

FOIA MARKER

**This is not a textual record. This is used as an
administrative marker by the William J. Clinton
Presidential Library Staff.**

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Counsel Office

Series/Staff Member: Clarissa Cerda

Subseries:

OA/ID Number: 5478

FolderID:

Folder Title:

State Crime Bill Legislation [5]

Stack:

S

Row:

107

Section:

4

Shelf:

9

Position:

3

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. report	re: Persistent Offender Case Status Report [Personally Identifiable Information] [Partial] (1 page)	05/13/1994	b(6)

COLLECTION:

Clinton Presidential Records
Counsel Office
Clarissa Cerda
OA/Box Number: 5478

FOLDER TITLE:

State Crime Bill Legislation [5]

2009-1305-F

jp3656

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

OFFICE OF THE PROSECUTING ATTORNEY
KING COUNTY, WASHINGTONNorm Maleng
Prosecuting Attorney

Post-It™ brand fax transmittal memo 7671 # of pages > 7	
To Acqa Taylor	From Kristen Reiber
Co Office of Counsel	Co WA House of Reps.
Dept White House	Phone # (206) 786 7156
Fax # (202) 456-1647	Fax # (206) 786 7018

W 554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

TO: Kristin Reiber, House Corrections Committee

FROM: Paula J. Jellison

DOCUMENT: 3 Strikes info.

TIME: 3:45 p.m. NUMBER OF PAGES (incl this one) 6

DATE: 5/27/94

COMMENTS: Per your request.

The information in this fax message is privileged and confidential. It is intended only for the use of the recipient named above (or the employee or agent responsible to deliver it to the intended recipient). If you received this in error, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this message in error, please notify us by telephone immediately, and destroy the original message.

Voice #(206) 296-9000
Fax #(206) 296-0955

If you have problems receiving this material, please call the above voice number for assistance.



SECTION 21: PERSISTENT OFFENDER ALLEGATION

I. FILING

A. Evidentiary Sufficiency

Lacking non-evidentiary reasons to decline prosecution (see I. C.), a persistent offender allegation normally shall be filed when the Prosecuting Attorney (or in the Prosecutor's absence, the Chief Deputy) is satisfied that the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact finder, after hearing all the admissible evidence and the most plausible defense that could be raised, would:

1. Current Offense(s)

Convict the defendant of a current most serious offense, and

2. Prior Convictions.

Find the defendant, on at least two separate occasions in this state or elsewhere, has been convicted as an adult (including a person declined from juvenile court jurisdiction) of what would be a most serious offense in this state and would be included in the offender score under RCW 9.94A.360. However, the defendant must have been convicted of one of the prior provable most serious offenses before the commission of another provable prior conviction. Initiative 593, Sec. 3(25).

B. Non-Evidentiary Reasons to Decline or Dismiss Prosecution

1. Policy

The King County Prosecutor's policy is to prosecute persistent offender allegations when (1) the case meets the evidentiary sufficiency standards and (2) the case lacks substantial and compelling non-evidentiary reasons to decline or dismiss prosecution. Persistent offender proceedings normally shall not be declined or dismissed either due to prosecutor work load demands, prison overcrowding or as part of a plea bargain to gain advantage in the prosecution of either the substantive charge upon which the

Section 21- 2 -

was significantly impaired as a result of mental disease or defect (voluntary use of drugs or alcohol is excluded);

- (e) The defendant or the defendant's children suffered physical or sexual abuse by a victim of the current offense and the offense is a response to that abuse;
See RCW 9.94A.390(1)

- (f) Whether the current offense was committed while the defendant was under the influence of extreme mental disturbance;

- (g) Whether the defendant was an accomplice to the current offense committed by another person where the defendant's participation in the current offense was relatively minor;

See RCW 10.95.070

- (h) Whether the current offense and/or prior convictions are "most serious offenses," but not of the type of criminal conduct that justifies prosecution under the Persistent Offender Accountability Act. This mitigating factor has limited application to only those rare situations when no reasonable and objective person would conclude that the current offense and/or prior convictions, by the nature of the criminal conduct, should qualify under the Act.

C. Decision-Making Process

1. Investigating and Initiating a Persistent Offender Case

Any filing deputy who becomes aware of a potential persistent offender allegation shall immediately notify the Persistent Offender Unit. From that point on the Persistent Offender Unit shall be responsible for the vertical prosecution of the persistent offender allegation. The deputy prosecutor from the Persistent Offender Unit will

work with the deputy who is preassigned to the current offense.

The Persistent Offender Unit shall immediately take steps to obtain authenticated copies of the prior convictions' documents, prison records and evidence of the defendant's identity as the person with the prior convictions. When practicable, the head of the Persistent Offender Unit shall make a filing recommendation and submit a supporting file.

2. Decision to File

A persistent offender allegation shall be filed when the Prosecuting Attorney, under these filing and disposition policies, has personally decided charges should be filed under Initiative 593. The Criminal Division Executive Committee may advise the Prosecuting Attorney on the filing decision.

D. Procedures

1. After a decision has been made to file persistent offender allegations, the Persistent Offender Unit shall as soon as practicable notify the defendant and the defense attorney in writing of the intention to file a persistent offender allegation.
2. The deputy from the Persistent Offender Unit shall request a trial on the supplemental information to be held immediately following the conviction on the current most serious offense.
3. A current most serious offense case shall be preassigned if the case has or potentially may have a persistent offender allegation.
4. Defense counsel may submit material for reconsideration of the decision to file the persistent offender allegation until the early plea cut off date for the predicate crime.

II. DISPOSITION

A. Termination of Persistent Offender Proceedings

1. A defendant normally will be expected to plead guilty to the persistent offender allegation or go to trial. Correction of errors in the initial

charging decision or the development of proof problems with the persistent offender allegation are the only factors, which were not apparent at filing, may be considered in determining whether to revoke the decision to file the supplemental information or to dismiss the supplemental information. Caseload pressure or the expense of prosecution may not be considered. The exception policy shall be followed before any revocation is announced or dismissal motion is made. Any revocation or dismissal shall be discussed with the victim before being concluded.

2. A persistent offender allegation shall not be dismissed or revoked, respectively, without the prior personal approval of the Prosecuting Attorney (in the Prosecutor's absence, the Chief Deputy may approve the dismissal).

B. Sentencing

The deputy prosecutor who is preassigned to the current offense and the deputy prosecutor from the Persistent Offender Unit shall be co-counsel for the sentencing of the persistent offender.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. report	re: Persistent Offender Case Status Report [Personally Identifiable Information] [Partial] (1 page)	05/13/1994	b(6)

COLLECTION:

Clinton Presidential Records
Counsel Office
Clarissa Cerda
OA/Box Number: 5478

FOLDER TITLE:

State Crime Bill Legislation [5]

2009-1305-F

jp3656

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

20245661281# 777
0007

Persistent Offender Case Status Report - May 13, 1994

Name	CCN	OPA	Defense Attorney	Defense Attorney's Telephone	Trial Date/Disposition	Case Number
Bridges, Michael Lee	763751		Steve Winchley Rich Lichtensunder	447-3900 X761 447-3900 X778	C/S (6/17/94)	94-1-02799-5
Dorsey, Steven Arthur	0668999	Lisa Johnson (8992)	Nancy Horgan	447-3900 x710	06/13/94	94-1-01558-0
Howe, Kris Stephens	1118600	Lisa Marchese (8522)	Thomas Olson	447-3900 x730	08/15/94	94-1-01314-5
Morgan, Steven Michael	0121160	Robin Fox (9677)	Julie Gahoford	613-3932	07/06/94	94-1-00144-9
Rivers, Paul	1002869	Robin Fox (9677)	Lynn Marie Hupp Eric Lladell	322-8400 x125 322-8400 x122	Guilty 05/13/94	93-1-06019-6
Shawleed, AJ Karrens	1651254	Catherine Shaffer 94497	Lynn Marie Hupp John McHale	322-8400 x125 322-8400 x	05/13/94	94-1-01695-2
Ward, Donald Lee	8036120	Dave Wall (9490)	Nancy Horgan Ann Albright	447-3900 x710 447-3900 x575	06/01/94	94-1-00994-6

[001]

(b)(6)

CLINTON LIBRARY PHOTOCOPY

5-31-94 9:32AM
AC PAID. ALL

SENT BY

OFFICE OF PROGRAM RESEARCH

State of
Washington
House of
Representatives



VIA TELEFACSIMILE

To: Gary Taylor
Office of Counsel
The White House

From: Kristen L. Reiber *KLR*
Counsel, Corrections Committee
Washington House of Representatives

Re: Initiative 593/"Three Strikes and You're Out"

Date: May 27, 1993

Per your request, I've attached the voter's manual text and projections of inmate population increases. I've also added news and editorial clippings.

I have requested prosecutors in King County (Seattle) and Pierce County (Tacoma) to send me information on individuals convicted under the new law. Due to the upcoming holiday, I might not receive this information until next Tuesday, but I will forward it upon receipt.

Please call me if you have questions or need additional information. My voice number is (206) 786-7156 and my fax number is (206) 786-7018.

Post-It™ brand fax transmittal memo 7671		# of pages »
To	Gary Taylor	From K.L. Reiber
Co.	Office of White	Co. OPR
Dept.	House Counsel	Phone # (206) 786-7156
Fax #	(202) 456-1647	Fax # (206) 786-7018



INITIATIVE MEASURE 593

TO THE PEOPLE

Note: The ballot title and explanatory statement were written by the Attorney General as required by law. The complete text of Initiative Measure 593 begins on page 14.

Statement for

It's time to get tougher on violent criminals.

The problem is clear: the overwhelming majority of violent crime is committed by less than 10% of violent criminals. And most of them will re-offend again when released.

CURRENT STATE LAW IS MUCH TOO WEAK

Under current state laws, the average prison term recommended for a child molester with two previous sex felony convictions on his record is just 9 years, six months. *That's for a third offense.*

For someone convicted of 1st degree robbery with two violent felony convictions already on his record, the recommended sentence is just 5 years. That doesn't count time off for "good behavior."

Why let proven repeat offenders out to offend again? Let's make sure that nobody becomes their 4th, 5th or 6th victim.

INITIATIVE 593 GETS TOUGH ON VIOLENT CRIME

Under 593, anyone convicted of a third violent offense goes to prison for life. No early release. No parole. No furloughs. No loopholes. Three strikes and you're out.

Initiative 593 brings accountability and the certainty of punishment back to our criminal justice system. In aiming at three time violent offenders, it targets the "worst of the worst" criminals who most deserve to be behind bars. With 593 that's where they'll stay. Without it, most of them won't.

Official Ballot Title:

Shall criminals who are convicted of "most serious offenses" on three occasions be sentenced to life in prison without parole?

The law as it now exists:

Criminal sentencing is now governed by the Sentencing Reform Act (Chapter 9.94A RCW). The judge determines the sentence for each person convicted of a crime, based on standard sentencing ranges set down in the law. The

INITIATIVE 593 SENDS THE RIGHT MESSAGE TO CRIMINALS

Not only does 593 keep our most serious offenders off the streets, it also sends a clear and unmistakable message to all other criminals in Washington: either obey the law or leave the state — for good.

People from all over the state are supporting 593 to make our streets and neighborhoods safer.

For more information, call (206) 462-7353.

Rebuttal of Statement against

593's opponents claim that violent offenders can already be locked up for life. The problem is, they aren't. That will change when 593 becomes law. Three time serious felons will stay behind bars for life. Only a pardon issued by the Governor could authorize their release.

The crimes covered by 593 are serious, violent felonies, not "bar fights" or car accidents. 593 keeps the "worst of the worst" in prison. Isn't that where they belong?

Voters Pamphlet Statement Prepared by:

JOHN CARLSON, Washington Institute for Policy Studies,
KVI Radio; IDA BALLASIOTES, State Representative;
BRIAN EBERSOLE, Speaker, House of Representatives.

Advisory Committee: HELEN HARLOW, Tennis Shoe Brigade;
PAM ROACH, State Senator; JOHN LADENBURG, Pierce
County Prosecutor; TERRY MANGAN, Spokane Police Chief;
TOM CAMPBELL, State Representative.

standard sentence range is determined by calculating an "offender score," which takes into account the nature of the crime committed as well as prior convictions for other crimes. Prior convictions for serious offenders increase the "offender score" and the standard sentencing range if there is a later conviction. Under special circumstances the judge may give a sentence outside the sentencing range. Current law does not require a specific sentence for repeat offenders.

The effect of Initiative Measure 593, if approved into law:

This initiative would create a new category of "persistent offenders" consisting of persons who have been convicted three or more times of "most serious crimes." The initiative specifies which crimes will be defined as "most serious crimes" (section 3 of the initiative), essentially consisting of all class A felonies and all class B felonies involving harm

or threats of harm to persons. When a "persistent offender" is sentenced, the initiative would require the judge to impose a sentence of total confinement for life without possibility of parole. For the crime of aggravated murder in the first degree, the initiative would preserve present law allowing the death sentence in some cases.

"Persistent offenders" would not be eligible for community custody, earned early release time, furlough, detention, partial confinement, work crew, work release, or any other form of early release. Judges and correctional facilities would be authorized to warn about the consequences of becoming a "persistent offender." The governor could still issue pardons or clemency orders on a case-by-case basis, and would be required to issue periodic reports on the progress of any offenders released through pardons or clemency.

Statement against

INITIATIVE 593: REVIVING FAILED AND REJECTED LAWS

Washington used to have a law like "three strikes you're out." It didn't work. It was extremely costly, locked up people who didn't need to be locked up to protect us, and locked up people long past the age when they were a risk. Washington's citizens and legislature have wisely chosen not to endorse recent, similar proposals.

INITIATIVE 593: VERY COSTLY, WITHOUT INCREASING OUR SAFETY

Repeat "serious offenders" after middle age are not the norm. 593 will unnecessarily result in expensive geriatric wards in our prisons for people who are long past the age when they are a threat.

593 needlessly forces us to spend nearly \$26,000 per person, per year, for an average of thirty years, to feed, clothe and house people who aren't a risk to us. Nearly \$600,000 for each person!

We can use current law *now* to put away, for a long time, those who need to be put away. 593 takes away the power to choose who should be locked up for life.

INITIATIVE 593: INCLUDES OFFENSES NOT MERITING LIFE IMPRISONMENT

Proponents claim 593 only applies to "most serious" offenses. Not true! 593 also includes reckless car accidents with injuries, as well as bar fights if a blow accidentally, recklessly injures someone.

INITIATIVE 593: NEEDLESSLY HIGH COST

593 falsely offers the appearance of a quick fix solution to a serious problem.

593 *won't* reduce crime. Repeat, serious offenders can *already* be locked up until they are no longer a danger.

593 *will* increase your taxes, or force the legislature to take away money from jobs, healthcare, education and other programs that *do* serve to prevent crime.

Rebuttal of Statement for

593's proponents aren't telling the whole truth. Current law already keeps violent criminals in prison an average of 15-25 years. Under 593, reckless car accidents with injuries are treated the same as rape and murder. \$12,000,000 will be required over the next few years for additional prisons for people *not* likely to re-offend. 70-year-olds don't repeat violent crimes, *but* have enormous medical costs. 593 plays on our fears, but is in truth expensive and ineffective.

Voters Pamphlet Statement Prepared by:

JOHN A. STRAIT, Associate Professor of Law; CARL MAXEY, Attorney at Law.

Advisory Committee: REVEREND JOHN BOONSTRA, Executive Minister, Washington Association of Churches; JUDGE ROBERT WINSOR, retired; JUDGE SOLIE M. RINGOLD, retired; MONICA ZUCKER; JOHN M. JUNKER, Professor of Law.

Fax Transmittal Memo

7672

Kristen Reiter
Home Connection

Company

Address

Fax #

Comments

Telephone #

No. of Pages

From

Company

Location

Fax #

Original
Disposition☐ Destroy☐ Return☐ Call for pickup

Today's Date 5-27-94 Time

Eva C. Reme
DOC

Dept. Charge

Telephone #

I-593.

Persistent Offender Accountability Act

Initiative 583, commonly referred to as "Three Strikes You're Out," became effective December 2, 1993. The law states that an offender who is convicted of a third most serious offense shall be classified as a "persistent offender" and sentenced to life without parole. Each conviction must be a separate prosecution.

The following felonies, as defined in RCW 9A.04.030, are "most serious offenses" and count as "strikes."

