

History of 2- and 3-strikes Laws in Washington For CSTF Sentencing Grid work group

3-Strikes and 2-Strikes Laws: Historical information

3-strikes Law

> Prior to July 1, 1984 (SRA):

RCW [9.92.090](#)

Habitual criminals.

Every person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who shall previously have been convicted, whether in this state or elsewhere, of any crime which under the laws of this state would amount to a felony, or who shall previously have been twice convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be adjudged to be an habitual criminal and shall be punished by imprisonment in a state correctional facility for not less than ten years.

Every person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who shall previously have been twice convicted, whether in this state or elsewhere, of any crime which under the laws of this state would amount to a felony, or who shall previously have been four times convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be punished by imprisonment in a state correctional facility for life.

> 1992:

An initiative was proposed but did not receive enough signatures to be placed on the ballot.

> 1993:

Two Legislative bills that included Persistent Offender language were proposed but failed to pass.

1. SHB 1139 (1993) - An offender must be sentenced to the statutory maximum sentence for an offense if:
 - The offender is sentenced for an offense with a seriousness level of X or above on the sentencing grid; and
 - The offender had been previously convicted at least two prior times of offenses with a seriousness level of X or above; and
 - The offender committed one of the prior offenses with a seriousness level of X or above after the offender had been convicted of another offense with a seriousness level of X or above.
- If the statutory maximum sentence for an offense is life imprisonment, then the term for such repeat offender is established at 99 years.
- The increased determinate sentences do not apply to aggravated murder in the first degree.
- Offenses that are ranked at a seriousness level of X or above are: Murder 1, Homicide by abuse, Murder 2, Assault 1, Assault of a child 1, Rape 1, Rape of a child 1, Kidnapping 1, Rape 2, Rape of a child 2, Child molestation 1, Damaging a building by

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explosion with threat to humans, Delivery of heroin or narcotics by an adult to a minor, and Leading organized crime.

The original version of the bill required a persistent offender to be sentenced to life imprisonment without the possibility of parole or early release. A persistent offender was defined as anyone who was separately convicted of three most serious offenses. A most serious offense included all class A felonies, any felony with a deadly weapon finding, any class B felony with a finding of sexual motivation, and other crimes of violence.

Testimony For: The cost of incarcerating repeat offenders cannot compare to the cost of having people seriously hurt. It also costs money to continually reprocess repeat offenders. A small percentage of the population commit most of the felonies, so locking them up longer will decrease crime. This will apply to career offenders. This will act as a deterrent to some offenders.

Testimony Against: None.

2. HB 2053 (1993) - included the same Persistent Offender language as in HB 1139 among other sentencing options. **Requested by Governor Lowry**
 - Alternatives to Jail Confinement – Zones 1 & 2
 - Two-month Temporary Sentence Reduction
 - Special Drug Offender Sentencing Option
 - Motor Vehicle Theft
 - Work Ethic Camp
 - Mechanism for Sentence Option Funding
 - Creation of Washington Council on Justice Policy
 - Assignments for SGC related to proportionality and fairness of felony sentences,

Testimony For: The bill was worked and perfected for some considerable time in the Corrections Committee. While there may be need for some further amendments, it should be supported. Specifically, certain references to the Sentencing Guidelines Commission and emergency powers need to be addressed. The areas of drug offender options are sound policy. We need the provisions of the bill to help keep people from re-offending. It includes sections on raising the level of car theft; when coupled with other sections, this is a good reason to support the bill. The bill contains good public policy.

Testimony Against: None

> November 2, 1993

Initiative 593 was created by “conservative, Seattle-based Washington Institute for Policy Studies”,¹ and filed on January 6, 1993, by newly-elected Representative Ida Ballasiotes of Mercer Island². It was “backed by numerous victims-rights groups, police organizations, and the

¹ Seattle Times (October 1993). Initiative 593 – “Three Strikes” Equals Life In Prison found at <https://archive.seattletimes.com/archive/?date=19931028&slug=1728480>

² Washington “Three Strikes”, Initiative 593 (1993) found at [Washington "Three Strikes", Initiative 593 \(1993\) - Ballotpedia](#)

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Washington State Grange.”³ A few weeks before the deadline to be filed with the SOS, the NRA donated \$90,000 into campaign, which allowed for a massive direct mailing to citizens and paid for professional companies to gather signatures.⁴ The initiative passed with 76% of the vote. It became effective on 12/2/1993. This was the nation’s first 3-strikes law. California and the feds passed similar laws in 1994. By 1997, 20 other states passed 3-strikes laws.

