

HB

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HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 11, 1994

FURTHER REFERRALS:

Date of Committee Action: 4/11/94

The FINANCE Committee considered:

HB 334

HOUSE BILL NO. 334

99 YR PENALTY-3RD SERIOUS FELONY OFFENDER

"An Act relating to criminal sentencing; and relating to mandatory life imprisonment, parole, good time credit, pardon, commutation of sentence, reprieve, furlough, and service of sentence at a correctional restitution center for offenders with at least three serious felony convictions."

RECOMMENDATIONS:

be replaced with (S) HB 334 (FIN) the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact ⁽²⁾ Admin; AK Court; 1 W

fiscal note(s) Admin

zero fiscal note Conviction

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		Eileen P. Maclean ^{Maclean}	X		
		Ronald J. Larson ^{LARSON}		X	
		Mark Hanley ^{Hanley}		X	
		Larry Martin ^{MARTIN}		X	
		Heard Parnell Parnell	X		
		Jay Brown ^{BROWN}	✓		
		Gene Hernandez ^{Hernandez}			X

Ronald J. Larson Eileen P. Maclean
 CHAIRMAN'S SIGNATURE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO.: CSHB 334 (JUD)

Revision Date: March 21, 1994

Dept. Affected:

Corrections

Title: Three Strikes

BRU:

All

Sponsor: Rep. Bunde

Component:

All

Requestor: House Finance

Component Serial #:

694-1884

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXP.	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXP	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGES IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost \$ 0.0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Please see the attached explanation. Fiscal impact will be significant, but delayed beyond the years measured in this fiscal note.

Prepared by: Diane Schenker, Special Assistant
 Division: Office of the Commissioner
 Approved by: J. Frank Prewitt, Jr., Commissioner
 Agency: Department of Corrections

D. Schenker
JFP

Phone: 465-4643/786-2147
 Date: 3/22/94
 Date: 3/22/94
 Page 1 of 5

The bill would mandate a life sentence for a conviction for an unclassified or Class A felony if the offender has been previously convicted of two or more separate "most serious" felonies: any unclassified or Class A felony (or attempt, conspiracy or solicitation regarding an unclassified or Class A felony), or Assault II, Sexual Assault II, Sexual Abuse of a Minor II, or Unlawful Exploitation of a Minor. Offenders sentenced to mandatory 99 year sentences would not be eligible to earn statutory good time. Prisoners sentenced under the provisions of the bill would be ineligible for parole or other forms of early or graduated release, but could apply for a modification or reduction of sentence after serving half of the 99-year mandatory sentence (49.5 years.)

Assumptions

1. According to the department's data, approximately 19% of the prisoners incarcerated on November 4, 1993 had been convicted of three or more felonies. A June 30, 1993 profile indicated that approximately 1,052 (almost 40%) of the prisoners were incarcerated for a "most serious felony." Estimates from the Alaska Judicial Council and from the department's OBSCIS system suggest that only 10% of incarcerated felons have been convicted of prior, multiple, most serious felonies. To check these assumptions, ten cases were randomly selected from the list of prisoners incarcerated for unclassified and class A felonies, and criminal histories were checked according to file information. One out of the ten had a prior most serious felony conviction. Criminal justice information records are not available to discern whether or not prior convictions were separate, consecutive offenses. The department does not have the resources to conduct individual file reviews to determine this factor and therefore assumes the 10% estimate is correct.
2. The 99 year sentence is assumed to be a "life" sentence. The estimated lifespan of a male, by the year 2000, is estimated to be 73.5 years, according to the United States Statistical Abstract. The estimated age at the time of conviction for a most serious felony is estimated to be 28 years, according to the Alaska Judicial Council. Thus, those sentenced under this bill would be incarcerated for 45.5 years, rounded up to 46 years. (Age for males is used, since the prison population is over 95% male.) If allowed to earn statutory good time on a 99 year sentence, the prisoner would still have to serve 66 years. Furlough eligibility would not occur until the prisoner had served 63 years, with good time, and sentence modification allowed under the bill would not occur until after serving 49.5 years. Since the average prisoner would be dead prior to meeting these requirements, the provisions governing good time, furlough, and sentence modification are assumed to be irrelevant.

3. The estimated length of incarceration for applicable crimes under current law is listed in the table below, with the associated increase based upon sentencing under this bill. The current average lengths of incarceration for unclassified and Class A felonies are based upon data from the department's OBSCIS system on current prisoners.

Offense Category	Current Length of Incarceration	Proposed Incarceration	Difference	% increase
Unclassified: Murder I, Murder II, Kidnapping	over lifespan	over lifespan	0	0
Unclassified: MICS I, SA I, SAM I	13 years	46 years	+ 33 years	+ 354%
A felonies	12 years	46 years	+ 34 years	+ 383%

4. The statewide average cost of incarceration in a state correctional center is \$113 per day. This figure does not include CRC beds, since prisoners under this bill are prohibited from furlough, restitution center placement, etc. This figure includes the standard overhead for medical and administrative costs. This number should be considered to be conservative, since medical expenses for older prisoners doing life sentences are expected to be higher than average. Operating expenses are reflected under "miscellaneous" on page 1 of the fiscal note since the total operating cost involves multiple categories of expenses.

6. The average cost for construction of a maximum security prison bed in Alaska is \$160,000. It is assumed that prisoners sentenced to life will require high security housing. Capital expenses might be reduced if additional beds were purchased under contract, however there are no contract beds currently available in Alaska for prisoners with higher than minimum custody.

7. The correctional system cannot absorb any additional prisoners without additional resources. The system has been operating over emergency capacity throughout the past year. Even when all aspects of the department's current population management plan are achieved, only the current overcrowding will be addressed, not including any additional numbers of inmates caused by new legislation. In addition to posing safety hazards, operating over emergency capacity for prolonged periods may result in fines of up to \$1,000 per day if the department is found in contempt of court for violating population caps.

8. Because a number of crime bills are pending before the legislature this year, it is difficult to predict the total number of beds by which the prison system may need to be increased, and therefore difficult to predict how and where such beds would be added: through new facility construction, facility modification, or contracting. It is not possible to estimate the number of staff positions needed until specific expansion plans are made.

Operating Expenses and Capital Expenses

There will be long-term impact and expenses which the department will have to address through the budget process in subsequent years, because the impact will not occur during the six-year period addressed in the fiscal note process.

The table below calculates the increased costs of all the categories of offenders whose actual length of stay would be increased under the bill. Although the increases for various categories of offenses would result over varying periods of time, this method arrives at an aggregate increase in population in order to predict future needs for the prison system. It is assumed that 10% of the unclassified and class A felony population would increase according to the percentage increase in sentence lengths shown in the table under Assumption 3. Murder I, Murder II, and Kidnapping are excluded since the current average sentence already exceeds the expected lifespan.

Offense	Total in DOC on 6/30/93	10% (3rd repeaters)	Current Prisoner-days	% sent. length increase	Additional Prisoner-days
Unclassified Felonies					
SAM I	153	15.3	5,584.5	X 3.54	19,769.1
SA I	178	17.8	6,497		22,999.4
MICS I	9	.9	328.5		1,162.9
TOTAL UNCLASSIFIED					43,931.4
Class A Felonies					
Assault I	57	5.7	2,080.5	X 3.83	7,968.3
Manslaughter	28	2.8	1,022		3,914.3
Robbery I	101	10.1	3,686.5		14,119.3
Arson I	6	.6	219		838.7
Escape I	2	.2	73		279.6
MIW I	20	2	730		2,795.9
TOTAL A FELONIES					29,916.1
TOTAL ADDITIONAL PRISONER-DAYS					73,847.5

Fiscal Note/DOC
CSHB 334 (JUD)
March 21, 1994
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This suggests that the actual prison population would, over time, increase by 73,848 prisoner-days, or 202 prisoners as a result of the increased sentence lengths required by the bill.

73,848 prisoner-days X \$113 per day = \$ 8,344,824 operating expenses

202 beds X \$160,000 per maximum bed = \$ 32,320,000 capital expenses

TOTAL ADDITIONAL EXPENSE = \$ 40,664,824

This increase would be spread over the 46-year lifespan expectancy of the first batch of prisoners sentenced to 99 years, less the 12 years the first batch would be expected to receive, on average, under current law, or a 34 year period between FY07-41. Spread over those years, the average yearly cost would be approximately \$1,196,024.

This figure does not include any inflation factor and does not assume any increase in the rate of convictions/incarcerations. It does not account for increases in medical costs for a larger, aging population.

Offsetting this number, it would be expected that some savings might be expected in the Community Corrections component, since most of these prisoners would otherwise have been released and supervised on probation or parole under current law. However, the \$6 average cost per day for this supervision is almost negligible compared to the \$113 cost per day of incarceration, and would only be a factor for a relatively small portion of the total sentence.

Another offsetting factor might be the avoidance of costs of new crimes, probably violent, that these chronic types of offenders might be assumed to commit if they were released, under current law. These savings would be experienced by other agencies and departments through avoidance of arrests, investigations, trials, etc.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 334

Revision Date: _____
Title: 'An Act relating to criminal sentencing; and relating to mandatory life imprisonment, parole...'
Sponsor: Representatives Bunde, Olberg
Requestor: House Judiciary

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy
COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	83.1	83.1	83.1	83.1	83.1	83.1
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	83.4	83.4	83.4	83.4	83.4	83.4
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	3.6	3.6	3.6	3.6	3.6	3.6
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	181.1	181.1	181.1	181.1	181.1	181.1

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUNDING SOURCE:

(Thousands of Dollars)

1002 Federal Receipt	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	181.1	181.1	181.1	181.1	181.1	181.1
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	181.1	181.1	181.1	181.1	181.1	181.1

Estimate of any current year (FY 94) cost: \$ None

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy

Phone: 274-1684
Date: _____

Approved by Commissioner: Nancy Bear Usery
Agency: Administration

Date: 3/22/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 334

ANALYSIS: (continued)

The revisions in the original 'Three Strikes' proposal made by CSHB 334, the House Judiciary substitute, should significantly reduce the number of criminal defendants susceptible to the 99 year prison term. The changes allow prosecutorial discretion, modify the way prior felony convictions are viewed by the court, and require that the final charge be an A or Unclassified felony.

The Alaska Judicial Council, which provided the statistical analysis related to the original HB 334, has not provided additional statistics regarding the potential impact of the new bill on criminal justice agencies. However, the assumptions regarding the initial fiscal notes remain valid. While the numbers of cases will undoubtedly be reduced by the modifications contained in the committee substitute, there is no question that litigation surrounding 'Three Strikes' cases will be lengthy and costly. Costs will be dictated by the high stakes of each case, the necessity for collateral attacks on prior convictions both in State and Federal courts, and the certainty that each of these cases will go to trial.

Because of the necessity of attacking underlying convictions and the treatment of each case as most serious because of the severity of the sanction, litigation will require the filing of numerous motions, not only on the current charge, but in each prior case which resulted in convictions. This will require the review of voluminous records associated with each of the prior felony cases and the initiation of new litigation in each case. If that prior conviction occurred in a different state, it would be necessary to retain out-of-state counsel to launch the collateral attacks upon these convictions. Further, expert testimony regarding the adequacy of prior counsel would probably need to be prepared in many of the cases.

While it is not possible to estimate the indirect impact of such legislation on client decision-making in first and second felony cases, there is little question that some clients will be influenced to go to trial rather than plead guilty when they know that this conviction will make them eligible for life in prison if they commit another felony. More trials mean higher costs for each criminal justice agency.

It should also be noted that these cases will give rise to many conflicts of interest which will necessitate withdrawal of the Public Defender Agency and the assignment of OPA to provide representation. These conflicts of interest will arise because the Public Defender will have provided representation in the earlier cases which resulted in convictions, and which would be subject to collateral attack during the litigation of each 'Three Strikes' case.

Because OPA criminal lawyers are currently at maximum caseload capacity, and because of the loss of one such attorney in FY93, it will be necessary to add an additional experienced attorney to provide representation in these cases throughout the state.

Further, because at least one of these cases each year will require the appointment of conflict counsel, at an estimated cost of \$60,000 per case, contractual costs will also be high.

Position Title Attorney IV		No. of Positions 1	Range / Step 24/A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location Anchorage		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary		61.0		
Benefits		22.1		
Premium Pay				
Other				
Total Personal Services		0.0		
Travel				
Contractual		3.4		
Commodities		1.0		
Equipment		3.6		
Other				
Total Cost		91.1		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
G.F. Match 1003				
General Fund 1004		91.1		
I-A Receipts 1007				
CIP Receipts 1061				
Other				
Justification The Anchorage Office of Public Advocacy presently has three attorney positions devoted to criminal defense. These attorneys are also handling several major cases outside of the Anchorage area as staff coverage and travel is more cost effective than contracting major cases to private attorneys in rural areas. Current caseloads indicate that these three attorneys cannot absorb the additional cases which would result from this legislation. It is necessary that an additional attorney be added to the Anchorage staff to cover the resultant increased caseload.				

07/leg94/137/csnb334a.kp

Request For New Position

AGENCY ADMINISTRATION
 BRU OFFICE OF PUBLIC ADVOCACY
 COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 95

Page 3 of 3
 Revised Date: _____

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 334 (JUD)

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: An Act relating to criminal sentencing... BRU: Trial Courts
 Components: _____
 Sponsor: Reps. Bunde, Olberg
 Requestor: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	40.6	40.6	40.6	40.6	40.6	40.6
TRAVEL						
CONTRACTUAL	37.5	37.5	37.5	37.5	37.5	37.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	78.1	78.1	78.1	78.1	78.1	78.1

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

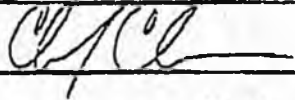
1002 Federal Receipts						
1003 GF Match						
1004 GF	78.1	78.1	78.1	78.1	78.1	78.1
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	78.1	78.1	78.1	78.1	78.1	78.1

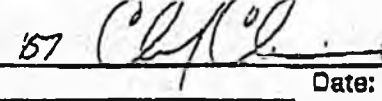
POSITIONS

FULL-TIME						
PART-TIME	2.0	2.0	2.0	2.0	2.0	2.0
TEMPORARY						

Estimate of current year (FY 94) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)
See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Agency: Alaska Court System Date: 03/22/94

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 03/22/94
 Agency: Alaska Court System

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ALASKA COURT SYSTEM
FISCAL ANALYSIS
CSHB 334 (JUD)

The Judiciary CS for HB 334 amends Alaska's presumptive sentencing laws to provide that a defendant convicted of a third felony offense is subject to a mandatory term of imprisonment of 99 years. The first two convictions must be for a "most serious" felony, and the third conviction must be for a class A or unclassified felony. The prosecutor has the discretion to pursue or not pursue the 99-year mandatory sentence.

The Department of Law has estimated that prosecutors will seek the mandatory 99-year sentence five or six times per year. Because of the potential sentence, these cases can be expected to rival first-degree murder cases in the amount of court time spent on the actual trial, as well as on evidentiary hearings, collateral attacks on previous convictions, and other pre- and post-trial motion work. This is estimated to average four weeks of trial time per case, plus one week of additional hearings. If the defendant was not subject to a 99-year sentence, only one of these cases would statistically be expected to go to trial; that would most likely be a first-degree murder case, with an average five week length.

In addition to the costs of the third felony case, the existence of the mandatory 99-year sentence will encourage offenders charged with their first or second "most serious" felony to fight the charge more strenuously, because conviction would greatly increase the chance that the offender would be vulnerable to the 99-year sentence at a later time. In the years 1984 through 1990, an average of about 900 defendants each year were charged with a first or second "most serious" felony. Trial rates for those charged with these felonies range from eight to 20 percent, depending on the classification of the offense (class B, class A, or unclassified). If the trial rate increases by 50 percent, over 50 additional felony trials will be held each year. Such changes in the trial rate are not unprecedented. When the plea bargaining ban was imposed in 1975, the felony trial rate doubled during the first year and tripled during the second year. Because it is impossible to predict what increase will occur in the trial rate as a result of HB 334, this note does not reflect those costs. Should HB 334 result in a significantly higher trial rate, the court system will need to return to the legislature for additional funding.

For similar reasons, it can be expected that the appeal rate and rate of applications for post-conviction relief will increase among the 900 defendants charged each year with a first or second "most serious" felony. Again, this note does not attempt to quantify those costs.

Alaska Court System
Fiscal Analysis
CSHB 334 (JUD)

Personal Services

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Superior Court Judge, PPT, fully vested, Anchorage, 6 months	\$12,075	\$8,868	\$20,943
In-court Clerk, range 12A, PPT, Anchorage, 6 months	13,554	6,116	<u>19,670</u>
Total Personal Services			<u>40,613</u>

Contractual Services

Jury fees for 12 jurors and 3 alternates for 20 days for law trials at \$25 a day for each juror 37,500

Estimated Total Cost \$78,113

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 334 (JUD)

Revision Date: _____

Department Affected: Administration

Title: An Act relating to criminal sentencing. . . .

BRU: Public Defender Agency

Component: Public Defender Agency

Sponsor: Reps. Bunde, Olberg

Requestor: House Judiciary

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	171.8	177.0	182.3	187.8	193.4	199.2
TRAVEL	3.0	3.1	3.2	3.3	3.4	3.5
CONTRACTUAL	25.0	25.8	26.6	27.4	28.2	29.0
SUPPLIES	3.0	3.1	3.2	3.3	3.4	3.5
EQUIPMENT	4.5	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	207.3	209.0	215.3	221.8	228.4	235.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUNDING SOURCE:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match	207.3	209.0	215.3	221.8	228.4	235.2
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	207.3	209.0	215.3	221.8	228.4	235.2

Estimate of any current year (FY 94) cost: \$ 0

POSITIONS:

FULL-TIME	3	3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: John B. Salemi, Director
Division: Public Defender Agency

Phone: 264-4400
Date: _____

Approved by Commissioner: Nancy Bear Usery
Agency: Department of Administration

Date: 3/22/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 334

ANALYSIS: (continued)

CSHB 334, the House Judiciary substitute bill for the original 'Three Strikes' proposal, makes significant changes which serve to limit the pool of criminal defendants susceptible to the 99 year prison term which is the hallmark of the bill. These changes include 1) discretionary, rather than mandatory, application (discretion rests with prosecuting authority), 2) the manner in which prior triggering felony convictions are considered by the court and, 3) the requirement that the 'third strike' be an A or Unclassified felony.

This agency, along with the Department of Law, relied to some extent on research and analysis done by the Alaska Judicial Council related to the original HB 334, in determining fiscal impact. No statistical analysis has been prepared regarding the present substitute version, and as such, the revised fiscal notes may be more speculative in terms of the actual number of cases which will be prosecuted under the 'Three Strikes' law. This much is certain: there will be a real and distinct impact on this agency if this proposal becomes law. Repeat felony offenders are regularly assigned as clients to the Public Defender for legal representation. The cases which are susceptible to 'Three Strikes' penalties will be intensely litigated (as described in our original fiscal analysis). And while this version of the bill builds prosecutorial discretion into the law, there is no way of knowing how and to what extent the prosecution will exercise such discretion. If a prosecuting authority decided to prosecute each potential 'Three Strikes' case as one appropriate for the maximum penalty, neither the defendant, the courts, nor the Department of Corrections could complain that discretion wasn't being properly exercised.

In summary, this committee substitute will lessen the fiscal impact on criminal justice agencies. It is, however, difficult to quantify the effect of said changes. This agency believes the substitute version will reduce the number of 'Three Strikes' cases by roughly 50%. As such, the Public Defender fiscal note is adjusted downward by approximately the same percentage amount.

BUDGET ANALYSIS

100: Anchorage - Attorney IV	83.1
Paralegal Asst. II	51.8
Legal Secretary I	36.9
	171.8
200: Travel	3.0
300: Contractual	25.0
400: Supplies	3.0
500: Equipment (one time)	<u>4.5</u>
TOTAL	207.3

Position Title Legal Secretary I		No. of Positions 1	Range / Step 10/A	Barg. Unit GGU
Time Status PFT	Staff Months 12.0	Location EBA		Election District 50
TYPE OF EXPENDITURE		AMOUNT		
Salary		24,756		
Benefits		12,110		
Premium Pay				
Other				
Total Personal Services	0.0	36,866.0		
Travel		0.0		
Contractual		0.0		
Commodities		1,000.0		
Equipment		1,500.0		
Other				
Total Cost		39,366.0		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	39,366.0		
I-A Receipts	1007			
CIP Receipts	1061			
Other				
Justification				
<p>The "Three Strikes" legislation will create a category of serious felony cases which will be litigated as intensely as homicide cases. Because of the effort involved, and because this will have statewide impact on this 13-office agency, additional staff will be required. The litigation effort will necessarily include collateral attacks on prior felony convictions, and other pretrial investigation and motion work. Some travel (both in and out of state) will be required. Contractual funds will be required in those instances where collateral attacks will involve challenging prior convictions which are sited in other states.</p> <p>The positions described below will work in the Anchorage office but will also provide litigation support to the other 12 offices whenever a "Three Strikes" case is assigned to the agency:</p> <p>Anchorage: Attorney IV 83.1 Paralegal Assistant II 51.8 Legal Secretary I 36.9</p>				

1/leg94/13/8113d.kp

Request For New Position

AGENCY ADMINISTRATION

BRU PUBLIC DEFENDER AGENCY

COMPONENT PUBLIC DEFENDER AGENCY

FY 94

Page 3 of 3
Revised Date: _____

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 334 (JUD)

Revision Date: March 11, 1994
Title: "...relating to criminal sentencings... mandatory life imprisonment, parole, good time credit, pardon, commutation..."
Sponsor: Representative Bunde
Requestor: Representative Bunde

Department Affected: Department of Law
BRU: Prosecution
Component: Third District
COMPONENT SERIAL NO. 0087

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL	81.7	81.7	81.7	81.7	81.7	81.7
TRAVEL	7.5	7.5	7.5	7.5	7.5	7.5
CONTRACTUAL	13.6	13.6	13.6	13.6	13.6	13.6
SUPPLIES	3.3	3.3	3.3	3.3	3.3	3.3
EQUIPMENT	6.5					
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	112.6	106.1	106.1	106.1	106.1	106.1

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF	112.6	106.1	106.1	106.1	106.1	106.1
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	112.6	106.1	106.1	106.1	106.1	106.1

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Richard I. Peques

Prepared by: Richard I. Peques, Director

Phone: 465-3672

Division: Administrative Services Division

Date: March 11, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General

Agency: Department of Law

Date: March 11, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 334 (JUD)

ANALYSIS CONTINUATION:

The House Judiciary Committee Substitute for HB 334 makes three important changes from the original version of the bill.

First, the committee substitute provides prosecutors with the discretion to persue or not persue a 99-year mandatory sentence.

Second, the committee substitute makes it clear that the sequence of most serious felony convictions consists of thrae separate crimes and three separate convictions in terms of criminal episode and time before a 99-year mandatory sentence can be invoked.

Third, the committee substitute provides that the third and triggering most serious felony conviction must be for an unclassified felony or a class A felony in order for a 99-year mandatory sentence to be imposed.

In view of these changes, the Department of Law believes that the number of cases where prosecutors will seek a 99-year mandatory sentence will be reduced to five or six each year. Because a trial with consequences this serious can require two or more months of a prosecutors time, and because the largest number of serious crimes occur in Southcentral Alaska, we are reducing fiscal note costs to include a single prosecutor for the Anchorage area at a cost of \$112,600, or a reduction of \$217,800 from the department's original fiscal note request.

01/26/94

14:56:24.0

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 2

DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020300 NAME: THIRD JUDICIAL DISTRICT

BRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	Y S	LOCATION NAME	R B S C U	R&S NOS BUDG	SALARY	PREM PAY	BENEF	PER.SERV. COSTS	G. F. AMOUNT
03/044		ATTORNEY IV		F ANCHORAGE		A XE AA 24A 12	61000	0	20660	81668.60	

**** JUSTIFICATION:

CSMB 334 (JUD)

TRAVEL COSTS	7500.00
CONTRACTUAL COSTS	13600.00
SUPPLIES COSTS	3300.00
EQUIPMENT COSTS	6500.00
OTHER COSTS	0.00

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS

TOTAL COSTS 112568.60 81668.60

81668.60

TOTAL FUNDING 81668.60

**** COMPONENT TOTALS:

FULL TIME NEW POSITIONS	1
PART TIME/SEASONAL NEW POSITIONS	0
NON PERMANENT NEW POSITIONS	0
OTHER.....	0

TOTAL PERSONAL SERVICES 81668.60

TOTAL COSTS INC. ASSOC COSTS 112568.60

NUMBER OF NEW POSITIONS IN COMPONENT: 1

FUNDING DATA: G.F. & G.F. MATCH: 81668.60
OTHER FUNDS: 0.00

TOTAL FUNDING: 81668.60

AMENDMENT

I

adopted

OFFERED IN THE HOUSE
TO: CSHE 334(JUD)

BY REPRESENTATIVE BROWN

Page 3, line 19:

Delete "or (l)"

Insert "of this section or a definite term of imprisonment under (l)"

Page 3, line 20, following "mandatory":

Insert "or definite"

Page 3, line 24:

Delete "mandatory"

Insert "definite"

Page 3, line 25, following "imprisonment of":

Insert "at least 30 years but not more than"

Page 3, line 27:

Delete "99-year mandatory sentence"

Insert "definite sentence under this subsection"

Page 3, lines 27 - 28:

Delete "mandatory 99-year sentence"

Insert "definite"

Page 6, line 31:

Delete "(l)"

Insert "a definite term under AS 12.55.125(l)"

Page 7, line 9, following "to a":

Insert "(1)"

Page 7, line 11:

Delete "(1)"

Page 7, line 12, following "(2)":

Insert "definite term under"

Page 7, line 15:

Delete "mandatory 99-year"

Insert "definite"

Page 8, line 1:

Delete "mandatory 99-year"

Insert "definite"

Page 8, line 6:

Delete "mandatory"

Page 8, line 7:

Delete "of 99 years"

Page 8, line 8:

Delete "mandatory"

D.1

AMENDMENT II adopted

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 334(JUD)

Page 6, line 20 after "AS 11":

Delete " ;"
Insert " ;"

Page 6, line 21 through line 24:

Delete all material

A M E N D M E N T 3

withdrawn

Offered in the House
CSHB 334 (JUD)

By Rep. MacLean

Page 6, line 21:

Delete all material.

Reletter subsequent items.



House of Representatives

SPONSOR STATEMENT

HB 334

"THREE STRIKES YOU'RE OUT"

"An Act relating to criminal sentencing; and relating to mandatory life imprisonment, parole, good time credit, pardon, commutation of sentence, reprieve, furlough, and service of sentence at a correctional restitution center for offenders with at least three serious felony convictions."

HB 334 provides a mandatory 99-year sentence for a specific group of violent offenders who have two previous most serious violent felony convictions. This law is intended to affect only the criminals who work their way through the criminal justice system twice for most serious offenses and then commit a third and separate most serious crime.

There is a notification requirement in HB 334. Offenders who have two violent felony convictions must be informed in writing of sentencing requirements upon a third violent felony conviction.

Under this proposed legislation parole is not available to an offender who has been given a 99-year sentence, but release is possible. When the offender is no longer thought to be a threat, or becomes chronically ill, the governor may grant clemency or a pardon. This provision would prevent our correctional facilities from becoming overburdened.

The cost of keeping a person incarcerated for 99 years is high. However, when cost is considered, the true cost and benefits must be enumerated before concluding that this legislation is too expensive. First, strong punishments can shape behavior and deter crime by scaring some offenders away. Second, many studies have shown that the recidivism rates for three time offenders let back into society are between 65-76%. These offenders are taking up costly time in our judicial system by committing the same crimes again and again.

Third, this legislation has been narrowly focused to include only specific violent felony offenses. The intention is to keep the cost to the state to a minimum.

This proposed legislation will make our state a safer place to be by taking some violent offenders off the street. I urge your positive consideration of this legislation.

Back-up

Representative Kay Brown

ALASKA STATE LEGISLATURE

Legislative Information Office
716 W. 4th Ave, #420
Anchorage, AK 99501-2133
(907) 258-8162

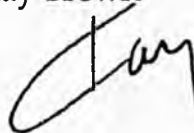
During Session
State Capitol
Juneau, Alaska 99801-1182
(907) 465-4998

MEMORANDUM

TO: Representative Eileen MacLean, Co-chair
Representative Ron Larson, Co-chair
House Finance Committee

FROM: Representative Kay Brown

DATE: April 8, 1994



SUBJECT: HB 334, "3 strikes you're out"

"Three strikes, you're out!" it's so appealing. A simple concept, easy to grasp and easy to communicate.

The questions we need to ask ourselves are also simple:

1. Does Alaska need this change in the law?
2. Would such a change have any appreciable effect on crime, what would that effect be?

The major issues involved in this bill have little to do with deterring crime--there is no evidence that this approach will make society safer. Oh yes, it sounds logical, lock up the habitual, violent criminals for life and we all can breathe easier. What this bill really comes down to is:

• First, do we want sentencing discretion in the hands of judges or prosecutors?

Have we any evidence that Alaska judges are failing in their commitment to justice? Are Alaska judges letting habitual violent offenders off easy? Are the

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three-time, convicted violent criminals not spending most or all of their lives behind bars? Does the Legislature need to remove sentencing discretion from our judges? Is it better for that discretion to be given to prosecutors?

I'm disturbed by the implication that our judicial system is somehow deficient. Alaska has a unique, modern and nationally recognized judicial system. Our judges are not politicians. The framers of our constitution took great pains to ensure that we would have a unified, accessible court system, responsive to the citizens it serves. The qualifications and conduct of our judges is subject to review by the Judicial Council, the Commission on Judicial Conduct and finally regular approval or rejection in a non-partisan election.

Wouldn't it be great if crime were so simple--that every serious crime was the same--that there was no qualitative difference between one armed robbery or sexual assault or drug felony and another? Or that every person who committed a burglary or sold drugs or held up a convenience store were, each and every one, young and old, unredeemable? In that case, judges would only have to decide if the defendant was technically guilty as charged. Sentencing could be done by computer. But, justice in a democracy that values individual rights is not that simple. Part of a judge's task is to determine guilt. Another part is to ensure that the punishment fits the character of the crime, as well as the character of the defendant.

I see no reason to take this responsibility away from Alaska judges.

•Second, if we want longer sentences for "habitual" criminals, will we build new prisons to house them or will we release one time or two time violent offenders earlier? One way or another we have to face the facts--Alaska does not have enough prison beds to keep the criminals we have already convicted locked up for the duration of their sentence. Passing tougher sentencing laws, putting more juveniles in adult prisons, creating new crimes, sounds good to politicians and the public--they are meaningless without the resources to back them.

One of my concerns is that if we take up limited bed space with geriatric prisoners, we may be forced to release one-time violent offenders too soon.

Are the really violent monsters among us also the habitual serious offenders?