All Class A Felonies (including felony attempts, criminal solicitation and criminal conspiracy to commit):

AGGRAVATED MURDER 1	10.95.020
ARSON 1	9A.48.020
ASSAULT 1	9A.36.011
ASSAULT OF A CHILD 1	9A.36.120
BAIL JUMPING WITH MURDER 1	9A.76.170(2)(a)
BURGLARY 1	9A.52.020
CHILD MOLESTATION 1	9A.44.083
DAMAGING BLDG., ETC., BY EXPLOSION W/THREAT TO HUMAN BEING	70.74.280(1)
DRUGS-CREATE, DELIVER, POSSESS A COUNTERFEIT CONTROLLED SUBSTANCE-SCHEDULE I OR II NARCOTIC (SUBSEQUENT DRUG CONVICTION)	69.50.4010x(1)(b)
DRUGS-INFO, DELIVER, POSSESS W/ INTENT TO DELIVER NARCOTICS FROM SCHEDULE I OR II (SUBSEQUENT DRUG CONVICTION OR IN A PROTECTED ZONE)	69.50.4010x(1)(c)
ENDANGERING LIFE AND PROPERTY BY EXPLOSIVES W/THREAT TO HUMAN BEING	70.74.270(1)
EXPLOSIVE DEVICES PROHIBITED	70.74.180
HOMICIDE BY ABUSE	9A.32.055
KIDNAPPING 1	9A.40.020
LEADING ORGANIZED CRIME	9A.82.060(1)(a)
MURDER 1	9A.32.030
MURDER 2	9A.32.050
OVER 18 & DELIVER NARCOTIC FROM SCHEDULE I OR II TO SOMEONE UNDER 18	69.50.406
POSSESSION OF INCENDIARY DEVICE	9.40.120
RAPE 1	9A.44.040
RAPE 2	9A.44.050
RAPE OF A CHILD 1	9A.44.073
RAPE OF A CHILD 2	9A.44.076
ROBBERY 1	9A.86.200
SETTING SPRING GUN	9.41.180
TREASON	9.82.010
USE OF MACHINE GUN IN COMMISSION OF FELONY	9.41.225

The following specifically included felonies (including attempts):

ASSAULT 2	9A.36.021
ASSAULT OF A CHILD 2	9A.36.130
CHILD MOLESTATION 2	9A.44.086
CONTROLLED SUBSTANCE HOMICIDE	69.50.415
EXTORTION 1	9A.56.120
INCEST 1 (WHEN CHILD UNDER 14 YEARS)	9A.64.020(1)
INCEST 2 (WHEN CHILD UNDER 14 YEARS)	9A.64.020(2)
INDECENT LIBERTIES	9A.44.100(1)(a),(b),(c)
KIDNAPPING 2	9A.40.070
MANSLAUGHTER 1	9A.32.060
MANSLAUGHTER 2	9A.32.070
PROMOTING PROSTITUTION 1	9A.88.070
RAPE 3	9A.44.080
ROBBERY 2	9A.86.210
SEXUAL EXPLOITATION	9.68A.040
VEHICULAR ASSAULT	46.61.922
VEHICULAR HOMICIDE, BY BEING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR ANY DRUG OR BY THE OPERATION OF ANY VEHICLE IN A RECKLESS MANNER	46.61.520(1)(a),(b)

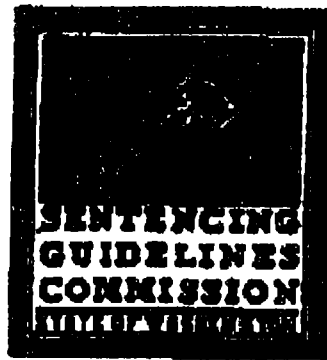
Any felony with a deadly weapon verdict.

Any Class B offense with a finding of sexual motivation (including attempts).

Any felony comparable to those felonies listed above (including out of state convictions).

"Most serious offense" convictions before December 2, 1993, count as "strike one and two."

**A Look at The Persistent Offender Accountability Act
Initiative 590 - "Three Strikes, You're Out"**



May 5, 1992

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

CHANGES TO PUNISHMENT:

- ① Mandatory life in prison without the possibility of parole for "persistent offenders".
- ② No earned good time reductions for offenders convicted of Murder in the first degree, Assault in the first degree, Assault of a Child in the first degree, or Rape in the first degree.

OFFENDERS AFFECTED BY CHANGES:

① A "persistent offender" is someone convicted of a "most serious offense" who has at least two prior convictions on different occasions for a "most serious offense". Juvenile adjudications and offenses not counted in the offender score are not considered.

"Most serious offense" is defined as any of the following felonies (including attempts):

- Any Class A felony (including conspiracies and solicitations)
- Assault in the second degree
- Assault of a child in the second degree
- Child molestation in the second degree
- Controlled substance homicide
- Extortion in the first degree
- Incest when committed against a child under age fourteen
- Indecent liberties
- Kidnapping in the second degree
- Leading organized crime
- Manslaughter in the first degree
- Manslaughter in the second degree
- Promoting prostitution in the first degree
- Robbery in the second degree
- Sexual exploitation
- Vehicular assault
- Vehicular homicide (under the influence or recklessness)
- Any Class B felony with a sexual motivation finding
- Any felony with a deadly weapon finding

There were 16,534 adult felony offenders sentenced in Fiscal Year 1991. It is estimated that 63 of them would have met the definition of "persistent offender". The most common category of current conviction offense is Robbery (34%) followed by Sex offenses (26%) and Assault (16%). These categories are displayed in Figure 1.

② In Fiscal Year 1991, there were 119 offenders sentenced to prison for Murder in the first degree, Assault in the first degree, Assault of a Child in the first degree, or Rape in the first degree. The proposed removal of good time reductions for these offenders is independent of criminal history (i.e., even offenders with no criminal history would not be eligible for good time reductions).

IMPACT ON STATE PRISON POPULATION:

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

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

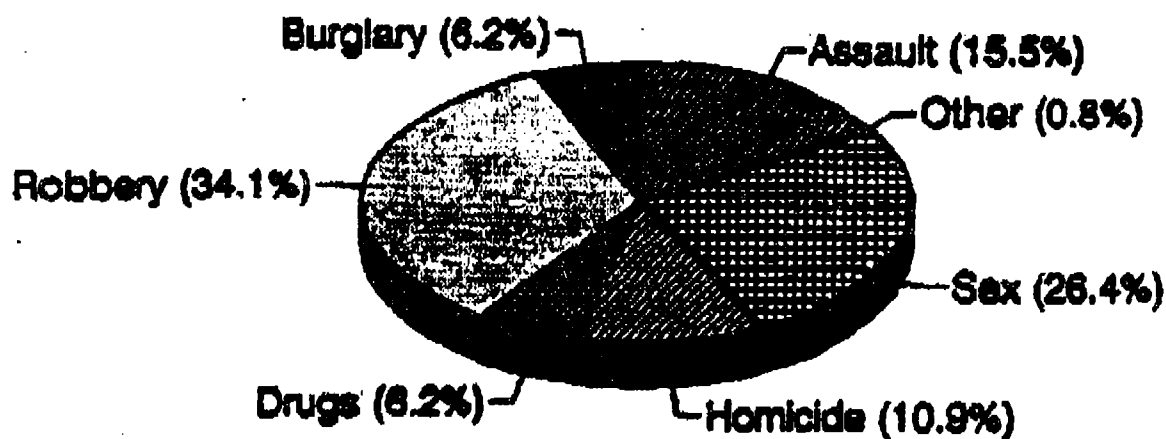
Worst Case Impact of Mandatory Life Sentences for "Persistent Offenders" (for timing purposes only - not a forecast)

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

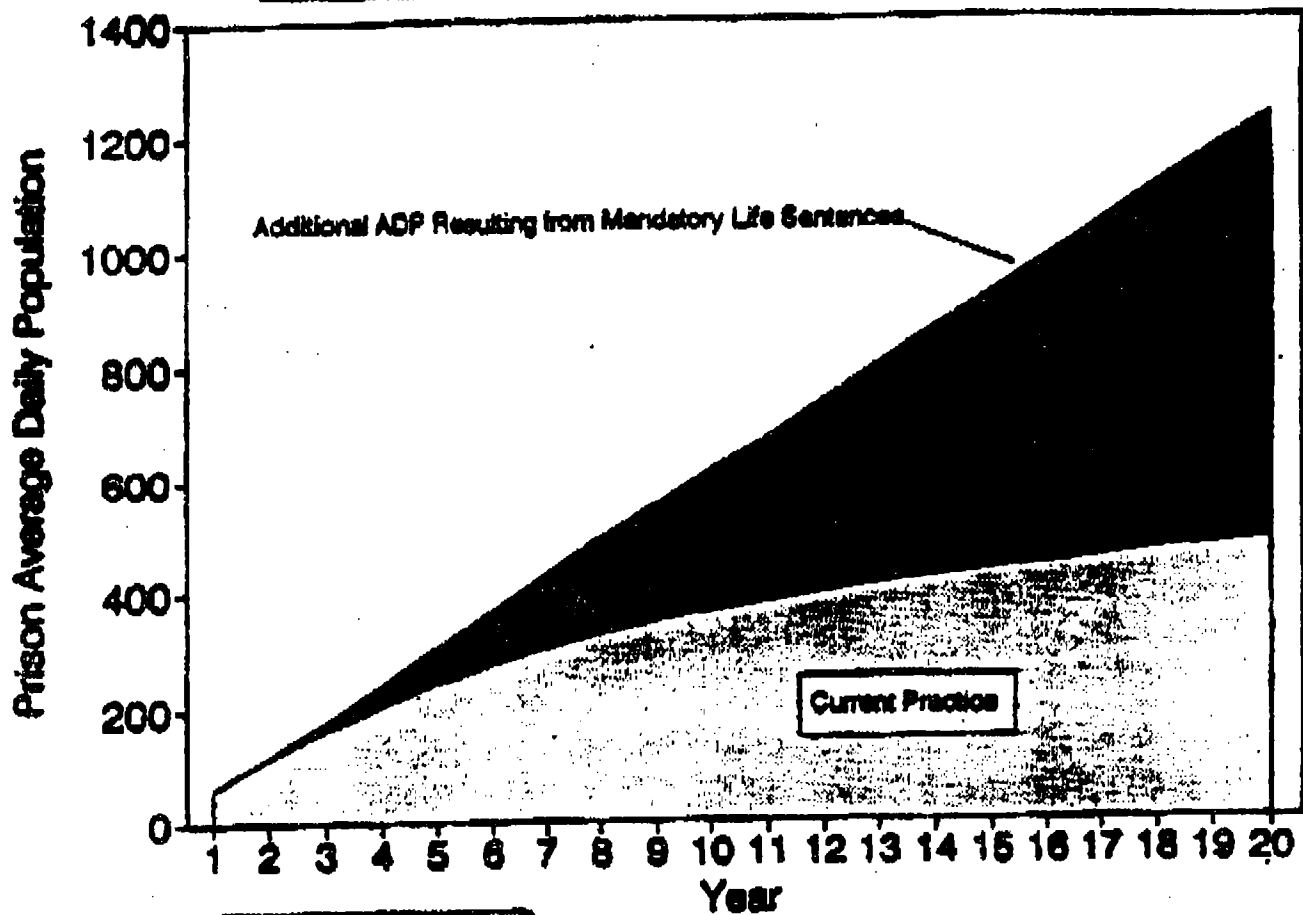
Note: Impact is defined as an increase to the prison average daily population.

Figure 1

Conviction Offense for "Persistent Offenders" Receiving a Life Sentence



Sentencing Guidelines Commission 8/8/92

Figure 2**Impact of Mandatory Life Sentences
for "Persistent Offenders"**

Sentencing Guidelines Commission 5/5/92

Note: This graph displays a worst case scenario and is intended only to display the timing of any potential impact. It is not a forecast.

The impact detailed in the previous table is graphed in Figure 2.

② A separate analysis was conducted to estimate the impact of removing eligibility for good time reductions for offenders convicted of Rape 1, Assault 1, Assault of a Child 1, and Murder 1. As mentioned earlier, this portion of the initiative would apply to all offenders convicted of these offenses, regardless of their previous criminal history (if any).

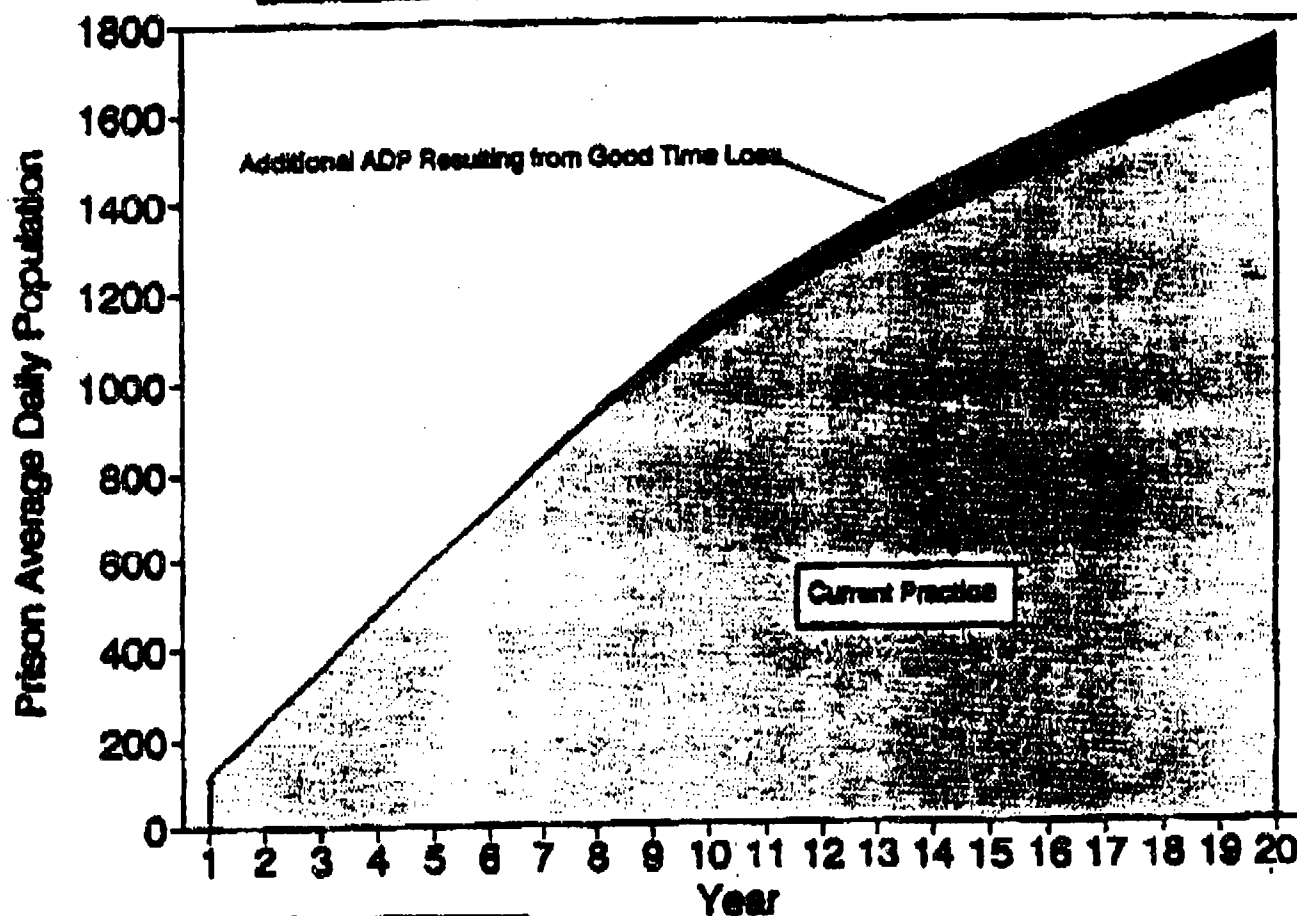
In Fiscal Year 1991, there were 119 prison sentences for offenders convicted of Rape 1, Assault 1, or Murder 1 (excluding Aggravated Murder 1). Under current sentencing law, offenders convicted of these offenses are eligible for up to 15 percent sentence reduction for earned good time. The following impact analysis assumes offenders sentenced under current law would earn 87% of their good time (on the average, based on historical data). This analysis does not contain a phase-in adjustment (i.e., the early impact is slightly over-estimated).

**Potential Impact of Removing Good Time Eligibility for Offenders
Convicted of Rape 1, Assault 1, or Murder 1**

YEAR IMPACT		YEAR IMPACT	
1	0	11	51
2	0	12	61
3	0	13	69
4	0	14	76
5	1	15	83
6	2	16	88
7	8	17	92
8	17	18	97
9	29	19	103
10	42	20	109

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

The impact detailed in the previous table is graphed in Figure 3.

Figure 3**Impact of Eliminating Good Time for Murder 1, Assault 1, and Rape 1**

Sentencing Guidelines Commission 5/5/92

Three Strikes You're Out - Initiative 593

		<u>Average Daily Population</u>		
FY		OFM Forecast *	Impact of : Mandatory Life No Early Release	Total Impact
1994		11,004	0	0
1995	Year 1	11,724	1	1
1996	Year 2	12,280	5	5
1997	Year 3	12,761	18	18
1998	Year 4	13,162	36	36
1999	Year 5	13,529	62	63
2000	Year 6	13,868	93	95
2001	Year 7	14,195	127	135
2002	Year 8	14,465	166	183
2003	Year 9	14,709	207	236
2004	Year 10	14,913	250	292
2005	Year 11	15,114	296	347
2006	Year 12	15,282	342	403
2007	Year 13	NA	390	459
2008	Year 14	NA	439	515
2009	Year 15	NA	488	571
2010	Year 16	NA	539	627
2011	Year 17	NA	589	681
2012	Year 18	NA	642	739
2013	Year 19	NA	695	798
2014	Year 20	NA	746	855

Notes:

Average Daily Population Impact analysis was done by Sentencing Guidelines Commission.

OFM Forecast of November 1992.

Three Strikes You're Out - Initiative 693

	Average Daily Population			Capital Costs		Operating Costs	Total Costs
	Impact of : Mandatory Life	No Early Release	Total	512 bed unit	\$\$\$\$	\$\$\$\$	
Year 1	1	0	1			3,008	3,008
Year 2	5	0	5			15,038	15,038
Year 3	18	0	18	Predesign	3,569,000	54,137	3,623,137
Year 4	36	0	36			108,246	108,246
Year 5	62	1	63	Design	6,000,000	189,478	6,189,478
Year 6	93	2	95			2,597,775	2,597,775
Year 7	127	8	135	Construction	60,000,000	3,991,575	63,991,575
Year 8	165	17	183			5,004,135	5,004,135
Year 9	207	29	236			6,453,420	6,453,420
Year 10	250	42	292			7,984,740	7,984,740
Year 11	296	51	347	Predesign	3,569,000	9,488,715	13,057,715
Year 12	342	61	403			11,020,036	11,020,036
Year 13	390	89	480	Design	6,000,000	12,551,355	18,551,355
Year 14	439	78	518			14,082,675	14,082,675
Year 15	488	83	571	Construction	60,000,000	15,513,995	75,513,995
Year 16	539	88	627			17,145,315	17,145,315
Year 17	589	92	681			18,821,945	18,821,945
Year 18	642	97	739			20,207,955	20,207,955
Year 19	695	103	798	Predesign	3,569,000	21,821,310	25,390,310
Year 20	748	109	856			23,379,975	23,379,975

Notes:

Average Daily Population impact analysis was done by Sentencing Guidelines Commission.

