

CRIME BIL

Three Strikes Life Imprisonment

- ◆ A significant percentage of violent crimes are committed by a small percentage of criminals. We need to enact laws around the country that will target these career predators and put them away for good. For this reason the Administration strongly supports enactment of "three strikes you're out" provisions that lock up these repeat offenders for good.

- ◆ Over thirty states are now considering three strikes provisions and they have been endorsed by governors ranging from Governor Cuomo of New York to Governor Wilson of California. A number of these provisions have been proposed in Congress and two are included in the crime bill which passed the Senate.

- ◆ We need to act quickly to pass a federal three strikes law that is both tough and smart. We should pass a law that focuses on those who commit truly violent offenses, not a law that covers offenses which every police officer would tell should not be included. What we do not need is partisanship, politics or posturing.

- ◆ The federal government also needs to assist and encourage the state efforts to pass three strikes laws. The vast majority of violent criminals are caught and punished at the state level. We need to ensure that when they are caught they are not released early.

- ◆ Federal assistance to states in this area should take two forms. By passing a tough and smart three strikes provision, the federal government can provide a model for state laws. More importantly, the federal government should provide assistance to states to create the necessary prison space so that no violent offender is ever released early for the lack of a cell.

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503**

February 28, 1994

LEGISLATIVE REFERRAL MEMORANDUM

LRM #M-1155

TO: Legislative Liaison Officer -

EOP - Review Only, See Distribution Below - () -

FROM: JAMES J. JUKES (for)
Assistant Director for Legislative Reference

OMB CONTACT: Douglas STEIGER (395-3386)
Secretary's line (for simple responses): 395-3454

SUBJECT: JUSTICE Proposed Testimony on "Three Strikes"

DEADLINE: 6:30 PM TONIGHT February 28, 1994

COMMENTS: This referral contains Justice testimony proposing the Administration's version of mandatory life imprisonment for repeat violent offenders. The hearing is tomorrow.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
C. Walden/J. Cerda
Clarissa Cerda
Ken Schwartz
Jim Duke
Harry Meyers
Bernie Martin

Draft

Mr. Chairman and members of the Subcommittee. I appreciate the opportunity to appear before you to outline the Administration's legislative proposal to require life imprisonment for persons convicted of three serious violent felonies -- what we call the "three strikes" proposal. If enacted, this proposal would send a strong message that violent crime will be punished severely. The proposal aims at the truly dangerous offenders in our society yet does not sweep so broadly as to include persons convicted of crimes that, while serious enough for significant sentences, should not result in mandatory life imprisonment.

As you know, the American people are outraged about the level of violence in our society. Studies have shown that a significant portion of violent crime is committed by a relatively small group of criminals. According to Professor Marvin Wolfgang of the University of Pennsylvania, about seven percent of males in two groups he studied committed over two-thirds of all violent crimes committed by each of the two groups.¹ At the same time many States have criminal justice systems that do not assure that dangerous criminals are kept behind bars, where they cannot imperil the rest of society. According to the Bureau of Justice Statistics, for example, the average sentence served for murder was just 8 1/2 years; the average time served for rape was just

¹ P.E. Tracy, M.E. Wolfgang, and R.M. Figlio, Delinquency Careers in Two Birth Cohorts, pp. 279-280 (1990).

over five years.² Sometimes these abbreviated sentences result from overcrowded State prisons and other times from outdated sentencing laws. The result is the same: those with a propensity to repeat violent crime are given the opportunity to harm society again and again. It is repeat violent offenders, who unfortunately do not change their conduct after repeated convictions for violent crimes, that the Administration's proposal seeks to remove from our society.

One of the primary purposes of government is to maintain public safety. The highest priority of this Administration is to fight crime and keep our streets, homes, and schools safe. The "three strikes" proposal I will outline is just one facet -- just one focused facet -- of the Administration's comprehensive anti-crime program. The program emphasizes both punishment and prevention and includes the following other major components:

- the Brady bill, now law, which will help save lives by keeping guns out of the hands of convicted felons;
- 100,000 more cops on the streets, engaged in community policing, trained to prevent crimes as well as to arrest criminals;
- boot camps and other methods of ensuring the certainty of punishment for young offenders;

² These figures apply to both prison and jail time for first releases from State prisons. Source: National Corrections Reporting Program, 1990.

- a ban on the sale and manufacture of military-style assault weapons;
- an expansion of the federal death penalty;
- provisions to keep guns away from children;
- drug treatment for hard-core and crime-committing addicts;
- a safe schools program to combat crime, violence, and drugs in our children's schools.

We need to be both tough and smart in our efforts to fight crime, and we believe the above program, along with the "three strikes" proposal, will contribute substantially to making America a better and safer place in which to live.

Overview of the Proposal

First, I shall provide an overview of the features of our "three strikes" proposal and then address each aspect in more detail. Our legislative proposal mandates life imprisonment for a person who commits a serious violent felony under federal law after having been convicted of two or more other such felonies prosecuted under either federal or State law. It provides a two-part definition of the predicate offenses to which the provision applies: (1) an enumeration of certain particularly serious offenses, and (2) a generic definition designed to include other serious violent felonies. In addition, the proposal provides a means by which a defendant may attempt to demonstrate -- in a limited number of cases -- that the underlying convictions should not be counted. The burden of proving that the predicate is "non-qualifying" is placed on the defendant. Finally, the

amendment imposes a sequencing requirement with respect to the timing of the predicate offenses and convictions.

"Life Imprisonment"

As reflected in the proposal, "life imprisonment" means a sentence for the person's entire, natural life. Recently, there has been some criticism expressed that mandatory life imprisonment is an inappropriate sanction -- even for persons convicted of three serious violent felonies -- because elderly people are arguably not dangerous. While incapacitation of dangerous persons is the primary purpose of the "three strikes" proposal, it is not the only one. The proposal is also intended to deter violent crime, particularly by people who have shown a propensity to commit it in the past, and to punish such persons when they commit their third violent offense. Mandatory life imprisonment sends a clearer and more effective message to would-be violent criminals than a sentence for a minimum number of years or until the offender is deemed no longer dangerous that society will not tolerate their transgressions. Further, it is intended to make a strong statement to our people that we are not helpless against the predators; that it is right to imprison for life the most dangerous criminals who -- after we give them a chance to change -- continue to prey upon us; and that we have the will and the means to do it.

Moreover, properly understood, the criticism is directed not at the "three strikes" proposal specifically but at the concept of life imprisonment in general. Life imprisonment is a sanction

that has existed under numerous federal and State statutes since the beginning of the Republic; and it exists today as a punishment for many federal crimes such as murder,³ kidnapping, and aggravated sexual abuse. It would make no sense to include a different definition of life imprisonment for purposes of the "three strikes" legislative proposal, applicable to repeat, serious violent offenders, than exists currently in federal statutes applicable to offenders who commit only a single such serious crime.

Additionally, the suggestion that "life imprisonment" should involve something less than natural life would arguably reinstitute a form of parole, a mechanism rejected by Congress in the Sentencing Reform Act of 1984 as inconsistent with the notion of truth in sentencing. Someone -- a court or parole-type official -- would have to determine in each instance whether and when a person convicted and sentenced under the "three strikes" sanction should be released as no longer dangerous. Even granting the proposition that, in general, an offender's propensity to commit violent crimes diminishes with advancing age, there is no reliable method for determining at what point a particular individual can be safely released. Moreover, the bureaucracy necessary to administer this release process would be costly and would reduce any savings allegedly flowing from this counterproposal.

³ First degree murder under 18 U.S.C. §1111 carries a mandatory sentence of life imprisonment.

The fact of the matter is this: when someone has committed three serious violent felonies, the question of doubt as to whether that person is now "safe" should be resolved on behalf of the innocent public, not the felon.

Finally, in extraordinary cases there are already two means of mitigation: 1) commutation of sentence; and 2) modification of a term of imprisonment under a provision of the Sentencing Reform Act of 1984, 18 U.S.C. §3582(c)(1). The latter provision authorizes a court, upon motion of the Director of the Bureau of Prisons, to reduce a term of imprisonment after considering the purposes of imprisonment and other general factors set forth in the Act if it finds that "extraordinary and compelling reasons warrant such a reduction" For example, the Bureau of Prisons might make use of this provision in the case of an inmate with a terminal illness. This statute will apply even in the context of mandatory life imprisonment.

Definition of Serious Violent Felony

The amendment uses a two-part definition of "serious violent felony." This definition applies both to the current federal offense and the two past convictions that trigger the mandatory life sentence. The first part of the definition lists particularly serious offenses such as murder, assault with intent to commit rape or murder, aggravated sexual abuse and sexual abuse, arson, and kidnapping that (with the exception of robbery) qualify per se for treatment under the proposed mandatory life sentencing scheme if the sequencing requirements of the proposal

The second part of the definition of "serious violent felony" is designed to cover other violent felonies which in certain circumstances ought to be considered as being so serious as to be predicates. This "catch-all" provision uses a generic approach and requires that the offense have been punishable by a maximum term of imprisonment of 10 years or more. This aspect of the definition adapts the general definition of "crime of violence" from section 16 of title 18, United State Code. Aside from the limitation on maximum prison terms, the amendment defines "serious violent felony" in a manner almost identical to the title 18 definition of "crime of violence," with one exception. The definition in the amendment is limited to offenses that have as an element the use of physical force, or the attempted or threatened use of such force, against another person, or that by their nature involve a substantial risk that such force will be used against another person. Force against property, included in section 16, is excluded from the amendment's definition. However, crimes directed at property will meet the definition if, by their nature, they involve a

substantial risk that force will be used against a person and if they are treated as serious offenses under the law of the jurisdiction in which the conviction was obtained.

Non-qualifying Felonies

The proposal carves out "non-qualifying felonies" that would otherwise be included within the "catch-all" part of the definition of "serious violent felony," and certain other crimes such as robberies, which may not on the facts of particular cases involve the type of violent crime we seek to sanction with life imprisonment. Under the "non-qualifying felonies" provision the defendant must establish by clear and convincing evidence that:

- (1) no firearm or other dangerous weapon was involved, and
- (2) the offense did not result in death or serious bodily injury.

A provision addressing "non-qualifying felonies" is needed because of the breadth of the definition of "serious violent felony" and its reliance on the elements or the nature of the offense. Under the "non-qualifying felonies" provision relatively minor offenses, such as burglaries or assaults not involving a weapon or serious bodily injury, would be excluded as predicate offenses for mandatory life imprisonment. The exception would not apply to most of the specifically enumerated classes of offenses, since the other felonies are categorically so serious that a defendant should not have the opportunity to establish the existence of the specified mitigating factors. A serious violent felony not subject to mandatory life imprisonment

would be sentenced under the sentencing guidelines, resulting in substantial imprisonment in any event.

Sequencing of Offenses and Convictions

As I indicated earlier, our proposal is a recidivism law: it is aimed at the offender who has had two chances to get "straightened out" but just cannot -- or will not -- end his violent behavior. Thus, a defendant who committed several bank robberies and then was arrested and prosecuted for all of them would be subject to the sentencing range established by tough sentencing guidelines, but not to mandatory life imprisonment under the amendment. Committing a serious violent crime after conviction for a prior such offense -- particularly when this pattern is established on more than one occasion -- convinces a greater degree of culpability and incorrigibility so as to warrant mandatory life imprisonment. An offender who engages in this conduct has demonstrated that he or she is not likely deterred by a past conviction (and in many cases a period of incarceration) from committing additional offenses.

These conclude my prepared remarks on behalf of the Department of Justice. I would be happy to answer any questions you may have.

OFFICE OF THE ~~DEPUTY~~ ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D. C. 20530

FACSIMILE TRANSMISSION SHEET

TO: Bruce Reed

FAX #: () 456-7028 Voice #: _____

FROM: _____
Office of the ~~Deputy~~ Attorney General, Room 4217
U.S. Department of Justice, Main Justice Building
Washington, D. C. 20530

FAX #: (202) 514-6897 VOICE #: 514-2 6909

THIS TRANSMISSION CONTAINS 16 SHEETS INCLUDING THIS SHEET

Special
Note (s): _____

If any page (s) are missing, please call the sender for re-transmission.

BRUCE:

Attached is a draft memo to POTUS from you and I, recommending a three strikes proposal. We need to get this to him today, so we can get it up to the Hill on Tuesday.

Following behind the two page decision memo, is the actual proposed statute. I have also included, for your benefit, not his, the 8 page memorandum for the AG that gives more details on the controversial issues.

Please advise, ASAP. Thanks.

RON

February 25, 1994

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED and RON KLAIN

SUBJECT: THREE STRIKES PROPOSAL

We now have a draft of a legislative "three strikes and you're out" proposal. It has been approved by Attorney General Reno. With your approval, it will be presented at a House Judiciary Subcommittee hearing next Tuesday, by Acting Deputy Attorney General Jo Ann Harris.

Major Features of the Draft

The draft embodies your pledge to have a federal "three strikes" law -- a law that will impose life imprisonment when a defendant is convicted, in federal court, of his third serious violent felony against another person (the first two strikes can be federal or state crimes).

Major issues or controversies addressed by our proposal are as follows:

- Life Sentence: In the draft, "life" is real life -- not merely a term of years.
- Covered Offenses: We have limited the proposal to specific violent offenses against another person (this excludes, for example, drug trafficking). A catch-all offense (any felony serious enough to merit a 10-year term, where an element of the crime is the use or threat of force) is also included.
- Exception: Robberies or "catch-all" felonies do not count as "strikes" if the defendant can prove that he did not use a gun, or did not cause serious bodily harm to his victim.
- Timing: The statute is a recidivism law -- it only applies when someone is caught, convicted, released, and then commits a crime again, and then again. Thus, someone who commits three felonies on a single crime spree is not covered. On the other hand, there is no time limit for the three convictions: convictions at ages 18, 35, and 50, for example, would count as three strikes.

The best statistics available suggest that the law would cover 200 federal defendants annually, nationwide.

Likely Support and Opposition

We are working with Senator Biden and Representative Schumer, seeking their support for this proposal. We think some limited endorsement of it is possible. Also, we are working closely with the Klass family to gain their support as well.

We would expect opposition to this draft from both the left and the right.

Liberal Democrats in the House want a 25 year limit on the sentence, and a 30 year limit on the time spread of the three strikes. We respond by saying that, for deterrent purposes, life should be life -- and that we do not want to bet innocent lives on a criminal becoming "safe" at some specific age (i.e., age 55 or age 60).

Republicans want the "three strikes" law to cover drug crimes and crime against property; they also will complain that (because of the timing rule) our "three strikes" law does not cover someone who goes on rampage and kills a dozen people before being apprehended.

We respond by saying that many other laws -- including the death penalty -- exist to deal with mass murderers and crazed criminals on a crime spree; this is a single statute, to deal with a single problem: revolving door repeat offenses by violent criminals. Moreover, without a timing rule, a 19-year old who holds up three stores on a weekend would go to jail for life.

Decision

We need your approval by Monday to be able to present this at Rep. Schumer's hearing on Tuesday (where Mary ^c ~~Klass~~ ^a is also appearing).

____ APPROVE

____ DISAPPROVE

____ OTHER:

Attachment

best example of fed crime.

why not min 5 + max 10

Substitute the following for the corresponding provision of H.R. 3355 as passed by the Senate.

SEC. 5111. MANDATORY LIFE IMPRISONMENT FOR PERSONS CONVICTED OF A THIRD VIOLENT FELONY.

Section 3559 of title 18, United States Code, is amended--

(1) in subsection (b) by striking "An" and inserting "Except as provided in subsection (c), an" in lieu thereof; and

(2) by adding the following new subsection at the end:

"(c) Imprisonment of certain violent felons.--

"(1) Mandatory life imprisonment.--Notwithstanding any other law, a person who is convicted in a court of the United States of a serious violent felony shall be sentenced to life imprisonment if--

"(A) the person has been convicted on two or more prior occasions in a court of the United States or of a State of a serious violent felony; and

"(B) each serious violent felony used as a basis for sentencing under this subsection, other than the first, was committed after the defendant's conviction of the preceding serious violent felony.

"(2) Definitions.--For purposes of this subsection--

"(A) the term 'assault with intent to commit rape' means an offense that has as its elements engaging in physical conduct by which a person intentionally places another person in fear of aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242);

2

"(B) the term 'arson' means an offense that has as its elements maliciously damaging or destroying any building, inhabited structure, vehicle, vessel, or real property by means of fire or an explosive;

"(C) the term 'extortion' means an offense that has as its elements the extraction of anything of value from another person by threatening or placing that person in fear of injury to any person or kidnapping of any person;

"(D) the term 'kidnapping' means an offense that has as its elements the abduction, restraining, confining, or carrying away of another person by force or threat of force;

"(E) the term 'serious violent felony' means--

"(i) a federal or State offense, by whatever designation and wherever committed, consisting of murder (as described in section 1111); manslaughter other than involuntary manslaughter (as described in section 1112); assault with intent to commit murder (as described in section 113(a)); assault with intent to commit rape; aggravated sexual abuse and sexual abuse (as described in sections 2241 and 2242); abusive sexual contact (as described in section 2244(a)(1) and (a)(2)); kidnapping; aircraft piracy (as described in section 1472(i)(2) or (n)(2) of

3

title 49; robbery (as described in section 2111); extortion; arson; or attempt, conspiracy, or solicitation to commit any of the above offenses; or

"(ii) any other offense punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against the person of another or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense; and

"(F) the term 'State' means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

"(3) Non-qualifying felonies.-- Robbery, an attempt, conspiracy, or solicitation to commit robbery; or an offense described in paragraph (2)(E)(ii) shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that--

"(A) no firearm or other dangerous weapon was involved in the offense; and

"(B) the offense did not result in death or serious bodily injury (as defined in section 1365) to any person.

4

"(4) Information filed by United States attorney.--The provisions of section 411(a) of the Controlled Substances Act (21 U.S.C. 851(a)) shall apply to the imposition of sentence under this subsection.

"(5) Rule of construction.--This subsection shall not be construed to preclude imposition of the death penalty."



U. S. Department of Justice

Washington, D.C. 20530

MEMORANDUM FOR THE ATTORNEY GENERAL

FROM: Ronald Klain
Counselor to the Attorney General

SUBJECT: Issues Involved in "Three Strikes" Proposals

This memorandum makes policy recommendations on a number of key issues involved in finalizing the President's "three strikes" legislative proposal mandating life imprisonment for a person convicted of three or more serious violent felonies. Alternative options on each issue are also discussed. Finally, a draft proposal embodying the recommendations is attached for illustrative purposes.

Meaning of "Life Imprisonment"

The first issue is whether the three strikes proposal should provide for mandatory life imprisonment or imprisonment until a certain age or for a minimum number of years.

Recommendation: "Life imprisonment" should mean a sentence for the person's entire, natural life.

Concerns have been raised that imprisonment of elderly people is not necessary because they are, arguably, not dangerous. Regardless of the reliability of such claims in the case of persons convicted of three serious violent felonies (a claim that may have no application to certain sex offenders and members of organized crime groups), the purpose of the three strikes proposal is not only to incapacitate offenders. It is also intended to deter violent crime, particularly by people who have shown a propensity to commit it in the past, and to punish such persons when they commit their third violent offense. The public message that three violent acts will result in imprisonment until, say, age 55, or until a judge or parole official determines that the person is no longer dangerous simply does not have the same impact from the standpoint of deterrence and punishment as imprisonment for life. Likewise, imprisonment for a minimum number of years, which would address persons who commit their third serious violent offense close to age 55, would lack the same impact as mandatory life imprisonment.

Finally, in extraordinary cases two types of escape valves exist: commutation of sentence and modification of a term of imprisonment under a provision of the Sentencing Reform Act of 1984, 18 U.S.C. §3582(c)(1). The latter provision authorizes a court, upon motion of the Director of the Bureau of Prisons, to reduce a term of imprisonment after considering the purposes of imprisonment and other general factors set forth in the Act if it finds that "extraordinary and compelling reasons warrant such a reduction" For example, the Bureau of Prisons might make use of this provision in the case of an inmate with a terminal illness. This statute will apply even in the context of mandatory life imprisonment.

