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State Crime Bill Legislation [2]

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NORTH CAROLINA GENERAL ASSEMBLY
STATE LEGISLATIVE BUILDING
RALEIGH 27611



FACSIMILE TRANSMITTAL SHEET

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TO: Greg Taylor

FAX NUMBER 202-456-1647

FROM: Brenda J. Carter
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COMMENTS:

This is the info you requested on North Carolina's 3 strikes legislation.

IF THERE HAVE BEEN ANY PROBLEMS WITH THIS TRANSMISSION PLEASE CALL (919) 733-2578.

THIS IS THE FIRST PAGE OF THIS TRANSMITTAL

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 39 (Committee Substitute)

SHORT TITLE: Three Strikes You're In

SPONSOR(S): Representative Hunt

FISCAL IMPACT: Expenditures: Increase (X) Decrease ()
Revenues: Increase () Decrease ()
No Impact ()
No Estimate Available ()

FUNDS AFFECTED: General Fund (X) Highway Fund () Local Fund ()
Other Fund ()

BILL SUMMARY: Three Strikes You're In. "To provide that upon a third conviction of certain violent felonies an offender is a violent habitual felon and shall be sentenced to life imprisonment without parole, unless the offender is sentenced to death for a capital offense." Retains habitual felony law with substantially same provisions as amended by Ch. 538, SL 1993 (structured sentencing law), which becomes effective January 1, 1995. Adds new provisions imposing life imprisonment without parole for violent habitual felon, an offender who is convicted of violent felony in N.C. and had previously been convicted on at least two separate occasions, whether in N.C. or elsewhere, of felonies that under the laws of NC would be considered violent felonies. Violent felony includes any Class A or B felony, robbery, first-degree arson or burglary, manslaughter, second-degree rape or sexual offense, felonious assault under G.S. 14-32, kidnapping, indecent liberties with children, felony child abuse, felony death by vehicle, drug trafficking, and drug violations under G.S. 90-95(a)(1) for Schedule I or II controlled substances. Procedure for determining violent habitual felon is similar to current habitual felony law. Applicable to offenses committed on or after March 1, 1994.

House Committee Substitute - Feb. 21, 1994

House committee substitute adds new Article 2B, "Violent Habitual Felons," to GS Ch. 14. Defines violent habitual felons as persons who have been convicted of two violent felonies in any federal court, in North Carolina or other state court, or a combination of these courts. Does not apply to second felony unless it is committed after the conviction or plea of guilty or no contest to the first violent felony, and does not apply to felony for which pardon as been extended. Until Structured Sentencing Act takes effect, increases list of specified violent felonies from 21 to 41, then

Indigent Defense:

- (a) Private assigned counsel: 47 defendants x 18 additional hours x \$50 per hour = \$42,300
- (b) Public defenders: 19 defendants x 2.25 additional days x \$230 per day \$9,833
- (c) Total increase: \$52,133

Cost of Court Time:

88 trials: 1 additional day x \$1,064/day x 88 trials = \$93,632

FY 95-96

75% of 48 defendants = 36 defendants found indigent
29% of 36 defendants = 10 defendants represented by public defender
71% of 36 defendants = 16 defendants represented by private assigned counsel

Indigent Defense:

- (a) Private assigned counsel: 26 defendants x 18 additional hours x \$50 per hour = \$23,400
- (b) Public defenders: 10 defendants x 2.25 additional days x \$230 per day \$5,175
- (c) Total increase: \$28,575

Costs of Court Time:

48 trials: 1 additional day x \$1,064/day x 48 trials = \$51,072

SOURCES OF DATA: Department of Correction; NC Sentencing and Policy Advisory Commission; Administrative Office of the Courts

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION
733-4910

PREPARED BY: Charles E. Perusse (C. E. Perusse)
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APPROVED BY: Tom Covington

DATE: 25-FEB-1994

[FRD#003]

Representative Hunt**ATTACHMENT A**

**ESTIMATED ADDITIONAL PRISON POPULATION NEEDED
ABOVE THAT PROJECTED UNDER
STRUCTURED SENTENCING**

**AN ACT TO PROVIDE LIFE WITHOUT PAROLE
FOR A THIRD VIOLENT FELONY CONVICTION**

(Effective May 1, 1994 for a specified list of offenses,
effective January 1, 1995 for Class A through E offenses)

END OF FISCAL YEAR	THREE STRIKES AND YOU'RE IN
1994-95	7
1995-96	12
1996-97	27
1997-98	33
1998-99	39
1999-00	55
2000-01	69
2001-02	83
2002-03	101
2003-04	125
2013-14	508
2023-24	1,085
2033-34	1,854
2043-44	2,887

NOTES: (Revised 2-4-94)

1. The unbolded area shows projections for the first ten years based on the Commission's correctional population simulation model. This simulation model only provides projections for 10 years.

2. The bolded area shows projections beyond ten years. These projections are not based on the simulation model but have been estimated using other less precise methodologies. These long term projections should be viewed with caution. They may be affected by changes in demographics, crime rates, law enforcement policies, and/or sentencing laws.
3. The estimates beyond ten years assume that no inmates die while in prison or are pardoned.
4. The estimates beyond ten years assume a 3% annual growth in the volume of convictions for these crimes.

GENERAL ASSEMBLY OF NORTH CAROLINA
EXTRA SESSION 1994
RATIFIED BILL

CHAPTER 22
HOUSE BILL 39

AN ACT TO ESTABLISH CRIME PREVENTION AND ENHANCED
PUNISHMENT INITIATIVES, AND TO AMEND THE LAW TO ENHANCE
CRIME CONTROL.

The General Assembly of North Carolina enacts:

PART 1. TITLE OF ACT

Section 1. This act shall be known as the Crime Control Act of 1994.

PART 2. BRUTAL RAPE SENTENCES

Sec. 2. G.S. 14-27.2(b) reads as rewritten:

"(b) Any person who commits an offense defined in this section is guilty of a Class ~~B~~ B1 felony."

Sec. 3. G.S. 14-27.4(b) reads as rewritten:

"(b) Any person who commits an offense defined in this section is guilty of a Class ~~B~~ B1 felony."

Sec. 4. G.S. 14-17, as amended by Section 1127 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

"§ 14-17. Murder in the first and second degree defined; punishment.

A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life as the court shall determine pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other substance described in G.S. 90-90(a)4., when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class ~~B~~ B2 felon."

Sec. 5. G.S. 14-20, as amended by Section 1129 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

"§ 14-20. Killing adversary in duel; aiders and abettors declared accessories.

If any person fight a duel in consequence of a challenge sent or received, and either of the parties shall be killed, then the survivor, on conviction thereof, shall be punished as a Class ~~B~~ B2 felon. All their aiders and abettors shall be considered accessories before the fact.

Any person charged with killing an adversary in a duel may enter a plea of guilty to said charge in the same way and manner and under the conditions and restrictions set forth in G.S. 15-162.1 relating to pleas of guilty for first degree murder, first degree burglary, arson and rape."

Sec. 6. G.S. 14-5.2 reads as rewritten:

"§ 14-5.2. Accessory before fact punishable as principal felon.

All distinctions between accessories before the fact and principals to the commission of a felony are abolished. Every person who heretofore would have been guilty as an accessory before the fact to any felony shall be guilty and punishable as a principal to that felony. However, if a person who heretofore would have been guilty and punishable as an accessory before the fact is convicted of a capital felony, and the jury finds that his conviction was based solely on the uncorroborated testimony of one or more principals, coconspirators, or accessories to the crime, he shall be guilty of a Class ~~B~~ B2 felony."

Sec. 7. G.S. 15A-1340.17, as enacted by Section 1 of Chapter 538 of the 1993 Session Laws and as amended by Sections 20 and 21 of Chapter 14 of the Session Laws of the 1994 Extra Session, reads as rewritten:

"§ 15A-1340.17. Punishment limits for each class of offense and prior record level.

(a) Offense Classification; Default Classifications. -- The offense classification is as specified in the offense for which the sentence is being imposed. If the offense is a felony for which there is no classification, it is a Class I felony.

(b) Fines. -- Any judgment that includes a sentence of imprisonment may also include a fine. If a community punishment is authorized, the judgment may consist of a fine only. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only. Unless otherwise provided, the amount of the fine is in the discretion of the court.

(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. -- The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

- (1) A sentence disposition or dispositions: 'C' indicates that a community punishment is authorized; 'I' indicates that an intermediate punishment is authorized; ~~and~~ 'A' indicates that an active punishment is ~~authorized.~~ authorized; and 'Life Imprisonment Without Parole' indicates that the defendant shall be imprisoned for the remainder of the prisoner's natural life.
- (2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.
- (3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of

imprisonment is justified; in such a case, any minimum term of imprisonment in the mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.

- (4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

PRIOR RECORD LEVEL

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	Life Imprisonment or Death as Established by Statute						
	<u>A</u> <u>240-300</u>	<u>A</u> <u>288-360</u>	<u>A</u> <u>336-420</u>	<u>A</u> <u>384-480</u>	<u>A</u> <u>Life Imprisonment</u> <u>Without Parole</u>	<u>A</u> <u>384-480</u>	<u>DISPOSITION</u> <u>Aggravated</u>
B1	<u>192-240</u> <u>144-192</u>	<u>230-288</u> <u>173-230</u>	<u>269-336</u> <u>202-269</u>	<u>307-384</u> <u>230-307</u>	<u>346-433</u> <u>260-346</u>	<u>288-384</u>	<u>PRESUMPTIVE</u> <u>Mitigated</u>
	<u>A</u> <u>135-169</u>	<u>A</u> <u>163-204</u>	<u>A</u> <u>190-238</u>	<u>A</u> <u>216-270</u>	<u>A</u> <u>243-304</u>	<u>A</u> <u>270-338</u>	<u>DISPOSITION</u> <u>Aggravated</u>
BB2	<u>108-135</u> <u>81-108</u>	<u>130-163</u> <u>98-130</u>	<u>152-190</u> <u>114-152</u>	<u>173-216</u> <u>130-173</u>	<u>194-243</u> <u>146-194</u>	<u>216-270</u> <u>162-216</u>	<u>PRESUMPTIVE</u> <u>Mitigated</u>
	<u>A</u> <u>63-79</u>	<u>A</u> <u>86-108</u>	<u>A</u> <u>100-125</u>	<u>A</u> <u>115-144</u>	<u>A</u> <u>130-162</u>	<u>A</u> <u>145-181</u>	<u>DISPOSITION</u> <u>Aggravated</u>
C	<u>50-63</u> <u>38-50</u>	<u>69-86</u> <u>52-69</u>	<u>80-100</u> <u>60-80</u>	<u>92-115</u> <u>69-92</u>	<u>104-130</u> <u>78-104</u>	<u>116-145</u> <u>87-116</u>	<u>PRESUMPTIVE</u> <u>Mitigated</u>
	<u>A</u> <u>55-69</u>	<u>A</u> <u>66-82</u>	<u>A</u> <u>89-111</u>	<u>A</u> <u>101-126</u>	<u>A</u> <u>115-144</u>	<u>A</u> <u>126-158</u>	<u>DISPOSITION</u> <u>Aggravated</u>
D	<u>44-55</u> <u>33-44</u>	<u>53-66</u> <u>40-53</u>	<u>71-89</u> <u>53-71</u>	<u>81-101</u> <u>61-81</u>	<u>92-115</u> <u>69-92</u>	<u>101-126</u> <u>76-101</u>	<u>PRESUMPTIVE</u> <u>Mitigated</u>
	<u>I/A</u> <u>25-31</u>	<u>I/A</u> <u>29-36</u>	<u>A</u> <u>34-42</u>	<u>A</u> <u>46-58</u>	<u>A</u> <u>53-66</u>	<u>A</u> <u>59-74</u>	<u>DISPOSITION</u> <u>Aggravated</u>
E	<u>20-25</u> <u>15-20</u>	<u>23-29</u> <u>17-23</u>	<u>27-34</u> <u>20-27</u>	<u>37-46</u> <u>28-37</u>	<u>42-53</u> <u>32-42</u>	<u>47-59</u> <u>35-47</u>	<u>PRESUMPTIVE</u> <u>Mitigated</u>
	<u>I/A</u> <u>16-20</u>	<u>I/A</u> <u>19-24</u>	<u>I/A</u> <u>21-26</u>	<u>A</u> <u>25-31</u>	<u>A</u> <u>34-42</u>	<u>A</u> <u>39-49</u>	<u>DISPOSITION</u> <u>Aggravated</u>
F	<u>13-16</u> <u>10-13</u>	<u>15-19</u> <u>11-15</u>	<u>17-21</u> <u>13-17</u>	<u>20-25</u> <u>15-20</u>	<u>27-34</u> <u>20-27</u>	<u>31-39</u> <u>23-31</u>	<u>PRESUMPTIVE</u> <u>Mitigated</u>
	<u>I/A</u> <u>13-16</u>	<u>I/A</u> <u>15-19</u>	<u>I/A</u> <u>16-20</u>	<u>I/A</u> <u>20-25</u>	<u>A</u> <u>21-26</u>	<u>A</u> <u>29-36</u>	<u>DISPOSITION</u> <u>Aggravated</u>
G	<u>10-13</u> <u>8-10</u>	<u>12-15</u> <u>9-12</u>	<u>13-16</u> <u>10-13</u>	<u>16-20</u> <u>12-16</u>	<u>17-21</u> <u>13-17</u>	<u>23-29</u> <u>17-23</u>	<u>PRESUMPTIVE</u> <u>Mitigated</u>

	C/I	I	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated

	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated

(d) Maximum Sentences Specified for Class F through Class I Felonies. -- Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class F through Class I felonies. The first figure in each cell in the table is the minimum term and the second is the maximum term.

3-4	4-5	5-6	6-8	7-9	8-10	9-11	10-12
11-14	12-15	13-16	14-17	15-18	16-20	17-21	18-22
19-23	20-24	21-26	22-27	23-28	24-29	25-30	26-32
27-33	28-34	29-35	30-36	31-38	32-39	33-40	34-41
35-42	36-44	37-45	38-46	39-47	40-48	41-50	42-51
43-52	44-53	45-54	46-56	47-57	48-58	49-59	

(e) Maximum Sentences Specified for Class ~~B~~ B1 through Class E ~~Felonies~~. Felonies for Minimum Terms up to 339 Months. -- Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class ~~B~~ B1 through Class E felonies. The first figure in each cell of the table is the minimum term and the second is the maximum term.