Operating costs assume medium custody estimated at \$27,345 per inmate per year, beginning in year 6. Marginal costs are used in years 1 through 5.

Predesign, design and construction costs relate to a 512-bed medium custody facility. Estimates are based on recent construction costs.

Local Government Fiscal Note **Department of Community Development**

BILL NO. HB 1139	PRIME SPONSOR Rep. Campbell	DCD REQUEST NO. FNB223
BILL TITLE Persistent Offenders	PREPARED BY Jacque Madje	DATE February 1, 1993
93 FEB -1 P453	TITLE Fiscal Note Analysis	TELEPHONE 804-6912
	REVIEWED BY CDM Pinda Swanson	DATE 2/3/93

Fiscal impact of the above on local government is estimated to be: ☐ None ☒ As shown below:

Impact on: ☒ Counties ☐ Cities ☐ As listed below:

Also See State Gov't FN

Other agencies preparing notes on this bill:

BILL SUMMARY AND LOCAL GOVERNMENT IMPACT:

Proposed HB 1139 would have no fiscal impact on local governments. This proposed legislation would sentence three-time, most serious offenders to prison for life without the possibility of parole. A serious offense is defined as any felony defined under any law as a Class A felony or criminal solicitation of or criminal conspiracy to commit a Class A felony.

FISCAL NOTE

Revision 2

Request 2

CODE

110

BILL NO.

8001130

RESPONDING AGENCY

DEPARTMENT OF CORRECTIONS

TITLE

Perpetrant Offender Accountability Act

APPROVED BY

Margaret Vonbeder, Assistant Director

PREPARED BY:

TEADY COM. 1943

DATE _____

2-5-93

PHONE

664-01

REVIEWED BY OPM

DATE _____

Impact of the above legislation on Washington State government is estimated to be:

[illegible]

(2) AN FURTHER BELOW

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 84

() COSTS CAN BE ASSIGNED

Figures in parentheses represent reductions.

Detail supporting these estimates is contained in PW-2

| REVENUE TO: | | First Biennium 1993-1995 | | | | | |
|-------------|--------|--------------------------|----------|----------|-------|--------------|--------------|
| FUND | SOURCE | CODE | 1ST YEAR | 2ND YEAR | TOTAL | 2ND BIENNium | 3RD BIENNium |
| OF-STATE | | | | | | | |
| OF-FED | | | | | | | |
| TOTALS | | | 0 | 0 | 0 | 0 | 0 |

EXPENDITURES FROM:

TOPIC

CODE

| | | | | | | |
|-----------------------------|-------|-------|--------|--------|-----------|-----------|
| GENERAL FUND-STATE | 001-1 | 3,000 | 10,430 | 10,440 | 142,283 | 2,700,791 |
| GENERAL FUND-FEDERAL | 001-2 | | | 0 | | |
| DRUG INF. & EPDC ACCOUNT | 101-1 | | | 0 | | |
| COST OF SUPERVISION | 206-6 | | | 0 | | |
| STATE BUILD. CONST. ACCOUNT | 057 | | | | 2,849,000 | 6,440,000 |
| TOTALS | | 3,000 | 10,430 | 10,440 | 2,721,283 | 9,700,791 |

EXPENDITURES BY OBJECT OR PURPOSE:

| | 1960 | 1961 | 1962 | 1963 | 1964 |
|----------------------------|-------|--------|--------|-----------|-----------|
| FTS STAFF YEARS | 0.0 | 0.0 | 0.0 | 3.2 | 33.1 |
| SALARIES AND WAGES | 0 | 0 | 0 | 22,873 | 1,511,033 |
| EMPLOYEE BENEFITS | 0 | 0 | 0 | 27,123 | 942,473 |
| PERSONAL SERVICE CONTRACTS | 0 | 0 | 0 | 3 | 10 |
| GOODS AND SERVICES | 1,405 | 9,033 | 10,927 | 28,330 | 434,010 |
| TRAVEL | 0 | 0 | 0 | 373 | 6,480 |
| EQUIPMENT | 0 | 0 | 0 | 0 | 0 |
| CAPITAL OUTLAYS | 0 | 0 | 0 | 2,450,000 | 6,000,000 |
| GRANTS AND SUBSIDIES | 0 | 0 | 0 | 0 | 0 |
| SERVICE | 1,302 | 6,014 | 7,310 | 10,707 | 293,770 |
| INTERAGENCY REIMBURSEMENT | 0 | 0 | 0 | 893 | 17,000 |
| TOTALS | 3,008 | 15,037 | 18,947 | 3,703,293 | 8,706,793 |

THIS BOX IS THE ABOVE LEGISLATION
HAS CASE FLOW IMPACT FOR INSTRUCTIONS: 1
CASE FLOW IMPACT ON PU-3.

CHECK THIS BOX IF THE ABOVE LEGISLATION HAS
FISCAL IMPACT ON LOCAL GOVERNMENTS: ☐
DO NOT INCLUDE LOCAL GOVERNMENT IMPACT ON PW-1.

FISCAL NOTE**REQUEST NO.25**

| RESPONDING AGENCY | CODE | DATE | BILL NUMBER |
|---------------------------|------|--------|-------------|
| Department of Corrections | 310 | 2-5-93 | HB1139 |

Bill Summary:

The proposed legislation would change existing law by requiring courts to sentence "persistent offenders" to life without parole. A "persistent offender" is defined as one who commits three most serious offenses at different times. The specific crimes that meet the standards necessary to label a person a "persistent offender" are stipulated in the proposed legislation. Persistent offenders, as well as those convicted of Murder 1, Assault 1, Assault of a child 1, or Rape 1, 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 or authorized leave of absence from a correctional facility.

The Sentencing Guidelines Commission (SGC) studied this proposal when it was offered as Initiative 590 and published a report entitled "A Look at the Persistent Offender Accountability Act." Because of difficulties detailed in the SGC report, the impacts on prison populations are quite uncertain. Nonetheless, the report presented a "worst case" impact. The data suggested a relatively small impact, i.e., less than 100 additional inmates, for the first six years. However, the impact continues to grow each year. The costs are determined using a marginal cost of \$8.24 per day per inmate. When the inmate population grows beyond 100, operating costs of \$27,345 per inmate per year are used. In later years there will be a need for more prison space and the related funding to construct and operate the new facilities. Given the population growth, a 512-bed medium custody level facility would be necessary. The funding must begin in the second biennium to allow adequate lead time to construct the necessary prison beds. These estimates are based on SGC figures, and, considering the cautions expressed in the SGC report, the estimated costs might be different.

EDITOR

Teresa Mutha

ASSOCIATE EDITOR/ADVERTISING

Christie Hudson

EDITORIAL COMMITTEECarole Grynem and Steve Mayne,
Co-Chairs • Judy Benkin, Mike Lambie,
Anita Moorit, Richard Tansman**WDA EXECUTIVE COMMITTEE**Robert C. Bernickson, President
Richard Casano, Vice President
David Campbell, Secretary/Treasurer

Christie Hudson, Executive Director

OFFICES810 3rd Avenue, Suite 800
Seattle Washington 98104
206-423-4331**WACDA BOARD**Jill Bernickson, President
Ben Ford, President Elect
Dwight Witzel, Vice President/East
Lorell Hunsberr, President/West
Chabon Korte, Secretary
Jon Zelner, Treasurer
Richard Trabasso, Immediate Past President**FIRST DISTRICT**

Sheryl Gordon McCord, Tom Miller

SECOND DISTRICT

Marilyn McLean, George Bowden

THIRD DISTRICT

Charles Williams, Mark Muscovar

FOURTH DISTRICT

Dan Fowler, Victor Lutz

FIFTH DISTRICT

Lois Olson, Jeffry Fier

SIXTH DISTRICT

Ron Hest, Judy Menden

SEVENTH DISTRICT

Anne Harper, Karen Klein

EIGHTH DISTRICT

Jon Fox, Tom Campbell

NINTH DISTRICT

Jim Short, Marjorie Tardick

AT LARGE

Peter Mohr, Gil Levy, David Bulkey, Jim Lohman

Teresa Mutha, Executive Director

OFFICES421 Central Building
Seattle, WA 98104
206-423-1302**ARTWORK**

Jack DeLong

PHOTO

Liam Kerr, page 3

Washington Criminal Defense is published four times a year. We welcome contributions from our members. Deadlines are February 24, June 24, September 25, and December 24. For more information contact Teresa Mutha, 206-423-1302.

DEFENSE

A joint publication of the Washington Defender Association and
The Washington Association of Criminal Defense Lawyers.

FEATURES

Washington Strikes Out ▲ BY ANNE HARPER 3
Voters pass 503; defense lawyers need to be ready to respond.

Grand Jury Witness Checklist ▲ BY JEFFRY FINER 5

Work Ethic Camp ▲ BY JACKIE CAMPBELL 10
New sentencing option created at McNeil Island.

State Constitutional Law Forum ▲ BY TOM CONOM 12
Scientific evidence - dawn of a new era?

DEPARTMENTS

New Cases of Note ▲ BY KEVIN DOLAN 19
New lobbyist, call for nominations, CLE calendar.

Briefs 21
Selected Washington cases.

Riding The Bench ▲ BY PETER MAIR 24

Washington "Strikes Out"

Voters pass 593; defense lawyers need to be ready to respond.

BY ANNE HARPER



On November 4, 1993 the people of Washington voted in fear, anger and frustration. They responded to media imagery telling them that they were in danger, and that they could alleviate that danger by a single vote. They enacted Initiative 593, "Three Strikes You're Out." The supporters stated the purpose of this new law bluntly in the *Voters Pamphlet*:

Under 593, anyone convicted of a third violent offense goes to prison for life. No early release. No parole. No furloughs. No loopholes. Three strikes and you're out.

Not only does 593 keep our most serious offenders off the streets it also sends a clear and unmistakable message to all other criminals in Washington: either obey the law or leave the state — for good.

Preliminary studies indicate that the hammer of 593 may fall disproportionately

ately on the non-white population. Initiative 593 potentially gives the prosecutor, an elected official, tremendous unfettered discretion to take a little or a lot from persons accused of "strike" offenses. The "protection" being offered is protection from 55 - 65 year old offenders, after they have served 13 - 25 years for their last offense. This is the group that commits the fewest offenses.

Prior to the vote on the initiative, these arguments — and others about fairness, morality, cost and the effectiveness of current law — were presented to the public through a loose association pulled together by WACDL and including ACLU, the Washington Association of Churches, the Washington State Catholic Conference, the Washington Council on Crime and Delinquency and one courageous prosecutor. We talked to newspapers, community groups, political associations and our neighbors.

Those efforts, however, were futile and 75% of Washington voters voted for 593. It became law on December 2, 1993. Now we must deal with it as criminal law practitioners.

The law is not as simple as it may appear upon first reading. What follows is an outline of the new law, highlighting some of the issues to be raised.

Where We Are

Upon the third "most serious offense" conviction, the sentence is life — without parole, good time, furlough, or any other release.

A "most serious offense" is any of the following felonies, or felony attempts to commit these crimes:

- I. Any class A or conspiracy to commit a class A or criminal solicitation to commit a class A crime.

This includes the usual suspects: Arson 1, Burglary 1, Murder 1, Murder 2, Rape 1, Robbery 1, Kidnap 1, Child Rape 1, Child Molestation 1, etc. This also includes Bail Jumping on Murder 1, damaging a building by explosion with threat to human beings, treason and setting a spring gun. According to the Sentencing Guidelines Commission, the following drug crimes are class A offenses: Over 18, delivery of narcotics (Schedule I or II) to someone under 18; manufacture, delivery or possession with attempt to deliver heroin, cocaine or any narcotics on Schedule I or II with a drug conviction prior or in a protected zone; create, deliver or possess a counterfeit controlled substance. (See Appendix B 1993 Implementation Manual for a full list of class A felonies.)

- II. Any felony with a "deadly weapon" finding under RCW 9.94A.125.
- III. Any class B felony with a "sex motivation" finding under RCW 9.94A.030(32).
- IV. Class B felonies: Assault 2, Child Molestation 2, Controlled Substance Homicide, Extortion 1, Incest with a child under 14, Indecent Liberties, Kidnapping 2, Manslaughter 1, Promoting Prostitution 1, Robbery 2, Sexual Exploitation, Vehicular Homicide.
- V. Class C felonies: Manslaughter 2, Rape 3, Vehicular Assault.

The list may be amended at any time.

On its face, the statute applies to all prior felonies, whenever committed. Therefore, there are many people walking around with two or more

strikes against them, any of whom could become a third strike case. When the lawyer has determined that a client is presently charged with a "strike" offense, deciding whether his or her past history includes two or more such offenses, thereby subjecting him or her to this law, will not be a simple task.

Exclusions

A "strike" will be excluded if it has "washed out" under RCW 9.94A.360. Juvenile offenses are not strikes unless the defendant is prosecuted as an adult. Two of the prior convictions must be separate convictions. The second strike offense must have been committed after the conviction of the first strike offense. According to the SRA (prior to and after the initiative), a "conviction" occurs when a finding of guilt is entered, not at sentencing, RCW 9.94A.030(9).

Out-of-State Offenses

Federal and out-of-state convictions will be strikes if they are "comparable" to a Washington strike offense. There is no definition of "comparable offense." However, Washington has a body of case law dealing with classification of out-of-state and federal offenses under RCW 9.94A.360(3).

Procedures for Proving Priors

This is not addressed in the statute. *State v. Ammons*, 105 Wn.2d 105 (1986), and *State v. Randle*, 47 Wn.App. 232 (1987), made the procedures for proving priors very easy under the SRA before this initiative. The prosecutor produces certified copies of judgments and sentences with the client's name on them. There is no need to prove identity further, unless your client swears under oath that a prior is not his or hers. Further, the only basis to challenge the constitutionality of a judgment and sentence is if the defect appears on the judgment and sentence itself.

No special notice or proceeding is required by the statute and none seems to be required, if the case law interpreting the SRA before this initiative is followed.

Where We Are Going

The issues related to life without parole convictions for persistent offenders are numerous. The answers are not obvious. What follows are some issues to ponder and research.

The primary issue is whether this is a "status offense," such as the habitual criminal statute under pre-SRA law. If this is a statute offense, it is arguable that the habitual criminal procedures will be grafted on to this statute.

The habitual criminal statute also appeared mandatory and sparse of rights. Under the former habitual criminal statute, however, Washington courts have required the exercise of

United States and Washington State constitutional provisions against cruel and unusual punishment?

5. Are exceptional sentences allowed for persistent offenders?
6. Is a subsequent delivery or possession with intent to deliver a class A offense?
7. Is the initiative void for vagueness regarding proof for out-of-state priors?
8. May any strike committed as a juvenile be used without violating equal protection?
9. Does the statute require a period of

The habitual criminal statute also appeared mandatory and sparse of rights.

principled prosecutorial discretion in charging (selective use of the statute), written pleading of the status, specific proof by the prosecuting attorney with certified copies and identity evidence. Proof beyond a reasonable doubt was required, and the accused was entitled to jury trial. See *State v. Furth*, 5 Wn.2d 1 (1940), *State v. Kirkpatrick*, 181 Wash. 313 (1935), etc. The cases are numerous.

Also, defendant could challenge the constitutionality of a prior conviction. *State v. Holsworth*, 93 Wn.2d 148 (1980). Once the issue was raised by the defendant, the prosecution was required to prove the constitutionality of the prior convictions beyond a reasonable doubt.

There are several other issues to be considered. Here is a partial list:

1. Can the initiative process increase the maximum punishment for a crime?
2. Was the initiative drafted to provide notice that it amends by implication the maximum punishment for class B and C crimes? If not, is it constitutionally defective?
3. Is this initiative effective without a legislative allocation of funding?
4. Does this punishment violate the

opportunity for rehabilitation between strike one and strike two?

The effect of the statute is permanent. The legal issues are many, and the work will be voluminous. Unfortunately, the effectiveness of the statute and the wisdom of isolating those who are offensive to us will not be addressed in our legal briefs.

The Washington Association of Criminal Defense Lawyers has organized a group of WACDL and WDA members from around the state who have volunteered to research the above issues and others. We are preparing "generic" briefs and position papers on these issues. These materials will be available to members on paper and on disk (most likely in "WordPerfect" format).

If you have a third strike case, we urge you to contact either WACDL or WDA to obtain the available materials. We also urge you to submit any materials you may produce so that other defense attorneys can benefit from your efforts.

Anne Harper is a member of the WACDL Board of Governors. She worked against "Three Strikes" proposals before the 1993 legislature, and was a member of the anti-593 task force.

Let's invest in people, not prisons

By Chase Riveland

There are two Washingtons. One is the site of the nation's capitol, powerful politics, numerous memorials and the Washington Redskins. The other, in the Pacific Northwest, is the site of Mount Rainier, Puget Sound, abundant rainfall and the Seattle Seahawks.

