37 RCW 9.94A.825;

38 ~~((u))~~ (t) Any felony offense in effect at any time prior to  
39 December 2, 1993, that is comparable to a most serious offense under  
40 this subsection, or any federal or out-of-state conviction for an

1 offense that under the laws of this state would be a felony  
2 classified as a most serious offense under this subsection;

3 ~~((v))~~ (u)(i) A prior conviction for indecent liberties under  
4 RCW 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.  
5 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),  
6 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW  
7 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,  
8 until July 1, 1988;

9 (ii) A prior conviction for indecent liberties under RCW  
10 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
11 if: (A) The crime was committed against a child under the age of  
12 fourteen; or (B) the relationship between the victim and perpetrator  
13 is included in the definition of indecent liberties under RCW  
14 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,  
15 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,  
16 1993, through July 27, 1997;

17 ~~((w))~~ (v) Any out-of-state conviction for a felony offense with  
18 a finding of sexual motivation if the minimum sentence imposed was  
19 ten years or more; provided that the out-of-state felony offense must  
20 be comparable to a felony offense under this title and Title 9A RCW  
21 and the out-of-state definition of sexual motivation must be  
22 comparable to the definition of sexual motivation contained in this  
23 section.

24 (34) "Nonviolent offense" means an offense which is not a violent  
25 offense.

26 (35) "Offender" means a person who has committed a felony  
27 established by state law and is eighteen years of age or older or is  
28 less than eighteen years of age but whose case is under superior  
29 court jurisdiction under RCW 13.04.030 or has been transferred by the  
30 appropriate juvenile court to a criminal court pursuant to RCW  
31 13.40.110. In addition, for the purpose of community custody  
32 requirements under this chapter, "offender" also means a misdemeanor  
33 or gross misdemeanor probationer ordered by a superior court to  
34 probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and  
35 supervised by the department pursuant to RCW 9.94A.501 and  
36 9.94A.5011. Throughout this chapter, the terms "offender" and  
37 "defendant" are used interchangeably.

38 (36) "Partial confinement" means confinement for no more than one  
39 year in a facility or institution operated or utilized under contract  
40 by the state or any other unit of government, or, if home detention,

1 electronic monitoring, or work crew has been ordered by the court or  
2 home detention has been ordered by the department as part of the  
3 parenting program or the graduated reentry program, in an approved  
4 residence, for a substantial portion of each day with the balance of  
5 the day spent in the community. Partial confinement includes work  
6 release, home detention, work crew, electronic monitoring, and a  
7 combination of work crew, electronic monitoring, and home detention.

8 (37) "Pattern of criminal street gang activity" means:

9 (a) The commission, attempt, conspiracy, or solicitation of, or  
10 any prior juvenile adjudication of or adult conviction of, two or  
11 more of the following criminal street gang-related offenses:

12 (i) Any "serious violent" felony offense as defined in this  
13 section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a  
14 Child 1 (RCW 9A.36.120);

15 (ii) Any "violent" offense as defined by this section, excluding  
16 Assault of a Child 2 (RCW 9A.36.130);

17 (iii) Deliver or Possession with Intent to Deliver a Controlled  
18 Substance (chapter 69.50 RCW);

19 (iv) Any violation of the firearms and dangerous weapon act  
20 (chapter 9.41 RCW);

21 (v) Theft of a Firearm (RCW 9A.56.300);

22 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);

23 (vii) Malicious Harassment (RCW 9A.36.080);

24 (viii) Harassment where a subsequent violation or deadly threat  
25 is made (RCW 9A.46.020(2)(b));

26 (ix) Criminal Gang Intimidation (RCW 9A.46.120);

27 (x) Any felony conviction by a person eighteen years of age or  
28 older with a special finding of involving a juvenile in a felony  
29 offense under RCW 9.94A.833;

30 (xi) Residential Burglary (RCW 9A.52.025);

31 (xii) Burglary 2 (RCW 9A.52.030);

32 (xiii) Malicious Mischief 1 (RCW 9A.48.070);

33 (xiv) Malicious Mischief 2 (RCW 9A.48.080);

34 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);

35 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

36 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW  
37 9A.56.070);

38 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW  
39 9A.56.075);

40 (xix) Extortion 1 (RCW 9A.56.120);

- 1 (xx) Extortion 2 (RCW 9A.56.130);
- 2 (xxi) Intimidating a Witness (RCW 9A.72.110);
- 3 (xxii) Tampering with a Witness (RCW 9A.72.120);
- 4 (xxiii) Reckless Endangerment (RCW 9A.36.050);
- 5 (xxiv) Coercion (RCW 9A.36.070);
- 6 (xxv) Harassment (RCW 9A.46.020); or
- 7 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

8 (b) That at least one of the offenses listed in (a) of this  
9 subsection shall have occurred after July 1, 2008;

10 (c) That the most recent committed offense listed in (a) of this  
11 subsection occurred within three years of a prior offense listed in  
12 (a) of this subsection; and

13 (d) Of the offenses that were committed in (a) of this  
14 subsection, the offenses occurred on separate occasions or were  
15 committed by two or more persons.

