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FAX COVER SHEET

Date: MAY 26, 1994Time: 9:00 AMNumber of Pages (including coversheet): 2

FROM: <i>JERRY DONALDSON</i>	TO: <i>GREG TAYLOR</i>
AGENCY NAME and ADDRESS: Kansas Legislative Research Department 300 S.W. 10th Avenue Room 545-N -- Statehouse Topeka, Kansas 66612-1504	AGENCY NAME and ADDRESS:
PHONE NUMBER: (913) 296-3181	PHONE NUMBER:
FAX NUMBER: (913) 296-3824	FAX NUMBER: <i>202-456-1647</i>

MESSAGE

*Enclosed is copy of the summary
for H.B. 2788 which started out as
a "Three Strikes" bill. If I find
an impact statement, I will forward
that also.*

Tougher Sentences for Premeditated Murder and Repeat Felony Offenders; Hard 40 Extended; Other

H.B. 2788 doubles the length of the prison term for certain repeat felony offenders; requires a person convicted of premeditated first degree murder to serve a minimum of 25 years (15 years is the current minimum) before being eligible for parole; modifies the "Hard 40" to make it easier to impose on persons committing premeditated first degree murder including juveniles 14 years of age and older; and makes the use of a minor under 16 in the commission of a crime, gang membership, and crimes of extreme sexual violence aggravating factors allowing departure of up to twice the length of sentence from the sentencing guidelines grids.

H.B. 2788 amends the sentencing guidelines nondrug grid to double the length of the prison term for certain felons whose prior criminal histories are covered by categories A and B (those persons who have committed three or more person felonies and those persons with two prior person felonies) for severity levels 1 to 5 crimes.

H.B. 2788 requires that a person convicted of premeditated first degree murder be sentenced to life in prison and must serve a minimum sentence of 25 years without parole or good time credits. The bill also makes significant changes in procedures regarding the imposition of the "Hard 40" sentence on those persons convicted of premeditated first degree murder who qualify for this more severe sentence and allows this sentence to be imposed on juveniles 14 years old and older who are certified as adults and convicted of first degree premeditated murder.

The bill deletes the prior law requirement of a bifurcated trial for the imposition of the "Hard 40"; requires the trial judge to determine whether one or more aggravating circumstances outweigh any mitigating circumstances and thus require the imposition of the "Hard 40"; and deletes the current law requirement that the prosecutor notify the defendant of an intent to request the "Hard 40." The court is required to designate in writing the existence of aggravating circumstances which it found to exist.

The bill also clarifies the inherently dangerous felony statute used in first degree felony murder, *i.e.*, K.S.A. 21-3436. The bill separates those inherently dangerous felonies that may be used to support a conviction of felony murder regardless of the merger doctrine and those inherently dangerous felonies which must be distinct from the homicide in order to sustain a conviction of first degree felony murder.

H.B. 2788 adds three new aggravating factors which may be considered by a judge in determining whether substantial and compelling reasons exist for departing from the guidelines and imposing a more severe sentence, *i.e.*, up to double the regular grid box sentence. These three aggravating factors include:

1. the defendant committed any felony violation for the benefit of, at the direction of, or in association with a criminal street gang;
2. the defendant who is 18 or more years of age, employed, hired, used, persuaded, induced, enticed, or coerced any juvenile under 16 years of age to commit or assist in the commission of a person felony or a violation of the Uniform Controlled Substances Act; and
3. the defendant's current crime of conviction is a crime of extreme sexual violence and the defendant is a predatory sex offender.

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Law/Legislative Reference Dept.
TELEPHONE NUMBER (203) 566 - 5736
FAX NUMBER () _____ - _____

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

* * * * *

FISCAL IMPACT STATEMENT - BILL NUMBER HB 5385

STATE IMPACT	Potential Workload Increase, see explanation below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Division of Criminal Justice, Public Defender Services Commission, Department of Correction, Judicial Department

EXPLANATION OF ESTIMATES:

STATE IMPACT: Passage of the bill, as amended, would result in a potential workload increase for the Division of Criminal Justice, Public Defender Services Commission and the Judicial Department. This increase would be the result of a greater number of cases potentially going to trial (rather than plea bargained) since there is more at stake for the defendant. Therefore, a greater amount of resources would be consumed by these cases under the bill, as amended, rather than current law.

The Department of Correction is currently operating at maximum capacity. Any significant growth in the inmate population, therefore, would more likely result in a redistribution of the existing prison population rather than the creation of new prison beds.

It should be noted that cumulative pressures on the criminal justice system over time create the need for additional judicial resources and prison facilities.

House Amendments "A" and "B" resulted in a potential

increase on the pressures within the criminal justice system.

* * * * *

OLR AMENDED BILL ANALYSIS

HB 5385 (File 377, as amended by House "A" and "B")*

AN ACT CONCERNING PERSISTENT DANGEROUS FELONY OFFENDERS

SUMMARY: This 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. By law, a sentence of life imprisonment means a definite sentence of 60 years.

Current law allows the enhanced sentence of 25 years imprisonment regardless of whether the offender has one or two previous convictions.

The bill requires, rather than allows, a court to impose an enhanced sentence if it determines the public interest would best be served by the sentence.

The bill makes anyone convicted of an offense committed with a firearm in, on, or within 1,500 feet of a public or private elementary or secondary school ineligible for parole.

*House Amendment "A" makes anyone convicted of an offense committed with a firearm in, on, or within 1,500 feet of a school ineligible for parole.

*House Amendment "B" requires, instead of allows, a court to impose the enhanced penalties when a person has been found to be a persistent dangerous felony offender, and the court concludes that extended incarceration will best serve the public interest.

EFFECTIVE DATE: October 1, 1994

FURTHER EXPLANATION

Persistent Dangerous Felony Offenders

By law, a persistent dangerous felony offender is a person who (1) has just been convicted of manslaughter, arson, kidnapping, sexual assault in the first or third degree, aggravated sexual assault in the first degree, sexual assault in the third degree with a firearm, robbery in the first or second degree, or assault in the first degree and (2) prior to committing the present crime, was convicted of and imprisoned for any of the same crimes, murder, an attempt to commit these crimes or murder, or prior to October 1, 1975, any of a specified list of violent crimes or attempts to commit them. These previous convictions and terms of imprisonment could have been under federal or out-of-state law. Under the bill, a persistent dangerous felony offender can be imprisoned for life only if the two previous convictions and prison terms occurred on separate occasions, before the offender committed the present crime.

Current law specifies that rather than sentencing the offender to the prison term authorized for the crime at issue, the court may sentence him to the term for a class A felony, which is 10 years at the minimum and 25 at the maximum. With the exception of kidnapping in the first degree and arson in the first degree, both of which are class A felonies, all of the crimes for which the offender is presently being sentenced are class B, C, or D felonies. For a class B felony offense, a person may be imprisoned for up to 20 years. Current law thus allows a five-year sentence enhancement for persistent dangerous felony offenders who have committed class B felonies and a greater enhancement when they have committed class C and D felonies. Under the bill, the enhanced sentence is increased to 40 years for offenders who have one previous violent felony conviction and up to life for offenders who have two.

Under the bill, a court must impose the enhanced sentence if it determines, based on the offender's history and character, and the nature and circumstances of his criminal conduct, that the public interest will best be served by such sentence. Under current law, a court has discretion whether to impose the enhanced sentence once it makes this determination.

BACKGROUND

Firearm

A firearm is defined as sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver, or other weapon, loaded or unloaded, from which a shot can be fired.

COMMITTEE ACTION**Judiciary Committee**

Joint Favorable Report
Yea 30 Nay 0

House Bill No. 5385

PUBLIC ACT NO. 94-37

AN ACT CONCERNING PERSISTENT DANGEROUS FELONY
OFFENDERS AND PAROLE ELIGIBILITY.

Be it enacted by the Senate and House of
Representatives in General Assembly convened:

Section 1. Section 53a-40 of the general
statutes is repealed and the following is
substituted in lieu thereof:

(a) A persistent dangerous felony offender is
a person who (1) stands convicted of manslaughter,
arson, kidnapping, sexual assault in the first or
third degree, aggravated sexual assault in the
first degree, sexual assault in the third degree
with a firearm, robbery in the first or second
degree, or assault in the first degree, and (2)
has been, prior to the commission of the present
crime, convicted of and imprisoned under a
sentence to a term of imprisonment of more than
one year or of death, in this state or in any
other state or in a federal correctional
institution, for any of the following crimes: (A)
The crimes enumerated in subdivision (1) of this
subsection, murder, or an attempt to commit any of
said crimes or murder; or (B) prior to October 1,
1975, any of the crimes enumerated in section
53a-72, 53a-75 or 53a-78 of the general statutes,
revision of 1958, revised to 1975, or prior to
October 1, 1971, in this state, assault with
intent to kill under section 54-117, or any of the
crimes enumerated in sections 53-9, 53-10, 53-11,
53-12 to 53-16, inclusive, 53-19, 53-21, 53-69,
53-78 to 53-80, inclusive, 53-82, 53-83, 53-86,
53-238 and 53-239 of the general statutes,
revision of 1958, revised to 1968, or any
predecessor statutes in this state, or an attempt
to commit any of said crimes; or (C) in any other
state, any crimes the essential elements of which
are substantially the same as any of the crimes
enumerated in subdivision (1) or (2) of this
subsection.

(b) A persistent serious felony offender is a
person who (1) stands convicted of a felony, and
(2) has been, prior to the commission of the
present felony, convicted of and imprisoned under
an imposed term of more than one year or of death,
in this state or in any other state or in a
federal correctional institution, for a crime.

House Bill No. 5385

This subsection shall not apply where the present conviction is for a crime enumerated in subdivision (1) of subsection (a) of this section and the prior conviction was for a crime other than those enumerated in subsection (a) of this section.

(c) A persistent larceny offender is a person who (1) stands convicted of larceny in the third degree in violation of the provisions of section 53a-124 in effect prior to October 1, 1982, or larceny in the fourth, fifth or sixth degree and (2) has been, at separate times prior to the commission of the present larceny, twice convicted of the crime of larceny.

(d) A persistent felony offender is a person who (1) stands convicted of a felony other than a class D felony, and (2) has been, at separate times prior to the commission of the present felony, twice convicted of a felony other than a class D felony.

(e) It shall be an affirmative defense to the charge of being a persistent offender under this section that (1) as to any prior conviction on which the state is relying the defendant was pardoned on the ground of innocence, and (2) without such conviction, the defendant was not two or more times convicted and imprisoned as required by this section.

(f) When any person has been found to be a persistent dangerous felony offender, and the court is of the opinion that his history and character and the nature and circumstances of his criminal conduct indicate that extended incarceration and lifetime supervision will best serve the public interest, the court, in lieu of imposing the sentence of imprisonment authorized by section 53a-35 for the crime of which such person presently stands convicted, or authorized by section 53a-35a if the crime of which such person presently stands convicted was committed on or after July 1, 1981, [may impose the sentence of imprisonment authorized by said section for a class A felony] SHALL SENTENCE SUCH PERSON TO A TERM OF IMPRISONMENT OF NOT MORE THAN FORTY YEARS AND, IF SUCH PERSON HAS, AT SEPARATE TIMES PRIOR TO THE COMMISSION OF THE PRESENT CRIME, BEEN TWICE CONVICTED OF AND IMPRISONED FOR ANY OF THE CRIMES ENUMERATED IN SUBDIVISION (2) OF SUBSECTION (a) OF THIS SECTION, SENTENCE SUCH PERSON TO A TERM OF IMPRISONMENT OF NOT MORE THAN LIFE.

House Bill No. 5385

(g) When any person has been found to be a persistent serious felony offender, and the court is of the opinion that his history and character and the nature and circumstances of his criminal conduct indicate that extended incarceration will best serve the public interest, the court in lieu of imposing the sentence of imprisonment authorized by section 53a-35 for the crime of which such person presently stands convicted, or authorized by section 53a-35a if the crime of which such person presently stands convicted was committed on or after July 1, 1981, may impose the sentence of imprisonment authorized by said section for the next more serious degree of felony.

(h) When any person has been found to be a persistent larceny offender, and the court is of the opinion that his history and character and the nature and circumstances of his criminal conduct indicate that extended incarceration will best serve the public interest, the court, in lieu of imposing the sentence authorized by section 53a-36 for the crime of which such person presently stands convicted, may impose the sentence of imprisonment for a class D felony authorized by section 53a-35, if the crime of which such person presently stands convicted was committed prior to July 1, 1981, or authorized by section 53a-35a, if the crime of which such person presently stands convicted was committed on or after July 1, 1981.

(i) When any person has been found to be a persistent felony offender, and the court is of the opinion that his history and character and the nature and circumstances of his criminal conduct indicate that extended incarceration will best serve the public interest, the court, in lieu of imposing the sentence authorized by section 53a-35a for the crime of which such person presently stands convicted, may impose the sentence of imprisonment authorized by said section for the next more serious degree of felony; provided the sentence imposed may not be less than three years, and provided further three years of the sentence so imposed may not be suspended or reduced by the court.

Sec. 2. Subsection (b) of section 54-125a of the general statutes, as amended by section 2 of public act 93-219, is repealed and the following is substituted in lieu thereof:

House Bill No. 5385

(b) No person convicted of any of the following offenses, which was committed on or after July 1, 1981, shall be eligible for parole under subsection (a) of this section: Capital felony, as defined in section 53a-54b, felony murder, as defined in section 53a-54c, arson murder, as defined in section 53a-54d, [or] murder, as defined in section 53a-54a, OR ANY OFFENSE COMMITTED WITH A FIREARM, AS DEFINED IN SECTION 53a-3, IN OR ON, OR WITHIN ONE THOUSAND FIVE HUNDRED FEET OF, THE REAL PROPERTY COMPRISING A PUBLIC OR PRIVATE ELEMENTARY OR SECONDARY SCHOOL. No person convicted of any other offense for which there is a mandatory minimum sentence which may not be suspended or reduced by the court shall be eligible for parole under subsection (a) of this section until such person has served such mandatory minimum sentence or fifty per cent of the definite sentence imposed, whichever is greater.

Certified as correct by

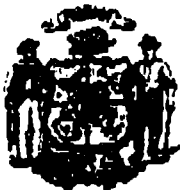
Legislative Commissioner.

Clerk of the Senate.

Clerk of the House.

Approved _____, 1994.

Governor, State of Connecticut.



The State of Wisconsin
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STATE OF WISCONSIN

1993 Senate Bill 781

Date of enactment: April 13, 1994

Date of publication*: April 27, 1994

1993 Wisconsin Act 289

AN ACT to renumber and amend 973.014; to amend 302.11 (1m), 303.065 (1), 304.06 (1) (b), 304.071 (2), 973.12 (title), 973.12 (1) and 978.07 (1) (c) 1; and to create 304.02 (5), 939.62 (2m) and 973.014 (2) of the statutes, relating to persistent serious felony offenders and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 5. 302.11 (1m) of the statutes is amended to read:

302.11 (1m) An inmate serving a life term is not entitled to mandatory release. Except as provided in ss. 939.62 (2m) and 973.014, the parole commission may parole the inmate as specified in s. 304.06 (1).

SECTION 6. 303.065 (1) of the statutes is amended to read:

303.065 (1) The department may grant work release privileges to any person incarcerated within the state prisons, except that no person serving a life sentence may be considered for work release until he or she has reached parole eligibility under s. 304.06 (1) (b) or 973.014, whichever is applicable, and no person serving a life sentence under s. 939.62 (2m) may be considered for work release.

SECTION 7. 304.02 (5) of the statutes is created to read:

304.02 (5) Notwithstanding subs. (1) to (3), a prisoner who is serving a life sentence under s. 939.62 (2m) is not eligible for release to parole supervision under this section.