The experience in Washington State might indicate otherwise--the state has published a study titled "Ten High Profile Offenders, Did They Meet the Persistent Offender Definition?" What they found was that the most notorious, violent criminals had not been convicted of two previous serious offenses. Because of the nature of their crimes, these criminals were either put away forever or executed.

Rather than concentrating on counting "strikes" we should put our efforts to recognizing the potential violent offender, to intervention, to preventing the tragedy before it happens. The violent nature of the offense should dictate the length of treatment or imprisonment. That is the system we have now--when we have sufficient resources.

Please take a moment to review the enclosed information, which mostly applies to the "3 strikes" experience Washington state.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 22, 1994

SUBJECT: Sectional Summary CSHB 334(JUD) (Work Order No. 8-LS1342\K)

TO: Representative Con Bunde
Attn: Pattie Swenson

FROM: Jerry Luckhaupt 
Legislative Counsel

You have requested a sectional summary of the above-described bill, please be advised that a sectional summary is not an authoritative statement of a bill and what it does - the bill is the best statement of its contents.

Section 1 of the bill provides findings and intent.

Section 2 of the bill amends AS 12.55.025(e) by clarifying that mandatory 99-year terms for certain three time felony offenders, added by sec. 6 of the bill, do not affect the court's ability to impose consecutive sentences.

Section 3 of the bill amends AS 12.55.125(c) by providing a conforming change to make it clear that the presumptive sentences provided in that subsection only apply if the defendant is not subject to sentencing as a third most serious felony offender under Sec. 6 of the bill.

Section 4 of the bill amends AS 12.55.125(i) by providing a conforming change to make it clear that the presumptive sentences provided in that subsection only apply if the defendant is not subject to sentencing as a third most serious felony offender under Sec. 6 of the bill.

Section 5 of the bill amends AS 12.55.125(j) to provide that a person sentenced to a mandatory term of 99 years under sec. 6 of the bill may apply to the court for a sentence reduction after serving one half of the sentence.

Section 6 of the bill amends AS 12.55.125 by providing a new subsection (l) that requires a court to sentence a defendant convicted of an unclassified or class A felony

to a mandatory 99-year term of imprisonment when the defendant has been previously convicted of at least two most serious felonies. This section also provides that the mandatory 99-year term may not be suspended or reduced.

Section 7 of the bill amends AS 12.55.145(a) to explain how a conviction can qualify as a prior most serious felony conviction for purposes of sentencing under sec. 6 of the bill.

Section 8 of the bill amends AS 12.55.145(c) to provide the procedure by which a defendant may challenge the use of a conviction as a prior most serious felony conviction at sentencing under sec. 6 of the bill.

Section 9 of the bill amends AS 12.55.145(d) relating to the burden of proof of showing that a conviction is a prior most serious felony conviction for purposes of sentencing under sec. 6 of the bill.

Section 10 of the bill amends AS 12.55.145 by adding a new subsection (f) that explains when a prior conviction has occurred for use at sentencing under AS 12.55.145.

Section 11 of the bill amends AS 12.55.155(c)(20) by providing a conforming change to the change made in sec. 7 of the bill.

Section 12 of the bill amends AS 12.55.185 by adding a new paragraph (14) that provides a definition of what is a "most serious felony."

Section 13 of the bill amends AS 33.16.090(b) to provide that a person receiving a mandatory 99-year term under AS 12.55.125(l) is not eligible for discretionary parole during the entire 99-year term.

Section 14 of the bill amends AS 33.20.010(a) to provide that a person receiving a mandatory 99-year term under AS 12.55.125(a)(after the effective date of this bill) or AS 12.55.125(l) may not earn good time deductions from the 99-year term.

Section 15 of the bill amends AS 33.30.101 by adding a new subsection (c) that provides that furlough regulations may not allow for the granting of a furlough to any inmate serving a mandatory 99-year term under AS 12.55.125(l) except in certain limited instances.

Section 16 of the bill amends AS 33.30.161(b) by adding a new paragraph (5) that provides that an inmate serving a mandatory 99-year term under AS 12.55.125(l) may not serve the inmate's sentence in a correctional restitution center.

Section 17 of the bill provides an applicability section.

Representative Con Bunde
March 22, 1994
Page 3

Section 18 of the bill provides notice that the change made in sec. 5 of the bill has the effect of modifying Alaska Rule of Criminal Procedure 35 which thereby necessitates a two-thirds vote.

GPL:mi
94-068.mai

Three strikes: Fine tuning of new law urged

Seattle Post-Intelligencer

'Three strikes' may be harder than intended

Law for habitual criminals produces new difficulties

The New York Times

Washington, the only state requiring that criminals be locked up for life without parole if they are convicted of three felonies, is finding that the law has had some unintended side effects.

Two months after the law went on the books here, the state is seeing the first faces of the so-called "three strikes, you're out" law. And they present a picture that is much more complicated than the baseball slogan that inspired 76 percent of state voters to back the measure last fall.

And with 30 other states considering some version of the "three strikes" concept, it is proving to be a bipartisan prescription by politicians from President Clinton on down.

With nothing to lose, Washington prosecutors and police say, some criminals are showing a tendency to be more violent or desperate when officers try to arrest them. And prosecutors say first- and second-time offenders are less willing to plea bargain, which would mean leading guilty to a felony — the first or second strike. These offenders are instead forcing full trials in a court system that has neither the manpower nor space to take on the extra load.

Among the first candidates for life in prison under the three-strikes law, several seem to fit the profile of violent predators with long criminal histories. But other cases may not be what voters here had in mind. One man has led life as a small-time criminal, and his third-strike offense was robbing a sandwich shop of \$151, using a concealed finger as a threat.

In Seattle, King County prosecutors announced last week that under provisions of the law they were seeking life in prison for two ex-

From Page 1

convicts — Steven Michael Morgan, 40, and Paul Rivers, 26 — with a total of 34 convictions between them.

Both men are awaiting trial. Rivers is charged with robbing an espresso bar operator of \$337 in December. He has prior felony convictions for second-degree assault, second-degree robbery and second-degree attempted robbery, dating back to 1985, prosecutors said.

Morgan is accused of robbing a 91-year-old man twice, robbing a second man in the victim's home after kicking in the door and trying to rob a gas station.

"What people will see after they pass something like this is that the law sends away some people who probably weren't intended to be sent away for life," said Seth Dawson, the prosecutor in Snohomish County, where the man accused of the sandwich shop robbery will be tried.

Dawson supports the new law, but said it may need refining.

Three strikes, endorsed by President Clinton and written into the crime bill passed by the Senate (the House is working on a version of its own), is favored by more than 80 percent of Americans, according to recent polls.

Its supporters include Democrats like Gov. Mario Cuomo of New York as well as Republicans like Gov. Pete Wilson of California.

Under the Washington law, which has become the model for states trying to pass similar measures, criminals are required to spend life in prison without chance of parole if they are convicted of three separate felonies from a list of 44 crimes, most of them involving violence.

Washington does not give prosecutors or judges any discretion, though some states are allowing for more latitude in classifying three-strike crimes.

Pointing to federal figures showing that 6 percent of criminals commit about 70 percent of all crimes, supporters of three strikes said the law would remove from society a core group of violent felons who are incorrigible.

High-profile cases like the kidnapping and killing of 12-year-old Polly Klaas of California — committed, the police say, by a man with an extensive criminal history — have given powerful anecdotes for the debate.

From the early experience in Washington, some legal experts say the three-strikes notion may need retooling. Others say the law is achieving exactly what most voters wanted.

The case most troubling to the law's critics is that of Larry Lee Fisher, 35, who has been in and out of jail since he was a teenager.

His first strike (as classified by the new law) was in 1986, when he was convicted of pushing his grandfather down and taking \$390 from him — robbery in the second degree. Fisher served four months in jail.

Two years later came his second strike, a \$100 robbery of a pizza parlor, in which he veiled his finger and said it was a gun. He served 17 months on a work farm.

Last month he was arrested in the holdup of a sandwich shop in Everett. He is not accused of using a gun, but pretending he had one by pointing his finger inside his coat pocket. The police found Fisher an hour after the holdup, drinking beer in a nearby tavern.

Normally, he would face about 22 months in jail. But now, if convicted, he will spend the rest of his life in prison.

"You can understand he's in shock after he heard what he was facing," said Bill Jaquett, Fisher's lawyer. "He didn't know about the new law."

Fisher's case is also coming as a bit of shock around Everett.

"I went to a Rotary meeting this week, and a number of people came up to me and said they were pretty surprised that this is what they voted for," said Jim Townsend, the prosecutor handling Fisher's case. "What I think will happen is, we will put away a lot of people whom no one will have a second thought about, and then we will have a few cases that will give people pause."

Dave LaCourse, a leader of the three-strikes initiative in Washington, said Fisher's case was unusual but not unintended.

"Here's a guy with .10 misdemeanors on his record, he's 35 years old and he hasn't learned his lesson yet," LaCourse said. "What's it going to take? He seems to be one of those people who's making crime a career."

If Fisher's case is causing second thoughts, those of other three-strikes candidates are less contentious. Cecil Emile Davis, 34, of Tacoma, is facing life in prison without parole for his most recent charges: kidnapping, rape and attempted murder.

According to court records, Davis kidnapped a 24-year-old woman Dec. 28, raped her repeatedly, stabbed her in the throat and left her for dead. Unable to speak, the woman was able to draw a map to the site of her abduction, an apartment where Davis was arrested.

The first man to be charged under the new statute, Davis is "a poster child for three strikes and you're out," LaCourse said.

Pierce County Prosecutor John Ladenburg hailed Davis' arrest.

"This appears to be exactly the kind of case the public had in

mind when passing this law said. Davis had been convicted several crimes, including a tack with an ice pick on people and a robbery in which he beat a store clerk and a p who came to the clerk's rescue.

Though he had been sentenced close to the maximum — "for extreme cruelty" — he never served more than years in prison for any crime.

Before the three-strikes law Davis would have been in about 20 years in prison for current charges.

Nationwide, critics of three-strikes law say it will create a population of geriatric prisoners by locking up people who are past their peak crime years then keeping them in prison at a current cost of \$25,000 a year each inmate — until they die.

They say repeat offenders should be let go at an older age after serving extensive time.

Experts in criminal law say the peak crime years are from ages of 15 to 25. But of the five cases in Washington, three the criminals are in their mid-30s, one is 40 and only one is under 30.

If the typical age is higher than expected, the volume of people who fit the three-strikes category is running about a third of what is expected. In Washington, experts said the law would lock up 100,000 people a year.

For New York state, the estimate is about 300 a year. California, where a three-strikes measure is expected to pass by a big margin in the fall, the number would be slightly more than 100.

Police officers in Washington say they have run into one expected problem on the street: suspects who are more prone to use violence when cornered.

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Two weeks ago, Seattle police were about to make what they thought would be a routine arrest of a burglary suspect. Instead of surrendering, he threatened to shoot. Only after a special weapons squad surrounded the house did the standoff end.

After the suspect was taken into custody, the police were told by his acquaintances that he thought he was facing a three-strikes charge. Rather than face life in prison, he decided to confront officers, the police said.

"It now looks like some of these three-strikes cases might try to get away or shoot their way out," said Seattle police Sgt. Eric Barden. "Believe me, that's not lost on us. We're thinking about it."

Washington prosecutors said states now considering three-strikes laws would do well not to put too many crimes in the mix of what qualifies. Because of cases like Larry Lee Fisher's, Washington's law may have to be refined, they said.

What's Wrong With HB 334

"3 Strikes You're Out"?

- Little Impact on Crime
- Increased Court and Prison Costs
- Disparity in Sentencing
- Vehicle for Injustice
- Bad Public Policy

The Experience in Washington State

THE SENTENCING PROJECT

BRIEFING SHEET

WHY "3 STRIKES AND YOU'RE OUT" WON'T REDUCE CRIME

What Is "3 Strikes and You're Out?"

Following the passage of the nation's first "3 Strikes and You're Out" law in Washington state in 1993, legislators across the country have developed proposals to adopt similar policies. In general, these proposals require that offenders convicted of a third violent offense be sentenced to a prison term of life without parole.

Although the proposals are often described as directed at third-time violent offenders, in practice their scope is often considerably broader than what most people would think of as violent crime. In Washington state, for example, the offenses covered in the law include burglary, a serious but not necessarily violent crime. At the federal level, a similar proposal adopted in the 1993 Senate crime bill requires life without parole not only for third-time violent offenders, but also for third-time drug offenders or for offenses involving a threat to property.

Although the life without parole aspect of these proposals is new, the concept of enhanced penalties for habitual offenders has been in existence for many years. Thirty-four states currently have some type of habitual offender law, whereby a second or third-time felony offender receives substantial additional years in prison.

Why do some violent offenders receive shorter sentences than appears appropriate?

Most repeat violent offenders are punished harshly. Few judges would risk the wrath of imposing "soft" sentences on such offenders, and most judges abhor violent crime as much as the public. Serious violent offenses — murder, rape, armed robbery — are punishable by sentences up to life in prison or the death penalty in almost all states.

It is true, though, that a relatively small proportion of violent offenders receive prison terms that are shorter than might seem appropriate at first glance. This is generally due to the plea bargaining process wherein prosecutors, anxious to avoid time-consuming trials, make a plea offer to a defendant. Many times, their cases are not strong. Their evidence may be weak or witnesses may have disappeared, and so the plea offer may be more "generous" to the defendant than in cases with stronger evidence.

What will be the impact of these laws?Little impact on violent crime

Even widespread adoption of these policies will have little impact on violent crime. This is true for the following reasons:

1. Most serious crime is committed by young males in the 15-24 age group. For violent crime, 66 percent of the persons arrested are under age 30. Most persons subject to these laws will be

in their late 20s or older. Since crime rates for most offenses drop sharply after age 30, "3 Strikes and You're Out" will result in imprisoning a group of offenders for life who might be more appropriately sentenced to shorter terms of imprisonment until they "age out" of criminal activity.

2. Most violent crime is committed by people who have not committed a prior violent offense. A major study conducted in Columbus, Ohio, found that two-thirds of those persons convicted of serious violent crimes were first-time felony offenders.

Increased prison and court costs

There are no firm estimates yet of the long-term impact on prison populations and costs associated with these proposals. This is likely to vary substantially depending on the particular laws and sentencing policies of the jurisdiction. Current estimates range from 300 offenders a year being sentenced under these proposals in New York to as many as 11,000 additional inmates by the year 2005 in Pennsylvania. The most significant impact of these proposals, though, will begin to take place 10-20 years after their implementation, since the prisoners affected by these proposals would generally be locked up for at least that period of time under current practices. After that, the law's impact will be felt in "additional" prison years being added to sentences.

Generally, the cost of incarceration is about \$20,000 a year nationally. In addition to this, though, are costs associated with the fact that aging prisoners have disproportionate medical problems. In twenty years, we can expect to see geriatric prisons that resemble hospital wards.

In addition to increased prison costs, we can anticipate that there will be substantial increases in court costs. Defendants faced with a sentence of life without parole will have no incentive to plead guilty, and so it is likely that the number of such defendants going to trial will increase dramatically, along with associated costs.

Disparity in sentencing

Research has consistently shown that all types of mandatory sentencing, such as these proposals, contribute to sentencing disparity based on race. While discretion may be taken away from judges at sentencing, prosecutors still retain power to plea bargain by offering plea agreements that avoid the mandatory penalty. Studies have demonstrated that this discretion results in different outcomes based on race, quality of defense attorney, and other factors not related to public safety. In the federal courts, for example, studies have shown that black offenders are 21% more likely and Hispanic offenders 28% more likely than similar white offenders to receive a mandatory sentence.

Conclusion

The "3 Strikes and You're Out" laws represent the continuation of harsh sentencing policies that have been enacted by the federal government and most states over the past twenty years. Despite hundreds of mandatory sentencing laws now in effect, crime rates remain at near-record levels. There is no reason to believe that continuing to increase the severity of penalties will have any significant impact on crime.

One of the most unfortunate aspects of these proposals is that they divert public attention from a full discussion of the causes of violent crime and the range of possible solutions. Until such a national discussion takes place, we can expect more rhetoric on crime but little impact on public safety.

STATE	HABITUAL OFFENDER LAWS		MANDATORY SENTENCE FOR SPECIFIC OFFENSE		
	"2/3 STRIKES AND YOU'RE OUT"	OTHER	DRUGS	USE OF FIREARMS	CHARACTERISTICS OF VICTIMS
NEVADA	Yes		Possession/Sale	Several	Several
NEW HAMPSHIRE	Yes	Several	Sale	Several	Several
NEW JERSEY	Yes		Possession/Sale	Several	
NEW MEXICO	Yes	Several		Several	Several
NEW YORK	Yes	Several	Possession/Sale	Several	Several
NORTH CAROLINA	Yes		Possession/Sale	By repeat felon	
NORTH DAKOTA				In course of committing felony	
OHIO			Possession/Sale	In the course of committing felony	Felony against minor
OKLAHOMA	Yes		Possession/Sale	Several	Several
OREGON	Yes	Several		Several	
PENNSYLVANIA	Yes		Possession/Sale	In the course of committing felony	Several
RHODE ISLAND	Yes	Several	Sale near school	Several	Several
SOUTH CAROLINA	Yes		Possession/Sale	In the course of committing felony	
SOUTH DAKOTA			Sale	In the course of committing felony	
TENNESSEE					
TEXAS	Yes		Possession/Sale	Several	
UTAH				Several	Several
VERMONT					Several
VIRGINIA		Several	Sale	Several	
WASHINGTON	*				
WEST VIRGINIA	Yes	Several	Possession/Sale	Several	Several
WISCONSIN			Sale		
WYOMING	Yes				

Source: Information compiled by The Sentencing Project from State Justice Sourcebook of Statistics and Research, Bureau of Justice Statistics, 1992.

Notes

"2/3 Strikes and You're Out" represent habitual offender statutes that call for enhanced penalties for offenders with one or two prior felony convictions, depending on the state. These statutes generally require that the offender serve a number of years in prison in addition to the penalty for the current offense. "Other" habitual offender laws are generally related to specific types of prior offenses, such as crimes of violence or sex offenses.

The "Victims" category of mandatory sentences generally covers enhanced penalties for crimes against minors or the elderly.

* Washington State passed a "3 Strikes and You're Out" law requiring life without parole in 1993.

THE SENTENCING PROJECT

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STATE MANDATORY SENTENCING LAWS

STATE	HABITUAL OFFENDER LAWS		MANDATORY SENTENCE FOR SPECIFIC OFFENSE		
	2/3 STRIKES AND YOU'RE OUT	OTHER	DRUGS	USE OF FIREARMS	CHARACTERISTICS OF VICTIMS
ALABAMA	Yes		Possession/Sale	In the course of committing felony	Felony against public safety employee
ALASKA	Yes		Sale to minor near school	In the course of committing felony	Kidnapping
ARIZONA	Yes	Several	Sale by weight to minor near school	In the course of committing felony	Felony against minor
ARKANSAS	Yes		Possession/Sale	In the course of committing felony	
CALIFORNIA	Yes	Several	Possession/Sale	Several	Several
COLORADO	Yes	Several	Possession/Sale	Several	Several
CONNECTICUT			Sale	Several	Several
DELAWARE	Yes	Several	Possession/Sale	Several	
DIST. OF COL.			Possession/Sale	In the course of committing felony	
FLORIDA			Possession/Sale	Several	
GEORGIA	Yes	Several	Possession/Sale	Several	Several
HAWAII	Yes	Several	Sale near school	Several	Several
IDAHO	Yes		Possession/Sale	In the course of committing felony	
ILLINOIS	Yes	Several	Sale	In the course of committing felony	Several
INDIANA	Yes	Several	Sale	With certain prior felony	Several
IOWA	Yes		Sale	In the course of committing felony	
KANSAS	Yes	Several	Possession/Sale	In the course of committing felony	Several
KENTUCKY	Yes	Several	Possession/Sale	Several	Several
LOUISIANA	Yes		Possession/Sale	Possession by convicted felon	Several
MAINE				In the course of committing felony	
MARYLAND	Yes	Several	Sale	Several	Felony against public safety employee
MASSACHUSETTS			Possession/Sale	Several	Several
MICHIGAN		Sex offenders	Possession/Sale	In the course of committing felony	
MINNESOTA		Several	Repeat Offenders	In the course of committing felony	
MISSISSIPPI	Yes		Possession/Sale	Several	Several
MISSOURI		Sex offenders		Several	
MONTANA	Yes		Possession/Sale	Several	Several
NEBRASKA	Yes		Possession/Sale		

Prosecutors Say "No" to Three-Strikes Initiative

A Letter to the Voters of Washington:

243

We, the undersigned, are all present or former prosecutors. Collectively, we represent 175 years of experience prosecuting criminals in major felony cases. We wish to indicate our strong opposition to Initiative 593, the so-called "Three Strikes and You're Out" initiative.

Incredibly, Washington State officials, those in the best position to appreciate the tragic and foolish consequences of this misguided initiative, are, for the most part, unable or unwilling to speak out. State employees, including those in the Department of Corrections, have been told that they are precluded from commenting on ballot initiatives. Elected politicians have, for the most part, shied from opposing this measure as politically unwise.

In this climate, as present and former prosecutors with extensive experience in the state and federal criminal justice systems, we have no choice but to step forward.

We urge you to reject Initiative 593 for compelling reasons of justice, public policy, and fiscal responsibility.

Initiative 593 Will Work Great Injustice

Unquestionably, there are certain people who should be locked up for lengthy periods, including life, because they pose an immediate threat to our society if released. Equally certain, however, Initiative 593 will sweep into prison, without possibility of parole, many people whose crimes, while not petty, simply do not merit this sanction. The initiative includes a laundry list of offenses that covers an extraordinarily broad range of criminal conduct, from the most heinous to the relatively minor. To use a glaring but accurate example, imagine this scenario, which is quite possible under the initiative. An 18-year-old high school senior pushes a classmate down to steal his Michael Jordan \$150 sneakers--Strike One; he gets out of jail and shoplifts a jacket from the Bon Marche, pushing aside the clerk as he runs out of the store--Strike Two; he gets out of jail, straightens out, and nine years later gets in a fight in a bar and intentionally hits someone, breaking his nose--criminal behavior, to be sure, but hardly the crime of the century, yet it is Strike Three. He is sent to prison for the rest of his life. We could list dozens of similar examples.

Throughout our history, Americans have held that the punishment should fit the crime. But under Initiative 593 the punishment for the third strike, every time, is throwing away the key.

Initiative 593 Is Bad Public Policy

Initiative 593 is bad public policy for two reasons. First, it removes all discretion from the judge, someone who, by definition, we have elected to exercise judgment. At the time of sentencing in a third-strike context, both the judge and the defendant might as well be potted plants, because the judge must impose sentence without considering either the facts of the case or the defendant as a living human being. As we have noted, the punishment should fit the crime, and a big part of the crime is the criminal. If the defendant is a heinous criminal, the judge right now can impose a lengthy sentence; if the defendant is not, the judge can impose a sentence that fits the crime and fits the criminal. If we do not like the judgments the judge is making, we can elect someone else whose judgment we like better.

The initiative is bad public policy in a second respect. Our state's criminal justice system is a complex mechanism that imposes punishment on thousands of people every year. As it is, our determinate sentencing system sharply limits a judge's discretion in imposing lenient sentences, and he or she may impose an exceptional sentence in cases of gratuitous violence, breach of trust, vulnerable victims, and sexual predators who are likely to reoffend in the future. This system, consisting of intricate checks and balances on both prosecutors and judges, should not be addressed by the sledgehammer approach of Initiative 593, which will be decided by the voters on the basis of an emotional single-sentence ballot title. This is a case where, in our view, the cure will be far worse than the disease.

Initiative 593 Is Fiscally Irresponsible

With Initiative 593 we will be paying substantially increased criminal justice costs--for prosecuting and defending third-strike cases (most defenses will come straight out of county budgets) and for additional prison facilities--with no increase in safety in return. In our experience as prosecutors, there is most often no reliable way to identify violent criminal predators from their official records. Most are young and not likely to have extensive official criminal records; when they do have records, these records generally do not readily distinguish them from other, lesser offenders. But our concern with costs is more fundamental than this.

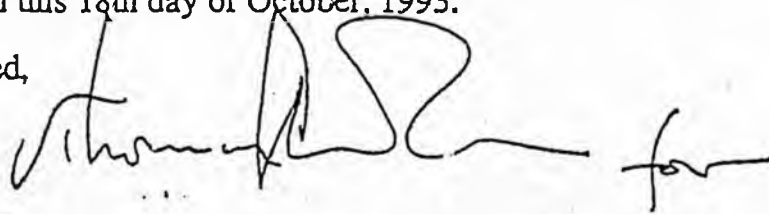
We can tell you with assurance that under the present system, people who commit three truly serious crimes are already getting long sentences, emerging from prison generally well into late middle age, if at all. Given that less than 1% of all serious crimes are committed by people over the age of 60, it makes no sense to continue paying tax dollars to house these people for the rest of their lives. It costs almost \$26,000 a year to house a young and fit prisoner; housing an aging prisoner means providing far more expensive geriatric care. With older offenders come all the medical problems of the elderly, including, among others, cancer, TB, Alzheimer's, pulmonary diseases, dialysis, and incontinence. A bone marrow transplant can cost nearly \$200,000; dialysis can cost up to \$40,000 per year. Are these costs we want to bear, to spend years housing and caring for someone almost certain not to reoffend?

Conclusion

Initiative 593 will cost an extraordinary amount and is likely to produce severe injustice. It is bad public policy. It will make bad law. We urge you to give it a thumbs down on November 2.

Dated this 18th day of October, 1993.

Signed,



John L. Austin, Mark N. Bartlett, Helen J. Brunner, David B. Bukey, William H. Fligeltau, C. James Frush, Murray B. Guterson, Susan Harrison, John W. Lundin, Peter K. Mair, David V. Marshall, Frederick Mendoza, James R. Moore, Jerald E. Olson, James M. Roe, Susan M. Roe, Kenneth W. Sharaga, J. Ronald Sim, Thomas C. Wales, Robert J. Wayne, Robert H. Westinghouse

All signatures are specifically authorized for this letter. Contact: Tom Wales at (206) 553-4495 between 12:00-1:00 p.m. or after 5:00 p.m., or at home (206) 284-0719

add names: Steve Schroeder, Angelo Calfo, Paul Bernstein, Paul Acheson, John Carver, Andrew Hamilton.

I-593 doesn't sit well with some on the bench

If the "Three Strikes, You're Out" initiative passes, the state's Superior Court judges would lose sentencing discretion, says King County Superior Court Judge Donald Haley.

The Superior Court Judges' Association of Washington has not taken a position on the measure, but Haley, association president, said he believes if a vote were taken, judges would oppose it.



Donald Haley

"Judges need broad discretion," said Haley. "The fact that everyone gets the same sentence for the same crime ...

doesn't mean it's just."

It's hard to explain to the public, Haley said, but there are differences between individual defendants, including their age, and chances of succeeding. Take away discretion and you might as well program a computer instead of using judges, Haley said. "We are convinced that's not justice."

A '3 strikes' law would have cost him a 2nd chance

BY PETER LEWIS
Seattle Times staff reporter



MARYSVILLE — If the proposed "Three Strikes, You're Out" initiative had been law when Cameron VanDunk was convicted of his last crime, he'd be behind bars now, for life.

Fortunately for VanDunk — and for taxpayers saving an estimated \$1 million — Washington's get-tough-on-crime initiative wasn't around when he struck out more than 10 years ago by trying to rob a pharmacy.

Now 44, the former heroin addict has turned his life around. He's gainfully employed, happily married and the father of two young children.

He credits his acceptance of Jesus Christ as the turning point in his life. But he believes other support systems, such as Alcoholics Anonymous, can also help make the difference. "You can't do it on your own," he said.

VanDunk, of Marysville, knows he's defied the odds — that it's rare for a three-time loser to go straight and stay that way.

VanDunk has agreed to tell his story because he believes the Three Strikes proposal would rob people of hope.



MURK HARRISON/SEATTLE TIMES

Cameron VanDunk, 44, is a former repeat offender who turned his life around. On his lap is his 3-year-old daughter, Christina, and behind him are his wife, Donna, and 6-year-old son, Cameron Jr.

Taking advantage of second chance

Three Strikes

CONTINUED FROM PAGE 1

VanDunk claims he's not unique, that there are other "losers" like him — losers with a criminal past who still have potential, losers who would be warehoused for life under Initiative 593.

That's why VanDunk plans to vote against the measure Nov. 2.

It would add more than 40 offenses to the list of crimes requiring a sentence of life without chance of parole following a third conviction of a qualifying crime.

Some of the offenses are violent: murder, kidnapping and rape. But others are relatively minor, including certain forms of robbery without a weapon and reckless driving that results in bodily harm. Under the initiative, the only relief from life in prison without parole would be to petition the governor for clemency.

Voters fed up with crime may find the proposal emotionally appealing.

But VanDunk says that, with few exceptions, giving up on people is not the answer. "We have enough laws," he said. "We just have to start instituting what you've got, and we have to help them (inmates) reform, too. . .

But he's hardly a bleeding heart. He supports the death penalty for malicious murderers, such as convicted triple killer Charles Campbell, who is on death row for slaying three people in Snohomish County in 1982. In fact, VanDunk was in jail with Campbell in Snohomish County more than a decade ago, and he thinks it's absurd that Campbell hasn't been executed yet.

VanDunk was born and reared in California's San Fernando Valley. His mother left the family when he was 3

and he was brought up by an alcoholic father.

His life of crime started early.

He was in trouble with the law from the age of 12: truancy, curfew violations, disorderly conduct, incorrigibility, petty theft and burglary. He finally was made a ward of the court.

At 14, he was put in a boys camp for juvenile delinquents in Los Angeles County. He fell in with gangs. He graduated to adult crimes in 1973 by pointing a pistol at a teller and robbing a California bank. He got 10 years. He escaped. Two years later, he robbed another bank, again using a deadly weapon. He got eight years. He escaped again.

In 1980, while still a federal fugitive and looking to get high, VanDunk decided to skip robbing another bank and go straight for the drugs. Armed with a pistol, he tried to rob an Everett pharmacy.

A Snohomish County judge gave VanDunk 10 years for attempted first-degree robbery. He suspended all but one year, with that year to run consecutively with his federal sentence. It was in the county jail, during conversations with the chaplain, that VanDunk "found the Lord."

He had received his high-school-equivalency degree while in federal prison in 1974. During his last stretch behind bars, he earned a two-year-college degree in hotel cookery and restaurant management.

When he was finally released from prison in 1983, his federal probation officer was skeptical of his chances of staying out of trouble. He wanted to send him back to California for continued supervision.

But VanDunk, having found Jesus in Snohomish County, considered Western Washington "God's country." He wanted to stay here. Reluctantly, federal probation officer Ronald Campbell agreed.

In a June 1985 probation review, Campbell noted VanDunk's progress: "(He) continues what must by any standard be considered an excellent adjustment."

VanDunk got help from M-2 Job Therapy of Snohomish County, Inc., a nonprofit group dedicated to helping offenders make the transition from prison to community life. The "M-2" refers to "man to man," said Executive Director Lou Kaufer, who describes VanDunk as an exceptional person.