Specific Enumeration of Offenses and Catch-All Definition

The next issue is whether the proposal should:

- (1) specifically enumerate the violent offenses that qualify as predicates for imposition of mandatory life imprisonment,
- (2) provide a general description of serious violent offenses, or
- (3) use a combination of these approaches.¹

Recommendation: The proposal should use a combination approach that specifically lists particularly serious violent felonies, such as murder and kidnapping, and provides a catch-all definition for other offenses punishable by imprisonment for ten years or more.

A combination approach assures the inclusion of certain categories of crimes as predicate offenses, such as murder and kidnapping, regardless of how they are denominated under various State laws and regardless of their maximum terms of imprisonment. At the same time the combination approach recognizes that other offenses create a risk of the use of force against a person and should be included when treated as serious offenses under the law of the jurisdiction in which the conviction was obtained.

The specifically enumerated offenses could consist of, for example: murder, manslaughter other than involuntary manslaughter, assault with intent to commit rape or murder, rape, sexual contact offenses that would be rape if completed, sexual abuse of children, kidnapping, aircraft piracy, robbery, extortion involving a threat of kidnapping or injury to any person, arson, and attempt, conspiracy, or solicitation to commit any of these offenses. The listed offenses could be defined

¹ Some State "three strikes" provisions and a current federal statute include certain non-violent offenses as predicates. There is agreement that our proposal should be limited to serious violent felonies, and not a combination of drug crimes and crimes of violence, as in section 2408 of the Senate-passed crime bill.

through references to conduct described in federal statutes for some offenses and through specific definitions for other offenses so that uniformity of coverage of State offenses would be provided.

The catch-all definition should be a modified version of the definition of "crime of violence" in 18 U.S.C. §16 to include an offense that has as an element the use, attempted use, or threatened use of physical force against the person of another, or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense.² The provision should require that the offense have been punishable by a maximum term of imprisonment of ten years or more in order to exclude some assaults and other relatively minor felonies that would otherwise be included in the catch-all. Since this definition requires either that the use of force be an element of the offense or that the offense by its nature involve a substantial risk of force, it should ordinarily not be necessary to delve into court records of old offenses to determine the particular facts of a case. A similar definition appears in one of the Senate-passed crime bill's "three strikes" provisions, section 5111, but requires that the offense have been punishable by imprisonment for five years or more, rather than ten years.

The treatment of assault under this approach deserves special consideration. The offenses specifically enumerated include only assault with intent to commit rape or murder. Aggravated assault and assault with a weapon would be included only if they fall within the catch-all definition. Therefore, offenses such as the one by Lorena Bobbitt and the attack on Nancy Kerrigan would be considered predicate offenses under the proposal only if the law under which the conviction was obtained provided for a maximum term of imprisonment of ten years or more.

One alternative approach would be to provide only a listing of specific offenses and no catch-all. The option of only a specific enumeration would assure the exclusion of certain, less serious offenses, such as non-aggravated assault. It would also eliminate the need to determine whether certain convictions meet a generalized definition. Finally, a specific listing alone can avoid the problem of overbreadth in a broad definition. However, a specific enumeration alone runs the risk of overlooking some serious offenses that should count toward mandatory life imprisonment, such as certain racketeering offenses, particularly in light of the peculiarities of federal jurisdiction.

² Crimes against property would not be covered unless they posed a risk of force against the person.

A final alternative is to provide only a generalized definition and no specific enumeration of offenses. This strategy, embodied in many of the House and Senate bills on the subject and the proposal of the Attorney General's Advisory Committee of United States Attorneys, is simpler on its face and eliminates the need for definitions of specifically included offenses. However, the broad definitional approach alone incorporates barroom brawls and other relatively minor offenses. So as not to include such offenses, a maximum term of imprisonment to which such offenses were subject (or some other general qualifier) is needed. However, such qualifiers exclude offenses that should be included. For example, the maximum term of imprisonment of ten years or more means that some serious offenses, e.g., child molestation, that may not be punishable under State law by a sufficient term would be excluded. The listing of offenses assures that those crimes we most care about automatically become predicate offenses for purposes of mandatory life imprisonment.

Exception

The next issue is whether a "three strikes" proposal should provide an exception for classes of relatively less violent offenses or offenders otherwise included in the definitional provisions discussed above.

Recommendation: The proposal should identify "non-qualifying felonies" that either are included within the catch-all part of the definition of "serious violent felony" or are robberies. The other specifically enumerated, serious violent felonies should not be subject to the exception. The exception should apply if the defendant establishes by clear and convincing evidence that:

- (1) no firearm or other dangerous weapon was involved, and
- (2) the offense did not result in death or serious bodily injury.

"Non-qualifying offense" language is needed because of the breadth of the definition of "serious violent felony" and its reliance on the elements or the nature of the offense. That is, many offenses have the use or attempted use of force as an element or, by their nature, create a substantial risk of physical force, but the particular offense did not itself result in serious bodily injury or involve a weapon. The exception language looks to the commission of the particular offense.

One effect of the exception, as outlined above, is to exclude relatively minor offenses that might be included in the catch-all definition of serious violent felony despite the requirement of a ten-year maximum term of imprisonment. For example, serious assaults, but not barroom brawls, should be included. However, a barroom brawl would meet the catch-all part of the definition of "serious violent felony" if it were punishable by a maximum term of imprisonment of ten years or

more. The exception would exclude the barroom brawl, assuming no weapon was involved and serious bodily injury did not occur. In addition, the exception would exclude certain inchoate offenses because of the absence of injury or use of a weapon. (As outlined in the above recommendation, inchoate offenses would only be excluded if they related to robbery or the catch-all offenses.)

One option is to make the non-qualifying offense language, or a more rigorous version of it, applicable to any included offense, not just the catch-all offenses and robbery. This approach could allow a person with a minimal role in a kidnapping or arson that did not result in death or serious bodily injury, for example, to avoid mandatory life imprisonment on the basis of that offense. Another option would be to make all inchoate offenses, even those that relate to the enumerated offenses, subject to an exemption but otherwise to limit its application to the catch-all part of the definition of "serious violent felony" and robbery. However, some offenses by their very nature are so serious that, despite a defendant's minimal role or an unplanned favorable outcome, such offenses should be included as predicates for mandatory life imprisonment. A small part in carrying out or planning a murder, for example (but enough to result in a murder conviction or attempt, conspiracy, or solicitation to commit murder), would fall in this category. The list of specifically enumerated offenses seeks to identify such serious crimes. Finally, expansion of the applicability of the exception to all or many offenses will likely increase litigation in certain instances.

The other option is to provide no exception language. The presence of any exception language will create issues in some cases where none should exist. A bright line rule could also have greater deterrent effect on dangerous criminal activity. However, the failure to include "non-qualifying offense" language will result in an overly broad application of the "three strikes" proposal, particularly if a catch-all definition of "serious violent felony" is included.

Number of Required Proceedings

All of the pending "three strikes" proposals require that the defendant stand convicted before being sentenced to mandatory life imprisonment of at least three predicate violent felonies. There is, however, substantial variation in the possible approaches relating to the number of required trials or proceedings and the timing (i.e., "sequencing") of the commission of the requisite offenses.

Recommendation: A legislative "three strikes" proposal should require sequencing of offenses and convictions.

The proposal would require three or more convictions on separate occasions for a predicate offense, and in addition would require that the defendant must have committed the second offense after his first conviction, and his third offense after his second conviction (i.e., the "sequencing" element). This position's premise is that it is worse, and demonstrates a greater degree of incorrigibility warranting mandatory life imprisonment, for an individual to commit a serious violent crime after conviction for a prior such offense. A defendant who comes in contact with the criminal law for a serious violent offense, is convicted, and later commits a new serious violent offense is deserving of greater punishment and may be less likely deterred by imprisonment from committing future offenses than an offender who commits several offenses before being prosecuted. An offender who establishes this sequenced pattern of criminal activity on several occasions is the type for whom mandatory life imprisonment is appropriate.

At the opposite extreme is an option that would require only one trial or proceeding at which the defendant is convicted of three or more separate, predicate offenses. For example, a repeat bank robber who is apprehended after having committed, say, five robberies over a span of several months and who is convicted in a single trial of all five offenses could be deemed eligible for "three strikes" punishment. This position is premised on the view that requiring multiple trials and sequential commission of crimes insufficiently addresses public safety, since mandatory lifetime incarceration would apply only to those violent criminals who get caught at least three times, not to those criminals who commit multiple violent offenses but elude capture except for one or two instances in their careers.

Time Limits for Convictions or Crimes

Whether there should be a time limit for inclusion of past offenses has been an issue of debate. The question is whether some serious violent felonies occurred so far in the defendant's past or not close enough in time to the new serious violent felony that they should not count for "three strikes" purposes.

Recommendation: There should be no time limit applicable to old offenses or requiring proximity in time between the requisite convictions or crimes.

Any time limit is arbitrary and will give rise to legitimate concerns about capricious outcomes. Moreover, a person who is convicted of having committed violent crimes over a span of several decades is arguably more dangerous than one who has been convicted of the same number and type of such crimes over a more

condensed period, assuming both are the same age when tried.³ All but one of the drafts developed within the Department recommended against time limits.⁴ The relevant Senate-passed crime bill provisions include no time limits, and the House bills of which we are aware on the subject include no such limits.

Time limit options include both a limit between the first and last predicate offenses (e.g., 30 years) and a limit between the last two crimes (e.g., 10 or 15 years). In support of an overall limit is the notion of staleness, that is, that a conviction a long time past bears little or no relation to a person's likelihood of committing future crimes and thus should not be counted. A time limit between offenses has a similar rationale. Ten years is the period used in the RICO statute to define a "pattern" of racketeering created by predicate crimes; 15 years is the period used by the Sentencing Commission to determine whether or not to count a prior serious conviction for purposes of a defendant's criminal history score under the guidelines. If time limits are adopted, a subsidiary issue is whether or not to exclude time spent by the defendant while in prison. The argument for such exclusion is that a prison environment is not a true test of a person's ability to live in society without committing crimes.

Notice

A final important issue is whether application of the "three strikes" provision should be subject to a requirement that the attorney for the government file notice of an intent to rely on prior convictions for the purpose of mandatory life imprisonment.

Recommendation: There should be a requirement that a federal prosecutor give formal notice before trial or before a plea of guilty of an intent to trigger the "three strikes" sanction through the use of prior convictions.

Before a defendant is subject to a mandatory life term based on his commission of other offenses, concepts of fairness and due process strongly suggest that he should be notified in advance of trial or plea. A like procedure was enacted by Congress in 1970 as part of the Controlled Substances Act, 21 U.S.C. §851(a), to

³ For example, a fugitive thrice tried and convicted at age 50 for three separate violent offenses committed in his twenties, but who by all reports has lived a crime free existence since then may be less deserving of a life sentence than one whose offenses occurred while he was 25, 35, and 50.

⁴ The exception was the draft from the Deputy Attorney General's Office. In addition, a minority within the Advisory Committee of United States Attorneys favored time limits.

regulate the triggering of stiff recidivist penalties under the controlled substances laws. Such notice, apart from fairness, may also be of occasional practical benefit in allowing the defendant to show that a conviction relied on by the government never occurred.⁵

Against this idea is the fact that notice requires the prosecutor to do something -- i.e., file a written notification -- before the "three strikes" sanction can be imposed. This may be criticized as leading to under-utilization of the mandatory life penalty. The proposal may also be criticized as likely to produce a racially disparate impact if no standards are employed regarding the notice requirement. (Of course, criticism alleging racial disparity may also arise in the absence of any notice requirement.) To counteract both types of criticism, it would be possible either to write into the proposal itself a command that the prosecutor must file notice when the requisite predicates appear to exist, or to indicate that the Department intends, promptly upon enactment, to issue written instructions to its prosecutors to the same effect (or perhaps affording a modest degree of latitude to seek an exemption from the "three strikes" sanction in extraordinary cases).⁶ Neither the Senate-passed crime bill provision pertaining solely to three violent felonies (section 5111) nor any similar House provision of which we are aware imposes a notice requirement. However, the existing notice requirement in the drug laws would apply in the context of amendment of the drug laws to permit a combination of three violent and drug offenses to trigger mandatory life imprisonment. (See section 2408 of the Senate-passed crime bill.)

Attachment

⁵ Criminal records have been known to be inaccurate. Moreover, it is not uncommon for a clerical error to occur (e.g., the record of a David M. Smith is reported to the prosecutor rather than the requested record of David N. Smith, and the prosecutor does not observe the error.

⁶ Given the facts that the other recommended aspects of the proposal include a carefully circumscribed list of predicate offenses plus the opportunity for the defendant to show that a particular predicate offense should not count because his role was minor and the offense, while of the requisite type, involved no death or serious bodily injury, any further ground for not invoking the statute, other than in a truly exceptional and unforeseen situation, would lead to disparate results and legitimate criticism.

The PRESIDING OFFICER (Mrs. FEINSTEIN). The clerk will call the roll. The assistant legislative clerk proceeded to call the roll.

Mr. BIDEN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. Madam President, the distinguished Senator from Mississippi [Mr. LOTT] is here, and has an amendment. He is ready to go with it. I would like to ask him whether or not he is prepared to enter into a time agreement whereby there would be a half-hour equally divided in the usual form, with no amendments in order to his amendment. If he is, I think it would be helpful.

Mr. LOTT. Madam President, if I might reply, I would be happy to agree with that. There may be two or three Members that would like to make comments on it. But I do not see any reason why we need to drag this out. It is pretty easy to explain. We will have a few statements. I would be willing to agree with a time agreement.

Mr. BIDEN. I so request, then, Madam President.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Mississippi is recognized.

AMENDMENT NO. 1126

(Purpose: To amend title 18, United States Code, to provide mandatory life imprisonment for persons convicted of a third violent felony)

Mr. LOTT. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. LOTT] proposes an amendment numbered 1126.

Mr. LOTT. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert the following:

SEC. . MANDATORY LIFE IMPRISONMENT OF PERSONS CONVICTED OF A THIRD VIOLENT FELONY.

Section 3581 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(C) IMPRISONMENT OF CERTAIN VIOLENT FELONS.—

"(1) DEFINITION.—In this section, 'violent felony' means a crime of violence (as defined in section 16) under Federal or State law that—

"(A) involves the threatened use, use, or risk of use of physical force against the person of another;

"(B) is punishable by a maximum term of imprisonment exceeding 1 year; and

"(C) is not designated as a misdemeanor by the law that defines the offense.

"(2) MANDATORY LIFE IMPRISONMENT.—Notwithstanding any other provision of this title or any other law, in the case of a con-

viction for a Federal violent felony, the court shall sentence the defendant to prison for life if the defendant has been convicted of a violent felony on 2 or more prior occasions.

"(3) RULE OF CONSTRUCTION.—This subsection shall not be construed to preclude imposition of the death penalty."

Mr. LOTT. Madam President, this amendment in the form of a bill has generally been referred to as the LIFER bill. There is similar legislation pending in the House of Representatives with over 70 cosponsors. There are a number of cosponsors of this bill in the Senate along with perhaps some other versions of the same bill.

It is very simple to understand, really. It just says three strikes and you are out; or, if you will, three strikes and you are in.

If you commit not one, not two, but three felonies, on that third State or Federal felony you will go to prison for life, without parole.

If you talk to law enforcement officials, they will tell you repeatedly that one of their biggest problems is recidivism—those criminals who commit felonies repeatedly. In fact, about 70 percent of violent crimes are committed by the same 6 percent repeat offenders. So this LIFER bill would say that once you have committed a third violent felony, you would pay the penalty of life in prison.

There are a number of groups supporting this LIFER bill: The National Victim Center, Empower America, and various law enforcement groups, including the National Sheriffs' Association.

So I urge my colleagues to take a very close look at this amendment. I want to note now that the State of Washington, just last Tuesday, passed a version of this LIFER amendment. I understand there might be some differences. That one did include some grants to the State to help carry it out. But even States now are taking the initiative in this particular area. The State of Washington did it last week.

There is no doubt that a small hardened group of criminals commit most of the violent crimes in this country. This amendment would begin to try to deal with this. LIFER stands for Life Imprisonment For Egregious Recidivists Act. Many of the people involved in these crimes are released again and again because of the "revolving door" of the prison system. They commit a crime, they are indicted and convicted, but we do not have enough prisons, so they are back out in the streets and they commit other crimes.

So we are talking about State and Federal felonies. They would have to go to prison for life. Seventy-six percent of criminals who have been jailed three times or more end up committing crimes once again. They think they have a license to kill, steal and maim. They might have to serve a little time, but they get back on the streets.

A 1987 study by the National Institute of Justice found that the average multiple offender is responsible for

\$430,000 in crime costs. Putting just 1,000 more repeat offenders away would cost about \$25 million more annually. But putting these crooks behind bars would save society millions of dollars and save many, many lives.

I would like to read from some of the letters that I received endorsing this legislation.

The National Sheriffs' Association said:

On behalf of the 22,000 members of the National Sheriffs' Association, we are writing to support the LIFER amendment to the crime bill.

The crime bill is certainly comprehensive in that it proposes reforms and solutions to several issues in the criminal justice system. However, this amendment will address the problem of victimization by removing some of the most dangerous criminals in our society. This is one big step in curbing recidivist crimes.

The National Victim Center also has written, and they make it very clear that they are concerned about this issue and would like to support the LIFER amendment.

I ask unanimous consent that the letter from the National Sheriffs' Association be printed in the RECORD at this point, along with the National Victim Center legislation letter.

There being no objection, the letters was ordered to be printed in the RECORD, as follows:

NATIONAL SHERIFFS' ASSOCIATION,

Alexandria, VA, October 27, 1993.

Hon. TRENT LOTT,
U.S. Senate, Russell Building,
Washington, DC.

DEAR SENATOR LOTT: On behalf of the 22,000 members of the National Sheriffs' Association, we are writing in support of the Life Imprisonment for Egregious Recidivists, (LIFER) amendment to the crime bill. We applaud your stand and comment you for your efforts.

The crime bill is certainly comprehensive in that it proposes reforms and solutions to several issues in the criminal justice system. However, this amendment will address the problem of victimization by removing some of the most dangerous criminals in our society. This is one big step in curbing recidivist crimes.

Once again, we thank you for your endeavors and support of the nation's law enforcement community.

Sincerely,

CHARLES "BUD" MEEKS,
Executive Director.

NATIONAL VICTIM CENTER,

Arlington, VA, November 4, 1993.

Hon. TRENT LOTT,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR LOTT: On behalf of the Board Members and Staff of the National Victim Center, we wish to lend our full support to the "Life Imprisonment for Egregious Recidivists Act of 1993" (Senate Bill 499).

The National Victim Center works with more than 8,000 victim-related organizations and law enforcement agencies nationwide. These organizations and agencies serve on the front lines in our nation's war against crime. As such, they see first hand the horrible human toll violent crime exacts on innocent members of society.

Nothing is more demoralizing to victims and service providers than to see the same

offenders destroying the lives of countless other victims, despite previous arrests, convictions, and sentences.

The criminal justice machine recycles the same career criminals time after time and crime after crime. The offenders appear unaffected by the process, but their victims are ground beneath its gears.

Statistics indicate that 6 percent of violent offenders commit 70 percent of violent crimes. Many re-offend within months of their release from incarceration. But the real cost can only be measured in human terms. Each cycle through the system comes at the expense of at least one victim.

The legislation you have proposed allows victims a first glimmer of hope that this vicious cycle can be stopped no later than the third turn of the wheel. Given the recidivism rates of our nation's most violent offenders, there is no doubt that tens of thousands of would-be victims will be spared and thousands of lives saved each year.

No greater accomplishment could be offered to the victims of crime in this nation than a measure which will prevent the addition of more members to their ranks. The "Life Imprisonment for Egregious Recidivists" bill is such a measure.

Therefore, the Board of Directors and Staff of the National Victim Center support this important bill and urge your colleagues in the Senate to make every effort to secure passage of this legislation.