- In 1993 - 17 specific offenses plus all class A felonies, etc.
- In 2021 – 56 specific offenses plus all class A felonies, etc.

Both the 1992 and 1993 initiatives were promoted by growing concerns about rising crime rates and based on research completed by the Washington Institute for Policy Studies, which was headed by John Carlson.⁵

> 1994 Codification of Initiative 593 language:

9.94A.030(25) "Persistent offender" is an offender who: (a) Has been convicted in this state of any felony considered a most serious offense; and (b) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.360; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted.

9.94A.505 (formerly 9.94A.120(4)) A persistent offender shall be sentenced to a term of total confinement for life without the possibility of parole or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, notwithstanding the maximum sentence under any other law...

9.94A.555 (formerly 9.94A.392) Findings and intent-1994 c 1 (Initiative Measure No. 593). (1) The people of the state of Washington find and declare that: (a) Community protection from persistent offenders is a priority for any civilized society. (b) Nearly fifty percent of the criminals convicted in Washington state have active prior criminal histories. (c) Punishments for criminal offenses should be proportionate to both the seriousness of the crime and the prior criminal history. (d) The public has the right and the responsibility to determine when to impose a life sentence. (2) By sentencing three-time, most serious offenders to prison for life without the possibility of parole, the people intend to: (a) Improve public safety by placing the most dangerous criminals in prison. (b) Reduce the number of serious, repeat offenders by tougher sentencing. (c) Set proper and simplified sentencing practices that both the victims and persistent offenders can understand. (d) Restore public trust in our criminal justice system by directly involving the people in the process.

[1994 c 1 § 1 (Initiative Measure No. 593, approved November 2, 1993).] Severability-1994 c 1 (Initiative Measure No. 593): " If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 1 § 6 (Initiative Measure No. 593, approved November 2, 1993).] Short title-1994 c

³ Seattle Times (Ibid).

⁴ Seattle Times (Ibid).

⁵ Drosendahl, G. (2015). Ida Ballasiotes files initiative that will become the nation’s first “Three Strikes, You’re Out” law with Washington Secretary of State’s office on January 6, 1993. Found at <https://www.historylink.org/File/11148>

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1 (Initiative Measure No. 593): "This act shall be known and may be cited as the persistent offender accountability act." [1994 c 1 § 7 (Initiative Measure No. 593, approved November 2, 1993).] Captions-1994 c 1 (Initiative Measure No. 593): "Captions as used in this act do not constitute any part of the law." [1994 c 1 § 8 (Initiative Measure No. 593, approved November 2, 1993).]

9.94A.561 (formerly 9.94A.393) Offender notification and warning.

A sentencing judge, law enforcement agency, or state or local correctional facility may, but is not required to, give offenders who have been convicted of an offense that is a most serious offense as defined in RCW 9.94A.030 either written or oral notice, or both, of the sanctions imposed upon persistent offenders. General notice of these sanctions and the conditions under which they may be imposed may, but need not, be given in correctional facilities maintained by state or local agencies. This section is enacted to provide authority, but not requirement, for the giving of such notice in every conceivable way without incurring liability to offenders or third parties. [1994 c 1 § 4 (Initiative Measure No. 593, approved November 2, 1993).] Severability-Short title--Captions-1994 c 1 (Initiative Measure No. 593): See notes following RCW 9.94A.392.

9.94A.565 (formerly 9.94A.394) Governor's powers.

(1) Nothing in chapter 1, Laws of 1 994 shall ever be interpreted or construed as to reduce or eliminate the power of the governor to grant a pardon or clemency to any offender on an individual case-by-case basis. However, the people recommend that any offender subject to total confinement for life without the possibility of parole not be considered for release until the offender has reached the age of at least sixty years old and has been judged to be no longer a threat to society. The people further recommend that sex offenders be held to the utmost scrutiny under this subsection regardless of age. (2) Nothing in this section shall ever be interpreted or construed to grant any release for the purpose of reducing prison overcrowding. Furthermore, the governor shall provide twice yearly reports on the activities and progress of offenders subject to total confinement for life without the possibility of parole who are released through executive action during his or her tenure. These reports shall continue for not less than ten years after the release of the offender or upon the death of the released offender. [1994 c 1 § 5 (Initiative Measure No. 593, approved November 2, 1 993).] Severability-Short title--Captions-1994 c 1 (Initiative Measure No. 593): See notes following RCW 9.94A.392.