SECTION 8. 304.06 (1) (b) of the statutes, as affected by 1993 Wisconsin Acts 79 and 89, is amended to read:

304.06 (1) (b) Except as provided in sub. (1m) or s. 161.49 (2) or 302.045 (3), the parole commission may parole an inmate of the Wisconsin state prisons or any felon or any person serving at least one year or more in a county house of correction or a county reforestation camp organized under s. 303.07, when he or she has served 25% of the sentence imposed for the offense, or 6 months, whichever is greater. Except as provided in s. 939.62 (2m) or 973.014, the parole com-

mission may parole an inmate serving a life term when he or she has served 20 years, as modified by the formula under s. 302.11 (1) and subject to extension using the formulas under s. 302.11 (2). The person serving the life term shall be given credit for time served prior to sentencing under s. 973.155, including good time under s. 973.155 (4). The secretary may grant special action parole releases under s. 304.02. The department or the parole commission shall not provide any convicted offender or other person sentenced to the department's custody any parole eligibility or evaluation until the person has been confined at least 60 days following sentencing.

SECTION 9. 304.071 (2) of the statutes is amended to read:

304.071 (2) If a prisoner is not eligible for parole under s. 161.49 (2), 939.62 (2m) or s. 973.032 (5), he or she is not eligible for parole under this section.

SECTION 10. 939.62 (2m) of the statutes is created to read:

939.62 (2m) (a) In this subsection, "serious felony" means any of the following:

1. Any felony under s. 161.41 (1), (1m) or (1x) if the felony is punishable by a maximum prison term of 30 years or more.

2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1), 940.19 (2), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4, 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43, 948.02 (1) or (2), 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

3. The solicitation, conspiracy or attempt, under s. 939.30, 939.31 or 939.32, to commit a Class A felony.

4. A crime at any time under federal law or the law of any other state or, prior to the effective date of this subdivision [revisor inserts date], under the law of

* Section 991.11, WISCONSIN STATUTES 1991-92: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

- 2 -

this state that is comparable to a crime specified in subd. 1, 2 or 3.

(b) The actor is a persistent repeater if he or she has been convicted of a serious felony on 2 or more separate occasions at any time preceding the serious felony for which he or she presently is being sentenced under ch. 973, which convictions remain of record and unreversed and, that of the 2 or more previous convictions, at least one conviction must have occurred before the date of violation of at least one of the other felonies for which the actor was previously convicted. It is immaterial that the sentence for a previous conviction was stayed, withheld or suspended, or that he or she was pardoned, unless the pardon was granted on the ground of innocence. The term of imprisonment for the felony for which the persistent repeater presently is being sentenced under ch. 973 is life imprisonment without the possibility of parole.

(d) If a prior conviction is being considered as being covered under par. (a) 4 as comparable to a felony specified under par. (a) 1, 2 or 3, the conviction may be counted as a prior conviction under par. (b) only if the court determines, beyond a reasonable doubt, that the violation relating to that conviction would constitute a felony specified under par. (a) 1, 2 or 3 if committed by an adult in this state.

SECTION 11. 973.014 of the statutes is renumbered 973.014 (1), and 973.014 (1) (intro.) and (b), as renumbered, are amended to read:

973.014 (1) (intro.) When Except as provided in sub. (2), when a court sentences a person to life imprisonment for a crime committed on or after July 1, 1988, the court shall make a parole eligibility determination regarding the person and choose one of the following options:

(b) The person is eligible for parole on a date set by the court. Under this subsection paragraph, the court may set any later date than that provided in s. 304.06 (1), but may not set a date that occurs before the earliest possible parole eligibility date as calculated under s. 304.06 (1).

SECTION 12. 973.014 (2) of the statutes is created to read:

973.014 (2) When a court sentences a person to life imprisonment under s. 939.62 (2m), the court shall provide that the sentence is without the possibility of parole.

SECTION 13. 973.12 (title) of the statutes is amended to read:

973.12 (title) Sentence of a repeater or persistent repeater.

SECTION 14. 973.12 (1) of the statutes is amended to read:

973.12 (1) Whenever a person charged with a crime will be a repeater as defined in or a persistent repeater

1993 Senate Bill 781

under s. 939.62 if convicted, any applicable prior convictions may be alleged in the complaint, indictment or information or amendments so alleging at any time before or at arraignment, and before acceptance of any plea. The court may, upon motion of the district attorney, grant a reasonable time to investigate possible prior convictions before accepting a plea. If such the prior convictions are admitted by the defendant or proved by the state, he or she shall be subject to sentence under s. 939.62 unless he or she establishes that he or she was pardoned on grounds of innocence for any crime necessary to constitute him or her a repeater or a persistent repeater. An official report of the F.B.I. or any other governmental agency of the United States or of this or any other state shall be prima facie evidence of any conviction or sentence therein reported. Any sentence so reported shall be deemed prima facie to have been fully served in actual confinement or to have been served for such period of time as is shown or is consistent with the report. The court shall take judicial notice of the statutes of the United States and foreign states in determining whether the prior conviction was for a felony or a misdemeanor.

SECTION 15. 978.07 (1) (c) 1 of the statutes is amended to read:

978.07 (1) (c) 1 Any case record of a felony punishable by life imprisonment or a related case, after the defendant's parole eligibility date under s. 304.06 (1) or 973.014 or 50 years after the commencement of the action, whichever occurs later. If there is no parole eligibility date, the district attorney may destroy the case record after the defendant's death.

SECTION 15m. Nonstatutory provisions. The department of administration shall monitor and study sentencing in this state for the period beginning on June 1, 1995, and ending on June 1, 1997, to assess the fiscal impact that will occur by reason of this act. In its study, the department of administration shall assess the fiscal impact on district attorneys, the courts, the office of the state public defender, the department of justice and the department of corrections. By August 1, 1997, the department of administration shall report the results of its study to the legislature in the manner provided under section 13.172 (2) of the statutes.

SECTION 16. Initial applicability. The treatment of section 939.62 (2m) of the statutes first applies to serious felonies committed on the effective date of this SECTION, but does not preclude the counting of other serious felonies as prior serious felonies for sentencing a person as a persistent repeater under section 939.62 (2m) of the statutes, as created by this act.

1993 SENATE BILL 781

1993 Session

FISCAL ESTIMATE

DOA-2048 (R10/92)

☒ ORIGINAL
☐ CORRECTED☐ UPDATED
☐ SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

SB 781

Amendment No. if Applicable

Subject Relating to persistent felony offenders.

Fiscal Effect

State: ☐ No State Fiscal EffectCheck columns below only if bill makes a direct appropriation
or affects a sum sufficient appropriation.☒ Increase Costs - May be possible to Absorb
Within Agency's Budget ☐ Yes ☒ No☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation☐ Decrease CostsLocal: ☐ No local government costs1. ☐ Increase Costs
☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs
☐ Permissive ☐ Mandatory3. ☐ Increase Revenues
☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues
☐ Permissive ☐ Mandatory5. Types of Local Governmental Units Affected:
☐ Towns ☐ Villages ☐ Cities
☐ Counties ☐ Others
☐ School Districts ☐ VTAE Districts

Fund Sources Affected

☒ GPA ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-SAffected Ch. 20 Appropriations
20.410(1)(a)

Assumptions Used in Arriving at Fiscal Estimate

Persistent Repeat Serious Felony Offenders

This legislation requires a sentence of life imprisonment with no possibility of parole for offenders convicted of a "serious" felony on three separate occasions. One adjudication of delinquency counts towards the convictions.

Data was analyzed from calendar year 1992 first admissions to prison in order to make an estimate of the number of offenders who might be subject to the provisions of this legislation. This number is conservative because we are unable to estimate how many persons have relevant out-of-state convictions or a prior adjudication of delinquency.

Based on 1992 data, and assuming it is representative of future statistics, approximately 11 offenders/year will have to serve a total of 3,144 additional months of incarceration, which results in a population increase of 262 (3,144/12). These calculations were made by analyzing an offender's mandatory release date, birth date and remaining life expectancy. Any population increase will begin to be felt in about four years and will level off in 40-50 years.

Since the prison system is well above capacity, it is anticipated that prison construction will be likely at some point in the future to accommodate the population increase which will result from this legislation.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)
Department of CorrectionsAuthorized Signature/Telephone No.
Robert Margolies 266-2931
*Robert Margolies*Date
3-7-94

1993 SENATE BILL 781

1993 Session

FISCAL ESTIMATE
DOA-2046 (R10/92)

☒ ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
SB 781Amendment No. if Applicable
—

Subject

PERSISTENT SERIOUS FELONY OFFENDERS

Fiscal Effect

State: ☐ No State Fiscal EffectCheck columns below only if bill make a direct appropriation
or affects a sum sufficient appropriation.

☒ Increase Costs - May be possible to Absorb
 Within Agency's Budget ☒ Yes ☐ No

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☐ Decrease CostsLocal: ☐ No local government costs1. ☒ Increase Costs☐ Permissive ☐ Mandatory2. ☐ Decrease Costs☐ Permissive ☐ Mandatory3. ☐ Increase Revenues☐ Permissive ☐ Mandatory4. ☐ Decrease Revenues☐ Permissive ☐ Mandatory

5. Types of Local Governmental Units Affected:

☐ Towns ☐ Villages ☐ Cities☒ Counties ☐ Others☐ School Districts ☐ VTAE Districts

Fund Sources Affected

XGPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Ch. 20 Appropriations

S. 20.475 (1) (d)

Assumptions Used in Arriving at Fiscal Estimate

This bill creates a persistent repeater category for whom a sentence of life imprisonment without the possibility of parole is required upon conviction. There are no data available by which to estimate the number of persons who would be charged with a crime which, if subsequently convicted, would result in the imposition of this enhanced penalty. However, it is certain that there would be a larger number of time consuming jury trials than is presently the case in those cases where a plea bargain to a reduced charge would still subject the defendant to life imprisonment without parole. On the other hand, if the plea bargain offer was to a charge that removed the threat of life imprisonment without parole, then the incentive to accept it would rise and thus some jury trials would be eliminated. There are no data available by which to estimate which effect would predominate and therefore whether there would be a net savings or a net cost associated with the passage of this bill.

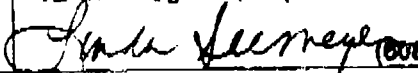
Long-Range Fiscal Implications

None

Agency/Prepared by: (Name & Phone No.)

DA/Stuart Morse (606) 267-2700

Authorized Signature/Telephone No.

 (606) 266-3508

Date

3/9/94

SB 781

1993 Session

LRB or Bill No./Adm. Rule No.
SB-781

Amendment No. if Applicable

FISCAL ESTIMATE

☒ ORIGINAL
☐ CORRECTED☐ UPDATED
☐ SUPPLEMENTAL

DOA-2048 (R10/92)

Subject

Releasing to persistent repeat serious offenders.

Fiscal Effect

State: ☐ No State Fiscal EffectCheck columns below only if bill makes a direct appropriation
or affects a sum sufficient appropriation☒ Increase Costs - May be possible to Absorb
Within Agency's Budget ☐ Yes ☒ No☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation☐ Decrease CostsLocal: ☐ No local government costs1. ☐ Increase Costs☐ Permissive ☐ Mandatory3. ☐ Increase Revenues☐ Permissive ☐ Mandatory

5. Types of Local Governmental Units Affected:

☐ Towns ☐ Villages ☐ Cities2. ☐ Decrease Costs☐ Permissive ☐ Mandatory4. ☐ Decrease Revenues☐ Permissive ☐ Mandatory☐ Counties ☐ Others☐ School Districts ☐ VTAE Districts

Fund Sources Affected

☒ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-3

Affected Ch. 20 Appropriations

20.506 (4) (dm)

Assumptions Used in Arriving at Fiscal Estimate

This bill would create a persistent repeat serious felony offender category and these persons must be sentenced to life imprisonment without possibility for parole.

This bill would have a relatively small fiscal impact related to costs associated with the reprinting of the sentencing guidelines manual in order to instruct the users of the guideline system that under certain conditions the guidelines do not apply. (This, incidentally, leads to long range substantive impact of this bill on the Commission's work: every time the Commission must rescind a segment of the existing sentencing guideline system, compliance drops due to the confusion and uncertainty on the part of those using the system.). The direct substantive impact, however, would be minimal since it is likely that there would be a relatively small number of affected cases.

One-time costs relating to the persistent repeat serious felony offender portion of the bill:

Printing manuals and training materials	\$5,000	
Postage for new materials to judges, attorneys and agents	1,000	
Total	\$6,000	one-time

Long-Range Fiscal Implications

Unknown

Agency/Prepared by: (Name & Phone No.)
DOA/Sent. Comm./Thomas Wickham 267-2437

Authorized Signature/Telephone No.

Thomas Wickham 267-2437

Date
03/10/94

1993 SENATE BILL 781

1993 Session

FISCAL ESTIMATE
DOA-2048 (R 11/90)☒ ORIGINAL
☐ CORRECTED
☐ UPDATED
☐ SUPPLEMENTALLRB or Bill No./Adm. Rule No.
SB 781

Amendment No. if Applicable

Subject

Mandatory Sentencing of Serious Felony Offenders

Fiscal Effect

State: ☒ No State Fiscal EffectCheck columns below only if bill makes a direct appropriation
or affects a sum sufficient appropriation☐ Increase Existing Appropriation
☐ Decrease Existing Appropriation
☐ Create New Appropriation
☐ Increase Existing Revenues
☐ Decrease Existing Revenues☐ Increase Costs - May be possible to Absorb
Within Agency's Budget ☐ Yes ☐ No☐ Decrease CostsLocal: ☒ No local government costs1. ☐ Increase Costs
☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs
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4. ☐ Decrease Revenues
☐ Permissive ☐ Mandatory5. Types of Local Governmental Units Affected
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Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Under this bill, an individual who commits a serious felony may be sentenced to life imprisonment if the individual has been convicted of, or adjudicated delinquent for, two other serious felonies.

The provisions in this bill apply to adult criminals or to juveniles who have been waived into adult court and who will be tried as adults. It does not affect sentencing for juvenile offenders. The bill will not, therefore, have a fiscal effect on the Department.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

DHSS/Ellen Hadidian 266-8155

Authorized Signature/Telephone No.

Richard Lorang 266-9822

Date

03/15/94

1993 SENATE BILL 781

FISCAL ESTIMATE

1993 Session

DOA-2048 (R10/92)

☒ ORIGINAL
☐ CORRECTED☐ UPDATED
☐ SUPPLEMENTALLRB or Bill No./Adm. Rule No.
SB 781

Amendment No.

Subject Persistent Repeat Serious Felony Offenders		
Fiscal Effect State: ☐ No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation. ☐ Increase Existing Appropriation ☐ Increase Existing Revenues ☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues ☐ Create New Appropriation		☒ Increase Costs - May be possible to Absorb Within Agency's Budget ☐ Yes ☒ No ☐ Decrease Costs
Local: ☐ No local government costs 1. ☐ Increase Costs ☐ Permissive ☐ Mandatory 2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory 3. ☐ Increase Revenues ☐ Permissive ☐ Mandatory 4. ☐ Decrease Revenues ☐ Permissive ☐ Mandatory		
Fund Sources Affected: ☒ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S		5. Types of Local Government Units Affected: ☐ Towns ☐ Villages ☐ Cities ☐ Counties ☐ Others _____ ☐ School Districts ☐ VTAE Districts
Affected Ch. 20 Appropriations 20.455(1)(a)		

Assumptions Used in Arriving at Fiscal Estimate

This bill authorizes life sentences without parole for certain defined persistent repeat serious felony offenders. The creation of this new statute would undoubtedly cause defendants who are sentenced under it to appeal their convictions.