Sincerely,

ROBERT S. ROSS, Jr.,
Executive Director.

Mr. LOTT. I also have a letter from the Law Enforcement Alliance. I will read one paragraph from this letter:

For violent recidivists, career criminals who thrive on violent antisocial behavior, we urge swift and certain isolation from society. Senator Trent Lott's S. 499, aimed at egregious, repeat, violent offenders is, we believe, society's most effective short-term response. These violent predators must be removed from society if we are to be safe from their depredations. The daily carnage on our streets demands that we prevent these monsters from claiming more victims.

I ask unanimous consent that this letter from the Law Enforcement Alliance of America be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

LAW ENFORCEMENT ALLIANCE
OF AMERICA.

Falls Church, VA, October 18, 1993.

Hon. JOSEPH R. BIDEN, Jr.,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR BIDEN: Once again, I am writing regarding the upcoming anti-crime bill on behalf of the now early 35,000 members of the Law Enforcement Alliance of America. The increase in LEAA membership since my last letter makes us not only the nation's largest coalition of law enforcement professionals and concerned crime victims, it makes us the nation's fastest growing organization of its kind.

I wish to call your attention to a concern of law enforcement that to date has received very little attention by legislators or the media.

Law enforcement occupies a unique position in its capacity of law conservators as first hand witnesses to the treatment of crime victims throughout our criminal justice system. Often we are the first to see victims immediately after they have suffered a criminal violation. We see them again during

our investigation of the incident and yet again throughout the court proceedings.

We watch helplessly as the system often first ignores them, and then again as they are vilified during the actual trial. The greatest offense our system perpetrates against victims, in our view, is the primacy of perpetrator rights over those of their victims. We have watched and remained silent, until now.

Now we are compelled to break our professional silence and raise the cry for simple justice for crime victims and for society.

Over the decades, the courts have taken great pains and great strides to protect the rights of the accused and of those convicted of heinous crimes. We agree in principle.

But, those laudable goals have been turned into a travesty of their intent by the deliberate and frivolous petitioning for imagined or fabricated infractions. Further, the extremes taken to mitigate time served by turning penal institutions into virtual prisoner entertainment centers has failed to stem the recidivist rate from the days when prisons were extremes in austere living conditions.

We urge a determined legislative search for a solid middle ground that ensures basic rights, provides basic living conditions, and underscores the fact that inmates are serving time for a very real, very serious infraction of society's rules.

For violent recidivists, career criminals who thrive on violent anti-social behavior, we urge swift and certain isolation from society. Senator Trent Lott's S. 499, aimed at egregious, repeat, violent offenders is, we believe, society's most effective short-term response. These violent predators must be removed from society if we are to be safe from their depredations. The daily carnage on our streets demands that we prevent these monsters from claiming more victims.

I emphasize that this is a short-term solution. It provides immediate protection, saves lives, and allows honest citizens the ability to enjoy life as described in the preamble to our Declaration of Independence.

Society is not the place to experiment with unproved long-term solutions to crime. Lives are at stake. We don't allow direct human experimentation with drugs designed to cure our illnesses. We certainly shouldn't use humans, in this case society, to research ways to curb those who rape, rob, or kill. To do so is to heap yet another insult upon crime's victims.

We look forward to your leadership in providing sound measures addressing our concerns.

Again, we offer our assistance in any way possible to pass meaningful remedies to the nation's crime problems.

Sincerely,

JAMES J. FOTIS,
Executive Director.

Mr. LOTT. Madam President, last week, we did make some major revisions to this crime bill. I think we improved it considerably. We did add a large amount of funds for prisons, Federal prisons. These recidivists are the people who really need to be put in these Federal or regional prisons, as well as the prisons in the various States around the country.

I urge my colleagues to support this amendment. I believe it will go a long way toward really dealing with crime in this country. I noted late last Friday that the distinguished majority leader said, "There is not much in this Federal legislation that is really going to deal with crime and criminals in

this country. A lot of it occurs under the jurisdiction of the State and local level." But recidivism is one place where we can make a difference. If we can begin to get these few thugs off of the streets, it will really make a difference, not only in cities like Washington, DC, but in rural areas across this country.

Again, I urge adoption of this amendment.

I yield the floor.

Mr. BIDEN. Madam President, I think I and all Americans sympathize with what my friend from Mississippi is attempting to do. In the crime bills that have passed in the recent 10 years, we have had some what we refer to as minimum mandatory sentences in the bill, like this being a minimum mandatory. For example, as the Senator accurately characterized, there is mandatory life imprisonment in this circumstance. I will read the language:

Notwithstanding any other provision of this title or any other law, in the case of a conviction for a Federal violent felony, the court shall sentence the defendant to prison for life.

The point is: "Shall sentence for life." Madam President. Now, the Senator from Mississippi—I was going to say "I am sure"—I suspect he had in mind what the Senator from Delaware did when I drafted minimum mandatory provisions 3, 4, or 5 years ago in previous crime bills; that is, what we are looking for here is the predator, the guy or woman out there—in almost every instance it is the man—who has committed a heinous crime, has been let out of jail and commits another one, and is let out of jail and then commits another one. He is clearly a predator. It is a term I use, not a term of art; but that is how I think of these folks, as predators. So we want to put them in jail. This would be the 3-time rapist and the 3-time murderer. You might say, should they not be in jail for life after one?

Well, the truth is, the average amount of time served in the District for a conviction for a capital offense, I believe, is 5½ years, and in other States it is similar. The reason I wrote the sentencing commission law with a couple others about 10 years ago, Madam President, was because your State of California was letting people out of jail after being convicted of murder on average of serving only 7 years. I remember Sirhan Sirhan coming up, and I said, "How in the Lord's name can we have that happen?" So they are the people we are all looking at.

One of the things that I found out is when you pass these minimum mandatory bills you sometimes end up in your net taking in people who you would never intend by the scope of the law when you write it to take in.

As I read this amendment—and I promise the Senate I am not trying to nitpick with my friend from Mississippi—but it says the definition of a "violent felony," to be precise, "means

a crime of violence (as defined in section 16) under Federal or State law that—

"(A) involves the threatened use, use, or risk of use of physical force against the person of another;

"(B) is punishable by a maximum term of imprisonment exceeding 1 year; and,

"(C) is not designated as a misdemeanor by the law that defines the offense."

If one man takes his hand and that hand connects to another man's jaw, in almost every case in every State in the Union that is a felony. That is an assault. It is a felony and by definition of this law is a violent crime.

We all have in our small towns and our large towns the guy who gets drunk, who is the person who causes brawls in bars. We can identify them, particularly in small towns who they are. It is either Bubba, Charlie, Harry, Bill, or Pete. They may very well have been convicted twice of being in a fistfight in a bar-connected fight. Both are felonies. In almost every State in the Nation, a plain old, good old American fistfight, in fact, in most States is a felony, a violent crime punishable by more than a year in jail.

If that same person has the misfortune of also getting in one of those fistfights at Yellowstone Park, at one of the restaurants in Yellowstone Park, under this law, as bizarre as it sounds, a Federal judge, upon convicting, finding that person guilty, must send that person to jail for the rest of his natural life.

I do not think we are intending to do that. I know I should not say "know." I suspect that is not the intention of my friend from Mississippi.

As to a three-time rapist, I do not have even the slightest concern about that person spending the rest of his life in jail. As a matter of fact, in the violence against women legislation which was adopted as an amendment in this bill, we increased the penalties for rape. I am all for minimum mandatory life imprisonment—no probation and no parole.

These are aberrations that occur in the law. I wonder if my friend would entertain an amendment to his legislation whereby in subsection (c)(1) where it says "Definition" it says, "In this section, 'violent felony' means a crime of violence (as defined in section 16) under Federal or State law that"—and then to sections (A), (B), and (C) add a section (D) that says, "And carries with it a maximum penalty of 10 years or more," so that we do not end up inadvertently sweeping into our net people that a Federal judge would be required to put in jail for life—the drunken brawler who gets in his third fight and he happens to do it in Yellowstone Park while he is there—and the reason I say "Yellowstone Park," I am not being facetious—one of these offenses has to occur under Federal jurisdiction. So if he does a crime of violence on a Federal jurisdiction, almost by definition, with a few notable exceptions, it has to be a crime committed

on an Indian reservation and/or a crime committed on Federal property.

Theoretically, I guess, if someone had two prior convictions for being drunk and disorderly and getting in fights and then happens to be watching this debate up in the gallery there and someone said, "I do not like what BIDEN says," the other says, "I like it," and he pops him, that is on Federal property, and that is a Federal crime.

The other thing I might point out is I think this is a very dangerous law to pass in terms of equity for American Indians, because if you are an American Indian and you get over a period of 10 years, 20 years, 30 years, convicted three times for being disorderly and/or a crime of assault with your fist because you are on an Indian reservation and that is Federal property, you might have to go to jail for life.

I do not think that is the intention of my friend from Mississippi. Maybe it is. If it is, I would like to know. If it is not, I would like to suggest maybe we could go into a short quorum call and see if there is any way he would be willing to further circumscribe this to get at the people he and I and everyone wants to get at, and those are people who commit serious heinous crimes.

I am not suggesting to get in a fight, one man with another, and without provocation one man hits another and knocked his teeth out or tooth out is not serious. That is serious. I am not trying to belittle that. I do not think anybody is suggesting that person should have to be sent to jail for life with no discretion on the part of the judge because that happened three times over the period of his life.

But that is a question and a request. Mr. LOTT. Madam President, will the distinguished Senator from Delaware yield for a comment?

Mr. BIDEN. I am happy to yield.

Mr. LOTT. Certainly, I think for any rule you could find an exception. I can think of certain circumstances where obviously you would like for the judge to have some discretion. If you get in a fistfight one time, I guess that could happen with anybody. I am responding to the Senator's example about the fistfights. If you got into one, maybe you just got carried away; if you got into the second one maybe it was provoked. If you got in a third one, that is assault and battery, whatever the evidence. Keeping in mind that under the system we have, the judge has discretion with what he might have decided in the first case and second case. But after this third case, there is pretty good evidence that you have a repeat offender on your hands who keeps getting in fistfights and knocking people's teeth out and causing serious injury.

I think the point the Senator is making is a legitimate one. I would like to talk to him a little. I would like to look at the language and see exactly what he is proposing. Some flexibility perhaps would be something we could work together on, because I am not out trying to charge every petty crook

with a felony, but these statistics we have here are not about petty crooks, but violent criminals. The Senator knows the ones we are trying to get to.

Mr. BIDEN. If the Senator will yield, I completely agree the statistics are overwhelming that there are, for example, as the Presiding Officer knows a lot about this issue as well knows that 6 percent of all the criminals in America—convicted folks—commit about 65 or 70 percent of all the serious crimes.

Mr. LOTT. Those are the ones we want.

Mr. BIDEN. Those are the ones the Senator wants. I have no disagreement on that.

I do not have any particular language in mind. All I want to do is believing, and the Senator confirmed it, they are the people he is going after, that there may be a way to tighten this a little bit so we do not inadvertently get the folks we do not want to get.

For example, under the Federal system, under the current guidelines a murderer with two prior convictions or one of these folks out there with two serious convictions gets an average sentence of 30 years under the Federal guidelines; whereas, a troublemaker who gets in three fights under the present guideline of the Sentencing Commission gets an average of 5½ years.

We are not looking to let off the bully who goes around knocking people's teeth out. They get 5½ years on average.

When the Senator was in the House and I was and we worked on this, under the Federal guidelines we took away the discretion of the judges. That is why they are mad. Right now the judges are not real happy with the Senator from Delaware, separate and apart from minimum mandatories because we passed a law that is the law now, and the Sentencing Commission exists out there.

For every Federal crime we make a crime, they must set up a sentence, and the sentences are those that are required. The defendant is required, the convicted person is required to serve that time. That is what we call flat time sentencing. In only rare circumstances can a Federal judge alter it by increasing or decreasing up to 15 percent the sentence. That is where we get this 85 percent, serve a minimum of 85 percent of the time having to be served.

I am taking more time than is needed to be taken here. I will not formally propound this at the moment, but I would consider propounding a unanimous consent request that we temporarily move off this amendment without the Senator losing the right to come back up and ask for a vote if he wants it and to see if we can work out language that somewhat circumscribes the people to whom we intend this to apply.

I am confident his staff and mine can work out some language. Again, I have nothing particular in mind. I have not

thought through how it should be. I just want to tighten it so we do not get the folks we are talking about who are now in the Federal system doing 5½ years having to serve life without probation, parole, and without discretion on the part of the judge.

Mr. LOTT. If the distinguished Senator will yield further, perhaps at some point we could have that quorum call and talk more about it. I do know that there are a number of States, including the distinguished Presiding Officer's State, California, where they have a lot of repeat offenders. It is a serious problem when you have this combination of felonies; quite often one may not be so serious and the next one could be a lot more serious. I want to emphasize something I said a while ago, that the average multiple offender is responsible for \$430,000 in crime costs.

While there might be some additional costs as a result of this amendment to incarcerate these people for life, it is estimated we could save \$405 million per thousand prisoners if we could pass an amendment like this because of the burden of the cost on the judicial system, the law enforcement system, where these people come back and have to be tried again and again and again. It is something for which there is a lot of support.

I saw one poll just last week that indicated that well over 70 percent of the American people thought we should be tough on these repeat offenders. When I talk to policemen, sheriffs, and other law enforcement people in my State, this is the issue they mention more than anything else—more than habeas corpus, more than some of these other rules that we talk about. They say that if we had the surety of punishment of these repeat offenders, it would make their jobs so much easier and safer from that standpoint.

Mr. BIDEN. Will Senator yield for one more question?

Mr. LOTT. I am glad to yield.

Mr. BIDEN. Again, we have no disagreement, at least he and I have no disagreement, on trying to get to these serious repeat offenders, three-time losers.

But I have a second question unrelated to that. And that is, I am a little bit confused the way the amendment is written.

Does this require a State to impose minimum mandatory life or only the Federal judge to apply minimum mandatory life? In other words, must the defendant be within the jurisdiction of a Federal judge—having committed his third felony, that felony being a Federal felony for violence—before this can happen, or is the Senator instructing every State to change their laws and for them to impose at a State level in State court minimum mandatory life imprisonment?

Mr. LOTT. Madam President, I would like to respond to the Senator's question. It is not my intention that we micromanage every State judge. Obvi-

ously a Federal judge would impose such sanctions under this amendment.

Mr. BIDEN. I think the Senator has it fairly clearly in this and I was not suggesting it was not.

But we have a rash, as my friend from Mississippi knows—a State's right man, a man from a State that protected its own integrity and fought for that—we have more conservatives, liberals, moderates, Democrats and Republicans insisting in this crime bill that we require States to adopt every aspect of the Federal system. I am pleased to see that is not what the Senator is doing here.

I would like to suggest, for purposes of trying to work out this language as to what the definition of a serious violent offender is, I would like to suggest the absence after quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested.

Mr. BIDEN. I realize I must ask unanimous consent to be able to go into a quorum call without the time for the quorum being charged against the remaining time that the Senator from Mississippi and the Senator from Delaware has on the Lott amendment.

The PRESIDING OFFICER. Is there objection? There being none, that will be the order.

The clerk will call the roll.

Mr. LOTT. Madam President, I ask unanimous consent, that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Madam President, I ask unanimous consent that I be permitted to modify my amendment. I send that modification to the desk.

The PRESIDING OFFICER. Is there objection to the modification? There being none, it is so ordered. The amendment is modified.

The amendment (No. 1126), as modified, is as follows:

At the appropriate place insert the following:

SEC. . MANDATORY LIFE IMPRISONMENT OF PERSONS CONVICTED OF A THIRD VIOLENT FELONY.

Section 3581 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(c) IMPRISONMENT OF CERTAIN VIOLENT FELONS.—

"(1) DEFINITION.—In this section, 'violent felony' means a crime of violence (as defined in section 16) under Federal or State law that—

"(A) involves the threatened use, use, or risk of use of physical force against the person of another;

"(B) is punishable by a maximum term of 5 years or more; and

"(C) is not designated as a misdemeanor by the law that defines the offense.

"(2) MANDATORY LIFE IMPRISONMENT.—Notwithstanding any other provision of this title or any other law, in the case of a conviction for a Federal violent felony, the court shall sentence the defendant to prison for life if the defendant has been convicted of a violent felony on two or more prior occasions.

"(3) RULE OF CONSTRUCTION.—This subsection shall not be construed to preclude imposition of the death penalty."

Mr. LOTT. Madam President, before I yield the floor, I would like to point out I had a discussion with the distinguished chairman of the committee and other Senators, and we have agreed to the modification that would change, on the second page of the amendment, section "(B), is punishable by a maximum term of 5 years or more."

This would replace the language that had said, "imprisonment exceeding 1 year." I think this is an improvement. This is the language basically that was recommended by the Senator from Delaware to get at those most violent crimes and criminals.

I think this is a reasonable approach. That is why I modified the language.

I ask unanimous consent that Senator MCCAIN be added as a cosponsor of the amendment and Senator GORTON, of Washington.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, as Senator BIDEN said, the scope of definition could cover prior conditions, which the Senator from Mississippi does not wish to cover. I commend my colleague from Mississippi for working with the Senator from Delaware to make it clear this amendment applies to individuals with three felony convictions for crimes incurring a maximum penalty of 5 years or more. I think that is a reasonable way to resolve this.

I commend the distinguished Senator from Mississippi for his efforts in trying to get this provision through because I think it is important. He has made the right decision. I think that this provision will help us in this fight against crime.

Mr. BIDEN. Madam President, how much time does the Senator from Delaware have?

The PRESIDING OFFICER. Two minutes fifty-three seconds.

Mr. BIDEN. I ask unanimous consent that we be able to increase the time on each side 5 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BIDEN. I yield 5 minutes to my friend from Washington.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Madam President, I thank my friend, the distinguished Senator from Delaware. I am pleased to have been added as an enthusiastic cosponsor to this modified amendment.

Last Tuesday when the citizens of my State passed Initiative 593, with more than 75 percent voting in favor, they made the State of Washington extremely unpleasant for two-time violent offenders to live. If someone now commits a third serious felony in Washington State, they are going to go to prison for life. The Nation watched this election campaign as the initiative was entitled, "Three Strikes, You're Out." That is the case now in Washington State. It will be the case under the

Federal system if this amendment is to be adopted.

Let me tell you just one of the significant differences this makes in the State of Washington. Up until this point, before this initiative passed, the average prison term for a child molester who had two previous sex felony convictions on his record was 9½ years. That will not be the case in the future. We will not have that kind of predator going in and out of the revolving door in the State of Washington.

I regret to say that 2 years ago the State of Washington had the sixth highest crime rate in the Nation, and that last year there was another percentage increase. This is a reaction by the people of the State of Washington in repudiation of that kind of record and particularly because two-thirds of all violent crime is committed by a relatively small handful of offenders.

My citizens, the people I represent, want those predators off our streets, away from our schools and safely behind bars. As a consequence, this is one of few amendments on any bills with which we deal in which we have a graphic illustration in the very week in which we vote, that people in one State, who I am convinced are typical of people across the United States, have told us precisely what it is that they wish.

The modification, which the Senator from Mississippi has offered, makes it certain that this will not inadvertently be applied to some of those who have engaged in crimes, which most of us probably would not regard as being serious enough to count against the "three strikes you're out" strategy. In Washington State, when our young people play baseball, "Three strikes and you're out." The people of the State of Washington have said to violent criminals, "Three strikes and you're out." The Lott amendment says to those who are charged under the Federal system: "Three strikes, you're out."

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Madam President, how much time do I have?

The PRESIDING OFFICER. Seven minutes and twenty-four seconds.

Mr. LOTT. Madam President, if I could take a moment to commend the distinguished Senator from Washington for his statement. Having served as attorney general of the State of Washington before he came to this body, he had an outstanding record and was well respected as an attorney general by the attorneys general from all over this country. I know that is the case because I have talked with other attorneys general with whom he served. I am very pleased he came here this morning and was able to work with us on this modification. His statement is a very ringing endorsement.