Separated by radically different histories — almost 3,000 miles, the two Washingtons do have some similarities. Washingtonians have citizens who are sickened at daily reports of escalating crime, violence and drug use. Both Washingtons are struggling to find solutions for those very frightening social problems — neither very effectively.

In Western Washington, since 1987, passed laws lengthening sentences for drug offenders, sex offenders and residential burglars. In November, a people's initiative, called "Three Strikes, You're Out," passed overwhelmingly. The legislation will mandate sentences of life without parole for any person convicted of three felonies.

Lowry has said that if the trend of incarceration continues, "... everyone in the state of Washington will either be in or working in a prison by the year 2056."

Absent from Washington state has been an environment conducive to a debate on what should be done to address these issues. Incarceration is the dominant solution. Indeed, elected officials in Washington state, like elected officials in most states, have failed to bow to fears of not being re-elected if they're not tough on crime.

Meanwhile, in the other Washington, surrounded by one of the highest crime rates in the Western world, nationally elected officials have put in place a sentencing scheme that includes mandatory minimum sentences so severe that they are questioned by many judges, prosecutors, lay persons and even U.S. Attorney General Janet Reno. It is resulting in an outrageously disproportionate incarceration rate for minority groups, severe overcrowding of federal prisons and an enormous consumption of resources by the federal criminal justice system.

Feeling that it has not yet impressed voters back in the U.S.

passed an "omnibus" crime bill that, among other things, would incarcerate some teenagers in the adult prison system, federalize a number of crimes now dealt with in state courts, build billions of dollars worth of regional prisons and require states to lengthen the amount of time served for a large number of offenders.

In their rush to belly-up to the tough-on-crime image, they passed what could only be termed drive-by legislation.

It is clear that few of the U.S. senators who voted for the crime bill would be spending much time back in their districts. If they were, they would know that most state and local budgets have been consumed by criminal-justice costs in general and correctional costs in particular.

Prisons recently built for hundreds of millions of dollars are sitting unoccupied in many states, including Washington, Connecticut and California. The enormous cost of running prisons is catching up to officials whose vision does not exceed the next election. Instead, officials in both Washingtons are now searching for a less expensive silver bullet. "Let's do boot camps," say both Washingtons. "Let's do it."

In both Washingtons, the public

continues to be reinforced with the political rhetoric that the more people that are incarcerated, the safer everyone will be.

What are we missing? In both Washingtons, we are missing leadership in demanding that we address the issues of crime and punishment rationally.

A group called the Campaign for an Effective Crime Policy is supported by nearly 700 people from around the country, including present and former governors, present and former attorneys general and prosecutors, correctional administrators, law enforcement officials and citizens. Their call is simple: a rational debate on crime and punishment.

The call is important in both Washingtons. Neither Washington can afford the diversion of funds needed for critical societal and environmental problems to unneeded incarceration. Neither Washington should lead its citizens into the false belief that incarceration can solve crime, violence and substance abuse problems.

Neither Washington can afford to punish nonviolent people in costly incarceration settings when we know there are better, less costly punishments.

Both Washingtons want to — and should — eradicate fear, violence and

crime, but political leadership will be required, at some risk, to accomplish that in both places.

It took years, many deaths and much national pain to bring the nation out of the Vietnam War. Political careers were made and lost during the struggle. The same may be said of similar societal issues of health care, welfare reform and others.

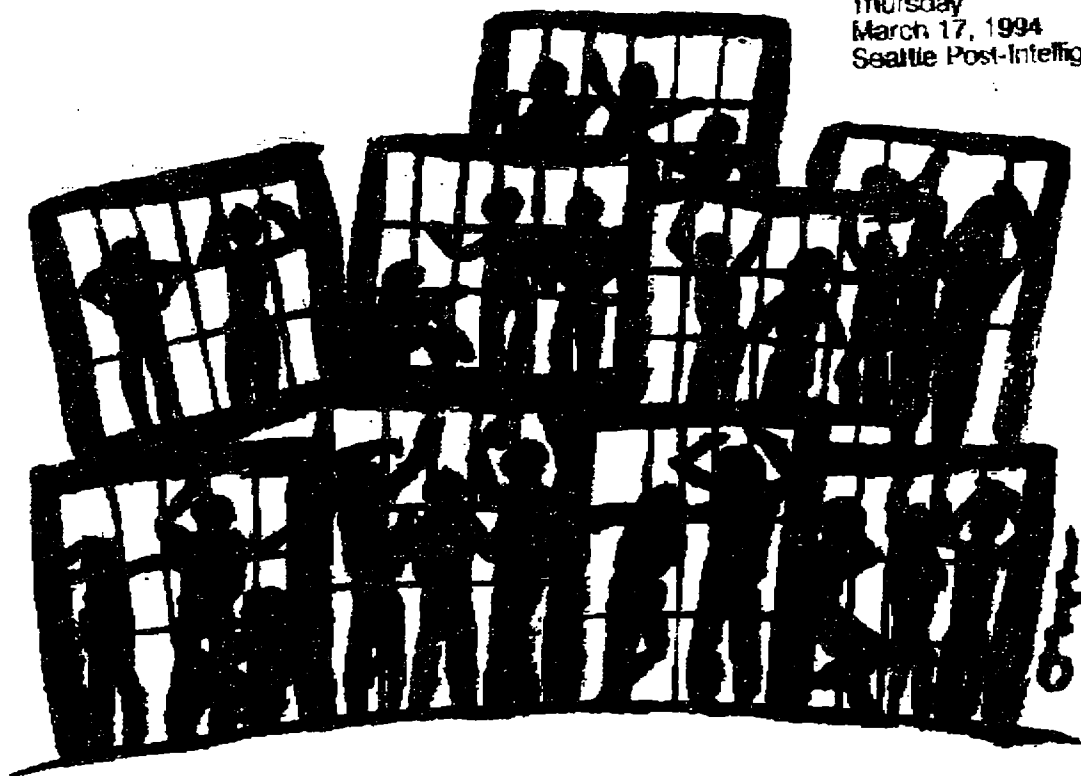
The question of curiosity may be, who will take the lead in figuring out responsible positions — the Washington of Puget Sound or the Washington of the Potomac? Will the leadership arise from a president or a governor, a Congress or a legislature?

Both must come to the conclusion at some point that prisons must be treated as scarce, costly resources and that our investments must be in people — not institutions. We should incarcerate people who are violent, predatory and irredeemable. We must make research, technology and compassion available to address the remainder.

The challenge is not to have drive-by legislation. It is to have thoughtful, risk-taking, pragmatic leadership.

Stand up, Washington.

Chase Riveland is secretary of the Washington State Delegation of Corrections.



Thursday
March 17, 1994
Seattle Post-Intelligencer

SENT BY:

5-27-94 : 1:10PM :

2024566423:#20
P.17

'o stop violence, we must first understand it

P-I
9p8d
2-25-94

By Larry Felt

Peruse the headlines. Listed to your friends. Watch the news. . . . Unmistakably, violence has become the pre-eminent public issue of the day.

Not surprisingly, politicians at all levels and at every stripe are churning out plans, policy papers and proposals on crime and especially youth violence, as never before. During the current state legislative session, more than 125 separate bills have been introduced, including a number of "omnibus" bills, which contain many different proposals within one bill, to address violence.

Selected officials at other levels of government are likewise attempting to address the violence problem. Seattle Mayor Norm Rice has announced an "anti-violence" initiative. King County Executive Gary Leake has called for a "summit" on crime and violence. U.S. Sen. Patty Murray held special meetings on "violence prevention" around the state and U.S. Sen. Blode Gorton presided over a "Crime Summit" in Yakima. President Clinton announced that passage of a "Crime Bill" by Congress is his highest domestic priority for 1994.

Regrettably, we are already beginning to see increased political posturing on the issue. Conservatives promote the "get tough" rhetoric and decry failed efforts of the past

Violence has become the pre-eminent public issue of the day.

to address the root causes of crime. Liberals advance pet social and economic programs and criticize recent policies sending more people to jail for ever-longer periods of time with no apparent impact on crime rates. Neither camp has accurately identified the

resources necessary to pay for their proposals. What has been ignored in this clamor to respond to violence is a consideration of the single most exhaustive research project conducted in our country to better understand and prevent violence.

The purpose of this article is to summarize the findings and recommendations from that study.

The National Academy of Sciences recently published a special report on "Understanding and Preventing Violence," after having been asked by three federal agencies (the National Institute of Justice, the National Science Foundation and the Center for Disease Control), to assess the current understanding of violence and what can best be done to help prevent violence.

A panel of recognized experts from a diversity of disciplines, including criminal justice, sociology, psychology, genetics, public policy, law, psychiatry and victim services, was established. The panel elected to focus on criminal violence and excluded from its examination other important but more specialized areas of collective violence (for example, wars), pre-20th century violence, self-inflicted violence (such as suicide), ethology (animal behavior) and systematic cross-cultural research.

Some of the research findings were surprising and help to answer some long-standing questions regarding violence in our society.

Is the United States more violent than other industrial nations?

In general, yes. Rates for homicides, sexual assaults and other violent crimes generally exceed those of any other industrialized nation.

Is the United States more violent today than ever before?

No. The national homicide rate peaked in the early 1980s and then, again, between 1979 and 1981. Only for aggravated assault do 1990 rates exceed 1980 rates in cities of all sizes.

What are the consequences of violent crimes?

Physical injury occurs in only about one-third of violent crimes. Most injuries are minor, with only 4 percent requiring an overnight hospital stay. However, the fact that 23,000 people died in 1990 as a result of homicide still points to the seriousness of the problem. Significant economic losses are also created due to victim monetary losses, lost productivity, compensation, responses by law enforcement and cost of other criminal justice agencies, etc. Most fundamentally, quality of life is diminished.

Who is at greatest risk of violence?

Demographic minorities. Black were 41 percent and Hispanics 33 percent more likely than whites to be victims of violent crimes. Young black males are about 20 times more likely than older white females to be a victim of violent crime.

Who commits violent crimes?

Although less is known about the violent criminals than their victims, it is known that both share similar demographic profiles. Perpetrators are overwhelmingly male (89 percent) and are disproportionately racial and ethnic minorities. Men in the 25-29 age range are

than any other age range (violence is not predominantly a problem of juveniles).

Are violent crimes the work of "violent career criminals?"

No. Only a small proportion of total violence is attributable to the few criminals who commit violent crimes frequently. Most violent crimes occur during long criminal careers dominated by property offenses. However, most offenders do not associate their criminal careers from property to violent offenses. Finally, predictions of future violent behavior from past arrest are "highly inaccurate."

What effect has increasing the prison population had on levels of violent crime?

According to the researchers, "apparently, very little." While the average prison time served per violent crime roughly tripled between 1975 and 1988, reported levels of serious violent crime remained at about the same level. Moreover, they found that a 50 percent increase in the probability of incarceration would prevent twice as much violent crime as a 50 percent increase in the average term of incarceration.

The researchers conclude this part of their report with this critically important observation:

"This analysis suggests that preventative strategies may be as important as criminal justice responses to violence." Yet, prevention approaches certainly have not received anywhere near comparable levels of attention or resources as criminal justice responses.

The researchers identify a variety of individual, socioeconomic and other circumstances associated with violence.

Aggressive childhood behaviors are correlated with greater likelihood for violent behavior. The researchers found that aggressive and violent behaviors are learned responses to frustration. Significantly, they identify certain things that work to reduce children's aggressive behavior, including: (1) teaching children nonaggressive methods of solving interpersonal problems, social skills training and using television to promote prosocial behavior, and (2) reducing early school failure through programs such as a peer tutoring and training high school youth to help younger students.

Many psychological, social, biological and cultural factors have been suggested as causes of sexual violence, yet incidents are more difficult to count and analyze than most other forms of violence. Promising strategies for reducing sexual violence include teaching males about appropriate rules and responsibilities toward women, teaching females to recognize risks and ways to protect themselves, separating offenders and the intimates they repeatedly attack, and repairing the physical and psychological consequences of sexual victimization.

Family violence is substantially underreported. Nevertheless, about 16 percent of all violent victims report being attacked by members of their own family; two-thirds of which are simply assault. Systematic evaluations of methods to prevent family violence are occurring. Visiting nurse programs help to reduce child abuse. Police responses to family violence "have not consistently shown a trend to have a deterrent effect."

Interventions that are cited as showing promise in reducing domestic violence include alcohol abuse treatment and anger-management training for assaulters, assistance in shelters to help repeat victims become self-sufficient, restraining orders and non-enforcement sanctions for assaulters.

An individual's potential for aggressive and violent behavior is influenced by genetics, neurobiologic characteristics and consumption of alcohol and certain drugs. Preventing brain dysfunctions could occur from reducing exposure to lead, head injuries and expectant mothers' use of alcohol, cocaine, opiates, or tobacco during pregnancy. While the researchers confirm that the pharmacological effects of alcohol and other drug use on violent behaviors have been fairly well established for illegal psychoactive drugs, the illegal market itself accounts for far more violence than the pharmacological effects.

Men 25-29 are most likely to commit violent crimes.

The popular 'three strikes' laws that mandate prison sentences for repeat offenders sound good in theory. But **Elton Goodman** says the laws are no bit.

Laws strike out against crime

The Boston Globe

I have never been a fan of jocktalk in political life. The endless campaign lingo about slam-dunking opponents and hitting questions out of the ballpark has left me on the sidelines.

But I am even more uncomfortable when sporting life stops being a metaphor and starts becoming public policy.

This is exactly what is happening with the new favorite anti-crime legislation that's known as "three strikes and you're out." This is criminology according to Abner Doubleday.

At heart, the Three Strikes bills are meant to send third-time felons — in some places, violent felons, in other places, all felons — to jail for life without parole. This is an idea that is popular with everyone from California Gov. Pete Wilson to New York Gov. Mario Cuomo, a former center fielder. It's even popular with jogger and golfer Bill Clinton.

The first of the Three Strikes proposals passed a Washington state referendum last fall. A second variation on the law went into effect here in California two weeks ago. It mandates 25 years to life or triple the usual sentence, whichever is more.

Now, in the midst of spring training, there are bills or ballot initiatives in 30 state legislatures and in both branches of Congress. Georgia, not to be outplayed, just passed a bill that will put a Two Strikes proposal on the state ballot next fall.

I am not surprised at the cheers this idea has received. The real national pastime — one that I share — is watching and worrying about crime.



Elton Goodman

Crime may not be on the rise in the statistics. But it is on the rise among the young. It's on the rise in the news and in the polls that track our collective mood.

We worry now about random crime, about violent crime, and Three Strikes laws have become the easiest way for legislators to prove that they are on our team.

But life is more complicated than baseball and so is crime. Not every felon warrants the same punishment. Some first crimes deserve much harsher sentences than they get. Some third crimes deserve lighter sentences than Three Strikes would mandate.

In Washington state, for example, both Cecil Emile Davis and Larry Lee Fisher were caught under the same new law. One of these men, Davis, had attacked two people with an ice pick and severely beaten two others before he was picked up for allegedly kidnapping, raping, and cutting another woman's throat.

Fisher, on the other hand, was charged for the third time with robbing a store. He took off with \$151 after telling the clerk that the finger in his pocket was a gun. None of his crimes involved violence. Do they both deserve the same life sentence?

James Alan Fox, the dean of criminal justice at Northeastern University — the Boston site, by the way, of the first World Series — puts it this way: "Punishments should not just fit the crime, but the criminal."

That subtlety is rapidly being lost in this sports arena. Under the proposed Georgia law, two-time losers as young as 13 could become lifers. Under one Illinois bill, someone who was caught three times passing three burn checks a year, could be jailed forever.

If Three Strikes sounds like it's tough on crime, it is really tough on judges. And even on police.

A law that makes sentences mandatory rather than presumptive, an absolute rather than a general rule, takes away the judge's role in sentencing. They are stripped of the very quality we choose them for — their "judge"-ment.

As Dean Fox says, "Even in baseball umpires have discretion on the third strike. . . . I'd like judges to have at least as much discretion as an umpire."

The law in California already has police worried about facing desperate criminals with two strikes and nothing to lose. It has others talking about geriatric prisons filled with people whose crime prime is long past.

Will these elders fill space that should be left for younger, "active" criminals? Will less dangerous people use up money that should be allocated to — if the word may be spoken before today's filled and angry bleachers — crime prevention?

This is a time when as many people memorize crime reports as batting averages. Two-time murderers and rapists released to rape again soar to the top of the news. No politicians want to face charges that they let any criminals walk — into their town.

But to be rational about criminals is not to be soft on crime. Violent criminals — first, as well as third-timers — should indeed be punished harshly. They should be punished by the quality of their crimes, not just the quantity.

I'm afraid it's going to take a whole league of brave legislators to step up to that plate.

■ Elton Goodman is a columnist for The Boston Globe.

Three strikes: Fine tuning of new law urged

Seattle Post-Intelligencer, Tuesday, February 15, 1994

Three strikes' may be harder than intended

Law for habitual criminals reduces new difficulties

© New York Times

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

Two months after the law went on the books, the state is seeing the first faces of the so-called "three strikes, you're out" law. And they present a picture that is much more complicated than the baseball slogan that inspired 70 percent of state voters to back the measure last

year. With 30 other states considering some version of the "three strikes" concept, it is coming to be a bipartisan prescription by politicians from President Clinton on down. With nothing to lose, Washington prosecutors and police say, some criminals are showing a tendency to be more violent or desperate. Officers try to arrest them. And prosecutors say first- and second-time offenders are less likely to plea bargain, which would mean leading guilty to a felony — the first or second strike.