Specifically, new terms included in the provisions of this bill would require litigation. Due to the fact that the new statute does not contain any time limit on prior offenses, due process challenges can be expected. In addition, the current repeater law is discretionary, not mandatory, and it does not count juvenile adjudications. These provisions will result in even more appeals of sentences under the proposed statute. The list of serious offenses is quite broad and disparate and could possibly be challenged as violating equal protection.

Aside from these reasons to predict more appeals, conditions of confinement complaints by prisoners are expected to increase due to the longer sentences which would result from this statute.

The Department expects that the number of appeals which would be handled by the Division of Legal Services would increase significantly. It is impossible, at this time, to predict any hard numbers, but attorney positions and support costs would be imperative.

Long-Range Fiscal Implications		
Agency/Prepared by: (Name & Phone No.) Justice - Kelly Kennedy 6-1221	Authorized Signature/Telephone No. <i>Kelly J. Kennedy</i> 6-1221	Date March 17, 1994

J.F. Crime and Criminals Sentences 9

CRIMINAL JUSTICE

Golden State Lawmakers Consider Harsh 'One Strike' Anti-Crime Bill

By Scott Armstrong

Staff writer of The Christian Science Monitor

LOS ANGELES

CALIFORNIA is considering crossing a new — and, critics say, dangerous — threshold in its move to get tough on criminals.

Fresh from passing a "three strikes and you're out" law, state lawmakers are now about to take up a measure that would put rapists and child molesters behind bars for life after their first conviction.

It would be the harshest such penalty in the nation.

While supporters believe it would help curb heinous offenses, critics say a "one strike" law would increase incarceration costs, result in more leniency in some cases, and increase the risk of innocent people being put away for life.

"It is essentially criminology by public opinion poll," says Franklin Zimring, a law professor at the University of California at Berkeley.

The din over the one-strike law mirrors a national debate over what is effective and appropriate punishment in an era of rising concern about crime. It is one more sign that rehabilitation, a mantra of the 1960s and 1970s, no longer seems part of the discourse, at least when it comes to repeat offenders.

Many concerns about the latest measure are similar to those raised about three-strike laws, which mandate life in prison without parole for three-time violent felons. California has started applying such a law, and many other states are considering them.

The new legislation comes at an emotional time for crime issues in California. Residents of rural Modoc County are still chafing over placement of a serial rapist on parole at a prison camp in their area.

In leafy Claremont, residents protested when a convicted rapist was supposed to be paroled to their community. He ended up failing a psychiatric test and now remains behind bars. Even the

slaying of two Japanese students in San Pedro, though involving a different type of crime, carjacking, has added to public emotionalism over violence and may buttress chances of get-tough legislation in Sacramento.

The one-strike bill has been introduced in the Legislature by state Sen. Marian Bergeson (R). It is due to come up for its first hearing as early as today. It is championed by Gov. Pete Wilson (R), who trumpeted its virtues across the state last week and has made crime a central part of his reelection campaign.

The bill would mandate life sentences for convicted rapists and child molesters who used force or exhibited "substantial sexual conduct." Supporters say the bill is needed because many who commit sexual crimes are re-

the punishment, there would be more plea bargains, and juries might acquit if they thought the penalty was too high.

At the same time, people who were assaulted by friends or family — as is often the case in rape and molestation attacks — would be reluctant to file charges, knowing possible consequences.

For this reason, some prosecutors privately oppose the measure. Even state Attorney General Dan Lungren (R), hard-nosed on crime issues, has expressed reservations about the breadth of the bill. That also goes for some women groups, that, nevertheless, have made stemming sexual assault a prime focus.

"At this point, we will testify against the legislation," says Elizabeth Toledo, president of the California chapter of the National Organization for Women. "It will be harder to get convictions."

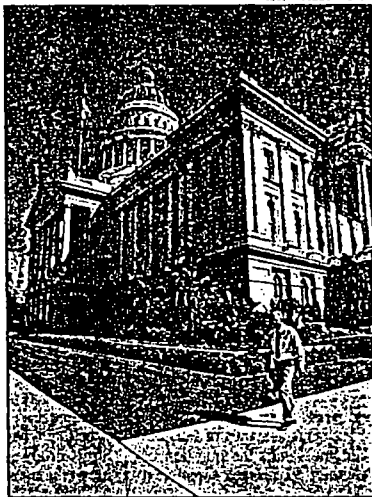
Some criminologists point out that the two crimes have among the highest rates of false arrests, increasing the chances of innocent people being put away for life. They argue that the stiffer sentences will do nothing to deter rapists and molesters, who often act out of psychological compulsions rather than rational impulses.

One other concern: Facing life imprisonment, child molesters and rapists might be more inclined to kill victims they kidnap — to ensure that victims couldn't testify against them.

"It is really silly to see child molestation as equal to murder," says Norval Morris, a prominent criminologist at the University of Chicago.

How the measure will do is uncertain. Some people expressed similar reservations about the three-strikes law, but the publicly popular measure zip-ped through the state Legislature. An early sign will come in the state Senate Judiciary Committee this week, which will also be considering a Wilson-backed bill to impose life sentences on certain first-time arsonists.

Dr. Zimring says of the get-tough measures: "I think the politics of crime has turned the governor into a genuine monster."



STATE HOUSE, SACRAMENTO, CALIF.: Critics say a measure to put first-time rapists, child molesters in prison for life would increase incarceration costs, among other things.

peat offenders and rarely respond to rehabilitation. "I don't think we should have to wait for the next victim to be raped or molested," says Ms. Bergeson. At a recent stop in Orange County, with rape and molestation victims at his side, Mr. Wilson declared: "These victims do a life sentence. It's simply not fair for their perpetrators to be out in a matter of months, which some of them can under the current law."

But many criminologists and others argue the bill could produce the opposite effect of its intent: Because of the severity of

Indian Tribes Split Over Official US Protection

AMERICAN Indians want Congress to guarantee federal protection for their sacred places and religious practices. The question is: Who is an Indian?

That dilemma has opened a fierce debate in the West and tied up legislation that's been in the works for at least three years. Many Indian leaders, with the Clinton administration's backing, favor limiting protection to the nation's 545 federally recognized tribes to prevent exploitation by Indian impostors and New Age enthusiasts.

"Our religion is being exploited as it is," said Marge Anderson, chairman of the Mille Lacs Band of Ojibwe in Minnesota. But such a stance would deny protection to native Hawaiians and hundreds of tribes in California and elsewhere.

The bill's chief sponsor, Sen. Daniel Inouye (D) of Hawaii, calls that indefensible. "The First Amendment does not say you have to be federally recognized [to practice religion] or you have to be a member of a religion that is federally recognized," he said.

Senator Inouye heads the Senate Select Committee on Indian Affairs, through which the bill must pass.

His measure, the Native American Free Exercise of Religion Act, would require government agencies to show a compelling interest before disturbing areas where Indians worship or gather substances for ceremonies. The Forest Service and other agencies would have to follow specific procedures for notifying and consulting with interested Indians.

Tribes and government agencies have sparred over numerous sites in recent years, such as South Dakota's Black Hills, a holy place to the Sioux; a quarry in Minnesota where Indians obtain stone for ceremonial pipes; and Oregon's Mount Hood, where Columbia River Indians seek visions.

Other provisions of Inouye's bill would guarantee Indian prison inmates access to religious leaders and ceremonies and protect the sacramental use of peyote, a hallucinogen used in native American rites.

The Religious Freedom Restoration Act, passed last year, applied the "compelling interest" test to laws that limit the free exercise of religion. But it did not specify how that would apply to sacred sites, according to the Justice Department.

Missouri votes on riverboat gambling

I VAN WILLIAMS gazes out the window of his sandwich shop to the lazy Mississippi River a block away and dreams of new prosperity in Mark Twain's old hometown.

He looks toward a crumbling grain elevator, past the poster in his window that pleads "Vote YES for Riverboat Gambling." "I'm supporting riverboats because I want to see progress. In 1904, Hannibal's population was 18,000. In 1994, it's still 18,000," said Mr. Williams, who moved to town a year ago. "Frankly, we need the revenues, we need the jobs."

His poster is a small statement in a multimillion-dollar statewide refrain, that Missouri is losing dollars and jobs to neighboring Illinois's riverboats, and that the economic erosion will spread as other states expand gambling.

Missouri voters consider a gambling referendum tomorrow for the second time. Amendment 3 would change the state constitution to legalize games of chance on the Missouri and Mississippi rivers. In addition, residents of 15 cities and a half-dozen counties will decide whether to allow proposed floating casinos to dock along their riverbanks.

In 1992, state voters overwhelmingly approved a law legalizing riverboats, and the Legislature created a state agency to regulate waterway wagering, which began accepting license applications and fees. Cities and counties started making deals for elaborate riverfront developments, with the tab to be picked up by optimistic casino operators.

But this year, riverboat business lurched to a halt when the Missouri Supreme Court ruled essentially that games of chance are legal only through constitutional change, not mere law. Those games include slot machines, which casino operators say they must offer to be viable.

The Legislature rushed to send Amendment 3 to a statewide vote. And the riverboat industry, whose spokesmen said \$170 million had already been spent in Missouri to develop boats and potential sites, began a vast advertising campaign.

Associated Press

JUSTICE BY THE GRID

If you want to get tough on crime, you have to impose some order on the sentencing process. North Carolina is trying.

Six days into the new year, a thin winter sun glazes the granite façade of North Carolina's Wake County Courthouse in downtown Raleigh. Upstairs in courtroom 3A, Eugene Morgan is coming to terms with a summer crime spree.

Morgan, a stocky 23-year-old, stands charged with breaking into eight churches and one house, stealing checks and cashing them. Set end to end, the counts against him could translate into a 240-year sentence. Under a plea arrangement, however, Morgan has admitted his guilt and the prosecutor is asking Judge Henry V. Barnette to impose a sentence of 20 years in prison.

But even as the judge pushes back his reading glasses, closes Morgan's folder and hands down the sentence, Morgan does not wear the shaken countenance—or flash the hostile glare—of a man condemned to 20 years behind bars.

That's because the sentence is a fiction. Morgan, his lawyer, the prosecutor and the judge all know that he is likely to be paroled in a matter of months. On average, North Carolina prisoners serve 18 percent of their sentences, and nonviolent offenders like Morgan serve much less. Ten years ago, offenders in the state did nearly half their time. Today, you can go to prison for a serious offense in the spring and still make it home for Christmas.

The same deterioration in time served has taken place all around the country. While judges send felons through one end of the revolving-door prison system, parole boards rotate them out the other end. Nationally, state prison inmates are serving roughly one-third of their sentences, but as sentences grow longer, time served is actu-



ally shrinking. In Texas, when courts increased penalties from an average of 6½ years to nearly 10, time served dropped from nearly 2½ years to a little more than 18 months. The actual sentence handed down by the judge is as meaningless for murderers and rapists as it is for the common housebreaker like Eugene Morgan.

Of all the stories that have fueled the current national preoccupation with crime, none are more frightening than the ones about violent thugs walking the streets after a token imprisonment. In Virginia, where first-degree murderers, sentenced to 40 years, are averaging 11 years behind bars, George Allen rode a "no parole" campaign theme last fall to become the state's first Republican governor in more than a decade. In California, the call to end parole has been fueled by anger over the murder of 12-year-old Polly Klaas, allegedly

slain by a paroled kidnapper who had served half of his 16-year sentence. North Carolina has been in the same condition of sentencing outrage. One of the men who murdered Michael Jordan's father in the state last year had been paroled weeks earlier, having served two years and two months of a six-year sentence for an ax assault.

In the past few months, ending parole and imposing life sentences on repeat offenders have become rallying cries just about everywhere. But it is not as simple as that. Most state prison systems don't have room to keep inmates any longer than they do; that is why they are being released—not out of misplaced leniency. In North Carolina, the penal institutions have room for 21,500 inmates; there are 30,000 admissions to prison every year.

A state can always build more cells, but the cost of that can be prohibitive. North Carolina has already spent \$550 million since 1985 to build 16,600 new prison beds, and the legislature has had to more than double the prison portion of the corrections budget, from \$195 million in 1985 to \$472 million in 1993, to pay for operating those new beds. But even with new prison space coming on line, there still aren't enough beds to maintain the number of offenders rotating through the criminal justice system today—to say nothing of the future. Merely ending parole would be a recipe for chaos.

But North Carolina has taken a step toward a genuine solution. Last year, the legislature passed a new sentencing law. Some of its provisions are in line with the get-tough rhetoric of the moment: Starting next January, all offenders will serve their entire sentences; parole will be abolished. But the essence of the reform is not the parole provision. It is a simple chart of letters

BY PENELOPE LEMOV

and numbers that everybody in the criminal justice system refers to by a two-word name: the grid.

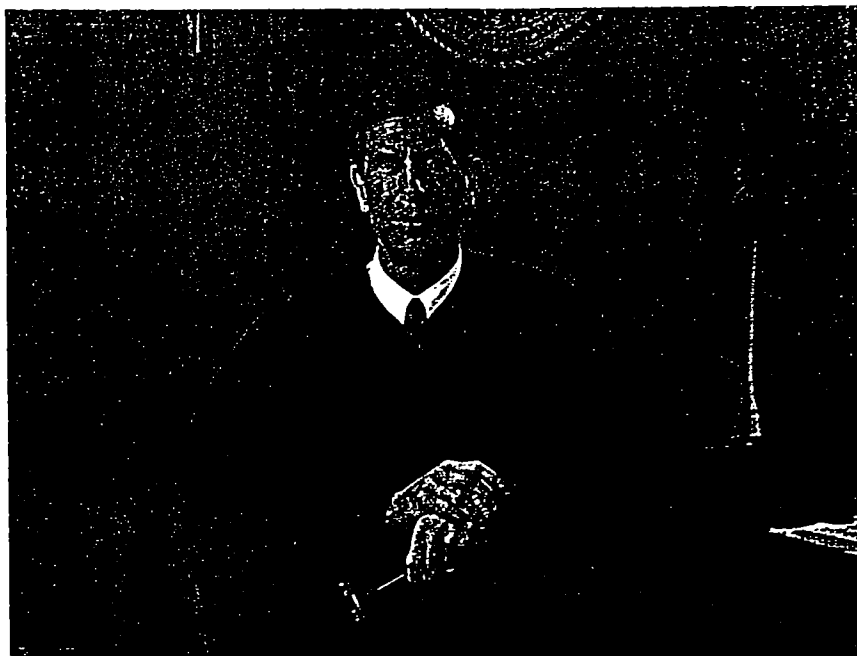
A year from now, criminals like Eugene Morgan will know all about the grid. The crimes they commit will all be assessed a level based not only on the harm they cause victims or society but also on the number of beds in the system and the capacity for other forms of punishment. "There is a relationship between punishment and cost," says Judge Thomas W. Ross, who chairs the state's Sentencing and Policy Advisory Commission. "We are balancing sentencing policy with resources."

A special legislative session met last month to discuss changes in some penalties, but the philosophy behind the grid remains the same.

The grid is available on a single sheet of paper to anybody who wants to see it. The left-hand side of the page is a rank order of crimes, levels A (first-degree murder) and B (second degree murder, rape) through H (breaking and entering, larceny) and I (forgery, drug sales). The numbers at the top of the page correspond to the number of black marks on a felon's record. When the time comes to impose sentence, a judge will run one finger down the left hand column to the level of crime and then move that finger across the grid to match it with the offender's record. Where the finger lands, the judge will find a square that contains a range of minimum and maximum sentences.

The judge will be able to use the lighter or heavier end of the range, depending on mitigating or aggravating circumstances. A judge might tilt toward the lighter sentence, for instance, if an offender has a job and is supporting his family. He might lean toward the heavier end if the offender is rootless and shows no remorse. The punishment has to fall within the square. The offender will then serve at least the minimum end of the sentence found inside the square. And if his behavior in prison is poor, he will serve the maximum.