15-27	16-29	17-30	18-31	19-32	20-33	21-35	22-36
23-37	24-38	25-39	26-41	27-42	28-43	29-44	30-45
31-47	32-48	33-49	34-50	35-51	36-53	37-54	38-55
39-56	40-57	41-59	42-60	43-61	44-62	45-63	46-65
47-66	48-67	49-68	50-69	51-71	52-72	53-73	54-74
55-75	56-77	57-78	58-79	59-80	60-81	61-83	62-84
63-85	64-86	65-87	66-89	67-90	68-91	69-92	70-93
71-95	72-96	73-97	74-98	75-99	76-101	77-102	78-103
79-104	80-105	81-107	82-108	83-109	84-110	85-111	86-113
87-114	88-115	89-116	90-117	91-119	92-120	93-121	94-122
95-123	96-125	97-126	98-127	99-128	100-129	101-131	102-132
103-133	104-134	105-135	106-137	107-138	108-139	109-140	110-141
111-143	112-144	113-145	114-146	115-147	116-149	117-150	118-151
119-152	120-153	121-155	122-156	123-157	124-158	125-159	126-161
127-162	128-163	129-164	130-165	131-167	132-168	133-169	134-170
135-171	136-173	137-174	138-175	139-176	140-177	141-179	142-180
143-181	144-182	145-183	146-185	147-186	148-187	149-188	150-189
151-191	152-192	153-193	154-194	155-195	156-197	157-198	158-199
159-200	160-201	161-203	162-204	163-205	164-206	165-207	166-209

167-210	168-211	169-212	170-213	171-215	172-216	173-217	174-218
175-219	176-221	177-222	178-223	179-224	180-225	181-227	182-228
183-229	184-230	185-231	186-233	187-234	188-235	189-236	190-237
191-239	192-240	193-241	194-242	195-243	196-245	197-246	198-247
199-248	200-249	201-251	202-252	203-253	204-254	205-255	206-257
207-258	208-259	209-260	210-261	211-263	212-264	213-265	214-266
215-267	216-269	217-270	218-271	219-272	220-273	221-275	222-276
223-277	224-278	225-279	226-281	227-282	228-283	229-284	230-285
231-287	232-288	233-289	234-290	235-291	236-293	237-294	238-295
239-296	240-297	241-299	242-300	243-301	244-302	245-303	246-305
247-306	248-307	249-308	250-309	251-311	252-312	253-313	254-314
255-315	256-317	257-318	258-319	259-320	260-321	261-323	262-324
263-325	264-326	265-327	266-329	267-330	268-331	269-332	270-333
271-335	272-336	273-337	274-338	275-339	276-341	277-342	278-343
279-344	280-345	281-347	282-348	283-349	284-350	285-351	286-353
287-354	288-355	289-356	290-357	291-359	292-360	293-361	294-362
295-363	296-365	297-366	298-367	299-368	300-369	301-371	302-372
303-373	304-374	305-375	306-377	307-378	308-379	309-380	310-381
311-383	312-384	313-385	314-386	315-387	316-389	317-390	318-391
319-392	320-393	321-395	322-396	323-397	324-398	325-399	326-401
327-402	328-403	329-404	330-405	331-407	332-408	333-409	334-410
335-411	336-413	337-414	338-415	339-416			

(e1) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms of 340 Months or More. -- Unless provided otherwise in a statute establishing a punishment for a specific crime, when the minimum sentence is 340 months or more, the corresponding maximum term of imprisonment shall be equal to the sum of the minimum term of imprisonment and twenty percent (20%) of the minimum term of imprisonment, rounded to the next highest month, plus nine additional months."

Sec. 8. G.S. 15A-1368.1, as enacted by Section 20.1 of Chapter 538 of the 1993 Session Laws and as amended by Section 26 of Chapter 14 of the Session Laws of the 1994 Extra Session, reads as rewritten:

"§ 15A-1368.1. Applicability of Article 84A.

This Article applies to all felons in Class ~~B~~ B1 through Class E sentenced to an active punishment under Article 81B of this ~~Chapter~~. Chapter, but does not apply to felons in Class B1 sentenced to life imprisonment without parole. Prisoners subject to Articles 85 and 85A of this Chapter are excluded from this Article's coverage."

Sec. 9. G.S. 15A-1340.13(h), as enacted by Section 1 of Chapter 538 of the 1993 Session Laws and as amended by Section 19 of Chapter 14 of the Session Laws of the 1994 Extra Session, reads as rewritten:

"(h) Exceptions When Extraordinary Mitigation Shall Not Be Used. -- The court shall not impose an intermediate sanction pursuant to subsection (g) of this section if:

- (1) The offense is a Class A or Class B1 felony;
- (2) The offense is a drug trafficking offense under G.S. 90-95(h); or
- (3) The defendant has five or more points as determined by G.S. 15A-1340.14."

Sec. 10. G.S. 15A-1340.14(b), as enacted by Section 1 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(b) Points. -- Points are assigned as follows:

- (1) For each prior felony Class A conviction, 10 points.
- (1a) For each prior felony Class B1 conviction, 9 points.
- (2) For each prior felony Class ~~B~~, B2, C, or D conviction, 6 points.

- (3) For each prior felony Class E, F, or G conviction, 4 points.
- (4) For each prior felony Class H or I conviction, 2 points.
- (5) For each prior Class 1 misdemeanor conviction, 1 point. ~~point.~~ except that convictions for Class 1 misdemeanor offenses under Chapter 20 of the General Statutes, other than conviction for misdemeanor death by vehicle (G.S. 20-141.4(a2)), shall not be assigned any points for purposes of determining a person's prior record for felony sentencing.
- (6) If all the elements of the present offense are included in the prior offense, 1 point.
- (7) If the offense was committed while the offender was on probation or parole, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction."

Sec. 11. G.S. 14-2.5, as enacted by Section 6 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"§ 14-2.5. Punishment for attempt to commit a felony or misdemeanor.

Unless a different classification is expressly stated, an attempt to commit a misdemeanor or a felony is punishable under the next lower classification as the offense which the offender attempted to commit. An attempt to commit a Class A or Class B1 felony is a Class B2 felony, an attempt to commit a Class B2 felony is a Class C felony, an attempt to commit a Class I felony is a Class 1 misdemeanor, and an attempt to commit a Class 3 misdemeanor is a Class 3 misdemeanor."

Sec. 12. G.S. 14-2.4(a), as amended by Section 5 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(a) Unless a different classification is expressly stated, a person who is convicted of a conspiracy to commit a felony is guilty of a felony that is one class lower than the felony he or she conspired to commit, except that a conspiracy to commit a Class A or Class B1 felony is a Class B2 felony, a conspiracy to commit a Class B2 felony is a Class C felony, and a conspiracy to commit a Class I felony is a Class 1 misdemeanor."

Sec. 13. G.S. 14-2.6(a), as enacted by Section 6.1 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(a) Unless a different classification is expressly stated, a person who solicits another person to commit a felony is guilty of a felony that is two classes lower than the felony the person solicited the other person to commit, except that a solicitation to commit a Class A or Class B1 felony is a Class C felony, a solicitation to commit a Class B2 felony is a Class D felony, a solicitation to commit a Class H felony is a Class 1 misdemeanor, and a solicitation to commit a Class I felony is a Class 2 misdemeanor."

Sec. 14. This Part becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective. This Part applies to offenses occurring on or after the effective date of this Part. Prosecutions for offenses committed before the effective date of this Part are not abated or affected by this Part, and the statutes that would be applicable but for this Part remain applicable to those prosecutions.

PART 3. MODIFY HABITUAL FELON LAW

Sec. 15. G.S. 14-7.6 reads as rewritten:

"§ 14-7.6. Sentencing of habitual felons.

When an habitual felon as defined in this Article ~~shall commit~~ commits any felony under the laws of the State of North Carolina, ~~he the felon~~ must, upon conviction or plea of guilty under indictment as ~~herein provided~~ provided in this Article (except where the death penalty or a sentence of life imprisonment is imposed) be sentenced as a Class C felon. In determining the prior record level, convictions used to establish a person's status as an habitual felon shall not be used. ~~Notwithstanding any other provision of law, a person sentenced under this Article shall serve a term of not less than seven years in prison, excluding gain time granted under G.S. 148-13. A person sentenced under this Article shall receive a sentence of at least 14 years in the State's prison and shall be entitled to credit for good behavior under G.S. 15A-1340.7. The sentencing judge may not suspend the sentence and may not place the person sentenced on probation.~~ Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced ~~hereunder.~~ under this section."

Sec. 16. Section 9 of Chapter 538 of the 1993 Session Laws is repealed.

Sec. 17. This Part becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective, and applies to offenses committed on or after that date. Prosecutions for, or sentences based on, offenses committed before the effective date of this Part are not abated or affected by this Part, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this Part remain applicable to those prosecutions or sentences.

PART 4. INCREASE FIREARM PENALTY

Sec. 18. G.S. 14-2.2 reads as rewritten:

"§ 14-2.2. Sentencing of person convicted of repeated felony using deadly weapon.

~~Notwithstanding any other provision of law, any person who has been previously convicted in the courts of this State within seven years of a felony in which a deadly weapon was used, provided that the previous felony did not occur within 10 days of the second or subsequent felony, in which a deadly weapon was used, shall serve a term for the second or subsequent felony of not less than seven years in prison, excluding gain time granted under G.S. 148-13. Any person sentenced under this section shall receive a sentence of at least 14 years in the State's prison and shall be entitled to credit for good behavior under G.S. 15A-1340.7. The sentencing judge may not sentence a person sentenced under this section as a committed youthful offender and may not suspend the sentence and place the person sentenced on probation. Sentences imposed pursuant to this section shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.~~

~~For the purpose of this section, the record or records of the prior felony conviction shall be admissible in evidence after conviction and before sentencing, but only for the purpose of proving that the person has been convicted of a previous felony. A judgment of a conviction or plea of guilty or no contest to such felony offense certified to a superior court in this State from the custodian of records of any other court of this State under the same name as that by which the defendant is charged shall be prima facie evidence that the identity of such person is the same as the defendant so charged and shall be prima facie evidence of the facts so certified.~~

~~For the purposes of this section, a felony committed before a person attains the age of 18 years does not constitute a previous felony conviction.~~

~~Pleas of guilty or no contest to or convictions of felony offenses prior to September 1, 1977, are not felony offenses within the meaning of this section. Any felony offense~~

~~to which a pardon has been extended does not for the purpose of this section constitute a felony. The burden of proving a pardon rests with the defendant and the State is not required to disprove a pardon.~~

Sentencing of a person convicted of a Class A, B, B1, B2, C, D, or E felony who used, displayed, or threatened to use or display a firearm during the commission of the crime; confiscation and disposition of a firearm used in a felony.

(a) If a person is convicted of a Class A, B, B1, B2, C, D, or E felony and the person used, displayed, or threatened to use or display a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to imprisonment for five years.

The court shall not sentence a person sentenced under this section as a committed youthful offender. The court shall not suspend any sentence imposed under this section and shall not place a person sentenced under this section on probation for the sentence imposed under this section. Sentences imposed pursuant to this section shall be consecutive to all other sentences imposed and shall begin at the expiration of any other sentence being served by the person.

(b) Subsection (a) of this section does not apply in any of the following circumstances:

- (1) The person is not sentenced to an active term of imprisonment.
- (2) The evidence of the use, display, or threatened use or display of a firearm is needed to prove an element of the underlying Class A, B, B1, B2, C, D, or E felony.
- (3) The person did not actually possess a firearm about his or her person.

(c) When a person is found to have personally used a firearm in the commission or attempted commission of a felony and the firearm is owned by that person, or the serial number on the firearm has been defaced such that ownership is not traceable, the court shall order that the firearm be confiscated and disposed of in any of the ways provided by G.S. 14-269.1 that the court in its discretion deems appropriate.

(d) Subsection (a) of this section does not apply to the following felonies:

- (1) G.S. 14-49(b). Malicious use of explosive or incendiary.
- (2) G.S. 14-59. Burning of certain public buildings.
- (3) G.S. 14-60. Burning of schoolhouses or buildings of educational institutions.
- (4) G.S. 14-61. Burning of certain bridges and buildings.
- (5) G.S. 14-62. Burning of churches and certain other buildings.
- (6) G.S. 14-62.1. Burning of building or structure in process of construction.
- (7) G.S. 53-129. Misapplication of bank funds by officer or employee."

Sec. 19. (a) G.S. 14-2.2(a), as amended by Section 18 of this act, reads as rewritten:

"(a) If a person is convicted of a Class A, B, B1, B2, C, D, or E felony and the person used, displayed, or threatened to use or display a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to ~~imprisonment for five years.~~ a minimum term of imprisonment for 60 months as provided by G.S. 15A-1340.16A. Evidence of the use, display, or threatened use or display of a firearm that is needed to prove an element of the underlying felony shall not be used to establish the enhancement under this section.

~~The court shall not sentence a person sentenced under this section as a committed youthful offender.~~ The court shall not suspend any sentence imposed under this section and shall not place a person sentenced under this section on probation for the

sentence imposed under this section. Sentences imposed pursuant to this section shall be consecutive to all other sentences imposed and shall begin at the expiration of any other sentence being served by the person."

(b) G.S. 14-2.2(d), as amended by Section 18 of this act, is repealed.

(c) Section 4 of Chapter 538 of the 1993 Session Laws is repealed.

Sec. 20. Part 2 of Article 81B of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed, or threatened to use or display a firearm during the commission of the felony.

(a) If a person is convicted of a Class A, B1, B2, C, D, or E felony and the court finds that the person used, displayed, or threatened to use or display a firearm at the time of the felony, the court shall increase the minimum term of imprisonment to which the person is sentenced by 60 months. The court shall not suspend the 60-month minimum term of imprisonment imposed as an enhanced sentence under this section and shall not place any person sentenced under this section on probation for the enhanced sentence.