Offenders are instead forcing 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 had in mind. One man has led life as a one-time criminal, and his third-strike offense was robbing a sandwich shop of \$15, using a concealed dagger as a threat.

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

From Page 1

convicts — Steven Michael Morgan, 49, and Paul Rivers, 26 — with a total of 34 convictions between them.

Both men are awaiting trial. Rivers is charged with robbing an espresso bar operator of \$337 in December. He has prior felony convictions for second-degree assault, second-degree robbery and second-degree attempted robbery, dating back to 1988, prosecutors said.

Morgan is accused of robbing a 34-year-old man twice, robbing a second man in the victim's home after kicking in the door and trying to rob a gas station.

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

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

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

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

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

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

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

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

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

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

His first strike (as classified by the new law) was in 1986, when he was convicted of pushing his grandfather down and taking \$360 from him — robbery in the second degree. Fisher served four months in jail.

Two years later came his second strike, a \$700 robbery of a pizza parlor, in which he yelled his finger and said it was a gun. He served 17 months on a work farm.

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

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

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

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

"I went to a Rotary meeting this week, and a number of people came up to me and said they were pretty surprised that this is what they voted for," said Jan Townsend, the prosecutor handling Fisher's case. "What I think will happen is, we will put away a lot of people whom so one will have a second thought about, and then we will have a few cases that will give people pause."

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

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

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

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

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

Pierce County Prosecutor John Latsenburg hailed Davis' arrest.

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

mind when passing this law," he said. 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 crime.

Before the three-strikes law, Davis would have been facing about 30 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 each inmate — until they die.

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

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

If the typical age is higher than expected, the volume of people who fit the three-strikes category is running about 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 in the fall, the number would be slightly more than in New York.

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

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

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

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

Robbery suspect taking a swing at 3-strikes law

By SCOTT NORTH
Herald Writer

Larry Lee Fisher says he often wakes up in the dark at the Snohomish County Jail wondering, "Why me?"

Until late last month the former Bellingham man was someone many people tried to avoid because of his cocaine-skinny ex-conv who evaded homelessness by moving from one crash pad to the next.

Then he was arrested Jan. 28 for a sandwich shop robbery in Lynnwood.

Fisher allegedly made off with \$152 and was captured a minutes later sitting on a bar stool at a nearby tavern, according to court papers.

It was a crime so routine, so unremarkable, that it didn't make the newspapers.

But prosecutors say that if convicted, Fisher, 35, faces extraordinary punishment.

The robbery, they contend, is Fisher's third serious felony and

"They are going to be overrun with cases like this. I don't want to see someone else in this position."

—Larry Lee Fisher

grounds for a mandatory sentence of life in prison without parole. That's the punishment mandated under Initiative 589, the state's tough, new "three strikes, you're out" law.

Fisher is the first person in the county to tangle with the "three strikes" law, which was overwhelmingly approved by the voters in November and is now being eyed by President Clinton and others as a model for a crime-weary country.

The national media are already beginning to beat a trail to Fisher's jail house door.

See STRIKES, back page, this section

STRIKES

from Page 1

The defendant was interviewed last week by a National Public Radio reporter. The New York Times, meanwhile, sent over a photographer to snap his picture and announced that it was telling his story today on its front page.

A reporter from USA Today is expected sometime this week, said Michael Magee, the senior Snohomish County deputy prosecutor who is handling Fisher's case.

For his part, Fisher said Monday, he hopes his legal predicament will prompt discussion about whether voters really intended the law to function as it may in cases like his.

"I hope people will realize that this is an unjust law the way they have it set up," he said. "There are going to be a lot of people facing this and they are going to be overrun with cases like this. I don't want to see someone else in this position."

Magee conceded that Fisher is "not the most vicious, violent person" he's prosecuted, but said the law leaves no room for prosecutors to decide who should risk "three strikes" penalties.

He also points out that Fisher has five prior robbery convictions, including two robberies, which are being counted now as his first and second "strikes."

"He's a career criminal," Magee said. "He's just not what you'd call the Legs Diamond or Baby Face Nelson of violent crime."

On the advice of his attorney, Fisher declined to discuss his criminal history and the charge against him.

But court records show he has never displayed a weapon during a

holdup, although in his most recent arrest he allegedly had a five-inch folding knife in his pocket.

Fisher was first convicted of robbery in 1986 after he threatened his 73-year-old grandfather into surrendering \$300. When he held up a South Everett pizza restaurant of less than \$100 two years later, he turned himself in to police the next day, making a full confession, court papers show.

Fisher told police he hid his hand in his pocket not to simulate a weapon, but to hide one of his many tattoos, according to court documents.

Fisher said he has abused alcohol and has been addicted to cocaine and heroin much of his adult life. The seeds for his substance abuse problems were sown during his teen-age years, he said, when he became involved in drug use while living in state-run group homes.

He was a ward of the state from the time he was 13 until just before he turned 18.

Fisher is being represented by the Snohomish County Public Defenders Association, which plans to attack his case as vigorously as it would one involving the death penalty. Among other things, defense attorneys plan to challenge the constitutionality of the "three strikes" law.

"We are going to have to fight this on every front possible," defense attorney Chad Dold said. "We are going to have to invent tricks to fight this on."

Fisher said his attorneys have been straight with him, warning that if he's convicted of the

sandwich shop robbery he will be sentenced to spend the rest of his life behind bars.

"Is this the sort of event that should trigger that kind of a response?" Dold wondered.

The attorney said that crime-fighting strategies have a great deal in common with national defense policy. The response is measured by the threat and deterrence is a key goal.

This ("three strikes" law) is in many respects going back to 1930s and 40s Cold War thinking," Dold said. "We just make it blow it out of existence."

Dold said there is more to Fisher's story than his present predicament.

"I think it would be fair to say his substance abuse problems are symptoms of other problems," the attorney said. "I don't know that I would have liked to grow up like Larry grew up. I don't know whether I'd personally say that the warm, loving arms of the state of Washington and easy access to drugs were a substitute for a good home."

Magee doesn't dispute Dold's arguments. He just contends they aren't relevant under the "three strikes" law.

The voters were very clear when they approved the initiative that they expected swift and certain punishment for repeat offenders, he said. While the "three strikes" penalty is harsh, it is consistent with the predictable way offenders have been punished in Washington since the Sentencing Reform Act went into effect, he added.

Unless state legislators or appeals court judges decide otherwise, "the law, as it was written and adopted by the people, is how we are going to interpret it," Magee said.

Crest Herald 2/15/94

FORIALS AND COMMENT



Gunslinging pols know where votes are

WASHINGTON — As if Bill Clinton didn't have enough critics, here comes Phil Heymann slinging brickbats at his ex-boss. Worse, he's a critic who was a Clinton administration insider until a few days ago.

Heymann says Clinton, along with most of the U.S. Senate, is full of hot air with their "tough-on-crime" posturing. He jabs Clinton for succumbing to political pressure with crime panaceas that "sound terrific but don't make sense."

His barbs have sharp bite. Heymann was No. 2 honcho at the Justice Department, the Clinton official responsible for policy, sentencing and dealing with violent crime.

When Attorney General Janet Reno and Heymann parted ways in an awkward press conference, each blamed "bad chemistry."

Word was passed that Reno was unhappy with Heymann, a former Harvard professor and experienced Justice Department official, because he wasn't a "team player."

Bad karma wasn't the only source of their breakup. Heymann was disenchanted with Clinton's pandering to anti-crime emotions by leading cheers for the Senate crime bill, especially the popular "three-strikes-you're-out" life sentences. Although Heymann won't publicly rap Reno, she's parroted Clinton's tough rhetoric even if it rubs against her grain.

So what's Heymann's beef with the prez and other Washington crime warriors?

After all, Clinton drew a roaring ovation in his State of the Union speech when he pounded

the podium for more cops, more prisons and "three-strikes-you're-out" for violent felons. Even as Heymann was denouncing his approach, Clinton was cheered by Ohio cops when he demanded mandatory life for "people who do horrible things."

Heymann says the president and the Senate "throw-away-the-key" crowd are trapped in anti-crime hysteria. They're pumping money into a criminal justice system that's costly, inefficient and a fraud — "tough but not smart."

Sure, Heymann agrees, the "three-strikes-you're-out" concept means stashing away for life some serial killers and rapists. But you'll also sweep up small-time robbers who'll serve time until they're 60, 70, 80 at a minimum of \$20,000 a year.

"That's \$800,000 or \$700,000 our children and grandchildren will pay for each one of those people," Heymann says. "Bad deal. We can't afford it."

Heymann scoffs at the Senate's mandatory five-year terms for drug offenders even though they may have no prior convictions, no violent background, no connections to organized crime.

"There are roughly 16,000 of those people in the federal system — 21 percent of the prison population," Heymann says. "They're taking space that could be used for violent criminals. We'll have to build a new prison every two months. Doesn't make sense."

When Reno took over at Justice, her remarks jibed with Heymann. She took a hard line on violent criminals but pushed treatment programs for first-time drug offenders. "How many prisons can we build?" Reno said. Now Reno's surrendered to the "lock 'em up, throw away the key" syndrome. Heymann, liberated to rail at the system on CNN and ABC's "Nightline," understands the pressure.

"I don't think Bill Clinton is playing politics with crime any more than anybody else caught up in the tide of politics," Heymann shrugs. "It's

politically suicidal to talk reason and common sense about crime."

Heymann's views may nudge House members when they debate the Senate crime bill — nicknamed the "Frequent Flyer" bill because it's larded with 50 death penalties, along with Draconian sentences and billions for prisons.

There's a myth that incarcerating more prisoners deters the so-called crime wave. Average

The Senate 'throw-away-the-key' crowd is trapped in anti-crime hysteria.

sentences doubled in the past decade, but the crime rate, according to FBI reports, didn't budge. We have 1.4 million people in U.S. prisons, surpassing every country, including South Africa. Feel safer?

In Washington, D.C., the crime rate is one of America's worst. Yet D.C. has more local and federal cops per square inch than any city in the country. And 4.5 percent of the population is in the prison system. If more cops and jails were the criteria, D.C. should be America's safest turf.

Even Clinton may have second thoughts. "I know it's easy to demagogue this," he said last week. "It's another thing to make a real difference."

That's Phil Heymann's pitch to Clinton: Don't panic over polls, cool the Reaganesque rhetoric, try to be rational about crime's cause and punishment.

No chance. Washington's gunslinging pols know where the votes are: Hang 'em high.

Sandy Grady is a columnist for the Philadelphia Daily News.



Politicians love this crime bill

By ANTHONY LEWIS

At the urging of President Clinton and many other politicians of both parties, the United States is about to embark on a remarkable new social program. It is to house, feed and provide geriatric support services for elderly Americans who have led worthless, harmful lives.

That will be one result of "three strikes, you're out," the much-touted proposal to put criminals away for life after a third violent felony. It would make state and federal prisons hold increasing numbers of men past the age of violence, living on into their 80s and 90s.



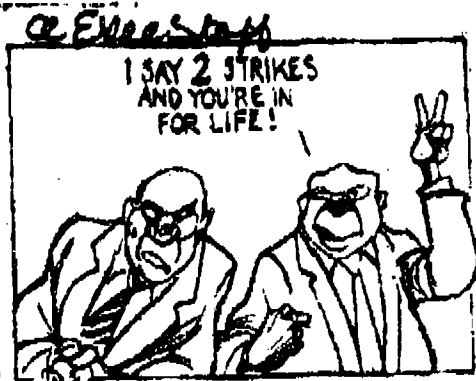
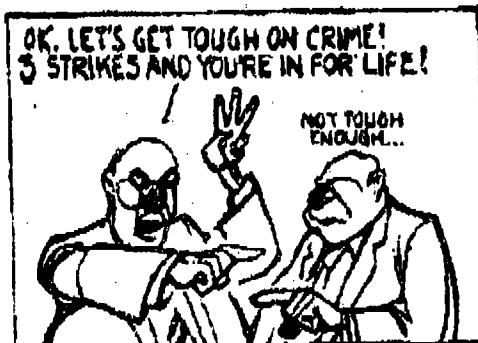
LEWIS

If the federal government and the states considering the idea go ahead with it, the cost will be enormous. Philip Heymann, who has just left the job of deputy attorney general, estimates that it will cost between \$800,000 and \$700,000 to keep one person in prison for life after age 50, when the statistics show that criminal careers run down.

Heymann, speaking out after he returned to private life, said what most students of the crime problem privately believe: The three-strikes proposal and much else in the crime bill passed by the Senate will do little if anything to reduce violent crime.

"It's feeling good by appearing to be tough," Heymann said on ABC's "Nightline." Ted Koppel, who is usually so wise an interviewer, sneered at Heymann as "a lousy politician." Telling the truth about the phoniness of much crime legislation risks sneers.

Anthony Lewis writes his "Abroad at Home" column for The New York Times.



The Christian Science Monitor
Los Angeles Times Syndicate

Politicians produce tough-looking remedies for crime because that is what voters want. The public is right to be angry and fearful about crime. Though statistics do not show a recent rise in violence, people are aware of drive-by shootings, the murder of children and other random horrors.

They want to be tough: longer sentences, more prisons, boot camps. But the question is whether that kind of toughness will reduce violence.

The United States has more prisoners per capita than any other country: 455 per 100,000. That is 10 times the rate in Japan. There are almost 1 million Americans in prison today, three times the number in 1980.

The number of prisoners is so large, and growing so rapidly, for two main reasons. This country imposes penal sentences for minor drug offenses. And in recent years Congress and some states have imposed mandatory minimum sentences, without parole, for a number of crimes.

We tend to think of people who are sent to prison as depraved and brutal. Many, probably most, are in fact nonviolent offenders. About 20 percent of federal prisoners are drug offenders with no prior record, no violence and no connection with any druglord.

Consider the case of Joel Project, a lawyer in upstate New York, former president

of the Sullivan County Bar Association. He grew marijuana plants at his place in the country. He was not a dealer, not a seller, just a user of pot. He is now serving a mandatory minimum sentence of five years in federal prison.

Project was wrong to violate the law. But can it conceivably benefit our society to keep him in prison for five years for growing marijuana plants?

And there are many thousands like him.

This country needs to reduce its prison population. It needs to get away from mandatory minimum sentences. Janet Reno knew that and said so before she became attorney general. But the Clinton White House, determined to make the president look tough on crime, has evidently muted her.

The Senate crime bill would cost upward of \$22 billion. It is a rag-bag of politicians' gestures, such as turning local offenses into federal crimes, that will do nothing except waste money and frustrate citizens concerned about crime.

The saddest thing about the political posturing over crime is that it turns us back toward remedies proved useless.

A headline in The Economist of London put it exactly: "Three strikes, you're hoo winked."

© 1994, New York Times News Service

Instead of '3 strikes,' why not fund '4 balls'?

It's hard for elected officials to talk sense about crime. That's what former deputy assistant attorney general Philip Heymann said the day after he left office. It's hard for appointed officials, too. Heymann said on Wednesday what his former boss, Attorney General Janet Reno, used to say before she was muzzled by the White House: Much of the Senate crime bill makes no sense.

If criminals prey on our fears, so do public officials. They posture tough on crime, scramble over each other to pro-lock-'em-up, fry-them-penal-to win votes, not to deal with the problem. The current fad is "three strikes and you're out," a proposed statute that imposes mandatory lifetime sentences for time violent offenders.

Fits on a bumper sticker. Sounds American. Polls support it. No wonder politicians are scrambling to endorse it. Gov. Zell Miller of Georgia even wants "two strikes and out." Pretty soon, as was put it, it will be a "four ball and gone."

President Clinton even made "three strikes" the centerpiece of his State of the Union address, implying that it might make the streets safer. Pure sham. The federal government doesn't have much of a role in policing street crime. One expert estimated that the "three strikes" law might apply to all of 300 people. At the state and local level, the problem is the reverse. If applied, it can't be afforded. Most violent crime is committed by young men. If "three strikes" enforced, we'd end up spending \$20,000 a year per person keeping old men locked up for crimes they can

barely remember committing.

No one is more victimized by crime than African Americans who live in urban neighborhoods. I live in one of those neighborhoods. I have walked the streets of the most victimized areas in our cities. I've talked with elderly women afraid to pick up their Social Security checks. I've met with young people, urging them to create a civil rights movement against drugs and crime. I've met with police chiefs and ministers, activists and citizens seeking ways to reduce crime.

But the crime bill now in the Senate is not guided by the opinions of police or activists. It is driven by polls. The Senate now plans on spending \$22 billion over five years, most of it to build jails and boot camps and to put more police on the streets. They want to put the money in a trust fund and build a wall around it so it can't be spent for anything else.

Under the congressional ceilings on spending passed last year, this requires slashing spending on domestic programs. Clinton's budget begins that process. Bus and subway fares will go up as mass transit subsidies are cut. The old and young will be left in the cold as home heating aid is slashed. Libraries will close. Public housing will grow more scarce.

If you talk to most police chiefs, they will say more police officers and jails aren't the answer. We've got to get kids when they are young, nurture them before they are lost. What we need is something like four balls and you're on.

Ball one: pre-natal care, infant nutrition and Head Start for every child. Ball two: quality education, and an end to the schools that are literally collapsing on children's heads in cities across the country. Ball three: an affordable college education for those who want it and apprentice training for those who don't. Ball four: a job — the possibility of a lifetime of jobs rather than a life-

time in jail. Four balls and you're on, with a chance to run, a chance to score.

The Congressional Black Caucus — made up of legislators who represent many of the districts that suffer the worst rates of crime — has put forth an alternative crime bill that incorporates many of these provisions.