He will not be paroled. All the sentences on the grid are designed to match the expected capacity of the system for the next five years. If the projections change, the legislature can



The father of North Carolina's sentencing grid:
Superior Court Judge Thomas W. Ross.

adjust the numbers in the boxes. But if it does that, the idea is to redraw the whole grid at once—no more doubling the sentence for a particular crime when the system doesn't have a place to put the people who are committing it.

Not all crimes fall into squares that demand prison sentences. First and second-time offenders who commit H and I level crimes, such as breaking and entering, will be given suspended sentences so long as they successfully complete an alternative sanction. This could be a period of intensive probation, complete with electronically monitored house arrest or a stint in boot camp. The sentence could also call for restitution to victims and participation in a drug treatment program.

Forty percent of the offenders who come before North Carolina judges fall into the first two squares of H and I level crimes. They are first- or second-time offenders who commit nonviolent crimes. Under the present system, nearly 20 percent of those low-level offenders are sent to prison. That will end next year, and as it does it will free up prison space to keep violent offenders in prison longer.

North Carolina is not the first state to try a version of structured sentencing. There are "grids" in Minnesota, Oregon and Washington, and to a lesser extent in Pennsylvania, Louisiana and, most recently, Arkansas. But North Carolina

is among the most ambitious in targeting punishment to resources. And its grid, unlike most of the others, is not a set of guidelines: It is a set of dictates that have to be followed.

"We borrowed from other states, but tailored the ideas to North Carolina," says state Representative Anne Barnes. "Every state is different and knows what its people will accept."

The North Carolina grid is not only a way of responding to the popular concern about revolving-door justice. It is a way to deal with the oppressive costs of politically charged mandatory sentences. Correction costs nationally have been growing at a rate of between 10 and 15 percent a year—they now account for 5 percent of total state spending—and the mandatory sentencing laws of the past decade are one of the main reasons.

Almost all states now have mandatory sentencing for a range of crimes from violent acts committed with a gun to drug offenses, drunk driving and property theft. In addition, 25 states have habitual-offender laws that require fixed prison terms for repeat offenders, in some cases regardless of the seriousness of the crime. In Louisiana, for instance, an offender convicted of three unrelated felonies must be sentenced to life without parole. In Alabama, there is a two-year

minimum sentence for drug sales, with five years added if the sale occurs within three miles of a school or housing project. In an urban area such as Birmingham, just about everything is within three miles of a school.

These laws have been enacted emotionally but haphazardly, with little regard to prison resources. So as the prisons fill up with newly convicted mandatory-sentence offenders, other prisoners have to be set free to make room for them. In many cases, those marked for early release have actually committed more violent crimes, but ones that did not happen to involve drug sales or repeat violations and thus did not trigger any mandatory penalty.

The effect of this shoddy lawmaking has been dramatic. In New Hampshire, mandatory drug sentences have helped the prison population grow by 239 percent in a decade, with prison costs rising three times as fast as the rest of state spending. In Delaware, a newly imposed minimum sentence of three years for possession of 5 to 15 grams of cocaine or heroin resulted in imprisonment of 424 offenders the first year, at a cost of \$26.6 million. Nearly 80 percent of the offenders had never been in prison before; most were nonviolent. A subsequent study showed that alternative sentencing for these people would have cost one-tenth as much and achieved results that were no worse.

Officials in many states would like to undo the effects of clumsy mandatory sentencing, but getting rid of these laws is as politically difficult to do as passing them was easy. As North Carolina Attorney General Michael F. Easley points out, all the public really wants to hear about fixing the criminal justice system is that wardens will lock up thugs and throw away the key. "Anything else," Easley says, "and you have a sales job on your hands."

The North Carolina grid is an effort to restore some common sense and order to the process. The corrections system is approached as a whole. All sentences are placed at what seems to be the appropriate level: more prison time for violent crimes, less harsh punishment for nonviolent offenses, no disproportionately swollen penalties for minor drug-related violations. Under the new law, the only mandatory sentences will be for first-degree murder

and major drug trafficking.

State legislators who want to call the new system mandatory sentencing will be able to do so, since there will be no parole. But it will be a system adjusted to the circumstances of the crime and the resources available, not to the public emotions of the moment. "The amount of time depends on the offender's crime history," Judge Ross argues, "and that's different than straight mandatory sentencing. This is a more rationally developed system. It's linked to harm done."

The bottom line is that violent offenders will be locked away for longer periods of time than they are now—even if the sentences themselves are shorter. "They get sentenced to six years, they serve six," Easley sums up. "Before, they got 50 and served five."

The new system also provides an ultimate choice to voters: What do they want to pay for corrections? With a clear link between sentences and corrections costs, the public can decide whether it wants to spend more money to keep certain kinds of criminals in jail

longer—and how much more it would be willing to spend. Easley, who believes the new sentences are too lenient, says this is a way for the public to "intelligently weigh options of whether to build new prisons." If it wishes to spend and build, the grid can be rewritten to accommodate longer sentences all across the board.

In fact, the sentencing commission originally recommended stiffer sentences than the ones ultimately chosen. But the longer sentences would have required another round of prison construction, on top of the \$550 million already spent since 1985. The legislature opted to try the less expensive alternative. "The legislature had to make a tough decision and face up to reality," says Robin Lubitz, the executive director of the Sentencing Commission. "You can't get a Cadillac for the price of a Yugo."

North Carolina law also discourages haphazard legislative tinkering: Any legislator who proposes lengthening a particular sentence must accompany that proposal with a fiscal note detailing

SCENES FROM THE GRID

Below is a sample of some of the "presumptive range" sentences that will be imposed under North Carolina's new grid system. All sentences are in months.

	Active Prison Sentence	Alternative Sentence	Judicial Discretion to Choose Either
	First-time Offender	Mid-level Repeat Offender	Habitual Criminal
1st Degree Murder	Death penalty or life imprisonment mandatory		
1st Degree Rape 2nd Degree Murder	103-135	174-216	216-270
1st Degree Kidnapping 2nd Degree Rape	50-85	124-155	116-145
1st Degree Burglary 1st Degree Arson	24-50	34-101	101-126
Selling Drugs Near a School Voluntary Manslaughter	20-25	37-46	47-59
Involuntary Manslaughter Embezzlement by public officials	15-16	20-25	31-39
2nd Degree Burglary 2nd Degree Arson	10-15	16-20	23-29
Breaking and Entering Larceny, Embezzlement	3-8	12-15	16-20
Perjury Forgery	3-6	6-8	8-10

Based on the grid developed by the North Carolina Sentencing Commission

how much the change would cost. "The idea of being able to stand up and be tough on crime without worrying about how to pay for it has got to stop," Judge Ross insists.

The truth-in-sentencing law will not work, however, unless it also manages to put some teeth into the alternative programs at the lower end of the grid. Low-level offenders will have to be diverted from prison in order to assure that there is room for violent criminals.

As things stand now, judges can sentence offenders to intermediate sanctions or community punishments, but they must pair these with a prison sentence, usually of equal length. In North Carolina, as in most states, the offender can opt for the prison sentence instead of the alternative sanction. In recent years, a significant number of those offered alternative sanctions have chosen prison instead. A criminal doesn't have to have the I.Q. of a Hannibal Lecter to figure out that a two-year sentence, with release in a few months, is better than two full years of strict supervision.

It also costs him less. On probation, offenders pay a \$20-a-month supervision fee and, if the judge orders it, have to attend drug treatment programs and pay restitution to victims. Upon early release from prison, few, if any, of these requirements apply. "People I've supervised say they save money by going to prison," says Theodis Beck, of the state's adult probation and parole division. When a two-year sentence means a two-year sentence, however, that calculation is likely to change.

An expanded alternative sanction program will actually be a money-saver for the state as a whole, but it won't exactly come free. The state plans to put about \$20 million a year into beefing up its intensive probation system, plus \$13 million for grants to counties to develop such community-based alternatives as drug treatment facilities, day reporting centers that offer education and job training, and day-fine programs that penalize offenders through a series of fines geared to their incomes. These facilities do not, for the most part, exist in adequate num-

'Punishment will be meted out locally, not by the state,' says the head of the corrections department.

bers in North Carolina now.

Franklin Freeman, the director of the state's Department of Corrections, says it will be up to each county to decide what kinds of facilities to operate, based on what the county believes will be the most effective punishment for its citizens. Pointing to one county where 40 percent of the admissions to jail are public drunks, Freeman suggests the answer there might be a drug-alcohol treatment center. "This is a return to colonial times and our early life as a nation," says Freeman. "We won't have stocks and public humiliation, but punishment will be meted out locally, not by the state."

Although the North Carolina grid is not in effect yet, it already has its critics. Judge Herbert Small, who served on the Sentencing Commission, believes that judges have been robbed of their discretion. "The grid is too rigid," he says. By way of example, he notes that TV evangelist Jim Bakker, convicted of massive fraud in federal court, would never see the inside of a cell under the grid system. That is because Bakker had no prior conviction record. "He'd be treated the same as a 17-year-old working at McDonald's who embezzles \$15," says Small. "That's not justice in my eyes."

Judge Ross insists that judges will still have significant discretion within the grid: They can decide whether many offenders go to jail or serve an alternative sentence, whether to impose a minimum or maximum penalty within a particular category, and whether to give a multiple offender concurrent or consecutive sentences. "You can have the same crime," he says, "but some offenders are drug addicts who need rehabilitation and others are career criminals. The judge is in the best position to make that decision, and

the grid leaves room for that."

Victims' rights groups are concerned that the sentences, tied deliberately to resources, will be diluted when money is tight. "I worry that the legislature will chip away at a system that probably won't be adequately funded to begin with," says Catherine Gallagher Smith, executive director of the North Carolina Victim Assistance Network and a member of the Sentencing Commission. "I foresee someone sitting behind a computer, punching in numbers and saying, 'We need 2,500 beds by September 30, so we need to decrease the sentence for this category of offenses.'"

What would happen to a Eugene Morgan if he walked into Wake County courtroom 3A in January of 1995? He certainly wouldn't plea-bargain for a 20-year sentence. As an H and I level offender committing a second-time offense, he would fall under community sanctions. If the judge found that the crimes were committed to support a drug habit, drug treatment would be part of the sentence. Backing it up would be a suspended prison term—somewhere between four and eight months—in case the alternative sentence was violated.

If Morgan's record were horrendous—a long litany of larcenous acts—the judge would move his finger farther along the grid. As a habitual offender at the H and I levels, Morgan could then receive 10 to 12 months on intermediate sanctions, with a suspended sentence of at least 10 months in jail. There is no question that this will seem to many people a disturbingly light penalty for burglary, which is after all an act of violence against property if not against human beings. At least, however, the state will not be setting armed robbers free so that burglars can serve time.

"It's going to be an interesting experiment," says corrections chief Freeman. "Like all Southern states, our primary emphasis has been 'lock 'em up and throw away the key.' This is an effort to strike a balance between incarceration for those who really need it and punishment short of that for those others we can manage without threat to society." G

A 3-Strike Penal Law Shows It's Not as Simple as It Seems

By TIMOTHY EGAN
Special to The New York Times

SEATTLE, Feb. 14 — In the fight against violent crime, perhaps no idea is more popular than "three strikes and you're out" — locking up repeat offenders for life without parole. With 30 states considering some version of this concept, it is proving to be a bipartisan prescription by politicians from President Clinton on down.

But only one state, Washington, has any experience with it. Two months after a law went on the books here requiring criminals to spend life in prison without parole if they are convicted of three felonies, the first faces of "three strikes" are emerging. And they present a picture that is much more complicated than the baseball slogan that inspired 76 percent of Washington State voters to back the measure last fall.

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

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

Here in Seattle, prosecutors announced last week that they were seeking life in prison for a man who they say took \$337 from an espresso cart

Continued on Page A18, Column 1

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Zagreb, Croatia, on Sunday between General Rose, other United Nations officials and NATO commanders, including Adm. Jeremy Boorda, who heads the United States European command.

All Playing 'From Same Sheet'

The peace effort, General Rose said tonight, is "backed by the power of NATO's air might." He added: "There is no discrepancy at all between what we are doing and the ultimatum. We are all playing from the same sheet of music."

The threat of NATO air strikes, another officer involved in the rapidly developing plans said, "is a tool, a

Continued on Page A12, Column 1

info-key

Crime and Criminals Sentences

By R Center, y to clos er three of clined to

After just two days of ny on behalf of one defendant, lawyers in essence left it to the decide the case entirely on the or weakness of the prosecuti dence.

The detailed, methodical p tion by the prosecution, which tested the patience of the p judge, Kevin T. Duffy, cor starkly with the decision of mo defense lawyers to call no with

But the judge reminded the j week that it was entirely nor the defense, which has no bu proof, to present no case, an indeed, most defense lawyers in al cases do just that.

Instead, the judge said, the argued that the Government ha

INSIDE

Health Plan and Retirees

The Clinton health plan's proposal to cover early retirees is in growing jeopardy because of troublesome financial projections. Page A17.

Dead End on the Digital Path

Telephone companies are cutting jobs by the tens of thousands and many of those laid off will have trouble finding work. Page D1.

M.S. Workers Faulted

An initial inquiry found that emergency workers violated rules in the case of a Queens woman whose baby died just after birth. Page B1.

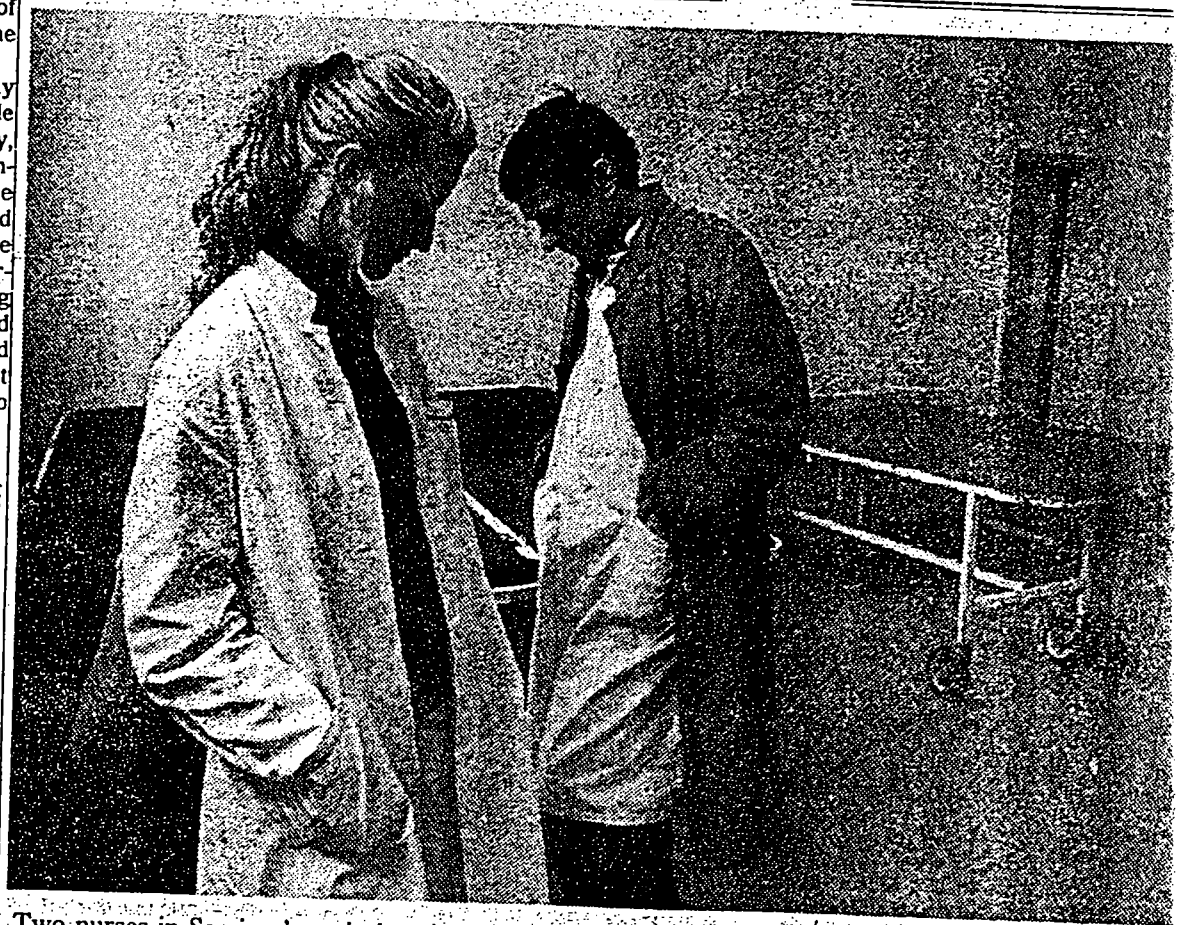
Influential Israeli Indicted

Former Ambassador to the United States who heads Israel's powerful immigration program was charged with credit card fraud. Page A3.

