

FIX WASHINGTON'S 3-STRIKES LAW

LEGISLATIVE BRIEFING 09-10

PLEASE SUPPORT SENATE BILL 5292 TO REMOVE ROBBERY 2 FROM THE 3-STRIKES LIST

Initial Sponsors: Senators Kline, Hargrove, Pridemore, Kohl-Welles, Regala, McDermott

EXHIBIT A: HIGH SEVERITY, LOW SERIOUSNESS

Mr. Wheeler is serving a "minimum term" of 777 years and 77 months with no possibility of parole for 3 unarmed, no-injury Robbery 2s. Robbery 2 is the most common 3-Strikes conviction.

Photo and "Good Conduct Time" summary shared with permission.



IISO440-37	WASHINGTON DEPARTMENT OF CORRECTIONS EARNED EARLY RELEASE CREDITS	PAGE 1
DATE: 08 25 07	NAME: WHEELER, JOHN	DOC NO: COUNSELOR:
<u>GOOD CONDUCT TIME</u>		
ON THIS SENTENCE FROM KING COUNTY, 981012311 WITH A MINIMUM TERM OF 777 YEARS, 77 MONTHS, 77 DAYS, YOU HAD THE POTENTIAL TO EARN 3425 DAYS OF GOOD CONDUCT TIME (GCT) . FROM THE TIME START ON THIS CAUSE, 07/16/99 TO THE START OF THIS REPORTING PERIOD YOU HAVE LOST 0.00 DAYS OF GCT.		
IN THIS PERIOD, 07/01/06 TO 08/01/07, YOU HAVE LOST OR WILL BE RECOMMENDED TO LOSE 0.00 DAYS OF GCT AS A RESULT OF INFRACTIONS.		

EXHIBIT B: STATE AGENCY RECOMMENDS REFORM

RECOMMENDATIONS

- That the Legislature **REMOVE ROBBERY 2 FROM THE LIST OF OFFENSES THAT CONSTITUTE A STRIKE UNDER THE PERSISTENT OFFENDER STATUTE;** and
- That the Legislature examine the circumstances under which a charge of Assault 2 applies and examine under what circumstances, if any, should Assault 2 be treated as a strike...

A Comprehensive Review and Evaluation of Sentencing Policy in Washington State, WA Sentencing Guidelines Commission, 2000-2001

Delay in implementing this reform is estimated to cost **OVER \$2 MILLION YEARLY** in corrections operating expenses alone.

EXHIBIT C: LOW COST-EFFECTIVENESS

Multiple studies find low cost-effectiveness, questionable benefits, and unintended consequences. A 2008 study found that effects on crime in California, where approximately 100,000 people are serving under Two and Three Strikes are "mostly undetectable" and not different from the effects measurable in states, such as Washington, with many fewer Three Strikes convictions. The author cites "tremendous monetary and social costs." Chen, Elsa Y. Impacts of "Three Strikes and You're Out" on Crime Trends in California and Throughout the United States. J. Contemporary Criminal Justice, 2008.

EXHIBIT D: SEVERE RACIAL DISPARITY

From 2007 list of Persistent Offenders, Sentencing Guidelines Commission

Summary by Race		
Asian	5	1.9%
Black	117	45.3%
Hispanic	8	3.1%
Nat. Am.	8	3.1%
Unknown	4	1.6%
White	150	58.1%
Total	292	100.0%

"Alongside drug sentences, "Three Strikes" offenses are perhaps the most objective example of notorious racial disparity in Washington State. Under "Three-Strikes," African Americans are sentenced to life in prison with no possibility of parole at a rate nearly 19 times higher than for white offenders. Same crime - more time." Le Roi Barshears, Washington State's War on the Black Family, 12/12/08, Washblog.

EXHIBIT E: INADEQUATE DEFENSE FOR THE POOR

"I was court-appointed trial counsel in 1997 in this matter. I was compensated BY CLARK COUNTY at a flat rate of \$1,500 for the trial. This was far less than the amount needed to provide an adequate defense."

Perry Buck, 9/16/08. Public defender for Shawn Cruze's third strike. Mr. Cruze was sentenced to life under 3-Strikes at the age of 24 for crimes in the lowest quartile of seriousness under state criminal law. Used with permission.