I commend the people of his State of Washington for the vote they had last Tuesday. They are very serious about dealing with these repeat offenders. I

believe it adds a great deal of weight and timeliness to this particular amendment.

Madam President, I do not have any further request for time at this moment. I would like to ask for the yeas and nays, so perhaps we can be assured of getting a recorded vote, perhaps at an agreed-to time. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Madam President, with the permission of my friend from Mississippi, I ask unanimous consent that the vote on this amendment, for which the yeas and nays have just been ordered, occur at 2:30 today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. That being the case, I yield back whatever time I have remaining on this amendment.

Mr. HOLLINGS. Mr. President, I was unable to be present for today's vote on the Lott amendment, the so-called three time loser amendment. I would like the record to show, had I been in attendance, I would have voted for the amendment. I believe this is a much needed amendment. We must take those who continue to perpetrate violent crimes and make sure they never walk the streets again. We must insure these repeat offenders are isolated from society forever. Again, I just wanted to let the record show that despite my absence, I support the amendment of the Senator from Mississippi.

The PRESIDING OFFICER. All time is yielded back.

Mr. LOTT. Madam President, I yield back the remainder of my time.

The PRESIDING OFFICER. Time is yielded back.

Mr. BIDEN. Madam President, I think we are very close—we are literally drafting the final language, as they say, crossing the t's and dotting the i's on four major initiatives that the Senator from Utah and I have been working on literally for the past month. They relate to several major areas of the bill.

So, unless someone wishes to speak, I am going to suggest the absence of a quorum and hopefully between now and 2:30, we will be back with that drafted language which we can approve and accept prior to the rollcall vote on the Lott amendment.

Further, that upon the completion of the Lott amendment, we hopefully will have another amendment we can go to for action and debate, as we are lining them up. Those offices that are listening to this proceeding on the floor, I urge you if you or your Senators have amendments that you are seeking to offer to the crime bill, let the floor staff know so we can try to order them.

I see my distinguished friend from California, the Presiding Officer, perking up because I know she has a major

amendment which I am sure in due time we will get to. Hers is so major, once we get to it, we may not get to anything else for a couple of hours. So maybe we can get rid of some additional amendments in the meantime.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GLENN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. BOXER). Without objection, it is so ordered.

Mr. GLENN. Madam President, the debate on the crime bill has been long and will be even longer. It is one of the more important pieces of legislation we will probably pass this year.

Madam President, we pass laws in this country so that as a civilized nation we can all live together, so that we have the greatest good for the greatest number of people. We pass laws to that end, but some people find it difficult to live within those laws or deliberately try to short-circuit the system, the American democracy that we all know and love so well. They try to do things that disadvantage the rest of us, and they break our laws.

When they do, certain things then occur. The police system in this country starts out by trying to apprehend these people. There are a lot of people involved in that effort. And once our police system apprehends one suspected of a crime, we have a judicial system that goes to work and says, OK, you have been charged with certain crimes, and you now have certain constitutional privileges to protect you against unlawful abrogation of your rights. So we have an elaborate judicial system to make sure that everybody has their day in court and a fair hearing. And at the end of this whole process, which sometimes is far too lengthy, we finally have a judgment of guilty against a high proportion of these people.

Then, if things worked as they are supposed to, we have punishment meted out. Those who find they cannot live in harmony under the laws of this country receive punishment for their infractions. That is the way our system is supposed to work.

What we are considering in this crime bill is whether that system is working properly or not. And we are debating how we can strengthen the system so that it works better and so that it works more fairly for everybody in this country of ours.

Let us go back through those three things again—apprehension by our police system, determination of guilt by our judicial system, and punishment.

First, apprehension of those who break the laws. We have in this country right now around 600,000 sworn officers in police and sheriffs departments. In this legislation, we are going to increase the number of officers by up to

100,000 over 5 years. Needless to say, this is a very substantial increase.

No one doubts that will make some difference, just by the fact you see more policemen out on the street. But is that the answer? No. I do not think that is the principal weakness of our whole system of crime and punishment in this country. The facts are that we have more arrests now than we are able to accommodate within our judicial system and more than we are able to accommodate within our penal system. The police are simply arresting more people than we can handle.

Now, will this visual presence out on the street do some good? Of course it will. How many times have you driven along a road just a little bit over the speed limit and just the sight of a police car—what the Ohio State Patrol used to call visual patrol, just parking a car out along the road—leads you to lift your foot off the gas pedal to make sure you are back under the limit. We have all done that. I admit to it myself.

So whether it is by the highway patrol out along the highways or whether it is a new cop out there on the corner, through visual presence crime is deterred. That will work to a certain degree. But I submit that our central problem is not the lack of police officers. They are arresting more people now than the rest of the system can handle.

Let us look at the judicial system for a moment. The rights of people are protected through the court system. It is a long and arduous process. That judicial system is severely strained, as the distinguished majority leader pointed out in the Chamber here last week. He believes that we need more people in that system so that we move people through the system more quickly and make sure their rights are fully protected—and I agree with that. But once again I submit that we are convicting more people through that system than we are able to take care of.

So we come to the last part of that system, the punishment part of the system—taking away the freedom of those who cannot live within the boundaries of the laws that we depend on in this democratic society of ours.

Depriving a man of his freedom is not done lightly. But once it is decided by the courts, after all of the constitutional protections have been afforded, after all of the police apprehension efforts, after all of the judicial proceedings, at that point the carrying out of that sentence should be swift; it should be certain; and it should be meaningful for those who violate the law and do not fit into the norms of society.

It seems to me that here is where our whole system of crime and punishment begins to fall apart these days, because our problem is not that the judicial system is in chaos; it is that the punishment system, after the judicial system has worked, is in chaos. Our whole penal system is in literal chaos. It is overloaded. It is crowded. People are

not serving their sentences. We even have such overcrowding of prison facilities we are under court orders to correct the situation in the majority of States, including my home State of Ohio.

The system right now makes a mockery of justice. When the police go out, all too often at the risk of their own lives, and apprehend the criminals, the judicial system works and sentences are handed out. But then when punishment is nonexistent or minimal at best, we are engaged in the process of creating a nation of scofflaws who are making a mockery of our penal system. They know they have committed a crime. Why not go out and rob again? You get very little for it, a hand slap, parole, maybe some minor punishment. Why not grab an old lady's purse and run down the street with it? You are not going to get anything much if you get caught anyway. What matters if you steal from your employer? Does that make any difference? They are probably not going to be able to prove it. If they do, the sentence will probably be light.

Why not sell drugs? It is easy money because your prison sentence will probably be minimal. Why not drive drunk? You know there will be minimal penalty if you are caught.

I read in the paper a few days ago where a person, I believe in Florida, drove across a median, drunk, ran into some other cars, and several people were killed. That person had been arrested for drunk driving 24 times previously.

How about white-collar crime? Does it get punished properly? No. Too often not.

Over the last few days we have had soaring rhetoric from Senator after Senator after Senator. We are going to get tougher. We are going to outmacho anybody else. We are going to show them we can be as tough on crime as anybody will be, and we will show them through proposals such as the death penalty that we really mean business on crime.

So we pass all sorts of things that lead us into thinking that we are doing something, and leads the American people into thinking we are doing something, when I feel we are not even addressing the major weakness. The part that is missing is really meaningful confinement, the loss of liberty for those who cannot obey the laws that everybody else obeys.

Let me go back to the last time we had a crime bill on the floor. Let me tell you my little personal experience. This might be of some interest to my colleagues on both sides of the aisle who are up for reelection and want to touch the hot button among the people on crime. In 1991 when the crime bill was on the floor for debate, I happened to have been in the cloakroom and planned to take part in the debate. But what they were debating at the time I came on the floor was the amount we were going to spend to help States

build prisons, and what was going to be spent on the Federal prison system.

I was interested in this because back home when I was running for election back many years ago, I had made some statements about my thoughts on how crime should be punished once the judgment is in—that crime should be punished immediately, and we should have adequate prison space.

I had put together and proposed some ideas at that time, not for great new brick and mortar palaces that we put people in, not the slammer that have to deal with the violent criminals, but ways of dealing with the nonviolent criminals and how we could incarcerate them without building these great big expensive structures costing hundreds and hundreds of millions of dollars.

I made my statements that day on the floor concerning some ideas on low-cost incarcerations that I thought were very good. I proposed that we use some of our construction techniques that have been used in the military and that I have had some experience with. And I proposed that we build not just great big new brick and mortar things where each cell costs as much as \$50,000 per prisoner, more than many of the people that they have offended paid for their homes. I think it is ridiculous to be putting out that kind of money for nonviolent prisoners.

I do not question locking the violent people up in whatever the most secure facilities are. But for nonviolent prisoners, I do not think we need that same kind of construction nor that kind of security.

Is there a better way? Is there a cheaper incarceration for the non-violent? I believe there is.

I spent some 23 years in the Marine Corps putting in my military time along with several million other Americans who did not live in great big brick buildings for years at a time. We lived in low-cost housing like Butler buildings or, back in World War II days and since then, Quonset huts, plain old Quonset huts.

Everybody is familiar with what we mean when we say a Quonset hut. But whether it is Quonset hut, Butler buildings, prefabs, or mobile home conversions, or whatever it may be, I believe we can do prison and jail construction more inexpensively. Some localities have even tried things like taking old 18-wheeler trailers off the highway after their days are done, refurbishing them and making them into quarters for people; even things like that may have practical application in our prison system.

Is this inhuman? Is this inadequate? Our military experience is that millions of good American citizens in the military lived in quarters just like that for years at a time, and did it without any problem at all. Whole families lived in quarters like that. I know because on two different occasions my family lived in half of a Quonset hut, and it was quite adequate. But it was constructed at a mere fraction of the

cost that a big brick and mortar building would have cost.

This is not something that just applies in the tropics. People lived in things like Quonset huts and Butler buildings for month after month, year after year, from the Arctic to the tropics. You can take these buildings and make them just as livable as any other building.

I still visit bases around this country and around the world, and I find some of these buildings still being used some 45 years after they were constructed. They are not constructed for just a few months of use. They can be made just as livable from the Arctic to the tropics and from summer to winter use.

We love to rise on the Senate floor and talk about the crisis of crime. And it is a crisis. No one doubts that. But when we deal with a crisis, are we willing really to come out and say here is a cheaper way that we can make sure that people serve the sentence that they have received?

We are putting somewhere around \$6 billion into prison construction in this bill.

Let us say we take an average cost of \$50,000 per cell for regular prison construction across this country. What will \$6 billion mean divided by \$50,000 per cell? It means that 120,000 additional people could be locked up, even if this bill works out perfectly.

Yet we find in my home State of Ohio, we have some 40,000 people locked up. But our capacity is only 21,863 prisoners. So we are nearly double the capacity of the Ohio prison system right now. And Ohio is not alone.

I think we would come a long ways toward tripling or quadrupling the effect of that \$6 billion if we did not insist on all of this brick and mortar construction and went to quite adequate low cost quarters, whether they be Quonset huts or Butler buildings, or some other type of low-cost housing.

We also have excess military bases around this country. They have all the facilities of a city. They have sewer, water, lights, buildings, bunks, recreation, the whole works furnished right there, ready to be moved in once those bases are surplus. They should be utilized.

One thing that is provided in the bill that I think is good is it encourages regional use of the facilities like that for several States. I think that is important. I hope that some of the States exercise their rights once Federal entities have indicated there is no Federal use for the property and it becomes the right of the State as the next claimant. I hope that States are willing to work out some agreements where they can use those bases for prisons. They are set up ideally for this purpose.

Next, I think we should expand existing penal facilities within States by some of these cheaper methods that I am talking about. What is wrong with going to some of our facilities in Ohio which are overcrowded using some of these cheaper construction techniques

to expand their facilities on those same grounds? What is wrong with that? I see nothing wrong with it myself. I repeat, millions of Americans have lived in those and far worse facilities in serving their country. I find it difficult to think this would be inhumane or is not the way to treat prisoners. I think it is every bit the way to treat prisoners.

A third area: If we establish new prisons, I submit that we would get our greatest bang for the buck by doing what I am talking about here and not trying to insist on great big brick and mortar buildings costing \$50,000 a cell. Why not go out on a 500- or 1,000-acre plot of land someplace, put security around it, double concertina wire, flood lights at night? But within that area, the living area is of the cheaper construction I am talking about, which would save billions of dollars.

If we establish these new prisons, I do not think there is any problem with perimeter security on anything like that. I find people thinking we have to have all sorts of exercise equipment and gymnasiums and nautilus equipment and rowing machines for prisoners. What happened to the day when you could get your exercise by running around the perimeter of a facility—inside, of course—running around to get your exercise? What is wrong with having the people build their own Quonset huts, as far as that goes? About six people can build one in 3 or 4 days, once you lay out the construction and know what you are doing. You can insulate it and do whatever you want with it.

What is wrong with having prisoners build some of their own facilities? That has been tried in Arizona. They built 100 Quonset huts and housed a number of people in them over a number of years. What is wrong with people growing some of their own food on that ground? A hoe in the hand to some of these people might lead them to learn that tomatoes do not come in cans and so forth. I do not see why it is a problem to have them grow some of their own food. I could go on and on with the analogies, but it is not necessary.

In other words, a Quonset establishment like that can have buildings for whatever purpose you may want to have a building built. You can join them together, and you can have a library, you can have your shower and toilet facilities, and you can have whatever you want, and it can be done at a fraction of the cost of what it is now. That is what I talked about when I came on the floor 2 years ago.

Advice to my colleagues: Let me tell you what happened. This was 2 years ago before the current furor about the rise of crime and what we are going to do about it. I left the floor that day, and by the time I got back to our office—this whole presentation having been made on C-SPAN, of course; now that the Senate is broadcast by C-SPAN all over the country every day—by the time I got back to my office, the phones had lit up, not just from back

home in Ohio, but from all over this country. People were saying, "Why not? What is wrong with that idea? It is the best idea I have heard of in a long time." We got a terrific increase in mail over the next few weeks on this very subject. People were saying, "What is wrong with it? We do not want the crooks back in our neighborhood. Why does everybody convicted not serve some time?" And they are right.

Following that time, I had such an outpouring of interest, I went back and spent a week at the next break going all around Ohio. I asked the people in several of our major communities—six of them—to set up meetings with prosecutors, police, sheriffs, judges, mayors, all in one meeting, to talk about what was wrong with our criminal justice system. What is lacking in our present system that would make the whole system work better?

Well, what I found was a great frustration on behalf of the prosecutors, police, sheriffs, judges, the mayors, that after all of the efforts to apprehend, after all of the efforts in the judicial system, too often, the final outcome was that the prisoner walks free to do it again. This was the frustration of these people who were most involved. Why? Because there is no place to put them. Or you have to let one go early for every new one that you put in.

Let me give an example. In one of our major counties, the sheriff there told me he had between 50,000 and 70,000 unserved warrants. He did not send officers out to arrest more offenders because he did not have anyplace to put them anyway. At that time, the sheriff 2,900 times had given people convicted of crimes letters telling them when to come back—up to 18 months later—to start serving their sentence. When and if they came back in 18 months, what would be the result? They would have to put somebody out of prison to let this other person in. If that is not a mockery of justice, I do not know what is.

Earlier I referenced the crisis facing Ohio's prison system. It is creating a situation where we are letting people get by without serving any major penalty because we have no place to put them.

What is wrong with the idea of Butler buildings, or Quonset huts, or converting trailers, or whatever, for our non-violent prisoners? I see nothing wrong with it. Millions of Americans have lived under those conditions and lived quite well while they were in the military.

I see no reason why our prisoners should be treated better than the people in our military. If we had a system the way it is supposed to work, we would have enough bed spaces out there, in whatever type facility. We should have beds waiting. We should have beds waiting so that when a judge imposes a sentence he knows that person is going directly into prison and

not be let off. We should have enough space so that a prison official does not have to put somebody out of the prison to let another person get into the system. It just makes common sense.

How are we ever going to carry out the Stevens proposal, which I fully back up, saying 85 percent of every sentence should be served? I submit that is impossible to do with the present spaces that we have available.

When I came to the Senate floor a couple years ago, a man in Cleveland was listening that day and sent me a little model. Everyone likes to come on the Senate floor these days with little models of everything. Since we went on C-SPAN, I think the cost of doing charts for the Senate floor must have gone up 10,000 percent. I would like to know what the bill is now for placards. We love to have easels on the Senate floor. This man sent this to me from Cleveland. This man was Mr. Milton Rudler. He heard what I said and was interested in seeing what he could do to make a model of this. Here is an old World War II style Quonset hut.

I do not think he knew we were having a brand new debate on this subject, but he sent a model of a new Quonset hut the other day. He sent us one that looked like prisoners could be incarcerated in without hurting their souls too much. Here it is.

So we are gaining our own little city of model Quonset huts here so everyone will see what these look like. This has shrubbery around it, a flag out in front, and a few other things with it. This Quonset hut looks a little better than the old World War II style, I must admit.

What I am submitting is not an ad for Quonset huts. It is an ad for low-cost incarceration of nonviolent prisoners.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BIDEN. If the Senator will yield for a question?

Mr. GLENN. I yield for a question.

Mr. BIDEN. As I understand it, the Senator from Ohio has another half an hour?

Mr. GLENN. No, about 10 minutes.

Mr. BIDEN. The Senator from Ohio has another 10 minutes on the issue he was speaking to.

Then, what I would like to do, with the permission of the ranking member, comanager of the bill, is then move to the Helms amendment. Senator HELMS has an amendment on restriction on payments of benefits to individuals confined by court order to public institutions pursuant to verdicts of not guilty by reason of insanity or other mental disorders.

Mr. THURMOND. Madam President, we have an amendment following that of Senator HELMS.

Mr. BIDEN. Madam President, what I would like to do—we have been attempting to go back and forth here, Democratic and Republican amendments—I would be delighted to go to the Senator from South Carolina after

the Senator from North Carolina, assuming there is not a Democratic amendment intervening. But I want to put everyone on notice at the expiration of the 10 or 12 minutes time the Senator from Ohio is going to take, I would ask unanimous consent we then move to the Helms amendment with a time agreement of 15 minutes equally divided, with no second-degree amendments to be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. In the meantime, I will sit with my friend from South Carolina and others to see if we can line up additional amendments to go upon the completion of the Helms amendment.

I thank my friend from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DORGAN. Madam President, I wonder if the Senator from Ohio will yield for a comment and question?

Mr. GLENN. I yield for questions without losing my right to the floor.

Mr. DORGAN. Madam President, I have worked with the Senator from Ohio, [Mr. GLENN], on this amendment and I am a cosponsor with him.

This amendment furthers what we are trying to do with the crime legislation I introduced last month. Senator GLENN cosponsored this legislation, which attempts to develop alternative incarceration facilities.

Senator GLENN has made the point that is important to remake. One half of the people in prison are nonviolent. I believe there is no reason for us not to take these offenders out of regular prison cells, put them in converted air bases or Army bases with alternative incarceration facilities, and free up the prison cells for violent criminals. This will give us the room to stop turning criminals out early or not even putting them in, as is now the case.

The interesting thing about this approach is that it is a way of doing things better and doing things smarter. We do not always have to throw money at problems. Senator GLENN has suggested that we could build prisons for nonviolent offenders for about one-fifth the cost of building regular prison cells for violent criminals. We have plenty of cells, let us just put violent prisoners in them and turn some of the nonviolent prisoners out into a different kind of incarceration facilities.

I think that nonviolent prisoners sentenced to prison ought to serve their time. But, why not provide alternative facilities that are one-fifth as costly and open up those prison cells to put violent prisoners in. The Senator from Ohio has been talking about this for some long while and does the Senate, I think, a real service in pointing out how we can do the same thing at much less cost. We do not always have to look for the most costly approach to solve a problem.