16 (38) "Persistent offender" is an offender who:

17 (a)(i) Has been convicted in this state of any felony considered  
18 a most serious offense; and

19 (ii) Has, before the commission of the offense under (a) of this  
20 subsection, been convicted as an offender on at least two separate  
21 occasions, whether in this state or elsewhere, of felonies that under  
22 the laws of this state would be considered most serious offenses and  
23 would be included in the offender score under RCW 9.94A.525; provided  
24 that of the two or more previous convictions, at least one conviction  
25 must have occurred before the commission of any of the other most  
26 serious offenses for which the offender was previously convicted; or

27 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
28 of a child in the first degree, child molestation in the first  
29 degree, rape in the second degree, rape of a child in the second  
30 degree, or indecent liberties by forcible compulsion; (B) any of the  
31 following offenses with a finding of sexual motivation: Murder in the  
32 first degree, murder in the second degree, homicide by abuse,  
33 kidnapping in the first degree, kidnapping in the second degree,  
34 assault in the first degree, assault in the second degree, assault of  
35 a child in the first degree, assault of a child in the second degree,  
36 or burglary in the first degree; or (C) an attempt to commit any  
37 crime listed in this subsection (38)(b)(i); and

38 (ii) Has, before the commission of the offense under (b)(i) of  
39 this subsection, been convicted as an offender on at least one  
40 occasion, whether in this state or elsewhere, of an offense listed in

1 (b)(i) of this subsection or any federal or out-of-state offense or  
2 offense under prior Washington law that is comparable to the offenses  
3 listed in (b)(i) of this subsection. A conviction for rape of a child  
4 in the first degree constitutes a conviction under (b)(i) of this  
5 subsection only when the offender was sixteen years of age or older  
6 when the offender committed the offense. A conviction for rape of a  
7 child in the second degree constitutes a conviction under (b)(i) of  
8 this subsection only when the offender was eighteen years of age or  
9 older when the offender committed the offense.

10 (39) "Predatory" means: (a) The perpetrator of the crime was a  
11 stranger to the victim, as defined in this section; (b) the  
12 perpetrator established or promoted a relationship with the victim  
13 prior to the offense and the victimization of the victim was a  
14 significant reason the perpetrator established or promoted the  
15 relationship; or (c) the perpetrator was: (i) A teacher, counselor,  
16 volunteer, or other person in authority in any public or private  
17 school and the victim was a student of the school under his or her  
18 authority or supervision. For purposes of this subsection, "school"  
19 does not include home-based instruction as defined in RCW  
20 28A.225.010; (ii) a coach, trainer, volunteer, or other person in  
21 authority in any recreational activity and the victim was a  
22 participant in the activity under his or her authority or  
23 supervision; (iii) a pastor, elder, volunteer, or other person in  
24 authority in any church or religious organization, and the victim was  
25 a member or participant of the organization under his or her  
26 authority; or (iv) a teacher, counselor, volunteer, or other person  
27 in authority providing home-based instruction and the victim was a  
28 student receiving home-based instruction while under his or her  
29 authority or supervision. For purposes of this subsection: (A) "Home-  
30 based instruction" has the same meaning as defined in RCW  
31 28A.225.010; and (B) "teacher, counselor, volunteer, or other person  
32 in authority" does not include the parent or legal guardian of the  
33 victim.

34 (40) "Private school" means a school regulated under chapter  
35 28A.195 or 28A.205 RCW.

36 (41) "Public school" has the same meaning as in RCW 28A.150.010.

37 (42) "Repetitive domestic violence offense" means any:

38 (a)(i) Domestic violence assault that is not a felony offense  
39 under RCW 9A.36.041;

1 (ii) Domestic violence violation of a no-contact order under  
2 chapter 10.99 RCW that is not a felony offense;

3 (iii) Domestic violence violation of a protection order under  
4 chapter 26.09, 26.10, (~~26.26~~) 26.26B, or 26.50 RCW that is not a  
5 felony offense;

6 (iv) Domestic violence harassment offense under RCW 9A.46.020  
7 that is not a felony offense; or

8 (v) Domestic violence stalking offense under RCW 9A.46.110 that  
9 is not a felony offense; or

10 (b) Any federal, out-of-state, tribal court, military, county, or  
11 municipal conviction for an offense that under the laws of this state  
12 would be classified as a repetitive domestic violence offense under  
13 (a) of this subsection.