(b) Subsection (a) of this section does not apply in any of the following circumstances:

- (1) The person is not sentenced to an active term of imprisonment.**
- (2) The evidence of the use, display, or threatened use or display of a firearm is needed to prove an element of the underlying Class A, B1, B2, C, D, or E felony.**
- (3) The person did not actually possess a firearm about his or her person."**

Sec. 21. G.S. 15A-1340.4(a)(1) reads as rewritten:

"(1) Aggravating factors:

- a. The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.
- b. The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- c. The defendant was hired or paid to commit the offense.
- d. The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- e. The offense was committed against a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duties.
- f. The offense was especially heinous, atrocious, or cruel.
- g. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- h. The defendant held public office at the time of the offense and the offense related to the conduct of the office.

- i. The defendant was armed with or used a deadly weapon at the time of the crime.
- j. The victim was very young, or very old, or mentally or physically infirm.
- k. The defendant committed the offense while on pretrial release on another felony charge.
- l. The defendant involved a person under the age of 16 in the commission of the crime.
- m. The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
- n. The defendant took advantage of a position of trust or confidence to commit the offense.
- o. The defendant has a prior conviction or convictions for criminal offenses punishable by more than 60 days' confinement. Such convictions include those occurring in North Carolina courts and courts of other states, the District of Columbia, and the United States, provided that any crime for which the defendant was convicted in a jurisdiction other than North Carolina would have been a crime if committed in this State. Such prior convictions do not include any crime that is joinable, under G.S. Chapter 15A, with the crime or crimes for which the defendant is currently being sentenced.
- p. The offense involved the sale or delivery of a controlled substance to a minor.
- q. The offense was committed because of the race, color, religion, nationality, or country of origin of another person.
- r. The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.

Evidence necessary to prove an element of the offense may not be used to prove any factor in aggravation, and the same item of evidence may not be used to prove more than one factor in aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. 14-2.2 may not be used to prove any factor in aggravation.

The judge may not consider as an aggravating factor the fact that the defendant exercised his right to a jury trial."

Sec. 22. G.S. 15A-1340.16(d) reads as rewritten:

"(d) Aggravating Factors. -- The following are aggravating factors:

- (1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.
- (2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- (3) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- (4) The defendant was hired or paid to commit the offense.
- (5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

- (6) The offense was committed against a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- (7) The offense was especially heinous, atrocious, or cruel.
- (8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- (9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- (10) The defendant was armed with or used a deadly weapon at the time of the crime.
- (11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.
- (12) The defendant committed the offense while on pretrial release on another charge.
- (13) The defendant involved a person under the age of 16 in the commission of the crime.
- (14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
- (15) The defendant took advantage of a position of trust or confidence to commit the offense.
- (16) The offense involved the sale or delivery of a controlled substance to a minor.
- (17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- (18) The defendant does not support the defendant's family.
- (19) The serious injury inflicted upon the victim is permanent and debilitating.
- (20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. 14-2.2 may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial."

Sec. 23. G.S. 14-269.1 reads as rewritten:

"§ 14-269.1. Confiscation and disposition of deadly weapons.

Upon conviction of any person for violation of G.S. 14-2.2, 14-269, ~~G.S.~~ 14-269.7, or any other offense involving the use of a deadly weapon of a type referred to in G.S. 14-269, the deadly weapon with reference to which the defendant shall have been convicted shall be ordered confiscated and disposed of by the presiding judge at the trial in one of the following ways in the discretion of the presiding judge.

- (1) By ordering the weapon returned to its rightful owner, but only when such owner is a person other than the defendant and has

filed a petition for the recovery of such weapon with the presiding judge at the time of the defendant's conviction, and upon a finding by the presiding judge that petitioner is entitled to possession of same and that he was unlawfully deprived of the same without his consent.

- (2) By ordering the weapon turned over to a law-enforcement agency in the county of trial for the official use of such agency, but only upon the written request by the head or chief of such agency. The clerk of the superior court of such county shall maintain a record of such weapons and the law-enforcement agency receiving them.
- (3) By ordering the weapon turned over to the sheriff of the county in which the trial is held to be sold as herein provided. Under the direction of the sheriff, the weapon shall be sold at public auction after one advertisement in a newspaper having general circulation in the county which advertisement shall be at least seven days prior to sale. The proceeds of such sale shall go to the general fund of the county in which such weapons are sold. The sheriff shall maintain a record and inventory of all such weapons received and sold by him. Sales of such weapons by the sheriff shall be held at least once each year.
- (4) By ordering such weapon turned over to the sheriff of the county in which the trial is held or his duly authorized agent to be destroyed. The sheriff shall maintain a record of the destruction thereof.
- (5) By ordering such weapon turned over to the North Carolina State Bureau of Investigation's Crime Laboratory Weapons Reference Library for official use by that agency. The State Bureau of Investigation shall maintain a record and inventory of all such weapons received.
- (6) By ordering such weapons turned over to the North Carolina Justice Academy for official use by that agency. The North Carolina Justice Academy shall maintain a record and inventory of all such weapons received."

Sec. 24. Sections 18, 21, and 23 of this act become effective May 1, 1994, and apply to offenses committed on or after that date. The remainder of this Part becomes effective on the date that Section 56 of Chapter 538 of the 1993 Session Laws provides that that act becomes effective, and applies to offenses committed on or after that date. Prosecutions for, or sentences based on, offenses committed before the effective dates of this Part are not abated or affected by this Part, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this Part remain applicable to those prosecutions or sentences.

PART 5. TRANSFER JUVENILES 13 YEARS OF AGE

Sec. 25. G.S. 7A-608 reads as rewritten:

"§ 7A-608. Transfer of jurisdiction of juvenile to superior court.

The court after notice, hearing, and a finding of probable cause may transfer jurisdiction over a juvenile ~~14 years of age or older~~ to superior court if the juvenile was ~~14~~ 13 years of age or older at the time ~~he~~ the juvenile allegedly committed an offense ~~which that~~ would be a felony if committed by an adult. If the alleged felony constitutes a Class A felony and the ~~judge~~ court finds probable cause, the ~~judge~~ court shall transfer the case to the superior court for trial as in the case of adults."

Sec. 26. G.S. 7A-609(a) reads as rewritten:

"(a) The judge court shall conduct a hearing to determine probable cause in all felony cases in which a juvenile was ~~14~~ 13 years of age or older when the offense was allegedly ~~committed~~ committed, ~~unless counsel~~ Counsel for the juvenile ~~waives~~ may waive in writing ~~his~~ the right to the hearing and ~~stipulates~~ stipulate to a finding of probable cause. The judge court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted."

Sec. 27. G.S. 7A-610(a) reads as rewritten:

"(a) If probable cause is ~~found~~, found and transfer to superior court is ~~not required by G.S. 7A-608~~, the prosecutor or the juvenile may move that the case be transferred to the superior court for trial as in the case of adults. ~~If the alleged felony does not constitute a capital offense, the~~ The judge may proceed to determine whether the needs of the juvenile or the best interest of the State will be served by transfer of the case to superior court for trial as in the case of adults. When the case is transferred to superior court, the superior court has jurisdiction over that felony, any offense based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan of that felony, and any greater or lesser included offense of that felony."

Sec. 28. G.S. 7A-601 reads as rewritten:

"§ 7A-601. Destruction of records resulting from nontestimonial identification procedures.

The results of any nontestimonial identification procedures shall be retained or disposed of as follows:

- (1) If a petition is not filed against a juvenile who has been the subject of nontestimonial identification procedures, all records of ~~such~~ the evidence shall be destroyed.
- (2) If in the district court or superior court pursuant to a transfer a juvenile is found not guilty, all records resulting from a nontestimonial order shall be destroyed. Further, in the case of a juvenile who is under ~~14~~ 13 years of age and who is adjudicated to have committed a delinquent act, which would be less than a felony had the juvenile been an adult, all records shall be destroyed.
- (3) If a juvenile ~~14~~ 13 years of age or older is found to have committed a delinquent act ~~which~~ that would be a felony if committed by an adult, all records resulting from a nontestimonial order may be retained in the court file. Special precautions shall be taken to ensure that these records will be maintained in such a manner and under such safeguards as to limit their use to inspection for comparison purposes by law-enforcement officers only in the investigation of a crime.
- (4) If the juvenile is transferred to superior court, all records resulting from nontestimonial identification procedures shall be processed as in the case of an adult.
- (5) Any evidence seized pursuant to a nontestimonial order shall be retained by law-enforcement officers until further order is entered by the court.
- (6) Destruction of nontestimonial identification records pursuant to this section shall be performed by the law-enforcement agency having possession of such records. Following destruction, the law-enforcement agency shall make written certification to the court of ~~such~~ the destruction."

Sec. 29. The Juvenile Code Committee of the Legislative Research Commission is authorized to study the issue of whether district courts should be

mandated to transfer jurisdiction of juveniles who have committed certain serious or violent felony offenses to superior court for trial as in the case of adults upon a finding of probable cause. The Committee may also study the issue of the proper age of juveniles mandatorily transferred to superior court for trial as in the case of adults. The Committee may submit an interim report of its findings and recommendations to the 1994 Regular Session of the 1993 General Assembly and shall submit a final report to the 1995 General Assembly.

Sec. 30. Sections 25 through 28 of this act become effective May 1, 1994, and apply to offenses committed on or after that date. The remainder of this Part is effective upon ratification.

PART 6. THREE STRIKES YOU'RE IN

Sec. 31. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 2B.

"Violent Habitual Felons.

"§ 14-7.7. Persons defined as violent habitual felons.

(a) Any person who has been convicted of two violent felonies in any federal court, in a court of this or any other state of the United States, or in a combination of these courts is declared to be a violent habitual felon. For purposes of this Article, 'convicted' means the person has been adjudged guilty of or has entered a plea of guilty or no contest to the violent felony charge, and judgment has been entered thereon when such action occurred on or after July 6, 1967. This Article does not apply to a second violent felony unless it is committed after the conviction or plea of guilty or no contest to the first violent felony. Any felony to which a pardon has been extended shall not, for the purposes of this Article, constitute a felony. The burden of proving a pardon shall rest with the defendant, and this State shall not be required to disprove a pardon. Conviction as an habitual felon shall not, for purposes of this Article, constitute a violent felony.

(b) For purposes of this Article, 'violent felony' includes the following offenses:

- (1)
 - a. Murder in the first and second degrees, G.S. 14-17.
 - b. Voluntary manslaughter, G.S. 14-18.
 - c. Killing an adversary in a duel, G.S. 14-30.
 - d. First degree rape, G.S. 14-27.2.
 - e. Second degree rape, G.S. 14-27.3.
 - f. First degree sexual offense, G.S. 14-27.4.
 - g. Second degree sexual offense, G.S. 14-27.5.
 - h. Intercourse and sexual offense by a parent or custodian, G.S. 14-27.7.
 - i. Malicious castration, G.S. 14-28.
 - j. Castration or maiming without malice aforethought, G.S. 14-29.
 - k. Malicious maiming, G.S. 14-30.
 - l. Malicious throwing of acid or alkali, G.S. 14-30.1.
 - m. Malicious assaulting in a secret manner, G.S. 14-31.
 - n. Any felony assault set forth in G.S. 14-32.
 - o. Felony assault on a handicapped person, G.S. 14-32.
 - p. Patient abuse and neglect, negligent or intentional, G.S. 14-32.2.
 - q. Discharging firearm in occupied property, G.S. 14-34.1.
 - r. Adulterated or misbranded foods or drugs, G.S. 14-34.4.
 - s. Kidnapping in the first or second degree, G.S. 14-39.

- t. Malicious use of explosive or incendiary devices, G.S. 14-49.
- u. Malicious damage of occupied property by the use of explosive, G.S. 14-49.1.
- v. Burglary in the first or second degree, G.S. 14-51.
- w. Breaking out of a dwelling house, G.S. 14-53.
- x. Burglary with explosives, G.S. 14-57.
- y. Arson in the first or second degree, G.S. 14-58.
- z. Burning of a mobile home, manufactured housing, or recreational trailer, G.S. 14-58.2.
- aa. Burning of public building, G.S. 14-59.
- bb. Burning of a schoolhouse or building of an educational institution, G.S. 14-60.
- cc. Burning of bridges and buildings, G.S. 14-61.
- dd. Burning of churches and other buildings, G.S. 14-62.
- ee. Burning of building or structure in the process of construction, G.S. 14-62.1.
- gg. Robbery with a firearm or dangerous weapon, G.S. 14-87.
- hh. Train robbery, G.S. 14-88.
- ii. Contaminating a public water supply, G.S. 14-159.1.
- jj. Felonious child abuse, G.S. 14-318.4.
- kk. First degree sexual exploitation of a minor, G.S. 14-190.16.
- ll. Distribution of adulterated food, G.S. 14-401.11.
- mm. Manufacture, sale, or delivery or possess with intent to manufacture, sell, or deliver a controlled substance within 300 feet of a school, G.S. 90-95(e)(8).
- nn. Selling and delivery of controlled substance by a person 18 or over to a person under 16, G.S. 90-95.
- oo. Discharge of oil or hazardous substance placing another in danger of death or serious bodily injury, G.S. 143-225.88(b).
- (2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).
- (3) Any offense committed in another jurisdiction substantially equivalent to the offenses set forth in subdivision (1) or (2).

"§ 14-7.8. Punishment.

When a person is charged by indictment with the commission of a violent felony and is also charged with being a violent habitual felon as defined in G.S. 14-7.7, the person must, upon conviction, be sentenced in accordance with this Article, except in those cases where the death penalty is imposed.

"§ 14-7.9. Charge of violent habitual felon.

An indictment that charges a person who is a violent habitual felon within the meaning of G.S. 14-7.7 with the commission of any violent felony must, in order to sustain a conviction of violent habitual felon, also charge that the person is a violent habitual felon. The indictment charging the defendant as a violent habitual felon shall be separate from the indictment charging the defendant with the principal violent felony. An indictment that charges a person with being a violent habitual felon must set forth the date that prior violent felonies were committed, the name of the state or other sovereign against whom the violent felonies were committed, the dates of convictions of the violent felonies, and the identity of the court in which the convictions took place. A defendant charged with being a violent habitual felon in a bill of indictment shall not be required to go to trial on that charge within 20 days after the finding of a true bill by the grand jury unless the defendant waives this 20-day period.

"§ 14-7.10. Evidence of prior convictions of violent felonies.