Summary

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D1-21
A20-21
A2-2



Two nurses in Sarajevo's main hospital pacing through an uncharacteristically empty emergency room yesterday. Since a cease-fire began Thursday, there have been no war-related deaths or injuries.

Irrked by Medicare, Doctors Ask Elderly to Pay U

By ELISABETH ROSENTHAL

A small but growing number of doctors, angry with the Federal Government's limits on what they can charge for treating elderly patients, are finding ways to get around the Medicare rates by having patients pay extra fees,

doctors warning them that taking excess payment under contract leaves them open to prosecution, fines and sanctions.

Some of these private contracts stipulate that the patient will forgo Medicare coverage for a particular visit and

like phone consultations, that Medicare considers part of the standard fee office visits.

Doctors say that at a time when Medicare is covering fewer services and when reimbursement rates are

One 3-Strike Penal Law: Not as Easy as It Seems

Continued From Page A1

vendor. He threatened to use a weapon, though he did not display one, in committing his third felony in a lifetime of similar crimes.

"What people will see after they pass something like this is that the law sends away some people who probably weren't intended to be sent away for life," said Seth Dawson, the prosecutor in Snohomish County, north of Seattle, where the sandwich shop robber will go on trial. Mr. Dawson supports the new law but thinks it may need refining.

Three strikes, endorsed by President Clinton and written into the crime bill passed by the Senate (the House is working on a version of its own), is favored by more than 80 percent of Americans, according to recent polls. Its supporters include Democrats like Gov. Mario M. Cuomo of New York as well as Republicans like Gov. Pete Wilson of California.

Under the Washington law, which has become the model for states trying

ett, north of Seattle, again without a gun but pretending he had one by pointing his finger inside his coat pocket. The police found him an hour after the holdup drinking beer in a nearby tavern. Normally, he would face about 22 months in jail. But now, if convicted, he will spend the rest of his life in prison.

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

Second Thoughts

Mr. Fisher's case is also coming as a bit of shock around Everett, an old mill town surrounded by fast-growing suburbs.

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

Dave LaCourse, a leader of the three-strikes initiative in this state, said Mr. Fisher's case was unusual but not unintended. "Here's a guy with 10 misdemeanors on his record, he's 35 years old and he hasn't learned his lesson yet," Mr. LaCourse said. "What's it going to take? He seems to be one of those people who's making crime a career."

'Poster Child' for the Law

If Mr. Fisher's case is causing second thoughts, those of other three-strikes candidates are less contentious. Cecil Emile Davis, 34, of Tacoma, is facing life in prison without parole for his most recent charge: kidnapping, rape and attempted murder. According to court records, Mr. Davis kidnapped a 24-year-old woman on Dec. 26, raped her repeatedly, stabbed her in the throat and left her for dead. Unable to speak, the woman was able to draw a map to the site of her abduction, an apartment where Mr. Davis was arrested.

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

The prosecutor, John Ladenburg of Pierce County, south of Seattle, hailed Mr. Davis's arrest. "This appears to be exactly the kind of case the public had in mind when passing this law," he said.

Mr. Davis had been convicted of several crimes, including an attack with an ice pick on two people and a robbery in which he beat a store clerk and a person who came to the clerk's rescue. Though he had been given sentences close to the maximum — "for extreme cruelty" — he had never served more than three years in prison for any of his crimes.

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

Nationwide, critics of the three-strikes law say it will create a population of geriatric prisoners by locking up people who are well past their peak crime years and then keeping them in prison — at a current cost of \$25,000 a year for every inmate — until they die. They say repeat offenders should be let



Therese Frare for The New York Times

As many states consider mandating life in prison for people convicted of three felonies, critics say petty criminals, not violent ones, would be most affected. Larry Fisher, who has two small-time robbery convictions, waited in his cell near Seattle for trial on a third felony charge.

go at an older age after serving a long time.

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

If the typical age is higher than expected, the volume of people who fit the three-strikes category is running about as expected. In Washington, experts said the law would lock up about 70 people a year. For New York State, the estimate is about 300 a year; for California, where a three-strikes measure is expected to pass by a big margin next fall, the number would be slightly more than in New York.

Police See More Violence

Police officers here say they have run into one unexpected problem on the streets: suspects who are more prone to use violence when cornered. Two weeks ago, the Seattle police were about to make what they thought would be a routine arrest of a burglary suspect. Instead of surrendering, he threatened to shoot. Only after a special weapons squad surrounded the

house did the standoff end.

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

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

It is too early to judge if the Washington law is a deterrent, as proponents said it would be. There is anecdotal evidence that some career criminals are leaving this state, officers say.

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

"Don't assume this will have a dramatic effect on crime," said Mr. Ladenburg, the prosecutor. "This is not a cure-all. This is not going to fix crime. What it will do is get some of the worst offenders off the street forever."

Heads Later In Florida

GAINESVILLE, Fla., Feb. 1 — They were freshmen when five college students here were slain last fall of 1990. Now, as the man accused of the killings, Danny Harold Rolling, about to go on trial for murder and panic on the campus of the state of Florida here remain silent.

Karen Whitney, 23, recalls 1 with friends at night. She disremembered her parents' entreaties to return after the killings, but she said "freaking out."

Many of her friends fled the scene and some never came back.

No one was charged in the case for more than a year. Then, in Mr. Rolling, under arrest for crimes, was indicted. His law repeated delays in bringing trial, but the trial will finally Tuesday with jury selection.

Already Serving Life Term

Mr. Rolling, a 39-year-old from Shreveport, La., is charged with five counts of three of sexual battery and armed burglary. If convicted, he is sentenced to life in prison or the electric chair. He is already serving life terms for other crimes.

Community leaders say he still feels the effects of the killings: the negative publicity.

"There was no question the shadow over the community homicides occurred," Chief Clifton said. "I don't think it but some of it will return with starting."

Summer heat was still Gainesville on Sunday, Aug. when the bodies of Christina of Jacksonville, and Sonja of Deerfield Beach, both UF Florida students, were found in a town-house apartment. They were stabbed and mutilated.

Convenience Store Victim

Early the next day, Chris 18-year-old student at Sam Houston Community College, was found at her duplex about a mile from Ms. Larson's and a convenience store. Just hours before, Ms. Hoyt had bought a convenience store, and from the store's camera Rolling in the store at the

Ms. Powell and Ms. Ho raped, the police said, and all three women were left

The day after Ms. Hoyt found, the bodies of Traci Manuel Taboada, both 23, Miami area, were found when they shared. She was of the University of Florida transferring there from prior College.

Mr. Rolling had robbed branch of the First Union, previous day, escaping untainted by an exploding was not immediately captured money was found at a c. the Paules-Taboada apartment the campsite was a tent bought at a local Wal-Mart.

Three days before Ms. Ms. Larson were killed, women bought household

Testifying for Prosecution, Burned Sect Member Recalls an Inferno

SAN ANTONIO, Feb. 14 (AP) — A weeping, severely burned member of the Branch Davidian sect described in videotaped testimony today how her clothes and gas mask melted onto her skin in the fire that ended the group's standoff with the Federal authorities last April.

Marjorie Thomas, whose testimony was played at the trial of 11 fellow sect members charged with murder and conspiracy

lier testimony showed. Mr. Koresh died from a single bullet wound in the forehead, a pathologist said.

Ms. Thomas also testified that she saw three defendants: Ruth Riddle, Jaime Castillo and Brad Branch, with guns on the day of the shootout. Later, she said, a fourth defendant, Kevin Whitecliff, and a man who is not on trial, Oliver Gyafas, said "that they shot someone."

Mr. Whitecliff and three other defendants, Clive Doyle, Graeme Craddock and Renos Avraam, Ms. Thomas said she also had a gun.

Under cross-examination by defense lawyers, Ms. Thomas said she had not heard any defendant say anything about planning to harm Federal agents. She said people had sent out of the compound as part of a plan to surrender.

Ms. Thomas said she did not see with a gun, although other prosecution witnesses have said the opposite.

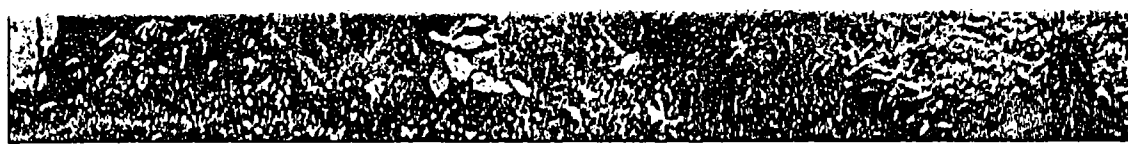
Defense lawyers contend the cult members were acting in self-defense. If convicted, they could be sentenced to life in prison.

Like other witnesses, Ms. Thomas told of a mass suicide plan that Mr. Koresh had devised in which his dead body would be carried out of the compound on a stretcher and his followers would die from gunfire or grenade

Robert Sherrod And Aut

By ERIC P.

Robert Sherrod, an editor of The Saturday and a correspondent in died on Sunday at his ho



A Colonist's Home in Ecuador's Endangered Rain Forest

Increasing migration into the forest, bringing clear-cutting and cattle-raising, spells trouble for a fragile ecosystem. **PAGE 10.**

'Three Strikes' Laws Strike Out With Law Enforcement Experts

By Keith Henderson

Staff writer of The Christian Science Monitor

BOSTON

WHETHER their political stance is left, right, or middle, prominent politicians are lining up behind "three strikes, you're out" proposals to lock up for life criminals who have committed three violent felonies.

President Clinton came out strongly for the idea in his State of the Union message last week. Gov. Mario Cuomo (D) of New York, often seen as a darling of liberal Democrats, has backed a

version of "three strikes" for his state, as has Gov. Pete Wilson of California, a moderate to conservative Republican. Bills to institute the policy are before 30 state legislatures, and a federal bill has already been passed by the Senate and is likely to end up part of the finished crime bill this year. (Political momentum, Page 2.)

But the nearly unanimous support in the political realm is not mirrored among people who study and work within the criminal justice and penal systems in the United States. Many of them tend to see "three strikes you're out" as potent politics but a whiff when it comes to battling crime.

See **CRIME** page 4

We don't think there's going to be a war, it's just media hype," shrugs a Seoul shopkeeper. A woman edging past a stacked heap of oranges agrees: "After 40 years, we're immune to the military problem with North Korea."

Despite such blasé assessments by South Koreans, tensions are rising as the United States turns up the heat on North Korea over its suspected nuclear weapons program and its refusal to agree to full inspections of its nuclear sites.

The US plans to go ahead with joint military exercises with South Korea this March if North Korea fails to allow inspections. And Washington is sending defensive Patriot missiles to South Korea to upgrade forces.

Most of all, Washington is tiring of fruitless dialogue with Pyongyang. The standoff is expected to result in a showdown

nize its nuclear facilities, or face the prospect of a UN-led trade embargo.

Pyeongyang has been stalling for nearly a year on international inspections of its seven declared nuclear sites, and, despite negotiations with Washington, is still blocking access to two sites thought to hold vital clues as to whether Kim Il Sung's regime is secretly building a nuclear bomb — or has already done so.

"They are very good at playing this brinkmanship strategy," says Kim Kook Chin, dean for research at the Institute of Foreign Affairs and National Security, a South Korean government think tank.

He and other analysts point out that North Korea has skillfully dragged its old enemy, the United States, into direct talks while making no real concessions itself.

The key problem for the Clinton administration and the UN is to gauge whether intense external

See **KOREA** page 4

A CLOSER LOOK

The Makings of a New Russian Empire

Four years after the Soviet Union's collapse, Russian nationalists hope to rebuild an empire. Recent events, including the election of a Russian nationalist, Meshkov (right) in the Ukrainian region of Crimea, give neighboring leaders cause for concern. Some worry that Russian "self-determination," could lead to a Yugoslav-type civil war.

Story, Page 6



British See Another Blow to US Ties As Clinton Grants Visa to Irish Activist

By Alexander MacLeod

Special to The Christian Science Monitor

LONDON

RELATIONS between London and Washington have been dealt a serious blow by the Clinton administration's decision to grant Gerry Adams, president of Sinn Féin, a visa to visit the United States.

British officials say that the granting of a 48-hour visa to the leader of the Irish Republican Army's political wing, personally approved by Mr. Clinton on Sunday, came despite several days of intense lobbying by Washington-based British diplomats.

The diplomats had conveyed a request from Prime Minister John Major that the 20-year US ban on Adams be continued. The IRA — which supports joining Northern

Ireland (a province of Britain) to the Irish Republic — has used violence to attempt to force British troops out of the province, where they have been since 1969.

Michael Mates, a former Northern Ireland minister in the Major government, said the decision was "mystifying" and "an enormous publicity coup" for Mr. Adams. "It is exactly what he wants," Mr. Mates said. "He wants

See **ADAMS** page 4

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Northern Ireland's Unionist politicians erupted with anger at the news of the Adams visit. The Rev. Ian Paisley, leader of the Democratic Unionist Party, accused Clinton of "bowing to a Roman Catholic lobby" in the US.

McNulty counters that any added burden on prisons - or any added cost for new prison space - is "much less than the cost of violent crimes." In his view, "three strikes" will help keep habitual criminals off the streets and reduce their toll on society.

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Critics Say 'Three Strikes' Proposal Would Do Little to Reduce Crime

Relatively Few Violent Felony Cases Resolved in Federal Courts

2/22/94
By Pierre Thomas
Washington Post Staff Writer

When President Clinton recently embraced the popular concept of a federal "three strikes and you're out" bill for persons convicted of three violent felonies, the proposal sounded far-reaching and tough.

But less than 1.5 percent of such crimes are resolved in federal courts—where tough sentencing guidelines already exist for violent criminals, Bureau of Justice Statistics figures show.

Although a federal three strikes bill requiring mandatory life imprisonment represents a potential political home run for elected officials, its impact may be minimal, critics say. Polls show that an overwhelming majority of Americans support the concept, despite concerns raised by critics about fairness in sentencing.

"The federal role in responding to violence is limited," said Marc Mauer, spokesman for the Sentencing Project, a nonprofit organization promoting alternative sentencing programs. "This creates false expectations. People hear about all these federal crime initiatives and then they are frustrated when they don't work."

In 1990, about 2,331 criminal cases, including violent felonies and misdemeanors, were concluded in federal courts nationwide, compared to 147,766 violent cases heard in states, justice statistics show.

A closer look reveals that when federally designated "violent" crimes such as bank robberies are excluded, the numbers shrink even more. In 1992, for example, there were less than 250 rape, murder, manslaughter, attempted murder and aggravated assault convictions in federal court nationwide, according to statistics compiled by the U.S. Sentencing Commission.