14 (43) "Restitution" means a specific sum of money ordered by the  
15 sentencing court to be paid by the offender to the court over a  
16 specified period of time as payment of damages. The sum may include  
17 both public and private costs.

18 (44) "Risk assessment" means the application of the risk  
19 instrument recommended to the department by the Washington state  
20 institute for public policy as having the highest degree of  
21 predictive accuracy for assessing an offender's risk of reoffense.

22 (45) "Serious traffic offense" means:

23 (a) Nonfelony driving while under the influence of intoxicating  
24 liquor or any drug (RCW 46.61.502), nonfelony actual physical control  
25 while under the influence of intoxicating liquor or any drug (RCW  
26 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
27 attended vehicle (RCW 46.52.020(5)); or

28 (b) Any federal, out-of-state, county, or municipal conviction  
29 for an offense that under the laws of this state would be classified  
30 as a serious traffic offense under (a) of this subsection.

31 (46) "Serious violent offense" is a subcategory of violent  
32 offense and means:

33 (a)(i) Murder in the first degree;

34 (ii) Homicide by abuse;

35 (iii) Murder in the second degree;

36 (iv) Manslaughter in the first degree;

37 (v) Assault in the first degree;

38 (vi) Kidnapping in the first degree;

39 (vii) Rape in the first degree;

40 (viii) Assault of a child in the first degree; or

1 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
2 commit one of these felonies; or

3 (b) Any federal or out-of-state conviction for an offense that  
4 under the laws of this state would be a felony classified as a  
5 serious violent offense under (a) of this subsection.

6 (47) "Sex offense" means:

7 (a)(i) A felony that is a violation of chapter 9A.44 RCW other  
8 than RCW 9A.44.132;

9 (ii) A violation of RCW 9A.64.020;

10 (iii) A felony that is a violation of chapter 9.68A RCW other  
11 than RCW 9.68A.080;

12 (iv) A felony that is, under chapter 9A.28 RCW, a criminal  
13 attempt, criminal solicitation, or criminal conspiracy to commit such  
14 crimes; or

15 (v) A felony violation of RCW 9A.44.132(1) (failure to register  
16 as a sex offender) if the person has been convicted of violating RCW  
17 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130  
18 prior to June 10, 2010, on at least one prior occasion;

19 (b) Any conviction for a felony offense in effect at any time  
20 prior to July 1, 1976, that is comparable to a felony classified as a  
21 sex offense in (a) of this subsection;

22 (c) A felony with a finding of sexual motivation under RCW  
23 9.94A.835 or 13.40.135; or

24 (d) Any federal or out-of-state conviction for an offense that  
25 under the laws of this state would be a felony classified as a sex  
26 offense under (a) of this subsection.

27 (48) "Sexual motivation" means that one of the purposes for which  
28 the defendant committed the crime was for the purpose of his or her  
29 sexual gratification.

30 (49) "Standard sentence range" means the sentencing court's  
31 discretionary range in imposing a nonappealable sentence.

32 (50) "Statutory maximum sentence" means the maximum length of  
33 time for which an offender may be confined as punishment for a crime  
34 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute  
35 defining the crime, or other statute defining the maximum penalty for  
36 a crime.

37 (51) "Stranger" means that the victim did not know the offender  
38 twenty-four hours before the offense.

39 (52) "Total confinement" means confinement inside the physical  
40 boundaries of a facility or institution operated or utilized under

1 contract by the state or any other unit of government for twenty-four  
2 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

3 (53) "Transition training" means written and verbal instructions  
4 and assistance provided by the department to the offender during the  
5 two weeks prior to the offender's successful completion of the work  
6 ethic camp program. The transition training shall include  
7 instructions in the offender's requirements and obligations during  
8 the offender's period of community custody.

9 (54) "Victim" means any person who has sustained emotional,  
10 psychological, physical, or financial injury to person or property as  
11 a direct result of the crime charged.