It isn't soft. It devotes significant money to putting more police on the streets. But it seeks to build a way out, rather than prepare the way into prison. It invests in neighborhood mentoring, in community-release programs, in alternatives to jail, in Head Start and education, in drug treatment and job training.

Crime always has correlated more with poverty than with race. Place young people — particularly men — on the streets with nothing to do, and trouble results. Last year, unemployment among young African Americans who dropped out of school was 43.5 percent, even higher in major cities. But for those who played by the rules and graduated from high school, unemployment was 25.5 percent.

The economic recovery is now officially in its third year, but it does not reach these people. Black unemployment is going up, even as national unemployment is falling.

Yes, let's get tough on crime, but let's listen to the police, citizens and ministers on the front line. They want laws to be enforced, criminals to be punished. But they also want the young to be offered a way out, the addicted to be treated, the wayward to be mentored and brought back to the fold. And remember this about tough-talking politicians: They are more interested in re-election than in making the streets safer.

Jesse Jackson, a syndicated columnist, once was a candidate for the Democratic presidential nomination.



Jesse Jackson

Syndicated columnist

Let's invest in people, not prisons

by Chase Riveland

There are two Washingtons. One is the site of the nation's capital, powerful politics, numerous memorials and the Washington Redskins. The other, in the Pacific Northwest, is the site of Mount Rainier, Puget Sound, abundant rainfall and the Seattle Seahawks.

Separated by radically different history — almost 3,000 miles, the two Washingtons do have some similarities. Both Washingtons have citizens who are alarmed at daily reports of escalating crime, violence and drug use. Both Washingtons are struggling to find solutions for these very frightening social problems — neither very effectively.

Indeed, Western Washington has passed laws lengthening sentences for drug offenders, sex offenders and residential burglars. In November, a people's initiative, called "Three Strikes, You're Out," passed overwhelmingly. The legislation will mandate sentences of life without parole for any person convicted of three violent felonies.

Gov. Lowry has said that if the trend of incarceration continues, "... every citizen in the state of Washington will either be in or working in a prison by the year 2056."

Absent from Washington state has been an environment conducive to a debate on what should be done to address these issues. Incarceration has been the dominant solution. Indeed, elected officials in Washington state, like elected officials in most states, have been elected out of fear of not being re-elected if they're not tough on crime.

Meanwhile, in the other Washington, by one of the highest crime rates in the Western world, nationally elected officials have put in place a sentencing scheme that includes mandatory minimum sentences so severe that they are questioned by many judges, prosecutors, lay persons and the U.S. Attorney General Janet Reno.

It is resulting in an outrageously disproportionate incarceration rate for minority groups, severe overcrowding of federal prisons and an enormous consumption of resources by the justice system.

That it is yet half a century home, the U.S. Senate

passed an "omnibus" crime bill that, among other things, would incarcerate some teenagers in the adult prison system, federalize a number of crimes now dealt with in state courts, build billions of dollars worth of regional prisons and require states to lengthen the amount of time served for a large number of offenders.

In their rush to bely-up to the tough-on-crime image, they passed what could only be termed drive-by legislation.

It is clear that few of the U.S. senators who voted for the crime bill must be spending much time back in their districts. If they were, they would know that most state and local budgets have been consumed by criminal justice costs in general and correctional costs in particular.

Prisons recently built for hundreds of millions of dollars are sitting unoccupied in many states, including Washington, Connecticut and California. The enormous cost of running prisons is catching up to officials whose vision does not exceed the next election. Instead, officials in both Washingtons are now searching for a less expensive silver bullet. "Let's do boot camps," say both Washingtons. "Let's do it cheaper."

In both Washingtons, the public

continues to be reinforced with the political rhetoric that the more people that are incarcerated, the safer everyone will be.

What are we missing? In both Washingtons, we are missing leadership in demanding that we address the issues of crime and punishment rationally.

A group called the Campaign for an Effective Crime Policy is supported by nearly 700 people from around the country, including present and former governors, present and former attorneys general and prosecutors, correctional administrators, law enforcement officials and citizens. Their call is simple: a rational debate on crime and punishment.

The call is important in both Washingtons. Neither Washington can afford the diversion of funds needed for critical societal and environmental problems to unneeded incarceration. Neither Washington should lead its citizens into the false belief that incarceration can solve crime, violence and substance abuse problems.

Neither Washington can afford to punish nonviolent people in costly incarceration settings when we know there are better, less costly punishments.

Washingtons to — should — eradicate fear, v —

crime, but political leadership will be required, at some risk, to accomplish that in both places.

It took years, many deaths and much national pain to bring the nation out of the Vietnam War. Political careers were made and lost during the struggle. The same may be said of similar societal issues of health care, welfare reform and others.

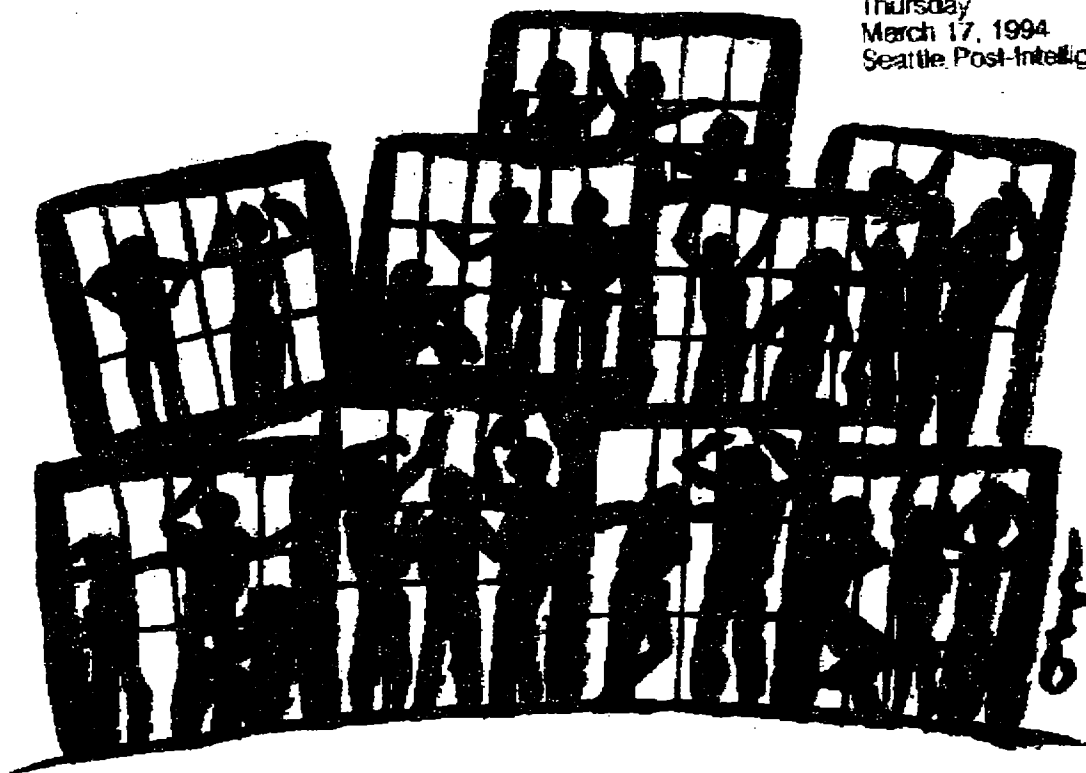
The question of curiosity may be, who will take the lead in figuring out responsible positions — the Washington of Puget Sound or the Washington of the Potomac? Will the leadership arise from a president or a governor, a Congress or a legislature?

Both must come to the conclusion at some point that prisons must be treated as scarce, costly resources and that our investments must be in people — not institutions. We should incarcerate people who are violent, predatory and unredeemable. We must make research, technology and compassion available to address the remainder.

The challenge is not to have drive-by legislation. It is to have thoughtful, risk-taking, pragmatic leadership.

Stand up, Washington.

Chase Riveland is secretary of the Washington State Department of Corrections.



Thursday
March 17, 1994
Seattle Post-Intelligencer

SENT BY:

5-27-94 : 1:17PM :

2024566423: #28

P-1
Op Ed
5-25-94

What has been ignored in this clamor to respond to violence is a consideration of the single most exhaustive research project conducted in our country to better understand and prevent violence.

According to the research panel, among the most critical socioeconomic risk factors are the following three items: (1) concentrations of poor families in certain geographic areas, (2) indicators of social disorganization, such as community transition, family disruption and population turnover (all of which bear on the ability of a community to supervise young males), and (3) opportunities associated with violence, including illegal drug and firearms markets. Interestingly, the panel found gangs to be so diverse as to make generalizations difficult. A promising approach they cite is "to focus on the places where violence occurs." For example, they note that 98 percent of all Minneapolis addresses generated no robbery calls to police, but 8 addresses generated 30 calls each.

Over 80 percent of the firearms used in crimes are obtained by theft or unregulated transactions. The panel recommends a number of strategies for enforcing laws governing purchase and ownership of firearms. Just as police disrupt illegal drug markets, so should illegal gun markets be targeted. Make guns less available in high-risk situations, such as with unsupervised juveniles, homes with histories of family violence and "fighting bars." Educational, technological and regulatory strategies can be created to change the way that handguns are used and stored.

According to the National Academy of Science's report, the greatest potential for improved understanding and control of violence is a systematic problem-solving strategy of innovation — diagnosing specific problems, designing preventive interventions, evaluating them, using the results to refine them and replicating projects elsewhere.

Many of the proposals being considered at the federal, state and local levels bear little resemblance to the comprehensive, empirically-validated recommendations discussed above. In addition, many of the proposals identified and supported by the research panel are nowhere to be found among the current policy prescriptions. While incarcerating the truly dangerous and holding all violent offenders accountable for their behavior must serve as the starting point for any rational anti-violence strategy, policy-makers must avoid the politically expedient response of simply "getting tough" at the expense of proven prevention approaches.

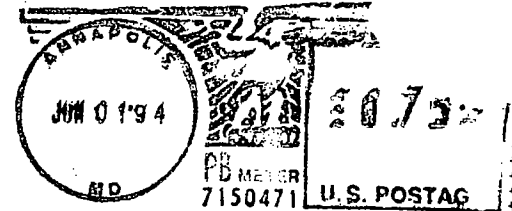
Crime and violence policy need not be guided by political values and rhetoric alone. The most important tool in reducing violence is frequently the least appreciated — objective information concerning the nature of violence and what works to help reduce its unacceptable levels in our homes, schools and communities.

■ Larry Fehr is executive director of the Washington Council on Crime and Delinquency. He is an adjunct professor in the Department of Criminal Justice at Seattle University. For the past year he has also served as chair of the Public Policy Committee of the state's Stop Youth Violence Advisory Committee.



KK HB 1112 + printouts
Department of Legislative Reference

General Assembly of Maryland
Legislative Services Building
90 State Circle
Annapolis, Maryland 21401-1991



*Mr. Greg Taylor
White House Counsel
Room 128
Old Executive Office Building
Washington, D.C. 20500*

LEGISLATIVE HISTORY / BILL SYNOPSIS

hb 1112 1994 Regular Session
PRIMARY SPONSOR: Genn, Gilbert J., Delegate District 16
SHORT TITLE: Crimes of Violence - Mandatory Sentencing - Parole

COMMENT: Session Laws, Chapter 717
FISCAL IMPACT: Fiscal Note available
SYNOPSIS:

Establishing that a person who is convicted for a second time of a "crime of violence" is subject to a mandatory sentence of a certain number of years under certain circumstances; providing an exception to the prohibition against parole for inmates of a certain age under certain circumstances; requiring the Parole Commission to adopt regulations; prohibiting persons convicted of certain violent crimes from being paroled until having served a certain portion of a sentence; etc.

HOUSE

2/04 lrg jud
2/09 hrg 2/22 at 1:00 p.m.
3/28 fwa rpt by jud
3/26 fwa rpt adp
3/26 2rg pwa
3/27 3rg pas (135-1)
4/10 hse con sen amds
4/10 3rg pas (119-0)
4/10 pas enr

SENATE

3/30 lrg sru
4/06 rrf jpr
4/06 hrg 4/07 at 1:00 p.m.
4/11 fwa rpt by jpr
4/10 fwa rpt adp
4/10 2rg pwa
mot 2rdgs same day
Const/Rule 24 (Baker) adp
4/10 3rg pwa (39-0)

5/26 GOV app Chapter 717

***** END OF LEGISLATIVE HISTORY *****

..... END REPORT

BILL TITLE TEXT

HB 1112 LR 1829 1994 Regular Session

BY: Delegates Genn, Thomas, Arrington, Harkins, Dembrow, Preis, Menes, DePazzo, Ehrlich, Petzold, Dypski, Maddox, Braun, Bissett, Brewster, and Montague Montague, Huff, Sauerbrey, Littrell, Gary, Franks, Albin, Madden, Douglass, Smith-Anderson, La Vay, Klima, Astle, Edwards, Stup, Sophocleus, Redmer, Morgan, McClenahan, Dewberry, Dixon, and Davis

AN ACT concerning

~~Habitual Offenders --- Mandatory Sentencing --- Crimes of~~
Violence Crimes of Violence - Mandatory Sentencing -
Parole

FOR the purpose of establishing that a person who is convicted a ~~third~~ second time of a "crime of violence" ~~as defined in the Annotated Code; may be~~ is subject to a mandatory sentence of life imprisonment without the possibility of parole if the person has served ~~two separate terms of confinement as a result of two separate convictions of any crime of violence a certain number of years under certain circumstances; altering the definition of "crime of violence"; providing for the application of the definition of "crime of violence" in this Act; and generally relating to the mandatory sentencing of habitual offenders of crimes of violence making a technical correction; requiring the State to proceed against certain defendants as subsequent offenders under certain circumstances; allowing the State to proceed against certain defendants as subsequent offenders under certain circumstances; providing an exception to the prohibition against parole for inmates of a certain age under certain circumstances; requiring the Parole Commission to adopt certain regulations; providing that parole hearings be open to the public under certain circumstances; requiring the Parole Commission to make certain records available to the public and deny admission or attendance to parole hearings under certain circumstances; providing for the closing of parole hearings under certain circumstances; prohibiting persons convicted of certain violent crimes from being paroled until having served a certain portion of a sentence; requiring persons convicted of certain violent crimes to be given a certain hearing after having served a certain portion of a sentence; making~~

..... END REPORT

certain stylistic and clarifying changes; providing an exception to the prohibition against parole for inmates of a certain age under certain circumstances; requiring the Parole Commission to adopt certain regulations; providing that parole hearings be open to the public under certain circumstances; requiring the Parole Commission to make certain records available to the public and deny admission or attendance to parole hearings under certain circumstances; providing for the closing of parole hearings under certain circumstances; prohibiting the granting of credit to an inmate for the time between release on parole and revocation of parole under certain circumstances; prohibiting persons convicted of certain violent crimes from being paroled until having served a certain portion of a sentence; requiring persons convicted of certain violent crimes to be given a certain review after having served a certain portion of a sentence; and generally relating to parole and crimes of violence.

BY repealing and reenacting, with amendments,
Article 27 - Crimes and Punishments
Section 643B 643B(b), (c), and (d)
Annotated Code of Maryland
(1992 Replacement Volume and 1993 Supplement)

BY adding to
Article 27 - Crimes and Punishments
Section 643B(e) and (f), (f), and
(g)
Annotated Code of Maryland
(1992 Replacement Volume and 1993 Supplement)

BY repealing and reenacting, with amendments,
Article 41 - Governor - Executive and Administrative Departments
Section 4-507 and 4-516 4-507,
4-511(d), and 4-516
Annotated Code of Maryland
(1993 Replacement Volume)

***** END OF BILL TITLE TEXT *****

..... END REPORT

MARYLAND GENERAL ASSEMBLY -- BILL STATUS SYSTEM

FISCAL NOTE

(Prepared by Department of Fiscal Services)

hb 1112

1994 Regular Session

HB 1112

House Bill 1112 (Delegate Genn et al.)

Judiciary

Referred to Judicial Proceedings

Crimes of Violence - Mandatory Sentencing - Parole

This enrolled bill makes the following changes to current law regarding parole, probation, and persons convicted of violent offenses:

- o imposes a mandatory minimum 10 year sentence for a person convicted of a second violent crime;
- o allows the Parole Commission to grant parole to an inmate who is at least 65 years old, has served 15 years incarceration, and has petitioned for parole;
- o requires parole hearings to be open to the public when requested by a victim of violent crime; makes the vote of the Parole Commissioners public; explicitly permits parole hearings via teleconferencing; and lists persons to whom the Commission may deny admission;
- o provides that prisoners sentenced for violent crimes must serve at least 50% of their sentences (up from 25%) before being eligible for parole; and
- o requires the Parole Commission to hold a review hearing for an inmate convicted of violent crimes after serving 25% of the sentence unless the inmate is not eligible for parole.

STATE IMPACT: State expenditures would increase by an estimated \$29.1 million annually, beginning in fiscal 1995. Capital construction costs would exceed \$92 million.

| | |
|----------------------------------|-----------------|
| Office of the Public Defender | \$ 0.4 million |
| Additional circuit court judges | 2.8 million |
| Increased prison operating costs | 25.9 million |
| | \$ 29.1 million |

In addition to these annual operating costs, significant capital expenditures would be required for construction of one new prison (at least \$92.5 million), and for construction of public meeting rooms for the Parole Commission in each existing prison.

LOCAL IMPACT: Local expenditures could increase by \$900,000 as discussed

..... END REPORT

below. Revenues are not affected.

STATE REVENUES: No effect.

STATE EXPENDITURES: This bill has several parts which have a significant fiscal impact, as discussed below.