In all cases where a person is charged under this Article with being a violent habitual felon, the records of prior convictions of violent felonies shall be admissible in evidence, but only for the purpose of proving that the person has been convicted of former violent felonies. A prior conviction may be proved by stipulation of the parties or by the original or a certified copy of the court record of the prior conviction. The original or certified copy of the court record, bearing the same name as that by which the defendant is charged, shall be prima facie evidence that the defendant named therein is the same as the defendant before the court, and shall be prima facie evidence of the facts set out therein.

"§ 14-7.11. Verdict and judgment.

When an indictment charges a violent habitual felon with a violent felony as provided in this Article and an indictment also charges that the person is a violent habitual felon as provided in this Article, the defendant shall be tried for the principal violent felony as provided by law. The indictment that the person is a violent habitual felon shall not be revealed to the jury unless the jury finds that the defendant is guilty of the principal violent felony or another violent felony with which the defendant is charged. If the jury finds the defendant guilty of a violent felony, the bill of indictment charging the defendant as a violent habitual felon may be presented to the same jury. Except that the same jury may be used, the proceedings shall be as if the issue of violent habitual felon were a principal charge. If the jury finds that the defendant is a violent habitual felon, the trial judge shall enter judgment according to the provisions of this Article. If the jury finds that the defendant is not a violent habitual felon, the trial judge shall pronounce judgment on the principal violent felony or felonies as provided by law.

"§ 14-7.12. Sentencing of violent habitual felons.

A person who is convicted of a violent felony and of being a violent habitual felon must, upon conviction (except where the death penalty is imposed), be sentenced to life imprisonment without parole. Life imprisonment without parole means that the person will spend the remainder of the person's natural life in prison. The sentencing judge may not suspend the sentence and may not place the person sentenced on probation. Sentences for violent habitual felons imposed under this Article shall run consecutively with and shall commence at the expiration of any other sentence being served by the person."

Sec. 32. Effective on the date Chapter 538 of the 1993 Session Laws becomes effective, G.S. 14-7.7(b), as enacted by Section 31 of this act, reads as rewritten:

~~"(b) For purposes of this Article, 'violent felony' includes the following offenses:~~

- ~~(1) a. Murder in the first and second degrees, G.S. 14-17.~~
- ~~b. Voluntary manslaughter, G.S. 14-18.~~
- ~~c. Killing an adversary in a duel, G.S. 14-30.~~
- ~~d. First degree rape, G.S. 14-27.2.~~
- ~~e. Second degree rape, G.S. 14-27.3.~~
- ~~f. First degree sexual offense, G.S. 14-27.4.~~
- ~~g. Second degree sexual offense, G.S. 14-27.5.~~
- ~~h. Intercourse and sexual offense by a parent or custodian, G.S. 14-27.7.~~
- ~~i. Malicious castration, G.S. 14-28.~~
- ~~j. Castration or maiming without malice aforethought, G.S. 14-29.~~
- ~~k. Malicious maiming, G.S. 14-30.~~
- ~~l. Malicious throwing of acid or alkali, G.S. 14-30.1.~~
- ~~m. Malicious assaulting in a secret manner, G.S. 14-31.~~
- ~~n. Any felony assault set forth in G.S. 14-32.~~

- ~~o. Felony assault on a handicapped person, G.S. 14-32.~~
- ~~p. Patient abuse and neglect, negligent or intentional, G.S. 14-32.2.~~
- ~~q. Discharging firearm in occupied property, G.S. 14-34.1.~~
- ~~r. Adulterated or misbranded foods or drugs, G.S. 14-34.4.~~
- ~~s. Kidnapping in the first or second degree, G.S. 14-39.~~
- ~~t. Malicious use of explosive or incendiary devices, G.S. 14-49.~~
- ~~u. Malicious damage of occupied property by the use of explosive, G.S. 14-49.1.~~
- ~~v. Burglary in the first or second degree, G.S. 14-51.~~
- ~~w. Breaking out of a dwelling house, G.S. 14-53.~~
- ~~x. Burglary with explosives, G.S. 14-57.~~
- ~~y. Arson in the first or second degree, G.S. 14-58.~~
- ~~z. Burning of a mobile home, manufactured housing, or recreational trailer, G.S. 14-58.2.~~
- ~~aa. Burning of public building, G.S. 14-59.~~
- ~~bb. Burning of a schoolhouse or building of an educational institution, G.S. 14-60.~~
- ~~cc. Burning of bridges and buildings, G.S. 14-61.~~
- ~~dd. Burning of churches and other buildings, G.S. 14-62.~~
- ~~ee. Burning of building or structure in the process of construction, G.S. 14-62.1.~~
- ~~gg. Robbery with a firearm or dangerous weapon, G.S. 14-87.~~
- ~~hh. Train robbery, G.S. 14-88.~~
- ~~ii. Contaminating a public water supply, G.S. 14-159.1.~~
- ~~jj. Felonious child abuse, G.S. 14-318.4.~~
- ~~kk. First degree sexual exploitation of a minor, G.S. 14-190.16.~~
- ~~ll. Distribution of adulterated food G.S. 14-401.11.~~
- ~~mm. Manufacture, sale, or delivery or possess with intent to manufacture, sale, or deliver a controlled substance within 300 feet of a school, G.S. 90-90.~~
- ~~nn. Selling and delivery of controlled substance by a person 18 or over to a person under 16, G.S. 90-95.~~
- ~~oo. Discharge of oil or hazardous substance placing another in danger of death or serious bodily injury, G.S. 143-225.88(b).~~
- ~~(2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).~~
- ~~(3) Any offense committed in another jurisdiction substantially equivalent to the offenses set forth in subdivision (1) or (2).~~

(b) For purposes of this Article, 'violent felony' includes the following offenses:

- (1) All Class A through E felonies.
- (2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).
- (3) Any offense committed in another jurisdiction substantially equivalent to the offenses set forth in subdivision (1) or (2)."

Sec. 33. G.S. 15A-1370.1 reads as rewritten:

"§ 15A-1370.1. Applicability of Article 85.

This Article is applicable applies to all sentenced prisoners, including Class A and Class B felons, and Class C felons who receive a sentence of life imprisonment, who are not subject to Article 85A of this Chapter. Chapter, but shall not apply to prisoners who receive life imprisonment without parole. A person serving a sentence of life imprisonment without parole shall not be eligible for parole at any time."

Sec. 34. G.S. 15A-1370.1, as amended by Section 21 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"§ 15A-1370.1. Applicability of Article 85.

This Article is applicable to all prisoners serving sentences of imprisonment for convictions of impaired driving under G.S. 20-138.1 and prisoners serving sentences of life imprisonment. This Article does not apply to a person serving a sentence of life imprisonment without parole. A person serving a sentence of life imprisonment without parole shall not be eligible for parole at any time."

Sec. 35. G.S. 15A-1340.10, as amended by Section 1 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"§ 15A-1340.10. Applicability of structured sentencing.

This Article applies to criminal offenses in North Carolina, other than impaired driving under G.S. 20-138.1 that occur on or after January 1, 1995. This Article does not apply to violent habitual felons sentenced under Article 2B of Chapter 14 of the General Statutes."

Sec. 36. Effective May 1, 1994, Section 8 of Chapter 21 of the Session Laws of the Extra Session of 1994 reads as rewritten:

"Sec. 8. This act becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective, and applies to offenses occurring on or after that ~~date.~~ date except that Section 7 of this act becomes effective May 1, 1994, with respect to offenses committed on or after May 1, 1994, that are punishable under Article 2B of Chapter 14 of the General Statutes. Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal, expiration, or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Sec. 37. Sections 31, 36, and 37 of this act become effective May 1, 1994. Section 33 of this act becomes effective May 1, 1994, and expires on the date that Chapter 538 of the 1993 Session Laws becomes effective, but prosecution for, or sentences based on, offenses occurring before that date are not abated or affected by the expiration of that section. Sections 32, 34, and 35 of this act become effective on the date that Chapter 538 of the 1993 Session Laws becomes effective. Prosecution for, or sentences based on, offenses occurring before the effective date of this Part are not abated or affected by the repeal or amendment in this Part of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this Part remain applicable to those prosecutions or sentences.

PART 7. EFFECTIVE DATE

Sec. 38. Except as otherwise provided, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of March, 1994.

MARC BASNIGHT

Marc Basnight
President Pro Tempore of the Senate

DANIEL BLUE, JR.

Daniel Blue, Jr.
Speaker of the House of Representatives

May 1994

Vol. 19, No.9

Significant State Anti-Crime Legislation

By
Donna Hunzeker
Program Manager

C rime control has been a dominant issue in state legislatures this year, just as crime and violence have been media themes and a public preoccupation. Lawmakers have concentrated heavily on sentencing and release of repeat, violent criminals; in 1994 they have also crafted responses to serious and violent juvenile crime. These efforts have had the characteristic toughness, and scrutiny, of election-year crime policy. But state legislatures also are seen to be moving in the direction of tempering punishment with prevention. "Lock 'em up" will be part of—but not the only—solution to the nation's crime dilemma, which is ultimately a state and local responsibility.

This report summarizes selected, significant crime enactments in state legislatures so far in 1994. Reference to some late 1993 enactments from special sessions or from states with year-round legislatures also are included, as is selected pending legislation from states in session.

"Three Strikes You're Out"

The most popular piece of crime legislation in 1994 is to provide tougher sentences for repeat offenders of serious and violent crime. "Three strikes you're out" was coined and successfully carried out in the 1993 fall elections in Washington state, where voters approved a Persistent Offender Act requiring life without possibility of parole for third-time serious felony offenders. Even though many states already had mandatory minimum provisions applying to repeat offenders of violent crime, and nearly all states have some type of habitual offender law for repeat felons, the three-time loser notion caught on in Washington and beyond. By early 1994, about half the states had "three strikes" or similar related bills introduced, some with half a dozen or more such bills offered. By May 1, 10 state legislatures had passed similar new sentencing provisions applying to repeat felons. Those are: California, Connecticut, Georgia, Indiana, Kansas, Maryland, New Mexico, North Carolina, Virginia and Wisconsin. At least 12 other states had repeat offender bills pending at that time: Alaska, Colorado, Delaware, Illinois, Michigan, New

Jersey, New York, Ohio, South Carolina, Vermont, Rhode Island and Pennsylvania. In addition, Minnesota's pending crime bill prohibits a judge from departing from the sentencing guidelines when an offender has been convicted of a third violent crime.

What distinguished the Washington "three strikes" act from what existed in most state law was that it provides for mandatory life without parole and applies that sentence to repeated convictions for a fairly broad list of serious felonies. States that have passed similar laws this year have adopted, adapted, those components. (See Chart A.)

Most of the new "three strikes" laws are mandatory, requiring the court to impose the statutory sentence for habitual or persistent offenders, as defined. Connecticut, Kansas and Maryland retained some judicial discretion in their new laws.

Prison terms required under the laws also differ. The Washington initiative and laws in Georgia, Indiana, Maryland and Wisconsin, provide for life without possibility of parole. California imposes a sentence of life imprisonment, under which offenders will spend a minimum of 25 years behind bars. Similarly, New Mexico provides for parole eligibility after an inmate serves 30 years of the life term. North Carolina's "three strikes" law, passed during an Extra Session on crime and corrections early this year, provides for life without parole, while a separate measure also approved in special session entitles those sentenced to life without parole to a sentence review after 25 years are served. Maryland and Virginia provide a release mechanism to those 65 years and older who have served a set number of years. Kansas applied the "three strikes" concept to its sentencing guidelines, allowing the court to double the grid sentence for repeat "person felonies."

Number and types of crimes to which "three strikes"-type habitual offender laws apply also are important points of distinction. Washington's new law applies to more than 20

serious felonies. California's "three strikes" is similarly broad in application, including a number of violent felonies plus some 25 "serious felonies." Indiana, Maryland and North Carolina also apply their new laws to many violent and serious crimes.

New Mexico's law applies to a comparatively narrower list of violent crimes; and Georgia's law, which actually is a "two strikes" mandatory life without parole, also applies to just a few violent felonies. Virginia's "acts of violence" are similar in scope.

States' enthusiasm to crack down on repeat, violent criminals does not come without concern for the cost of "three strikes" and similar measures. The number and types of crimes the persistent offender provisions apply to, and whether "life means life," have been contentious points in some enacted and pending legislation, largely because of fiscal implications. Preliminary projections place the most significant costs of "three strikes"-type laws well into the future. Short-term prison bed needs are thought to be minor compared to longer-term capacity needs and health costs of a cumulative number of aging prisoners serving long or life prison terms. Some states have projected immediate increased public defender and judicial costs, based on likelihood that more cases will go to trial under such laws.

The Department of Corrections in California, in a fairly extensive impact analysis of the law passed there, estimates corrections costs will increase by \$75 million by 1995-96 and nearly \$2 billion by the year 2000. Kansas estimates it will need a new prison by the end of the decade to accommodate prisoners for whom sentences were doubled on the guidelines grid. Wisconsin's law calls for a comprehensive fiscal analysis.

"Truth" and Sentencing

States have taken a variety of other approaches this year to "truth" and certainty in sentencing. Arizona passed a law restricting prosecutors from dismissing charges in plea agreements for crimes committed by repetitive criminals and in cases of crimes against children or those committed while on parole. The Legislature also amended parole laws to require the parole board to discharge serious offenders only with majority approval if four or more members consider the action or by unanimous affirmative vote if fewer consider.

Under a new law in Connecticut, parole is eliminated for offenders sentenced to a capital felony, felony murder, arson murder, and any offense committed with a firearm or on or within 1,500 feet of a school. Other states, including Georgia, Maryland, North Carolina, Virginia, West Virginia, and Wisconsin, also have restricted or changed parole eligibility for some serious offenders. Some of the no-parole provisions passed this year were part of the "three-strikes" package.

Tennessee approved a law to require the judge in criminal cases to inform the jury of how much time the defendant will serve if convicted of the offenses charged.

Stalkers, sex offenders and those who victimize children are targets of increased penalties in the states. Utah created

the offense of child abuse homicide and provided penalties; and Wyoming similarly established abuse of a child resulting in death as first degree murder. Utah also increased penalties for stalking under certain circumstances, as did Kansas and South Dakota. A measure approved in Kentucky prohibits suspended sentences for sex offenders; and North Carolina also increased sentences for rapists and other sex offenders with significant prior records or whose crimes include aggravating circumstances. Many states, including Georgia, Kentucky, Mississippi, Virginia, South Dakota, Tennessee, Wisconsin and Wyoming, changed or added provisions for registration of released sex offenders. The New York Senate has passed on to the Assembly a bill that sets penalties for a course of sexual conduct against a child; as well as other measures dealing with a sex offender DNA data bank, rape victim services, stalkers and those who violate orders of protection.