In a bit of a twist, VanDunk eventually put his culinary skills to work as a cook in the Snohomish County jail, where authorities recognized him instantly and predicted he'd be back in a cell.

Some of them still "think I'm going to end up in jail," VanDunk observed. "Let them think that. I'm not going back."

The initiative's supporters contend that targeting repeat offenders will save money in the long run, even if there are extra costs to pay for rigorous "third-strike" defense work and more prison beds.

Such expenses, they claim, will

be offset by the savings from less crime, unnecessary prosecutions and fewer negligence suits against the state.

Opponents argue the law is too broad, would cost too much and would not cut violent crime.

If Three Strikes passes, robbers, as VanDunk once was, are likely to be the most common type of criminal ensnared in it. That is the experience of at least one other state — Illinois — that has had a similar statute for 15 years.

It is also the conclusion of a study by the Washington state Sentencing Guidelines Commission. It found that if the initiative had been in effect last year, 63 inmates would have qualified for mandatory life sentences. Of those, 34.1 percent would have been for robbery; 26.4 percent for sex offenses; 15.5 percent for assault; 10.9 percent for homicide; 6.2 percent for burglary; 6.2 percent for drugs; and 0.8 percent for "other."

Crime council opposes '3 strikes, you're out'

By Jack Hopkins
P-I Reporter

The Washington Council on Crime and Delinquency announced yesterday that it opposes Initiative 593, commonly known as "three strikes, you're out."

The council's board said it opposes the measure, which would permanently lock up repeat offenders who commit a wide variety of crimes, because it believes the initiative "will not reduce crime, is unfair and is not cost effective."

Executive Director Larry Fehr said the problem of repeat offenders could be better addressed by changing state sentencing guidelines to call for longer prison terms for people who commit serious violent crimes.

"If we are truly interested in reducing the unacceptable levels of violence, we must adopt a more balanced approach that, in addition to meting out punishment,

also strengthens families, provides child protection, ensures safe and effective schools and improves community efforts to prevent crime," Fehr said.

Aggravated first-degree murder is the only crime that currently carries a life prison term without hope of release.

Initiative 593, which will be on the Nov. 2 ballot, adds more than 40 crimes that would carry a life sentence for three-time offenders, including murder, robbery, rape, manslaughter, vehicular assault or homicide, child molestation and exploiting a child for pornography.

The council is a nonprofit organization formed in 1956 to push for improvements in the criminal and juvenile justice systems. Its 26-member board of directors includes individuals with backgrounds in law enforcement, prosecution, defense, the judiciary, corrections, juvenile justice and related fields.



COLMAN MCCARTHY / *Syndicated columnist*

The 'three-strikes' panic



WASHINGTON — In the crime bill debate, all politics is vocal. Little more than craven cynicism, twinned with simplism, is at the core of the current get-tough-on-crime cure-alls. Politicians mouthing the three-strikes-you're-out mantra are being outdone by Gov. Zell Miller of Georgia who demands life and no parole for two violent crimes.

In New York, Gov. Mario Cuomo, who writes books, quotes Thomas Aquinas and presents himself as the thinking person's politician, runs with the pack by baying that the three-strike law would be a "heavy hammer" in the fight against crime. Mississippi's governor, Kirk Fordice, has a passion for caging more criminals for longer sentences: "And if that means we have to build a bigger jail house, then hand me a shovel, stand back and we'll get it built."

Amid the din of hammers banging and shovels digging, you'd think that those working as judges, social workers and parole officers have been in full retreat all these crime-ridden years. Not only that, but the solution now is a Senate crime panic bill that would throw \$22 billion at the problem, and forget that the money would come from such discretionary programs as Job Corps, youth mentoring, public housing and violence-prevention courses in schools that are proven long-term crime deterrents.

The 20-year escalation of building more prisons and stuffing more people into them

— a tripling of inmate population since 1973 — has been superficially defined as crime control. A sharper definition comes from Norval Morris, the University of Chicago criminologist: "The whole law-and-order movement that we have heard so much about is — in operation — anti-black and anti-underclass. Not in plan, not in design, not in intent, but in operation."

Facts support that statement. The surge in imprisonment in the past decade is related to the alleged war on drugs, waged disproportionately among low- or no-income black neighborhoods, not in white suburbs where many of the buyers are found. In 1992, drug arrests for blacks was 40 percent, up from 30 percent in 1984. Blacks currently number 48 percent of the prison and jail population.

If precedent means anything, the three-strikes crusade would strike black criminals more than white. In 1991, Florida's legislature — a tough-talking creature — passed a law that provided severe sentences for criminals guilty of three previous felonies. In each of the 20 circuits statewide, blacks were prosecuted under the habitual-offender law in greater proportion than whites eligible under the statute. In some circuits, the percentage was double and triple.

When examining the racism of the sentencing, criminal court judges in Palm Beach County — one of Florida's largest — voted unanimously to close the habitual-offender court created to process three-time losers. These judges are only a portion of the larger national group that has been refusing to embrace simplistic anti-crime laws enacted by posturing politicians.

Judges in all 12 federal circuits have publicly and privately opposed mandatory minimum sentences as being excessive in cost, ineffective and leaving no options for probation, community service or counseling. Many of these judges are Nixon, Reagan and Bush appointees, who would presumably be sympathetic with the noises currently coming out of Congress.

Congressional calls for new juvenile penalties, more capital punishment provisions, longer sentences, increased prison construction and the three-strike gim-

mick represent a repressiveness that was tried for 20 years and yet the United States has the world's highest violent crime rate.

One shard of hope is that swift passage of the Senate bill is anything but assured as details are worked out with the House, which has five bills pending.

One is from the Black Caucus, legislation that is solution — not punishment — oriented. Not to give that approach a full national hearing — slogan, hammer and shovel free — would be criminal.

(Copyright, 1994, Washington Post Writers Group)

Colman McCarthy's column appears regularly on editorial pages of The Times.

'The whole law-and-order movement that we have heard so much about is — in operation — anti-black and anti-underclass.'

NORVAL MORRIS
University of Chicago criminologist

DAVID S. BRODER / *Syndicated columnist*

Simplistic slogans won't make nation's streets safe



WASHINGTON — As the House wrestles with its version of the crime bill, it is trying to strike a balance between what is popular and what makes sense. It has an opportunity to improve on what the Senate did late last year

when it passed a \$22 billion monster measure aimed at cracking down on lawbreakers. The Senate bill put bumper-sticker simplicity way ahead of what police and prosecutors think would actually help them reduce crime. We'll see if the House does better.

A useful guide to the proceedings was furnished last month, when the Consortium of Social Science Associations held a forum here to discuss "A Menaced Society: Is the Crime Bill the Answer?"

Freda Adler of Rutgers, the president-elect of the American Society of Criminology, who moderated the discussion, sounded the keynote for the day. "The ideology," she said, "is that tough is smart. That ideology has not been borne out by research."

The subsequent discussion focused on three key elements of the crime bill: additional manpower for community policing; boot camps for young, nonviolent offenders, and the "three-strikes-and-you're-out" proposal for lifetime imprisonment of repeat criminals.

In shorthand — my language, not theirs — the judgment is that the first makes a lot of sense, the second is an unproven remedy, and the third is pretty dumb.

Hubert Williams, the former Newark, N.J., police chief who now heads the Police Foundation, said the proposal for expanded community policing appears to be a very

promising approach — if cities and police departments are prepared to do their part. He noted, with proper skepticism, that President Clinton's much-ballyhooed promise to put 100,000 more police on the streets is not all it's cracked up to be. The Clinton bill would make that number available to cities and states — but only if they are prepared to pick up the costs after declining annual federal subsidies expire in five years.

Even if all 100,000 of them were trained and hired, Williams pointed out, that would put only 20,000 additional cops on the streets of America at any time, given the 24-hour scheduling demands and the administrative overhead in all departments.

Williams said that despite conventional wisdom, professional studies show that neither additional patrol cars nor beat-walking cops in themselves reduce or prevent crime. Policemen on the beat do give assurance to citizens. But what appears to produce results that justify that increased confidence is the reorganization of police departments from paramilitary units into neighborhood assistance organizations — the approach described as "community policing." It is when police are given the freedom and responsibility to work with the people in a neighborhood in an "interactive, non-threatening way," that the total resources of the area can be mobilized for the fight against crime.

The pending crime bills' legislation's emphasis on that approach is probably its most positive element.

They also subsidize and encourage use of "boot camps" for young offenders — tough physical and mental discipline applied for a short time in hopes it will "straighten them out" before they get committed to a life outside the law. To summarize a class of studies presented by Doris MacKenzie of

the University of Maryland, it's just plain uncertain whether boot camps "work" any better than conventional jails. They are worth trying, but the studies suggest that no one should assume they are a panacea.

The final big piece of the crime bills — a prison-building program to accommodate the increase in inmates that would follow the imposition of mandatory, lifetime sentences for perpetrators of three violent crimes — is almost certainly the most wasteful and misguided approach. "Three-strikes-and-you're-out" is wildly popular; governors are falling over each other to sign such laws and Clinton has endorsed the idea — with some limitations on the category of crimes to be covered.

Jerome Skolnick of the University of California-Berkeley, who is the current president of the Society of Criminology, says it may satisfy society's desire for retribution to "lock 'em up and throw away the key," but it almost certainly will not do what people say they want done — reduce their risk of being victims of random violence.

Violent crimes are committed disproportionately by young men between 13 and 23, Skolnick pointed out. The episodes peak at about age 17 and diminish sharply as the criminals enter their 30s. Most of the repeat offenders commit far more violent crimes than they are arrested for. "It follows," Skolnick said, "that if we jail them for life after their third conviction, we will get them in the twilight of their careers, and other young offenders will take their place."

Instead of keeping these aging ex-raiders in jail for life in what Skolnick called "the most expensive, taxpayer-supported middle-age and old-age (housing and medical care) entitlement program in the history of the world . . . we need to concentrate on the young cohorts who are just going into their criminal careers."

That means curbing and treating the alcohol and drug abuse that is a factor in at least half the violent assaults, reducing their easy access to guns — and selectively throwing the book at the few real psychopaths among them.

That's not a bumper-sticker solution. But it makes sense.

(Copyright, 1994, Washington Post Writers Group)

David S. Broder's column appears Wednesday on editorial pages of *The Times*.

'Three strikes' would impact blacks most, records show

By Patti Epler Tacoma WA
The News Tribune

State records suggest the percentage of violent black felons who would face a life sentence under a state initiative is disproportionately higher than for white felons.

"Three Strikes, You're Out" would impose life sentences on criminals who commit their third violent felony.

Records kept by the state Sentencing Guidelines Commission indicate blacks would be hit particularly hard.

In 1991, blacks received 19 percent of sentences for violent felonies while 66 percent of those sentences were imposed on whites.

But if Three Strikes had been law, 36 percent of those black felons would have faced life sentences, compared to 61 percent of the white offenders, the state statistics show.

Blacks make up 3 percent of the state's population, according to the 1990 census.

The statistics worry criminologists and minority advocacy groups, who say Three Strikes would magnify racial discrimination present in the state's criminal justice systems.

But Initiative 593 supporters say bad

Please see 'Strikes', B2

'Strikes'

Continued from B1

conduct is bad conduct and should be punished without regard to race.

The Three Strikes sentencing proposal would be the harshest in the nation, mandating life without parole for dozens of felony offenses. Those range from murder and rape to second-degree assault and vehicular assault.

No other state requires true life imprisonment — no good time, no parole — for such a broad range of offenses.

The Sentencing Guidelines Commission looked at more than 16,000 felony sentences handed down in fiscal year 1991 and determined that about 63 of those offenders would have "struck out."

A breakdown of sentences by ethnic group showed the percentage of blacks being sentenced for a third violent felony would have nearly doubled.

"That'd be real cause for concern," said Bob Crutchfield, a University of Washington sociologist who studies crime and racial disproportionality.

I-593 "is just the icing on the

cake," said John Strait, a University of Puget Sound law professor who is an outspoken opponent of the initiative.

He said blacks are subjected to an unfair system that relies heavily on police and prosecutors' discretion.

"Now, whammo, they get to the third one and they really get hammered," Strait said.

Strait contends the mandatory life sentences will take away the one chance minority offenders have to show they are being treated unfairly, and that's in a judge's courtroom. The initiative would take away the judge's ability to make a sentence lighter — or stricter — based on circumstances of the case.

James Kelly, director of the state Commission on African American Affairs, said his group is not taking a position on the initiative.

But, he said, "I was just kind of dumbfounded to see such a significant change" in the percentages of blacks who would be sentenced for Three Strikes offenses.

"The fundamental question here is who should be in prison for life and can it be done in a racially neutral way?" Kelly said. "It is clear that this would have a definitely adverse impact on

the African American population."

One black group — the Tacoma-based Upl Ye Mighty Race! — on Friday condemned the initiative as discriminatory and urged people to vote against it.

"Why are we concerned about this?" the group said in a press release. "Because our history has shown that simply putting our people in jail has failed miserably to address the problem."

Dave LaCourse, director of Washington Citizens for Justice, the group behind I-593, said his group considered the issue of racial disproportionality when it drafted the proposal. But, he said, they didn't study it thoroughly.

"We looked generally at the white-and-black issue but it wasn't a concern to us," he said. "We were writing an initiative based on conduct, not race."

He also noted that victims of crime tend to be racially disproportionate.

"As far as black thugs or white thugs who are Three Strikers goes, their victims in those cases are also generally of the same race," LaCourse said. "So if there's a disproportional amount of black thugs, there's also a disproportional amount of black victims."

No on 593: A costly scenario for injustice

Initiative 593 adds more than 40 crimes to life without parole

Initiative 593, also known as the "Three Strikes, You're Out" initiative, would add more than 40 crimes to the list of offenses requiring sentences of life without parole.

Those affected: An offender with two strikes — meaning he or she has been convicted of qualifying crimes on at least two previous trips through the court system — would be subject to the initiative on conviction of a third qualifying, felony offense. Comparable conviction in other states or in federal courts count as strikes.

Exceptions: Juvenile offenses don't count. The measure also includes "wash-out" provisions, meaning an offender's slate is wiped clean if he or she stays crime-free for certain periods. But class A crimes, including murder, rape and felony sex offenses, remain a strike. The only way to get out of prison would be to petition the governor for a pardon or clemency.

Effective date: If approved in November by voters, the initiative would take effect Dec. 2. If an offender with two strikes before that date was later convicted of a third, he or she would face life in prison.

The crimes: Here are some of the offenses covered by the initiative:

- First-degree arson; first-degree attempted arson;
- First- and second-degree assault;
- First- and second-degree burglary;
- First- and second-degree child molestation;
- First-degree extortion;
- Homicide by abuse;
- First-degree kidnapping;
- Manufacture, delivery or possession with intent to deliver heroin or cocaine;
- First- and second-degree murder;
- Possession of incendiary devices;
- First-, second- and third-degree rape;
- First- and second-degree robbery.

SPECIAL TO THE TIMES

INITIATIVE 593, the so-called "Three Strikes, You're Out" proposal, is unfair, unnecessary and very costly. In addition, while it appears to be a response to the fear of violent crime we all feel, it misses the mark: passage of 593 will not make us safer.

593 is unfair because it sweeps very broadly to require — without any exception — life without any chance of parole for many crimes that do not warrant such a harsh penalty. 593 is unnecessary and will not increase public safety because we already have tough sentencing laws on serious violent crimes.

593 is especially costly because it will add the extra costs of geriatric care for very old prisoners to the already high cost of imprisonment.

593 is far too broad

Initiative 593 is presented as requiring life without parole on a third conviction only for the most serious offenses. When most of us hear this, we think of crimes like murder and forcible rape. In fact, 593's list of "most serious" offenses is extremely long. Consider this scenario:

"Rick," a 19-year-old, gets in an argument at home. His father orders him to leave the house. Rick grabs a knife from the kitchen, waves it in front of his father and says, "Just try to make me leave." Father calls the police. Rick is convicted of second-degree assault and gets a mid-range sentence of 6 months.

At age 20, he and a friend rob a convenience store. Rick doesn't have a weapon, but sticks his finger in his pocket as if he had a gun. He's convicted of second-degree robbery and sentenced to 13 months.

Nine years later, at age 30, Rick goes to a tavern with his friends after work. They drink several beers, and Rick has a blood alcohol level of .12. Driving home over a familiar road, he goes too fast and rear-ends another car at 35 mph, causing a broken arm and collarbone to the other driver. He is convicted of vehicular assault.

Rick's sentence for vehicular assault under 593: mandatory life imprisonment, without the possibility of parole. For Rick, that's about half a century of prison. The sentencing judge could not consider Rick as

an individual or even look at the specific circumstances of the offense.

We're not suggesting that these types of offenses shouldn't be punished. We are saying that the punishment should fit the crime. That can happen under the laws we have now; under 593, it may not.

The long list of crimes subject to 593, combined with the total lack of any judicial

We should reject out of hand the notion that purse-snatchers should be indiscriminately cataloged with our worst violent predators and sentenced to life behind bars.

discretion, make 593 a formula for injustice. We should reject out of hand the notion that purse-snatchers should be indiscriminately cataloged with our worst violent predators and sentenced to life behind bars.

Sentencing Laws for the worst crimes are already tough

The Legislature has responded to citizen outrage about truly serious, violent criminal acts with laws that provide severe punishment, meted out by a judiciary that has no tolerance for violent crime.

We already can put the most serious criminals in prison for many years. Under current law, those convicted of three serious, violent felonies are already getting "standard range" sentences that keep them in prison until their 60s and longer.

In addition, the laws we have now allow a judge to impose a sentence far above the standard range on any sentence where there are severe aggravating factors.

This power includes, in cases of sex crimes, the ability to go far above the "standard range" when there is evidence that the offender cannot be treated and will be a future danger. In addition, the Community Protection Act allows indefinite

commitment of especially dangerous sex offenders even after they have served their entire prison sentence. For those convicted of aggravated first-degree murder, the sentence is either death or life without parole.

Current law is already tough on those who commit the most serious offenses. Unlike 593, current law also retains the important element of judicial discretion to assure fairness.

593 won't increase public safety

Proponents of 593 argue that a small group of offenders is responsible for a disproportionate amount of crime. What they don't tell you is that identifying these offenders isn't as easy as we'd like to think. Social scientists who've researched this issue have found that, while some offenders are more active than others, it is very difficult to identify this group on the basis of their criminal record alone.

So what happens if 593 passes?

• People who commit three serious violent crimes, who are already getting long sentences, will remain in prison for a few more years, during their 70s and 80s — when they are least likely to commit another crime.

This probably won't cause even the smallest reduction in the rate of serious violent crimes.

• At the other extreme, those convicted of crimes like assault 2, robbery 2 and vehicular assault will see their offenses for a third offense increase dramatically, by as much as 40 or more years.

Their sentences will be lengthened even though we know that criminal activity drops dramatically as people enter their 40s and 50s, and even though we know we can't use conviction records to predict future criminal behavior.

593 costs too much

The proponents of 593 say we don't need to worry about money now: added costs only come later, after those convicted under the law start serving the additional time 593 requires.

But we need to start preparing now. Washington already has the fastest growing prison population in the country.

593's passage will mean more prisoners and, eventually, more prison construction:

The current cost of housing a prisoner is about \$25,700 annually. This figure will be even higher for the older prisoners serving under 593 who need expensive geriatric care. This annual amount doesn't include the price of building new prison space, about \$100,000 per bed.

Costs will also increase on the local level, where prosecutions for these offenses occur. With 593, we can expect fewer guilty pleas and more — and longer — trials. That means higher costs for jails, prosecutors and public defenders.

In times of scarce and finite resources, we need to ask: Is keeping such offenders in prison for the rest of their lives the best way to protect public safety? Wouldn't the money be better spent on confining truly violent and dangerous offenders, or on measures that prevent crime?

593 may cause great injustice. The alleged benefits are not there: We already have very tough sentences for the worst

In times of scarce and finite resources, we need to ask: Is keeping such offenders in prison for the rest of their lives the best way to protect public safety?

crimes, especially on the third conviction, and 593 will not increase our chances of apprehending the worst criminals. 593 will cost more than advertised. 593 is bad law; this initiative should be rejected by the voters of Washington.

Contributing to this article were: Ned Doljst, executive director of the Washington State Catholic Conference; Tony Lee, legislative director of the Washington Association of Churches; and Roy Howson, director of Associated Counsel for the Accused and a former deputy prosecuting attorney for King County; Tom Wale;

has been a prosecutor for ten years.



American Civil Liberties Union of Washington

THE SEATTLE TIMES WEDNESDAY, FEBRUARY 2, 1994

\$151 robbery could land man in jail for rest of life

BY CHRISTY SCATTARELLA
Seattle Times Snohomish County bureau

EVERETT — A Bellingham man charged yesterday with robbing a sandwich store of \$151 could spend the rest of his life behind bars under the state's "Three Strikes, You're Out" statute.

Larry L. Fisher, 35, is the first person to be prosecuted in Snohomish County under a new law that carries a mandatory life sentence without parole for third-time offenders convicted of qualifying crimes.

Fisher was to be arraigned today on a charge of second-degree robbery. He has two previous convictions on the same charge: in 1988 for robbing his grandfather of \$390 and in 1986 for robbing a Little Caesar's Pizza shop of less than \$100. He has never injured anyone in his robberies, prosecutors say.

Some say people like Fisher may not exactly be the ones voters had in mind when they opted to separate dangerous felons from society.

"What public purpose would be served to lock this (type of) guy away for life?" asks Doug Honig, public-education director for the American Civil Liberties Union of Washington.

Honig says this case demonstrates two flaws in the 2-month-old statute:

- The law requires life without parole for a "laundry list" of offenses, many of which do not demand such an extreme penalty.

- It removes a judge's discretion to impose sentences based on individual circumstances.

On the other hand, it's likely that someone with Fisher's record has committed more crimes than just those for which he's been convicted, says John Carlson, who originated and headed the "Three Strikes, You're Out" campaign.

Locking up a three-time robber for life "ought to make every robber in the state sit up and take notice" that "Washington is slamming the doors on career criminals," Carlson says.

"Three Strikes, You're Out" covers more than 40 crimes, including homicide by abuse, first-degree arson, rape, first- and second-degree child molestation, and vehicular homicide.

Deputy Prosecutor Jim Townsend said Fisher's bail was originally set at \$25,000, then raised yesterday to \$500,000 when his office discovered he qualified for life in prison, if convicted.

Fisher allegedly pretended to have a gun in his pocket while holding up a Subway sandwich shop Friday on the Mukilteo Speedway. Fisher had a knife in his pocket when arrested at a nearby tavern.

Without the new law, Fisher's sentencing range would have been 43 to 57 months. Fisher also has been convicted of two counts of second-degree burglary and one count of second-degree theft, which do not qualify under the statute.

Fisher is the third person in the state to be charged under the statute since it went into effect in December. The first was a Pierce County man with convictions for robbery and assault who allegedly beat and slashed the throat of a woman after raping her. The second, in Stevens County, was a three-time rapist.

- Selected Pages

Why We Oppose

- I. Initiative 593 creates the category "most serious offenses" and defines it very broadly to include less serious offenses, and requires life without parole sentences indiscriminately.
- II Initiative 593 mandates a life sentence with no possibility of parole for some individuals convicted of three lesser offenses.
- III. Passage of Initiative 593 will substantially increase the state prison population, and will burden our prisons with an increasing number of aging prisoners in need of expensive geriatric medical care.
- IV. 593 will greatly increase annual criminal justice costs for both state and local county governments.
- V. With 593, we'll be spending more money -- but without the assurance that we're getting an increase in safety in return.
- VI. 593 is not fair and prevents us from treating people as individuals.

Attachment 1:

Voters pamphlet statement opposing initiative 593, with list of signers

Attachment 2:

Offenses covered by initiative 593

Prepared by:
Washington Association of Churches
Washington State Catholic Conference
American Civil Liberties Union of Washington
Washington Association of Criminal Defense Lawyers

October 1993

4. Washington state's population, as of the 1990 census, was:
 - 88.5 % white
 - 3.1 % African-American
 - 1.7 % American Indian
 - 4.3 % Asian/Pacific Islander
 - 2.4 % otherwith 4.4% of the total Hispanic.

5. Comments:
 - Of those we are aware of so far sentenced under or charged with "three strikes," 56% are African-American and 44% are white
 - This is a higher percentage of African-Americans than the state's Sentencing Guidelines Commission's figures indicate we should be expecting. This could be the result of different criminal histories by race, different charging decisions by prosecutors, or an aberration resulting from the small group convicted/charged so far.
 - The current figures and the Sentencing Guidelines Commission estimates both indicate that we can expect the percentage of African-Americans to be sentenced under this law to be higher than the percentage of African-American prison admissions in the state, and *much* higher than the African-American population of the state.

Jill S. Bernstein
President

Teresa Mathis
Executive Director

March 23, 1994

VIA FAX (2 PAGES)

TO: Ken Cooper, 202-225-1900
Washington Post

FROM: Teresa Mathis *Mathis*

RE: Race/Washington State's "Three Strikes" Experience

1. Our "Three Strikes" law took effect early in December. So far, one individual has been sentenced under the law and we are aware of eight cases where an individual has been charged with a "strike three" offense. Of this group of nine, five (56%) are African-American and four (44%) are white.
2. The Washington State Sentencing Guidelines Commission database includes information about all criminal convictions in the state, and criminal history for the individuals convicted. Of those convicted in FY 1993, 216 had two or more prior "strike" convictions. However, their database does not indicate whether prior convictions were received on the same or separate occasions (the first and second strike must be separate occasions). They estimate that 37% of the total group -- or 80 individuals -- had two or more prior convictions on separate occasions, and so would have been sentenced to life without the possibility of parole if our "three strikes" law had been in effect in FY 1993. The group of 216 is:
 - 61% white
 - 31% African-American
 - 2% Asian/Pacific Islander
 - 2% Hispanic
 - 1% American Indian
 - 3% unknown
3. Admissions to Washington State prisons for the fourth quarter of 1993 were:
 - 69.9% white
 - 24.0% African-American
 - 2.3% American Indian
 - 2.0% Asian/Pacific Islander
 - 1.1% other
 - 0.6% unknown

with 19.9% of the group Hispanic and 73.0% non-Hispanic (7.1% unknown).

VI. 593 is not fair, and prevents us from treating people as individuals.

- A. Initiative 593 removes the flexibility of the criminal justice system to consider the offender as an individual. The initiative makes the assumption that a person with a specific criminal history is dangerous enough to be locked away for life. This decision cannot be based on the person's criminal history alone. A person's criminal history is the result of the individual's actions and circumstances. It is also the result of an imperfect system. A criminal record is created by:
- The prosecutor's charging policy (which varies by county),
 - The quality of his/her defense, and
 - The pressure on the system when he/she flows through.
- These factors have nothing to do with dangerousness.
- B. 593 assumes that persons with a certain criminal history are irredeemable. This decision cannot be based on a criminal record, which is as much a product of prosecutorial discretion and plea negotiation pressures as it is a product of the person's will and actions. This decision can only be made on an individual basis.
- C. We elect judges because we trust their ability to exercise judgment; initiative 593 would shackle our judges.

V. With 593, we'll be spending more money -- but without the assurance that we're getting an increase in safety in return.

- A. Increasing the harness of punishment doesn't guarantee a decrease in the crime rate. Criminals rarely think about the consequences of their actions. Many of the crimes we all fear the most -- homicide, rape and assault -- are not planned, are committed under the influence of drugs or alcohol, and involve people who know each other. The individuals committing these offenses simply aren't weighing the costs of their actions.
- B. A small group of offenders may be responsible for a disproportionate amount of crime. However, identifying this group is not easy. It is very difficult to reliably identify the most active offenders from their official records. This is, in part, a result of their age -- the most active offenders are young, and not likely to have an official record of extensive criminal activity. When they do have records, their records don't distinguish them from other, lesser offenders.
- C. Criminal activity drops sharply as people age: adding extra time to older offenders -- those least likely to re-offend -- won't increase our safety.
- People who commit 3 serious crimes, who are already getting long sentences, will remain in prison a few more years, during their 60's and 70's when they are least likely to commit another crime. This will not cause even the smallest reduction in the rate of serious, violent crimes because:
 - Statistics indicate that recidivism drops very sharply after age 40. The chance of these people re-offending after serving the sentences they would get on a third offense is extremely small and therefore the "protection" being purchased is virtually non-existent. The "protection" being offered is whatever is afforded by keeping an old offender who has just finished serving fifteen to twenty-five years in prison until he or she dies.
 - Most felonies (50%) are committed by persons ages 20 to 29. Persons 60 years and older commit only 1% of "serious offenses" (U.S. Department of Justice, Bureau of Justice Statistics, Felony Sentences in State Courts, 1988). Most of those over 60 committing felonies don't have serious prior convictions; if 593 passed, it wouldn't prevent their crimes. A mandatory life sentence that keeps a person in prison past the age of 60 will not reduce the rate of violent crime.
- D. Current law already requires tough sentences for multiple "serious and violent" offenders. Following are examples of how these offenders would be treated now -- without the "Three Strikes" law.

Assumptions: These examples assume only six months between date of release and date of re-arrest. They also assume a mid-range sentence and, further, assume the convict has earned all possible good time. *These assumptions result in the shortest probable sentence.*

of holding a younger prisoner. They also reported that costs for a bare bones nursing home for the same population would be less than the average cost of holding a younger prisoner without medical problems.

- The cost of providing medical care in prison is higher than providing the same care outside; some of this is the result of added costs for security, transportation etc. in prisons.
- Because states are responsible for covering the costs of medical care for the prisoners they hold, these costs are not covered by Medicare or Medicaid.

IV. 593 will increase annual criminal justice costs for both state and local county governments.

A. Costs on the local level -- prosecution, defense, courts and jails -- will go up:

- The possibility of true life sentences for a third offense will mean fewer guilty pleas and more trials. Every eligible offense, whether it is first, second or third "strike" is likely to go to trial and be appealed because the risk of 593 exists. The sentencing hearings will be lengthy and expensive compared to current practice. We know from Washington's history with the old habitual criminal statute that this will happen.
- All "strike three" cases will be tried, and -- because the penalty will be the same -- will be tried as though the charge were non-capital aggravated murder. Such cases now cost tens of thousands of dollars more than other felony matters. (In King County, the Office of Public Defense estimates that the cost of defense services alone for a "strike three" case would be \$50,000, compared to \$600 for a regular felony. Over 90% of felony cases that go to trial in King County are handled by public defenders: these costs come out of the county budget.)
- Appellate litigation is expected to be voluminous, rivaling that of the 1970s involving the old "habitual criminal" statutes. This cost will be borne by the tax payers at the state level.
- This law will require jails, courts, prosecutors, public defenders and appointed counsel all to apply for additional money from the county and state coffers.
- If, as estimated by the Sentencing Guidelines Commission, there would be 60 or more "strike three" cases in one year, we could be spending up to an additional \$3 million per year just for added defense costs in these cases. And that's *before* considering the increase for prosecutors, courts, clerks, and others in the system.