Parole Commission Hearings Open to the Public

The Parole Commission expects to hear approximately 16,354 inmates in fiscal 1995. Approximately 700 current cases require victim notification of parole-related actions. Opening these hearings to the public would involve significant expense to the Department of Public Safety and Correctional Services.

Parole hearings are currently held inside Division of Correction facilities. The Division reports it is unable to estimate the cost of renovations required to accommodate open hearings. The Parole Commission estimates that the time involved in scheduling hearings, data entry, coordination with the Division of Correction, and longer hearings to explain the proceedings to the audience would require one additional Commissioner and three additional staff, at a cost in fiscal 1995 of \$251,369.

The Department of Fiscal Services advises that operational costs of this provision would be minimal, but significant capital costs could be necessary. Each Division facility would have to be remodeled to provide hearing rooms with adequate security to protect all parties. Once these facilities are established, there should be only minimal costs associated with their use. Attendees at hearings could be screened by Division of Correction officers who screen prison visitors. As the bill does not provide for any additional procedures, it is doubtful that open hearings would take any longer than closed hearings. Without information from the Division of Correction, the Department of Fiscal Services is unable to estimate capital costs to construct hearing rooms at each facility.

Mandatory Minimum Sentences for Repeat Violent Offenders

This bill imposes a mandatory 10-year sentence for a second violent offense.

Division of Correction: The Division of Correction advises that in fiscal 1993 there were 1,904 persons admitted to Division facilities for violent offenses with an average sentence of 10 years. The Division does not know how many of these were for second offenses. For illustrative purposes, if it is assumed that one-third of the violent offenders were sentenced for a second violent offense, and 50% of them were sentenced to ten years or less, with an average sentence of five years, this bill would require incarcerating approximately 317 inmates an additional 30 months under the mandatory 10-year sentence provision. Keeping 317 prisoners incarcerated for an additional 30 months would add 793 inmates to the average daily population in Division facilities (317 inmates X 30 months divided by 12 months in a year). It costs an estimated \$16,764 in fiscal 1995 to keep one prisoner incarcerated, so adding 793 could increase general fund expenditures by \$13.3 million by fiscal 2000.

There would be some savings for the Parole Commission in that the number of

..... END REPORT

hearings per year would be reduced until fiscal 2000, but this reduction is not expected to directly affect State expenditures.

Inmates who are released after serving mandatory minimum sentences would still be supervised by the Division of Parole and Probation. While case loads may drop slightly during the years 1995 to 2000, they would return to normal levels after that time. This is not expected to have any direct impact on State expenditures.

Office of the Public Defender: The Office of the Public Defender advises that mandating minimum sentences for repeat violent offenders would discourage defendants from plea bargaining and increase the number of trials. The bill also eliminates prosecutorial discretion, further discouraging plea bargaining. The Office projects an increase of 2,300 trials annually, a 35% increase. As a result, Public Defender expenditures could increase by an estimated \$424,869 in fiscal 1995 due to the costs associated with hiring six public defenders and related support staff. This estimate reflects the October 1, 1994 effective date and includes salaries of \$282,082, fringe benefits at 33% of salaries, one-time start-up costs, and operating expenses.

Judiciary: In fiscal 1993 there were 4,426 criminal bench trials and 1,795 criminal jury trials. An additional 2,300 trials would strain the resources of the circuit courts and could require additional circuit court judges. On average, each judge holds approximately 50 criminal trials annually. While this would appear to require an additional 50 judges, the actual number would be approximately 18, as criminal trials represent only about 40% of a judge's trial load. At an annual salary of \$89,000 and fringe benefits at 77.47% of salaries, State expenditures would increase by \$2.8 million.

Parole Eligibility for Violent Offenders

In calendar 1992 350 inmates convicted of violent crimes were released on parole prior to serving 50% of their sentences. On average, these inmates were released 18 months before reaching the 50% mark. The Division of Correction advises that this data was for prisoners sentenced between 1982 and 1987. Since the mid-1980s, the number of inmates entering Division facilities convicted of violent crimes has increased significantly. The Division estimates the change in parole eligibility would currently affect 500 inmates per year. Keeping 500 prisoners incarcerated for an additional 18 months would add 750 inmates to the average daily population in Division facilities (500 inmates X 18 months divided by 12 months in a year). It costs an estimated \$16,764 in fiscal 1995 to keep one prisoner incarcerated, so adding 750 could increase general fund expenditures by \$12.6 million per year.

HB 1112
Page 3

Parole Eligibility for Geriatric Inmates

The bill requires the Parole Commission to hold parole hearings for inmates over 65 years old who have been incarcerated for 15 years or more. As of early February 1994 there were 57 inmates over the age of 65. Even assuming all of these inmates have been in prison for more than 15 years and they all request hearings, any increase in costs to the Parole Commission is expected to be minimal. On the other hand, reducing the number of geriatric inmates in Division of Correction facilities could reduce Division expenses. Any such decrease, however, is assumed to be minimal.

..... END REPORT

Prison Construction

The provisions of this bill would increase the average daily prison population by 1,543 and thus would require construction of at least one new prison. For illustrative purposes, the Western Correctional Institute under construction in Allegany County will hold 1,296 inmates and costs an estimated \$92.5 million. Based on this, a new prison would cost an estimated \$92.5 million, unadjusted for inflation. Operating costs for one prison is estimated at \$25.9 million per year, based on the fiscal 1995 average cost of \$16,764 per prisoner per year.

Summary

Opening Parole Commission hearings to the general public would have significant initial costs to establish secure hearing rooms in Division of Correction facilities, but concomitant operating costs are expected to be minimal.

Adding 1,543 inmates to the Division of Correction could require construction of one new prison and would cost at least \$92.5 million. Operating costs for those prisons would be approximately \$25.9 million annually.

Costs to the Public Defender could increase by \$424,869 as mandatory minimum sentences for repeat offenders result in a decrease in plea bargaining, requiring additional trials. Additional circuit court judges could cost an additional \$2.8 million.

LOCAL REVENUES: No effect.

LOCAL EXPENDITURES: Under current law, persons sentenced to one year or less serve their sentences in local detention centers. Under the bill, persons convicted of a second violent offense are subject to a mandatory five-year sentence. To the extent these offenders would have been sentenced to one year or less, local expenditures could decrease. Any such decrease is expected to be minimal.

HB 1112
Page 4

The Office of the Public Defender advises that this provision would require significant additional resources, as more defendants facing mandatory minimum sentences would refuse to plea bargain and demand full trials. The Public Defender estimates the number of criminal trials could increase by as much as 35%. This would increase case loads for the State's Attorneys and the circuit courts, requiring additional prosecutorial and judicial resources to accommodate an estimated 18 judges and 2,300 trials. Assuming an average support staff cost per judge of \$50,000, mandated expenditures would increase by \$900,000 annually.

INFORMATION SOURCE: Department of Public Safety and Correctional Services (Division of Correction, Parole Commission); Office of the Public Defender; Department of Fiscal Services

Fiscal Note History: First Reader - February 17, 1994
Revised - House Third Reader - April 5, 1994
Revised - Enrolled Bill - April 25, 1994

***** END OF FISCAL NOTE *****

..... END REPORT

HOUSE BILL 1112

E2

(4lr1829)

ENROLLED BILL

— Judiciary/Judicial Proceedings —

Introduced by Delegates Genn, Thomas, Arrington, Harkins, Dembrow, Preis, Menes, DePazzo, Ehrlich, Petzold, Dypski, Maddox, Braun, Bissett, Brewster, ~~and Montague~~ Montague, Huff, Sauerbrey, Littrell, Gary, Franks, Albin, Madden, Douglass, Smith-Anderson, La Vay, Klima, Astle, Edwards, Stup, Sophocleus, Redmer, Morgan, McClenahan, Dewberry, Dixon, and Davis

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER **0717**

MAY 26 '94

1 AN ACT concerning

APPROVED BY THE GOVERNOR

2 ~~Habitual Offenders — Mandatory Sentencing — Crimes of Violence~~ Crimes of Violence —
3 Mandatory Sentencing — Parole

4 FOR the purpose of establishing that a person who is convicted a ~~third~~ second time of a
5 "crime of violence" ~~as defined in the Annotated Code, may be~~ is subject to a
6 mandatory sentence of life imprisonment ~~without the possibility of parole if the~~
7 ~~person has served two separate terms of confinement as a result of two separate~~
8 ~~convictions of any crime of violence~~ a certain number of years under certain
9 circumstances; altering the definition of "crime of violence"; providing for the
10 application of the definition of "crime of violence" in this Act; and generally
11 relating to the mandatory sentencing of habitual offenders of crimes of violence
12 making a technical correction; requiring the State to proceed against certain
13 defendants as subsequent offenders under certain circumstances; allowing the State
14 to proceed against certain defendants as subsequent offenders under certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



~~circumstances; providing an exception to the prohibition against parole for inmates of a certain age under certain circumstances; requiring the Parole Commission to adopt certain regulations; providing that parole hearings be open to the public under certain circumstances; requiring the Parole Commission to make certain records available to the public and deny admission or attendance to parole hearings under certain circumstances; providing for the closing of parole hearings under certain circumstances; prohibiting persons convicted of certain violent crimes from being paroled until having served a certain portion of a sentence; requiring persons convicted of certain violent crimes to be given a certain hearing after having served a certain portion of a sentence; making certain stylistic and clarifying changes; providing an exception to the prohibition against parole for inmates of a certain age under certain circumstances; requiring the Parole Commission to adopt certain regulations; providing that parole hearings be open to the public under certain circumstances; requiring the Parole Commission to make certain records available to the public and deny admission or attendance to parole hearings under certain circumstances; providing for the closing of parole hearings under certain circumstances; prohibiting the granting of credit to an inmate for the time between release on parole and revocation of parole under certain circumstances; prohibiting persons convicted of certain violent crimes from being paroled until having served a certain portion of a sentence; requiring persons convicted of certain violent crimes to be given a certain review after having served a certain portion of a sentence; and generally relating to parole and crimes of violence.~~

BY repealing and reenacting, with amendments,

Article 27 – Crimes and Punishments

Section ~~643B~~ 643B(b), (c), and (d)

Annotated Code of Maryland

(1992 Replacement Volume and 1993 Supplement)

BY adding to

Article 27 – Crimes and Punishments

Section 643B(e) ~~and (f), (f), and (g)~~

Annotated Code of Maryland

(1992 Replacement Volume and 1993 Supplement)

BY repealing and reenacting, with amendments,

Article 41 – Governor – Executive and Administrative Departments

Section ~~4-507 and 4-516~~ 4-507, 4-511(d), and 4-516

Annotated Code of Maryland

(1993 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article 27 – Crimes and Punishments

~~643B:~~

(a) ~~As used in this section, the term "crime of violence" means abduction; arson in the first degree; [burglary; daytime housebreaking under § 30(b) of this article;] kidnapping; manslaughter, except involuntary manslaughter; mayhem and maiming under §§ 384, 385, and 386 of this article; murder; rape; robbery; robbery with a deadly weapon; earjacking or armed earjacking; sexual offense in the first degree; sexual offense in the second degree; use of a handgun in the commission of a felony or other crime of violence; an attempt to commit any of the aforesaid offenses; assault with intent to murder; assault with intent to rape; assault with intent to rob; assault with intent to commit a sexual offense in the first degree; and assault with intent to commit a sexual offense in the second degree.~~

~~The term "correctional institution" includes Patuxent Institution and a local or regional jail or detention center.~~

~~(b) Any (1) EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, ANY person who has served [three] TWO separate terms of confinement in a correctional institution as a result of [three] TWO separate convictions of any crime of violence shall be sentenced, on being convicted a [fourth] THIRD time of a crime of violence, to life imprisonment without the possibility of parole. Regardless of any other law to the contrary, the provisions of this section SUBSECTION are mandatory.~~

~~(c) (1) IN THIS SUBSECTION "CRIME OF VIOLENCE" INCLUDES, IN ADDITION TO THOSE CRIMES LISTED IN SUBSECTION (A) OF THIS SECTION, BURGLARY AND DAYTIME HOUSEBREAKING UNDER § 30(B) OF THIS ARTICLE.~~

~~(2) Any EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, ANY person who [(1)] (I) has been convicted on two separate occasions of a crime of violence where the convictions do not arise from a single incident, and [(2)] (II) has served at least one term of confinement in a correctional institution as a result of a conviction of a crime of violence, shall be sentenced, on being convicted a third time of a crime of violence, to imprisonment for the term allowed by law, but, in any event, not less than 25 years. Neither the sentence nor any part of it may be suspended THE COURT MAY NOT SUSPEND ALL OR PART OF THE MANDATORY 25 YEAR SENTENCE REQUIRED UNDER THIS SUBSECTION, and the person shall not be eligible for parole except in accordance with the provisions of Article 31B, § 11. A separate occasion shall be considered one in which the second or succeeding offense is committed after there has been a charging document filed for the preceding occasion.~~

~~(d) ANY PERSON WHO HAS BEEN CONVICTED ON A PRIOR OCCASION OF A CRIME OF VIOLENCE, INCLUDING A CONVICTION FOR AN OFFENSE COMMITTED BEFORE OCTOBER 1, 1994, AND HAS SERVED A TERM OF CONFINEMENT IN A CORRECTIONAL INSTITUTION FOR THAT CONVICTION SHALL BE SENTENCED, ON BEING CONVICTED A SECOND TIME OF A CRIME OF VIOLENCE COMMITTED ON OR AFTER OCTOBER 1, 1994, TO IMPRISONMENT FOR THE TERM ALLOWED BY LAW, BUT, IN ANY EVENT, NOT LESS THAN 10 YEARS. THE COURT MAY NOT SUSPEND ALL OR PART OF THE MANDATORY 10 YEAR SENTENCE REQUIRED UNDER THIS SUBSECTION. If the State intends to proceed against a person as a subsequent offender under this section, it shall comply with the procedures set forth in the Maryland Rules for the indictment and trial of a subsequent offender.~~

~~(E) (1) THE STATE SHALL PROCEED AGAINST A PERSON WHO QUALIFIES AS A SUBSEQUENT OFFENDER UNDER SUBSECTIONS (B) AND (C) OF THIS SECTION AND SHALL NOTIFY THE DEFENDANT OF THE TIME AND PLACE OF THE PRIOR QUALIFIED CONVICTIONS.~~

~~(2) THE STATE MAY PROCEED AGAINST A PERSON WHO QUALIFIES AS A SUBSEQUENT OFFENDER UNDER SUBSECTION (D) OF THIS SECTION AFTER COMPLYING WITH THE PRETRIAL NOTICE REQUIREMENTS OF THE MARYLAND RULES.~~

~~(F) (1) ANY PERSON SENTENCED UNDER THE PROVISIONS OF THIS SECTION WHO IS AT LEAST 65 YEARS OLD AND HAS SERVED AT LEAST 15 YEARS OF THE SENTENCE IMPOSED MAY PETITION FOR AND BE GRANTED PAROLE.~~

~~(2) THE MARYLAND PAROLE COMMISSION SHALL ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS PARAGRAPH.~~

~~Article 41 — Governor — Executive and Administrative Departments~~

~~4-507.~~

~~(a) The Commission or its hearing examiners shall hear cases for parole release at least once each month at penal institutions under the Division of Correction and as often as necessary at other places of penal confinement within this State at which inmates eligible for parole consideration are confined.~~

~~(b) The Commission may adopt rules and regulations for the conduct of proceedings before it and the hearing examiners.~~

~~(C) (1) A VICTIM OF A VIOLENT CRIME WHO HAS MADE A WRITTEN REQUEST FOR NOTIFICATION UNDER § 4-504 OF THIS SUBTITLE MAY REQUEST IN WRITING AT LEAST 30 DAYS BEFORE A SCHEDULED HEARING FOR THE INMATE CONVICTED OF THE VIOLENT CRIME THAT THE HEARING BEFORE THE COMMISSION OR THE HEARING EXAMINERS BE OPEN TO THE PUBLIC.~~

~~(2) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, IF A VICTIM HAS MADE A REQUEST UNDER PARAGRAPH (1) OF THIS SUBSECTION, A HEARING BEFORE THE COMMISSION OR THE HEARING EXAMINERS SHALL BE OPEN TO THE PUBLIC.~~

~~(3) THE VOTE OF EACH MEMBER OF THE COMMISSION ON A FORMAL ACTION, INCLUDING AN ACTION TO CLOSE OR RESTRICT ACCESS TO A PAROLE HEARING UNDER SUBSECTION (D) OF THIS SECTION, SHALL BE MADE AVAILABLE TO THE PUBLIC.~~

~~(4) NOTHING IN THIS SECTION LIMITS THE ABILITY OF THE COMMISSION TO HOLD A PAROLE HEARING THROUGH THE USE OF VIDEO CONFERENCES OR OTHER MEANS OF ELECTRONIC TRANSMISSION.~~

~~(D) (1) THE COMMISSION MAY RESTRICT THE NUMBER OF INDIVIDUALS ALLOWED TO ATTEND A PAROLE HEARING IN ACCORDANCE WITH PHYSICAL LIMITATIONS OR SECURITY REQUIREMENTS OF THE FACILITY WHERE THE HEARING IS HELD.~~