12 (55) "Violent offense" means:

13 (a) Any of the following felonies:

14 (i) Any felony defined under any law as a class A felony or an  
15 attempt to commit a class A felony;

16 (ii) Criminal solicitation of or criminal conspiracy to commit a  
17 class A felony;

18 (iii) Manslaughter in the first degree;

19 (iv) Manslaughter in the second degree;

20 (v) Indecent liberties if committed by forcible compulsion;

21 (vi) Kidnapping in the second degree;

22 (vii) Arson in the second degree;

23 (viii) Assault in the second degree;

24 (ix) Assault of a child in the second degree;

25 (x) Extortion in the first degree;

26 (xi) Robbery in the second degree;

27 (xii) Drive-by shooting;

28 (xiii) Vehicular assault, when caused by the operation or driving  
29 of a vehicle by a person while under the influence of intoxicating  
30 liquor or any drug or by the operation or driving of a vehicle in a  
31 reckless manner; and

32 (xiv) Vehicular homicide, when proximately caused by the driving  
33 of any vehicle by any person while under the influence of  
34 intoxicating liquor or any drug as defined by RCW 46.61.502, or by  
35 the operation of any vehicle in a reckless manner;

36 (b) Any conviction for a felony offense in effect at any time  
37 prior to July 1, 1976, that is comparable to a felony classified as a  
38 violent offense in (a) of this subsection; and

1 (c) Any federal or out-of-state conviction for an offense that  
2 under the laws of this state would be a felony classified as a  
3 violent offense under (a) or (b) of this subsection.

4 (56) "Work crew" means a program of partial confinement  
5 consisting of civic improvement tasks for the benefit of the  
6 community that complies with RCW 9.94A.725.

7 (57) "Work ethic camp" means an alternative incarceration program  
8 as provided in RCW 9.94A.690 designed to reduce recidivism and lower  
9 the cost of corrections by requiring offenders to complete a  
10 comprehensive array of real-world job and vocational experiences,  
11 character-building work ethics training, life management skills  
12 development, substance abuse rehabilitation, counseling, literacy  
13 training, and basic adult education.

14 (58) "Work release" means a program of partial confinement  
15 available to offenders who are employed or engaged as a student in a  
16 regular course of study at school.

Passed by the Senate March 13, 2019.

Passed by the House April 16, 2019.

Approved by the Governor April 29, 2019.

Filed in Office of Secretary of State April 30, 2019.

--- END ---

# ATTACHMENT B

# SENATE BILL REPORT

## SB 5288

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As Reported by Senate Committee On:  
Law & Justice, February 21, 2019

**Title:** An act relating to persistent offenders.

**Brief Description:** Sentencing for persistent offenders.

**Sponsors:** Senator Darneille.

**Brief History:**

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

**Brief Summary of First Substitute Bill**

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

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

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

Any offender previously 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. 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.

**EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):** Assault in the second degree is restored as a most serious offense for the purposes of determining whether an offender is a persistent offender.

**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.

# ATTACHMENT C

5288-S AMS PADD S2657.1

SSB 5288 - S AMD 161  
By Senator Padden

ADOPTED 03/13/2019

1 Beginning on page 15, line 17, strike all of section 2

SSB 5288 - S AMD 161  
By Senator Padden

ADOPTED 03/13/2019

2 On page 1, line 1 of the title, after "offenders;" insert "and"

3 On page 1, beginning on line 1 of the title, after "9.94A.030"  
4 strike all material through "date" on line 3

EFFECT: Removes provisions requiring offenders be resentenced if Robbery 2 was used as a basis for finding the offender was a persistent offender prior to the effective date of the bill.

--- END ---

# ATTACHMENT D

# 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.

---

### 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.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ALAN JENKS,

Petitioner.

NO. 98196-4  
COA # 52450-3-II

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington, that on October 9, 2020, I e-mailed a copy of the Supplemental Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Gregory Link and Jan Trasen  
wapofficemail@washapp.org

Jessica Levin  
levinje@seattleu.edu

Robert Chang  
changro@seattleu.edu

Melissa Lee  
leeme@seattleu.edu

Cindy Elsberry  
cindy@defensenet.org

Ali Hohman  
ali@defensenet.org

Nancy Talner  
talner@aclu-wa.org

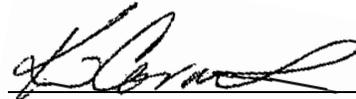
Antoinett Davis  
tdavis@aclu-wa.org

Jaime Hawk  
jhawk@aclu-wa.org

Mark Middaugh  
mark.middaugh@kingcounty.gov

10/9/2020  
**(Date)**

Spokane, WA  
**(Place)**

  
\_\_\_\_\_  
**(Signature)**

# SPOKANE COUNTY PROSECUTOR

October 09, 2020 - 4:06 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 98496-4  
**Appellate Court Case Title:** State of Washington v. Alan Dale Jenks  
**Superior Court Case Number:** 14-1-04486-1

### The following documents have been uploaded:

- 984964\_Briefs\_20201009160435SC683299\_6992.pdf  
This File Contains:  
Briefs - Respondents Supplemental  
*The Original File Name was Jenks Alan - 984964 - PFR Supp Resp - LDS-BBP.pdf*
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Sender Name: Kim Cornelius - Email: kcornelius@spokanecounty.org

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Phone: (509) 477-2873

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