Finally, one other point that I made when we debated alternative forms of incarceration last week. The problems in this country are not just related to

an epidemic of violence, but an inability to put those who are violent behind bars and keep them there. Almost every major crime has been committed by someone we knew, someone who has been in jail and was turned out. Why? Because there is overcrowding. Senator GLENN's amendment solves that and at one-fifth the cost.

The Senator from Ohio has done a real service and I just want to compliment him for it and ask him if he does not concur that his approach would save an enormous amount of money and accomplish the same result?

Mr. GLENN. It would certainly lock up far more prisoners for the dollars spent. That is the bottom line of what we are trying to do here.

The PRESIDING OFFICER. If the Senator will suspend for one more moment, I am going to get the Senate in order.

The Senator from Ohio.

Mr. GLENN. What we are talking about is that we should have enough spaces in our prison system so that when a judge sentences someone to a time in jail, there should be a bed waiting—and that space should cost the taxpayers the least amount plausible.

A judge should not be constrained by having to integrate part of his thinking into the fact that we do not have a spot for that person unless we put another one out. What kind of a criminal justice system is it that sends us through an apprehension process with the police out there sometimes risking their lives, through an expensive judicial process, through a sentencing process, and then it ends and we say, "Oh, yes, I forgot, we don't really have any place to put you. And so we are going to send you back to your community with a letter to wait your turn as to when you will serve. And when you do come back in to serve that sentence, we will have to put somebody else out to accommodate you," as is happening right now in my home State of Ohio.

Madam President, Senator STEVENS made a proposal that 85 percent of the sentences should be carried out. I agree with that; 85 percent of the time assigned should be served. We just adopted moments ago in this Chamber a proposal that says if you are a three-time felony offender, you go to jail. No question, that is it. But where are they going to go to jail? That is what I am trying to address today.

Almost half of the people that have been through the criminal justice system in this country—they have been apprehended, been charged, been judged and given a term—almost half of them are nonviolent prisoners. Why do they have to have be housed in brick and mortar high security facilities when those are needed for the violent prisoners? Putting them instead in low-cost housing would relieve much of the stagnation in our prison system, as I see it.

We have a GAO report that came out in October of 1991, almost 2 years ago.

It is called "Prison Costs, Opportunities Exist to Lower the Cost of Building Federal Prisons." And they are so right. If anything, this has become even more obvious over the last couple of years since this report was published in October of 1991: "Prison Costs, Opportunities Exist to Lower the Cost of Building Federal Prisons."

I wish I did have a blowup of this. I was making a little bit of fun about some of the charts and pictures we see in the Senate Chamber these days. I wish everyone could see this. It pictures facilities in Arizona and Florida that would be the envy of any small college. They are beautiful facilities. These facilities are far better than the places where many of the prisoners came from. I can guarantee you that. These are beautiful facilities and they house nonviolent prisoners as well as violent ones. Nonviolent prisoners do not need to be in a facility where there is a slammer, where it has to be locked up at night.

According to the GAO report:

The Bureau of Prisons' overall philosophy is that the term of confinement is the punishment, not the conditions of confinement and that inmates should find their surroundings safe, humane and "normalized."

Then it says:

Thus, prisons are designed to provide a campus-like setting with recreation areas and landscaped grounds that give the inmates space for some freedom of movement.

Campus-like facilities—the pictures I just showed here, those are very plush campus-like facilities, I can guarantee you that. Is that what we really mean by establishing prisons and sending people to prisons?

Let me get on to the costs. Federal prisons cost more to build than State prisons. In the report, construction costs are compared.

The State prisons analyzed ranged from about \$11,000 and \$93,000 per bed with an overall average of about \$55,000. Construction costs for the four Federal prisons range from about \$50,000 to \$85,000 per bed and averaged about \$70,000.

This is for violent and nonviolent prisoners. Why are we spending more than the homes they came from to lock them up—more per cell—when they could just as well be housed like millions of Americans have been housed for years and years and years, for many decades, ever since World War II. Not in inhumane facilities, but in something like these model Quonset huts, Butler buildings, or whatever. In facilities I am sure we could design that would cost maybe one-fourth or one-fifth as much. And for the same amount of money we could incarcerate maybe four or five times the number of people.

Madam President, there are other things in this GAO report. I will not try and cover every point made in this GAO report. Here are some other pictures of some of the gym facilities, the equipment and the bunk rooms. I will tell you, the people in the military would have dearly loved to have lived

in anything this posh or have had access to these recreation facilities. I am not against having good facilities, but I think where we talk about crime as being a crisis in this country, then I think we ought to treat it as a crisis.

"Bureau of Prisons Cost Cutting Proposals." They have some proposals, but they have a rather narrow scope.

The Bureau of Prisons convened an Administration Wardens' Advisory Group to identify and consider several options aimed at reducing construction costs for medium security prisons. In December 1990, the BOP executive staff considered the following 12 options developed by the wardens advisory group:

One, utilize inmate labor to construct staff training centers. I do not disagree with using inmate labor to construct their own buildings. I know from personal experience that one person can read the construction sheet for a quonset hut and a half-dozen people can put one up in 3 or 4 days' time. I have done it. It is not something that is impossible to do. I hold no stock in the quonset company.

The point I am making is that this kind of construction is something that we could use instead of the big brick and mortar structures that cost hundreds and hundreds and millions of dollars. So in regard to the recommendation to utilize inmate labor to construct facilities, I agree with that.

Two, they propose deleting construction of gymnasiums at satellite camps. I see no problem with that at all. I agree with them on that absolutely. If we want to have people get some exercise at some of these camps, what on Earth is wrong with having them run around the perimeter of the camp like people in the military have done for the last 50 years? They can get plenty of exercise—build a ball diamond, build their own huts, their own recreation facilities. What on Earth is wrong with that? What is wrong with them growing some of their own food? I do not see anything wrong with it at all.

Three, reduce programmed square footage in the following support areas: outside and inside warehouses, maintenance shop, recreation, commissary and laundry. As far as square footage goes, low-cost facilities like quonset huts are cheap enough to construct that I would guarantee you we could exceed the per-square-foot requirement that they put out for each prisoner. That is no problem at all. We would have plenty of space for each person, far more than we are ever going to be able to afford in the big brick and mortar construction.

Four, replace sloping roofs with flat roofs or, at a minimum, utilize composition shingles on sloped roofs. That is something that was supposed to start saving some money, I suppose. If we cannot do better by using something like these little models beside me, I would be surprised.

Five, delete landscaping and irrigation beyond basic seeding and make

landscaping inmate labor intensive. I agree with that.

Six, although an actual savings would not be realized, certain equipment items could be paid from other funds.

Seven, reduce the quality of exterior walls and insulation.

Eight, delete indoor "active recreation," such as weight lifting and gymnasiums; make open-air recreation available. Boy, do I ever agree with that. What is wrong with people getting outside and building their own ball diamond? What is wrong with getting outside and making their own basketball court? What is wrong with getting outside and doing push-ups, putting cinder blocks on the end of a pipe and do bench presses if they want to, as I used to see people in the military doing all the time—and they enjoyed it.

What is wrong with focusing not on how much we can spend for prisoners but what we can do without—the minimum facilities that we can get by with for the nonviolent prisoners.

Well, several of these recommendations go on. But out of all of these recommendations, nowhere are low-cost structures considered. These were some of the recommendations of the administration-wardens advisory group.

Now, is there any wonder that the wardens do not particularly want low-cost construction? If you are a warden out there, you would love to preside over a great big Federal penitentiary with its big glass windows and its great big brick walls and nice driveways. Facilities that can cost between \$50,000 and \$100,000 per prisoner. Now, sure, if you were a warden, I am certain that you would much prefer to preside over that. In your office, you can sit at your window overlooking your marble palace.

But if we are trying to incarcerate criminals who are terrorizing our society, and we call this a crisis and we all get up and we beat our breasts here on the Senate floor and make our press releases talking about what a crisis this is for America, then we should be concerned about locking these people up. Half of them are nonviolent prisoners who should be serving time and who are now in a revolving door where they just go in and out, get a slap on the wrist and they are out again, and in again and out again. It does, indeed, mean something if you have a prison sentence awaiting you.

Let me give you one little example of this. Almost 2 years ago, I chaired a hearing of the Governmental Affairs Committee. The hearing involved some of the problems of apprehension of drug offenders here in the District. Without going into a lot of detail on it, we had two young people in from the Mayor's task force in Washington who were working to keep the kids out of drugs. They were both in their very early twenties. One of them had grown up out here in an area infested with drugs which is in the paper a lot these days

for murders and other crimes. The first one had not been in any trouble. He stayed out of trouble. He wanted to be part of the Mayor's task force. The second one was a young man, I think he was 23, and he had been in trouble. He had been to prison. He had been selling drugs and he got caught.

I asked him when he started selling drugs—he was just hustling drugs himself—how much was he making? And he said, "Oh, about 60 bucks a day." I said, "Well, but you had some people working for you." He said, "Yeah, I wound up with 24 mules working for me." And I said, "How much did you make then?" And as I recall I think he said, "\$350,000." And I said, "Over what time?" I think the figure was 5 months. And I said, "Well, why did you get into this to begin with." "Well," he said, "the other kids had a car and they had good clothes and I wanted that, so I got into it that way."

He said, "I knew there was some danger in it, but everybody always said we make a lot of money and then occasionally go to prison but it's a piece of cake. It's no problem. It's almost like living at home," words to that effect. "There is no problem with it. So you can do your time and get out and you will get out pretty quick anyway."

And then I said, "Well, is that the way you found it?" "No, sir, Senator." That was not the way he found it. He did not like jail. He did not like to be locked up. He did not like to be away from his home area. And so he hated that lockup so much that he was now part of the Mayor's task force working with other young people in Washington, DC to try and prevent the spread of drugs and the sale of drugs.

Now, going to jail and the certainty of a sentence is not something that is a piece of cake, as he had been told. He did not like to have his freedom taken away from him. He did not like any of that. He hated it so much that he has now signed up to help prevent other kids from getting involved in that same sort of thing.

So going to jail does have an effect, it does have an impact. But justice should be served swiftly, fairly, and with a sentence carried out immediately at the end of it, if it is to mean anything.

I would say as far as the nonviolent prisoners go—let me just repeat that—the nonviolent prisoners can be incarcerated in facilities that are not the big slammer, not the \$50,000 per cell unit. They can be done at a fraction of that cost with lesser facilities, and I think that is what we should be doing.

For the first offender who may be at the beginning of a life of crime, if they receive a sentence right then, maybe it will stop them. But they get the idea that, hey, this is a piece of cake; we can roll this over. No problem. I will just take my chance out here. I will grab that old woman's purse, and I will not go to jail anyway. Street crime, whatever crime, white collar crime, you name it. What happens out on our

highways? Do we lock people up that should be locked up for drunk driving repeat offenses? No, we do not.

So we are not just talking about murders here. We are talking about the people who are just scofflaws that are not locked up at the State level because they do not have the facilities in which to put them.

We have about 40,000 to 50,000 deaths, incidentally, to follow up on that, on our highways every year. It varies up and down a little bit. Half of those fatalities on the highway—half of them—are from drunk driving. We thought it was a tragedy that in the Vietnam war we killed 58,000 people over a 10-year period. Every 2½ years we kill as many people in this United States just from drunk driving as we did in 10 years of the Vietnam war. And yet we laugh it off—oh, yeah, you were just drunk; you had a few beers.

That is fine until you come up against the thing I mentioned a little while ago. The fellow in Florida who had 24 arrests for drunk driving and nothing happened, basically, and he is out then driving down the road, goes across the median, rams into a car and kills some people. He should have been locked up a long time ago, so he would have known that the consequences of drunk driving are not something that you wave off and just say, "Well, it is not important, ho, ho, ho." Yes, "ho, ho, ho," unless you have a family member who is a victim of something like that.

This crime bill, the Biden crime bill, has some very major provisions to it, and I support the bill. Community policing, we are going up to 100,000 police initially. I support that. So this vigil of having police out there on the corner does work. It will make for a little less crime over a period of time. It is not going to work by itself unless people know if they are apprehended they are going to absolutely and certainly go through that criminal justice system and wind up in jail. They are going to do their time. So that is a requirement for more jails.

State and local law enforcement is covered in this bill. It supports police, corrections, drug treatment, authorizes money for military-style boot camps for nonviolent offenders, trying to get them while they are young, which I support. All of this requires more prison space. It authorizes drug court programs; it requires testing, treatment, alternative punishments; and expands the death penalty.

The death penalty—many people in the Senate love to hang their hats on the death penalty. We are making the largest ever expansion of the Federal death penalty—50 new death penalty offenses. It sounds as if we are really getting tough on this, except over the last 20 years there have been 40 documented cases where mistakes have been made in this area. I know of no study which says that the death penalty really is effective in creating less violent crime deaths in the future. It

turns out most studies show these are not crimes where someone sat down and said, "You know, I am going to go out and get so and so."

Most of them are crimes of passion, spur-of-the-moment type things.

There are over 60 penalty increases in new offenses primarily covering violent crime, drug trafficking, gun crimes, enhanced penalties for, among other crimes, the use of semiautomatic gun possession by convicted criminals dealing in drug zones. That is a whole section on increased penalties.

Where are we going to put these offenders once we have these increased penalties meted out? There is no place that I know of. Increased penalties for sexual violence, child abuse—all of these are very laudable provisions of this legislation. But at the end of the process, there is no place to put the offenders, no place to lock up the criminals.

Fifty percent of the criminals that are apprehended and go through our system are judged to be nonviolent. We do not need the big slammer. We do not need the dragnet-type door closed with all the sound effects. We do not need all of that for the nonviolent prisoners.

What we do need is the cheapest possible incarceration per prisoner we can get for those prisoners. I am not trying to be inhumane. But I am trying to say we should be treating those people no better than millions upon millions of military personnel in this country have been treated, living in, whether it is Quonset huts, Butler buildings, converted warehouses, or whatever. But let us see if we cannot arrange for the lowest cost incarceration instead of blowing the money provided in this bill on big, new, brick and mortar, in effect, palaces for people who are convicted criminals.

Mr. President, I send to the desk an amendment that seeks to ensure this goal. I believe it has been accepted on both sides. I want to speak just briefly about it and then summarize my statement today. We are talking about a lot of money in this bill. I am trying to make sure it gets spent wisely, deters crime, and punishes criminals to the maximum extent per dollar spent.

In the legislation before us, we are increasing the number of police. I favor that. We have a judicial system in this country that gives people their fair day in court, and, if convicted, gives them a sentence. I favor beefing that up. But I submit that not with this bill, and not with any other bills like this, are we going to really have an appropriate punishment at the end of that judicial process unless we do a lot more than we are doing now.

I talked a couple of years ago to our Governor and Lieutenant Governor about the idea of low-cost prison construction after I made my trip around Ohio. They agreed basically we should be going to something like this.

So what this amendment does, Mr. President, is it calls on the Attorney

General to encourage innovations and cost-saving methods in making grants to States and localities under this bill. We are talking about cost savings in a lot of areas. One of them is administrative spending. We can do better in streamlining operations, increasing automation, providing for more cooperative ventures, and reducing the cost of overhead administration.

We are talking about putting a lot of police officers on the street. We can compound this effect by encouraging more community policing; also making neighborhoods partners in providing for security in their communities.

Another issue that Senator DORGAN spoke to me about recently and I certainly support increasing our criminal debt collection efforts. It is estimated that of the fines assessed against criminals, only 5 to 10 percent get collected. Maybe they do not have much money or they would not be out there committing whatever crime it is. But it is estimated that over \$1 billion is owed in this area. And I am certain that more of that could be collected if we went after it. Why should they not be required to pay back the people that they have wronged, if at all possible? I agree with that. Senator DORGAN deserves a lot of credit for the work he has done in this particular area.

Certainly we can do better in providing facilities for nonviolent offenders at a lesser cost than we have been doing. We do not need Cadillac prisons. We do not need marble palaces for these offenders. We need practical solutions to help alleviate a very serious crisis that faces America. We all get up and say crime is a crisis in this country. If it is a crisis, let us treat it that way. If it is a crisis, let us say we are going to put people behind bars who need to be behind bars—or behind secure fences. They do indeed lose their freedom if they have been judged as the type people in our society who do not have any claim to being out in the open as long as they are committing the kind of crimes that they are committing.

We say it is a crisis. But it is a crisis which forces judges and prison officials to play a sort of a Russian roulette, if you will, or a family attack roulette, in allocating prison space, making impossible choices on who to keep locked up and who to let go.

I already spoke about the situation in Ohio where prisons now house 41,121 people, and that is 18,258 inmates over capacity and growing. Some facilities in Ohio, like the Lorain Correctional Institution, are more than 200 percent of capacity.

I only hope that the action we took last week in the extraordinary effort of Senator BYRD—I commend him for this—the chairman, and the ranking minority member, will alleviate this situation. And I have worked closely with my friend and colleague, Senator DORGAN from North Dakota, on efforts to increase prison space for the non-violent prisoners.

We do not want to just make more space. We want to add it in the most cost-effective manner possible. We do not need to be building \$50,000-a-bed prisons for drunk drivers and non-violent drug offenders.

It is my hope that this amendment will result in greater use of low-cost alternative forms of housing other than marble palaces. I think most people across this country would be supporting of that.

These models were sent to me by Mr. Rudler. I did not ask for them. I do not know him personally. He heard some of my remarks on the floor a few years ago. He sent the first one. A few days ago this model arrived, a little model of a Quonset hut, a shortened version.

It shows that it can be quite an attractive place. I was accused by one of the staff a little while ago of trying to put mailboxes on the Senate floor, which I am not exactly doing. But what I am doing is saying that this is a model of a Quonset hut; it could just as well be a Butler building; but it is low-cost space and can be built very cheaply compared to what we spend in price for prisons right now.

To those who say this type of alternative is too harsh, that it would provide prisoners with a spartan existence, I would make two points:

First, millions of military personnel have lived in Quonset huts—and I spent a significant part of my life in Quonset huts. Two different times my wife, our children, and I lived in half of a standard Quonset hut. We did not feel too set upon. We lived quite reasonably well there. Would I have preferred a big permanent home someplace on a base? Yes; sure I would have. But it was not all that bad. The accommodations were OK. We lived through one winter, a cold winter, in a Quonset hut. It was not all that bad. We lived through a summer without an air-conditioner. We might break out in a sweat. Wouldn't that be too bad if a prisoner had to break out in a sweat?

Quonset huts are used by the military families in the tropics to the Arctic. If it is good enough to house our military people serving the country, I think it would be considered good enough for convicted criminals. They might not offer plush accommodations, but a spartan environment is not going to particularly hurt anybody.

The Warden's Association did not recommend low-cost facilities. No wonder. They, like any other administrator, would like to preside over a great campus-like environment that looks much better. I do not quarrel with that. I am interested in seeing convicted criminals get locked up. I do not say this would be the answer for housing all prisoners, but at the very least they provide an overflow relief valve. Not all prisoners need to be in a high-security environment, but they should be incarcerated.

Housing them in Quonset huts or other prefabricated housing accomplishes two important things: It ensures that all

offenders, regardless of their offense, serve their time. No. 2, it frees up space in the big brick and mortar facilities for violent criminals to serve a greater percentage of their terms.

We have a number of States currently using some prefabricated housing to alleviate their prison overcrowding problems. As I mentioned, one State that utilized the Quonset hut approach is Arizona. In 1984, the Arizona State Prison faced a severe overcrowding crisis, and they came up in what was looked at as an ingenious solution. They got a hold of enough Army surplus material for 100 Quonset huts, formed prisoner work crews to put them up, and lo and behold, the prison was no longer overcrowded. Imagine that. They did it at a low cost, and they did it quickly. Just as important, they did it themselves.

A hammer in a man's hand, I feel, can be a real character builder. And so can a hoe. I would have prisoners grow their own food and have them learn that food does not all come out of a fast food drive-through window, that tomatoes grow on vines, that peas have pods, and that corn can grow in as little as 90 days. They might learn something. They can eat their own food and can some of it, as we did when I was a kid in New Concord, OH. Crazy idea? I do not think it is. And neither are Quonset huts or Butler buildings, or other types of low-cost facilities. They can mean a very significant cost savings.