2. The increase in prison population will cause an increase in state costs for holding prisoners, and for prison construction.

- The current cost of housing a prisoner is \$25,700 annually.
- This figure doesn't include the costs of building a new prison, about \$100,000/bed. The Department of Corrections figures that, in the first three bienniums, we'll need to spend additional \$12.5 million just to start construction of a new 512-bed prison needed because of the additional prisoners resulting from passage of Initiative 593.

3. The increase in older prisoners will add even more to the annual cost of holding a prisoner

- Most medical expenses occur in the last part of a person's life.
- The *Wall Street Journal* reported (8/18/93) that the cost of holding an aging prisoner with medical problems can be two to three times the cost

III. Passage of Initiative 593 will substantially increase the state prison population, and will burden our prisons with an increasing number of aging prisoners in need of expensive geriatric care.

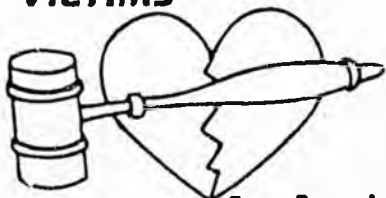
- A. The proponents of Initiative 593, and the Sentencing Guidelines Commission, have estimated that it's passage would affect about 40 - 70 individuals per year.
- B. Because these individuals would have been sentenced to prison under current law, we will not notice an increase in the average daily population of our prisons right away. Even so, life sentences without the possibility of parole -- coupled with the removal of "good time" reductions -- will mean increasing the number of prisoners. While unable to predict the exact impact of passage of the "three strikes" initiative, the Sentencing Guidelines Commission has estimated the following "worst case" increases in average daily prison population by year:

<i>year</i>	<i>impact</i>
1	1
2	5
3	18
4	36
5	62
6	93
7	127
8	166
9	207
10	250
11	296
12	342
13	390
14	439
15	488
16	539
17	589
18	642
19	695
20	746

These figures do not include increases in average daily prison population as a result of the elimination of earned early release by some offenders. The Sentencing Guidelines Commission has estimated that this will result in an increase of 42 prisoners at year 10, and 109 prisoners at year 20.

- B. As we incarcerate more aging prisoners up to their natural death, our prisons will become geriatric facilities. Some predict that we will have to build now, geriatric prisons to deal with these older, increasingly infirm, prisoners.

VICTIMS



for Justice

January 27, 1994

Representative Con Bunde
State Capitol Room 112
Juneau, Alaska 99801-1182

Re: HB 334

Dear Representative Bunde,

Victims for Justice supports the bill of Three Strikes and you are Out. The "revolving door" costs the State so much money in legal fees and no one counts the cost to victims. It is time to put a stop to this nonsense. According to a study done by the Justice Department in 1985, (these statistics are probably lower now) of all crimes committed in this nation, 15-20% of the criminals are apprehended and only 2-3% go to prison. Furthermore 75-80% of all criminals that are released from jail are back in prison within 36 months for the same offense.

Justice Charles L. Welntner sums it up well saying: "Right now a person who has been through the system and is contemplating a crime probably views things as follows: (1) if I do it I won't get caught, (2) if I get caught I won't get prosecuted, (3) if I get prosecuted I won't get convicted, (4) if I get convicted I won't go to prison, (5) and if I go to prison I won't be there for very long."

Given the statistics above this assessment is based very much on reality.

The up coming criminals are more violent and the cost to society is much higher than the cost of keeping an offender locked up. The court costs can be tracked but victims costs are impossible to calculate. Victims never receive proper compensation or proper justice through the system. With the new prison matrix's changed we are letting out more serious offenders who will ultimately lead to more victimization. It is time to put a stop to this. Please pass this legislation. Please build more prisons and quit letting out dangerous offenders. Our new way of dealing with criminals puts some mighty dangerous people on the streets. The prison system is told not to pay attention to victim's response and public safety is no longer considered when releasing criminals. The prison system is saying they are saving money putting people into half way houses before releasing them. It is really a concern, how bureaucracy can manipulate a fairly good means of tracking offenders into allowing these people out early. Three Strikes legislation will eliminate the possibility of continuing to release these dangerous offenders which seems to be the new way of dealing with crime in the Department of Corrections.

Sincerely,
Janice Lienhart
Janice Lienhart

The New York Times

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Washington
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SUNDAY, DECEMBER 26, 1993

Printed by

Drive to Keep Repeat Felons In Prison Gains in California

By JANE GROSS

Special to The New York Times

FRESNO, Calif., Dec. 23 — When Mike Reynolds vowed a year and a half ago to find a way to keep repeat offenders locked up for life, it seemed just a howl of pain by a grieving father whose teen-age daughter had been shot in the head at point-blank range by a man with a long criminal record.

But Mr. Reynolds's personal crusade to tighten sentencing for career criminals has become a political juggernaut here in California, the scene in recent weeks of several high-profile crimes, including the abduction and slaying of 12-year-old Polly Klaas at the hands of a twice-convicted kidnapper.

Until Polly's body was found early this month, few outside this Central

Valley city knew anything about the 1992 slaying of Kimber Reynolds, 18, who was leaving a restaurant with a friend when a man tried to steal her purse and instead shot her with a .357 Magnum revolver.

Aimed at Chronic Criminals

And fewer still knew that her father, a wedding photographer, had responded by writing a ballot measure that would double and triple sentences and limit parole opportunities for chronic criminals like the one who killed his daughter, who dreamed of a career in fashion and was buried in a silver lame prom dress of her own design.

But in recent weeks Mr. Reynolds's ballot measure has become a rallying cry. Frightened by the spread of random violence in their neighborhoods and struck by how often those crimes are committed by repeat offenders, California voters are signing petitions for the Reynolds measure at the rate of 15,000 a day.

Patterned on a Washington State initiative, although stricter in many ways, the measure, known as Three Strikes and You're Out, is expected to qualify easily for next November's ballot and, if current public opinion holds, win by a landslide. And 30 other states are looking into such initiatives, which experts say could be the hot issue of next year's campaign, as term limits were for a sour electorate in 1992.

The popularity of such measures can

3 STRIKES
YOU'RE
OUT

Continued on Page 12, Column 1

Drive to Keep Repeat Felons in Prison Is Gaining Po

Continued From Page 1

to under-od by skimming the maza- ing news- per or watching the evening news. Despite statistics that show a drop in violent crime, each day offers a roster of victims who have been set upon in relatively safe places by assailants with long criminal records.

That was the case with Uwe-Wilhelm Rakebrand, a honeymooning German tourist killed in a rental car as he left the Miami airport. Or James Jordan, the father of the basketball star Michael Jordan, shot in the chest while stepping in his luxury sedan beside a road in North Carolina.

It was also the case with Polly, snatched from her bedroom during a shagbort party in rural Polatuma while her mother slept nearby. And Kimber, who was slain not on the mean streets of Los Angeles, where she was studying fashion design, but during a weekend visit here to be a bridesmaid in a friend's wedding.

"What these crimes have done is show people that you can do all the right things and it doesn't matter," Mr. Reynolds said. "You can lock your door, stay in the right neighborhood. But when you come up against one of these creeps, the rules don't matter. They're hunting you."

"When bad guys are killing bad guys, that's one thing," he added. "But when they start killing regular people, that's where you draw a line in the sand. That's what's driving people crazy."

From Tides to Tidal Wave

That moment of collective horror came here in California with the killing of Polly Klass, a case that roused the nation for months and turned a trickle of support for Mr. Reynolds's initiative into a tidal wave.

Until then, Mr. Reynolds's campaign was a relatively lonely one. On a shoestring budget — the money he and his wife, Sharon, were saving for a mountain cabin — a few volunteers had gathered 35,000 signatures, less than a tenth of what was needed.

Around Thanksgiving, Mr. Reynolds was invited to appear on a San Francisco talk radio show, which inspired about 40,000 people in the Bay Area to sign petitions. But still, the measure lagged far behind the 385,000 signatures needed to put it before the voters.

Then Polly's body was found at an abandoned lumber mill. A San Francisco radio station, KGO-AM, suggested that listeners vote their rage and frustration by calling Mr. Reynolds.

By Monday morning, the voice mail system in the Three Strikes and You're Out storefront headquarters had crashed under the onslaught of calls, within a few weeks, more than 300,000 signatures were gathered. And three days later, the letter carrier slung into the campaign office bowed under the weight of his mail bag.

Angry Letter-Writers

The mail is angry, more punitive than the measure itself, which mandates double the usual sentence for a second serious felony and triple the usual sentence or 25 years to life, whichever is longer, for a third. By contrast, the Washington State measure, which passed last fall with 78 percent of the vote, does not enhance sentences with the third felony.

One typical letter writer was not satisfied. "What is needed is three strikes and you're dead," he said. "We



Mike Reynolds's personal crusade to tighten sentencing for career criminals has in recent weeks become a rallying cry in California, with voters frightened by the incidents of random violence in their neighborhoods.



Kimber Reynolds, Mr. Reynolds's daughter, who was shot and killed in 1992 by a man trying to steal her purse.

can't afford to warehouse this load of human debris."

Unlike the Washington State initiative, the California measure also restricts time off for good behavior so that a felon must serve 80 percent of any sentence rather than half, as is often the case now.

An initiative that could be a hot political issue next year.

But repeat felons deserve worse than that, the volunteers at the Three Strikes headquarters said, echoing the letter writers. "I'm for stricter things, like no contact visits and shut down the prison libraries," said Carl Lantieri, a retired banker.

Supporters of Mr. Reynolds's measure, including Gov. Pete Wilson and the State Attorney General, Dan Lundgren, both Republicans, are confident that it will have a sweeping effect if it is passed. But that is impossible to judge at this point.

No Estimate of Costs

In Washington, 40 to 70 felons a year were expected to meet the criteria of that state's initiative, corrections officials projected, but none have been charged under the statute in its first month. No similar projections have been made in California, although there is widespread agreement that more people would be affected because of the stringency of the measure and the size of the criminal population here.

Has anyone predicted how much the measure would cost if it went into effect, a calculation normally made after an initiative has qualified for the ballot? It is assumed that extending the sentences of so many felons would cost the state billions of dollars in increased prison costs, while saving cities and counties some money because there would be fewer repeat prosecutors.

Measures like the one in Washington and the one proposed here in California are expected to be more effective than the so-called habitual offender laws on the books in 17 states because they are broader and their application is mandatory. The 17 state laws, by contrast, generally give prosecutors and judges wide discretion about whether to charge felons as habitual offenders, and tend to be narrower about which criminals qualify for the longer sentences.

There is broad consensus among criminologists that a small percentage of repeat offenders are responsible for the vast majority of violent crime. But experts are divided about whether targeting repeat offenders for life sentences is an effective remedy.

William J. Bennett, the former Secretary of Education who is now the director of Empower America, a conservative advocacy group, said such measures are a worthy way to reduce the "frustration level of Americans who see people engaging in violent acts and not doing their time."

'Expensive Old-Age Homes'

But opponents say the measure, however satisfying to frustrated voters, is bad public policy because it would crowd the prison system with aging felons without having much impact on rates of violent crime.

"It'll stop a few guys, and that could add up to big numbers in California, but mainly it will just create the most expensive old-age homes in the world," said Peter Greenwood, the acting director of the criminal justice program at the Rand Corporation, a Southern California research center.

But stopping a few guys would be enough for Mr. Reynolds, who said his campaign for new sentencing standards is what has kept him sane since that summer evening a year and a half ago, when the youngest of his three children joined her two brothers in a softball game and then went out for coffee and cake with a friend.

PHOTO BY AP/WIDEWORLD

PHOTO BY AP/WIDEWORLD

As the couple left the Daffy Planet restaurant at 10:40 P.M., two young men on stolen motorcycles wheeled up to the curb. One of them grabbed Kimber's purse. When she struggled, the assailant stuck the barrel of his gun in her ear and pulled the trigger.

Shortly after Kimber's death, Mr. Reynolds went on the radio here, begging for a witness or an informer to help find his daughter's killer. A friend of the gunman did just that, leading the police to 28-year-old Joe Davis, a methamphetamine user who had been convicted and jailed repeatedly for armed robbery, auto theft and drug use.

Nine Years for Accomplish

Mr. Davis died in a gun battle with the police. His accomplice, Douglas Walker, 27, also a drug user with a long criminal record, pleaded guilty to armed robbery and accessory to murder. He was sentenced to nine years in prison. Under current law, he will serve half that time.

Mr. Reynolds said that he is haunted by feelings that he was not able to protect Kimber in the final months and minutes of her life.

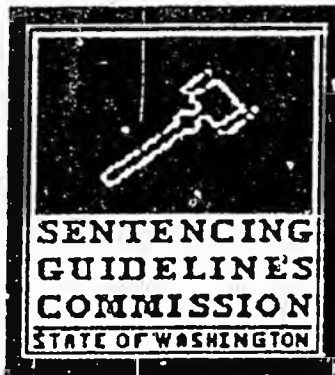
Once she called him from Los Angeles because her car would not start, and he was struck by the realization that "there comes a time you can't be there for a child." He later bought her a cellular telephone so she could call for help in case of a highway emergency. But the phone was stolen.

And these were but precursors to Mr. Reynolds's ultimate helplessness. "You never stop reliving the last moments of your child's life and wondering what you could have done to prevent it," he said. "If I was standing there with a gun I don't think I could have stopped him. But I might have shot him before he got down the street."



A Look at The Persistent Offender Accountability Act
Initiative 590 – “Three Strikes, You're Out”

593



May 5, 1992

David L. Fallen, Ph.D.
Sentencing Guidelines Commission
3400 Capitol Blvd.
Olympia, WA 98504-0927

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IMPACT ON STATE PRISON POPULATION:

① The potential impact of mandatory sentences of life imprisonment for "persistent offenders" cannot be analyzed with the methods normally employed in this office. Unlike most sentencing proposals, this sentencing initiative applies only to a relatively small group of offenders with an extensive history of recidivism. Accordingly, the recidivism component must be explicitly factored into the impact estimation. Unfortunately, no Washington State data exist which documents the rate, nature, and timing of recidivism for this select group of offenders. One clue regarding the nature of the recidivism can be gleaned from the Commission's Fiscal Year 1991 data. Of the 16,554 SRA sentences that year, 1,844 of the offenders had one or more prior "most serious offenses". The *current* conviction for 25 percent of these 1,844 offenders was also a "most serious offense". The other 75 percent were convicted of less serious felonies.

The mandatory sentencing provisions of this initiative apply to offenders who would be drawing substantial prison terms under the current sentencing policies. Thus any impact of the mandatory sentencing provisions would be well into the future. In order to obtain a sense of the timing for the potential impact, a *worst case scenario* impact was estimated. This analysis used no phase-in adjustments (applies immediately to all offenders regardless of date of offense) and assumes no offender recidivates. Because this last assumption is unrealistic for this group of offenders, it must be emphasized this analysis should not be taken at face-value. The actual impact of this proposal would be substantially less than the figures in the following table.

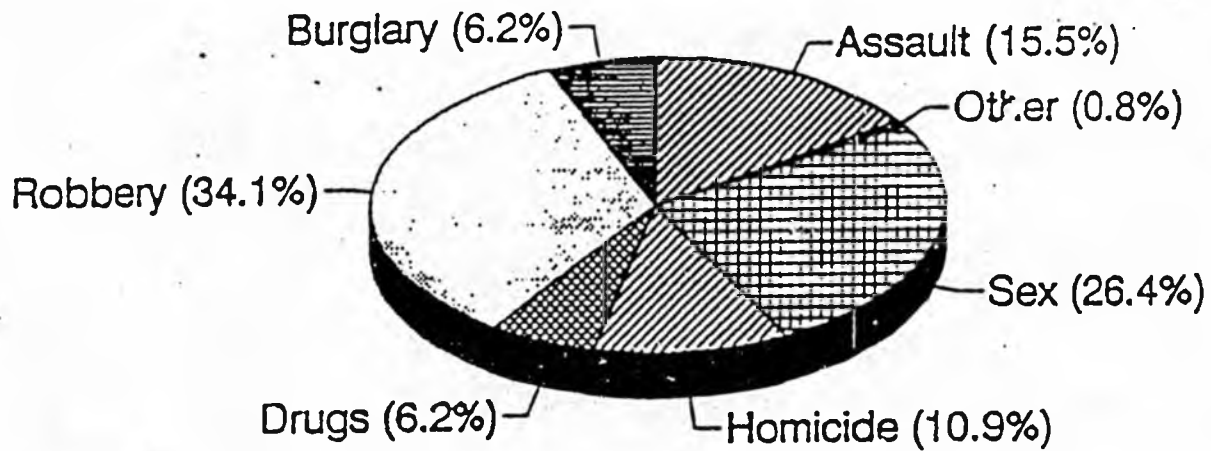
Worst Case Impact of Mandatory Life Sentences for "Persistent Offenders" (for timing purposes only – not a forecast)

YEAR IMPACT		YEAR IMPACT	
1	1	11	296
2	5	12	342
3	18	13	390
4	36	14	439
5	62	15	488
6	93	16	539
7	127	17	589
8	166	18	642
9	207	19	695
10	250	20	746

Note: Impact is defined as an increase to the prison average daily population.

Figure 1

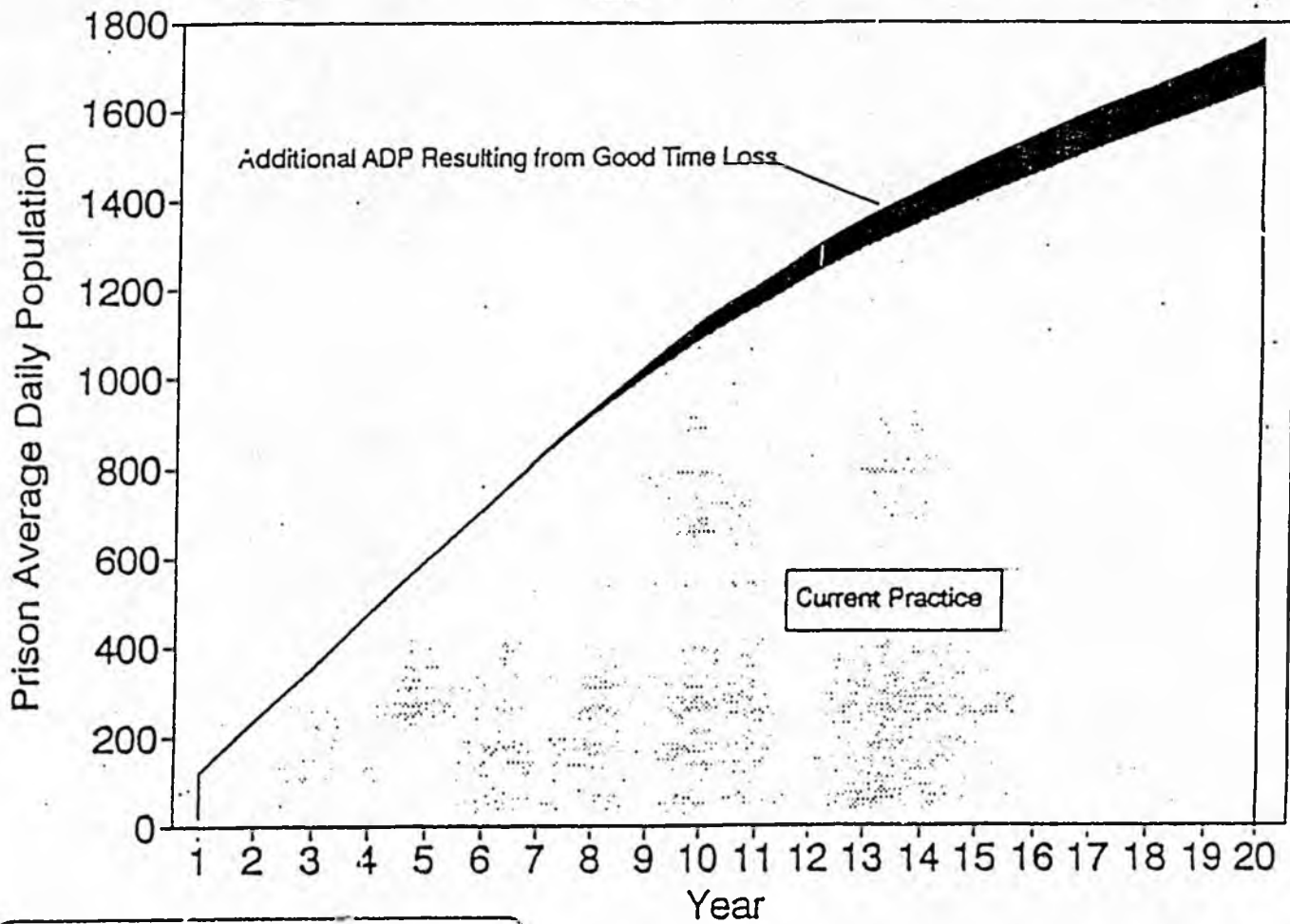
Conviction Offense for "Persistent Offenders" Receiving a Life Sentence



Sentencing Guidelines Commission 5/5/92

Figure 3

Impact of Eliminating Good Time for Murder 1, Assault 1, and Rape 1



Sentencing Guidelines Commission 5/5/92



155 John A. Cherberg Building
P.O. Box 40175
Olympia, Washington 98504-0175
206/786-7002

Washington State Senate

Law and Justice Committee

Senator Adam Smith
Chairman

INITIATIVE 593

TO: Senator Adam Smith, Chair

FROM: Dick Armstrong, Staff

SUBJECT: Initiative 593 (Persistent Offender)

DATE: July 15, 1993

INTRODUCTION

You requested a memorandum which explains Initiative 593, commonly referred to as "Three Strikes and You're Out". As the phrase implies, the Initiative provides that any person who commits three serious felonies (as defined) must be sentenced to a term of life imprisonment without possibility of parole.

To assist with your understanding of Initiative 593, the memo provides: (1) background information on how habitual offenders were treated prior to the 1984 Sentencing Reform Act (SRA) and how repeat offenders are now sentenced under the SRA; (2) a summary of the provisions of the Initiative, including a list of crimes which constitute a "most serious" felony; and (3) information on the fiscal impact of the Initiative.

BACKGROUND

Any person who was convicted of a crime committed before July 1, 1984 which involved fraud or an intent to defraud as an element, or larceny or any felony, could be sentenced to life imprisonment as a habitual criminal if he or she had two prior felony convictions, or had been convicted four times of any crime which involved fraud or intent to defraud as an element. Any person sentenced to life imprisonment as a habitual criminal was still eligible for parole.

The Sentencing Reform Act applies to felonies committed on or after July 1, 1984. The sentencing grid used pursuant to the Sentencing Reform Act counts prior felony convictions as part of the offender's criminal history score. Offenders with previous convictions receive higher scores under the grid, and as a result are given longer sentences. The sentencing judge can give an exceptional sentence that varies from the presumptive sentence if aggravating or mitigating

of absence unless it is for emergency medical treatment or inpatient treatment because of a first degree rape conviction.

Sentencing judges, law enforcement agencies, and correctional facilities are authorized, but not required, to give offenders who have been convicted of a serious offense notice of sanctions imposed upon persistent offenders.

The Governor is urged to refrain from pardoning or granting clemency to anyone sentenced as a persistent offender until the offender has reached the age of at least 60 and is judged to no longer be a threat to society. The Governor must provide reports at least twice a year on the status of persistent offenders who are released during the Governor's tenure. The reports must continue for at least ten years after the offender's release or until the death of the offender.

FISCAL IMPACT

A review of Initiative 593 indicates that it will increase the prison population by about 40 beds per year. However, the impact will occur largely in the future. In addition, the analysis of the impact on prison populations needs to be considered with caution, as indicated in the attachments.

The fiscal analysis that is available is based on a 1992 review of Initiative 590 (Persistent Offender Accountability Act), which is nearly identical to Initiative 593. The only major difference between the Initiatives is that the crime of Rape in the 3rd Degree (statutory rape) is included as a "most serious offense" under Initiative 593. A copy of the analysis is attached. Dave Fallen, Executive Director of the Sentencing Guidelines Commission, is of the opinion that the impact analysis that he did in 1992 is essentially still valid for Initiative 593.

The impact of Initiative 593 on the state prison population is difficult to accurately predict because the initiative only applies to a relatively small group of offenders with an extensive history of recidivism. As to this select group of offenders, data does not exist which documents the rate, nature, and timing of recidivism.

However, as can be seen from the analysis provided by the SGC, the impact of the Initiative is largely in the future. A "worse case impact" provides that the average daily prison population will increase (a) 63 by the year 1998; (b) 292 by the year 2003; (c) 571 by the year 2008; and (d) 855 by the year 2013.

A fiscal note prepared by the Department of Corrections indicates a cost of \$18,046 for the 1993-95 biennium, \$3,731,383 for the 1995-97 biennium, and \$8,786,791 for the 1997-99 biennium.

NOTE: The information provided above is for analytical and legislative policy purposes only. It is not provided as an expression of support for or opposition to the measure.

circumstances are present. Certain offenses (i.e., first degree murder, first degree rape and first degree assault) have mandatory minimum sentences.

The Sentencing Reform Act does not provide a punishment of life imprisonment for habitual offenders.

SUMMARY

A person who meets the definition of a "persistent offender" must be sentenced to a term of life imprisonment without the possibility of parole, unless the offender is sentenced to death for the crime of aggravated murder.

"Persistent offender" is defined as an offender who has been convicted of a felony considered a "most serious offense," and has been previously convicted on at least two separate occasions of felonies that would be considered as most serious offenses.

"Most serious offense" is defined to include the following felonies or attempted felonies (For your information, the type of felony and the seriousness level on the sentencing grid is set forth):

- Any Class A felony (see attachment);
- Assault 2nd degree (Class B, Level IV);
- Assault of a child 2nd degree (Class B, Level IX);
- Child molestation 2nd degree (Class B, Level VII);
- Controlled substance homicide (Class B, Level IX);
- Extortion 1st degree (Class B, Level V);
- Incest with child under age 14 (sexual intercourse - Class B, Level VI; sexual contact - Class C, Level V);
- Indecent liberties (Class B, forced - Level IX, unforced - Level VII);
- Kidnapping 2nd degree (Class B, Level V);
- Leading organized crime (Class B, Level X);
- Manslaughter 1st degree (Class B, Level IX);
- Manslaughter 2nd degree (Class C, Level VI);
- Promoting prostitution 1st degree (Class B, Level III);
- Rape 3rd degree (Class C, Level V);
- Robbery 2nd degree (Class B, Level IV);
- Sexual exploitation (Class B, Level IX);
- Vehicular assault (Class C, Level IV);
- Vehicular homicide when proximately caused by driving under the influence or by driving recklessly (Class B, Level VII);
- Any other Class B felony with a finding of sexual motivation; and
- Any felony with a deadly weapon finding.

Persons convicted of first degree murder, first degree rape, and first degree assault are not eligible for community custody, earned early release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release or authorized leave

9A.40.020	Kidnapping 1	X
9A.82.060(1)(a)	Leading Organized Crime	X
69.50.401(a)(1)(i)	Manufacture, Deliver, or Possess with Intent to Manufacture or Deliver Heroin or Cocaine (Subsequent Drug Conviction or in a Protected Zone)	VIII
69.50.401(a)(1)(i)	Manufacture, Deliver, or Possess with Intent to Manufacture or Deliver Narcotics from Schedule I or II (Except Heroin or Cocaine) (Subsequent Drug Conviction or in a Protected Zone)	VI
9A.32.030	Murder 1	XIV
9A.32.050	Murder 2	XIII
69.50.406	Over 18 and Deliver Narcotic from Schedule I or II to Someone Under 18	X
9.40.120	Possession of Incendiary Device	Unranked
9A.44.050	Rape 2	X
9A.44.040	Rape 1	XI
9A.44.076	Rape of a Child 2	X
9A.44.073	Rape of a Child 1	XI
9A.56.200	Robbery 1	IX
9.41.180	Setting Spring Gun	Unranked
9.82.010	Treason	Unranked
9.41.225	Use of Machine Gun in Commission of Felony	Unranked

ATTACHMENT "A"

CLASS A FELONIES

<u>Statute</u>	<u>Offense</u>	<u>Seriousness Level</u>
10.95.020	Aggravated Murder 1	XV
9A.48.020	Arson 1	VIII
9A.36.120	Assault of a Child 1	XII
9A.36.011	Assault 1	XII
9A.76.170	Bail Jump with Murder 1 Offense	VI
9A.52.020	Burglary 1	VII
9A.44.083	Child Molestation 1	X
69.50.415	Controlled Substance Homicide (Subsequent Drug Conviction)	IX
69.50.401(b)(1)(i)	Create, Deliver, or Possess a Counterfeit Controlled Substance - Schedule I or II Narcotic (First Drug Conviction)	II
9A.28.040	Criminal Conspiracy - Murder 1	Attempt**
9A.28.020(3)(a)	Criminal Attempt - Arson 1 or Murder 1	Attempt**
9A.28.030(2)	Criminal Solicitation - Arson 1 or Murder 1	Attempt**
70.74.280(1)	Damaging Building, Etc., by Explosion with Threat to Human Being	X
70.24.270(1)	Endangering Life and Property by Explosives with Threat to Human Being	IX
70.74.180	Explosive Device, (Possession with Intent to Use)	IX
9A.32.055	Homicide by Abuse	XIV



Bureau of Justice Statistics Special Report

Federal Offenses and Offenders

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DEC 17 1992

Federal Sentencing in Transition, 1986-90

By
Douglas C. McDonald
Kenneth E. Carlson
Abt Associates Inc.

Federal sentencing practices changed substantially during the last half of the 1980's. Before the 1986 and 1988 anti-drug abuse laws that stiffened sanctions, the Sentencing Reform Act of 1984 (Public Law 98-473, 98 Stat. 1837 [1984], called "the Act" in this report) had already set in motion alterations of Federal practices. Among other reforms, the Act established the U.S. Sentencing Commission to develop guidelines, which scale punishments to the gravity of the offense and the offender's criminal record. The guidelines apply to Federal prisoners who committed their crimes on or after November 1, 1987.

Under the guidelines Federal prisoners are no longer released from prison to parole by the U.S. Parole Commission. Instead, judges impose prison sentences that are served in full, except for time off that prisoners earn for good behavior. Offenders are supervised following their release from prison only if a judge requires it as a part of the sentence.

Cases subject to the Act ("guideline cases") began to appear in appreciable numbers in 1988, the year after the guidelines went into effect. During 1988, 17% of the offenders convicted in Federal district courts were guideline cases.¹ In 1989 the proportion increased to 51%, and in 1990, to 65%. This report summarizes the main

¹ See *Methodology*, page 10, for a discussion of which cases were included as guideline cases.