In addition to a pending "three strikes" measure, Ohio has several important sentencing measures still in works, including implementation of recommendations of the Criminal Sentencing Commission, and provisions dealing with drug laws, sentence appeals and judicial release. New Jersey has a measure pending that would ban plea bargaining for repeat offenders, as well as other pending proposals to provide mandatory sentences for repeat criminals and those convicted of murder and sexual assault. California and Illinois each have several sentencing measures still being considered this year, including "truth" proposals requiring offenders to serve at least 85 percent of the sentence. Pennsylvania has major sentencing reform legislation pending which would keep violent prisoners incarcerated longer and deal with prison overcrowding by expediting release for appropriate non-violent offenders. The legislation also would promote increased use of alternatives to incarceration for certain low-risk offenders.

Sentencing legislation passed in Texas during its last legislative session in 1993 revised several aspects of law so that violent offenders serve significantly greater proportions of prison sentences. Aggravated offenders serve 50 percent of their sentences or 30 years, whichever is less. Nonviolent offenders are punished at the bottom end of the felony system as "state jail felonies." New facilities for that category of offenders provide greater capacity for drug treatment.

Alternatives to incarceration remain of interest elsewhere. In its last legislative session in 1993, Arkansas approved transfer of certain offenders to community punishment facilities 120 days prior to projected parole-eligibility dates. That state created a new Department of Community Punishment, under authority of a newly structured Board of Correction and Community Punishment. The New York Assembly has a crime bill pending that would increase penalties for violent and repeat offenders, while also providing a comprehensive community corrections program and treatment options for non-violent offenders.

Juvenile Crime and Justice

Much of the country's current anti-crime mood has to do with increasing violence among juveniles. In recent years states have explored how to adapt handling youthful offenders to better fit the increasingly serious and violent nature of

TO: Greg Taylor

FROM: Tony Ortiz

T.O.
5/26/94

SUBJECT: "THREE STRIKES AND YOU'RE OUT"--NEW MEXICO LEGISLATION

As we discussed on Thursday, May 26, 1994, enclosed please find a copy of Chapter 24, Laws of New Mexico 1994, regarding life imprisonment for individuals convicted of three violent felony offenses.



The Legislature of the State of New Mexico

41st Legislature, 2nd Session

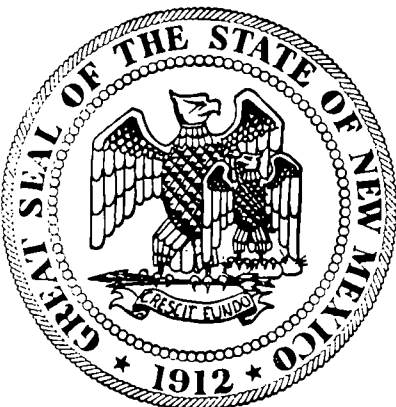
LAWS 1994

CHAPTER 24

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR

SENATE BILLS 73 and 742, as amended

Introduced by



CHAPTER 24

AN ACT

REQUIRING LIFE IMPRISONMENT FOR PERSONS HAVING THREE VIOLENT
FELONY CONVICTIONS; ESTABLISHING SENTENCING PROCEDURES;
AMENDING AND ENACTING SECTIONS OF THE CRIMINAL SENTENCING
ACT; AMENDING A SECTION OF THE PROBATION AND PAROLE ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-18-12 NMSA 1978 (being Laws 1977,
Chapter 216, Section 1) is amended to read:

"31-18-12. SHORT TITLE.--Chapter 31, Article 18 NMSA
1978 may be cited as the "Criminal Sentencing Act"."

Section 2. A new Section 31-18-23 NMSA 1978 is enacted
to read:

"31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY
LIFE IMPRISONMENT--EXCEPTION.--

A. When a defendant is convicted of a third
violent felony, and each violent felony conviction is part of
a separate transaction or occurrence, and at least the third
violent felony conviction is in New Mexico, the defendant
shall, in addition to the punishment imposed for the third
violent conviction, and that sentence does not result in
death, be punished by a sentence of life imprisonment. The
life imprisonment sentence shall be subject to parole
pursuant to the provisions of Section 31-21-10 NMSA 1978.

B. The sentence of life imprisonment shall be

1 imposed after a sentencing hearing separate from the trial or
2 guilty plea proceeding resulting in the third violent felony
3 conviction, pursuant to the provisions of Section 31-18-24
4 NMSA 1978.

5 C. For the purpose of this section, a violent
6 felony conviction incurred by a defendant before he reaches
7 the age of eighteen shall not count as a violent felony
8 conviction.

9 D. When a defendant has a felony conviction from
10 another state, the felony conviction shall be considered a
11 violent felony for the purposes of the Criminal Sentencing
12 Act if that crime would be considered a violent felony in New
13 Mexico.

14 E. As used in the Criminal Sentencing Act:

15 (1) "great bodily harm" means an injury to
16 the person that creates a high probability of death; or that
17 causes serious disfigurement; or that results in permanent
18 loss or impairment of the function of any member or organ of
19 the body; and

20 (2) "violent felony" means:

21 (a) murder in the first or second
22 degree, as provided in Section 30-2-1 NMSA 1978;

23 (b) shooting at or from a motor vehicle
24 resulting in great bodily harm, as provided in Subsection B
25 of Section 30-3-8 NMSA 1978;

1 (c) kidnaping resulting in great bodily
2 harm inflicted upon the victim by his captor, as provided in
3 Subsection B of Section 30-4-1 NMSA 1978; and

4 (d) criminal sexual penetration, as
5 provided in Subsection C or Paragraph (4) or (5) of
6 Subsection D of Section 30-9-11 NMSA 1978; :

7 (e) robbery while armed
8 weapon resulting in great bodily harm as pro
9 30-16-2 NMSA 1978 and Section 30-1-12 (A) NM

NO BIFURCATED
TRIAL

10 Section 3. A new Section 31-18-24 NMS.
11 to read:

12 "31-18-24. VIOLENT FELONY SENTENCING :

13 A. The court shall conduct a sepa
14 proceeding to determine any controverted que
15 regarding whether the defendant has been convicted of three
16 violent felonies. Either party to the action may demand a
17 jury trial.

18 B. In a jury trial, the sentencing proceeding
19 shall be conducted as soon as practicable by the original
20 trial judge before the original trial jury. In a nonjury
21 trial, the sentencing shall be conducted as soon as
22 practicable by the original trial judge. In the case of a
23 plea of guilty, the sentencing proceeding shall be conducted
24 as soon as practicable by the original trial judge or by a
25 jury upon demand of the defendant.

C. In a jury sentencing proceeding, the judge shall give appropriate instructions and allow arguments. The jury shall retire to determine the verdict. In a nonjury sentencing proceeding, or upon a plea of guilty where no jury has been demanded, the judge shall allow argument and determine the verdict."

Section 4. Section 31-21-10 NMSA 1978 (being Laws 1980, Chapter 28, Section 1, as amended) is amended to read:

"31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

A. An inmate of an institution who was sentenced to life imprisonment as the result of the commission of a capital felony, or who was convicted of three violent felonies and sentenced pursuant to Section 31-18-24 NMSA 1978, becomes eligible for a parole hearing after he has served thirty years of his sentence. Before ordering the parole of an inmate sentenced to life imprisonment, the board shall:

(1) interview the inmate at the institution where he is committed;

(2) consider all pertinent information concerning the inmate including:

(a) the circumstances of the offense;
(b) mitigating and aggravating circumstances;

(c) whether a deadly weapon was used in

1 the commission of the offense;

2 (d) whether the inmate is a habitual
3 offender;

4 (e) the reports filed under Section
5 31-21-9 NMSA 1978; and

6 (f) the reports of such physical and
7 mental examinations as have been made while in prison;

8 (3) make a finding that a parole is in the
9 best interest of society and the inmate; and

10 (4) make a finding that the inmate is able
11 and willing to fulfill the obligations of a law-abiding
12 citizen.

13 If parole is denied, the inmate sentenced to life
14 imprisonment shall again become entitled to a parole hearing
15 at two-year intervals. The board may, on its own motion,
16 reopen any case in which a hearing has already been granted
17 and parole denied.

18 B. Unless the board finds that it is in the best
19 interest of society and the parolee to reduce the period of
20 parole, a person who was convicted of a capital felony shall
21 be required to undergo a minimum period of parole of five
22 years. During the period of parole, the person shall be
23 under the guidance and supervision of the board.

24 C. An inmate who was convicted of a first, second
25 or third degree felony and who has served the sentence of

imprisonment imposed by the court in a corrections facility designated by the corrections department shall be required to undergo a two-year period of parole. An inmate who was convicted of a fourth degree felony and who has served the sentence of imprisonment imposed by the court in a corrections facility designated by the corrections department shall be required to undergo a one-year period of parole. During the period of parole, the person shall be under the guidance and supervision of the board.

D. Every person while on parole shall remain in the legal custody of the institution from which he was released, but shall be subject to the orders of the board. The board shall furnish to each inmate as a prerequisite to his release under its supervision a written statement of the conditions of parole which shall be accepted and agreed to by the inmate as evidenced by his signature affixed to a duplicate copy to be retained in the files of the board. The board shall also require as a prerequisite to release the submission and approval of a parole plan. If an inmate refuses to affix his signature to the written statement of the conditions of his parole or does not have an approved parole plan, he shall not be released and shall remain in the custody of the corrections facility in which he has served his sentence, excepting parole, until such time as the period of parole he was required to serve, less meritorious

1 deductions, if any, expires, at which time he shall be
2 released from that facility without parole, or until such
3 time that he evidences his acceptance and agreement to the
4 conditions of parole as required or receives approval for his
5 parole plan or both. Time served from the date that an
6 inmate refuses to accept and agree to the conditions of
7 parole or fails to receive approval for his parole plan shall
8 reduce the period, if any, to be served under parole at a
9 later date. If the district court has ordered that the
10 inmate make restitution to a victim as provided in Section
11 31-17-1 NMSA 1978, the board shall include restitution as a
12 condition of parole. The board shall also personally apprise
13 the inmate of the conditions of parole and his duties
14 relating thereto.

15 E. When a person on parole has performed the
16 obligations of his release for the period of parole provided
17 in this section, the board shall make a final order of
18 discharge and issue him a certificate of discharge.

19 F. Pursuant to the provisions of Section 31-18-15
20 NMSA 1978, the board shall require the inmate, as a condition
21 of parole:

22 (1) to pay the actual costs of his parole
23 services to the field services division of the corrections
24 department for deposit to the corrections department
25 intensive supervision fund not exceeding one thousand twenty

1 dollars (\$1,020) annually to be paid in monthly installments
2 of not less than fifteen dollars (\$15.00) and not more than
3 eighty-five dollars (\$85.00), subject to modification by the
4 appropriate district supervisor of the field services
5 division on the basis of changed financial circumstances; and

6 (2) to reimburse a law enforcement agency or
7 local crime stopper program for the amount of any reward paid
8 by the agency or program for information leading to his
9 arrest, prosecution or conviction."

10 Section 5. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 1994. _____

SJC/SB 73 &
742
Page 8

s/Casey Luna
Casey Luna, President
Senate

s/Margaret Larragoite
Margaret Larragoite, Chief Clerk
Senate

s/Raymond G. Sanchez
Raymond G. Sanchez, Speaker
House of Representatives

s/Stephen R. Arias
Stephen R. Arias, Chief Clerk
House of Representatives

Approved by me this 25th day of February, 1994

s/Governor Bruce King
Governor Bruce King
State of New Mexico

**A COMPARISSON OF STATE "THREE STRIKES AND YOU'RE OUT"
AND/OR SIMILAR ANTI-CRIME INITIATIVES**

**NATURE AND RESULT OF
AMENDMENTS**

TARGETED CRIMINAL ACT

CONNECTICUT: <i>-bill increases the maximum prison term a court may impose under the persistent dangerous felony offender law from 25 to 40 years based on one previous violent felony conviction and from 25 years to life based on two such previous convictions.</i> <i>-Life imprisonment is at least 60 years.</i> <i>-A life sentence can be imposed if it is in public interest.</i>	<i>-offense with a firearm in, or w/in 1500 feet of a public/private school,</i> <i>-manslaughter, arson, kidnapping, first degree assault, many sexual assaults, sexual assaults with a firearm,</i> <i>-first or second degree robbery.</i> <i>-After July 1981 no person convicted of HB 5385 shall be eligible for parole,</i>	<i>Impact/Opinion</i>
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CALIFORNIA:

-greater punishment for those who commit a serious or violent felony and have been previously convicted of two felony offenses

-serious felony with two priors, applicable jail term is life, 25 year mandatory sentence

-violent felony with two priors, sentence is life without parole

-priors from another jurisdiction are viewed as serious/violent felonies in CA

-court cannot dismiss or strike prior convictions

-for inherently serious felonies with one prior add 5 years

-for current violent felonies with one violent prior felony add 10 years

-for current forcible sex crime or kidnapping of a child less than 14 years of age, with one prior of the same type of crime, the jail term is life imprisonment wittory 25 years imprisonment,nda ma

-enumerated violent felonies include arson of residence or structure, bomb offenses involving injury or death, all carjacking, any felony with purposeful use of a dangerous or deadly weapon, assault with intent to commit a sex crime, felony assault of a peace officer, fire fighter, or custodial officer, 1st degree robbery

-serious felonies include new violent felonies and witness intimidation. All robberies qualify as serious felonies

GEORGIA: - "Sentence Reform Act of 1994" provides mandatory life without parole for <u>second</u> "serious violent felony" conviction. - Fourth conviction on any felony requires maximum sentence to be served before eligible for parole.	- "serious violent felonies" under "two strikes" approach. Offenses include murder, felony murder, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, aggravated sexual battery	
INDIANA: - "Three strikes law providing mandatory life without parole if in separate charge state proves two prior unrelated felony convictions. - Court has discretion to sentence to life without parole if found subject to provisions	- many serious felonies, including murder, battery, rape, sexual battery with a deadly weapon, child molesting, arson, robbery, burglary, resulting in serious bodily injury or with deadly weapon, dealing drugs.	