Our overcrowded prisons are sending a clear message to criminals. Do you know what society does? It talks like Rambo and acts like Bambi. That is what we do here on the Senate floor—talk like Rambo and act like Bambi when it comes to doing what has to be done in providing punishment to criminals who were sentenced in the criminal justice system. We say we did not really mean it after all. It might cost a little bit, but it need not cost as much as we have been led to believe.

A career of crime carries with it little or no risk of serving time in too many cases. We need to help States build low-cost alternatives to brick and mortar prisons so the revolving door criminals are not back on the street to repeat the crimes, being picked up again and going through the system, and once again finding no place to punish them at the end of that process.

We can make sure there is always a vacancy at the local jail or State prison. A "no vacancy" situation can no longer be an excuse for the absence of justice.

Mr. President, it is my understanding from the floor managers of the bill that they are prepared to accept this amendment.

The PRESIDING OFFICER. Will the Senator send his amendment to the desk?

AMENDMENT NO. 1127

(Purpose: To promote efficiency in law enforcement and corrections)



U.S. Department of Justice

Deputy Assistant Attorney General

Washington, D.C. 20530

DRAFT

January 29, 1994

TO: Bruce Reed and Jose Cerda

FROM: Jeffrey Robinson and Grace Mastalli

SUBJECT: Crime Bill Issue: Possible Federal Support for State Correctional Facilities Tied to State Adoption of "Three Strikes" Life Imprisonment Provision.

Enclosed are data relevant to the discussions re supporting additional federal assistance for state correctional facilities tied to state adoption of "three strikes" life imprisonment provisions for violent offenders.

Table 1.

8,800 to 13,200 violent state felons would receive life sentences under this proposal, if implemented at the state and federal levels.

Table 2. The impact of "3 strikes and you're out" on annual admissions to State and Federal correctional facilities:

Estimated percent of inmates admitted in 1991 with a current conviction for a violent offense and two or more prior adult sentences for violent offenses percent of new court commitments to prison for a violent offense

Prior adult
sentences

	State	Federal
All inmates	29.1%	7.7%
2 or more violent sentences to probation/incarceration	4.7%	1.7%
2 or more violent sentences to incarceration	3.3%	1.5%

2 or more violent sentences
to incarceration in a State
or Federal prison

2.8%

1.4%

Number of new court
commitments

317,237

20,241

Note: All data are based on new court commitments with maximum sentences of more than a year. Estimated percents are based on assumption that annual admissions for violent offenses and the current prison population have a similar distribution of prior adult sentences for violent offenses.

Source: Bureau of Justice statistics, unpublished data.

OPTIONAL FORM 99 (7-00)

FAX TRANSMITTAL

of pages ► 3

To <u>Jose Corda</u>	From <u>Best B.</u>
Dept/Agency	Phone #
Fax # <u>456-7028</u>	Fax #

NSN 7540-01-317-7368

5099-101

GENERAL SERVICES ADMINISTRATION

DATE: 3.17.95PAGE: 12A

Federal three-strikes law getting its first test in Iowa

By Sam Vincent Meddis
USA TODAY

The federal three-strikes law, defying predictions that it would throw a big net over small-time criminals, gets its first real test next week in the robbery trial of a violence-prone ex-convict.

Since the controversial measure went into effect last September, only seven people have been arrested and targeted to receive a mandatory life sentence because of previous convictions for violent crimes.

The charges against them include robbery and kidnapping, a new Justice Department survey shows.

The first of the seven, Thomas Lee Farmer, goes on trial Tuesday in Iowa. The law also has been invoked in Illinois, Pennsylvania, Tennessee and Arkansas.

President Clinton, who promoted the three-strikes law in his State of the Union address last year, has insisted that it be limited to the most violent criminals, says Rahm Emmanuel, White House adviser on crime issues.

But critics say the law is an example of overkill because federal sentencing guidelines already provide for tougher punishments based on a defendant's previous offenses.

"There was already an opportunity to effectively sanction people in terms of what they did before," says Alan Chaset, chairman of the sentencing committee of the National Association of Criminal Defense Lawyers.

Justice Department officials say their survey shows the new law is working the way supporters promised.

As an example, they point to Farmer, 43, the first defendant to face possible sentencing under the three-strikes law.

Prosecutors say he has a record dating to 1979 that includes convictions for murder, armed robbery and murder conspiracy.

During a November grocery robbery in Waterloo, he urged an accomplice to "shoot him, shoot him" when a clerk failed to move fast enough, prosecutors say. Before any shots were fired, the robbers fled because they heard over their police scanner that patrol cars were being called to the scene.

"This is the kind of case the law was written for," says Stephen Rapp, U.S. attorney in Cedar Rapids.

If Farmer is convicted — and if a judge decides his record is violent enough to warrant sentencing under the

three-strikes law — he faces life in prison without parole.

If Farmer were tried and convicted in state court for the same crime, he'd likely be free in about eight years, prosecutors say.

Tom Ferguson, Black Hawk County prosecutor, says the Farmer case "screamed at you" to be turned over for federal prosecution.

Even before the three-strikes measure, sentencing practices across the nation grew substantially stiffer over the past decade. Prison populations have nearly tripled since 1980, from about 330,000 inmates to more than 1 million last year.

But the idea of throwing three-time violent offenders behind bars for life really caught on last year, according to a report from the National Conference of State Legislatures.

First to coin the term was Washington state, which enacted a three-strikes law in 1993. By last October, 13 states had passed similar measures, the report says.

Helping fuel the laws' popularity was public outrage over crimes like the California kidnapping and murder of 12-year-old Polly Klaas in 1993 by an ex-convict with a history of violence.

Nationally, about 45% of all inmates have had three or more sentences to prison or probation prior to their current incarceration.

But just as critics have lashed out at the federal law, state three-strike laws have come under fire.

Complaints flared in California when a 27-year-old repeat offender was sent to prison for 25 years to life earlier this month for stealing a slice of pepperoni pizza.

Elizabeth Semel, former president of the California Attorneys for Criminal Justice, calls her state's three-strikes measure "a broad, sweeping, huge-scope law."

"It encompasses people whose second and third convictions do not involve violence, and that is the problem."

Whatever the national trend, and despite the claims of critics, federal prosecutors intend to employ the law sparingly, says U.S. Attorney Paula Casey in Little Rock.

"It's not something we will use every day."

LIFE WITHOUT PAROLE

The federal three-strikes-you're-out law, passed last year, lets prosecutors seek a life sentence without parole on a third violent felony charge if a person previously was:

- Convicted in a U.S. court of two or more violent felonies.
- Convicted of one or more violent felonies and one or more serious drug offenses.



DATE: 8.17.95

PAGE: 12A

6 other defendants wait to hear fate

In addition to Thomas Lee Farmer in Iowa, six other defendants face sentences of life in prison if they are convicted and sentenced under the federal three-strikes law passed last year.

► Robert Maxwell, 40, charged with kidnapping and two counts of carjacking in Robinson Township, Pa., in October. Previous convictions include armed robbery and arson in 1973, and rape and other sexual offenses in 1981.

► Benny Wicks, 44, charged with the October armed robbery of a bank in Clay County, Ill. Previous convictions include robbery charges in 1983 and 1992.

► Levanial Dwight Snyder, 47, charged in the December armed robbery of a restaurant, armed bank robbery, armed robbery of a tobacco store and carjacking in Memphis. Previous convictions include armed robbery in 1971 and bank robbery in 1977.

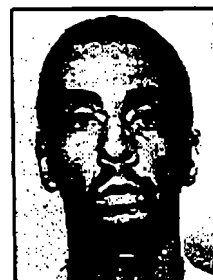
► Sammie Lee Penniman, 42, charged with the armed robbery of a Memphis bank in October. Previous convictions include three robberies between 1973 and 1976, and assault with intent to rob in 1976.

► Terrell Dickerson, 31, charged with a January carjacking in Little Rock. Previous convictions include two aggravated robberies in 1988.

► Brent Mosley, 38, charged in the same January carjacking in Little Rock. Previous convictions include armed robbery in 1974, armed bank robbery in 1977 and aggravated robbery in 1982.



SNYDER: Charged with armed robbery



PENNIMAN: Bank robbery charge



SANDY
FRIEDMAN

"Talk to Polly"
POLLY KLAAS FOUNDATION

P. O. Box 800
PETALUMA, CA 94953
TEL: 1-800-587-4357 / FAX: 1-707-766-9523

FAX COVER SHEET

TO: JOSE CERDA 202-456-7028 FAX

DATE: 5-20-94

TOTAL # OF PAGES 20 (INCLUDING COVER SHEET)

DOCUMENTS TRANSMITTED/MESSAGES:

Please call if you did not receive all pages. Thank you.

AMENDED IN SENATE MARCH 2, 1994
AMENDED IN SENATE FEBRUARY 23, 1994
AMENDED IN ASSEMBLY JANUARY 26, 1994
AMENDED IN ASSEMBLY JANUARY 19, 1994

CALIFORNIA LEGISLATURE—1993-94 REGULAR SESSION

ASSEMBLY BILL

No. 1568

Introduced by Assembly Member Rainey
(Principal coauthors: Assembly Members Burton, Johnson,
Klehs, and Richter)
(Principal coauthors: Senators Kopp, Peace, and Roberti)
(Coauthors: Assembly Members Aguiar, Allen, Alpert, Andal,
Boland, Bowler, Connolly, Conroy, Ferguson, Goldsmith,
Harvey, Haynes, Horcher, Knight, Martinez, Nolan,
Quackenbush, Seastrand, Snyder, Statham, and
Weggeland)
(Coauthors: Senators Presley and Russell)

March 4, 1993

An act to amend *and repeal* Sections 667, 667.5, 1170.95, 1192.7, 1385, 2931, and 2933 of, and to repeal *and add* Section 1192.8 of, the Penal Code, relating to sentencing, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1568, as amended, Rainey. Sentencing.

(1) Existing law, added by initiative statute, provides, among other things, that any person who is convicted of a serious felony, as defined, and who has been previously convicted of a serious felony in California, or of any offense committed in another jurisdiction which includes all of the elements of a serious felony, shall receive, in addition to the

sentence imposed for the present felony, a 5-year enhancement for each prior felony conviction on charges brought and tried separately.

This bill would provide, in addition, that (a) any person convicted of a serious felony, as defined, who has 2 or more prior separate convictions for any serious or violent felony, as defined, shall be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 25 years, (b) any person convicted of a violent felony who has 2 or more prior separate convictions for any violent or serious felony shall be punished by imprisonment in the state prison for life without the possibility of parole, and (c) any person convicted of a serious felony who has 2 or more prior separate convictions for any violent felony shall be punished by imprisonment in the state prison for life without the possibility of parole.

The bill also would provide that any person convicted of any specified sex offense committed against a person under 14 years of age who has been previously convicted of any of those offenses shall be punished by imprisonment in the state prison for life, shall not be eligible for release on parole for 25 years, and shall not be released on parole prior to serving at least 25 years in the state prison.

The bill would further provide that probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is punished under the above provision.

The bill would require the sentencing court, at the time of sentencing, and the Director of Corrections, or his or her designee, upon the admission of a defendant who has been convicted under the above provisions into the state prison, to inform the defendant of the penalties prescribed by those provisions.

(2) Existing law provides that where one of the new offenses is a specified violent felony, in addition and consecutive to any other prison terms therefor, the court shall impose a 3-year term for each prior separate prison term served by the defendant where the prior was a specified violent felony.

This bill would, instead, require the court to impose a

10-year term for each prior separate prison term served.

(3) Existing law provides that no additional term shall be imposed under the provision in (2) above for any prison term served prior to a 10-year period in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

This bill would delete that provision.

(4) Existing law specifies those offenses which are included within the definition of "violent felony."

This bill would delete and add various offenses to the list of offenses specified for purposes of defining "violent felony."

(5) Existing law specifies those offenses included within the definition of "serious felony" for purposes of the prohibition against plea bargaining.

This bill would add, among other offenses, assault upon a peace officer, firefighter, or custodial officer and felony domestic violence, as defined, when the traumatic condition is of a serious nature includes intentional infliction of serious bodily injury, as defined, to the list of offenses specified for purposes of defining "serious felony."

(6) Existing law provides that a judge or magistrate may, as specified, order an action dismissed.

Existing law also provides that the above provision does not authorize a judge to strike any prior conviction of a serious felony for purposes of sentence enhancement.

This bill would, in addition, provide that the above provision does not authorize a judge to strike any prior conviction of a violent felony for purposes of sentence enhancement.

(7) Existing law authorizes the Department of Corrections to reduce by $\frac{1}{3}$ for good behavior and participation, as specified, the prison term of any person sentenced to a determinate term of imprisonment.

This bill would, in addition, provide that notwithstanding the above provisions or other specified provisions of law authorizing a reduction in prison term for conduct credit, any person who is sentenced to serve a prison term for 1st or 2nd degree murder shall not receive the reduction in total imprisonment from the total term of imprisonment imposed by the sentencing court for those offenses or for any other

offense or sentence enhancement for that portion of the sentence that represents punishment for a violent felony as a principal or subordinate term, including any enhancement that attaches to, or is a part of, any violent felony and any enhancement for any prior conviction or prior prison term.

(8) Existing law provides, among other things, that any person sentenced to the state prison for 1st degree murder shall be eligible only for credit under the provisions in (7) above.

This bill would, instead, provide that any person sentenced to the state prison for 1st or 2nd degree murder shall not be eligible for credit.

The bill also would provide that any person who is sentenced to the state prison for at least one violent felony, as defined, shall not receive the reduction in total imprisonment under the provisions in (7) above or other specified provisions of law authorizing a reduction in prison term for conduct credit.

(9) The provisions of the law changed or added by this bill would be repealed on November 9, 1994, if a specified initiative measure is adopted by the voters at the November 8, 1994, general election.

(10) This bill would become operative on April 1, 1994, unless any one or more of several specified bills are enacted after this bill.

(11) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the "Polly Klaas Memorial Habitual Offender Reform Act."

SEC. 1.5. Section 667 of the Penal Code is amended to read:

667. (a) (1) In compliance with subdivision (b) of Section 1385, and except as provided in subdivisions (b) and (c), any person convicted of a serious felony who

previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this section to apply.

(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.

(4) As used in this subdivision, "serious felony" means a serious felony listed in subdivision (c) of Section 1192.7.

(5) This section shall not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of subdivision (c) of Section 1192.7.

(b) (1) Except as provided in paragraph (3), any person who is convicted of a serious felony and who has two or more prior separate convictions for any violent or serious felony shall be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 25 years. In no case shall a person who is punished under this paragraph be released on parole prior to serving at least 25 years in the state prison.

(2) Any person who is convicted of a violent felony and who has two or more prior separate convictions for any violent or serious felony shall be punished by imprisonment in the state prison for life without the possibility of parole.

(3) Any person who is convicted of a serious felony and who has two or more prior separate convictions for

1 any violent felony shall be punished by imprisonment in
2 the state prison for life without the possibility of parole.

3 (4) As used in this subdivision, "serious felony" means
4 any felony specified in subdivision (c) of Section 1192.7,
5 except for any felony specified in paragraphs (18) and
6 (26) of subdivision (c) of Section 1192.7, and includes any
7 offense that is committed in another jurisdiction which
8 includes all of the elements of any "serious felony."

9 (5) As used in this subdivision, "violent felony" means
10 any violent felony specified in subdivision (c) of Section
11 667.5, and includes any offense that is committed in
12 another jurisdiction which includes all of the elements of
13 any "violent felony."

14 (6) As used in this subdivision, convictions for two
15 offenses are "separate convictions" when the date of
16 conviction for one offense occurs before the date of
17 commission of the other. Nothing in this paragraph is
18 intended to change the meaning of "brought and tried
19 separately" as used in paragraph (1) of subdivision (a).

20 (7) Probation shall not be granted to, nor shall the
21 execution or imposition of sentence be suspended for,
22 any person who is punished under this subdivision.

23 (c) (1) Any person who is convicted of any offense
24 specified in paragraph (2) and who has been previously
25 convicted of any of those offenses shall be punished by
26 imprisonment in the state prison for life and shall not be
27 eligible for release on parole for 25 years. In no case shall
28 any person who is punished under this paragraph be
29 released on parole prior to serving at least 25 years in the
30 state prison.

31 (2) This subdivision shall apply to any of the following
32 offenses if committed against a person who is under 14
33 years of age, or any offense committed in another
34 jurisdiction which includes all of the elements of any of
35 the following offenses if committed against a person who
36 is under 14 years of age:

37 (A) A violation of paragraph (2) of subdivision (a) of
38 Section 261.

39 (B) A violation of Section 264.1.

40 (C) A violation of subdivision (b) of Section 288.

1 (D) A violation of subdivision (a) of Section 289.

2 (E) Sodomy or oral copulation in violation of Section
3 286 or 288a by force, violence, duress, menace, or fear of
4 immediate and unlawful bodily injury on the victim or
5 another person.

6 (F) Kidnapping in violation of subdivision (b) of
7 Section 207 or subdivision (d) of Section 208.

8 (3) Probation shall not be granted to, nor shall the
9 execution or imposition of sentence be suspended for,
10 any person who is punished under this subdivision.

11 ~~(d) (1) At the time of sentencing, the sentencing~~
12 ~~court shall inform a defendant who is convicted under~~
13 ~~this section of the penalties prescribed herein.~~

14 ~~(2) Upon the admission of a defendant who has been~~
15 ~~convicted under this section into the state prison, the~~
16 ~~Director of Corrections, or his or her designee, shall~~
17 ~~inform the defendant of the penalties prescribed herein.~~

18 ~~(e)~~

19 (d) The provisions of this section shall not be
20 amended by the Legislature except by statute passed in
21 each house by rollcall vote entered in the journal,
22 two-thirds of the membership concurring, or by a statute
23 that becomes effective only when approved by the
24 electors.

25 SEC. 2. Section 667.5 of the Penal Code is amended to
26 read:

27 667.5. Enhancement of prison terms for new offenses
28 because of prior prison terms shall be imposed as follows:

29 (a) Where one of the new offenses is one of the violent
30 felonies specified in subdivision (c), in addition and
31 consecutive to any other prison terms therefor, the court
32 shall impose a 10-year term for each prior separate prison
33 term served by the defendant where the prior was one
34 of the violent felonies specified in subdivision (c).

35 (b) Except where subdivision (a) applies, where the
36 new offense is any felony for which a prison sentence is
37 imposed, in addition and consecutive to any other prison
38 terms therefor, the court shall impose a one-year term for
39 each prior separate prison term served for any felony;
40 provided that no additional term shall be imposed under

1 this subdivision for any prison term served prior to a
2 period of five years in which the defendant remained
3 free of both prison custody and the commission of an
4 offense which results in a felony conviction.

5 (c) For the purpose of this section, "violent felony"
6 shall mean any of the following:

7 (1) Murder or voluntary manslaughter.

8 (2) Mayhem.

9 (3) Rape as defined in paragraph (2) of subdivision (a)
10 of Section 261.

11 (4) Sodomy by force, violence, duress, menace, or fear
12 of immediate and unlawful bodily injury on the victim or
13 another person.

14 (5) Oral copulation by force, violence, duress, menace,
15 or fear of immediate and unlawful bodily injury on the
16 victim or another person.

17 (6) Lewd acts on a child under the age of 14 years as
18 defined in Section 288.

19 (7) Any felony punishable by death or imprisonment
20 in the state prison for life.

21 (8) Any felony in which the defendant inflicts great
22 bodily injury on any person other than an accomplice
23 which has been charged and proved as provided for in
24 Section 12022.7 or 12022.9 on or after July 1, 1977, or as
25 specified prior to July 1, 1977, in Sections 213, 264, and 461,
26 or any felony in which the defendant uses a firearm
27 which use has been charged and proved as provided in
28 Section 12022.5 or 12022.55.

29 (9) Robbery of the first degree, as defined in
30 subdivision (a) of Section 212.5.

31 (10) Arson in violation of subdivision (a) or (b) of
32 Section 451.