About 58 percent of those cases involved Native Americans living on reservations, raising the specter that a federal three strikes measure would have a disproportionate impact on Native Americans. Unless the violent offense is a designated federal crime, it generally has to occur on federal property.

Though three strikes laws would have far greater impact at the state level, a somewhat symbolic gesture from the federal government should not be undervalued, said Sylvester Daughtry, president of the International Association of Chiefs of Police. "Symbolically, having the president call for this has influenced a number of governors and is important."

When federal legislators talk about crime they are sometimes "talking about policy as opposed to impact," said Rep. Steny H. Hoyer (D-Md.), who supports the three strikes concept. "The greatest impact is always at the state level. Having said that, it is important for the national legislature to set parameters and expectations—and to express the national sentiment."

In addition, looking at the effectiveness of the federal proposal solely in terms of numbers is misleading, particularly because a small number of criminals are believed to cause a disproportionately high number of crimes, Hoyer said. Three strikes federal legislation can also be seen as filling gaps in coverage and sending a message to the public, he said.

"The American public is saying that there has to be a consequence for your actions," Hoyer said.

But while the president and Congress, in responding to public frustration about violence, may be sending a symbolic message, they would, in fact, be adopting a measure that would make little law en-

forcement sense, opponents say.

Philip B. Heymann, who recently resigned as the No. 2 official at the Department of Justice, said last week that three strikes legislation and a number of items in the crime bill before Congress were shortsighted, wasteful, counterproductive and didn't "make any sense."

As criminals get older they generally commit far fewer crimes, Heymann and other critics say. So federal and state governments could be left housing aging inmates—well beyond their crime-perpetrating prime—who require extensive medical and other resources. In 20 years, if three strikes is approved, some prisons will resemble hospital wards, they say.

The costs will be "huge," said Mauer, whose organization notes that the average cost to incarcerate a prisoner is about \$20,000 annually. "The money is going to have to come from somewhere."

Daughtry acknowledged that "this must not be an empty threat."

"You have to have resources in place for this to work," he said. "Certainty of punishment is very important to this law."

About 284 prisoners a year would be added to the federal prison system if the measure is approved, Sentencing Commission officials estimate.

But the impact of the three strikes law would not be felt immediately because many of the suspects already would have received lengthy prison terms under current law, Sentencing Commission officials say.

Present federal sentencing guidelines call for tough terms against violent three-time offenders. A defendant convicted of a third violent offense or a drug trafficking charge must be sentenced at or near the maximum term for the final offense.

(cont'd.)

This can sometimes mean life imprisonment, depending on the charge. Departures from the guidelines are rare, Sentencing Commission officials say.

Critics argue the likely effect of federal three strikes legislation would be to give less-serious offenders lengthy terms similar to those already received by more dangerous offenders.

Although at first glance an increase of 284 inmates a year seems small, it translates into about five new prisons over a 15- to 30-year period, commission officials say.

"There is no free lunch," said Hoyer, who quickly countered that imprisoning repeat offenders for life would lead to tremendous savings in hospital, economic and criminal justice system costs.

Congress is considering several versions of three strikes legislation and a crime bill that also includes a measure that would federalize a number of state crimes, potentially increasing the legislation's impact.

One version of three strikes would include certain drug offenses among those that could lead to life imprisonment. This would increase the number of three strikes prisoners to an estimated 689 per year. In 1990 there were about 15,010 drug trafficking cases tried in federal courts, compared to 168,360 in state courts. Over 30 years this would add about 10,000 prisoners or 10 new federal prisons.

Among the crimes Congress is considering federalizing are offenses committed with firearms. If this measure, which is part of the Senate crime bill, were to be approved, the federal prison population might quadruple in eight years, some experts estimate.

The president has qualified his enthusiastic endorsement in recent weeks, asking legislators to make sure they "don't litter it up with every offense."

"There are a number of concerns," Hoyer said.

Even so, he said, "I would be shocked if we didn't enact" some form of three strikes.

Legislators get earful of anger over crime

2-21-94 The Capital

By CHRISTOPHER MUNSEY
Staff Writer

A computer printout of bills introduced in the General Assembly dealing with crime, punishment and the death penalty stretches for several yards — but the list of what actually will get passed this year takes about a page.

Three local legislators told residents at a meeting Thursday night in Edgewater that crime is the one of the big issues in this year's session, and residents gave them an earful of anger and frustration.

But Dels. John C. Astle, D-Annapolis, George W. Owings III, D-Owings, and Phillip D. Bissett, R-Mayo, voiced a good deal of frustration themselves.

Attended by about 20 people, the meeting was billed as a chance to ask elected officials about crime legislation, and was sponsored by the Southern District Police-Community Relations Council.

The legislators blamed the courts as a key part of the problem. Year after year, legislators pass bills that include mandatory sentences for convictions — but then everything gets plea-bargained down to lesser offenses, they said.

"The police enforce these laws and then they go to court, and what's not plea-bargained away is treated with less importance than it should be," Mr. Owings said.

Each legislator mentioned at least

one anti-crime bill he has submitted. They also stressed public responsibility — the need for people to support the costs of prison construction, take an interest in the political process and keep an eye out for crime in the neighborhood.

People also should pay attention to the penalties meted out by judges for drunken-driving convictions, Mr. Astle said.

"How many of us could tell each other what the judges are doing?" he asked.

When it comes to crime, citizens have to be ready to put their money where their mouths are, Mr. Owings said.

"Do we build more prisons and ask you for more taxes, and can we put it next to you?" he asked.

Gun control also was a hot topic. But it isn't the answer, said Mr. Bissett, adding that baseball bats are the next-favorite weapons behind guns.

"Don't tell me about the second-leading cause, tell me about the one that's killing people," interjected Lou Levine, a Heritage Harbour resident.

Tom Hennessey of Wilelinor Estates said gun control isn't the answer, but punishing people who use guns in violent crimes is the way to go.

"If he's got a gun in his pocket, slap 10 years on," he said.

AT Crime and
Criminals
Sentences

Harsh Punishment on Washington Agenda

A state Supreme Court ruling and a proposed initiative would make a powerful package of crime protection and retribution in Washington state.

The Washington high court upheld a controversial measure that allows the state to hold some sex offenders past their release date on a civil commitment. And on Nov. 2 voters will decide on a "Three Strikes You're Out" initiative that would lock up persistent offenders for life.

There is reason to believe that a public that has hailed the state's Community Protection Act, of which the civil



Illustration: Diego Haldeman

ond degree robbery, vehicular assault, any Class B felony with a sexual motivation or any felony committed with a deadly weapon.

Some of the state's law with the concept, portable crimes as set up to conceiv could parole depend. An s Sent mis measure tively ing the about now.

The small impact numbers were predicted mostly because third felonies are infrequent, and because offenders committing the most violent of the crimes would probably get stiff sentences anyway. Roxanne Lieb, a former director of the Sentencing Commission now with the Washington State Institute for Public Policy, said that other habitual offender proposals made since guidelines were enacted usually

predicted dire fiscal consequences. Still, Lieb and others who helped craft the sentencing guidelines find it disturbing that this broadly applicable, mandatory minimum law could eclipse some of what the guidelines have achieved in sentencing reform. She said mandatory sentences remove flexibility but don't necessarily ensure more certainty and fairness because of bargaining over charges and other side-stepping.

"You can adjust the guidelines if you want harshness," Lieb said, acknowledging that feelings of frustration and helplessness about violent crime give life to these grass-roots proposals. "I don't see where the opposition is going to come from."

Meanwhile, the initiative has strong, deep-pocket backers like the National Rifle Association. The NRA says its efforts in Washington state represent ongoing interests in criminal justice reform and victims' rights. Groups on the other side of the gun lobby, however, say the NRA's latest tack is to divert attention from guns by imploring states to simply lock up felons forever.

Many of the serious of-

fenses named in the "Three Strikes" proposal are sex crimes, including specific crimes against children. Despite the sweeping sexual predator legislation approved in 1990, belief that sex offenders don't get long enough sentences is helping drive this initiative.

Civil commitment of sex offenders, a unique, controversial provision of Washington's Community Protection Act, was designed to fill a perceived gap in the law that allowed release of known, dangerous criminals. The Washington Supreme Court this summer upheld the right of the state to hold some convicts past their release dates by committing them as mental patients.

The outrage of civil libertarians and the Washington State Psychiatric Association notwithstanding, the high court said the law does not violate a person's right to due process or other constitutional guarantees. The law says "any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence" may be considered for commitment. Release from the Special Commitment Center is possible only if a court finds that the person's mental abnormality or disorder has changed in such a way that the community is safe. The unsuccessful challenge to that premise was made on behalf of some of the 21 people held under the provision.

Keep # of eligible
offenses low
for many offenses
defeat purpose

by abuse, assault of a child, first degree arson and first degree attempted arson—would count. Manufacture, delivery or possession with intent to deliver cocaine or heroin also can be charged as a Class A felony. Other crimes listed as serious offenses in the proposal include second degree assault, second degree child molestation, second degree child assault, indecent liberties, sec-

*J.F. Crime and
Criminally
Sentences*

Residents have passed an initiative mandating life in prison for people convicted of a third violent crime. But officials are also developing strategies to get at the roots of youth violence.

Washington State: National Lab on Crime

By Mark Trumbull

Staff writer of The Christian Science Monitor

SEATTLE

A WEEK ago today, 16-year-old Zacariah John Spears was shot dead in front of Christmas shoppers by a youth-gang member at a suburban mall. Mr. Spears was not involved in a gang, but police are investigating whether the friend he was with, who had gang ties, may have been the intended victim. This murder is the latest sign here of violence gone out of control.

Fueled by public concern over the dramatic rise in crime, Washington State is becoming a laboratory for crime-prevention strategies ranging from "lock 'em up" to "help them out."

Echoing national trends, juvenile violence in the state rose 92 percent between 1984 and 1992, almost twice as much as violent crime in general, according to a Washington Association of Sheriffs and Police Chiefs index of four key offenses: murder, rape, robbery, and aggravated assault.

During the same period a broader state crime index moved up more slowly: 29 percent for all ages, and 21 percent for juvenile crimes. Here in the state's largest city, this year has seen almost one-third more murders than 1992, many of them committed by young people with guns.

Tough state initiative

The surge of violence is troubling in a state that traditionally tries to fix problems before they get out of hand. Efforts that emerge from Washington's mix of liberal and conservative advocates promise to be closely watched nationwide, since crime recently polled higher than health care or jobs as the issue of top national concern.

One big step came last month, when Washington residents voted 3 to 1 in favor of Initiative 593, mandating life in prison for people convicted of a third serious violent offense.

The "three strikes and you're out" measure will affect primarily adult criminals, who, despite the rise of youth crime, still account for almost 93 percent of the state's most-violent crimes. A juvenile can earn a "strike" if tried as an adult.

Dave LaCourse, a leading campaigner for 593, says the initiative's most important message is that state residents want to do more than talk about stopping crime. He says that he plans activism on juvenile justice issues this year.

The coming months will signal the degree to which the momentum of 593 will be channeled into further anticrime measures here.

Among the steps under discussion by government bodies:

■ Gov. Mike Lowry (D), who opposed 593, is talking up a "youth agenda" that he

says will be his top priority for the legislative session starting in January. The program will blend tougher juvenile justice and gun control with a stepped-up effort to uproot the seeds of violence through an advertising campaign, anger-management and mentoring programs in schools, and job and recreation opportunities for kids. Some state lawmakers are working up their own proposals.

■ Newly reelected Seattle mayor Norm Rice, who was challenged on the crime issue by tougher-than-thou challenger David Stern, is offering ideas similar to Mr.

Lowry's, including expanded services for families and teens and getting guns off the streets. "The only way to stop violence is by doing both," Mr. Rice asserted in delivering his city budget this fall. He is moving to appoint a new police chief, Norman Stamper from San Diego, a long-time advocate of close police-community relations.

■ To help students protect themselves without endangering lives, one school board is considering allowing children to carry pepper gas to spray at attackers.

The day after the Nov. 2 election, the National Rifle Association described the passage of Initiative 593 and other NRA-backed measures as a sign that Americans were rightly choosing stringent sentences as a more valuable deterrent to crime than gun control.

"Yesterday Americans ... rejected 20-year-old failed solutions like gun control and alternatives to prison," NRA chief Wayne LaPierre Jr. said. "They voted for tougher prison sentences and the abolition of parole in Virginia, a tough three-time-loser law in Washington State, and prison building and an end to bail for dangerous criminals in Texas."

Impact of 593

Though some critics say state laws similar to 593 have failed to cut crime rates, Mr. LaCourse says no other law comes close to Washington's in severity. The closest, in Illinois, "covers about 25 percent of the crimes we do," says LaCourse, an advocate with Washington Citizens for Justice.

Seventeen states have some sentence "enhancement" provision for repeat offenders, but these are "seldom used, seldom feared, and might as well not be there," he contends.

If the put-'em-away strategy fails to deter crime, taxpayer costs could be high. Washington is currently building a new 1,000-bed prison every 18 months to lock

people up at a per capita cost of \$25,000 a year, the governor's office says.

But Ed Striedinger, president of the Seattle Police Officer's Guild, says he recently overheard six inmates of King County Jail, standing in a lineup, discussing which crimes would be "strikes." One inmate said, "I'm getting outta this state."

The national anticrime bill now in Congress contains a version of "three strikes and you're out." Yet, ironically, the measure is seen as less critical at the federal level than at the state level, since most vio-

Such measures would address the many youths who take guns from older family members or obtain them illegally.

The NRA's liaison for the state, Brian Judy, says the group supports restrictions on gun use by minors - and particularly harsher sentencing - as long as there are "reasonable exemptions," such as for young people using guns in ranching or target practice.

A nationwide ban on juvenile possession of firearms, with exemptions, is in the Senate version of the federal anticrime bill; it is unclear whether this will remain in the final legislation.

Getting at the roots

In the end, some experts say, neither better gun control nor "three strikes and you're out" will solve the violence problem, though both may help in concrete ways.

"We're going to have to do it ourselves," says Seattle City Council member Margaret Pageler. As an example, she says young people must learn to say "I'm not going to ride [home with you] if you've got a gun in the car."

Lt. Sue Rahr, commander of the nearby King County Police gang unit, agrees that individuals have a key role to play. She says rising violence stems from a get-even "mind-set" that has become pervasive in the last few decades.

"These kids have turned out exactly the way we've raised them," Ms. Rahr says.

To help parents stay in touch with children, she calls for a youth curfew. Also, while not advocating broad censorship, she says that with her own two sons, "I've made it very clear to them why I won't buy those [violent video] games."

that have become popular.

Lowry, too, is "very concerned about ... video games," says Clarence Moriwaiki, spokesman for the governor. In one game, players act out attacks on women, he notes. "That's a jump beyond the already gruesome violence that's displayed" in other, more passive media such as television.

Like the governor, Rahr calls for more programs to keep kids out of trouble, but also for greater penalties for those who choose to commit crimes. She says the penalties should come in the form of a sweeping overhaul of the juvenile justice system, not just a few changes in sentencing rules.

Ms. Pageler agrees that, in the absence of stronger punishments, "young people learn to disrespect the criminal justice system."



SEATTLE MAYOR NORM RICE: A moderate on crime, he advocates both services for families and teens and getting guns off the streets.

lent crimes are not tried in federal courts.

Washington State, like Congress and numerous other states, is also considering new gun-control measures.

The NRA argues that many of the firearm restrictions being proposed would simply make it harder for law-abiding citizens to protect themselves, while failing to block criminals' easy access to black-market firearms. A recent Justice Department study confirms this point.