> 2019

ESSB 5288 passed the Legislature and removed Robbery 2 from the definition of Most Serious Offense, which is used to determine persistent offender status. Effective 7/28/2019.

Staff Summary of Public Testimony:

(In support) Washington was the first state to pass a "three strikes" law. The initiative was retrospective, so some people became persistent offenders shortly thereafter, as prior offenses could count toward establishing persistent offender status. This bill reduces the list of strike offenses by removing Robbery in the second degree. There is no weapon, bodily injury, or financial institution involved in this offense, and its inclusion as a most serious offense is not in line with original intent of the law. Though prosecutors report taking a different approach with this offense, currently 62 persons are serving three-strike life sentences today with Robbery in the second degree supporting their persistent offender status. This bill is reasonable, mirrors current practice in many counties, and is in line with the intent of initiative. There are many reasons to take Robbery in the second degree off of the strike offense list. It is disproportionate to other offenses on the list. There are geographic disparities in terms of how prosecutors' offices handle these cases, when there should be consistency in the application of sentencing

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laws. There are racial disproportionality issues in application, and this policy is not a deterrent. It is also expensive to house this aging population, and resources should be allocated to rehabilitative programs. It would be better to apply the policy retroactively. It takes courage to admit that there was an error in the underlying policy. Amends should be made for prior cases.

(Opposed) Robbery in the second degree is not an accident or a mistake, and three offenses are required for a person to be deemed a persistent offender. By the third conviction, there is a demonstrated need for community protection. Prosecutors already carefully approach these charges due to the three-strikes law. More data is needed to look into the facts of these cases and determine whether there are people truly receiving life sentences without the possibility of release for stealing candy or struggling with a security guard. It is likely some of these offenses were pled down from more serious charges.

(Other) Robbery in the second degree should not be on the list of strike offenses. It is usually a shoplifting-related offense, and the force involved is often from struggling in an effort to get away. Often it is committed by young people, and having them spend life incarcerated is not in the best interest of the child or consistent with the intent of the original law. Though punitive sentencing measures are purportedly made on behalf of victims, the actual desires of victims are not always listened to. The three-strikes policy is applied disproportionately, affecting certain populations more than others. Some communities are affected by mass incarceration. The bill should apply retroactively and allow for resentencing. The judge should be able to take certain factors into account, like the use of violence. People serving life sentences should have an opportunity to return to society. Many people serving these sentences are aging, which comes at an expense to the state.

Other Legislative bills related to Most Serious Offense (MSO):

- HB 2546/SB 6195/SB6530 (1995/1996) Add Res Burg to MSO
- **HB 1176** (1997/1998) Adding child rape to the two strikes list. **Effective 7/27/1997**
- HB 1860 (1999/2000) Removes Rob 2 from MSO
- SB 6120 (2001/2002) Removes Rob 2 from MSO
- HB 1881 (2003/2004) Removes Rob 2 and certain elements of Assault 2 from MSO
- SB 5911 (2004) Removes Rob 2 from MSO
- SB 5284 (2005/2006) Removes Rob 2 from MSO
- HB 1803 (2005/2006) Removes Rob 2 from MSO
- SB 5964 (2007/2008) Revising the definition of "most serious offense" and creating a task force to study crimes included in "most serious offense."
- SB 5502 (2007/2008) Adds an out-of-state felony conviction to MSO if the offense has a minimum sentence of 10 years or more and was committed with sexual motivation.
- **SSB 6184** (2007/2008) Adds an out-of-state felony conviction to MSO if the offense has a minimum sentence of 10 years or more and was committed with sexual motivation. **Effective date 6/12/2008.**
- SB 5292 (2009/2010) A conviction of Rob 2 is not considered a MSO.
- SB 5287 (2017/2018) Removes Rob 2 and Assault 2 from MSO.

> Other States:

Arkansas (since 1995) - "Three-Strikes": Habitual offenders receive enhanced sentences after the second and fourth felony conviction, length is based on the class of felony. Habitual offenders convicted of two or more violent crimes serve a mandatory sentence or life.