33 (11) The offense defined in subdivision (a) of Section
34 289 or Section 289.5 where the act is accomplished against
35 the victim's will by force, violence, duress, menace, or
36 fear of immediate and unlawful bodily injury on the
37 victim or another person.

38 (12) Attempted murder.

39 (13) A violation of Section 12308, 12309, or 12310.

40 (14) Kidnapping.

1 (15) Carjacking, as defined in subdivision (a) of
2 Section 215.

3 (16) Continuous sexual abuse of a child in violation of
4 Section 288.5.

5 (17) Any felony in which it is charged and proved that
6 the defendant personally used a dangerous or deadly
7 weapon, as provided in subdivision (b) of Section 12022.

8 (18) A violation of Section 220.

9 (19) Assault upon a peace officer or firefighter in
10 violation of subdivision (c) or (d) of Section 245.

11 (20) Assault upon a custodial officer in violation of
12 Section 245.3.

13 (21) Bank robbery, as defined in subdivision (d) of
14 Section 1192.7.

15 (22) Robbery of the second degree, as defined in
16 subdivision (b) of Section 212.5, where it has been
17 charged and proved that the defendant was armed with
18 a firearm, as provided in subdivision (a) of Section 12022,
19 or the victim suffered serious bodily injury, as defined in
20 paragraph (5) of subdivision (f) of Section 243.

21 The Legislature finds and declares that these specified
22 crimes merit special consideration when imposing a
23 sentence to display society's condemnation for these
24 extraordinary crimes of violence against the person.

25 (d) For the purposes of this section, the defendant
26 shall be deemed to remain in prison custody for an
27 offense until the official discharge from custody or until
28 release on parole whichever first occurs including any
29 time during which the defendant remains subject to
30 reimprisonment for escape from custody or is
31 reimprisoned on revocation of parole. The additional
32 penalties provided for prior prison terms shall not be
33 imposed unless they are charged and admitted or found
34 true in the action for the new offense.

35 (e) The additional penalties provided for prior prison
36 terms shall not be imposed for any felony for which the
37 defendant did not serve a prior separate term in state
38 prison.

39 (f) A prior conviction of a felony shall include a
40 conviction in another jurisdiction for an offense which, if

committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in the state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690, transferred to a community facility pursuant to Section 3416, 6253, or 6263, or on

furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided by this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other law.

SEC. 3. Section 1170.95 of the Penal Code is amended to read:

1170.95. (a) Notwithstanding Section 1170.1 relating to the maximum total of subordinate terms for consecutive offenses which are not "violent felonies," the total of the subordinate terms for consecutive offenses which are all residential burglaries may exceed five years but shall not exceed 10 years.

(b) Notwithstanding Section 1170.1, the term of imprisonment may exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 if the defendant stands convicted of at least two residential burglaries.

(c) As used in this section, "residential burglary" means burglary of an inhabited dwelling house, an inhabited floating home as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, an inhabited trailer coach as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building.

~~(d) As used in this section, "residential arson" means arson committed in violation of subdivision (b) of Section 451 where it is charged and proved that the defendant intentionally set fire to or burned or caused the burning of a distinct inhabited structure or a distinct inhabited property in the commission of that offense.~~

SEC. 4. Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to

1 prove the people's case, or testimony of a material
2 witness cannot be obtained, or a reduction or dismissal
3 would not result in a substantial change in sentence.

4 (b) As used in this section "plea bargaining" means
5 any bargaining, negotiation, or discussion between a
6 criminal defendant, or his or her counsel, and a
7 prosecuting attorney or judge, whereby the defendant
8 agrees to plead guilty or nolo contendere, in exchange for
9 any promises, commitments, concessions, assurances, or
10 consideration by the prosecuting attorney or judge
11 relating to any charge against the defendant or to the
12 sentencing of the defendant.

13 (c) As used in this section, "serious felony" means any
14 of the following:

15 (1) Murder or voluntary manslaughter; (2) mayhem;
16 (3) rape; (4) sodomy by force, violence, duress, menace,
17 threat of great bodily injury, or fear of immediate and
18 unlawful bodily injury on the victim or another person;
19 (5) oral copulation by force, violence, duress, menace,
20 threat of great bodily injury, or fear of immediate and
21 unlawful bodily injury on the victim or another person;
22 (6) lewd or lascivious act on a child under the age of 14
23 years; (7) any felony punishable by death or
24 imprisonment in the state prison for life; (8) any other
25 felony in which the defendant personally inflicts great
26 bodily injury on any person, other than an accomplice, or
27 any felony in which the defendant personally uses a
28 firearm; (9) attempted murder; (10) assault with intent
29 to commit rape or robbery; (11) assault with a deadly
30 weapon or instrument on a peace officer; (12) assault by
31 a life prisoner on a noninmate; (13) assault with a deadly
32 weapon by an inmate; (14) arson; (15) exploding a
33 destructive device or any explosive with intent to injure;
34 (16) exploding a destructive device or any explosive
35 causing great bodily injury or mayhem; (17) exploding a
36 destructive device or any explosive with intent to
37 murder; (18) burglary of an inhabited dwelling house, or
38 trailer coach as defined by the Vehicle Code, or inhabited
39 portion of any other building; (19) robbery or bank
40 robbery; (20) kidnapping; (21) holding of a hostage by a

1 person confined in a state prison; (22) attempt to commit
2 a felony punishable by death or imprisonment in the state
3 prison for life; (23) any felony in which the defendant
4 personally used a dangerous or deadly weapon; (24)
5 selling, furnishing, administering, giving, or offering to
6 sell, furnish, administer, or give to a minor any heroin,
7 cocaine, phencyclidine (PCP), or any
8 methamphetamine-related drug, as described in
9 paragraph (2) of subdivision (d) of Section 11055 of the
10 Health and Safety Code, or any of the precursors of
11 methamphetamines, as described in subparagraph (A) of
12 paragraph (1) of subdivision (f) of Section 11055 or
13 subdivision (a) of Section 11100 of the Health and Safety
14 Code; (25) any violation of subdivision (a) of Section 289
15 or Section 289.5 where the act is accomplished against the
16 victim's will by force, violence, duress, menace, or fear of
17 immediate and unlawful bodily injury on the victim or
18 another person; (26) grand theft involving a firearm; (27)
19 carjacking; (28) any violation of Section 220; (29) assault
20 upon a peace officer or firefighter in violation of
21 subdivision (c) or (d) of Section 245; (30) assault upon a
22 custodial officer in violation of Section 245.3; (31)
23 continuous sexual abuse of a child in violation of Section
24 288.5; (32) intimidation of a witness or victim in violation
25 of paragraph (1) of subdivision (c) of Section 136.1; (33)
26 any attempt to commit a crime listed in this subdivision
27 other than an assault; (34) any conspiracy to commit an
28 offense described in paragraph (24) as it applies to
29 Section 11370.4 of the Health and Safety Code where the
30 defendant conspirator was substantially involved in the
31 planning, direction, or financing of the underlying
32 offense; and (35) a felony violation of Section 273.5 when
33 the traumatic condition *is of a serious nature includes*
34 *intentional infliction of serious bodily injury as defined in*
35 *paragraph (5) of subdivision (f) of Section 243.*

36 (d) As used in this section, "bank robbery" means to
37 take or attempt to take, by force or violence, or by
38 intimidation from the person or presence of another any
39 property or money or any other thing of value belonging
40 to, or in the care, custody, control, management, or

1 possession of, any bank, credit union, or any savings and
2 loan association.

3 As used in this subdivision, the following terms have
4 the following meanings:

5 (1) "Bank" means any member bank of the Federal
6 Reserve System, and any bank, banking association, trust
7 company, savings bank, or other banking institution
8 organized or operating under the laws of the United
9 States, and any bank the deposits of which are insured by
10 the Federal Deposit Insurance Corporation.

11 (2) "Savings and loan association" means any federal
12 savings and loan association and any "insured institution"
13 as defined in Section 401 of the National Housing Act, as
14 amended, and any federal credit union as defined in
15 Section 2 of the Federal Credit Union Act.

16 (3) "Credit union" means any federal credit union and
17 any state-chartered credit union the accounts of which
18 are insured by the Administrator of the National Credit
19 Union Administration.

20 (e) The provisions of this section shall not be amended
21 by the Legislature except by statute passed in each house
22 by rollcall vote entered in the journal, two-thirds of the
23 membership concurring, or by a statute that becomes
24 effective only when approved by the electors.

25 SEC. 5. Section 1192.8 of the Penal Code is repealed.

26 SEC. 5.5. *Section 1192.8 is added to the Penal Code, to*
27 *read:*

28 1192.8. (a) *For purposes of subdivision (c) of Section*
29 *1192.7, "serious felony" also means any violation of*
30 *Section 288.5.*

31 (b) *This section shall become operative on November*
32 *9, 1994, if an initiative measure adding Section 1170.12 to*
33 *the Penal Code is approved by the voters at the*
34 *November 8, 1994, general election.*

35 SEC. 6. Section 1385 of the Penal Code is amended to
36 read:

37 1385. (a) The judge or magistrate may, either of his
38 or her own motion or upon the application of the
39 prosecuting attorney, and in furtherance of justice, order
40 an action to be dismissed. The reasons for the dismissal

1 must be set forth in an order entered upon the minutes.
2 No dismissal shall be made for any cause which would be
3 ground of demurrer to the accusatory pleading.

4 (b) This section does not authorize a judge to strike
5 any prior conviction of a serious or violent felony for
6 purposes of enhancement of a sentence under Section
7 667.

8 SEC. 7. Section 2931 of the Penal Code is amended to
9 read:

10 2931. (a) If a prisoner was sentenced to the state
11 prison pursuant to Section 1170, or if he or she committed
12 a felony before July 1, 1977, and would have been
13 sentenced under Section 1170 if the felony had been
14 committed after July 1, 1977, the Department of
15 Corrections may reduce the term prescribed under that
16 section by one-third for good behavior and participation
17 consistent with subdivision (d) of Section 1170.2. A
18 document shall be signed by a prison official and given to
19 the prisoner, at the time of compliance with Section 2930,
20 outlining the conditions which the prisoner shall meet to
21 receive the credit. The conditions specified in the
22 document may be modified upon any of the following:

23 (1) Mutual consent of the prisoner and the
24 Department of Corrections.

25 (2) The transfer of the prisoner from one institution to
26 another.

27 (3) The department's determination of the prisoner's
28 lack of adaptability or success in a specific program or
29 assignment. In that case the prisoner shall be entitled to
30 a hearing regarding the department's decision.

31 (4) A change in custodial status.

32 (b) Total possible good behavior and participation
33 credit shall result in a four-month reduction for each
34 eight months served in prison or in a reduction based on
35 this ratio for any lesser period of time. Three months of
36 this four-month reduction, or a reduction based on this
37 ratio for any lesser period, shall be based upon
38 forbearance from any act for which the prisoner could be
39 prosecuted in a court of law, either as a misdemeanor or
40 a felony, or any act of misconduct described as a serious

disciplinary infraction by the Department of Corrections.
 (c) One month of this four-month reduction, or a reduction based on this ratio for a lesser period, shall be based solely upon participation in work, educational, vocational, therapeutic, or other prison activities. Failure to succeed after demonstrating a reasonable effort in the specified activity shall not result in loss of participation credit. Failure to participate in the specified activities can result in a maximum loss of credit of 30 days for each failure to participate. However, those confined for other than behavior problems shall be given specified activities commensurate with the custodial status.

(d) Notwithstanding this section, Section 4019, or any other law authorizing a reduction in prison term for conduct credit, any person who is sentenced to serve a term of imprisonment in the state prison under subdivision (a) or (c) of Section 190 shall not receive the reduction in total imprisonment from the total term of imprisonment imposed by the sentencing court under subdivision (a) or (c) of Section 190 or for any other offense or sentence enhancement.

(e) This section shall not apply to any person whose crime was committed on or after January 1, 1983.

SEC. 8. Section 2933 of the Penal Code is amended to read:

2933. (a) It is the intent of the Legislature that any person who is convicted of a crime and sentenced to the state prison under Section 1170 serve the entire sentence imposed by the court, except for a reduction in the time served in the custody of the Director of Corrections for performance in work, training, or education programs established by the Director of Corrections. Worktime credits shall apply for performance in work assignments and performance in elementary, high school, or vocational education programs. Enrollment in a two- or four-year college program leading to a degree shall result in the application of time credits equal to that provided in Section 2931. For every six months of full-time performance in a credit qualifying program, as designated by the director, a prisoner shall be awarded

worktime credit reductions from his or her term of confinement of six months. A lesser amount of credit based on this ratio shall be awarded for any lesser period of continuous performance. Less than maximum credit should be awarded pursuant to regulations adopted by the director for any prisoner who is not assigned to a full-time credit qualifying program. Every prisoner who refuses to accept a full-time credit qualifying assignment or who is denied the opportunity to earn worktime credits pursuant to subdivision (a) of Section 2932 shall be awarded no worktime credit reduction. Every prisoner who voluntarily accepts a half-time credit qualifying assignment in lieu of a full-time assignment shall be awarded worktime credit reductions from his or her term of confinement of three months for each six-month period of continued performance. Except as provided in subdivision (a) of Section 2932, every prisoner who is willing to participate in a full-time credit qualifying assignment but who is either not assigned to a full-time assignment or is assigned to a program for less than full time, shall receive no less credit than is provided under Section 2931. Under no circumstances shall any prisoner receive more than six months' credit reduction for any six-month period under this section.

(b) Worktime credit is a privilege, not a right. Worktime credit must be earned and may be forfeited pursuant to Section 2932. Except as provided in subdivision (a) of Section 2932, every prisoner shall have a reasonable opportunity to participate in a full-time credit qualifying assignment in a manner consistent with institutional security and available resources.

(c) Under regulations adopted by the Department of Corrections, which shall require a period of not more than one year free of disciplinary infractions, worktime credit which has been previously forfeited may be restored by the director. The regulations shall provide for separate classifications of serious disciplinary infractions as they relate to restoration of credits; the time period required before forfeited credits or a portion thereof may be restored; and the percentage of forfeited credits that

1 may be restored for such time periods. For credits
 2 forfeited for commission of a felony specified in
 3 paragraph (1) of subdivision (a) of Section 2932, the
 4 Department of Corrections may provide that up to 180
 5 days of lost credit shall not be restored and up to 90 days
 6 of credit shall not be restored for a forfeiture resulting
 7 from conspiracy or attempts to commit one of those acts;
 8 provided that no credits may be restored if they were
 9 forfeited for a serious disciplinary infraction in which the
 10 victim died or was permanently disabled. Upon
 11 application of the prisoner and following completion of
 12 the required time period free of disciplinary offenses,
 13 forfeited credits eligible for restoration under the
 14 regulations shall be restored unless, at a hearing, it is
 15 found that the prisoner refused to accept or failed to
 16 perform in a credit qualifying assignment or
 17 extraordinary circumstances are present that require
 18 that credits not be restored. "Extraordinary
 19 circumstances" shall be defined in the regulations
 20 adopted by the director.

21 The prisoner may appeal the finding through the
 22 Department of Corrections review procedure, which
 23 shall include a review by an individual independent of
 24 the institution who has supervisory authority over the
 25 institution.

26 (d) Subdivision (c) shall also apply in cases of credit
 27 forfeited under Section 2931 for offenses and serious
 28 disciplinary infractions occurring on or after January 1,
 29 1983.

30 (e) Any person who is sentenced to a term in the state
 31 prison under subdivision (a) or (c) of Section 190 shall
 32 not be eligible for credit.

33 (f) Any person who is sentenced to a term of
 34 imprisonment in the state prison for at least one violent
 35 felony, as defined in subdivision (c) of Section 667.5, shall
 36 not receive the reduction in total imprisonment pursuant
 37 to this section, Section 2931, 4019, or any other law
 38 authorizing a reduction in prison term for conduct credit
 39 for that portion of the sentence that represents
 40 punishment for a violent felony as a principal or

1 subordinate term, including any enhancement that
 2 attaches to, or is a part of, any violent felony and any
 3 enhancement for any prior conviction or prior prison
 4 term.

5 SEC. 9. The provisions of this act shall become
 6 operative on April 1, 1994, unless either Assembly Bill 167,
 7 Assembly Bill 971, or Assembly Bill 2429 of the 1993-94
 8 Regular Session, or Assembly Bill 9 of the 1993-94 First
 9 Extraordinary Session, or any combination thereof, are
 10 enacted after this act, in which case this act shall not
 11 become operative.

12 SEC. 10. Sections 667, 667.5, 1170.95, 1192.7, 1385, 2931,
 13 and 2933 of the Penal Code shall remain in effect until
 14 November 9, 1994, and on that date are repealed if an
 15 initiative measure adding Section 1170.12 to the Penal
 16 Code is approved by the voters at the November 8, 1994,
 17 general election, at which time those sections shall have
 18 the same force and effect as if they had not been
 19 amended by this act.

20 SEC. 11. This act is an urgency statute necessary for
 21 the immediate preservation of the public peace, health,
 22 or safety within the meaning of Article IV of the
 23 Constitution and shall go into immediate effect. The facts
 24 constituting the necessity are:

25 In order to ensure longer prison sentences and greater
 26 punishment for those persons who commit serious or
 27 violent felonies and have been previously convicted of
 28 serious or violent felonies, and to protect the public from
 29 the imminent threat posed by those repeat offenders, it
 30 is necessary that this act take effect immediately.

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

REYNOLDS (AB 971 & INITIATIVE)

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

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

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

RAINEY / AB 1568

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

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

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

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

**-PAGE 2-
COMPARISON**

REYNOLDS

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

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

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

RAINEY

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

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

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

**-PAGE 3-
COMPARISON**

REYNOLDS

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

**PROHIBITS PLEA BARGAINING
ON PRIOR CONVICTIONS ONLY.**

RAINEY

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

**PROHIBITS PLEA BARGAINING
ON ANY SERIOUS OR VIOLENT
OFFENSE.**

**-PAGE 4-
COMPARISON**

HYPOTHETICAL SENTENCING EXAMPLE:

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

REYNOLDS

RAINEY

(1ST CONVICTION:)

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

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

(2ND CONVICTION:)

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

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

(3RD CONVICTION:)

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

LIFE WITHOUT
POSSIBILITY OF
PAROLE.

**THREE STRIKES AND YOU'RE OUT:
THE INITIATIVE, JONES (AB 971), AND RAINEY (AB 1568)**

THE INITIATIVE

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

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

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

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

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

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

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

THE JONES BILL (AB 971)

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

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

THE RAINEY BILL (AB 1568)

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

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

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

Prior convictions are defined as follows:

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

Expansion of the list of qualifying felonies is as follows:

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

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

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

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

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

Plea bargaining limitation is as follows:

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

Credit provisions are as follows:

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

Nickel (2/18/94)

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

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

1) For a defendant with no priors:

Robbery with a gun	Rainey	-	10 years
	Jones	-	5 years
Forcible rape	Rainey	-	8 years
	Jones	-	4 years

2) For a defendant with one prior:

Robbery with a gun, one violent prior with prison	Rainey	-	20 years
	Jones	-	12 years ¹
one serious or violent prior w/o prison	Rainey	-	15 years
	Jones	-	12 years ¹
Forcible rape, one violent prior with prison	Rainey	-	18 years
	Jones	-	12.8 years ²
one serious or violent prior w/o prison	Rainey	-	13 years
	Jones	-	12.8 years ²

3) For a defendant with two priors:

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

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

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

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

POINTS ON "THREE STRIKES"

- I'm not going to comment on the specific case because I am not familiar with the details, and because I believe it should move through the judicial process in the normal way.
- But let me say that my administration is absolutely committed to enforcing the "three strikes" law around this country to insure that repeat, violent offenders are not allowed to walk free.
- I fought to get this law passed, and to get the Crime Bill passed, to make sure that repeat violent offenders remain behind bars for life. And I am pleased that this tool now exists for our federal prosecutors to use in appropriate cases.
- And we are enforcing the "three strikes" law in conjunction with local prosecutors, and part of our National Violent Crime Strategy.