June 1992

The Sentencing Reform Act of 1984 introduced "truth in sentencing" to the Federal Justice system. The act created a commission that specified sentencing guidelines, which went into effect in late 1987. Defendants convicted for crimes committed after the guidelines serve the actual amount of the sentence, minus a brief "good time" to enable authorities to manage inmates more easily. The guidelines take into account the gravity of the crime and the offender's criminal record. Released prisoners no longer serve time on parole unless judges expressly sentence them to supervision in the community.

This report on sentencing and time served is the first in-depth analysis of these issues by the Federal Justice Statistics Program since 1987. It clearly traces changes in sentencing patterns and corresponding changes in time served in prison and supervision after incarceration.

Steven D. Dillingham, Ph.D.
Director

trends in Federal sentencing. It compares sentences imposed before the Act in 1986-87 with those imposed between January 1988 and June 1990, when an increasing percentage of defendants were subject to the guidelines and faced stiffer mandatory sentences. The report also examines time actually served by offenders released from Federal prison between 1986 and 1990.

The main findings include:

- The percentage of convicted Federal offenders receiving a prison sentence, which may have included a period of probation, rose from 52% during 1986 to 60% in the first half of 1990.
- Offenders sentenced under the sentencing guidelines were more likely to go to prison than those sentenced before the guidelines went into effect: 74% of the guideline cases in 1990, compared to 52% of the pre-guideline cases in 1986.
- The number and percentage of Federal offenders sentenced to prison increased primarily after 1988. Among those sentenced in Federal district courts, the increased number of drug offenders accounted for most of the increase in sentences to prison.
- The average length of Federal sentences to incarceration decreased between 1986 and 1990 for crimes other than drug offenses. However, because offenders sentenced under the provisions of the Act are not eligible for release on parole, the more recently committed offenders were likely to be incarcerated longer than their predecessors.
- The use of probation sentences decreased from 63% in 1986 to 44% in the first half of 1990.
- Federal prisoners first released in 1990 served an average of 19 months (75% of their court-imposed sentences). This was 29% longer than the average term served by prisoners first released in 1986.

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The Sentencing Reform Act of 1984

The Sentencing Reform Act of 1984 (Public Law 98-473, 98 Stat. 1837 [1984]), called "the Act" in this report, established the U.S. Sentencing Commission that had as one of its essential tasks the development of sentencing guidelines. This reform sought to reduce unwarranted disparities between the sentences imposed and the time in prison actually served.² The guidelines issued by the commission took effect on November 1, 1987, and applied to Federal offenses committed on that day or later. Sentencing of offenders convicted of crimes committed before that date was governed by the laws applicable before the Act's passage (called the "old law").

The report describes sentencing patterns which occurred during 1986-90. A variety of changes in criminal statutes, as well as shifts in prosecutorial priorities and composition of the offender pool, occurred during this period. Therefore, changes in sentencing patterns may not necessarily

²U.S. Sentencing Commission, *Supplementary Report on the Initial Sentencing Guidelines and Policy Statements* (Washington, D.C.: June 18, 1987).

reflect the impact of any particular factor such as the guidelines or provisions of the Act.

Persons sentenced to prison

The number of persons convicted in Federal district courts increased from 43,920 in 1986 to about 48,730 in 1990 — an average annual increase of about 2.6%.³ Although this growth in the number of convictions had slowed from the 6.4% average annual rate for the period of 1980 to 1985, the likelihood of being sentenced to incarceration rose, from 52% in 1986 to 60% in 1990 (table 1).

The likelihood of receiving a sentence to prison varied according to offense category. Violent offenders were somewhat more likely to be incarcerated in 1990 than in 1986: 88% in 1990, compared to 83% in 1986. Convicted drug offenders were more likely to receive a prison sentence in 1990 than in 1986 — 86%, compared to 77%. The likelihood of incarceration

³*Federal Criminal Case Processing, 1980-89, with Preliminary Data for 1990*, BJS report, NCJ-130526, October 1991, table 9. Figures for 1990 are preliminary.

increased slightly for public-order offenders (37% to 43%), and remained unchanged for property offenders (43% in 1986 and 1990).

As the number of convictions and the likelihood of being sentenced to prison increased, a substantially greater number of Federal offenders was sentenced to prison. From 1986 through 1988, the number of Federal offenders sentenced to prison remained between 23,000 and 23,600 per year. In 1989, the number increased to 27,377, and in 1990, to approximately 29,400.

This 1986-90 increase resulted largely from the growing number of persons sentenced to prison for drug offenses. The number of Federal drug offenders sentenced to prison rose 48%, while the number of persons sentenced to prison for all other types of crimes grew an average of 14%. By 1990 drug offenders accounted for nearly half (47%) of all persons sentenced to prison from Federal district courts, up from 40% in 1986 and 27% in 1980.

Table 1. Offenders convicted in cases terminated in U.S. district court: Number and percent sentenced to prison, by year and offense, 1986-89 and preliminary 1990

Most serious offense at conviction	Number of convicted offenders who were sentenced to prison ^a					Percent of convicted offenders who were sentenced to prison ^a				
	1986	1987	1988	1989	Preliminary 1990 ^b	1986	1987	1988	1989	Preliminary 1990 ^b
All offenses ^c	23,058	23,579	23,450	27,377	29,430	52.5%	53.0%	53.8%	58.5%	60.4%
Violent offenses	1,813	1,837	1,733	1,892	1,999	82.7	82.0	81.0	86.8	87.6
Property offenses	6,291	6,234	5,723	5,974	5,775	43.2	43.4	42.6	44.1	43.1
Fraudulent offenses	4,416	4,610	4,182	4,400	4,391	42.0	44.1	43.6	44.4	44.0
Other property offenses	1,875	1,624	1,541	1,574	1,384	46.6	41.6	40.0	43.3	40.5
Drug offenses	9,272	10,196	10,599	13,306	13,754	77.3	75.9	79.2	84.2	85.6
Public-order offenses	5,682	5,312	5,395	6,194	6,427	37.4	36.6	37.0	40.6	43.2
Regulatory offenses	688	601	640	746	757	34.2	32.5	32.6	36.9	38.3
Other public-order offenses	4,994	4,711	4,755	5,448	5,670	37.9	37.2	37.7	41.2	43.9

^aIncludes sentences to prison with or without probation.

^bSee *Methodology*, page 10.

^cTotal may include offenders for whom offense category could not be determined, but excludes offenders for whom sentence category could not be determined.

Comparing pre-guideline and guideline cases

Length of prison sentences

Between 1986 and 1990, the average length of imposed prison sentences decreased substantially for nearly all types of crimes (table 2). The average sentence to prison for all violent crimes was 32% less in 1990 than in 1986: 90 months in 1990 compared to 132 months in 1986. Sentences to prison for property offenses were 35% shorter, and for public-order offenses, 25% shorter.

Part of the reason for the shorter average sentence was that progressively larger proportions of cases during the period were subject to the Act. Despite this downward trend, the overall average length of prison sentences given to all Federal offenders increased from 53 months in 1986 to 57 months in 1990. This increase resulted from the longer sentences given to drug traffickers outweighing the decline

In sentences imposed on others. The average prison sentence for drug trafficking was 64 months in 1986 and 84 months in 1990.⁴

Likelihood of offenders going to prison

Offenders sentenced under the guidelines during 1988, 1989, and the first 6 months of 1990 were more likely, on the whole, to be sentenced to prison than were offenders sentenced during 1986 and 1987 under the old law (table 3). In 1986, 52% of all offenders sentenced under the old law were given incarceration terms, as were 53% of those sentenced during 1987. In the following year, 77% of all guideline cases resulted in incarceration sentences. The proportion remained constant in 1989, and decreased slightly to 74% during the first half of 1990.

⁴Federal Criminal Case Processing, 1980-89, with Preliminary Data for 1990, table 17. The category for drug offenses in table 2 of this report includes drug trafficking, drug possession, and other drug crimes. The average prison sentence for nontrafficking offenses in 1986 was 41 months and in 1990 was 13 months.

Within all offense categories, offenders sentenced under the guidelines were more likely to be sentenced to prison than those receiving pre-guideline sentences. During 1986 and 1987, 82% of those convicted of violent crimes were sentenced to incarceration; 91% to 92% of violent offenders were sentenced to prison in guideline cases disposed in 1988-90. Of offenders convicted of Federal drug crimes in 1986 and 1987 under the old law, more than 75% received sentences to prison; under the Act, those rates rose to around 86% to 90%.

Persons charged with public-order offenses — regulatory, weapons, racketeering, immigration offenses, or tax law violations — were more likely to be given prison terms after the guidelines went to effect. During 1986-87, 37% of convicted public-order offenders received prison sentences; from 1988 through the first half of 1990, about 71% to 75% of these offenders were incarcerated (table 3).

Table 2. Offenders convicted in cases terminated in U.S. district court: Average length of sentence to prison, by year and offense, 1986-89 and preliminary 1990

Most serious offense at conviction	Average length of sentence to prison				Preliminary 1990 ^a
	1986	1987	1988	1989	
All offenses ^b	52.7 mos.	55.2 mos.	55.1 mos.	54.5 mos.	57.4 mos.
Violent offenses	132.0	126.2	110.7	90.6	89.8
Property offenses	34.3	32.5	31.5	26.0	22.3
Fraudulent offenses	32.8	31.1	31.0	26.1	22.3
Other property offenses	37.9	36.5	32.7	25.7	22.5
Drug offenses	62.2	67.8	71.3	74.9	81.2
Public-order offenses	36.9	35.5	30.7	27.6	27.7
Regulatory offenses	47.2	42.1	30.4	24.0	26.3
Other public-order offenses	30.8	32.2	30.7	28.1	27.8

^aIncludes preliminary count of all cases terminated during 1990.
^bTotal may include offenders for whom offense category could not be determined.

Table 3. Offenders sentenced to Federal prison: Pre-guideline and guideline cases, by year and offense, 1986-89 and the first half of 1990

Most serious offense at conviction	Percent of convicted offenders who were sentenced to prison ^a				
	Pre-guideline		Guideline		
	1986	1987	1988	1989	1990 ^b
All offenses	52.5%	53.0%	76.5%	76.9%	73.6%
Violent offenses	82.7	82.0	91.0	92.3	91.2
Property offenses	33.2	43.4	53.8	53.3	46.7
Fraudulent offenses	42.0	44.1	60.4	54.0	46.2
Other property	46.6	41.6	43.6	51.8	48.0
Drug offenses	77.3	75.9	85.8	89.5	89.0
Public-order offenses	37.4	36.6	74.7	71.2	71.4
Regulatory offenses	34.2	32.5	42.0	48.6	49.5

Note: Data for "other public-order offenses" are not presented because certain offenses included in that category are not covered by the guidelines. "Public-order offenses," however, reflects all cases. Overall, among guideline cases, 7,197 defendants were convicted in 1988; 22,898 in 1989; and 14,075 in the first half of 1990. The guideline status could not be determined for 1,571 in 1988; 584 in 1989; and 113 in 1990.

^aIncludes sentences to prison with or without probation.
^bIncludes only cases terminated January 1 through June 30, 1990.

Not all of these changes can be attributed to the sentencing guidelines. Beginning in 1984, and every 2 years thereafter, Congress enacted laws that mandated minimum imprisonment terms for offenders convicted of drug or violent crimes. Although over 60 statutes in the Federal Criminal Code prescribe mandatory minimum penalties for Federal offenses, nearly all mandatory prison sentences imposed (94% during 1984-90) were for drug-law and weapons violations specified in 4 statutes.⁵ Because a growing proportion of offenders sentenced after 1984 had violated these statutes, some of the increased rate of sentencing to prison, especially for drug crimes, resulted from these mandatory sentencing provisions rather than the guidelines alone.

For all offenses other than Federal drug crimes, the guidelines brought shorter maximum imprisonment sentences, on average (table 4). For example, the average sentence for violent offenses decreased from 132 months in 1986 and 126 months in 1987 to 87 months in 1990.

⁵U.S. Sentencing Commission, *Mandatory Minimum Penalties in the Federal Criminal Justice System* (Washington, D.C., August 1991) p.10.

Under provisions of the Act, judges were to impose sentences to be served in full, minus a small amount of good-time credits that offenders could receive for good behavior.⁶ For most offenses, the guidelines were designed to approximate the

⁶Such credits are accumulated at the maximum rate of 54 days per year for all persons serving imprisonment terms longer than 12 months.

time that prisoners actually served in confinement under the old law.⁷

Sentences for Federal drug offenders departed from the pattern for other types of offenders. Drug offenders convicted under the guidelines received a longer, not

⁷Michael K. Block and William M. Rhodes, "The Impact of the Federal sentencing guidelines," *NJ Reports* (Sep/Oct 1987) 205, p. 2.

shorter, prison sentence on average: from 62 months in 1986 and 68 months in 1987 (pre-guideline), to 71 months in 1989 and 77 months in the first half of 1990. (See the box on this page.)

Sentences to probation

From 1986 through the first half of 1990, the proportion of offenders sentenced to probation (whether combined with prison terms or not) declined from 63% to 44% (table 5).⁸ The sharpest decrease occurred after 1988 and was especially pronounced for offenders convicted of violent or drug crimes. In 1988, 33% of violent criminals were sentenced to some type of probation sentence; in 1990, 19%. Over the same span of time, the percentage of convicted drug offenders sentenced to probation went from 30% to 17%.

The proportion of all offenders sentenced to "straight" probation, without any term of confinement, changed relatively little for the population as a whole from 1986 to

⁸The offenders include only those sentenced by the Federal district courts, excluding petty offenses.

Table 4. Average sentences to Federal prison: Pre-guideline and guideline cases, by year and offense, 1986-89 and the first half of 1990

Most serious offense at conviction	Average length of imposed prison sentences				
	Pre-guideline		Guideline ^a		
	1986	1987 ^b	1988	1989	1990 ^c
All offenses	52.7 mos.	55.2 mos.	42.1 mos.	53.1 mos.	56.9 mos.
Violent offenses	132.0	126.2	63.0	83.2	86.7
Property offenses	34.3	32.5	14.5	15.5	16.4
Fraudulent offenses	32.8	31.1	13.1	13.3	13.4
Other property	37.9	36.5	17.7	20.5	23.5
Drug offenses	62.2	67.8	56.8	70.7	77.4
Public-order offenses	36.9	35.5	19.0	24.7	26.1
Regulatory offenses	47.2	42.1	23.4	22.3	21.1
Other public-order	30.8	32.2	18.6	25.0	26.8

Note: The number of guideline cases in 1988 was 5,500; in 1989, 17,608; and in the first half of 1990, 10,361. The number of cases missing guideline designation in 1988 was 1,256; in 1989, 452; and in 1990, 93.

^aExcludes nonguideline cases in 1988-90. See table 2 for average sentences of all cases.

^bIncludes a small number of cases sentenced under guidelines.

^cIncludes only cases terminated between January 1 and June 30, 1990.

Sentences Imposed on offenders of Federal drug laws and the prison time the offenders serve

Congress and the Federal criminal justice system have placed a high priority on the enforcement of the Federal drug laws. This emphasis is evident in prosecution and sentencing patterns, as well as time served in prison. Between 1980 and 1990, the number of drug law offenders convicted in Federal district courts more than tripled, while the number of nondrug convictions increased by 32%. The proportion of convicted offenders sentenced to incarceration for drug crimes also rose over this period, from 72% in 1980, to 77% in 1986, to 86% in 1990. For drug traffickers, the likelihood of imprisonment increased from 77% in 1980 to 83% in 1986, and to 91% in 1990.⁹

The length of imposed incarceration sentences increased even more drama-

⁹Federal Criminal Case Processing, 1980-1989, with Preliminary Data for 1990, NCJ-130526.

tically. The average sentence imposed on those convicted of drug crimes in 1980 was 47 months. By 1986, the average had risen to 62 months, and by 1990, to 81 months.

The 1986 and 1988 anti-drug abuse laws prescribed stiffer sentences and mandatory minimum incarceration terms for Federal drug law offenders, especially traffickers. The combined effect of these laws and the sentencing guidelines has been to increase the length of incarceration sentences actually served by offenders.

Drug law offenders sentenced during 1990 under the guidelines will serve at least 66 months in prison, on average, and perhaps even more if they lose good-time credits for not complying with prison regulations. This represents a sharp increase in time served. Drug

offenders released from Federal prison in 1986 served an average of 22 months; those released in 1990 served 30 months, on average. Dispositions and sentences reported for guideline cases reflect only cases disposed of during the study period. No guideline cases requiring more than 2½ years from charge to final disposition were included.

The courts are also imposing terms of supervised release on most drug law offenders sentenced under the guidelines. During the first half of 1990, 87% of all offenders sentenced for Federal drug crimes were required to be supervised upon release from prison. Ninety-one percent of those convicted of trafficking offenses were so required. The average number of months to be served was 49 for all drug offenders combined, and 50 months for those convicted of trafficking.

1990. In 1986, 44% of all offenders were given straight probation sentences; in the first half of 1990, the proportion had declined to 38%.

A more dramatic change characterized the use of probation sentences in combination with incarceration in guideline cases. Whereas about a third of all offenders convicted of violent crimes received some kind of sentence to probation in the pre-guideline 1986-87 period, the proportion declined to less than a tenth of guideline cases sentenced for violent offenses during the first 6 months of 1990 (table 6).

Similar large declines occurred for sentences to probation for drug offenders (from 40% in 1986 and 35% in 1987 to 11% in 1990) and public-order offenders (from 72% in 1986 and 68% in 1987 to 28% in 1990). The decline in the percentage of property offenders sentenced to probation was somewhat less, from 76% and 73% in 1986-87 to 56% in 1990. This reduced frequency of sentences to probation reflects in part change in Federal law. The Act prohibited judges from sentencing to both prison and probation except when the guidelines recommend imprisonment of at least 1 month but not more than 6.

Time served in prison

Most of the prisoners released during 1986-90 were sentenced to prison under the laws in force before the Act's provisions took effect. Consequently, the U.S. Parole Commission determined the time of their release. After the U.S. Sentencing Commission promulgated its guidelines, the Parole Commission adopted release policies that reflected the sanctions recommended by the guidelines. The discussion that follows describes the time served by prisoners released under this transitional policy.

Table 5. Offenders sentenced to Federal probation: Type of sentence, by year and offense, 1986-89 and the first half of 1990

Most serious offense at conviction	Percent of offenders sentenced to:									
	Any probation ^a					Straight probation only				
	1986	1987	1988	1989	1990 ^b	1986	1987	1988	1989	1990 ^c
All offenses	62.5%	56.9%	54.6%	45.7%	43.9%	44.4%	38.5%	40.1%	37.3%	37.5%
Violent offenses	34.9	33.3	32.9	21.3	19.0	19.9	18.5	20.8	16.5	15.5
Property offenses	75.8	73.0	72.9	65.5	65.8	55.4	50.6	52.6	52.4	55.0
Fraudulent offenses	78.8	76.1	75.7	68.1	67.3	57.6	51.9	53.3	53.4	55.2
Other property offenses	68.0	65.1	65.5	58.6	61.7	49.7	47.0	50.6	49.8	54.5
Drug offenses	40.0	35.3	29.6	19.5	16.8	22.4	19.4	19.3	15.1	14.2
Public-order offenses	72.2	68.4	65.9	60.3	58.4	55.5	51.0	52.5	51.3	61.2
Regulatory offenses	77.7	76.1	74.0	68.7	67.3	63.8	60.6	61.7	60.2	60.6
Other public-order offenses	71.2	67.0	64.4	58.8	56.8	53.9	49.1	50.7	49.7	49.6
Number of offenders sentenced to probation	26,236	26,015	23,659	20,488	9,513	18,621	17,614	17,375	16,728	8,124

^aIncludes straight probation and any combination of incarceration with probation.

^bIncludes only cases terminated between January 1 and June 30, 1990.

Table 6. Offenders sentenced to any type of Federal probation: Pre-guideline and guideline cases, by year and offense, 1986-89 and the first half of 1990

Most serious offense at conviction	Percent of offenders sentenced to probation ^a				
	Pre-guideline		Guideline ^b		
	1986	1987	1988	1989	1990 ^c
Violent offenses	35%	33%	16%	9%	9%
Property offenses	78	73	49	47	56
Fraudulent offenses	79	76	48	48	57
Other property offenses	68	65	54	46	53
Drug offenses	40	35	16	11	11
Public-order offenses	72	68	29	29	28
Regulatory offenses	78	76	61	52	52
Number of offenders sentenced to probation	26,236	26,007	1,884	5,410	3,821

Note: Data for "other public-order offenses" are not presented because certain offenses included in that category are not covered by the guidelines. "Public-order offenses," however, reflects all cases. Overall, among guideline cases, 7,197 defendants were convicted in 1988; 22,898 in 1989; and 14,075 in the first half of 1990. The guideline status could not be determined for 1,591 cases in 1988; 584 in 1989; and 113 in 1990.

^aIncludes straight, mixed, and split probation sentences.

^bExcludes nonguideline cases in 1988-90.

^cIncludes only cases terminated between January 1 and June 30, 1990.

In calendar year 1990 Federal offenders who were released from prison for the first time on a sentence imposed in a U.S. district court had served an average (mean) of 19 months, which amounted to 75% of the court-imposed sentence (table 7).

Prisoners sentenced for violent offenses served an average time of more than 4 years, substantially longer than offenders

sentenced for property, drug, or public-order crimes. Convicted murderers who were released served an average of over 7 years. Kidnapers served an average of more than 8 years.

While violent offenders served longer in prison than other Federal offenders, on average they served smaller fractions of

their sentences in prison. Overall, violent offenders were released from prison after serving less than two-thirds of their maximum sentences; murderers and kidnapers were released after serving about half of their sentences.

When offenders are categorized by length of sentence imposed, within each category violent offenders spent slightly longer in prison than offenders convicted of other kinds of offenses (table 8). For example, violent offenders who were sentenced to a maximum prison term of 2 years served an average of 23 months before release, while other offenders with the same maximum sentence served about 10% less, 18 to 21 months.

On average, prisoners sentenced to less than 1 year served nearly all of their terms. A few exceeded their initial terms because they received sentences for crimes committed while in prison or for convictions following the original sentence. Those with 2-year sentences served 83% of the imposed term, those with 3-year sentences served 72%, and those with terms of 8 years served 53% of the imposed term. Persons sentenced to 10 years served an average of 48% of the maximum term imposed.⁸

⁸These numbers may differ from those reported by the Bureau of Prisons because they refer only to first releases of prisoners sentenced in Federal district courts for violations of the U.S. Code. The Bureau of Prisons typically counts all persons in its custody, including those returned to its custody for probation and parole violations, as well as some State, military, and District of Columbia prisoners.

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Table 7. Prisoners released from Federal prison in 1990: Average time served to first release and percent of sentence served, by offense

Most serious offense at conviction ^a	Number of prisoners released	Average time served	Percent of sentence served
All offenses^b	25,591	19.2 mos.	75.0%
Violent offenses	1,458	54.2 mos.	54.8%
Murder	43	92.3	53.2
Negligent manslaughter	28	23.0	78.4
Assault	401	45.0	69.1
Robbery	826	58.4	62.2
Rape	19	64.6	51.8
Other sex offenses	87	34.0	72.3
Kidnaping	31	106.3	50.5
Threats against the President	23	25.8	89.2
Property offenses	5,354	16.3 mos.	76.2%
Fraudulent property	3,889	15.1	76.7
Embezzlement	400	11.6	82.9
Fraud	2,797	15.2	76.0
Forgery	323	14.6	73.5
Counterfeiting	379	19.0	78.0
Other property	1,455	19.6 mos.	74.8%
Burglary	79	27.2	73.3
Larceny	867	16.8	77.0
Motor vehicle theft	204	22.6	69.1
Arson	39	38.8	66.8
Transportation of stolen property	168	28.3	68.7
Other	98	8.5	82.0
Drug offenses	7,685	29.7 mos.	67.6%
Trafficking	7,279	30.7	66.6
Possession and other	394	10.6	87.7
Public-order offenses	10,899	8.6 mos.	81.0%
Regulatory offenses	477	18.2	78.7
Weapons	1,192	20.9	78.6
Immigration offenses	7,329	4.1	82.0
Tax law violations	449	12.0	73.1
Bribery	79	11.5	78.5
Perjury	67	13.2	80.2
National defense	24	20.7	83.6
Escape	157	18.4	92.8
Racketeering and extortion	475	31.2	64.3
Gambling	2	8.3	88.6
Liquor	2	11.2	91.7
Mail or transport of obscene materials	69	24.8	75.7
Traffic offenses	434	2.0	91.6
Migratory birds	34	7.3	94.1
Other ^c	109	13.9	100.5

Note: Includes prisoners first released after serving terms imposed by Federal district courts.

^aExcludes prisoners with life sentences and others whose sentence could not be determined.

^bIncludes 195 prisoners whose offense category could not be determined.

^cAverage time served exceeded the average sentence because the sentence was the longest single sentence imposed but the time-served average includes time for all sentences.

Offender characteristics and time served

In general, offenders who were convicted at age 19 or 20 served shorter prison terms than offenders over age 20 (table 9). This difference may reflect a number of separate factors. Younger offenders are less likely to have prior convictions, and for that reason judges may impose shorter sentences on them. The law also allows special sentences for some youthful offenders. Female prisoners generally

served shorter terms than males because they were convicted of less serious offenses and tended to have fewer prior convictions.

Among offenders convicted of drug offenses, foreign nationals served slightly longer sentences than U.S. citizens. In contrast, noncitizens served such shorter sentences than U.S. citizens for "other" public-order offenses, including immigration offenses. Foreigners can violate immigration laws simply by illegal entry,

whereas U.S. citizens convicted of immigration violations are often involved in more serious crimes.

For assault, robbery, immigration offenses, and tax law violations, black offenders served longer prison terms than white offenders (table 10). In counterfeiting, motor vehicle theft, regulatory offenses, and racketeering and extortion, white offenders served more time incarcerated than black offenders. Racial differences in time served might be mostly or entirely explained by differences in sentences or other legal factors. For example, the 2-year difference for assault primarily stemmed from a larger percentage of blacks (55%) than whites (29%) having a sentence of 10 or more years.

Table 8. Prisoners released from Federal prison in 1990: Average time served to first release, by offense and sentence length

Sentence imposed*	Average number of months served in prison						
	All offenses	Violent offenses	Property		Drug offenses	Public-order	
			Fraud	Other		Regulatory	Other
6 mos.	6 mos.	7 mos.	6 mos.	7 mos.	7 mos.	6 mos.	7 mos.
12	13	13	11	12	14	13	14
24	20	23	18	21	21	20	21
36	26	30	22	23	27	25	26
48	31	34	28	29	32	...	33
60	38	42	33	38	39	40	39
72	43	51	37	41	43	...	41
84	48	58	40	...	46
96	51	65	40	49	49	...	51
120	58	70	51	56	55	...	57

Note: Includes prisoners first released after serving terms imposed by Federal district courts. Excludes prisoners with life sentences, those whose sentence could not be determined, and prisoners for whom offense category could not be determined. The number of missing cases was 3,769.

... Fewer than 20 cases.

*Average time served exceeded the average sentence in some offense categories because "sentence imposed" refers to the longest single sentence imposed, but time-served averages include time for all sentences.

Table 9. Prisoners released from Federal prison in 1990: Average time served to first release, by offense and offender characteristics

Offender characteristic	Average number of months served in prison					
	Violent offenses	Property		Drug offenses	Public-order	
		Fraud	Other		Regulatory	Other
All offenders	54.2 mos.	5.1 mos.	19.6 mos.	29.7 mos.	18.2 mos.	8.1 mos.
Age						
19-20	40.7	9.3	12.4	21.3	...	3.5
21-30	56.4	13.6	17.5	26.8	18.8	6.0
31-40	52.9	15.5	20.3	30.6	18.4	10.1
Over 40	54.6	16.0	22.2	33.9	16.8	14.4
Sex						
Male	55.1	15.9	20.9	30.5	18.7	8.3
Female	39.0	11.2	11.8	23.2	13.3	6.2
Ethnicity						
Hispanic	52.9	12.0	20.8	32.3	16.2	4.7
Other	54.3	15.5	19.5	28.4	18.6	16.4
Nationality						
U.S.	55.5	15.7	19.8	27.7	19.0	16.6
Other	33.9	12.3	17.0	34.4	15.3	4.8

Note: Includes prisoners first released after serving terms imposed by Federal district courts. Includes prisoners with life sentences and others whose sentence could not be determined. Excludes prisoners for whom offense category could not be determined. The number of cases missing data on average time served in 1990 was 195.

... Fewer than 20 cases.

Table 10. Offenders released from Federal prison in 1990: Average time served to first release, by race and selected offenses

Offense	Average number of months served in prison	
	White	Black
Violent offenses		
Assault	37.1 mos.	60.5 mos.
Robbery	55.6	65.0
Kidnaping	98.3	...
Property offenses		
Embezzlement	10.9 mos.	10.3 mos.
Fraud	14.5	14.5
Forgery	17.6	16.2
Counterfeiting	19.9	16.6
Burglary	24.7	25.4
Larceny	17.1	18.3
Motor vehicle theft	29.2	23.6
Arson	28.7	...
Transport of stolen property	28.6	28.3
Other property	9.9	8.8
Drug offenses		
Trafficking	25.9 mos.	26.1 mos.
Possession	10.1	10.9
Public-order offenses		
Regulatory offenses	18.2 mos.	17.6 mos.
Weapons	20.8	20.1
Immigration	4.8	10.6
Tax law	10.7	13.7
Bribery	10.7	...
Perjury	11.2	...
Escape	15.9	18.1
Racketeering and extortion	29.1	23.6
Mail or transport of obscene material	13.4	...
Traffic	2.3	2.1
Migratory birds	2.7	...
Other	1.8	...

Note: Includes prisoners first released after serving terms imposed by Federal district courts. Excludes prisoners with life sentences and others whose sentence could not be determined. Excludes prisoners for whom offense category could not be determined. In 1990, 186 cases were missing race or offense of offender.

... Too few cases for reliable estimate.

Hispanic offenders, who could be of any race, served prison terms similar to non-Hispanics in all categories except immigration law violations, for which Hispanics had a shorter average sentence.

Trends in time served

Offenders first released from prison in 1990 had served on average 29% more time than those released in 1984 (table 11). Although the time served in prison increased for every offense category, the largest increases were for regulatory offenses (from 13 months in 1984 to 18 months in 1990) and for drug offenses (from 22 months to more than 29 months). The proportion of the sentence served

prior to first release from prison increased from 69% in 1984 to 75% in 1990 (table 12). Overall, and for most individual offenses, the percentage of sentence served increased the most in 1989 and 1990, as the earliest offenders sentenced under the provisions of the Act left prison. As mentioned above, these offenders were not eligible for release to parole supervision.

Time served in nonguideline and guideline cases

It is too early to determine the precise effect of the sentencing guidelines on time served in Federal prison. Relatively few offenders sentenced to prison in guideline

cases have completed their terms, and those released in 1990 who were sentenced under the guidelines had received a sentence of less than 3 years.