Some measures, however, may help fight crime and could even win support from the gun-owners lobby, whose clout remains big despite recent passage of a nationwide waiting period for all handgun purchases.

Key ideas being floated here by Governor Lowry and LaCourse would enhance criminal penalties for youths who possess guns or use them in committing crimes.

Washington State Offers Case Study on Felon Law

IN calling for permanent lockup of three-time violent criminals, President Clinton struck a welcome note with a majority of Americans, according to polls taken after his State of the Union address.

Perhaps nowhere was the approval stronger than in Washington State, where voters recently passed a "three-time loser" law by a 75 percent majority.

The arguments leading to the passage of the ballot measure here in November were much the same as the ones Mr. Clinton cited Tuesday.

"We must recognize that most violent crimes are committed by a small percentage of criminals," the president said.

FROM THE
STATES

They "should be told, 'When you commit a third violent crime, you will be put away and put away for good, three strikes and you are out,'" he said.

The proposal was one of several measures in an anticrime bill that Clinton wants Congress to pass, including banning certain semiautomatic weapons and adding 100,000 police officers around the country to participate in community-based policing.

SOME observers say the "three strikes" measure in the crime bill would have limited impact, since most cases of murder, assault, and rape are tried in state courts, not federal ones. But passage of the measure would be important symbolically and could give momentum to other tough sentencing efforts.

Proponents say that to deter crime it is crucial to send a message that punishment will be certain and severe. While the repeat-offender law is aimed at hardened criminals, experts contend that other measures are needed to stem the troubling rise in youth violence.

"The penalties are no deterrent to these kids," says Lt. Sue Rahr, commander of the gang unit for the King County Police Department near Seattle.

Many observers call for beefing up first-time sentences and for trying more juveniles as adults for serious violent crimes, so that these will appear on a criminal record.

Some other states have passed variations on the three-strikes theme, but Washington's is the toughest to date and will be a closely watched case study.

Opponents of mandatory sentencing argue that it irresponsibly limits judges' discretion in sentencing.

Almost everyone agrees that punishment isn't the whole solution, a theme Clinton hit on: "Even as we say 'no' to crime, we must give people, especially our young people, something to say 'yes' to."

Clinton cited job opportunities and families as examples, noting that if trends continue, half the nation's children will be born to unwed mothers.

- Mark Trumbull, Seattle

As Child Poverty Report Warns of

Poverty among US children increased by

By David Holmstrom

Staff writer of The Christian Science Monitor

BOSTON

NO matter what the social and economic circumstances of a family, children are carried along for the ride. Increasingly, the ride for more and more children in the United States — the world's wealthiest nation — is straight into poverty.

A recent study by Tufts University in Medford, Mass., indicates that poverty among white, black, and Hispanic children under 18 in the US increased by a staggering 47 percent between 1973 and 1992. The result, says the Urban Institute in Washington, is that 1 out of 5 American children — more than 14 million — are in poverty today. That is twice the poverty rate of any other industrialized nation.

"Today, children are the poorest Americans," reports the National Commission on Children. The majority of children in poverty are white, but about 44 percent of all black children are poor, and 36 percent of Hispanic children are poor. Poverty rates among Hispanic children are growing the fastest.

If poverty rates among all children remain constant for the next 20 years or so, says the Tufts University study, "two nations will emerge, one poor and one

thicket of changing social politics, and new economic measures. Derrick Bell, author of book "Faces At The Bottom Of The Well" and a New York University law professor, says all of society's rules are changing. "The pattern across the country," he says, "is that as opportunities are being closed off at the top of the [economic] ladder, that traditionally went to whites and minorities are disappearing into technology or taken over by legal and illegal immigrants."

"We have had such tremendous neglect in many of our



DOWNTOWN HOUSTON: These girls live in skyscrapers. A Tufts University study warns

astated communities," says Jones, director of the National Center for Children in Poverty at Columbia University in New York City, "that a minimum-wage law is not going to change the quality of life for poor families and children. There have to be

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Prison heads call for intermediate solutions for some offenders, such as alternative sentencing, and expansion of drug and alcohol programs

More Prisons Not a Cure To Crime, Experts Say

By David Holmstrom

Staff writer of The Christian Science Monitor

BOSTON

IF President Clinton should ask Frank Hall if he wants money to help build a new regional prison in Oregon, the answer will be no.

Director of Oregon's department of corrections, Mr. Hall has not climbed aboard the national bandwagon promoting more prisons as one of the solutions to crime in the United States.

Nor does Hall think mandatory life sentences for repeat federal offenders - the "three strikes and your out" proposal recently approved in a United States Senate bill - is a viable long-term solution.

"In Oregon, we refer to this proposal as the corrections full-employment bill," Hall says. "In reality there is no magic bullet, no single solution to the problem. And if the federal government goes in this direction, we will end up running geriatric facilities for people who are long past the point in their lives when they are a threat to the community."

But Ronald Angelone, director of Nevada's Department of Prisons, believes that all habitual criminals deserve life imprisonment. He comments, "Are we saying that we should release violent criminals because we don't want to hold them in prison through life's stages? This law will hinder criminals because a large percentage of violent crime is committed by the same individuals over and over again."

Limited agreement

Many directors of state prison departments - the professionals on the front lines of long-term handling of individual criminals - agree that some criminals should be incarcerated for life.

But long-term costs for operating prisons are becoming prohibitive. Last year federal and state costs for constructing and operating prisons and jails amounted to \$25 billion. And building more and more US prisons over the last decade, along with tougher laws, has not significantly reduced crime or increased public safety. Between 1990 and 1992, the

number of people behind bars increased by 160 percent. According to the Edna McConnell Clark Foundation in New York, US prisons and jails now hold 1 million inmates.

"In the last six years the population in Illinois prisons has grown by over 12,000," says Howard Peters III, Illinois state director of corrections. "We have 35,000 inmates now. This is the most in state history. We have built 15 new prisons in the last 15 years and are still overcrowded."

What many state correctional directors say will help reduce bulging prisons is alternative sentencing, or intermediate punishments, for some non-violent offenders. "Electronic detention (detector fastened to leg) is an excellent cost-effective way of

plan.

"We need balance," says Hall, "prisons for people who are a threat to the community, and intermediate sanctions and other ways of holding lesser offenders accountable while leading them back into the community under strict supervision. We need more funds to expand drug and alcohol programs too, but we shouldn't continue to build these incredibly expensive prisons which we then have to maintain."

Often the fear of crime is heightened by reports of random shootings, serial killings, and inner city disintegration, he says.

Families in trouble

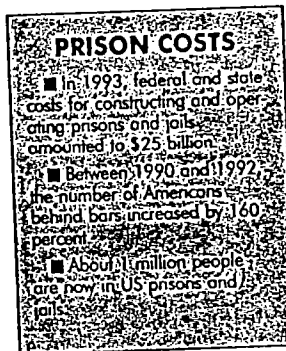
"The reality is that most violence happens among people that know each other," says Peters. "It occurs more often in family units. We have to help young people, beginning in the first grade, to learn to resolve conflict without violence. What families did for each other in the past they aren't doing anymore because of the deterioration of the family. If society doesn't have children who are healthy and whole in the first grade, then we are likely to continue making a new crop of prison inmates."

In Oregon last year, a bipartisan legislative effort, led by Governor Barbara Roberts, provided more funds for community programs and short-term confinement to cut down on the failures of people on parole and probation. Half of Oregon's prisons are filled with inmates who have violated parole or probation.

"Last year we actually had a decrease in the crime rate in Oregon," says Hall, "and with the bipartisan support, we didn't have to request an additional \$100 million for prison beds."

What most corrections officials and penologists know is that rehabilitation occurs in an inmate when he or she decides to change.

"If we are going to make an impact on crime," Mr. Angelone says, "it has to be in communities that help babies and families. I don't believe any prison system can rehabilitate people. Just by capturing more people on the streets is not going to stop crime. We have to go back to the roots of crime in communities if we want to see crime rates go down."



punishing," says Mr. Peters. "It confines a person to his house [off-hours] but allows him to work, go to school, or be in drug or alcohol treatment. In this way taxpayers aren't providing clothing, food, or shelter for the offender."

Other intermediate programs for offenders have had varying degrees of success around the country. Some are:

■ Intensive Supervision Probation (ISP), which requires employment, meetings with probation officers five times a week, curfews, and surprise drug checks.

■ Client-Specific Planning, which links offenders with community resources and may include restitution, education, training and other specific conditions mandated by a judge.

■ Day reporting, which requires an offender to report daily to a central location and follow a

US Looks to Partners To Preserve Its Edge In 'Big Science'

By Robert C. Cowen

Staff writer of The Christian Science Monitor

SAN FRANCISCO

AMERICAN physicists who lost heart when Congress killed the Super Collider particle accelerator project last year now may have new cause for hope in Europe.

CERN - the European Particle Physics Center - has invited the United States to join its proposed project to build a similar, although less powerful, machine at its site near Geneva.

Presidential science adviser John Gibbons says, "We were delighted at the invitation [and] it is under active consideration."

United States Rep. George Brown Jr. (D) of California, chairman of the House Committee on Science, Space, and Technology, says this "has become a subject of considerable discussion."

In separate meetings with the press during the annual meeting of the American Association for the Advancement of Science, both men explained that they view partnership in CERN's program from a larger perspective than just the pursuit of "cutting-edge" physics. It could become a prototype for internationalizing the kind of "big science" the US no longer can afford to fund, but which it also cannot neglect without eventually weakening its own scientific vigor.

Mr. Brown explains that "The Superconducting Super Collider (SSC) was terminated [both] because of escalating cost and the lack of international participation." Making a similar point, Dr. Gibbons notes that Congress did not turn its back on science in killing the SSC. It sent a signal that resources should be used wisely.

Such comments reflect a growing perception among Washington policymakers, and in the scientific community, that wise use of resources means no single nation should carry the financial burden of a big science project whose main payoff is to add to the common store of knowledge. Gibbons says that, because the Clinton administration believes this, it "has been avidly interested in the internationalization of science." He notes, wryly, that "we attempted to do that with the SSC, but it was too far gone in other directions."

Herein lies the main challenge for the US. It has to change its traditional ways of pursuing joint projects before other nations will accept it as a partner. Its domination of planning and operational control, its annual funding wrangles, and its unilateral design changes in such joint ventures as the space station have earned the US a "reputation for being a difficult and unreliable partner for big science undertakings," Brown observes.

Brown says the United States should strive to be second to none in its scientific enterprise. But when it comes to international cooperation, the country no longer can try to "swagger it" as a first among equals. It also has to reform its budget process - both in Congress and the White House - so that it can keep its international commitments.

Gibbons notes that the need to appropriate money annually makes this difficult. Yet he cites instances where multiyear commitments have been made in the defense area - such as building an aircraft carrier over a five-year period. "We're going to be working with Congress this year to find a way to do this multiyear commitment in these big [science] projects," he says.

For his part, Brown explains that science projects costing more than \$50 million should be authorized before they receive any funding. That means being reviewed on their merits and approved for funding over a specified multiyear period. It could short-circuit the annual squabbling.

Brown notes that the SSC never was authorized in this manner. The project's congressional supporters merely obtained money for it each year until they lost their political clout.

The United States has to change its traditional ways of pursuing joint projects before other nations will accept it as a partner in big science ventures.



COMPLETE TEXT OF Initiative Measure 593

AN ACT Relating to persistent offenders; reenacting and amending RCW 9.94A.120 and 9.94A.030; creating new sections; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. FINDINGS AND INTENT. (1) The people of the state of Washington find and declare that:

(a) Community protection from persistent offenders is a priority for any civilized society.

(b) Nearly fifty percent of the criminals convicted in Washington state have active prior criminal histories.

(c) Punishments for criminal offenses should be proportionate to both the seriousness of the crime and the prior criminal history.

(d) The public has the right and the responsibility to determine when to impose a life sentence.

(2) By sentencing three-time, most serious offenders to prison for life without the possibility of parole, the people intend to:

(a) Improve public safety by placing the most dangerous criminals in prison.

(b) Reduce the number of serious, repeat offenders by tougher sentencing.

(c) Set proper and simplified sentencing practices that both the victims and persistent offenders can understand.

(d) Restore public trust in our criminal justice system by directly involving the people in the process.

Sec. 2. RCW 9.94A.120 and 1992 c 145 s 7, 1992 c 75 s 2, and 1992 c 45 s 5 are each reenacted and amended to read as follows:

ENFORCEMENT OF MANDATORY MINIMUM SENTENCES. When a person is convicted of a felony, the court shall impose punishment as provided in this section.

(1) Except as authorized in subsections (2), (4), (5), and (7) of this section, the court shall impose a sentence within the sentence range for the offense.

(2) The court may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(3) Whenever a sentence outside the standard range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard range shall be a determinate sentence.

(4) A persistent offender shall be sentenced to a term of

criminals
Sentences
total confinement for life without the possibility of parole or when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years. An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years. An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years (, and shall not be eligible for furlough, work release or other authorized leave of absence from the correctional facility during such minimum five-year term except for the purpose of commitment to an inpatient treatment facility)). The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section. In addition, all offenders subject to the provisions of this subsection shall not be eligible for community custody, earned early release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8), or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer or officers during such minimum terms of total confinement except in the case of an offender in need of emergency medical treatment or for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree.

(5) In sentencing a first-time offender the court may waive the imposition of a sentence within the sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include up to two years of community supervision, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

(a) Devote time to a specific employment or occupation;
(b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;

(c) Pursue a prescribed, secular course of study or vocational training;

(d) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(e) Report as directed to the court and a community corrections officer; or

(f) Pay all court-ordered legal financial obligations as



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provided in RCW 9.94A.030 and/or perform community service work.

(6) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement, community service work, a term of community supervision not to exceed one year, and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(7)(a)(i) When an offender is convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense and has no prior convictions for a sex offense or any other felony sex offenses in this or any other state, the sentencing court, on its own motion or the motion of the state or the defendant, may order an examination to determine whether the defendant is amenable to treatment.

The report of the examination shall include at a minimum the following: The defendant's version of the facts and the official version of the facts, the defendant's offense history, an assessment of problems in addition to alleged deviant behaviors, the offender's social and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the defendant's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(A) Frequency and type of contact between offender and therapist;

(B) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(C) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(D) Anticipated length of treatment; and

(E) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(ii) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this special sexual offender sentencing alternative

and consider the victim's opinion whether the offender should receive a treatment disposition under this subsection. If the court determines that this special sex offender sentencing alternative is appropriate, the court shall then impose a sentence within the sentence range. If this sentence is less than eight years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(A) The court shall place the defendant on community supervision for the length of the suspended sentence or three years, whichever is greater; and

(B) The court shall order treatment for any period up to three years in duration. The court in its discretion shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court, and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. In addition, as conditions of the suspended sentence, the court may impose other sentence conditions including up to six months of confinement, not to exceed the sentence range of confinement for that offense, crime-related prohibitions, and requirements that the offender perform any one or more of the following:

(I) Devote time to a specific employment or occupation;

(II) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(III) Report as directed to the court and a community corrections officer;

(IV) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030, perform community service work, or any combination thereof; or

(V) Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime.

(iii) The sex offender therapist shall submit quarterly reports on the defendant's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, defendant's compliance with requirements, treatment activities, the defendant's relative progress in treatment, and any other material as specified by the court at sentencing.

(iv) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment. Prior to the treatment termination hearing, the treatment professional and community corrections officer shall submit written reports to the court and parties regarding the defendant's compliance with treatment and monitoring requirements,



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and recommendations regarding termination from treatment, including proposed community supervision conditions. Either party may request and the court may order another evaluation regarding the advisability of termination from treatment. The defendant shall pay the cost of any additional evaluation ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (A) Modify conditions of community supervision, and either (B) terminate treatment, or (C) extend treatment for up to the remaining period of community supervision.