Date: 07/21/94 Time: 19:05

Judge Says No to 'Three Strikes' Sentence

WALNUT CREEK, Calif. (AP) California's get-tough ``three strikes'' sentencing law says Jeffrey Dean Missamore should get up to eight years behind bars for getting caught with a joint in prison.

A judge says that's nonsense for a nonviolent crime. He said he'll give Missamore a much lighter sentence.

It may be the first time a judge balks at imposing the state's strict sentencing law, passed in a grass-roots effort during the uproar over last year's killing of 12-year-old Polly Klaas.

Superior Court Judge Lawrence Antolini is aware of that background. His courtroom is in Santa Rosa, the town 60 miles north of San Francisco where career criminal Richard Allen Davis is awaiting trial for Polly's kidnap-murder.

Antolini supports locking up violent repeat offenders, but he believes a long prison sentence for someone like Missamore amounts to cruel and unusual punishment.

``I'm just one lone voice crying out in the wilderness, so to speak, but I think someone has to cry out and point out to the public that there is an erosion of our Constitution that has to be addressed,'' he said in a telephone interview.

Ironically, Polly's father agrees with the judge.

District Attorney Gene Tunney thinks Antolini is wrong. ``The guy we're talking about is a career thief here,'' he said.

Missamore fell foul of the ``three strikes'' law in April when he was caught with a joint on a prison farm where he was serving a 120-day sentence for shoplifting. He was accused of two felonies possessing marijuana in jail and taking drug paraphernalia rolling papers into jail.

The shoplifting was not a serious felony, but a previous 1986 burglary conviction was, which brought ``three strikes'' into play.

Missamore was to have gone to trial Monday, but he pleaded guilty to possession of marijuana and the second charge was dropped.

Under the ``three strikes'' law, Missamore could get double the normal sentence for that one charge, two to four years in this case.

But Antolini announced that when he sentences Missamore on Aug. 11, he'll give him a year in jail and let him enter a residential drug treatment program.

Tunney said he would appeal if Missamore's sentence isn't longer than that.

Missamore is astounded. ``I didn't think I was going to draw all this publicity for a little weed,'' he told the Santa Rosa Press Democrat.

Missamore, 32, said drugs and alcohol have been his downfall, but he has never been violent and wants to turn things around for his wife and baby son.

Jerome Skolnick, a law professor at the University of California at Berkeley, said the ``three strikes'' law is too rigid.

``A sensible judge will feel extremely frustrated, as this judge obviously did,'' he said.

Tunney acknowledges there can be problems with requiring long prison terms for all repeat felons, regardless of the nature of their crimes.

Many prosecutors backed a different ``three strikes'' bill which sought to exclude nonviolent crimes as a third ``strike.'' But Gov. Pete Wilson would sign only the broadest version.

Marc Klaas, Polly's father, supported the narrower bill and believes Antolini is doing the right thing.

Long sentences for nonviolent felons are ``a terrible idea,'' he said Thursday.

APNP-07-21-94 1904EDT

Date: 11/03/94 Time: 12:34

First 'Three-Strikes-You're-Out' Prosecution Begins

WATERLOO, Iowa (AP) The first prosecution under the new federal ``three strikes you're out'' law has begun with robbery charges against a man with previous convictions for murder, robbery and conspiracy.

U.S. Attorney Stephen Rapp said today a federal grand jury returned robbery and weapons indictments against two men in a grocery store holdup last month.

One suspect, Thomas Lee Farmer, 42, of Des Moines, was convicted of second-degree murder in 1971, first-degree robbery in 1979 and conspiracy to commit murder in 1983.

Black Hawk County Attorney Tom Ferguson said he would drop state charges against Farmer so Rapp can handle the case. According to the federal three-strikes law, the third felony conviction must be on a federal charge, except in states that have their own three-strikes laws. Iowa has no such law.

If convicted in state court, the maximum sentence Farmer could face would be up to 25 years in prison. The average time actually served in Iowa prisons for this sentence is eight years, Rapp said.

The federal three-strikes law provides a mandatory life sentence for someone convicted of a third felony.

Rapp said the U.S. Justice Department told him this is the first prosecution of its kind since President Clinton signed the crime bill on Sept. 13.

No court dates were set for Farmer or the second defendant, Orlando Lee Proctor, 31, of Norwalk.

APNP-11-03-94 1233EST

NCSL • LEGISBRIEF

April 1995

Update of Vol. 2, No. 31

"THREE STRIKES" LEGISLATION UPDATE

By Alan Karpelowitz and Donna Hunzeker

*Most states
already have
sentence
enhancement
for habitual
offenders.*

"Three strikes you're out" for habitual offenders was coined and successfully carried out in the 1993 fall elections in WASHINGTON state, where voters approved a Persistent Felony Offender Act requiring life without possibility of parole for third-time serious felony offenders. Even though many states already had mandatory minimum provisions applying to repeat offenders of violent crime, and nearly all states have some type of sentence enhancement applying to habitual offenders, during 1994 the three-time loser notion caught on elsewhere. About half of the states introduced "three strikes" legislation in 1994, including a variety of proposals to add the tougher "three strikes" message to existing habitual offender laws.

By October 1994, another 13 states—CALIFORNIA, COLORADO, CONNECTICUT, GEORGIA, INDIANA, KANSAS, LOUISIANA, MARYLAND, NEW MEXICO, NORTH CAROLINA, TENNESSEE, VIRGINIA and WISCONSIN—had passed new "three strikes" laws. At least seven other states—ALASKA, ILLINOIS, NEW JERSEY, OHIO, PENNSYLVANIA, SOUTH CAROLINA and VERMONT—have similar legislation pending or ready for reintroduction.

Other states in 1994 have passed new laws relating to repeat offenders. Among those, MINNESOTA passed a law prohibiting the judge from departing from sentencing guidelines when an offender has been convicted of a third violent crime. And in MICHIGAN a new law changes sentencing procedures to allow the prosecuting attorney to seek sentence enhancement, based on alleged prior felony convictions, within 21 days of arraignment. Previously, prosecutors had to bring a separate habitual offender charge after conviction.

*Requirements
and terms
vary.*

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

Prison terms under the laws also differ. The WASHINGTON initiative and laws in GEORGIA, INDIANA, LOUISIANA, MARYLAND, TENNESSEE and WISCONSIN, provide for life without possibility of parole. CALIFORNIA imposes a sentence of life imprisonment, under which offenders will spend a minimum of 25 years behind bars. Similarly, NEW MEXICO provides for parole eligibility after an inmate serves 30 years, while COLORADO provides for parole eligibility only after 40 years have been served. NORTH CAROLINA's "three strikes" law, passed during an extra session on crime and corrections early last year, provides for life without parole, while a separate measure also approved in special session entitles those sentenced to life without parole to a sentence review after 25 years are served. MARYLAND and VIRGINIA provide a release mechanism to those 65 years and older who have served a set number of years. KANSAS applied the "three strikes" concept to its sentencing guidelines, allowing the court to double the grid sentence for repeat "person felonies."

Number and types of crimes to which "three strikes" laws apply also are important points of distinction. Washington's law applies to more than 20 serious felonies. CALIFORNIA's "three strikes" is similarly broad in application, including a number of violent felonies plus some 25 "serious felonies." INDIANA, COLORADO, LOUISIANA, MARYLAND, NORTH CAROLINA and TENNESSEE also apply their new laws to many violent and serious crimes. Tennessee law, however, which has "two strike" as well as "three strike" provisions, requires a period of incarceration for prior felony offenses to be considered a "strike."

**NATIONAL
CONFERENCE
OF STATE
LEGISLATURES**

Executive Director, William T. Pound

Copyright National Conference
of State Legislatures

Denver Office: 1560 Broadway,

Suite 700
Denver, Colorado 80202
303.830.2200

Washington Office: 444 N. Capitol St., N.W.,

Suite 515
Washington, D.C. 20001
202.624.5400

The fiscal impact of "three strikes" laws and proposals has been an important consideration. The term imposed and whether it is mandatory, the number and types of felony offenses the legislation applies to, and how significantly the new measure departs from existing provisions, are obvious factors in how costly "three strikes" will be to a state. These variations also make state comparisons impractical.

Among states developing fiscal projections of "three strikes" law, KANSAS estimates it will need a new prison by the end of the decade to accommodate prisoners for whom sentences were doubled on the guidelines grid. WISCONSIN also predicts needing additional prison capacity to contain a population increase that will begin to be felt in about 4 years and level off in 40 to 50 years. The Wisconsin fiscal analysis also predicts an increase in jury trials in the state, depending on charges filed by district attorneys and the effect of plea bargaining.

Kansas estimates it will need a new prison by the end of the decade.

In TENNESSEE, where a nearly 10-year-old prison "pay as you go" law requires an accompanying one-year appropriation for costs associated with a net increase in imprisonment in state facilities, the additional state expenditure for the "three strikes" law is estimated at \$2.8 million over the first 10 years.

Wisconsin predicts an increase in jury trials.

The "three strikes" law passed by the CALIFORNIA Legislature in March 1994 was later "ratified" by voters in the fall election. Considerable fiscal analysis and debate accompanied the initial impact assessment of the California measure. The Department of Corrections (DOC) estimated needing 20 more prisons (in addition to 12 already planned) for incarcerating "three strikes" inmates, adding \$6 billion in construction costs by the year 2000. Operating costs per year will increase by \$1.6 billion by the end of the decade, according to the DOC. The California Judicial Council expects "three strikes" to increase the number of felony jury trials. A 1 percent increase in the number of felony cases resulting in jury trial would require an additional \$16 million in court resources. The California Governor's Office of Planning and Research, however, estimated that the law will save the state five times more, or \$29.5 billion through the end of the decade, than what it will cost to implement. That study computed social and other savings to be derived through victimizations, arrests, prosecutions and the like that will not occur because repeat offenders are incapacitated. The governor's study used some "social cost" figures from the RAND group, which responded with a report suggesting that the California "three strikes" law is too sweeping to be cost effective. The RAND report says if only the second-strike component of the California law were implemented (doubling the sentence for any felony if there is a prior serious or violent felony) two-thirds of the benefit would be achieved at half of the cost.

According to a recent report by the California Legislative Analyst's Office, the number of inmates sent to prison under the "three strikes" law, at least in the short run, will be less than originally anticipated. However, it will continue to have a significant effect on the state's prison population. In order to simply maintain existing levels of overcrowding, the department will need at least 15 new prisons by 1999.

Contacts for More Information

Donna Hunzeker
NCSL—Denver
(303) 830-2200



TO: JOSE CERDA

FROM: GREG TAYLOR

RE: STATE ANTI-CRIME LEGISLATION: "THREE STRIKES AND
YOU'RE OUT"

DATE: MAY 30, 1994

What follows is a state by state analysis of the recently adopted "Three Strikes and You're Out" anti-crime legislation. I have included in this comparison, those states that have similar and/or related "mandatory time for repeat violent offenders" crime proposals. Finally, it should be noted that all states have enacted some sort of habitual offender law for repeat felons. However, for the purpose of analyzing "Three Strikes Legislation," I have included only those 1993-94 amendments that mandate non-parole eligible jail time.

As of May, 1994 the following states have enacted "Three Strikes" legislation:

Washington, Initiative 593 (1993)
California, A 971 (1994)
Connecticut, H 5385 (1994)
Georgia, S 441 (1994)
Indiana, H 1063 (1994)
Kansas, H 2788 (1994)
Maryland, H (1994, awaits governor)
New Mexico, S 73 and 742, Chapter 24 (1994)
North Carolina, H 39, Part 6 Chapter 22, Extra Session (1994)
Virginia, H 273 (1994)
Wisconsin, 1993 S 781, Act 289 (1994)

Florida
Illinois
New Jersey
Minnesota

The following states have related "Three Strikes" legislation pending as of May 1, 1994: AL, CO, DE, IL, MI, NJ, NY, OH, SC, VT, RI, PA

Of all of the states that have enacted "Three Strikes" type legislation, only Connecticut, Kansas and Maryland have retained some judicial discretion regarding sentencing. All other member states impose mandatory statutory sentencing.

In cases involving violent repeat offenders, ten states have listed

offenses that if committed eliminate or severely reduce plea bargaining in sentencing. In Arizona for example, repeat criminals are not eligible to plea bargain sentencing if the offense is against a child, or committed while the perpetrator is on parole. Moreover, in Arizona, parole will only be granted if the parole board approves an offenders petition with at least four votes or by unanimous vote if fewer consider the petition.

In Connecticut, parole eligibility is eliminated for offenders sentenced to capital felony, felony murder, arson murder, and any offense committed with a firearm on, or within 1500 feet of a school. California, Illinois and Pennsylvania each have pending "truth in sentencing" proposals that mandate that violent offenders serve at least eighty-five percent of their sentence, while non-violent, low-risk offenders receive alternate sentencing. Furthermore, in Tennessee, a judge can inform the jury of how much jail time the defendant will serve if convicted of a "serious, violent felony." Finally, GA, MD, NC, VA, WV and WI each have restricted or amended parole eligibility for repeat felony offenders.

In preparing this memo, I contacted the Department of Corrections, the Governor's office, and the appropriate legislators of each state that had passed "Three Strikes" legislation as of May 1994. Additionally, I contacted the National Conference of State Legislatures. Several states have yet to send me updated information.

Enclosed please find a draft copy of an 11 state chart. I have attempted to outline the nature and results of the amendments, and the targeted criminal acts were possible. I will update the chart as more information becomes available.

cc: Clarissa Cerda

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

**NATURE AND RESULT OF
AMENDMENTS**

TARGETED CRIMINAL ACT

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

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

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

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

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

WISCONSIN:

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

-the provisions of this bill apply to adult criminals or to juveniles who have been tried as adults.

-serious felonies (any felony that is punishable by a maximum prison term of 30 years or more) includes murder, manslaughter, battery, and aggravated battery, mayhem, vehicle theft, robbery and many crimes against children including sexual assault, physical abuse, sexual exploitation, abduction

CALIFORNIA:

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

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

-priors from other jurisdictions count as serious/violent felonies in CA

-court cannot dismiss or strike prior convictions

-for inherently serious felonies with one prior add 5 years

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

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

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

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

December 17, 1993

MEMORANDUM TO MARK GEARAN

From: Liz Bernstein
Re: POTUS meeting with Mark Klaas - Details on related crime policy
CC: Ricki Seidman
George Stephanopoulos
Bruce Reed

[In reference to questions that came out of Ricki's conversation with Klaas]

- ◆ There are two provisions in the crime bill that particularly relate to the Klaas case:

The Morgan P. Hardiman Task Force on Missing and Exploited Children

(Sponsored by Sen. Deconcini -- Hardiman was a D'Amato staffer who died of AIDS and had worked on this legislation for years)

This establishes for the first time a task force of law enforcement officers from various federal agencies to work with the National Center for Missing and Exploited Children to coordinate state and federal efforts on investigating the most difficult cases. The participating agencies are the FBI (chair of task force), DEA, Fed Marshals, Secret Service, ATF, Postal Service and Customs.

The Jacob Wetterling Crimes Against Children Registration Act

(Sponsored by Sen. Durenberger and Rep. Ramstad -- Wetterling was a child abducted in Minnesota four years ago and never found)

The Act requires any person convicted of a state criminal offense against a minor to register. Registration information would be filed with law enforcement officials of the state and maintained for ten years after the offender's release from prison, parole or supervision. [note: this seems to skirt questions of constitutionality due to the fact that 24 states already are doing this, it deals only with convictions -- public record -- and will only be available to law enforcement officials]

- ◆ The crime bill applies federal resources towards the protection of children in several other ways:

Child Safety Act:

Establishes visitation centers to provide supervised visitation in cases where there is a high risk of sexual, physical or emotional abuse or where a parent has threatened to abduct a child.

Designation of Office of Juvenile Justice and Delinquency:

This office would become an authorized user of the Federal Parent Locator Service.

Violence Against Women Act:

Increases the penalties for repeat offenders and for sex offenders against victims under 16; imposes mandatory restitution for sex crimes to compensate for monetary losses related to the offense; provides funding to law enforcement and prosecution to reduce violence crime against women; incorporates anti-stalking provisions.

DNA Identification

Provides funding to improve the quality and availability of DNA analysis to law enforcement agencies and a criminal defendant for use in a criminal proceeding.

VICAP upgrade:

There are resources in the bill allocated to beef up the VICAP criminal tracking system -- this will largely go to agents in Quantico who are studying patterns in criminal activity.

- ♦ The following are related bills separate from the crime conference:

The National Child Protection Act: (Oprah bill)

Establishes a national system for a background check on potential and current child care providers. (Will be signed on Monday)

International Parental Kidnapping Act of 1993:

Makes international child abduction a federal felony crime and imposes criminal fines and/or a prison term on anyone who removes a child from the U.S. or unlawfully retains a visiting child in a foreign country. (Signed by the President on December 3)

- ♦ In reference to making kidnapping a federal crime:

Currently, kidnapping is considered a federal offense only when there is a ransom demand (the Lindbergh law). There are some concerns with broadening this criteria not the least of which is the inordinate burden it would place on the FBI - there are about 6,000 FBI agents compared to about 17,000 police departments in the country. Arguably, the most egregious offenses could be federalized in some way, e.g., local police could approach the U.S Attorney in their state to prosecute in certain instances.

- ♦ Some side notes:

A survey of the last 90 days revealed that there were 37 cases classified as stranger abduction reported in the U.S. Each year there are about 200-300 such cases reported.

Klaas will be meeting with the National Center for Missing and Exploited Children on Monday before he comes to the White House. They have taken a very

supportive stance on the child-related provisions in the crime bill and so may defuse somewhat the meeting with the President.

♦ 1-2-3 legislation:

Also known as the "three strikes you're out" provision -- for the first serious felony conviction, you get sentenced without parole, the second gets you a double sentence without parole, and the third gets you life in prison without parole. We have not taken an official position on this issue.

CNN Larry King Live
December 14, 1993

Interview with Marc Klaas

Polly Klaas Foundation

We have the Polly Klaas Foundation, which was founded on the love of Polly - in our desperate search to find her, in our need to find her - and we had a simple mission statement at that time, which was to find Polly. And we were very successful in our efforts to get Polly's image there. We used the media as shamelessly as we could. We got approximately two billion images of Polly out worldwide. We also tried to focus the attention on the FBI and the Petaluma Police Department very heavily so that they would not be able to give up Polly's case.

Goals

Well, our goal now is threefold. We've changed the mission statement of the foundation from 'Find Polly,' to 'Make America Safe for Children,' and we're going to do this with a three-point attack. And one of those things will be prevention - that this will probably be the most difficult. And what we're going to try to do is we're going to try to change attitudes towards children. We're going to try to change children's attitudes and make them empower themselves, make them respect themselves, make them honor their gut feelings; and if they get into situations where they feel that they are endangered, certainly that they should feel that there is no reason they should not run, scream and get as far away from that as they possibly can.

Point two would be attacking the kidnapping event itself, preventing kidnapping. And the only way I can really address that in a thumbnail [sic] would be- in a community like ours, which is the only one we really have any experience in - and in fact, the only experience we have is in searching for Polly - my advice to anybody in such a community that had a child kidnapped would be to first of all call the police, secondly call the FBI, then get ahold of the radio stations, the television stations, the newspapers, find yourself a printer and show up the next morning and be ready to get your support and push toward it.

The third phase is going to be dealing with legislation and what I as a parent - and not necessarily the found - am very interested in now is one-two-three legislation, 'one, two, three, you're out' legislation. Meaning for the first serious felony you get a sentence without parole, for the second serious felony you get a double sentence without parole; and for the third serious felony, you go to jail and you do not come out of jail, because certainly these people have no business in society, harming people and children...I think there should be truth in sentencing.

Death Penalty

Well, I feel, certainly, about the death penalty in general that these are decisions that have to be made by society. I feel that- how do I feel about the death penalty for the person that took my- that kidnapped and took my young daughter's life? I feel that that person deserves not to live.