

## Proposal Would Weaken Three Strikes Law

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Lawmakers in Olympia are considering a proposal to change the state's Three-Strikes-You're-Out law by removing second degree robbery from the list of criminal offenses that count as a strike.

If enacted, the change would be retroactive. It would require judges to reduce the sentence of any offender currently in jail as if the new law had been in effect at the time the original sentence was handed down. The sentences of 139 Three-Strikes offenders, almost half the total, would be reduced under this proposal. About 80 of them would be released immediately.

### Background

Washington's Three Strikes law, the nation's first, was enacted by citizen initiative in November 1993 by a vote of 76%. The purpose of the law is to end the careers of repeat violent criminals. Anyone convicted of a third serious felony is sentenced to life in prison without the possibility of parole. Currently 292 offenders are serving life sentences under the law.

To qualify under Washington's Three Strikes law, a criminal must be convicted as an adult on three separate occasions for serious felony crimes, including rape, robbery, child molestation, serious assault, manslaughter or murder. Single crime sprees, regardless of the number of offenses committed, only count as one strike.

As an additional safeguard for borderline cases, any felony listed as a strike, but which is not classified as either a class A felony or a sex offense, has a "wash-out" provision, meaning it doesn't count if the offender avoids committing another serious offense for five to ten years after his release. This gives some potential Three-Strikes offenders the opportunity to remove a prior strike from their record based on their law-abiding conduct.

Supporters of the Three Strikes ballot initiative argued there would be three main benefits of adopting the law:

- 1. It would serve justice.** Victims and society would be assured that the worst violent criminals would receive certain punishment, once they had repeatedly demonstrated they were willing to harm or threaten their fellow citizens.
- 2. It would reduce crime.** Potential future crimes would never occur because the violent criminals who would have committed them were sitting in jail instead.
- 3. It would deter criminal acts.** Violent criminals who had earned two strikes would have a strong incentive to leave the state, choose to commit lesser offenses, or give up a life of crime entirely.

Critics of the Three Strikes initiative argued the new law would be too expensive for the state, would lead to jail overcrowding, and would not be effective in deterring future crimes or in reducing violent crime rates.

## **Results of the Three-Strikes Law**

Washington's experience with Three Strikes has shown that the law has been successful in fulfilling all three goals. The predictions of opponents have not been borne out. The law had an immediate and wide-ranging impact on the culture of criminal activity. Police soon discovered that criminals were well aware of the new law, and often asked at their arrest whether they were being accused of an offense that might count as a strike. Public defenders discussed the implications of the Three Strikes law when advising their clients, and accused offenders showed a willingness to plea bargain for a lesser charge in order to avoid conviction for a strike.

By 1995 violent crime had declined by 4.8%. Based on previous trends, this means over a two-year period there were 256 fewer rapes, 171 fewer robberies and 845 fewer violent assaults than would likely have occurred without the new law. Put another way, over the first two years of the Three Strikes law 1,272 people were spared the pain and trauma of being a victim of violent crime.

This trend continues today. Violent crime rates are lower and thousands of innocent citizens have not had their lives violently disrupted, because their would-be attackers are safely in prison after a conviction for a third strike.

## **Proposal to Amend the Three Strikes Law**

Passage of the proposed bill would represent a major change in the Three-Strikes law. Under the bill, a conviction for robbery in the second degree would not be considered a "most serious offense," and therefore would not count as a strike. The person committing the crime would not be considered a "persistent offender" for the purposes of administering the Three-Strikes law.

Washington law defines second-degree robbery as happening when a person unlawfully takes property from another person against his will with the use or threat of immediate force, violence, or fear of injury to that person or his property. The use of force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance from the property's lawful owner. In either case, the degree of force used or threatened is immaterial (Revised Code of Washington, 9A.56.200 and 9A.56.321).

Under the proposed change, all convicted Three-Strikes offenders would automatically receive a re-sentencing hearing. The judge would be required to reduce an offender's sentence if a past conviction for second-degree robbery or attempted second-degree robbery had been one of the offender's original strikes. The courts would have two years to review such cases and pass reduced sentences before the bill's retroactive provision expired on July 1, 2011.

Passage of the bill would have little immediate fiscal impact. In fact, it would likely reduce Department of Corrections costs in the short term through prisoners being released earlier than they would have been otherwise. Any savings to the state, however, would be offset by higher costs to society if violent Three-Strikes prisoners who are released early use their freedom to gain access to new victims.

## Conclusion

The crime data since 1993 shows that the Three Strikes law is working as voters intended. The law was designed to stop two kinds of criminals: violent predators who commit the worst crimes, such as murder, rape and assault, and repeat offenders who commit lesser but far more numerous crimes over and over again.

In both cases the law is narrowly targeted to people who have demonstrated repeatedly that they are unwilling to let others live in peace. Given the opportunity, these offenders have shown a willingness and ability to victimize others in an effort to benefit themselves.

As criminal justice policy, the Three Strikes law is most effective in deterring felons who already have one or two strikes on their record. Prosecutors, defense attorneys and judges carefully explain to strike-one and strike-two offenders what will happen after the third conviction for violent crime. When a third conviction means life behind bars, many felons resist the temptation to commit that last offense. They switch to lesser crimes, like shoplifting or check fraud, or, if they think they are likely to hurt someone again, leave Washington before committing another violent offense.

Weakening the Three Strikes law would reduce the effectiveness of this proven anti-crime legislation. Some convicted felons currently serving time would be released, and all criminals would find that, though they might still serve time for second-degree robbery, they could commit this type of crime without the risk of incurring a strike. The overall effect would be to make the citizens of Washington less safe by lessening the proven crime reducing effect of the Three Strikes law.

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