The effect of the sentencing guidelines can be estimated, however, using the assumption that the prisoners earn the maximum permitted time off for good behavior. Prisoners sentenced under the guidelines to imprisonment longer than 1 year are awarded good-time credits. For each year of the sentence a prisoner can receive a credit of 54 days, unless the Bureau of Prisons determines that the prisoner has not complied satisfactorily with institutional regulations during the preceding year.

Table 11. Offenders released from Federal prison: Average time served to first release, by offense and year of release, 1984-90

Year of first release	Number of releases*	Average time served until first release						
		All offenses	Violent offenses	Property		Drug offenses	Public order	
				Fraudulent	Other		Regulatory	Other
1984	16,758	14.9 mos.	49.9 mos.	12.6 mos.	16.5 mos.	21.9 mos.	12.8 mos.	6.5 mos.
1985	16,606	14.9	49.9	12.3	17.3	21.2	14.9	6.4
1986	22,122	14.9	49.6	13.5	19.3	22.1	15.9	6.0
1987	22,315	16.3	48.8	13.3	18.8	23.0	16.3	7.1
1988	22,022	18.7	54.2	14.8	21.0	25.2	18.3	8.5
1989	23,748	18.7	52.6	15.5	18.4	27.7	17.7	8.0
1990	25,591	19.2	54.1	15.1	19.6	29.6	18.2	8.1

Note: Includes only prisoners first released after serving terms imposed by Federal district courts. *Includes prisoners with life sentences, those whose sentence could not be determined, and the following number of prisoners for whom offense category could not be determined: 1984 (403), 1985 (609), 1986 (522), 1987 (355), 1988 (220), 1989 (179), and 1990 (195).

Table 12. Offenders released from Federal prison: Percent of sentence served to first release, by offense and year of release, 1984-90

Year of first release	Number of releases	Average percent of sentence served until first release						
		All offenses	Violent offenses	Property		Drug offenses	Public order	
				Fraudulent	Other		Regulatory	Other
1984	16,751	68.6%	49.2%	67.3%	65.6%	58.4%	69.5%	78.2%
1985	16,581	69.3	56.1	68.4	68.2	59.9	68.0	77.2
1986	22,117	67.5	53.8	65.8	64.0	59.0	66.9	75.2
1987	22,312	67.9	56.8	68.3	64.7	59.9	68.9	76.1
1988	22,013	66.9	57.6	67.7	65.6	58.3	67.6	76.1
1989	23,725	70.8	59.0	69.8	69.7	61.9	73.4	79.9
1990	25,574	75.0	64.8	76.7	74.8	67.8	78.7	81.1

Note: Includes only prisoners first released after serving terms imposed by Federal district courts. Excludes prisoners with a life sentence and those whose sentence could not be determined.

if prisoners sentenced under the guidelines during 1990 receive full good-time credit, they will serve substantially more time, on average, than prisoners who were released during 1990 (table 13). Offenders sentenced under the guidelines for violent offenses in 1990 will serve 74 months in prison on average, compared to 54 months for offenders released in 1990. Federal drug offenders sentenced under the guidelines will serve 66 months in prison, compared to 30 months for prisoners released in 1990. Those convicted of nonfraud-related property offenses and regulatory public-order offenses will serve the same time as their counterparts in the past, on average, while those convicted of fraud crimes will serve slightly shorter terms (12 months as opposed to 15 months served by those released in 1990).

These differences between the time served by those released in 1990 and the time expected to be served by those sentenced under the guidelines in 1990 may reflect not only changes in the sentencing laws but also differences in offense and offender characteristics of the two populations.

Supervised release

As part of the broader reform of Federal sentencing procedures, the Sentencing Reform Act of 1984 eliminated the U.S. Parole Commission's authority to release prisoners in advance of the time imposed by the court. The Act did provide for "supervised release," a period of time during which prisoners would be under supervision in the community. The

sentencing judges must specify the length of supervision for such a release, if it is part of a sentence. Under the old system of parole supervision, released prisoners were required to be supervised in the community by Federal parole officers until the expiration of the court-imposed maximum sentence.

Judges are not required to impose supervised release. If they choose to do so, judges can sentence offenders to a term within a permitted maximum — up to 5 years for those convicted of the most serious felonies. The declared purpose of this change in law was to have the courts allocate resources for community supervision to only those offenders who were thought to require supervision, rather than to all persons who were released before their sentences expired.

Table 13. Time served by prisoners first released in 1990 and estimated time to be served by prisoners sentenced in guideline cases during the first half of 1990, by offense

Most serious offense at conviction	Time served by prisoners released during 1990	Estimated time that prisoners sentenced during the first half of 1990 are expected to serve ¹
Violent offenses	54.1 mos.	74.0 mos.
Property offenses	16.3	14.6
Fraudulent offenses	15.1	12.0
Other property offenses	19.6	20.5
Drug offenses	29.6	66.1
Public-order offenses	8.6	22.8
Regulatory offenses	18.2	18.5
Other public-order offenses	8.1	23.4
Number of prisoners	25,591	10,361

Note: The number of prisoners released during 1990 for whom offenses could not be classified was 18.
¹Assumes that all prisoners sentenced under the provisions of the Sentencing Reform Act of 1984 will earn the maximum amount of time off for good behavior.

Table 14. Offenders sentenced in guideline cases during the first half of 1990: Percent sentenced to supervised release and time to serve under supervision, by offense

Most serious offense at conviction	Prisoners sentenced in guideline cases, 1990	
	Percent sentenced to supervised release	Average length of supervision
All offenses	68.9%	42.1 mos
Violent offenses	88.7	40.6
Property offenses	43.0	31.8
Fraudulent offenses	39.1	31.2
Other property offenses	42.1	33.1
Drug offenses	86.5	49.2
Public-order offenses	63.9	30.5
Regulatory offenses	41.4	28.3
Other public-order offenses	68.7	30.8
Number of cases sentenced to supervised release	9,967	9,967

Sixty-nine percent of all persons sentenced under the guidelines during the first half of 1990 were required to serve terms of supervised release after prison (table 14). Violent offenders (89%) and drug offenders (87%) were the most likely to have a supervised release; public-order regulatory offenders (64%) and property offenders (40%) were the least likely.

The average time to be served under supervision in the community after release from prison, by all offenders so sentenced, was 42 months. The longest average supervision terms were imposed on persons convicted of violent crimes, especially murder (39 months), robbery (44 months), kidnapping (52 months), and drug trafficking (50 months).

Congress gave Federal courts the authority to extend terms of supervised release up to the statutory maximum number of months and to terminate supervision early. The courts may also revoke supervision for violations of the terms and conditions of release and send offenders back to prison.

Methodology

Abt Associates Inc. calculated the tables in this report for the BJS Federal Justice Statistics Program (FJSP), based on data provided to the FJSP by Federal agencies. The Administrative Office of the U.S. Courts and the Bureau of Prisons provided the source files for this report.

Because some judges contested the constitutionality of the Act, a small proportion of cases that were eligible for sentencing under the guidelines were sentenced under the old law. In January 1989 the Supreme Court upheld the Act's constitutionality in *Mistretta v. U.S.*, Mo. 1989, 109 S.Ct. 647, 448 U.S. 361.

Offenders sentenced under the old law prior to *Mistretta* are excluded from tables of guideline cases. Also excluded are offenders whose cases combined offenses committed both before and after the effective date of the Act. The term *guideline cases* refers to all other offenders whose offenses were committed after the effective date of the Act, regardless of whether the imposed sentence actually fell within the guideline range.

The classification of offenses is based primarily upon offense codes established by the Administrative Office of the U.S. Courts. Offenders are classified according to their most serious charge at conviction.

Sentences to incarceration include all imprisonment terms of longer than 4 days, regardless of whether this term was concurrent or consecutive with a period of probation, a fine, or any other condition.

The average length of imprisonment sentences for tables 2 and 4 includes only offenders who received sentences limited by an imposed maximum term and excludes offenders given a life sentence or a death sentence. The statistic tabulated is the mean value of the maximum term to be served, considering all consecutive and concurrent sentences.

In tables 1 and 2 preliminary data for 1990 are based only on transactions recorded prior to April 1, 1991.

In tables 3 and 4, data from the Federal Probation Sentencing and Supervision System files are used for the 1988-90

period because they indicate whether offenders were sentenced under the guidelines.

In tables 5 and 6, data from Federal Probation Sentencing and Supervision System files are used because they indicate whether offenders were sentenced under the guidelines. The tables may not correspond to those in other Federal Justice Statistics Program (FJSP) publications, which present the same categories from other source files.

Tables 7 through 12 are computed from data that the Bureau of Prisons supplied to the FJSP. Prisoners are classified according to the offense associated with the longest sentence actually imposed. Offense categories are based on combinations of offense designations used by the Bureau of Prisons. They are similar to the categories in other tables, but may not be directly comparable.

Tables 7 through 12 include only prisoners committed by U.S. district courts for violations of the U.S. Code. Other prisoners, such as probation and parole violators, and other types of offenders, such as those from the military, District of Columbia, or States, are excluded. Unlike BJS publications concerning State prisoners, which exclude prisoners serving sentences under 1 year, tables 7 through 12 include Federal prisoners who received sentences of any length. Offenses for a few offenders could not be classified; these offenders are excluded from the tables.

Time served is the number of months from the prisoner's arrival into custody of the Bureau of Prisons until first release from prison, plus any jail time served and credited. The calculation is the same as that currently used by the Bureau of Prisons, but the population to which the calculation is applied differs, as discussed above.

In table 13, estimates of average incarceration time to be served by those sentenced during the first half of 1990 were computed by assuming that offenders sentenced to a term of 1 year or less would serve their full court-imposed term, while those given a sentence that exceeded 1 year would receive the maximum amount of time off permitted for good behavior (good time) and would thereby serve 85% of their imposed term.

This Bureau of Justice Statistics Special Report was prepared by Douglas McDonald and Kenneth Carlson of Abt Associates Inc. They were assisted by Jan Chaiken, Frederick DeFriesse, Karen Rich, Irma Rivera-Veve, Laura Evers, Paul Schelman, and Milla Ghosh. Carol Kaplan, assistant deputy director, reviewed this report, and Tom Hester edited it. Marilyn Marbrook, Tina Dorsey, Jayne Pugh and Yvonne Boston produced the report.

June 1992, NCJ-134727

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**Special
Report**

3 STRIKES and YOU'RE OUT

POINT

INITIATIVE 593

COUNTERPOINT

WYCOMA (10-11-85)
By Ida Ballasiotes
and Dave LaCourse

Laurie, 31, had just left a work-training class in Kent when a stranger grabbed her from behind. He forced her into her car, holding a knife against her body and ordered her to drive. After directing her behind an abandoned building, he turned up the radio to muffle her screams. Then he forced her down onto the seat and began assaulting her. During the rape, he shoved the knife into her mouth, cutting her, and threatened to plunge it down her throat.

Laurie may not have known her attacker, but the police did. His long string of felony convictions dated back to 1975. His attack on Laurie came less than two weeks after his probation period ended for the last conviction. He had a total of 11 separate prior convictions, including second-degree assault, sexual abuse of a child, sodomy (three counts), first-degree theft, resisting arrest (twice) and first-degree forgery, among others.

His sentence for this brutal kidnapping and rape, even with such an extensive record, was only 12 years and 30 months — not counting time off for "good behavior." He'll be returning to a neighborhood near you around the end of the decade.

Unfortunately, this is not an unusual prison term. Current law recommends sentences that are far lower than most people expect. For example, the sentence for a rapist convicted on his third attack is just 14 years, two months.

For child molesters, the law is even more lenient. A third conviction for first-degree child molestation dictates a recommended sentence of a year, nine months, six months. And if you've been wondering why robberies are increasing, you need only look at how we punish the crime. If someone is convicted of first-degree robbery, his sentence is just five years — even if his rap sheet already contains two violent felonies.

Under initiative 693, Laurie's attacker and other three-time violent criminals would receive a mandatory sentence of life without parole. Which penalty system strikes closer to your sense of justice?

Ida Ballasiotes is a Republican state legislator from Mercer Island. Dave LaCourse is campaign coordinator for Initiative 593.

New weapon against crime or a costly formula for injustice?



Initiative 693 is refreshingly clear. It states that anyone convicted on a third occasion of a violent crime will receive a mandatory sentence of life in prison. No parole. No probation. No more excuses. Three strikes and you're out.

Only the "worst of the worst" could ever qualify under initiative 593. It would nail only 40 to 70 hard-core criminals per year. But these few chronic criminals are responsible for large amounts of violent crime.

A study by Marvin Wolfgang, criminologist at the University of Pennsylvania, showed that just 7 percent of the criminals committed about 66 percent of violent crime. This included 75 percent of the rapes and robberies and almost all of

the murders. Furthermore, these hard-core individuals were rarely punished. They avoided arrest for about a dozen crimes for every crime that led to an arrest. Project Triggerlock, a program of mandatory federal sentences that targets armed drug traffickers and career violent criminals, pegged the figures at 6 percent of the criminals committing 70 percent of the violent crime.

These high-rate, repeat offenders have not only shown society a pattern of violence, but also represent a real danger of returning to crime if released. The Bureau of Justice Statistics cites the odds of recidivism for three-timers at 76 percent. The actual number of criminals returning

Please see Yee, G6

By Tom Wales
and Robert Kastama

Initiative 593 is presented as requiring life in prison without parole upon a third conviction only for "the most serious" offenses. When we hear this, we think of crimes like murder and forcible rape. In fact, 693's list of "most serious" offenses is extremely long. Consider this scenario:

"Rick," a 19-year-old, gets into a very bad argument at home. His father orders him to leave the house. Rick grabs a knife from the kitchen, waves it in front of his father and says, "Just try to make me leave." Father calls the police. Rick is convicted of second-degree assault and gets a mid-range sentence of 6 months.

At age 20, he and a friend rob a convenience store. Nobody has a weapon, but Rick sticks his finger in his pocket as if he did. He's convicted of second-degree robbery and sentenced to a year and a month.

Nine years later, at age 30, Rick goes to a tavern with his friends after work. They drink several beers, and Rick has a blood alcohol level of .12. Driving home over a familiar road, he goes too fast and rear ends another car at 35 mph, causing a broken arm and collarbone to the other driver. He is convicted of vehicular assault.

Rick's sentence for vehicular assault under 693: mandatory life imprisonment, without the possibility of parole. For Rick, that's about a half century of prison. The judge may not consider Rick as an individual or even look at the specific circumstances of the offense.

These types of offenses should be punished. But the punishment should fit the crime. That can happen under the laws we have now; under 693, it won't.

The long list of crimes subject to 693, combined with the complete lack of any judicial discretion, makes 593 a formula for injustice. We should reject out of hand the notion that pure-matchers should be indiscriminately catalogued with our worst violent predators and sentenced to life behind bars.

Sentencing laws for the worst crimes are already tough. The Leg-

Please see Ma, G6

Tom Wales has been a public prosecutor for 10 years. Robert Kastama is former superintendent of the Washington State Penitentiary at Walla Walla.

No

Continued from G1

ialature has been more than willing to respond to citizen outrage about truly serious, violent criminal acts with laws that provide severe punishment, meted out by a judiciary that has no tolerance for violent crime.

We already can put the most serious criminals in prison for many years. Under current law, those convicted of three serious, violent felonies are already getting "standard range" sentences that keep them in prison until their 60s and longer.

In addition, laws we have now allow a judge to impose a sentence far above the standard range on any crime where there are severe aggravating factors.

This power includes, in cases of sex crimes, the ability to go far above the "standard range" when there is evidence that the of-

fender cannot be treated and will be a future danger. In addition, the Community Protection Act allows indefinite commitment of especially dangerous sex offenders even after they have served their entire prison sentence. And, for those convicted of aggravated first-degree murder, the sentence is either life without parole or death.

Current law already is tough on those who commit the very serious offenses. Unlike 593, however, current law also retains the important element of judicial discretion to assure fairness.

593 won't increase public safety. Proponents of 593 argue that a small group of offenders is responsible for a disproportionate amount of crime. What they don't tell you is that identifying these offenders is not as easy as we'd like to think. Social scientists who have researched this issue have found that, while some offenders are more active than others, it is very difficult to identify

this group on the basis of its record alone.

So what happens if 593 passes?

People who commit three serious, violent crimes, who are already getting long sentences, will remain in prison for a few more years, into their 70s and 80s — ages when they are least likely to commit another crime.

This probably won't cause even the smallest reduction in the rate of serious, violent crimes.

At the other extreme, those convicted of crimes like second-degree assault, second-degree robbery or vehicular assault will see their sentences for a third offense increase dramatically, by as much as 40 or more years.

Their sentences will be lengthened even though we know that criminal activity drops precipitously as people enter their 40s and 50s, and even though we know we can't use conviction records to predict future criminal behavior.

593 costs too much. The propo-

nents of 593 say we don't need to worry about money now; added costs only come later, after those convicted under the law start serving the additional time 593 would require.

But the state will need to start preparing now for the tremendous future tax burden under 593. Washington already has the fastest-growing prison population in the country. Passage of 593 would mean hundreds more old-age "lifers" in our prisons and, eventually, more, expensive prison construction.

The current cost of housing a prisoner is about \$25,700 annually. This figure would be even higher for the older prisoners serving under 593 who would need expensive geriatric care. This annual amount doesn't include the price of building new prison space, at about \$100,000 per bed.

Costs also would rise dramatically at the county level, where these prosecutions would occur.

With 593, we could expect fewer guilty pleas and more — and longer — trials. That would mean far higher costs for already expensive jails, prosecutors and public defenders.

In times of scarce and finite resources, we need to ask: Is keeping such offenders in prison for the rest of their lives the best way to protect public safety? Wouldn't the money be better spent on confining truly violent and dangerous offenders, and on measures that prevent crime?

Initiative 593 would cause great injustice. The alleged benefits would not be there. We already have very tough sentences for the worst crimes, especially upon a third conviction, and 593 would not increase our chance of incapacitating the "most serious" offender. Initiative 593 would cost much more than advertised. It is bad and expensive public policy and should be rejected by the voters of Washington.

Yes

Continued from G1

to crime must be even higher since most violent crimes do not lead to an arrest, conviction or incarceration.

Not surprisingly, police groups and crime victims are among the strongest supporters of Initiative 593. These groups are joined by many prosecutors, business leaders, the Washington state grange and sportsmen's organizations. Supporters gathered the fourth-highest number of signatures ever for an initiative. The 290,000-plus signatures from around the state were about 110,000 more than required for ballot placement.

Despite this widespread support, narrow interest groups have been trying to kill the initiative by misleading the public. For example, they claim that tougher sentences are not working in other states. In truth, there are no other states with a law substan-

tially similar to this proposal. However, a pilot program to get "serious habitual offenders" off the streets in Oxnard, Calif., during the early 1980s worked very well in reducing that city's violent crime. By 1989, after all of the targeted criminals were locked up, "murders declined 60 percent, robberies by 40 percent and burglaries by 29 percent."

The career criminal cares about the sentence he will face if he reoffends. Many inmates in this state have requested information on the "Three Strikes" proposal. In fact, as word of this initiative spread, inmates from as far away as Georgia and Florida have asked about this "get tough" measure.

Critics attack the initiative as being overly broad, but the facts do not support this contention. An independent "worst-case scenario" study completed by the Sentencing Guidelines Commission confirmed the narrow focus of the initiative. It found that for fiscal 1991, only an estimated 63 offenders of the 16,534 felony

sentences were covered under the initiative. A proposal that affects .4 percent of felony sentences and only 2.5 percent of violent offenders in a given year is hardly a show-up approach.

As far as costs are concerned, they are minuscule.

The Department of Corrections worst-case estimate of \$12 million over the first six years for incarcerating these people is not a budget buster. In fact, it is about one-tenth of 1 percent — .1 percent.

A national study by Dr. David Cavanagh for the National Institute of Justice and the Wisconsin study by professor John Dilullo at Princeton calculated the costs of crime versus locking an individual up to prevent crimes. Both studies found the costs of incarceration were 1/3 (or less) the costs of turning offenders loose. A national study by Edwin Zedlewski focused calculations on more serious offenders and found that it was 17 times more expensive to release proven offenders than keep them off the streets.

Our critics claim that life without parole sentences would needlessly hold criminals long after they are a danger to society. They fail to mention that the initiative specifically retains the governor's powers for granting a pardon or clemency for an offender who is truly no longer a threat.

Undaunted, the opponents of 593 try to trivialize some of the crimes covered under the initiative. These allegations underestimate the seriousness of these crimes.

Assault in the second degree involves deadly weapons or serious bodily injuries, not your average "bar fights." Just ask the family of Matthew Parsons, who was beaten and shaken into a coma in 1991 over 10 consecutive days of abuse by his father. Matthew was sometimes tied up and was admittedly hit with his father's hands, belt, and a kitchen spoon more than 40 times. The attack was so vicious that the pupils of his eyes were blown out. The charge and conviction —

only assault in the second degree. Robbery in the second degree is not the simple theft of a purse, but a violent confrontation. Just ask Ann, a Federal Way woman beaten repeatedly on the head, neck and back in front of her young child in broad daylight in the parking lot of a local department store. Her attacker almost got away twice — first, when the system initially failed to pursue him except at her urging and, second, when he tried to plead down to a lesser crime of nonviolent theft.

Letting repeat offenders out merely because their sentence has been completed has proven to be far too expensive in additional crimes, human suffering and expensive civil lawsuits by victims. We have the opportunity to reduce the numbers of victims caused by habitual criminals this November by voting YES on Initiative 593.

Allowing more rapes, robberies, serious assaults, child molestations and homicides after the pattern of violence becomes clear is unjustifiable.

INSIDE POLITICS

Times 10.12.93

• **Giving Mike the business:** Publicly, Gov. Mike Lowry claims everything is hunky-dory between his administration and the business community.

Privately, it's a different story. Inviting bank and security lobbyists to his office a few weeks ago, he griped that they weren't telling their bosses about how well the industry fared during the last legislative session.

Lowry was particularly agitated because one CEO, Philip Campbell of US Bank, voted to recommend the Seattle Chamber of Commerce endorse Initiative 602. That's particularly galling since she is a Washington State University regent — and apparently not buying Lowry's argument that 602 will devastate higher education.

• **Trust us, we've been there:** Opponents of 602 are tugging on the provincial hearts of Washington voters pretty hard.

They harp on the evil influence of out-of-state tobacco companies that are bankrolling Initiative 602. And they keep predicting that passage will make our state vulnerable to the dire budget straits of California, brought on by the famous tax-rollback Proposition 13.

They should know. Two top staffers are both recent arrivals from Sacramento. Stephanie Bradfield, who took over as Committee for Washington's Future campaign manager last week, moved north about three years ago. Andy Grow, press secretary, was an aide to a county commissioner in California until moving here in the last few months.

The Dirty Little Secret About Our Crime Problem

Locking criminals up solves it

By Eugene H. Methvin

One of America's best-kept secrets is that our huge investment in building prisons—an estimated \$30 billion in the last decade to double capacity—has produced a tremendous payoff: Americans are safer and, as the Justice Department reported in 1991, crime has fallen steadily.

Moreover, some pioneering research and police field testing suggest that if we again double the present federal and state prison population—to somewhere between 1 million and 1.5 million—and leave our city and county jail population at the present 400,000, we will break the back of America's 30-year crime wave.

Liberal opponents will howl, of course. They have convinced many Americans that imprisonment is a failed policy and don't want to hear otherwise. The Edna McConnell Clark Foundation bombards influential media, declaring: "Our prison population has gone up by more than 200 percent in the last 15 years with no resulting decrease in crime." The director of the American Civil Liberties Union's National Prison Project, Alvin Bronstein, writes that "no jurisdiction has ever . . . had an impact on crime rates by an expanded incarceration policy." Washington Post columnist Colman McCarthy insists that prisons don't succeed but "work-release or community-service programs, structured therapy, in-prison job training, restitution, house arrests with electric monitoring and halfway houses do."

Other pundits and experts will point out that a numerical correlation—between increased incarceration and decreased crime rates—does not prove a causation and that other demographic variables may be at least partly responsible for the trend. They are usually the same people who nonetheless find correlations between crime and joblessness, poverty and illiteracy and who argue that public money is better spent addressing these "root causes."

Despite our high prison population, punishment for crime is near an all-time low, Texas A&M Univer-

sity economist Morgan O. Reynolds observes. He did a 38-year comparison of serious crime and probable punishment—that is, the expected days in prison as determined by the median prison sentence for all serious crimes and weighted by probabilities of arrest, prosecution, conviction and imprisonment. He charted the two lines from 1950 to 1988. His chart shows a big horizontal "X."

Probable punishment turned sharply down in 1954, and crime soared. Thus, in 1950 we had 1.8 million serious crimes, and the average criminal risked 24 days in prison. By 1964 imprisonment risk dropped in half, to 12.1 days, and

“ We've spent an estimated \$30 billion to double our prison population in the past decade, and yet today our prisons crowd in perhaps 140,000 more than they should. ”

crimes had increased to 4.6 million. By 1974, the criminals risked a mere 5.5 days in prison and America had 10.3 million crimes. Finally, in 1975, punishment turned slightly up, and the crime increase slowed. In 1988, the prison risk was 8.5 days and the number of crimes was 13.9 million.

"Why is there so much crime?" asks Reynolds. "The main reason is that crime pays for millions of criminals and potential criminals. Only 17 in 100 murders result in a prison sentence. The imprisonment rate for rape is 5.1 percent, for assault 1.5 percent and for auto theft only 0.3 percent Even though police make 13 million arrests each year, less than 2 percent of them result in a prison sentence."

(over)

A related analysis produces similar conclusions. During the 1960s, total prison population fell from a then-historical peak of about 219,000 in 1961 to about 195,000 in 1968. During the same decade, crimes soared from 3.4 million in 1960 to 8 million in 1970, according to the FBI's Uniform Crime Reports (UCR) based on incidents reported to police.

Only after 1972 did the prison population start upward, surpassing the 1961 peak in 1975, then soaring to 771,243 by last Jan. 1. And, wonder of wonders, crime declined significantly—whether measured by the FBI's long-standing UCR or by the Justice Department's National Crime Survey of households conducted by its Bureau of Justice Statistics (BJS). The distinction between the two surveys is important. The FBI's UCR, begun in 1929, includes only crimes reported to police; in 1973 Justice began its scientific BJS surveys to estimate actual victimization totals, including crimes not reported to police—which the department estimated at 62 percent in 1990 (and more than half of all violent crimes). The two sets of figures frequently produce seeming contradictions and must be interpreted carefully. For example, the latest BJS report shows that the percentage of assaults reported to police increased from 43 to 47 in 1989-90—which alone would produce an increase of almost 10 percent in the FBI's reported assaults even if there were no actual increase.

Moreover, there are differences in crimes. Half or more murders and aggravated assaults are once-in-a-lifetime crimes of passion that involve acquaintances; robbery and burglary are almost always crimes of deliberation by predators who repeat and repeat and repeat. I rely more heavily on the latter two categories than on others when measuring the effectiveness of imprisonment rates. There are other variables as well. The crack cocaine epidemic, which began in 1985, clearly has produced an increase in criminality since then—including murderous battles over turf. Rape and theft remain the most underreported crimes of all, though efforts by police and victims groups to encourage rape reporting are having some success. And much depends on what year is used as a baseline.

Given these caveats, it is not surprising that the FBI could report a few months ago that the number of reported crimes in the nation in the first half of 1991 increased 2 percent over the first half of 1990, continuing an upward trend evident since the mid-1980s—while the BJS could report at the same time that actual criminal victimization (reported and unreported) decreased 3.9 percent last year, continuing a "downward trend... that began a decade ago. [emphasis added]" Contradictory? Not really. They are describing different groups of crimes over different periods of time.

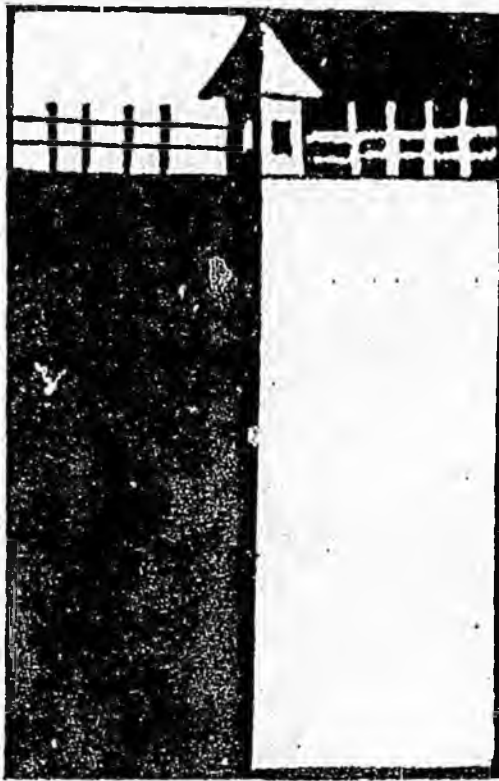
Both surveys, in fact, show a long-term downward trend. Even without adjusting for increased population, increased reporting to police or the crack phenomenon of the late 1980s, the FBI's reported murder rate for the 1981-90 decade declined 8 percent and the burglary rate 26 percent—though the robbery rate increased 5 percent. The broader BJS survey documents an overall 9.2 percent decline in violent crimes since its first survey in 1973; robbery is down 16 percent, burglary 41 percent and rape 33 percent. In sum, the BJS found, the rate of crimes against people was 25 percent lower in 1990 than in 1973 and the rate of household crimes 26 percent lower. The number of personal or household crimes, it added, fell from 41 million in 1981 to 34 million in 1990—a decline of 7 million in a decade.

Michigan, California and Texas in the 1980s have conducted revealing demonstrations of contrasting "deprisonization" and "lock 'em up" policies.

Case 1. Michigan tried it both ways. In the late 1970s, legislators and voters refused to build new prisons, and the state soon was forced to deal with severe overcrowding. The governor granted emergency releases to 20,000 inmates in four years, some more than two years early. Michigan became the only state to record a prison population decrease in 1981-85, dropping from 15,157 in 1981 to 14,604 in 1984 but then jumping sharply to 17,755 in late 1985 after a Detroit Free Press series on early release of prisoners.

The violent-crime rate for Michigan reported by the FBI soared 25 percent, and public outrage mounted. Starting in 1986, a crash prison-building program doubled inmate population in five years. And, wonder of wonders, Michigan's crime rate dropped. Robbery and burglary rates fell more than 25 percent; in Detroit the decline was even more impressive—burglaries down 32 percent, robberies 37 percent. (Murders decreased at lesser rates—12 percent in the state and 4 percent in the city, an apparent anomaly probably explained by new and deadly warfare among crack cocaine gangs in Detroit, as in Washington.)

Success in Michigan wasn't cheap. The state voted \$888 mil-



BY KUN TIAN FOR THE WASHINGTON POST

lion to build and expand prisons by 1992, operating them costs additional millions each year. But there were savings too. In 1988, U.S. Sentencing Commission criminologist Mark A. Cohen calculated the cost of 10 crimes to their victims by combining direct costs such as lost property and wages with estimates of pain, suffering and fear based on known jury awards. Cohen calculated the cost of a rape at \$51,050, a robbery at \$12,594, an assault at \$12,028, a burglary at \$1,372. By this measure, the decrease in just two prominent "fear" crimes—robberies and burglaries—saved Detroiters \$113,546,000 in a single year.