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Arizona (since 2005) - [13-706. Serious, violent or aggravated offenders; sentencing; life imprisonment; definitions](#)

- A. A person who is at least eighteen years of age or who has been tried as an adult and
- is convicted of a serious offense except a drug offense, first degree murder or any dangerous crime against children as defined in section 13-705, whether a completed or preparatory offense; and
 - has previously been convicted of two or more serious offenses not committed on the same occasion,
 - shall be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement until the person has served at least twenty-five years or the sentence is commuted.
- B. A person who has been convicted of committing or attempting or conspiring to commit any violent or aggravated felony and
- who, within fifteen years of the conviction for the third offense, has previously been convicted on separate occasions of two or more violent or aggravated felonies not committed on the same occasion
 - shall be sentenced to imprisonment for life and is not eligible for suspension of sentence, probation, pardon or release on any basis except that the person may be eligible for commutation after the person has served at least thirty-five years.

California

- Passed a 'three-strikes' law in 1994.
- In 2012, voters overwhelmingly enacted the Three Strikes Reform Act ("Proposition 36") to address the harshest, and unintended, consequences of the sentencing law. It eliminated life sentences for non-serious, non-violent crimes and established a procedure for inmates sentenced to life in prison for minor third strike crimes to petition in court for a reduced sentence. In order to win a reduced sentence, a court must find that the prisoner no longer poses an unreasonable threat to public safety.
- In the first eight months of its enactment, over 1,000 prisoners were released from custody. Of these inmates released, the recidivism rate stands at less than 2 percent charged with a new crime, a number well below state and national averages. Proposition 36 has saved California taxpayers between \$10 and \$13 million; and if the reform is applied to all eligible inmates, it is estimated that Californians would save almost \$1 billion over the next ten years.

Colorado (since 1994) - 18-1.3-801. Punishment for habitual criminals.

(1) (a) A person shall be adjudged an habitual criminal and shall be punished by a term in the department of corrections of life imprisonment if the person:

- (I) Is convicted of: (A) Any class 1 or 2 felony or level 1 drug felony; or (B) Any class 3 felony that is a crime of violence, as defined in section 18-1.3-406 (2); and
(II) Has been twice convicted previously for any of the offenses described in subparagraph (I) of this paragraph (a).

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- No person sentenced pursuant to this subsection (1) shall be eligible for parole until such person has served at least forty calendar years. (
- Nothing in this subsection (1) prohibits the governor from issuing a pardon or a clemency order on a case-by-case basis; however, the governor shall submit a report to the general assembly on each such pardon or clemency order in accordance with section 7 of article IV of the state constitution.
- This subsection (1) shall not apply to a person convicted of first or second degree burglary, which person shall be subject to subsections (1.5), (2), and (2.5) of this section and section

Connecticut (since 1994); - **Sec. 53a-40. Persistent offenders: Definitions; defense; authorized sentences; procedure.**

A persistent dangerous felony offender is a person who:

(A) Stands convicted of manslaughter, arson, kidnapping, robbery in the first or second degree, assault in the first degree, home invasion, burglary in the first degree or burglary in the second degree with a firearm, and

(B) has been convicted of a sentence to a term of imprisonment of more than one year or of death for any of the following crimes:

(i) The crimes enumerated in subparagraph (A) of this subdivision or an attempt to commit any of said crimes; or

(ii) murder, sexual assault in the first or third degree, aggravated sexual assault in the first degree or sexual assault in the third degree with a firearm, or an attempt to commit any of said crimes; or

(A) Stands convicted of sexual assault in the first or third degree, aggravated sexual assault in the first degree or sexual assault in the third degree with a firearm, and

(B) has been, prior to the commission of the present crime, convicted of and imprisoned under a sentence to a term of imprisonment of more than one year or of death, in this state or in any other state or in a federal correctional institution, for any of the following crimes:

(i) Murder, manslaughter, arson, kidnapping, robbery in the first or second degree, assault in the first degree, home invasion, burglary in the first degree or burglary in the second degree with a firearm, or an attempt to commit any of said crimes; or

(ii) prior to October 1, 1971, in this state, assault with intent to kill

- For a persistent dangerous felony offender
 - The sentence term shall be greater than twice the minimum term for the current offense and not more than twice the maximum for the current offense, or 40 years, whichever is greater.
 - Any mandatory minimum requirement shall be included as twice the authorized mandatory minimum term.
 - If a person has been twice convicted of any of the crimes enumerated in subsection (a) of this section, the sentence term shall be greater than three times the minimum term of imprisonment for the offense but not Life.
 - Any mandatory minimum term requirement shall be included as three times the authorized mandatory minimum term.