KANSAS: -doubles length of prison term for certain repeat offenders. -Requires a person convicted of 1st degree premeditated murder to serve a minimum 25 years before eligible for parole or good behavior credits. -Bill makes it easier to impose mandatory 40 years hard time for person (including 14 year old) committing premeditated murder. -Mandates doubling of existing sentencing guidelines when crime involves the use of minors under 16, gang membership, or crimes of extreme sexual violence.	-felonies committed against the person, including various classifications of murder, sex crimes, battery, and assault -three especially aggravating circumstances that warrant imposing severe mandatory sentencing: gang involvement, use of a minor under the age of 16 years old in the commission of a felony, or a crime of extreme sexual violence	
WASHINGTON: -Provides life imprisonment without possibility of parole for "persistent offenders convicted of a third serious felony.	-More than 20 serious felonies, including any Class A felony and any felony with a deadly weapon; many crimes against children	

MARYLAND (AWAITS GOVERNOR): -Mandatory life sentence without parole for <u>fourth</u> conviction of crime of violence, for which offender has served three separate prison terms. -Third crime of violence after two such convictions and at least one prison term results in mandatory 25 years. -Second crime of violence following prison term results in mandatory 10 year sentence. -Person sentenced under provisions who is 65 years old and served 15 years may petition for and be granted parole.	-More than 29 crimes of violence, including murder, rape, robbery with a deadly weapon, carjacking, armed carjacking, first and second degree sex offenses, arson, burglary, kidnapping, manslaughter, mayhem, maiming, use of handgun in the commission of a felony, attempt to commit murder, rape, robbery, sexual offenses.	
NEW MEXICO: -Mandatory life imprisonment, in addition to required years of imprisonment for third violent felony conviction. -Parole eligibility after 30 years of life term served	-Violent crimes including first and second degree murder, and several crimes resulting in great bodily harm, including shooting from a motor vehicle, kidnapping, criminal sexual penetration and robbery	

NORTH CAROLINA: <i>-Life without parole required upon third violent felony conviction and finding, under separate indictment, that offender is violent habitual felon.</i> <i>-Separate law (SB 2, 1994 Extra Session of 1994) provides for parole review after 25 years served of life without parole sentence</i>	<i>-applies to 40 violent felonies enumerated by statute.</i> <i>-After 10/1/94 when structured sentencing takes effect, provisions will apply to 47 Class A, B, B1, B2, C, D and E felonies</i>	
VIRGINIA: <i>-Three strikes law providing mandatory life without parole for offender convicted of third felony involving first and second degree murder, voluntary manslaughter, mob related felonies, kidnapping or abduction, malicious felonious assault or malicious bodily wounding, robbery, carjacking, any criminal sexual assault.</i> <i>-Those sentenced under this law who reach 65 years of age and have served five years may petition the parole board for conditional release.</i>	<i>-Acts of violence covered by statute include first and second degree murder, mob-related felonies, kidnapping or abduction, robbery and carjacking, sexual assault felonies, conspiracy to commit any of the above</i>	

WISCONSIN: <i>-Persistent repeater who has two previous, separate "serious felony" convictions, receives mandatory life sentence without parole</i> <i>-the provisions of this bill apply to adult criminals or to juveniles who have been tried as adults.</i>	<i>-serious felonies (any felony that is punishable by a maximum prison term of 30 years or more) includes murder, manslaughter, battery, and aggravated battery, mayhem, vehicle theft, robbery and many crimes against children including sexual assault, physical abuse, sexual exploitation, abduction</i>	
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COMMONWEALTH OF VIRGINIA

Division of Legislative Services



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TRANSMITTED TO ▼

Name	GREG TAYLOR	Organization	WHITE HOUSE Counsel
Fax	(202) 456-1647	Telephone	

TRANSMITTED FROM ▼

Name	OSCAR BRINSON
Regarding	HB 273 (1994) (VIRGINIA)

Comments
ABOVE BILL INCLUDES "THREE STRIKES
YOU'RE OUT" PROVISIONS ABOUT WHICH
YOU INQUIRED. A bill summary
is also enclosed.

VIRGINIA ACTS OF ASSEMBLY -- 1994 RECONVENED SESSION

REENROLLED

CHAPTER 881

An Act to amend and reenact §§ 19.2-264.3, 53.1-151 and 53.1-199 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 19.2-295.1 and 19.2-297.1, relating to sentence for third conviction of a violent felony; ineligibility for parole, probation, suspension of sentence or good time allowance; penalty.

[H 273]

Approved April 20, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-264.3, 53.1-151 and 53.1-199 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 19.2-295.1 and 19.2-297.1 as follows:

§ 19.2-264.3. Procedure for trial by jury.

A. In any case in which the offense may be punishable by death which is tried before a jury the court shall first submit to the jury the issue of guilt or innocence of the defendant of the offense charged in the indictment, or any other offense supported by the evidence for which a lesser punishment is provided by law and the penalties therefor.

B. If the jury finds the defendant guilty of an offense for which the death penalty may not be imposed, it shall fix the punishment for such offense as provided by law in § 19.2-295.1.

C. If the jury finds the defendant guilty of an offense which may be punishable by death, then a separate proceeding before the same jury shall be held as soon as is practicable on the issue of the penalty, which shall be fixed as is provided in § 19.2-264.4.

If the sentence of death is subsequently set aside or found invalid, and the defendant or the Commonwealth requests a jury for purposes of resentencing, the court shall impanel a different jury on the issue of penalty.

§ 19.2-295.1. Sentencing proceeding by the jury after conviction for a felony.

In cases of trial by jury, upon a finding that the defendant is guilty of a felony, a separate proceeding limited to the ascertainment of punishment shall be held as soon as practicable before the same jury. At such proceeding, the Commonwealth shall present the defendant's prior criminal convictions by certified, attested or exemplified copies of the record of conviction, including adult convictions and juvenile convictions and adjudications of delinquency. Prior convictions shall include convictions and adjudications of delinquency under the laws of any state, the District of Columbia, the United States or its territories. The Commonwealth shall provide to the defendant fourteen days prior to trial photocopies of certified copies of the defendant's prior criminal convictions which it intends to introduce at sentencing. After the Commonwealth has introduced such evidence of prior convictions, the defendant may introduce relevant, admissible evidence related to punishment. Nothing in this section shall prevent the Commonwealth or the defendant from introducing relevant, admissible evidence in rebuttal. If the defendant is found guilty of an offense other than a felony, punishment shall be fixed as otherwise provided by law.

§ 19.2-297.1. Sentence of person twice previously convicted of certain violent felonies:

A. Any person convicted of two or more separate acts of violence when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between each conviction, shall, upon conviction of a third or subsequent act of violence, be sentenced to life imprisonment and shall not have all or any portion of the sentence suspended, provided it is admitted; or found by the jury or judge before whom he is tried, that he has been previously convicted of two or more such acts of violence. For the purposes of this section, "act of violence" means (i) any one of the following violations of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2:

a. First and second degree murder and voluntary manslaughter under Article 1;

b. Mob-related felonies under Article 2;

c. Any kidnapping or abduction felony under Article 3;

d. Any malicious felonious assault or malicious bodily wounding under Article 4;

e. Robbery under § 18.2-58 and carjacking under § 18.2-58.1; or

f. Any criminal sexual assault punishable as a felony under Article 7; (ii) conspiracy to commit any of the violations enumerated in clause (i) of this section; and (iii) violations as a principal in the second degree or accessory before the fact of the provisions enumerated in clause (i) of this section.

B. Prior convictions shall include convictions under the laws of any state or of the

United States for any offense substantially similar to those listed under "act of violence" if such offense would be a felony if committed in the Commonwealth.

The Commonwealth shall notify the defendant in writing, at least thirty days prior to trial, of its intention to seek punishment pursuant to this section.

C. Any person sentenced to life imprisonment pursuant to this section shall not be eligible for parole and shall not be eligible for any good conduct allowance under Chapter 6 (§ 53.1-186 et seq.) of Title 53.1. However, any person subject to the provisions of this section who has reached the age of sixty-five or older and who has served at least five years of the sentence imposed may petition the Parole Board for conditional release. The Parole Board shall promulgate regulations to implement the provisions of this subsection.

§ 53.1-151. Eligibility for parole.

A. Except as herein otherwise provided, every person convicted of a felony and sentenced and committed by a court under the laws of this Commonwealth to the Department of Corrections, whether or not such person is physically received at a Department of Corrections facility, or as provided for in § 19.2-308.1:

1. For the first time, shall be eligible for parole after serving one-fourth of the term of imprisonment imposed, or after serving twelve years of the term of imprisonment imposed if one-fourth of the term of imprisonment imposed is more than twelve years;

2. For the second time, shall be eligible for parole after serving one-third of the term of imprisonment imposed, or after serving thirteen years of the term of imprisonment imposed if one-third of the term of imprisonment imposed is more than thirteen years;

3. For the third time, shall be eligible for parole after serving one-half of the term of imprisonment imposed, or after serving fourteen years of the term of imprisonment imposed if one-half of the term of imprisonment imposed is more than fourteen years;

4. For the fourth or subsequent time, shall be eligible for parole after serving three-fourths of the term of imprisonment imposed, or after serving fifteen years of the term of imprisonment imposed if three-fourths of the term of imprisonment imposed is more than fifteen years.

For the purposes of subdivisions 2, 3 and 4 of subsection A and for the purposes of subsections B1 and B2, prior commitments shall include commitments to any correctional facility under the laws of any state, the District of Columbia, the United States or its territories for murder, rape, robbery, forcible sodomy, animate or inanimate object sexual penetration, aggravated sexual battery, abduction, kidnapping, burglary, felonious assault or wounding, or ~~manufacturing~~ manufacturing, selling, giving, distributing or possessing with the intent to manufacture, sell, give or distribute a controlled substance, if such would be a felony if committed in the Commonwealth. Only prior commitments interrupted by a person's being at liberty, or resulting from the commission of a felony while in a correctional facility of the Commonwealth, of any other state or of the United States, shall be included in determining the number of times such person has been convicted, sentenced and committed for the purposes of subdivisions 2, 3 and 4 of subsection A. "At liberty" as used herein ~~shall include~~ includes not only freedom without any legal restraints, but shall also ~~include~~ includes release pending trial, sentencing or appeal, or release on probation or parole or escape. In the case of terms of imprisonment to be served consecutively, the total time imposed shall constitute the term of the imprisonment; in the case of terms of imprisonment to be served concurrently, the longest term imposed shall be the term of imprisonment. In any case in which a parolee commits an offense while on parole, only the sentence imposed for such offense and not the sentence or sentences or any part thereof from which he was paroled shall constitute the term of imprisonment.

The Department of Corrections shall make all reasonable efforts to determine prior convictions and commitments of each inmate for the enumerated offenses.

B. Persons sentenced to die shall not be eligible for parole. Any person sentenced to life imprisonment who escapes from a correctional facility or from any person in charge of his custody shall not be eligible for parole.

B1. Any person convicted of three separate felony offenses of (i) murder, (ii) rape or (iii) robbery by the presenting of firearms or other deadly weapon, or any combination of the offenses specified in subdivisions (i), (ii) or (iii) when such offenses were not part of a common act, transaction or scheme shall not be eligible for parole. In the event of a determination by the Department of Corrections that an individual is not eligible for parole under this subsection, the Parole Board may in its discretion, review that determination, and make a determination for parole eligibility pursuant to regulations promulgated by it for that purpose. Any determination of the Parole Board of parole eligibility thereby shall supersede any prior determination of parole ineligibility by the Department of Corrections under this subsection.

B2. Any person convicted of three separate felony offenses of manufacturing, selling, giving, distributing or possessing with the intent to manufacture, sell, give or distribute a controlled substance, when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in this section between each conviction, shall not be eligible for parole.

B3. Any person sentenced to life imprisonment pursuant to § 19.2-297.1 shall not be eligible for parole and shall not be eligible for any good conduct allowance under Chapter 6 (§ 53.1-186 et seq.) of this title, except that any person subject to the provisions of this subsection who has reached age sixty-five or older and who has served at least five years of the sentence imposed pursuant to § 19.2-295.1 may petition the Parole Board to be granted a conditional release from incarceration. The Parole Board shall promulgate regulations to implement the provisions of this paragraph.

C. Any person sentenced to life imprisonment for the first time shall be eligible for parole after serving fifteen years, except that if such sentence was for a Class 1 felony violation or the first degree murder of a child under the age of eight in violation of § 18.2-32, he shall be eligible for parole after serving twenty-five years, unless he is ineligible for parole pursuant to subsection B1 or B2, or B3.

D. A person who has been sentenced to two or more life sentences, except a person to whom the provisions of subsection B1, B2, or E of this section are applicable, shall be eligible for parole after serving twenty years of imprisonment, except that if either such sentence, or both, was or were for a Class 1 felony violation, and he is not otherwise ineligible for parole pursuant to subsection B1, B2, B3, or E of this section, he shall be eligible for parole only after serving thirty years.

E. A person convicted of an offense and sentenced to life imprisonment after being paroled from a previous life sentence shall not be eligible for parole.

E1. Any person who has been convicted of murder in the first or second degree, rape in violation of § 18.2-61, forcible sodomy, animate or inanimate object sexual penetration or aggravated sexual battery or any of the following acts of violence in violation of Chapter 4 (§ 18.2-30 et. seq.) of Title 18.2:

(i) voluntary manslaughter under Article 1;

(ii) mob-related felonies under Article 2;

(iii) any kidnapping or abduction felony under Article 3;

(iv) any malicious felonious assault or malicious bodily wounding under Article 4; or

(v) robbery under § 18.2-58 and who has been sentenced to a term of years shall, upon a first commitment to the Department of Corrections, be eligible for parole after serving two-thirds of the term of imprisonment imposed or after serving fourteen years of the term of imprisonment imposed if two-thirds of the term of imprisonment imposed is more than fourteen years. If such person has been previously committed to the Department of Corrections, such person shall be eligible for parole after serving three-fourths of the term of imprisonment imposed or after serving fifteen years of the terms of imprisonment imposed if three-fourths of the term of imprisonment imposed is more than fifteen years.