Case 2. Since 1982 Californians have approved \$3.7 billion in bonds to build prisons. From 1980 to January 1991, inmate population quadrupled from 22,600 to 98,000. By the 1990s, murder, rape and burglary rates fell a whopping 24 percent to 37 percent from their 1980-82 peaks—which translates as an annual reduction of nearly a thousand murders, 16,000 robberies and a quarter of a million burglaries.

Case 3. Conversely, Texas learned that skimping on prisons inflates crime disastrously. Prison costs had soared because of a burgeoning inmate population, a doubling of the guard/prisoner ratio and a federal judge's order to make costly changes—some indisputably necessary, such as better medical care, but others of dubious value, such as free college courses. The yearly cost per-prisoner would eventually rise from \$2,920 to \$14,000 in the '80s, but in an early effort to slow it, the legislature in 1983 adopted a turn-'em-loose-faster approach. Thus, while the imprisoned convict population grew by 2 1/2 times, the average term served dropped from 55 percent of sentence to less than 15 percent and the number of convicts on parole increased by 21 times.

Texas A&M professor Reynolds calculated the consequences. The expected punishment for a serious crime dropped 43 percent (from 13 days to 7.4) from 1980 to 1989, though for the nation as a whole it rose by about 35 percent (from 5.5 days to 8.8) in roughly the same period. Factoring in the probability of arrest, conviction and imprisonment, a potential criminal in Texas today risks little. Fewer than one out of every 100 serious crimes results in a prison term, and those who land in prison serve an average of only 10 months. For murder an offender risks 24 months, for rape 5.3 months, for robbery 2 months and for burglary 7 days.

Result: The crime rate soared 29 percent in the 1980-89 decade, though nationally it dropped 4 percent, making Texas the second most crime-prone state. In 1980 no Texas city had ranked in the 20 worst American cities in property crimes; in 1988, 13 of the nation's worst 20 cities were in Texas.

If increased incarceration cuts crime, how many convicts should we keep locked away in this "land of the free"? When can we stop? And how much can we afford? We've spent an es-

timated \$30 billion to double our prison population in the past decade, and yet today our prisons crowd in perhaps 140,000 more than they should.

University of Pennsylvania criminologist Marvin Wolfgang compiled arrest records up to the 30th birthday for every male born and raised in Philadelphia in 1945 and 1958 and published a 1990 study comparing the two cohorts. In both, about 35 percent of the young men collected one arrest and most never tangled with the law again. The real hard-core predators were an astonishingly small group of repeaters who were rarely punished; just 7 percent of each age group committed two-thirds of all violent crime, including three-fourths of the rapes and robberies and virtually all the murders. Moreover, this 7 percent not only had five or more arrests by age 18 but went on committing felonies and, for every arrest made, got away with about a dozen crimes.

Incredibly, only 14 percent of the first five arrests resulted in punishment; in the other 86 percent, no charges were brought. Even the 14 killers among the 1945 cohort averaged an appallingly lenient four years behind bars. Yet when punishment was tried, it worked. The few who were imprisoned committed fewer and less serious crimes afterward.

What can be done? Wolfgang's studies suggest that about 75,000 new young, persistent criminal predators are added to our population every year. They hit their peak rate of offenses at about age 16. Locking up all of them from the time of a third felony conviction until, say, age 30 would almost double our present prison population to about 1,230,000. But such long-term imprisonments may not prove necessary if punishment is applied early and consistently.

Another measure of the size of our hard-core criminal population comes from a Justice Department program begun in 1983 and based on the Philadelphia findings. Justice persuaded 20 cities to have their police, prosecutors, schools and welfare and probation workers pool information and focus on the worst offenders, generally youngsters with three or more arrests by age 18. A "serious habitual offender" (SHO) gets priority attention from probation authorities, and if he is arrested anew, investigators and prosecutors throw the book at him with escalating penalties (coupled with rehabilitation efforts) in an effort to stop the revolving door.

In all 20 cities, SHOs consistently accounted for less than 2 percent of all juveniles arrested, or about 18 to 25 youngsters per 100,000 population. Thus, out of 250 million Americans, we would have a maximum of maybe 62,500 SHOs between their 14th and 18th birthdays at any one time. Putting them all behind bars until 30 after the third offense—or even permanently, as is the law in many states, though rarely enforced—would be a relatively inexpensive way to cut a huge chunk out of our still atrocious crime rates.

California's only participating city, Oxnard, began a concerted effort to get the city's active SHOs behind bars, and in 1987 violent crimes dropped 38 percent, more than double the drop in any other California city. By 1989 all 30 of Oxnard's identified active SHOs were behind bars—almost exactly the predictable total for a city of 130,000—and its citizens experienced the lowest crime of a decade. Murders declined 60 percent, robberies 41 percent and burglaries 29 percent.

Based on these social yardsticks, it is hazardous to guess that America's hard-core violent repeaters number upwards of a million. That in turn suggests that if we increase federal and state prison populations to between 1 million and 1.5 million and keep our jails (usually operated by cities and counties for misdemeanor sentences of a year or less) at the present level of about 400,000, we may see a sharp drop in our horrendous crime rates.

And what about those alternatives to Imprisonment Colman McCarthy touts?

The American Institutes for Research in the Behavioral Sciences, a non-profit Washington think tank, studied 350 high-repeat Illinois delinquents and found imprisonment was significantly more effective in reducing subsequent arrests from their previous levels. Judges committed the 159 worst prospects to incarceration and sent another 191 to foster or group homes for community "treatment" programs; the latter recorded subsequent arrest reductions of 56 percent to 68 percent while those imprisoned registered 71 percent fewer. Moreover, those not imprisoned were free to continue committing untold crimes while in "treatment."

In short, lock 'em up and you slow 'em down. Turn 'em loose and you pay an awful price.

Eugene Methvin, a Reader's Digest senior editor, has reported on the U.S. criminal justice system for more than 40 years. He served on the 1983-86 President's Commission on Organized Crime.

Report to the Nation on Crime and Justice

Second edition

NCJ-105506, March 1988

Repeat offenders are responsible for much of the Nation's crime

Who are career criminals?

The term "career criminal" has been used to describe offenders who—

- have an extensive record of arrests and convictions
- commit crimes over a long period of time
- commit crimes at a very high rate
- commit relatively serious crimes
- use crimes as their principal source of income
- specialize (or are especially expert) in a certain type of crime
- have some combination of these characteristics.

Such criminals are often described as chronic, habitual, repeat, serious, high-rate, or professional offenders.

Some criminals exhibit all of the above characteristics, but most do not. Some high-rate offenders are arrested frequently and others rarely. In fact, some low-rate offenders are arrested more often than some high-rate ones. The frequency with which an offender commits crimes varies over time. Thus, an offender could be high-rate one month and low-rate the next. Similarly, the offender who commits a serious crime may or may not be committing serious or other crimes at a high rate. And some high-rate and/or serious offenders have no or almost no official prior record of involvement in crime.

A few criminals commit many crimes

Most offenders commit crimes at low rates, but a few do so at very high rates.

Studies in Philadelphia, Pennsylvania; Racine, Wisconsin; and Columbus, Ohio, show that 23 to 34% of the juveniles involved in crime are responsi-

ble for 61 to 68% of all the crimes committed by juveniles. In a national sample of U.S. youths age 11-17, the 7% who were the most active offenders committed about 125 crimes per year each, whereas the 55% who were the least active committed an average of fewer than 8 per year.

The same disproportionate pattern occurs with adults. The Chaikens' study of nearly 2,200 offenders coming into California, Michigan, and Texas jails and prisons found that 50% of the robbers committed an average of fewer than 5 robberies per year, but a robber in the most active 10% committed more than 85 per year. And, while 50% of the burglars averaged fewer than 6 burglaries per year, the most active 10% averaged more than 232 per year.

A Washington, D.C., study reported that 24% of all the adult arrests were attributable to just 7% of the adults arrested. Similarly, a 22-State study by BJS of young parolees revealed that about 10% of this group accounted for 40% of their later arrest offenses.

High-rate offenders seldom specialize in one type of crime

Instead, they tend to commit a variety of misdemeanors and felonies as well as both violent and property crimes. They also often engage in related crimes, such as property and drug offenses.

Few repeat offenders are full-time criminals

Most chronic offenders have irregular sources of income. And they usually commit crimes during the periods they are not employed. However, some prefer a "criminal career" to conventional employment.

Juvenile delinquency often foreshadows adult criminal activity

Most juvenile delinquents do not go on to become adult criminals, but many do continue to commit crimes.

- In Marion County, Oregon, 30% of the juvenile boys convicted of serious crime were later convicted of serious crimes as adults.
- In Chicago, 34% of the boys appearing in juvenile court later went to jail or prison as adults.

- The criminal records of 210 serious California juvenile offenders were examined to find out how many crimes they committed from age 18 to 26. Of this group, 173 (86%) were arrested for 1,507 crimes, including:

- 5 homicides
- 12 rapes
- 20 other sex offenses
- 40 weapon offenses
- 88 robberies
- 131 assaults
- 166 drug offenses
- 211 burglaries.

The more serious the juvenile career, the greater the chances of adult criminality

In New York City, 48% of the juveniles who had only 1 year of juvenile activity had one or more adult arrests and 15% were serious adult offenders. In contrast, 78% of those with lengthy juvenile careers were arrested as adults and 37% were serious adult offenders.

Long-term studies show that the more often a person is arrested, the greater the chances of being arrested again

For example, a study of Philadelphia males born in 1945 found that—

- 35% were arrested at least once
- 54% of those with one arrest had a second arrest
- 65% of those with two arrests had a third arrest
- 72% of those with three arrests had a fourth arrest.

A study of 539 former Illinois prison inmates showed that 53% of those with one incarceration were arrested within 29 months of their release date compared to a 76% recidivism rate among those with 3 or more incarcerations.

The more often an offender is arrested before going to prison, the more likely and the sooner that person will be arrested after his or her release

A BJS study of young parolees found that 69% were rearrested within 6 years of their release from prison. However, the rearrest rate was 93% among those with 6 or more prior arrests compared to 59% for those with one prior arrest. The median time between release from prison and the first subsequent arrest was 7 months for those with 6 or more prior arrests versus 17 months for those with one prior arrest. Similarly, the more often an offender was arrested before going to prison, the more likely and the sooner he or she was reconvicted and reincarcerated after being paroled.

Criminal history, age, and drug use are among the best correlates of future criminality

The combination of prior adult and juvenile record, age, and drug use provides a better than chance prediction of subsequent criminal activity. Hoffman found

that when Federal inmates were placed into risk groups based on these factors, 94% of the persons predicted to be of least risk to society had a favorable 2-year parole outcome vs. 41% of those predicted to be among the worst risks.

The same variables also predict recidivism among State prisoners. For example, Klein and Caggiano found that 21% of a group of inmates in California who were forecast to have a relatively low likelihood of committing future crimes were back in jail or prison within 2 years of their release date vs. a 52% reincarceration rate in the predicted high-risk group.

After their release from custody, offenders continue to commit crimes and often serious crimes

Studies show that 10% to 20% of defendants on pretrial release are arrested while awaiting trial. A study of California offenders by Petersilia et al. found that more than 45% of the persons convicted of crimes such as robbery, burglary, assault, and theft were already on adult or juvenile probation or parole at the time of their conviction.

This study also found that 63% of those given felony probation were rearrested within 2 years of their release date. The recidivism rate was 72% among similar defendants who went to prison. In both groups more than 25% of the new filed charges were for violent crimes (homicide, rape, assault, and robbery).

Nationally, about half the inmates released from State prison will return to prison. And most of those who return will do so within 3 years of their release date. In 1979, 61% of the 153,465 males admitted to State prison had at least one prior incarceration.

The older the offender at the time of arrest, the longer he is likely to continue his criminal career

One study shows that an 18-year old who commits an Index crime usually stops committing crimes within 5 years of the arrest date but a 35-year old who has been committing crimes since age 18 usually goes on committing crimes for another 10 years. However, 18-year olds who commit murder or aggravated assault tend to have criminal careers of about 10 years duration.

Despite repeated convictions and incarcerations, many offenders continue to believe they can get away with committing crimes

The Chaikens asked inmates in three States, "Do you think you could do the same crime again without getting caught?" The answer "yes" was given by—

- 50% of the California inmates
- 34% of the Michigan inmates
- 23% of the Texas inmates.

Motivations for crime range from thrill-seeking to need for money

Juveniles who went on to have adult criminal careers have stated that their main motives for crime were thrill-seeking, status, attention-getting, or peer influence, according to a RAND Corporation study of habitual felons. As criminals approach adulthood, the reasons cited shift to financial needs, especially to money for drugs and alcohol.

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Violent Crime Strikes a Chord Coast to Coast
'3-Time Loser' Laws Find Diverse Support

By Pierre Thomas
Washington Post Staff Writer

New York Gov. Mario M. Cuomo and California Gov. Pete Wilson, two men who stand at opposite ends of the country and the political spectrum, recently gave surprisingly similar speeches within hours of one another. They both proposed to lock up - for life - any person convicted of three violent felonies.

"Violence and crime have taken on a terrible urgency and we are determined to move quickly and decisively to protect our people," said Democrat Cuomo in his State of the State address. "In baseball, it's three strikes and you're out. Here, it's three strikes and you're in for life. Life imprisonment without parole."

Soon after, Republican Wilson told Californians:

"Every Californian has a fundamental right not to become a crime victim . . . and not to live in fear. . . . If you commit a violent crime, you're going to do serious time. . . . Three strikes, you're out. . . . Put three time losers behind bars for life."

The ironic agreement between the liberal Cuomo and the conservative Wilson, both running for reelection with low approval ratings, reflects the emergence of violent crime as a significant and popular issue for many Americans.

The speeches illustrate widespread citizen concern that the criminal justice system is too lenient and a growing belief that some people cannot be rehabilitated and need to spend their entire lives in prison.

Voters in Washington state approved a "three-strikes" measure last November by a 3-1 ratio. Legislation was introduced in the District in November, and similar proposals soon may be considered by as many as 30 state legislatures, including Virginia's. Georgia Gov. Zell Miller (D), citing complaints by constituents, recently called for a two-strikes-and-life law.

Such measures are among myriad crime initiatives that will be before state officials this year, including gun control provisions and a slew of proposals aimed at combating juvenile crime.

But skeptics say the three-strikes laws are grandstanding gestures that would overload prisons without attacking the real causes of violence.

Even so, the similar positions of Wilson and Cuomo show that violence is an "issue that crosses party lines," said Dan Schnur, communications director for the committee overseeing Wilson's reelection bid. Although there is evidence that crime is decreasing, "there is a randomness to the violence that never existed before - big city or small."

Politicians are reacting to the public realization that "it (violent crime) can happen to them" anywhere, any time, said Gwen Holden, executive vice president of the National Criminal Justice Association. "People used to think that if they took certain risks, like walking in a dark alley, they would be vulnerable. Now people realize that 'I could be riding on a commuter train and some guy who is ticked off could start shooting.' "

Americans are scared, Cuomo said. And when people "get frightened," they "get angry."

periods," said Steven Twist, an official of the National Rifle Association, which also supports three-strikes laws. "People are shocked at how low sentences (for violent offenders) are. And people are shocked at how little punitive consequence there is for these crimes."

A 1992 Justice Department study of 79,000 felons from 17 states showed that in a three-year period, 43 percent had been rearrested on charges of committing another felony. Twenty-three percent of the new arrests were for violent crimes.

Another Justice report, completed in 1987, revealed that in many states the median term for murder and nonnegligent manslaughter was 6 1/2 years, including pretrial jail time; for rape the typical prison stay was 3 years, 8 months. Most criminals documented in the report served less than half of their sentences.

News stories of repeat offenders committing new acts of violence also have stoked the public fervor. In California, for example, one rallying point for the three-strikes proposal was the Polly Klaas case. The 12-year-old was kidnapped from her home during a slumber party and strangled. The suspect in the death had been convicted of serious crimes six times and was on parole when the offense occurred.

Many have concluded "that given the grotesque nature of crime, we ought to put some people away forever and label them as incorrigible . . . or to kill them," said Cuomo, who is an opponent of the death penalty. "It's an unhappy conclusion . . . perhaps a tragic one."

One reason for the shorter prison terms for violent offenders may be the inmate population explosion resulting from the mandatory sentences of the war on drugs, said James Fyfe, a criminologist at Temple University.

"The war on drugs reduced our ability to deal with violent offenders," Fyfe said, noting there is not enough prison space to hold everyone. "That may have been a mistake. . . . We've got to set priorities."

And some officials wonder if, in the rush to curb violence, the public and politicians might be rushing into another ill-advised and costly quick fix.

Three-strikes measures "sound snazzy," said Nkechi Taifa, legislative counsel in the American Civil Liberties Union's Washington office. "The only three-strikes loser would be the public. . . . These bills may sound tough, but they aren't smart."

Certain ethnic groups, particularly African Americans, could be disproportionately locked away for life because they live in areas targeted for "selective enforcement" by law enforcement agencies, she said.

Such measures also would increase prison operating and capital costs and create new divisions of "geriatric" prisoners "pushing their walkers around prison," said Taifa.

If the three-strikes measure is approved, Schnur of California estimates that the additional prison operating costs - which do not include capital outlays - would grow from \$415,000 in the 1995-96 fiscal year to \$28.6 million in 1996-97, \$200 million in 1998-99 and \$561 million by 2014. However, Schnur maintains that the costs would be "significantly" offset, in part by the savings in law enforcement, court and medical costs of taking repeat offenders off the street. Eventually, there might be fewer crimes, and as a result, lower court costs, hospital bills and a need for fewer police resources.

Still, while the evidence is clear that some criminals are chronic offenders, setting up a system to catch such people is difficult, some experts said.

"We know these people (chronic repeat offenders) exist, but we are terrible at guessing who these people are," said Edwin Zedlewski, an economist with the National Institute of Justice. "For every one person you lock up, you may miss one. Some of the worst repeat offenders are smart enough to avoid the system and never get caught. It is extraordinarily difficult to separate these people out."

Cuomo acknowledges that such programs, by themselves, will not end violent crime.

"There is no magic solution," Cuomo said. "You must have strong laws, strongly enforced, but you must also deal with the underlying issues, poverty, degradation. . . . You have to do it all from A to Z."

Having said that, Cuomo also pointed out that despite the costs, society

... who mock the criminal justice system. "If you're convicted of three violent crimes, there are probably 30 to 40 others that you didn't get arrested for," Cuomo said.

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COMPLIMENTS OF THE
ALASKA STATE LIBRARY

There are other things we need to do, and I'll just mention them very quickly:

We need drug testing at all stages of the criminal justice process...for bail, for probation, while in prison, while in jail, while on parole...because we know that people commit four to six times as many crimes when they're using drugs compared to when they are not.

We need to put the heat on the federal government to do more on the illegal alien problem. I know the states in the Southwest particularly are aware of that, and that's a whole topic in itself.

We need to take another look at how our prisons are managed, and whether they are being effectively managed, and whether they are places that deter criminals. And this means perhaps looking at whether the discipline that is necessary for these people to comport their lives within the law is being exercised while they're in prison.

And finally, I think citizens need to be educated to the fact that today we're only spending three percent of our total tax dollars on the justice system, including the police, courts, prisons, and the civil justice system as well. If people agree with us that protecting the public from those who would prey on them is a vital part of defense, then just as we've been willing to make sacrifices for our external defense, we need to make a serious investment in our defense at home. At a time when we are able to reduce spending on the military because we've been successful at fighting and winning the cold war, shouldn't we consider using part, or all of these savings, for fighting crime at home? Just going from three percent to four percent of our total tax dollars would give us tremendous resources to build prisons, add police officers and enough courts and judges so that, once again, society would be able to tell the criminal that when you commit an offense against our people, you're going to pay the cost. And the cost will be considerably greater than it is at the present time.



Edwin Meese III currently holds the Ronald Reagan Chair in Public Policy at the Heritage Foundation, and is also a Distinguished Visiting Fellow at the Hoover Institution. Mr. Meese served as U.S. Attorney General from 1985-88, and as Counsellor to the President from 1981-85.



Reforming the Civil Justice System

Governor Fife Symington of Arizona

Thank you. It's great to be here. And members of ALEC, congratulations on your 20th anniversary.

I am really blessed as a governor to have an extraordinary group of individuals in our legislature, in our leadership in the legislature, who really work well together. We focus on issues well together, we plan ahead. We do things that frankly Arizona hasn't seen in twenty years, and I'm very, very proud of the leadership. It's extraordinary because for many years we have been unable to have short, productive sessions; we've had long and, I think, sometimes very unproductive sessions. But this year I believe is the first time in some twenty years, Brenda, (Ariz. Representative Brenda Burns) that we got in and out in about ninety days and we passed our budget in 65 days.

The year prior to that occurrence we went right up to our constitutional deadline of June 30, and had what some would refer to as an altercation at the end because I wanted to have tax reduction. My fellow believers in limited government and reduced regulation in the legislature wanted to have a tax reduction, but we couldn't get it through the Senate, and so we were within hours of shutting state government down. We had the National Guard ready to take over public safety and the prisons, and we were going to literally close our state government down because, unlike California, we don't issue warrants, we can't keep going, we've got to close. And I remember having a conversation with Brenda; Mark Killian, the Speaker of the House; and John Greene; and Tom Patterson in the Senate, and I looked at them and I said, "You know, my greatest fear is if we shut government down we're not going to be missed."

Well, fortunately, we didn't have to shut it down and we got our budget passed, but it was really tough. But

the bottom of the well." "What did he say?" asked the ranger "Pancho says he's prepared to die."

Now doesn't that fellow remind you of Bill Clinton telling us that the American people are prepared to sacrifice? Anyway, you may want to join those of us who will be presenting an alternative to the Clinton plan. I can assure you that I will be one of the sponsors of the market based approach that I discussed today.

I hope you'll join us in that effort, and I wish you all the very best as you work in your respective states for all of the citizens of this great nation.



Congressman Kyl was elected in 1986 and has rapidly established a reputation as an effective legislator, a strong proponent of fiscally responsible government, and an expert on national defense and health care. Congressman Kyl is helping to shape the national health care debate by offering free market alternatives for health care reform.



Making Criminals Pay: Solving America's Violent Crime Problem

**The Honorable Edwin Meese III
Former U.S. Attorney General**

Thank you very much ladies and gentlemen. It's a great privilege to be with you, and believe me, I am happy to be here with you today.

As Representative (Jerry Lee) Alwin (N.M.) mentioned, the Heritage Foundation and ALEC are close

partners, and I've certainly enjoyed the opportunity to work with your leaders. Certainly, Sam Brunelli and his staff are an outstanding group, as you know from your own personal experiences, and I was always interested in the active role in leadership that Bill Raggio. I've known Bill for longer than he'd probably want to admit...from the days when he was a District Attorney in Nevada and I was in the District Attorney's office in Alameda County in California. We worked very closely together at that time. So it's a pleasure to be here, especially since I will have the opportunity to discuss with you the issue of violent crime in America. There is no more important challenge facing our nation today.

One of the things that I think we have to recognize is the fact that crime has been, for many years now, the top thing that people worry about when they're asked, "What is the greatest domestic problem?" Periodically it gets eclipsed by the economy when we have high unemployment or when we have economic difficulties, but year in and year out, it's always in the top three or four topics that concern people.

And when we try to get the economy going, or when we try to work on the problems of the inner cities, or try to improve education, inevitably at least one of the trails of solutions leads to doing something about crime. You know from your own experience what's happened, and so I'd like to share a little bit with you from my own experience.

But first, I think it's important to recognize what's happened since World War II in terms of crime. In the 1950s, and from the period just after the war through the fifties, there was a philosophy in our country among almost all criminologists, that incarceration was a bad thing. And so almost every idea other than prison was used to take care of convicted criminals.

And so by the sixties, we found in California, when Ronald Reagan became Governor in 1967, that less than ten percent of all felons, the most serious criminals, were going to prison.

Well, over the course of the late sixties and the seventies, he was able to change that by appointing judges in California who had a different view. But throughout the country this was the prevailing sentiment.

And that's why we had during that period, from 1960 roughly, to 1980, we had the largest increase in crime in the history of the country...a 300 percent increase in

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November 1993

American Legislative Exchange Council 20th Annual Meeting
Traverse City, MI; August 12, 1993.

Workshop: "Making Criminals Pay: Solving America's Violent Crime Problem."

crime. As the average time served went down dramatically, crime went up.

Most people would say that kind of makes sense. Criminals can count, too. It was interesting that an organization in Texas the National Center for Policy Analysis, did an economist's computation of the cost of crime. They acted on the proposition that crimes are intentional acts and that they're freely committed by people who calculate the cost to them for committing crimes. And that in many cases the criminals, while they may not do it in a mathematical way like economists, nevertheless have a general feeling of what their chances are of getting caught. And if they do get caught, what's going to happen to them.

And so they did some calculations. They multiplied of percentage of criminals that got caught for each offense times the likelihood of conviction, times the amount of months that they would serve, and they came to a very interesting statistic. And that was that the expected time in prison for each murder is something like 2.3 years. For rape, it's 80.5 days. For robbery, it's 27 days. For aggravated assault, just a little over 13 days, and for burglary it's 5.4 days.

Now, obviously those that are caught serve much more time than that. But that's taking the average time that people serve, and then multiplying that by a factor of what their chances are of being caught. Now as I say, I don't think that criminals figure those things out exactly, but they do have a pretty general idea. And for that reason, many of them feel that crime does pay.

The important thing is, as was mentioned earlier in the opening remarks, today we have a situation where criminals are spending actually very little time in prison. We have a revolving door situation where the same people are coming back to prison, spending a little time, then going out to commit more crimes. And then most of them are coming back to prison at one time or another.

It seems to me that there's several things that we need to do, and while I could go into the analysis even more, I think it's perhaps important that we talk about what are the changes that have to be made. Let me just say this, however: We did have a period of time during the last 30 years when crime began to go down, and that was at the beginning of the 1980s. By that time, citizens had had enough of the old lenient philosophy and by the last half of the 1970s, into the early eighties, judges

were sentencing more people to prison for serious crimes...particularly violent felonies...and they were sentencing them for longer periods of time. And so from about 1981 through 1985, crime actually went down in the United States...the first time that had happened, since World War II.

But what happened by 1985 was that the prisons were full, overcrowded...and so it was at that point, if you look at the statistics, that people started being let out much earlier and not completing their full sentence.

Indeed, today the facts are that the average sentence for a felony in the United States is four years, but the average time served is about 13 months. And that's just the average for all felonies. That's everything from car theft on one end up to murder on the other end. But the amount of time that people are actually serving is only about a quarter of that, and most of that is because of a lack of prison capacity.

The other thing that I think we have to recognize is that even though in 1990 the crime rate in the United States was lower than it was in 1980, there were two significant differences in 1990 over 1980.

One was the tremendous amount of violence, and while property crimes in general were down or plateauing, violent crimes were considerably greater. Secondly, that drugs, particularly crack, was an increasing problem in the inner city.

The drug problem is kind of interesting. Up until 1981 or '82, most of the emphasis, what emphasis there was, on a national scale, was on law enforcement. In 1982, there was a comprehensive national strategy which included prevention, education, treatment and rehabilitation, along with strong law enforcement and strong international action.

And from 1982, that period when this strategy was implemented, up until the present time, we had a 50 percent decrease in drug use in the United States. Most of the decrease in drug use was due to the preventive activities in schools and drug-free workplace programs in business and industry. And so we have approximately half as many people today using drugs as we did at the beginning of the 1980s.

The drug problem, however, is starting to turn up again, particularly in high school and junior high school aged students. The reason is because we have this problem

in the United States that when something's no longer getting a lot of attention, people start to forget about it. And so the preventive efforts in schools and businesses are perhaps not as diligent as they have been in the past. We have to be very wary that we don't get another major drug problem in our schools.

However, the thing that has happened is that among those people who commit most of the crimes in the inner cities, both small crimes and major crimes, drug use has actually intensified. Because with half the market lessened, drugs have been relatively available in the inner cities. The price has been cheap because you don't have the demand that you had before. In addition to that, you have had crack introduced, which in my opinion was a cynical economic marketing act by the drug purveyors, who could no longer sell hundred dollar lines of cocaine to relatively affluent people. So now they manufacture cocaine in crystalline form, so they could sell \$5, \$10 and \$20 rocks of cocaine to less affluent people in their communities.

So we have these things facing us today: a continuing problem with crack, an increase of drug use in the inner city, a revolving door situation as far as prisons are concerned, and a tremendous increase in violence.

There were two interesting comments that I noted yesterday in the paper. One was that there's been a 61 percent increase during the 1980s...61 percent increase...in shootings committed by Americans 15 to 19 years of age. That's junior high and high school aged kids. For example, in our nation's capital, in Washington, D.C., the children and teenagers treated for knife and gunshot wounds in the last seven years has increased 1,740 percent. In some inner cities like Washington, D.C., New York, Los Angeles and other places, we literally have a war going on. What we have is a juvenile army out there, with the latest figures indicating that 270,000 children carry guns to school each day.

Now, 270,000 children...it's hard to put that into any kind of context, but for comparison that's half the projected size of the United States Army by the year 1995. The number of kids going to school carrying weapons today, is half the size of what the Army is going to be in 1995. What do we do about it?

The first thing is we've got to be realistic about sentencing. We have got to change sentencing and recognize that only if we're able to put people in prison for

violent crimes, or for repetitive crimes, that we will start to get them off the street. Many people say that we're spending more for prisons than we do for education in our state. That may be true, but let me say this: Prisons are more effective in the job they're set up to do than the educational establishment is with the job it is charged with.

We know that while people are in prison, they're not committing crimes against citizens on the street and in their homes. And I can't say that education is equally effective in teaching people to read and write under some of the conditions in some states today.

Now, obviously we need to support both. I think one of the mistakes we often make is that people will say, well, we've got to do this instead of that, or we can't put money into prisons...because we have to give it to education. We need to do both. And I know probably all of you face these tremendous dilemmas at home in terms of trying to squeeze all the requirements into the revenues that are available. But I think it is important.

The other thing that we need to do is decide who belongs in prison, as was stated earlier by Representative Alwin. Earlier he mentioned that some people shouldn't be there. How do you know when a person belongs in prison?

Well, it's tough. It's not always possible to tell on their first time through. But you sure know when they've been to prison and gotten out and committed a new felony, and come back a second time and gotten out and committed a third felony. About the third or fourth time around, they have self-selected themselves as a candidate for a long time in prison. And I think when that happens, we ought to say this person is going to go to prison for, if not the rest of their life, at least until they get to that period where statistically we know they kind of burn out as far as crime is concerned. Maybe they can't jump the fences anymore, running ahead of the police or whatever it is, but we know statistically that by the time a person gets to about 50 years of age, they're not as likely to commit crimes anymore. I hope it isn't true that in prison they learn to read and write, so that the robber becomes a forger when he gets out about that age. But in any event we do know that if a person after the third or fourth time around is kept in prison, we know that that individual who has the capability of committing anywhere from two dozen to 150 crimes per year is going to be out of reach where he or she can no longer prey on society.