"THE CLARK COUNTY INDIGENT DEFENSE SYSTEM is failing to fulfill the statutory requirements under Washington law to provide legal representation for poor criminal defendants consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches."

Overview of the Clark Co., WA Indigent Defense System in 2002, Prepared for Clark County Commissioners by Am. Bar Assoc

FREQUENTLY ASKED QUESTIONS

Does the reform have public support?

Yes! Organizations that have joined a statement of support at fix3strikes.org include:

American Civil Liberties Union of Washington *** Center for Social Justice *** Coalition of Anti-Racist Whites*** Church Council of Greater Seattle *** First African Methodist Episcopal Church – Seattle *** Friends Committee on Washington State Public Policy *** Justice Works! *** Lutheran Public Policy Office of Washington State *** Minority Executive Director's Coalition of King County *** NAACP - Alaska, Oregon and Washington State - Area Conference *** Peace and Justice Action League of Spokane *** Religious Coalition for the Common Good *** Seattle Fellowship of Reconciliation *** Seattle King County NAACP *** Statewide Poverty Action Network *** United Black Christian Clergy Association of Washington State *** Washington Defender Association *** Washington State Unitarian Universalist Voices for Justice *** Western Washington Fellowship of Reconciliation.

Other organizations and many other individuals have spoken out for reform over the years. Recent editorials in the Yakima Herald and Seattle Times support reform. Also see justiceisnogo.org for grassroots information.

Would reform endanger public safety?

Reform is protective of public safety.

From fix3strikes.org/data.html and fix3strikes.org/research.html

With Robbery 2 reform few individuals who have been convicted of any strike offenses above the mid-range of the state's criminal seriousness scale would complete their standard maximum terms and be released. It is estimated that this would include fewer than a dozen people in the next ten years. In contrast, hundreds of people convicted of crimes involving crimes of similar seriousness are released every year in Washington. The majority of all people released under Robber 2 reform would be in their 50s, 60s, or 70s -- decades during which people commit very few crimes – but are extremely expensive to house.

Violent crime began declining in the United States several years before Washington State passed the nation's first 3-Strikes law. Several studies have concluded that this decline has been significantly slower in cities where 3-Strikes laws are in place. Across the country, cities in 3-Strikes states have experienced homicide rates that are 10-12% higher than expected. Some studies show additional fatalities and other risks to law enforcement.

Does reform put public safety first?

Yes! Research shows that 3-Strikes laws have uncertain benefits that are, at best, of low cost-effectiveness compared with proven methods, and that the law is associated with significantly higher than expected homicide rates and additional risks to law enforcement. We are safer when we use our limited public safety dollars for policies that work well and are cost-effective. RCW 9.94A.515 states that punishments must be commensurate with the crimes, frugal with state resources, and provide an opportunity for people to improve themselves. Bringing our state's 3-Strikes law into alignment with the cornerstone principles of our criminal justice code is both ethical and protective of public safety.

Would reform prevent prosecutors from doing their jobs?

From fix3strikes.org/data.html and fix3strikes.org/shift.html

Patterns of prosecution for Robbery 2 have changed dramatically over the years. In the first 6 years of the 3-Strikes (1994-1999) 3-Strikes was imposed 44 times when Robbery 2 was the third conviction – compared with only 5 times during the six years from 2001-2006. Reforming the law would bring it into better alignment with current practice.

"We have changed our approach. At the time that [Initiative 593] went into effect, it had some really strong language that I think was an attempt to limit the discretion everybody had." The initiative said persistent offenders "shall" be sentenced to life without parole. Over time, however, Satterberg says, his office came to realize it still had discretion over how to charge defendants. Not every crime eligible to be counted as a strike has to be filed that way. That's particularly true for second-degree robbery. It's the lowest-level crime to be labeled a strike and yet the one that puts the most people away under three strikes, according to statistics from the state Sentencing Guidelines Commission."

King County Prosecutor Dan Satterberg quoted in: Prosecutor Admits Possible Injustice in the "Three-Strikes" Law. Will anyone follow? By Nina Shapiro, 1/22/08, Seattle Weekly

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