~~(2) THE COMMISSION MAY DENY ADMISSION OR CONTINUED ATTENDANCE AT A PAROLE HEARING TO AN INDIVIDUAL WHO:~~

~~(I) THREATENS OR PRESENTS A DANGER TO THE SECURITY OF THE INSTITUTION IN WHICH THE HEARING IS BEING HELD;~~

~~(II) THREATENS OR PRESENTS A DANGER TO OTHER ATTENDEES OR PARTICIPANTS; OR~~

~~(III) DISRUPTS THE HEARING.~~

~~(3) ON FORMAL ACTION OF THE COMMISSION, THE COMMISSION MAY CLOSE A PAROLE HEARING TO:~~

~~(I) DELIBERATE UPON THE ORAL TESTIMONY AND ANY OTHER RELEVANT INFORMATION RECEIVED AT THE HEARING; OR~~

~~(II) PROVIDE AN INMATE THE OPPORTUNITY TO CHALLENGE CONFIDENTIAL INFORMATION THAT THE INMATE BELIEVES TO BE DETRIMENTAL TO THE INMATE.~~

~~(4) ON WRITTEN REQUEST OF THE CHIEF LAW ENFORCEMENT OFFICIAL RESPONSIBLE FOR AN ONGOING CRIMINAL INVESTIGATION RELATED TO THE INMATE, AFTER FORMAL ACTION OF THE COMMISSION, THE COMMISSION MAY HOLD A CLOSED PAROLE HEARING IF THE ONGOING INVESTIGATION COULD BE COMPROMISED.~~

~~SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:~~

~~Article 41—Governor—Executive and Administrative Departments~~
~~4-516.—~~

~~(a) It shall be the duty of the Commission of its own initiative to request the Division to make such investigation as may enable the Commission to determine the advisability of granting parole to persons sentenced to a term of 6 months or more under the laws of this State to the jurisdiction of the Division of Correction, or to any other place of confinement or detention of violators of the criminal laws of the State whenever the prisoner shall have served in confinement one fourth of the term or consecutive terms.~~

~~(b) A person who has been sentenced to more than [1] ONE term of confinement, including a term during which the person is eligible for parole and a term during which the person is not eligible for parole, [shall be] IS NOT eligible for parole consideration under subsection (a) of this section [after] UNTIL the person has served the greater of:~~

HOUSE BILL 1112

~~(1) One fourth of the aggregate terms sentenced; or~~

~~(2) A period of time equal to the term during which the person is not eligible for parole.~~

~~(e) (1) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (A) OF THIS SECTION, A PERSON WHO HAS BEEN SENTENCED TO THE DIVISION OF CORRECTION AFTER BEING CONVICTED OF A VIOLENT CRIME IS NOT ELIGIBLE FOR PAROLE UNTIL THE PERSON HAS SERVED ONE HALF OF THE TERM OR CONSECUTIVE TERMS.~~

~~(2) A PERSON WHO HAS BEEN SENTENCED TO THE DIVISION OF CORRECTION AFTER BEING CONVICTED OF A VIOLENT CRIME AND WHO HAS BEEN SENTENCED TO MORE THAN ONE TERM OF CONFINEMENT, INCLUDING A TERM DURING WHICH THE PERSON IS ELIGIBLE FOR PAROLE AND A TERM DURING WHICH THE PERSON IS NOT ELIGIBLE FOR PAROLE, IS NOT ELIGIBLE FOR PAROLE UNTIL THE PERSON HAS SERVED THE GREATER OF:~~

~~(I) ONE HALF OF THE AGGREGATE TERMS SENTENCED; OR~~

~~(II) A PERIOD OF TIME EQUAL TO THE TERM DURING WHICH THE PERSON IS NOT ELIGIBLE FOR PAROLE.~~

~~(3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, A PERSON WHO IS SERVING A TERM OF CONFINEMENT FOR A VIOLENT CRIME SHALL RECEIVE A HEARING TO REVIEW THE INMATE'S PROGRESS IN THE INSTITUTION AFTER THE PERSON HAS SERVED ONE FOURTH OF THE TERM OF CONFINEMENT.~~

~~(II) A PERSON WHO IS SERVING A TERM OF CONFINEMENT THAT INCLUDES A MANDATORY TERM DURING WHICH THE PERSON IS NOT ELIGIBLE FOR PAROLE NEED NOT BE GIVEN A HEARING UNDER THIS PARAGRAPH UNTIL THE PERSON HAS SERVED THE PERIOD OF CONFINEMENT DURING WHICH THE PERSON IS NOT ELIGIBLE FOR PAROLE.~~

~~(D) (1) Except as provided in paragraphs (2) and (3) of this subsection, a person who has been sentenced to life imprisonment is not eligible for parole consideration until the person has served 15 years or the equal of 15 years when considering the allowances for diminution of period of confinement provided for in Article 27, § 700 and Article 27, § 638C, of the Code.~~

~~(2) A person who has been sentenced to life imprisonment as a result of a proceeding under Article 27, § 413 is not eligible for parole consideration until the person has served 25 years or the equal of 25 years when considering the allowances for diminution of period of confinement provided for in Article 27, § 700 and Article 27, § 638C, of the Code.~~

~~(3) (i) If a person is sentenced to imprisonment for life without the possibility of parole under Article 27, § 412 or § 413 of the Code, the person is not eligible for parole consideration and may not be granted parole at any time during the term of the sentence.~~

~~(ii) Nothing contained in this paragraph may be construed to restrict the authority of the Governor to pardon or remit any part of a sentence under the provisions of § 4-513 of this article.~~

~~(4) If eligible for parole under this subsection, an inmate serving a term of life imprisonment and a person serving a term of life imprisonment who is confined at Patuxent Institution as an eligible person shall only be paroled with the approval of the Governor.~~

~~643B.~~

(b) [Any] EXCEPT AS PROVIDED IN SUBSECTIONS (F) AND (G) OF THIS SECTION, ANY person who has served three separate terms of confinement in a correctional institution as a result of three separate convictions of any crime of violence shall be sentenced, on being convicted a fourth time of a crime of violence, to life imprisonment without the possibility of parole. Regardless of any other law to the contrary, the provisions of this [section] SUBSECTION are mandatory.

(c) [Any] EXCEPT AS PROVIDED IN SUBSECTIONS (F) AND (G) OF THIS SECTION, ANY person who (1) has been convicted on two separate occasions of a crime of violence where the convictions do not arise from a single incident, and (2) has served at least one term of confinement in a correctional institution as a result of a conviction of a crime of violence, shall be sentenced, on being convicted a third time of a crime of violence, to imprisonment for the term allowed by law, but, in any event, not less than 25 years. [Neither the sentence nor any part of it may be suspended] THE COURT MAY NOT SUSPEND ALL OR PART OF THE MANDATORY 25-YEAR SENTENCE REQUIRED UNDER THIS SUBSECTION, and the person shall not be eligible for parole except in accordance with the provisions of Article 31B, § 11. A separate occasion shall be considered one in which the second or succeeding offense is committed after there has been a charging document filed for the preceding occasion.

(d) EXCEPT AS PROVIDED IN SUBSECTION (G) OF THIS SECTION, ANY PERSON WHO HAS BEEN CONVICTED ON A PRIOR OCCASION OF A CRIME OF VIOLENCE, INCLUDING A CONVICTION FOR AN OFFENSE COMMITTED BEFORE OCTOBER 1, 1994, AND HAS SERVED A TERM OF CONFINEMENT IN A CORRECTIONAL INSTITUTION FOR THAT CONVICTION SHALL BE SENTENCED, ON BEING CONVICTED A SECOND TIME OF A CRIME OF VIOLENCE COMMITTED ON OR AFTER OCTOBER 1, 1994, TO IMPRISONMENT FOR THE TERM ALLOWED BY LAW, BUT, IN ANY EVENT, NOT LESS THAN 10 YEARS. THE COURT MAY NOT SUSPEND ALL OR PART OF THE MANDATORY 10-YEAR SENTENCE REQUIRED UNDER THIS SUBSECTION.

(E) If the State intends to proceed against a person as a subsequent offender under this section, it shall comply with the procedures set forth in the Maryland Rules for the indictment and trial of a subsequent offender.

(F) (1) ANY PERSON SENTENCED UNDER THE PROVISIONS OF THIS SECTION WHO IS AT LEAST 65 YEARS OLD AND HAS SERVED AT LEAST 15 YEARS OF THE SENTENCE IMPOSED MAY PETITION FOR AND BE GRANTED PAROLE.

(2) THE MARYLAND PAROLE COMMISSION SHALL ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SUBSECTION.

1 (G) IF A PERSON IS SENTENCED TO DEATH, THE PROVISIONS OF THIS SECTION
2 DO NOT APPLY.

3 **Article 41 – Governor – Executive and Administrative Departments**

4 **4-507.**

5 (a) The Commission or its hearing examiners shall hear cases for parole release at
6 least once each month at penal institutions under the Division of Correction and as often as
7 necessary at other places of penal confinement within this State at which inmates eligible for
8 parole consideration are confined.

9 (b) The Commission may adopt rules and regulations for the conduct of proceedings
10 before it and the hearing examiners.

11 (C) (1) IF A VICTIM OF A VIOLENT CRIME MAKES A WRITTEN REQUEST FOR
12 NOTIFICATION UNDER § 4-504 OF THIS SUBTITLE AND ALSO MAKES A WRITTEN REQUEST
13 WITHIN A REASONABLE AMOUNT OF TIME BEFORE A SCHEDULED HEARING FOR THE
14 INMATE CONVICTED OF THE VIOLENT CRIME THAT THE HEARING BEFORE THE
15 COMMISSION OR THE HEARING EXAMINERS BE OPEN TO THE PUBLIC, THE HEARING
16 SHALL BE OPEN TO THE PUBLIC.

17 (2) THE VOTE OF EACH MEMBER OF THE COMMISSION WHEN ACTING
18 COLLECTIVELY OR IN PANELS OR THE DECISION OF AN INDIVIDUAL COMMISSIONER OR
19 HEARING EXAMINER ON A FORMAL ACTION, INCLUDING AN ACTION TO CLOSE OR
20 RESTRICT ACCESS TO A PAROLE HEARING UNDER SUBSECTION (E) OF THIS SECTION,
21 SHALL BE MADE AVAILABLE TO THE PUBLIC.

22 (3) NOTHING IN THIS SECTION LIMITS THE ABILITY OF THE COMMISSION
23 TO HOLD A PAROLE HEARING THROUGH THE USE OF VIDEO CONFERENCES OR OTHER
24 MEANS OF ELECTRONIC TRANSMISSION.

25 (D) SUBJECT TO THE PROVISIONS OF SUBSECTION (E) OF THIS SECTION, THE
26 VICTIM OR VICTIM'S REPRESENTATIVE HAS THE RIGHT TO ATTEND THE HEARING.

27 (E) THE COMMISSION, A PANEL OF COMMISSIONERS, AN INDIVIDUAL
28 COMMISSIONER, OR A HEARING EXAMINER, MAY:

29 (1) RESTRICT THE NUMBER OF INDIVIDUALS ALLOWED TO ATTEND A
30 PAROLE HEARING IN ACCORDANCE WITH PHYSICAL LIMITATIONS OR SECURITY
31 REQUIREMENTS OF THE FACILITY WHERE THE HEARING IS HELD;

32 (2) DENY ADMISSION OR CONTINUED ATTENDANCE AT A PAROLE HEARING
33 TO AN INDIVIDUAL WHO:

34 (I) THREATENS OR PRESENTS A DANGER TO THE SECURITY OF THE
35 INSTITUTION IN WHICH THE HEARING IS BEING HELD;

36 (II) THREATENS OR PRESENTS A DANGER TO OTHER ATTENDEES OR
37 PARTICIPANTS; OR

38 (III) DISRUPTS THE HEARING;

1 (3) CLOSE A PAROLE HEARING ON FORMAL ACTION TO DELIBERATE UPON
2 THE ORAL TESTIMONY AND ANY OTHER RELEVANT INFORMATION RECEIVED AT THE
3 HEARING; OR

4 (4) AFTER FORMAL ACTION, HOLD A CLOSED PAROLE HEARING ON
5 WRITTEN REQUEST OF THE CHIEF LAW ENFORCEMENT OFFICIAL RESPONSIBLE FOR AN
6 ONGOING CRIMINAL INVESTIGATION RELATED TO THE INMATE, IF THE ONGOING
7 INVESTIGATION COULD BE COMPROMISED.

8 4-511.

9 (d) (1) Subject to PARAGRAPH (2) OF THIS SUBSECTION AND further action by the
10 Commission, if the order of parole is revoked, the prisoner shall serve the remainder of the
11 sentence originally imposed unless the Commission member hearing the parole revocation, in
12 [his] THE MEMBER'S discretion, grants credit for time between release on parole and
13 revocation of parole.

14 (2) A PRISONER MAY NOT RECEIVE CREDIT FOR TIME BETWEEN RELEASE
15 ON PAROLE AND REVOCATION OF PAROLE IF:

16 (I) AT THE TIME THAT PAROLE WAS REVOKED THE PRISONER WAS
17 SERVING A SENTENCE FOR A VIOLENT CRIME; AND

18 (II) THE PAROLE WAS REVOKED DUE TO A FINDING THAT THE
19 PRISONER COMMITTED A VIOLENT CRIME WHILE ON PAROLE.

20 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
21 as follows:

22 Article 41 – Governor – Executive and Administrative Departments

23 4-516.

24 (a) It shall be the duty of the Commission of its own initiative to request the Division
25 to make such investigation as may enable the Commission to determine the advisability of
26 granting parole to persons sentenced to a term of 6 months or more under the laws of this State
27 to the jurisdiction of the Division of Correction, or to any other place of confinement or
28 detention of violators of the criminal laws of the State whenever the prisoner shall have served
29 in confinement one-fourth of the term or consecutive terms.

30 (b) A person who has been sentenced to more than [1] ONE term of confinement,
31 including a term during which the person is eligible for parole and a term during which the
32 person is not eligible for parole, [shall be] IS NOT eligible for parole consideration under
33 subsection (a) of this section [after] UNTIL the person has served the greater of:

34 (1) One-fourth of the aggregate terms sentenced; or

35 (2) A period of time equal to the term during which the person is not eligible for
36 parole.

37 (C) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (A) AND (B) OF THIS
38 SECTION:

1 (1) (I) A PERSON WHO HAS BEEN SENTENCED TO THE DIVISION OF
2 CORRECTION AFTER BEING CONVICTED OF A VIOLENT CRIME IS NOT ELIGIBLE FOR
3 PAROLE UNTIL THE PERSON HAS SERVED ONE-HALF OF THE TERM OR CONSECUTIVE
4 TERMS; AND.

5 (II) A PERSON WHO HAS BEEN SENTENCED TO THE DIVISION OF
6 CORRECTION AFTER BEING CONVICTED OF A VIOLENT CRIME AND WHO HAS BEEN
7 SENTENCED TO MORE THAN ONE TERM OF CONFINEMENT, INCLUDING A TERM DURING
8 WHICH THE PERSON IS ELIGIBLE FOR PAROLE AND A TERM DURING WHICH THE PERSON
9 IS NOT ELIGIBLE FOR PAROLE, IS NOT ELIGIBLE FOR PAROLE UNTIL THE PERSON HAS
10 SERVED THE GREATER OF:

11 1. ONE-HALF OF THE AGGREGATE TERMS SENTENCED; OR

12 2. A PERIOD OF TIME EQUAL TO THE TERM DURING WHICH
13 THE PERSON IS NOT ELIGIBLE FOR PAROLE.

14 (2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
15 PARAGRAPH, A PERSON WHO IS SERVING A TERM OF CONFINEMENT FOR A VIOLENT
16 CRIME SHALL RECEIVE AN ADMINISTRATIVE REVIEW OF THE INMATE'S PROGRESS IN
17 THE INSTITUTION AFTER THE PERSON HAS SERVED ONE-FOURTH OF THE TERM OF
18 CONFINEMENT.

19 (II) A PERSON WHO IS SERVING A TERM OF CONFINEMENT THAT
20 INCLUDES A MANDATORY TERM DURING WHICH THE PERSON IS NOT ELIGIBLE FOR
21 PAROLE NEED NOT BE GIVEN A REVIEW UNDER THIS PARAGRAPH UNTIL THE PERSON
22 HAS SERVED THE PERIOD OF CONFINEMENT DURING WHICH THE PERSON IS NOT
23 ELIGIBLE FOR PAROLE.

24 ~~[(c)]~~(D) (1) Except as provided in paragraphs (2) and (3) of this subsection, a
25 person who has been sentenced to life imprisonment is not eligible for parole consideration
26 until the person has served 15 years or the equal of 15 years when considering the allowances
27 for diminution of period of confinement provided for in Article 27, § 700 and Article 27, §
28 638C, of the Code.

29 (2) A person who has been sentenced to life imprisonment as a result of a
30 proceeding under Article 27, § 413 is not eligible for parole consideration until the person has
31 served 25 years or the equal of 25 years when considering the allowances for diminution of
32 period of confinement provided for in Article 27, § 700 and Article 27, § 638C, of the Code.

33 (3) (i) If a person is sentenced to imprisonment for life without the possibility
34 of parole under Article 27, § 412 or § 413 of the Code, the person is not eligible for parole
35 consideration and may not be granted parole at any time during the term of the sentence.

36 (ii) Nothing contained in this paragraph may be construed to restrict the
37 authority of the Governor to pardon or remit any part of a sentence under the provisions of §
38 4-513 of this article.

39 (4) If eligible for parole under this subsection, an inmate serving a term of life
40 imprisonment and a person serving a term of life imprisonment who is confined at Patuxent
41 Institution as an eligible person shall only be paroled with the approval of the Governor.

HOUSE BILL 1112

11

1 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act
2 shall be construed prospectively to apply only to offenses that are committed on or after
3 the effective date of this Act and may not be applied or interpreted to have any effect on
4 or application to offenses that were committed before the effective date of this Act.

5 SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take
6 effect October 1, 1994.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.