The second thing we've got to do is we've got to have society keep its promises. We have to keep our promises to the citizens of our country and also to the criminals.

One of the things we do when a person is put on probation, is that the judge very sternly lectures him or her and says, "I'm putting you on three years' probation. I'm suspending two years in prison. Now if you get caught committing a crime or violating your probation during this three-year period, you're going to go to prison." Well, actually the judge knows, and the criminal knows, that that's probably not true. When that individual does commit a new crime, a new robbery, a new burglary, they're going to come back maybe in front of the same judge, or in front of another judge who sees the record, and what that judge is going to do. If he sentences him to prison the second time at all, he's going to make it concurrent with the sentence that was suspended for the first crime. In effect, the person on probation gets a free crime.

We have got to start living up to our promises, and when an individual violates their probation, they go to jail or prison for the length of the term of the first crime, and on top of that serve whatever the sentence is for the second crime, so that we don't give away crimes as a condition of probation.

Thirdly, we have to recognize that what I've been talking about...being realistic in keeping promises...has serious implications for the criminal justice system, particularly corrections. And it's important that we look at the whole criminal justice system.

Yesterday President Clinton announced federal funding to support putting up to a hundred thousand new police officers on the street. I think perhaps there's a good deal that can be done along that line. Actually, the money he talked about will barely support 60,000 officers on the street, but at least it's a start, and it's going to take time to work through this. And there were a lot of other proposals, too, many of them which are good.

But the thing that was forgotten is you can't just look at that stage of the criminal justice system. We have today, in cities and counties on the streets of our nation, just under 500,000 police officers. Now if we add, let's say, somewhere between 60 and a hundred thousand new officers, we're making a dramatic increase in the number of officers on the street. Particularly if these are added to the street patrol forces, because a good third,

at least, of those other officers are working on specialized details or administrative duties.

Now, unless we have the courts, the judges, and ultimately the correctional facilities, to accommodate the arrests made by those officers, they really will not be adding to our ability to stop crime and to be a credible deterrent to the criminal.

In a bill that was introduced last week, by Senator Dole and several other members of the Senate, is a provision that does recognize the flow-through of the criminal when you add new police officers. This bill not only provides for new police officers, but also provides for matching grants to states for prison construction, as well as the building of some regional prisons which can be used for both federal and state prisoners. Now I think this is a much more realistic approach to solving these problems, because the bill that looks at the whole system.

We also have to recognize that we have to look at more cost effective ways to build additional prisons as they are necessary, so that we can accommodate people for longer periods of time. I don't think we have to go on building prisons forever. You know, there's some people in the ACLU and elsewhere who say if you keep building prisons at the rate that we did during the 1980s, by the year 2050 every other person in the United States will be in prison.

Well, let's be realistic. I don't think any of us believes that's true. I think there will be a point at which we don't have to build any more prisons because we'll have the people who need to be in prison there.

We have, at the present time, a little over 800,000 people out of a population of 252 million who are in prison. Of the three million people total, or less than one and a half percent of the population, who are under correctional custody, only a quarter of those people, about 26 percent, are actually in prison; the rest are on parole or on probation.

So it seems to me that adding additional prison capacity for a short period of time, and making sure the people who belong there stay there, is going to be a very good investment in the long run. However, it will not be the horrendous continuation of the building boom of prisons during the eighties, which was in large part because no prisons were built between 1950 and the late 1970s, due to the move away from incarceration.

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Editorials

Time to target hard-core criminals

To many people in this state, public safety is an oxymoron. Violence is seemingly committed at will, criminals slip through the cracks, and the price is paid only by those who obey the law.

Into this mix comes Initiative 593, the so-called "Three Strikes You're Out" measure. It would send those who commit three violent crimes to prison for life, without the possibility of parole.

By itself, I-593 won't wipe crime from our doorsteps — it's certainly no panacea for the societal problems that plague us. But it is a way to bring fairness back to sentencing and it should be approved by the voters on Nov. 2.

Initiatives are, almost by definition, a poor way to make law. It removes a measure from the give-and-take possible when divergent interests work to hone an idea to general acceptability.

Those behind Initiative 593 tried to do that during the last session of the Legislature. Though a majority of House members signed on to a proposal essentially the same as now before us on the general election ballot, it never came to a vote. The proposed law became the initiative.

I-593 is fair. Though crime and criminals seem all around us, only 7 percent of criminals commit 70 percent of the violent crime. It's these criminals who pose the greatest danger to our society and it is these whom I-593 would put in prison for good.

Someone who faces a third conviction for violent crime shows clearly that he or she has not learned from past mistakes and has chosen not to be a law-abiding citizen. I-593 will remove the worst element of criminals, the hard core, from society.

The key, remember, is *violent* crime. Merely breaking a law doesn't earn someone a life sentence.

Voters should not be put off by appeals that such a proposal will bankrupt the system or condemn the wrong people to a life behind bars. Only the most serious offenders will face such a future. But if they don't, the rest of us may not have one at all.



Initiative 593

✓ **Yes**

EDITORIALS

'Three strikes' deserves approval

Initiative 593 would be one tough law. If enacted, "Three Strikes, You're Out" would mandate true life imprisonment — with no possibility of parole — for adults convicted of their third violent felony.

Washington state would thus acquire the harshest habitual-criminal law in the nation. Frankly, this doesn't sound like such a bad idea — though no one should assume this limited measure is going to make much of a difference in the crime rate.

Opponents of I-593 have offered some impressive-sounding arguments against the measure. But none of the charges quite stick.

For example, much has been made of the fact that

ELECTION

RECOMMENDATION

second-degree assault — a crime that could occur during a barroom brawl or strong-arm robbery — would constitute a "strike" under the initiative. Op-

ponents raise the specter of tavern rowdies accumulating minor offenses and eventually being sent up for life.

This argument fails the real-world test. State conviction records show that of the 63 felons who would have "struck out" under I-593's provisions in 1991, virtually all were real bad guys: killers, rapists, armed robbers and the like. Of those who would have struck out with a second-degree assault conviction this year, all were violent criminals who had plea-bargained down from a more serious charge.

Another contention is that I-593 would impose excessive costs on the criminal justice system. Yet the law would affect only a relative handful of convicts — 40 to 70 a year, according to the state Sentencing Guidelines Commission.

It's true this many additional life sentences would entail geriatric and medical expenses. Unfortunately, taxpayers get stuck with such bills anyway when aging ex-convicts ultimately wind up in nursing homes and hospitals at state expense. Likewise flawed are the claims that prison-construction and criminal-defense costs will grow onerous under I-593. The high numbers cited by opponents typically assume that three-time offenders, once freed, don't commit additional crimes and generate additional expenses. That's a naive assumption, to say the least.

In this context, it's a grave mistake to focus only on the cost of imprisonment. When active criminals are allowed to return to a life of crime, they visit horrific new costs on victims and communities. In 1988, a U.S. Justice Department study estimated that such non-prison expenses average \$430,000 a year — per offender.

I-593 is narrowly targeted, and it isn't likely to make a noticeable dent in the overall crime rate. At a minimum, though, it would snare some of the state's most dangerous felons and put them out of commission for good. And with any luck, other hardened criminals may feel a sudden inclination to wreak their havoc in more forgiving states.

❖ VICTIMS FOR JUSTICE ❖

Volume 4 Issue 2

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- CRIME SUMMIT- SPEAK OUT ON VIOLENT CRIME- DEC.6TH

"THREE STRIKES AND YOU'RE OUT!"

UNDERLYING CURRENTS

by Janice Harris Lord

Down at the courthouse, the defense attorney tosses his file on the counsel table and walks slowly to the jury box. He makes eye contact with every juror, one at a time. After a long and pregnant pause, he crosses his arms, puts his finger to his lips and frowns, obviously pondering the gravity of the words to come. He leans over the jury rail and whispers as if his very life depended on it. "If I could only bring the deceased back to life, believe me, I would. But punishing my client won't do it either." He pauses again and in a more audible voice, "It wasn't his fault. He never intended to kill. This woman the state is calling the "victim" was simply... and he pauses to make each word count..." in the wrong place at the wrong time."

Various exerts say they know what is wrong with America. Alienation. Boredom. Clearly it is "somebody else's fault." Have we lost the ability to speak the language of personal accountability? Is our moral vocabulary so lacking and our convictions so weak that we simply quit? Are we so afraid to face honest guilt, honest pain, honest responsibility that the simplest way out is to blame somebody else? This is the face and voice of almost every offender. Let us stop finding reasons to let them out of prison early, making excuses for them. Instead of processing them over and over - adopt Washington's law; 3 STRIKES AND YOUR OUT! The 3rd felony regardless, constitutes a life sentence! That would cut the crime 75-80% at least, since 80% of crime is done by repeat offenders! Now that's deterrence!



chain so that by one simple phone call thousands of messages will be directed towards legislators showing them people care and demand action.

It is not too late to save Anchorage from the gang problems and crimes of the big cities.

WE MUST ACT NOW!

VICTIM JUSTICE

VFJ joins in "celebrating" with the Samuel's family to see that the Alaska Supreme Court has agreed with Judge Michalski's original finding over 4 years ago, that Jonathan Norton's confession of killing Duane Samuels in 1989 was admissable as evidence. Though we have no understanding of why it took so long for the Justices to make the "right decision"; we do applaud and praise them. Not only for the Samuel families' ordeal, but for Duane Samules who can no longer speak for himself, this decision will set a precedent for future juveniles. Thank you, Justices Moore, Matthews, Burke, Rabinowitz and Compton!

Evil abounds when good people do nothing. Are you concerned for your children's future? About the increase of gangs in our town? Are you frightened? Do you feel safe? There are some active things we can do to decrease crime and violence in our community. But it can only happen if you are willing to get involved. Please plan to attend our Crime Summit a public forum, Monday, December 6th, 7:00 p.m. at East High Auditorium.

A brief presentation will be given by the following professionals to identify the problems and inform us of what important choices are needed to change what is happening in our community:

<i>Charlie Cole</i>	Attorney General
<i>Dr. Bill Mell</i>	Dir. of Secondary Ed.
<i>Kevin O'leary</i>	Chief, APD
<i>Mike Grimes</i>	President, APOA
<i>Frank Pruitt</i>	Comm. Corrections
<i>Edward McNally</i>	District Attorney
<i>Janice Lienhart</i>	Victims for Justice

All assembly people will be invited as well as all Anchorage legislators.

We will inform you of what each person can do to make a difference. If the legislators and the assemblyman see the volumes of citizens who are willing to get involved, they will work harder to make laws that work for the people. You will learn of a new program that is directed towards preventing juvenile crime. You will learn of important legislation that needs community support to stop the increasing crime in our community. We hope to set up a phone

Harsh Punishment on Washington Agenda

A state Supreme Court ruling and a proposed initiative would make a powerful package of crime protection and retribution in Washington state.

The Washington high court upheld a controversial measure that allows the state to hold some sex offenders past their release date on a civil commitment. And on Nov. 2 voters will decide on a "Three Strikes You're Out" initiative that would lock up persistent offenders for life.

There is reason to believe that a public that has hailed the state's Community Protection Act, of which the civil commitment is a part, will like Initiative 590 (the proposed Persistent Offender Accountability Act).

Under the "Three strikes" initiative, resurrected from a House bill that did not pass, someone convicted of a third serious offense would be labeled a "persistent offender" and get a mandatory life sentence without possibility of parole. The proposed measure is harsher than other states' habitual offender laws. All Class A felonies—generally violent crimes like murder, rape, controlled substance homicide, homicide by abuse, assault of a child, first degree arson and first degree attempted arson—would count. Manufacture, delivery or possession with intent to deliver cocaine or heroin also can be charged as a Class A felony. Other crimes listed as serious offenses in the proposal include second degree assault, second degree child molestation, second degree child assault, indecent liberties, sec-



Illustration: Bruce Hobbeman

ond degree robbery, vehicular assault, any Class B felony with a sexual motivation or any felony committed with a deadly weapon.

Some of the state's lawmakers who agree with the persistent offender concept, however, are not comfortable with the long list of crimes defined in the initiative as serious offenses that add up to life without parole. Conceivably, a third bar fight could get you life without parole under this initiative depending on the charges filed. An analysis by the state's Sentencing Guidelines Commission said that the measure would affect a relatively small group, increasing the prison population by about 300 beds a decade from now.

The small impact numbers were predicted mostly because third felonies are infrequent, and because offenders committing the most violent of the crimes would probably get stiff sentences anyway. Roxanne Lieb, a former director of the Sentencing Commission now with the Washington State Institute for Public Policy, said that other habitual offender proposals made since guidelines were enacted usually

predicted dire fiscal consequences. Still, Lieb and others who helped craft the sentencing guidelines find it disturbing that this broadly applicable, mandatory minimum law could eclipse some of what the guidelines have achieved in sentencing reform. She said mandatory sentences remove flexibility but don't necessarily ensure more certainty and fairness because of bargaining over charges and other side-stepping.

"You can adjust the guidelines if you want harshness," Lieb said, acknowledging that feelings of frustration and helplessness about violent crime give life to these grass-roots proposals. "I don't see where the opposition is going to come from."

Meanwhile, the initiative has strong, deep-pocket backers like the National Rifle Association. The NRA says its efforts in Washington state represent ongoing interests in criminal justice reform and victims' rights. Groups on the other side of the gun lobby, however, say the NRA's latest tack is to divert attention from guns by imploring states to simply lock up felons forever.

Many of the serious of-

fenses named in the "Three Strikes" proposal are sex crimes, including specific crimes against children. Despite the sweeping sexual predator legislation approved in 1990, belief that sex offenders don't get long enough sentences is helping drive this initiative.

Civil commitment of sex offenders, a unique, controversial provision of Washington's Community Protection Act, was designed to fill a perceived gap in the law that allowed release of known, dangerous criminals. The Washington Supreme Court this summer upheld the right of the state to hold some convicts past their release dates by committing them as mental patients.

The outrage of civil libertarians and the Washington State Psychiatric Association notwithstanding, the high court said the law does not violate a person's right to due process or other constitutional guarantees. The law says "any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence" may be considered for commitment. Release from the Special Commitment Center is possible only if a court finds that the person's mental abnormality or disorder has changed in such a way that the community is safe. The unsuccessful challenge to that premise was made on behalf of some of the 21 people held under the provision.

Welfare Incentives Have Merit, but Reforms Must Go Deeper

By Suzanne Fields

Money talks. It talks to the rich and it talks to the poor. But it has a different vocabulary for rich and poor.

A prosperous father promises his teenage daughter a dollar for every A on her report card. Welfare strategists use similar strategies to keep teenage mothers in school.

A welfare program in Ohio, for example, fattens the welfare check by \$62 each month that a teenage mother stays in school or returns to school after dropping out. But, like the child whose allowance is docked because of bad grades, a teenage mother who quits school or who has more than two unexcused absences has her welfare check cut by \$62.

B.R. Skinner, the behavioral psychologist who pushed rewards and punishments as a powerful means of changing behavior, would appreciate this imaginative public boxing of his theory. An Ohio teenage mother with one child, who is eligible for a monthly grant of \$274, soon learns that she can earn as much as \$336 a month if

she attends school and as little as \$212 if she doesn't.

In a six-year study of more than 7,000 teenage mothers, the Manpower Demonstration Research Corp. of New York found 61 percent of teenagers stayed in school when they earned the bonus, compared with 51 percent in a control group who did not. Nearly half the teen dropouts who received economic enticements returned to school, compared with about a third who did not. Such percentages demonstrate promise.

What's striking is that so many teenagers who would earn extra money decided to forgo the bonus and accept the penalty rather than go to school.

This tells us that to many teenage mothers, \$62 doesn't mean much, at least not enough to go to school. Some teenage mothers probably have other means of hidden support from their families or even the fathers of their children. Many of these young women never learned the value of education.

The incentive approach to welfare is benign, and a 10 percent increase in the number of teenagers who stay in school makes it worthwhile. But behavioral approaches to welfare and education suffer from the same problem that critics of Skinner identified when they applied his theories to many other human endeavors. They don't get to the root of problems. Whether measured in dollars or sense, such incentives are superficial.

Thirty years ago, welfare agencies became moral regulators, refusing to pay an unmarried woman who had a man in her house. The state became the husband who looked for cheaters under the bed, sending out snoops at all hours to ensure the uprightness of the welfare recipient. The law of unintended consequences let men off the hook altogether. Marriage didn't pay. Only sex did.

Stigma disappeared. The number of welfare mothers who gave birth to children out of wedlock soared. The stigma of unwed motherhood evaporated, too. The rise in the number of unwed mothers accounts for more than 70 percent of additional welfare families between 1987 and 1991.

Sen. Daniel Patrick Moynihan of New York, the godfather of welfare reform, wants even more incentive programs for welfare recipients. He's especially troubled by the way society has come to accept increasing types of deviant behavior as normal.

Unwed motherhood, in this scenario, has been normalized. What was once shocking has become commonplace. What was once shameful is now celebrated. An attempt to turn incentives around can't hurt, but until we redefine social standards and revive social stigma for hurtful behavior, nothing else is likely to make much of a difference.

Harsh, maybe, but true. Money talks. But those who take it often talk back, and we may not like what we hear.

Suzanne Fields, a columnist for the Washington Times, is nationally syndicated.

Three Strikes and You're Out — for Good

By Deroy Murdock

Some people just never learn. After serving less than five years of two 15-year prison terms for convictions in two rapes, Walter "Animal" McFadden did it again. In 1981, he was sentenced to another 15 years for the kidnapping and rape of a woman while he was on parole. By 1985, though, McFadden was out on the street once more. Within a year, he met an 18-year-old Texas girl, whom he raped and murdered. Then he killed her two young friends.

Ambrose Harris doesn't get it either. Authorities say that after 44 trips to jail for rapes and armed robberies, Harris, 40, abducted Kristin Huggins, a 22-year-old Philadelphia-area artist. A week before this past Christmas Eve, Harris allegedly shot Huggins twice in the head, then buried her. Spinning through the justice system's revolving door apparently made Harris dizzy. Perhaps that's why he laughed through his arraignment.

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much of a difference.

she attends school and as little as \$212 if she doesn't.

The acronym for the Ohio program, LEAP — for Learning, Earning and Parenting — emphasizes the main benefit of a high school education: hope for a better job. LEAP also shows that discipline and learning can pay as you go.

Not everybody takes advantage of the program.

May 17, 1993

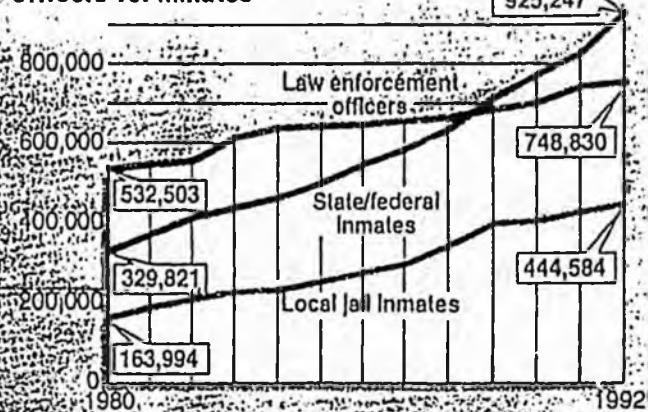
Insight • 19

COMPLIMENTS OF THE
ALASKA STATE LIBRARY

Combating guns with jail, prison

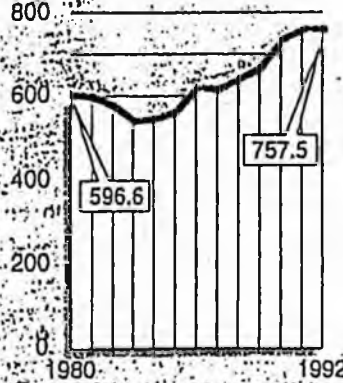
The number of criminals in prisons in the USA has increased by more than 180% since 1980, and the number in local jails has more than doubled. The number of full-time law enforcement officers has risen by 40%. Yet the violent-crime rate has risen by 27%. The war on crime:

Officers vs. Inmates



U.S. violent crime rate

Crimes per 100,000 population



Sentences vs. time served

Average length of sentence and estimated time to actually be served by state prison inmates for various convictions:



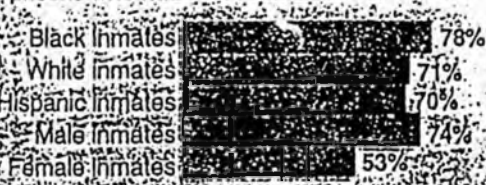
Time from arrest to sentencing

Average in days



Repeat offenders

Percentage of violent criminals in state prisons who had served time before:



Source: FBI Uniform Crime reports; Bureau of Justice Statistics reports

By Marty Baumann, USA TODAY

"Such people are the right people to put away," says Eric Sterling of Washington's Criminal Justice Policy Foundation.

But Sterling says it's hard to identify potential repeat offenders. He fears that "blunderbuss" get-tough laws more easily snag drug or burglary offenders than the violent criminals they're designed to stop.

And, he says, overcrowded and underfunded prisons may contribute to violence by making criminals more hardened than when they went in.

"Where did all these criminals come from?" Sterling asks. "Well, they came from our correctional institutions."

A 1992 study by the Sentencing Project shows the USA has the world's highest incarceration rate, about 455 per 100,000 people, compared with a rate of 311 per 100,000 in South Africa; 111 per 100,000 in China; and 42 per 100,000 in Japan.

Overall, the state and federal prison population hit a record 925,247 inmates in June, up more than 180% since 1980.

But there's no evidence that such explosive prison growth has stemmed crime.

Violent-crime reports nationwide dipped slightly in the first six months of 1993, but there still has been a 45% rise since the early 1980s.

Such numbers, though, don't reflect the public cry for punishment. It's "beyond dispute," McNulty says, that criminals can't harm the public from a jail. "At least we're stopping worse offenders. People will realize the price they'll pay."

'Revolving door' syndrome feeds cycle of violence

By Sam Vincent-Maddis
USA TODAY

In Washington, D.C., a teenager facing charges of deadly assault goes joy-riding while free on \$1,000 bond. He fatally shoots a woman in another car because he feels like "bustin' somebody."

In Hugo, Okla., a 39-year-old with a record of assault and property crimes buys an assault weapon and kills two people, wounds three others, then kills himself.

Many blame the easy access to guns for such carnage. But similarly under fire is a justice system that, to critics, seems to do little more than recycle criminals to the streets.

That outrage has sparked calls for a crackdown on repeat criminals nationwide: Washington state voters approved stiffer sentencing last year, and California voters consider an initiative this fall.

About 30 states are weighing similar measures, most of which provide long sentences without early parole for many repeat offenders.

"People have just had it — they don't want to live with the fear anymore," says Paul McNulty of the First Freedom Coalition, a group that advocates stiff crime penalties.

Looking at the numbers, repeat crime seems to be becoming the nationwide norm:

▶ About 60% of prison inmates have been behind bars before, according to a U.S. Bureau of Justice Statistics study; 44% were on probation or pa-

'3 strikes, you're out' likely in California

In what could spark a new wave of citizen action nationwide, California voters are expected to approve a crackdown on career criminals in a November 1994 ballot measure.

The measure, known as "Three Strikes and You're Out," would double sentences for criminals convicted of second serious felonies — and require a minimum of 25 years to life for a third offense.

Thirty other states are considering similar measures to toughen sentences for repeat offenders.

Gov. Pete Wilson supports the concept, and supporters appear to have easily topped the 385,000 signatures needed to place it on the 1994 ballot.

The initiative has been pushed by Fresno photographer Mike Reynolds, whose 18-year-old daughter was killed by a parolee in June.

role when re-arrested.

▶ A mere 108,000 criminals in one federal study had a staggering 1.9 million arrests between them.

Recent U.S. and Pennsylvania studies found about 6% of criminals commit nearly 70% of violent crimes.

Targeting those criminals sounds simple. The reality is tougher.

COMPLIMENTS OF THE
ALASKA STATE LIBRARY

THE WALL STREET JOURNAL

WEDNESDAY, MAY 13, 1992

Crime Strikes Out

Advocates for victims of violent crime in the state of Washington hope to send the criminals there a message this November: "Three strikes, you're out." That's the informal name of a tough anti-crime initiative that would sentence a person convicted of three violent crimes to life in prison. No parole. No time off for good behavior. No exceptions. Goodbye and good riddance.

The sponsors of the measure believe that murderers, rapists, robbers, drug dealers and the like belong behind bars, rather than out on the street, routinely wreaking havoc on other human beings. As John DiIulio writes nearby, most Americans share that view. They also believe that too many criminals are getting off lightly. Ida Ballasiotes of Friends of Diane, one of the initiative's sponsors, says: "When I tell people about the initiative, the question we're asked most often is, 'Why are we waiting three times?'"

It's instructive to look at what happens to a violent criminal in Washington under current law. As in about 30 states, criminals in Washington are sentenced according to a set of guidelines authorized by the legislature. Take rape. A man convicted of first-degree rape with two prior convictions for violent crimes receives an average sentence of 10 years, nine months, under the guidelines. Deduct the standard one-third for good behavior and he'll typically serve just over seven years.

Robbery: If someone with two prior convictions for violent crimes is convicted of first-degree robbery — which means he had a weapon or severely beat up his victim — he gets, under the guidelines, an average sentence of five years and will probably serve

three and a half.

A convicted murderer with two priors gets an average of 27 years, four months; that translates to about 18 years. Washington's guidelines are strict in that they mandate that the criminal serve two-thirds of his term. Judges are permitted to deviate from the guidelines but rarely bother since a stricter sentence brings with it an automatic appeal. The state has a death penalty on the books but hasn't used it since 1963.

Supporters estimate that, if passed, the initiative would affect only 30 to 60 hard-core criminals a year, a burden the state's overloaded prison system could bear. But the rule would catch the heavy hitters. It's well documented that a minority of recidivist criminals commit a majority of violent crimes. "The major cause of violent crime is letting violent criminals out of jail," says John Carlson, president of the Washington Institute for Policy Studies, which is leading the signature-collection campaign. "Seventy percent of violent crimes are committed by 6% of violent criminals."

It's too early to predict the success of the initiative, since petitions went out about two weeks ago. So far 5,000 have been counted; 150,001 are needed by July 2.

The initiative's formal title is the Persistent Offenders Accountability Act. It is wisely named. "Accountability" is a concept largely gone from our criminal justice system. And while a mandatory life sentence isn't necessarily the system's best tool — a genuinely repentant or rehabilitated criminal can suffer — it carries the crucial message of personal accountability: If you commit a severe crime, you get a severe punishment. Do it three times, and you're out.

Crime Joins Economic Issues As Leading Worry, Poll Says

By RICHARD L. BERKE

Crime now rivals the economy in the eyes of Americans as the single most important problem facing the country, but they are divided over whether Republicans or Democrats are best able to do something about it, according to the latest New York Times/CBS News Poll.

The sharp rise in concern about crime helps assure that it will be a front-line issue in this election year. But there is also a widespread sense that the country is powerless to deal with it, with most Americans saying they do not expect violence to decline significantly in the next few years.

The poll also found that many Americans seemed to question President Clinton's assertion that the health care system was in such a state of crisis that he must begin working on it before coming forward with his welfare reform plan. Asked which issue the Government should concentrate on first, 43 percent chose health care and 49 percent welfare reform.

While people put the economy at the top of the agenda for years, anxieties about the economy have diminished in recent months, and crime has filled the vacuum. Asked to cite the single biggest problem facing the nation, 19 percent said crime or violence, with an additional 2 percent saying guns. Fifteen percent cited health care.

Among economic issues, 14 percent said the state of the economy concerned them most, and 12 percent unemployment or jobs.

The next most cited issue, at 5 percent, was the deficit, a major issue in the 1992 campaign. In an issue that was once a dominant concern, 3 percent cited drug abuse.

The telephone poll of 1,146 adults nationwide underscores why the politi-

cal parties are battling so intensely to claim the crime issue as their own: Republicans may have lost the edge as the party seen as best poised to preserve law and order, leaving the potent political issue up for grabs.

Thirty-one percent said the Democrats had an advantage in dealing with crime, while a group of identical size cited the Republicans. The poll, conducted Jan. 15 to 17, has a margin of sampling error of plus or minus three percentage points.

The failure of either party to make itself the clear law-and-order cham-

Continued on Page 14, Column 1

Memorandum

State of Alaska
Department of Corrections
Division of Administrative Services
(907) 276-8122 Fax (907) 258-7512
800 A Street, Suite 102, Anchorage, Alaska

To: Diane Schenker
Special Assistant

Date: November 4, 1993

From: Steve Schwartz *Steve Schwartz*
Research Analyst IV
Department of Corrections

File: A-1-8A
Subject: Rep. Bunde request

The information requested from Rep. Bunde offices is as follows:

Inmate population on November 4, 1993 is 2,692 (In-state, out-of-state - excludes CRCs).

- Inmates with two felony cases is 560 or 20.8%
- Inmates with three felony cases is 253 or 9.4%
- Inmates with four felony cases is 123 or 4.6%
- Inmates with five or more felony cases is 133 or 4.9%

Rep. Bunde's original question was; "What percentage of prisoners in our present population have returned to jail after three felony convictions?" This percentage is 9.5% .

Thank you.

Post-It™ brand fax transmittal memo 7871 # of pages 1

To <i>Patti Swenson</i>	From <i>D. Schenker</i>
cc <i>Rep. Bunde</i>	cc <i>DOC</i>
Phone #	Phone #
Fax #	Fax #

hjt

03/02/94
16:07:28

PUBLIC OPINION MESSAGE SYSTEM
MEMBER OFFICE BUN Bunde

POMS100
LHSCZAN

From: Mr Jim
PO Box 877317

Christmas

Wasilla

AK 99687

Tel: 376-4388

Bill# HB 334 Title: ~~NON-CONSTITUENT~~
Subject

SUPPORTS THIS LEGISLATION

Message: THREE STRIKES & YOU'RE OUT IS VERY GOOD IDEA. IT WILL CLEAN UP OUR STATE. MOST FELONS WITH 2 OR MORE CONVICTIONS WILL WALK THE STRAIGHT & NARROW OR MOVE TO STATES WITH SLACK LAWS. THE COMFORT OF CONVICTED CRIMINALS SHOULD NOT COME BEFORE PUBLIC PROTECTION. PLEASE REMEMBER CONVICTED FELONS CANNOT VOTE. THESE MESSAGES ARE ON BEHALF OF MYSELF AND OF MY WIFE, CLARA AS WELL.

Entered By: LIOCCCC on 3/ 1/94

PomID 6596

Distribution 34

MSG:

Enter Next Message PF4 Menu PF6 WasteBasket PF7 Previous POM PF10 BigWaste

*Noted
6569*