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A persistent dangerous sexual offender is a person who:

(A) stands convicted of sexual assault in the first or third degree, aggravated sexual assault in the first degree or sexual assault in the third degree with a firearm, and
(B) has been, prior to the commission of the present crime, convicted of and imprisoned under a sentence to a term of imprisonment of more than one year,

- For a persistent dangerous sexual offender
 - The sentence shall include a term of imprisonment and a period of special parole pursuant to subsection (b) of section 53a-28 which together constitute a sentence of imprisonment for life, as defined in section 53a-35b.

Delaware (since 1973); § 4214. Habitual criminal; life sentence

- A habitual criminal is any person who:
 - has been 2 times convicted of a Title 11 violent felony, or attempt to commit such a violent felony and shall thereafter be convicted of a subsequent Title 11 violent felony, or attempt to commit such a violent felony, or
 - Shall receive a minimum sentence of the statutory maximum penalty up to Life.
 - has been 3 times convicted of any felony under the laws of this State and who shall thereafter be convicted of a subsequent felony
 - Shall receive a minimum sentence of ½ of the statutory maximum to Life. If the stat max is life, minimum sentence shall be 30 years.

The court shall impose the applicable minimum sentence pursuant to subsection (b), (c) or (d) of this section and may, in its discretion, impose a sentence of up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment. Under no circumstances may the sentence imposed pursuant to this section be less than the minimum sentence provided for by the felony prompting the person's designation as a habitual offender.

- Florida (since 1995);
- Georgia (since 1994);
- Indiana (since 1994);
- Kansas (since 1994);
- Louisiana (since 1994);
- Maryland (since 1975 but amended in 1994);
- Massachusetts (since 2012);
- Montana (since 1995);
- Nevada (since 1995);
- New Jersey (since 1995);
- New Mexico (since 1994);
- New York (since 1797);
- North Carolina (since 1994);
- North Dakota (since 1995);
- Pennsylvania (since 1995);
- South Carolina (since 1995);
- Tennessee (since 1994);
- Texas (since 1952);
- Utah (since 1995);
- Vermont (since 1995);
- Virginia (since 1994);
- Washington (since 1993); and

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- Wisconsin (since 1994).

2-strikes Law

Definition of Persistent Offender was expanded through SHB 2320 (1996) to include persons convicted of two separate sex offenses and became effective 6/6/1996.

SHB 2320:

A person will be sentenced as a persistent offender to life imprisonment without possibility of release if the person has been twice convicted, on separate trips through the judicial system, of any of the following qualifying offenses, including attempts:

- (1) rape in the first degree;
- (2) rape in the second degree;
- (3) indecent liberties by forcible compulsion; or
- (4) any of the following offenses if they were specifically found to have been sexually motivated:
 - (a) murder in the first or second degree;
 - (b) kidnapping in the first or second degree;
 - (c) assault in the first or second degree; or (d) burglary in the first degree

Testimony For: (Corrections) The sex offenses covered by this bill are different than the other offenses that are already covered under the existing "Three Strikes and You're Out" law. They merit inclusion in a "Two Strikes" bill. This bill is narrowly tailored. There is a possible chilling effect if the "Two Strikes" bill were to include crimes against children. Cost should not be a major factor in consideration of a "Two Strikes" bill. The bill is intended to complement, not replace, the existing statute allowing for civil commitment of sexually violent predators. This bill will reduce the need for the commitment statute. Prisoners who are put away for life should not be given sex offender treatment or sex offender counseling.

Testimony For: (Appropriations) This bill would help deal with the problem of chronic sex offenders. The bill does not replace either the current three strikes law or the civil commitment of sex offender law, but it provides another needed tool.

Testimony Against: (Corrections) Current law sufficiently protects the public. Judges can impose exceptional sentences. We also have "Three Strikes and You're Out" and the civil commitment statute for sexually violent predators. The bill will be expensive in future biennia. Judges should have discretion in sentencing sex offenders. A "Two Strikes" bill will deter reporting of offenses. This bill is patterned after the "Three Strikes and You're Out" law, which is currently being challenged in the appellate courts.

Related Legislative Bills:

HB 3036 /SB6672 (1998) and HB 1710/SB 5476 (1999) would have required that persons convicted of Crimes Against a Child (ROC 1, Child Mol 1 and Homicide by Abuse if victim is under 16 years) to be sentenced to LWOP.