(v) The court may revoke the suspended sentence at any time during the period of community supervision and order execution of the sentence if: (A) The defendant violates the conditions of the suspended sentence, or (B) the court finds that the defendant is failing to make satisfactory progress in treatment. All confinement time served during the period of community supervision shall be credited to the offender if the suspended sentence is revoked.

(vi) Except as provided in (a)(vii) of this subsection, after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW.

(vii) A sex offender therapist who examines or treats a sex offender pursuant to this subsection (7) does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (7) and the rules adopted by the department of health.

For purposes of this subsection, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(b) When an offender is convicted of any felony sex offense committed before July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, order the offender committed for up to thirty days to the custody of the secretary of social and health services for evaluation and report to the court on the offender's amenability to treatment at these facilities. If the secretary of social and health

services cannot begin the evaluation within thirty days of the court's order of commitment, the offender shall be transferred to the state for confinement pending an opportunity to be evaluated at the appropriate facility. The court shall review the reports and may order that the term of confinement imposed be served in the sexual offender treatment program at the location determined by the secretary of social and health services or the secretary's designee, only if the report indicates that the offender is amenable to the treatment program provided at these facilities. The offender shall be transferred to the state pending placement in the treatment program. Any offender who has escaped from the treatment program shall be referred back to the sentencing court.

If the offender does not comply with the conditions of the treatment program, the secretary of social and health services may refer the matter to the sentencing court. The sentencing court shall commit the offender to the department of corrections to serve the balance of the term of confinement.

If the offender successfully completes the treatment program before the expiration of the term of confinement, the court may convert the balance of confinement to community supervision and may place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (iii) Report as directed to the court and a community corrections officer;
- (iv) Undergo available outpatient treatment.

If the offender violates any of the terms of community supervision, the court may order the offender to serve out the balance of the community supervision term in confinement in the custody of the department of corrections.

After June 30, 1993, this subsection (b) shall cease to have effect.

(c) When an offender commits any felony sex offense on or after July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, request the department of corrections to evaluate whether the offender is amenable to treatment and the department may place the offender in a treatment program within a correctional facility operated by the department.

Except for an offender who has been convicted of a violation of RCW 9A.44.040 or 9A.44.050, if the offender completes the treatment program before the expiration of his or her term of confinement, the department of corrections may request the court to convert the balance of confinement to community supervision and to place con-



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ditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (iii) Report as directed to the court and a community corrections officer;
- (iv) Undergo available outpatient treatment.

If the offender violates any of the terms of his or her community supervision, the court may order the offender to serve out the balance of his or her community supervision term in confinement in the custody of the department of corrections.

Nothing in (c) of this subsection shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987. This subsection (c) does not apply to any crime committed after July 1, 1990.

(d) Offenders convicted and sentenced for a sex offense committed prior to July 1, 1987, may, subject to available funds, request an evaluation by the department of corrections to determine whether they are amenable to treatment. If the offender is determined to be amenable to treatment, the offender may request placement in a treatment program within a correctional facility operated by the department. Placement in such treatment program is subject to available funds.

(8)(a) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of such community custody to which the offender

may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(b) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or serious violent offense committed on or after July 1, 1990, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community placement shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Unless a condition is waived by the court, the terms of community placement for offenders sentenced pursuant to this section shall include the following conditions:

- (i) The offender shall report to and be available for contact with the assigned community corrections officer as directed;
- (ii) The offender shall work at department of corrections-approved education, employment, and/or community service;
- (iii) The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;
- (iv) An offender in community custody shall not unlawfully possess controlled substances;
- (v) The offender shall pay supervision fees as determined by the department of corrections; and
- (vi) The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

(c) The court may also order any of the following special conditions:

- (i) The offender shall remain within, or outside of, a specified geographical boundary;
- (ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;
- (iii) The offender shall participate in crime-related treatment or counseling services;
- (iv) The offender shall not consume alcohol; or
- (v) The offender shall comply with any crime-related prohibitions.

(d) Prior to transfer to, or during, community placement, any conditions of community placement may be removed or modified so as not to be more restrictive by the sentencing



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court, upon recommendation of the department of corrections.

(9) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(10) If a sentence imposed includes payment of a legal financial obligation, the sentence shall specify the total amount of the legal financial obligation owed, and shall require the offender to pay a specified monthly sum toward that legal financial obligation. Restitution to victims shall be paid prior to any other payments of monetary obligations. Any legal financial obligation that is imposed by the court may be collected by the department, which shall deliver the amount paid to the county clerk for credit. The offender's compliance with payment of legal financial obligations shall be supervised by the department. All monetary payments ordered shall be paid no later than ten years after the last date of release from confinement pursuant to a felony conviction or the date the sentence was entered. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation. Nothing in this section makes the department, the state, or any of its employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations. If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order.

(11) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a court may not impose a sentence providing for a term of confinement or community supervision or community placement which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(12) All offenders sentenced to terms involving community supervision, community service, community placement, or legal financial obligation shall be under the supervision of the secretary of the department of corrections or such person as the secretary may designate and shall follow explicitly the instructions of the secretary including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment.

(13) All offenders sentenced to terms involving community

supervision, community service, or community placement under the supervision of the department of corrections shall not own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

(14) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(15) A departure from the standards in RCW 9.94A.400 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in subsections (2) and (3) of this section, and may be appealed by the defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

(16) The court shall order restitution whenever the offender is convicted of a felony that results in injury to any person or damage to or loss of property, whether the offender is sentenced to confinement or placed under community supervision, unless extraordinary circumstances exist that make restitution inappropriate in the court's judgment. The court shall set forth the extraordinary circumstances in the record if it does not order restitution.

(17) As a part of any sentence, the court may impose and enforce an order that relates directly to the circumstances of the crime for which the offender has been convicted, prohibiting the offender from having any contact with other specified individuals or a specific class of individuals for a period not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community supervision or community placement.

(18) In any sentence of partial confinement, the court may require the defendant to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

(19) All court-ordered legal financial obligations collected by the department and remitted to the county clerk shall be credited and paid where restitution is ordered. Restitution shall be paid prior to any other payments of monetary obligations.

Sec. 3. RCW 9.94A.030 and 1992 c 145 s 6 and 1992 c 75 s 1 are each reenacted and amended to read as follows:

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

(1) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the



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department of corrections, means that the department is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(2) "Commission" means the sentencing guidelines commission.

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

(4) "Community custody" means that portion of an inmate's sentence of confinement in lieu of earned early release time served in the community subject to controls placed on the inmate's movement and activities by the department of corrections.

(5) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned early release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(6) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(7) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 46.61.524. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(8) "Confinement" means total or partial confinement as defined in this section.

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

(10) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime

victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction.

(11) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct.

(12)(a) "Criminal history" means the list of a defendant's prior convictions, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) "Criminal history" shall always include juvenile convictions for sex offenses and shall also include a defendant's other prior convictions in juvenile court if: (i) The conviction was for an offense which is a felony or a serious traffic offense and is criminal history as defined in RCW 13.40.020(6)(a); (ii) the defendant was fifteen years of age or older at the time the offense was committed; and (iii) with respect to prior juvenile class B and C felonies or serious traffic offenses, the defendant was less than twenty-three years of age at the time the offense for which he or she is being sentenced was committed.

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

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

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

(16) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except



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possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403);

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

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

(17) "Escape" means:

(a) Escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

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

(18) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

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

(19) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

(20)(a) "First-time offender" means any person who is convicted of a felony (i) not classified as a violent offense or a sex offense under this chapter, or (ii) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug or the selling for profit ~~((of))~~ of any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana, and except as provided in (b) of this subsection, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(b) For purposes of (a) of this subsection, a juvenile adjudication for an offense committed before the age of fifteen years is not a previous felony conviction except for adjudications of sex offenses.

(21) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following

felonies, as now existing or hereafter amended:

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

(b) Assault in the second degree;

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

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

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

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault;

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

(s) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under this section;

(t) Any other felony with a deadly weapon verdict under RCW 9A.4A.125;

(u) Any felony offense in effect at any time prior to the effective date of this section, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection.

(22) "Nonviolent offense" means an offense which is not a violent offense.

~~((22))~~ (23) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

~~((23))~~ (24) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention as defined in this section.



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~~((24))~~ (25) "Persistent offender" is an offender who:

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

(b) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.360; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted.

(26) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

~~((25))~~ (27) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.

~~((26))~~ (28) "Serious traffic offense" means:

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

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

~~((27))~~ (29) "Serious violent offense" is a subcategory of violent offense and means:

(a) Murder in the first degree, homicide by abuse, murder in the second degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, assault of a child in the first degree, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

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

~~((28))~~ (30) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((29))~~ (31) "Sex offense" means:

(a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) A felony with a finding of sexual motivation under

RCW 9.94A.127; or

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

~~((30))~~ (32) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

~~((31))~~ (33) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

~~((32))~~ (34) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

~~((33))~~ (35) "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, robbery in the second degree, vehicular assault, and vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

~~((34))~~ (36) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community of not less than thirty-five hours per week that complies with RCW 9.94A.135. The civic improvement tasks shall be performed on public property or on private property owned or operated by nonprofit entities, except that, for emergency purposes only, work crews may perform snow removal on any private property. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. Only those offenders sentenced to a facility operated or utilized under contract by a county are eligible to participate on a work crew. Offenders sentenced for a sex offense as defined in subsection ~~((30))~~ (31) of this section are not



COMPLETE TEXT OF Initiative Measure 593 (cont.)

eligible for the work crew program.

~~((35))~~ (37) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility.

~~((35))~~ (38) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance. Home detention may not be imposed for offenders convicted of a violent offense, any sex offense, any drug offense, reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third degree as defined in RCW 9A.36.031, assault of a child in the third degree, unlawful imprisonment as defined in RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home detention may be imposed for offenders convicted of possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403) if the offender fulfills the participation conditions set forth in this subsection and is monitored for drug use by treatment alternatives to street crime (TASC) or a comparable court or agency-referred program.

(a) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender: (i) Successfully completing twenty-one days in a work release program, (ii) having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary, (iii) having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense, (iv) having no prior charges of escape, and (v) fulfilling the other conditions of the home detention program.

(b) Participation in a home detention program shall be conditioned upon: (i) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender, (ii) abiding by the rules of the home detention program, and (iii) compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration.

tion. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution.

NEW SECTION. Sec. 4. OFFENDER NOTIFICATION AND WARNING. A sentencing judge, law enforcement agency, or state or local correctional facility may, but is not required to, give offenders who have been convicted of an offense that is a most serious offense as defined in RCW 9.94A.030 either written or oral notice, or both, of the sanctions imposed upon persistent offenders. General notice of these sanctions and the conditions under which they may be imposed may, but need not, be given in correctional facilities maintained by state or local agencies. This section is enacted to provide authority, but not requirement, for the giving of such notice in every conceivable way without incurring liability to offenders or third parties.

NEW SECTION. Sec. 5. GOVERNOR'S POWERS. (1) Nothing in this act shall ever be interpreted or construed as to reduce or eliminate the power of the governor to grant a pardon or clemency to any offender on an individual case-by-case basis. However, the people recommend that any offender subject to total confinement for life without the possibility of parole not be considered for release until the offender has reached the age of at least sixty years old and has been judged to be no longer a threat to society. The people further recommend that sex offenders be held to the utmost scrutiny under this subsection regardless of age.

(2) Nothing in this section shall ever be interpreted or construed to grant any release for the purpose of reducing prison overcrowding. Furthermore, the governor shall provide twice yearly reports on the activities and progress of offenders subject to total confinement for life without the possibility of parole who are released through executive action during his or her tenure. These reports shall continue for not less than ten years after the release of the offender or upon the death of the released offender.

NEW SECTION. Sec. 6. SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 7. SHORT TITLE. This act shall be known and may be cited as the persistent offender accountability act.

NEW SECTION. Sec. 8. CAPTIONS. Captions as used in this act do not constitute any part of the law.

CHART A "THREE STRIKES" AND SIMILAR HABITUAL OFFENDER ENACTMENTS

NATURE/SENTENCE

CRIMES INCLUDED

WASHINGTON

Initiative 593 (1993)

Provides life imprisonment without possibility of parole for "persistent offenders" convicted of third "serious felony."

More than 20 serious felonies, including any Class A felony and any felony with a deadly weapon; many crimes against children.

CALIFORNIA

A 971 (1994)

Mandatory life sentence for third felony if there have been two prior "serious" or violent felonies, with offenders spending a minimum of 25 years imprisoned. The prison sentence also is doubled for any felony if there has been one prior serious or violent felony.

"Violent felonies" include murder, mayhem, many sex crimes, any felony in which great bodily injury is inflicted. In addition, some 25 "serious felonies" include those above plus some assaults, robbery, kidnapping, some attempted felonies, felonies in which defendant used deadly weapon, some drug sales to minors.

CONNECTICUT

H 5385 (1994) Awaits Governor

Increases maximum sentence court may impose under "persistent dangerous felony offender" law from 25 to 40 years with one previous violent felony conviction; and from 25 years to life for two previous. Life sentence is 60 years, determinate.

Manslaughter, arson, kidnapping, first degree assault, many sexual assaults including aggravated and with a firearm, first or second degree robbery.

GEORGIA

S 441, 1994

"Sentence Reform Act of 1994" provides mandatory life without parole for second "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" are murder or felony murder, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, aggravated sexual battery.

INDIANA

H 1063 (1994)

"Three strikes" law, providing mandatory life without parole if in separate charge state proves two prior unrelated felony convictions. Court also has discretion (absent separate habitual charge) 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

H 2788 (1994)

Doubled sentences on sentencing guidelines grid for second and third "person felonies," at judge's discretion.

"Person felonies" include many serious, violent crimes including various classifications of murder, sex crimes, battery, assault.

MARYLAND

H 1112 (1994) Awaits Governor

Mandatory life sentence without parole for fourth 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 20 "crimes of violence," including murder, rape, robbery, robbery with a deadly weapon, carjacking or armed carjacking, first and second degree sex offenses, arson, burglary, kidnapping, manslaughter, mayhem, maiming, use of handgun in commission of felony, attempt to commit any of the aforesaid, assault with intent to commit murder, rape, robbery, sexual offenses.

CHART A, *Cont.*
"THREE STRIKES" AND SIMILAR HABITUAL OFFENDER ENACTMENTS

NATURE/SENTENCE

CRIMES INCLUDED

NEW MEXICO

S 73 AND 742, Chapter 24 (1994)

Mandatory life imprisonment, in addition to other term imposed, for third violent felony conviction. Parole eligibility after 30 years of the 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

H 39, Part 6 Chapter 22, Extra Session, 1994

Life without parole required upon third violent felony conviction and finding, under separate indictment, that offender is "violent habitual felon." Separate law (SB 2, also of Extra Session of 1994) provides for review after 25 years served of life without parole sentence.

Effective May 1, 1994, applies to 40 "violent felonies" enumerated in statute. After October 1, 1994, when structured sentencing takes effect, provisions will apply to 47 Class A, B, B1, B2, C, D and E felonies.

VIRGINIA

H 273 (1994)

"Three strikes" law, providing mandatory life without parole for offender convicted of third felony involving designated acts of violence. Those sentenced under this law who reach 65 years of age and have served five years may petition parole board for conditional release.

"Acts of violence" 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.

WISCONSIN

1993 S 781, Act 289 (1994)

"Persistent repeater" who has had two previous, separate "serious felony" convictions, receives mandatory life sentence without parole.

"Serious felonies" include murder, manslaughter, battery and aggravated battery, mayhem, vehicle theft, robbery, and many crimes against children including sexual assault, physical abuse, sexual exploitation, abduction.