For purposes of this subsection, prior convictions shall include convictions under the laws of any state or of the United States for any offense substantially similar to those listed above in this subsection if such offense would be a felony if committed in the Commonwealth.

F. If the sentence of a person convicted of a felony and sentenced to the Department is partially suspended, he shall be eligible for parole based on the portion of such sentence execution which was not suspended.

G. The eligibility time for parole as specified in subsections A, C and D of this section may be modified as provided in §§ 53.1-191, 53.1-197 and 53.1-198.

H. The time for eligibility for parole as specified in subsection D of this section shall apply only to those criminal acts committed on or after July 1, 1976.

I. The provisions of subdivisions 2, 3 and 4 of subsection A shall apply only to persons committed to the Department of Corrections on or after July 1, 1979, but such persons' convictions and commitments shall include all felony convictions and commitments without regard to the date of such convictions and commitments.

§ 53.1-199. Eligibility for good conduct allowance; application.

Every person who, on or after July 1, 1981, has been convicted of a felony and every person convicted of a misdemeanor and to whom the provisions of §§ 53.1-151, 53.1-152 or § 53.1-153 apply, and every person who, in accordance with § 53.1-198, chooses the system of good conduct allowances set out herein, may be entitled to good conduct allowance not to exceed the amount set forth in § 53.1-201. Such good conduct allowance shall be applied to reduce the person's maximum term of confinement while he is confined in any state

correctional facility. One-half of the credit allowed under the provisions of § 53.1-201 shall be applied to reduce the period of time a person shall serve before being eligible for parole.

Any person who, on or after July 1, 1993, has been sentenced upon a conviction of murder in the first ~~or second~~ degree, rape in violation of § 18.2-61, forcible sodomy, animate or inanimate object sexual penetration ~~or~~ aggravated sexual battery or any of the following acts of violence in violation of Chapter 4 (§ 18.2-30 et. seq.) of Title 18.2:

- (i) voluntary manslaughter under Article 1;
- (ii) mob-related felonies under Article 2;
- (iii) any kidnapping or abduction felony under Article 3;
- (iv) any malicious felonious assault or malicious bodily wounding under Article 4; or
- (v) robbery under § 18.2-58 and any person who has been sentenced to a term of life

imprisonment or two or more life sentences shall be classified within the system established by § 53.1-201. Such person shall be eligible for no more than ten days good conduct credit for each thirty days served, regardless of the class to which he is assigned. One-half of such credit shall be applied to reduce the period of time he shall serve before being eligible for parole. Additional good conduct credits may be approved by the Board for such persons in accordance with § 53.1-191.

2. The provisions of this act amending §§ 53.1-151 and 53.1-199 shall not take effect unless reenacted by a special session of the legislature in 1994.

Ineligibility for parole, suspension of sentence; habitual violent criminal; bifurcated sentencing for felonies Provides a variety of punishment enhancements for serious repeat violent offenders and establishes a procedure for sentencing by juries, who will have access to the defendant's criminal record, upon conviction of any felony

Any person convicted of a third felony involving designated acts of violence against another person (i.e., first and second degree murder, mob-related felonies, kidnapping and abduction, felony assaults and woundings, robbery, felony criminal sexual assaults), when such offenses are not part of a common act, transaction or scheme, shall, upon conviction of the third offense, be sentenced to life imprisonment and shall not be eligible for parole, probation, any good conduct allowance or any suspension of sentence. However, upon reaching age 65 and provided the person has served at least 5 years, he may be granted a "conditional release" by the Parole Board. The eligible convictions include convictions for conspiracy to commit one of the designated offenses, convictions as a principle in the second degree or as an accessory before the fact with respect to any of the specified offenses, convictions under substantially similar laws in other jurisdictions and convictions of juveniles tried as adults for the specified offenses.

The bill requires that anyone sentenced to a term of years upon a conviction of second degree murder or any of the following acts of violence in violation of Chapter 4 (§ 18.2-30 et. seq.) of Title 18.2: (i) voluntary manslaughter under Article 1; (ii) mob-related felonies under Article 2; (iii) any kidnapping or abduction felony under Article 3; (iv) any felony assault or bodily wounding under Article 4; and (v) robbery under § 18.2-58, will be eligible for parole as follows: (i) on a first commitment, after serving the lesser of two-thirds of the term or 14 years, and (ii) on a second or subsequent commitment, after serving the lesser of three-fourths of the term or 15 years. In addition, those same prisoners are to be limited to earning "good conduct" credits at a rate of 10 days for 30 days served. These provisions do not become effective unless reenacted at a Special Session of the General Assembly and will apply only to persons convicted after the effective date of the bill.

Procedures for sentencing by juries in felony cases tried by jury are adopted. The jury will receive evidence of the defendant's prior convictions, including juvenile convictions and adjudications of delinquency. Photocopies of the certified criminal convictions must be provided to the defendant 14 days before trial. The court will continue to impose sentence in those felony cases tried without a jury (§ 19.2-295).

The provisions modifying parole eligibility and good time credits will become effective only if reenacted at the special session on criminal justice issues.

SENATE RESOLUTION 395

By: Senators Taylor of the 12th, Brown of the 26th,
Middleton of the 50th and others

ADOPTED

A RESOLUTION

Proposing an amendment to the Constitution so as to provide that the General Assembly may by general law approved by two-thirds of the members thereof provide for mandatory service of sentences for persons convicted of armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, or aggravated sexual battery and, when so provided by such Act, the State Board of Pardons and Paroles shall not have the authority to consider such persons for pardon, parole, or commutation during that portion of the sentence; to provide that the General Assembly in the same manner may provide for the imposition of sentences of life without parole for persons convicted of murder and for persons who have been previously convicted of murder, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, or aggravated sexual battery and who subsequently commit and are convicted of one of such offenses and to prohibit such board from granting a pardon, parole, or commutation in such cases; to provide for the ratification and approval of certain previously enacted laws; to provide exceptions with respect to a person convicted of a crime who is subsequently determined to be innocent of said crime or is determined to be medically incapacitated and to provide an exception with respect to certain elderly persons; to provide for the submission of this amendment for ratification or rejection; and for other purposes.

BE IT RESOLVED BY THE GENERAL ASSEMBLY OF GEORGIA:



Section 1. Article IV, Section II, Paragraph II of the Constitution is amended by striking subparagraphs (b) and (e) in their entirety and inserting in lieu thereof new subparagraphs (b) and (e) to read as follows:

"(b) (1) When a sentence of death is commuted to life imprisonment, the board shall not have the authority to grant a pardon to the convicted person until such person has served at least 25 years in the penitentiary; and such person shall not become eligible for parole at any time prior to serving at least 25 years in the penitentiary.

(2) The General Assembly may by general law approved by two-thirds of the members elected to each branch of the General Assembly in a roll-call vote provide for minimum mandatory sentences and for sentences which are required to be served in their entirety for persons convicted of armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, or aggravated sexual battery and, when so provided by such Act, the board shall not have the authority to consider such persons for pardon, parole, or commutation during that portion of the sentence.

(3) The General Assembly may by general law approved by two-thirds of the members elected to each branch of the General Assembly in a roll-call vote provide for the imposition of sentences of life without parole for persons convicted of murder and for persons who having been previously convicted of murder, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, or aggravated sexual battery or having been

previously convicted under the laws of any other state or of the United States of a crime which if committed in this state would be one of those offenses and who after such previous conviction subsequently commits and is convicted of one of those offenses and, when so provided by such Act, the board shall not have the authority to consider such persons for pardon, parole, or commutation from any portion of such sentence.

(4) Any general law previously enacted by the General Assembly providing for life without parole or for mandatory service of sentences without suspension, probation, or parole is hereby ratified and approved but such provisions shall be subject to amendment or repeal by general law."

"(e) Notwithstanding any other provisions of this Paragraph, the State Board of Pardons and Paroles shall have the authority to pardon any person convicted of a crime who is subsequently determined to be innocent of said crime or to issue a medical reprieve to an entirely incapacitated person suffering a progressively debilitating terminal illness or parole any person who is age 62 or older."

Section 2. The above proposed amendment to the Constitution shall be published and submitted as provided in Article X, Section I, Paragraph II of the Constitution.

The ballot submitting the above proposed amendment shall have written or printed thereon the following:

"() YES Shall the Constitution be amended so as
to provide that the General Assembly may
() NO by general law approved by two-thirds of

of the members thereof provide for mandatory service of sentences for persons convicted of armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, or aggravated sexual battery and, when so provided by such Act, the State Board of Pardons and Paroles shall not have the authority to consider such persons for pardon, parole, or commutation during that portion of the sentence; to provide that the General Assembly in the same manner may provide for the imposition of sentences of life without parole for persons convicted of murder and for persons who have been previously convicted of murder, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, or aggravated sexual battery and who subsequently commit and are convicted of one of such offenses and to prohibit such board from granting a pardon, parole, or commutation in such cases; to provide for the ratification and approval of previously enacted laws providing for limitations on suspension, probation, or parole in certain cases; and to provide exceptions with respect to a person convicted of a crime who is subsequently determined to be innocent of said crime or is determined to be medically

incapacitated and to provide an exception
with respect to certain elderly persons?"

All persons desiring to vote in favor of ratifying
the proposed amendment shall vote "Yes." All persons
desiring to vote against ratifying the proposed amendment
shall vote "No."

If such amendment shall be ratified as provided in
said Paragraph of the Constitution, it shall become a part
of the Constitution of this state.

NATIONAL CONFERENCE OF STATE LEGISLATURES
1560 Broadway
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Denver, Colorado 80202
Phone: (303)830-2200
FAX No.: (303)863-8003



Telecopy to: Greg Taylor

From:



NATIONAL CONFERENCE OF STATE LEGISLATURES

DONNA HUNZEKER
PROGRAM MANAGER
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New Mexico's law applies to a comparatively narrower list of violent crimes, those being first or second degree murder, and several crimes resulting in great bodily harm including shooting from a motor vehicle, kidnapping, rape and robbery. Georgia's law, which actually is a "two strikes" mandatory life without parole, also applies to a just a few violent felonies, including several sex crimes like child molestation. Virginia's defined "acts of violence" are similar in scope.

Detractors of "three strikes" laws are most critical of those which broadly impose a mandatory life without parole sentence to many serious felonies. And they point out that the general "get tough" approach to crime has been ineffective and expensive. Proponents of these laws, however, point to incapacitation and deterrence as twin purposes served. And they support life imprisonment on the premise that the public should not be put at risk when there can be no assurance that an offender who has repeatedly committed violent acts is one day safe for return to the community.

Preliminary fiscal impact analyses of "three strikes" laws have placed most significant costs well into the future. Short-term prison bed needs are thought to be minor compared to longer-term health and other costs of a cumulative number of aging prisoners serving long or life prison terms. Some states have projected immediate increased public defender and judicial costs, based on likelihood that more cases will go to trial under such laws.

Federal legislation also has mimicked the "three strikes you're out" call. The U.S. Senate's crime bill passed in November, 1993, calls for life imprisonment without release for drug felons and violent criminals convicted a third time. And the House version passed in April, 1994, similarly would mandate life imprisonment for offenders convicted in federal court of a serious violent felony if they had two or more prior convictions, one of which could be a serious drug offense. Senate and House versions of the crime bill were awaiting reconciliation in the spring.

References:

New "Three Strikes" and Similar Sentencing Laws

Washington, 1993	Initiative 593
California, 1994	AB 971
<i>enacted</i> — Connecticut, 1994, Awaits Governor	HB 5385
Georgia, 1994	SB 441
Indiana, 1994	HB 1063
~~Kansas, 1994~~	~~HB 2788~~
Maryland, 1994, Awaits Governor	HB 1112
New Mexico, 1994	SB 73 and 742, Chapter 24
North Carolina, Extra Session 1994	HB 39, Part 6, Chapter 22
Virginia, 1994	HB 273, SB 115, SB 534, SB 543
Wisconsin, 1994	SB 781 of 1993, Act 289 of 1994

LEGISBRIEF
"THREE STRIKES" HABITUAL OFFENDER LEGISLATION
by Donna Hunzeker

The focus of much of states' attention to crime control this year has been on repeat, violent offenders. About half of the states are reviewing existing habitual offender laws, and many are proposing new laws to keep career criminals imprisoned longer.

In November, 1993, voters in Washington State approved a "Persistent Offender Act" initiative, calling for life without parole for three-time serious felony offenders. The act became known as "Three Strikes You're Out." By May 1, ten state legislatures had passed similar new sentencing provisions applying to repeat felons. Those are: California, Connecticut, Georgia, Indiana, Kansas, Maryland, New Mexico, North Carolina, Virginia and Wisconsin. At least eleven other states had repeat offender bills pending at that time: Alaska, Colorado, Delaware, Illinois, New Jersey, New York, Ohio, South Carolina, Vermont, Rhode Island and Pennsylvania. In addition, Minnesota's pending crime bill also includes that a judge cannot depart from the sentencing guidelines when an offender has been convicted of a third violent crime.

Some 18 states already have mandatory minimum provisions applying to repeat offenders of violent crimes. Other types of sentence enhancements apply in other states. And nearly all states have some sort of habitual offender statute applying to repeat felonies. The Washington Act, which appears to have set the stage for other states' proposals, is distinguished from what already was in place in most states in that it provided for mandatory life without possibility of parole, and applied that sentence to repeated convictions for a fairly broad list of serious felonies.

Of "three strikes"-type laws that have passed in states since the Washington Initiative, most are mandatory, meaning the court must impose the statutory sentence for habitual or persistent offenders, as defined. Connecticut and Maryland retained some judicial discretion in their new laws.

Prison terms required under these new laws also differ. The Washington Initiative and laws in Georgia, Indiana, Maryland and Wisconsin, provide for life without possibility of parole. California imposes a sentence of life imprisonment, under which offenders will spend a minimum of 25 years behind bars. Similarly, New Mexico provides for parole eligibility after 30 years of the life term is served. North Carolina's "three strikes" law passed in Extra Session in early 1994, provides for life without parole; while a separate measure also approved in Extra Session entitles those sentenced to life without parole to a sentence review after 25 years is served. Maryland and Virginia provide a release mechanism to those over 65 years who have served a set number of years. Kansas applied the "three strikes" concept to its sentencing guidelines, allowing the court to double the grid sentence for repeat "person felonies."

Number and types of crimes to which "three strikes"-type habitual offender laws apply also are important points of distinction. Washington's law applies to more than 20 serious felonies, including any Class A felony; any felony with a deadly weapon; some assault, rape, kidnapping; and many crimes against children including molestation, incest, assault. California's "three strikes" is similarly broad in application, including a number of violent felonies plus some 25 "serious felonies" such as some assaults and attempted felonies, felonies using a deadly weapon, and some drug sales to minors. Indiana, Maryland and North Carolina also apply their new laws to many violent and serious crimes.

**COMPARISON: REYNOLDS' "3 STRIKE" INITIATIVE VS.
RAINEY PROPOSAL / AB 1568**
[3/1/94]

James
REYNOLDS (AB 971 & INITIATIVE)

**DOUBLES SENTENCE FOR
SECOND "SERIOUS" FELONY
CONVICTION.**

**DOUBLES SENTENCE BUT
ALLOWS 20% TIME OFF
FOR GOOD BEHAVIOR,
AFTER SECOND CONVICTION
FOR SEX CRIMES AGAINST
CHILDREN. IMPOSES 20 TO LIFE
SENTENCE AFTER THIRD
CONVICTION.**

**MANDATES "INDETERMINATE 25
YEAR SENTENCE" UPON THIRD
FELONY CONVICTION, PROVIDED
THAT INDIVIDUAL HAS BEEN CONVICTED
OF TWO PRIOR "SERIOUS" FELONIES.
THIRD OFFENSE MAY BE ANY FELONY
OFFENSE.**

✓ *Passed 3/93*
RAINEY / AB 1568

**IMPOSES AN EXTRA
10 YEAR SENTENCE
FOR SECOND "VIOLENT"
CONVICTION.**

**IMPOSES A SENTENCE OF
25 YEARS TO LIFE FOR THOSE
CONVICTED OF TWO SEPARATE
FORCIBLE SEX OFFENSES
AGAINST CHILDREN, OR
KIDNAPPING WITH
INTENT TO COMMIT SUCH
OFFENSES - ELIMINATES ALL
"TIME OFF" FOR GOOD
BEHAVIOR.**

**IMPOSES EXTRA 5
YEAR SENTENCE FOR
SECOND "SERIOUS"
OFFENSE.**

**MANDATES SENTENCE OF
25 YEARS TO LIFE UPON
THIRD CONVICTION FOR
"SERIOUS" OFFENSES, W/
MIN 25. THIRD OFFENSE MUST
BE "SERIOUS."**

**-PAGE 2-
COMPARISON**

REYNOLDS

**MINIMUM SENTENCE AFTER
THIRD CONVICTION IS
20 YEARS TO LIFE.
MAXIMUM IS 25 TO LIFE.**

**ALLOWS UP TO 50% "GOOD TIME"
OFF FOR VIOLENT FELONS
ON 1ST CONVICTION, UP TO 20%
"GOOD TIME" OFF AFTER 2ND
OR 3RD CONVICTION**

**FOR PRIOR OFFENSES, INCLUDES
ONLY FELONIES LISTED IN
PC SECTIONS 667.5 AND 1192.7.
DOES NOT INCLUDE "CARJACKING."**

RAINEY

**MANDATES SENTENCE OF
LWOP UPON CONVICTION
FOR "VIOLENT" OFFENSE
IF INDIVIDUAL HAS TWO
PRIOR "VIOLENT" OR
"SERIOUS" CONVICTIONS,
SEPARATELY BROUGHT AND
TRIED.**

**ELIMINATES GOOD
TIME OFF FOR
ALL VIOLENT OFFENDERS.
ELIMINATES ALL GOOD
TIME OFF FOR
THREE-TIME "SERIOUS
FELONY" LOSERS.**

**667.5 VIOLENT OFFENSES
EXPANDED TO INCLUDE
• ALL KIDNAPPING, AS WELL AS
ALL FELONIES INVOLVING A
DANGEROUS OR DEADLY
WEAPON, ASSAULT ON A PEACE
OFFICER, ASSAULT ON A
CORRECTIONAL OFFICE,
CUSTODIAL OFFICER O
FIREFIGHTER, ASSAULT
WITH INTENT TO COMMIT RAPE
OR OTHER SEX OFFENSE,
SECOND DEGREE ROBBERY AND
ARSON. CARJACKING.**

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COMPARISON

REYNOLDS

INCLUDES OFFENSES LISTED
IN PC SECTION 1192.7 AS
OF 4/93.

PROHIBITS PLEA BARGAINING
ON PRIOR CONVICTIONS ONLY.

RAINEY

ADDS THE CRIME OF
THREATENING OF VICTIMS OR
WITNESSES BY FORCE,
DURESS, MENACE OR THREAT
OF BODILY INJURY TO THE
LIST OF "SERIOUS"
CRIMES IN 1192.7.

PROHIBITS PLEA BARGAINING
ON ANY SERIOUS OR VIOLENT
OFFENSE.

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COMPARISON

HYPOTHETICAL SENTENCING EXAMPLE:

THE RAINEY PROPOSAL IS FAR TOUGHER ON VIOLENT OFFENDERS THAN IS THE REYNOLDS INITIATIVE - ESPECIALLY UPON FIRST AND THIRD CONVICTION. FOR EXAMPLE, PERSON CONVICTED OF VIOLENT CRIME, GIVEN A "HYPOTHETICAL" BASE SENTENCE OF 10 YEARS, WOULD SERVE THE FOLLOWING SENTENCES, UNDER THE TERMS OF THE VARIOUS "THREE STRIKE" PROPOSALS ...

REYNOLDS

RAINEY

(1ST CONVICTION:)

10 YEARS - MINUS 50 % "GOOD TIME"
CREDITS = OUT IN 5 YEARS.

OUT IN 10 YEARS
(SERVES 100% OF
SENTENCE W/NO "GOOD
TIME" OFF.)

(2ND CONVICTION:)

20 YEARS - MINUS 20 % GOOD TIME
CREDITS = OUT IN 16 YEARS.

OUT IN 20 YEARS -
(SENTENCE + 10 YEAR
ENHANCEMENT W/ NO
"GOOD TIME" OFF.)

(3RD CONVICTION:)

25 YEARS TO LIFE
- 20 % TIME OFF FOR "GOOD BEHAVIOR"
OUT IN AS LITTLE AS 20 YEARS.

LIFE WITHOUT
POSSIBILITY OF
PAROLE.

03/20/84 10:02
TEL 415-438-1771 FAX 415-438-1771
**THREE STRIKES AND YOU'RE OUT:
THE INITIATIVE, JONES (AB 971), AND RAINEY (AB 1568)**

THE INITIATIVE

This initiative would add PC 1170.12 to provide greater punishment for those who commit a felony and have been previously convicted of serious or violent felony offenses.

The statute would apply to a defendant convicted of any felony who has one or more prior serious/violent felony convictions (PC 1170.12(a)). There are provisions relating to no aggregate term limitation, no probation, required prison sentence, limitation of credit reduction to 1/5 of the term, and required consecutive sentences.

A prior conviction is defined in PC 1170.12(b) as:

- (1) A violent felony (PC 667.5(c)) or a serious felony (PC 1192.7(c)) in California.
- (2) An element matching violent or serious felony from another jurisdiction.
- (3) A prior juvenile adjudication for a WJ 707(b) felony or a serious/violent felony if the juvenile was 16 years old.

The punishment provided in PC 1170.12(c) for prior felony convictions is as follows:

- (1) For one prior, the term provided for the current conviction for any felony is doubled.
- (2) For two or more California adult priors, which can be from a single case, the term for the current conviction for any felony is life imprisonment with a minimum term of three times the term for the current conviction, or 25 years, or the term provided under general statutes, whichever is longest; consecutive sentencing is required.

The section shall be used if applicable. The District Attorney must charge and prove the priors, not use the priors for plea bargaining, and not strike the priors except for insufficient evidence or under PC 1385 (PC 1170.12(d), (e)).

THE JONES BILL (AB 971)

The Jones bill, as amended, is a near copy of the initiative. However, instead of adding PC 1170.12 as a separate section, the initiative provisions have been amended into PC 667, the existing statute for punishing serious felony priors. Presumably, this was done to provide the

added protection of a two thirds majority for amendment. The comparable subdivisions of the two measures are as follows: PC 1170.12(a) [Initiative] is duplicated in PC 667(c) [Jones]; 1170.12(b) is duplicated in 667(d); 1170.12(e) is duplicated in 667(e); 1170.12(d) is duplicated in 667(f); 1170.12(e) is duplicated in 667(g). One difference between the Initiative and the Jones bill is that Jones is not limited to California adult priors for the life term. Another difference is that, unlike the initiative, the statutory references in Jones have been corrected to the standard format. Finally, there is an urgency clause so the act would go into effect immediately after being signed and filed.

THE RAINEY BILL (AB 1568)

This bill would add habitual criminal provisions to PC 667 (which requires a two thirds majority for amendment) to provide greater punishment for those who commit a serious or violent felony and have been previously convicted of two or more serious or violent felony offenses. It would also amend related code provisions. There is an urgency clause so the act would go into effect immediately after being signed and filed.

The punishment provided by PC 667(b) for two or more prior convictions is as follows:

- (1) For a current serious felony with two or more prior separate convictions for violent or serious felonies, the term is life imprisonment with a minimum term of 25 years (no parole for at least 25 years).
- (2) For a current violent felony with two or more prior separate convictions for violent or serious felonies, the term is life imprisonment without parole.
- (3) For a current serious felony with two or more prior separate convictions for violent felonies, the term is life imprisonment without parole.

Prior convictions are defined as follows:

- (1) A "serious felony" means any serious felony listed in PC 1192.7(c) except for grand theft firearm and residential burglary. The list of qualifying crimes has been expanded.
- (2) A "violent felony" means any violent felony listed in PC 667.5(c). The list of qualifying crimes has been significantly expanded.
- (3) Priors from another jurisdiction are included as serious or violent felonies. Priors for juveniles remanded for adult prosecution (WI 707) are also included; other juvenile adjudications are not.
- (4) A "separate conviction" means that the defendant was convicted of one crime before committing the other crime (PC 667(b)(6)). There is no requirement of serving custody or prison time, and there is no washout period (age of the prior doesn't matter).

Expansion of the list of qualifying felonies is as follows:

- (1) Violent felonies are expanded to include arson of a residence or structure; bomb offenses involving injury or death; all kidnapping; all carjacking; any felony with personal use of a dangerous or deadly weapon under PC 12022(b); assault with intent to commit a sex crime; felony assault on a peace officer, firefighter, or custodial officer; and certain robberies (all first degree robbery [residential or transit], bank robbery, and second degree robbery if defendant armed with a firearm, or victim suffers serious bodily injury). Note: Certain provisions of PC 1170.95 relating to residential robbery, residential arson, and robbery with a weapon are unnecessary based on this expanded violent felony list; they have been deleted.
- (2) Serious felonies are expanded to include new violent felonies not already on the list and witness intimidation (PC 136.1(c)(1)). Note: All robberies qualify as serious felonies under existing law.

Mandatory provisions of PC 667(b) are as follows:

- (1) Mandatory denial of probation (PC 667(b)(7)).
- (2) The court has no power to strike or dismiss the priors (PC 1385(b)).

The punishment provided by PC 667 and 667.5 for one prior conviction is as follows:

- (1) For a current serious felony with one or more prior separate convictions for any serious felony (including residential burglary), add five years for each such conviction. This is current law, except the list of qualifying crimes has been expanded. (PC 667(a); 1192.7(c)).
- (2) For a current violent felony with one prior separate prison term for a violent felony, add ten years. This increases the punishment from three to ten years. In addition, the list of qualifying crimes has been significantly expanded, and the washout period has been deleted. (PC 667.5(a), (c)).
- (3) For a current forcible sex crime or kidnapping on a child under age 14 with one prior conviction for the same type of crime, the term is life imprisonment with a minimum term of 25 years (no parole for at least 25 years); mandatory denial of probation. This provision greatly increases the punishment for these crimes against children. (PC 667(c)).

Plea bargaining limitation is as follows:

- (1) Existing law prohibits plea bargaining in all cases involving serious felonies (which includes violent felonies), with certain limited exceptions (PC 1192.7(a), (b)).

Credit provisions are as follows:

- (1) For habitual criminals punished under PC 667(b) or (c) (life with a 25 year minimum term, or life without parole), there is no reduction of the prison term for conduct credits by operation of law.
- (2) For defendants convicted of a violent felony, the reduction of the total term for conduct credits has been eliminated. The defendant is required to serve the full sentence imposed, compared with a 50% reduction under current law. This provision applies to all violent felonies on the expanded list, even if the defendant has no prior record (PC 2931(d); 2933(f)). (Note: The possibility of allowing for a 15% reduction has been suggested.)

Nickel (2/18/94)

COMPARISON OF PENALTIES - AB 1568 (RAINEY) VS. AB 971 (JONES)

The following examples use two significant serious/violent crimes, robbery with a gun and forcible rape, to compare the penalties under both bills for a defendant with no priors, with one prior, and with two priors. The examples show the actual time served, assuming the maximum sentence, less credits.

1) For a defendant with no priors:

Robbery with a gun	Rainey	-	10 years
	Jones	-	5 years

Forcible rape	Rainey	-	8 years
	Jones	-	4 years

2) For a defendant with one prior:

Robbery with a gun, one violent prior with prison	Rainey	-	20 years
	Jones	-	12 years ¹

one serious or violent prior w/o prison	Rainey	-	15 years
	Jones	-	12 years ¹

Forcible rape, one violent prior with prison	Rainey	-	18 years
	Jones	-	12.8 years ²

one serious or violent prior w/o prison	Rainey	-	13 years
	Jones	-	12.8 years ²

3) For a defendant with two priors:

Robbery with a gun, two serious or violent priors	Rainey	-	Life without parole
	Jones	-	25 yrs to life - 20 or 25 yr min

Forcible rape, two serious or violent priors	Rainey	-	Life without parole
	Jones	-	25 yrs to life - 20 or 25 yr min

Obviously, Rainey provides actual penalties that are longer, sometimes significantly longer, at all levels. The claim that Jones is the "toughest" measure being considered is simply not true where it really counts.

¹Proponents claim 16 years based on impermissible double use of the prior.

²Proponents claim 16.8 years based on impermissible double use of the prior.