

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
JUDICIARY COMMITTEE

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In re: House Bill 2313

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Stenographic report of hearing held in  
the Gold Room, Allegheny County Court-  
house, Pittsburgh, Pennsylvania, on  
Friday,

March 25, 1994  
10:30 a.m.

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HON. FRANK LaGROTTA, ACTING CHAIRMAN  
HON. FRANK DERMODY, SUBCOMMITTEE CHAIRMAN ON COURTS

MEMBERS OF JUDICIARY COMMITTEE

HON. GREGORY FAJT

ALSO PRESENT:

Richard Scott, Esquire, Staff Counsel  
Cameron Texter, Staff

Reported by:  
Nancy J. Grega, RPR

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1                   ACTING CHAIRMAN LaGROTTA: Good morning.  
2 We are going to get started. We are seven minutes late  
3 and I promised myself many times in hearings in the  
4 past that if God was good to me and let me live long  
5 enough to be a Chairman, we would always start on time  
6 and end early.

7                   Which proves that all politicians lie,  
8 especially Frank LaGrotta.

9                   I am Frank LaGrotta and I'm acting as  
10 Chairman on behalf of Representative Calderone, who  
11 could not be here.

12                   To my left is Representative Frank Dermody,  
13 from Allegheny County and we are hoping that other  
14 colleagues will be joining us momentarily.

15                   As Cameron pointed out, sometimes people  
16 get confused between the City County Building and the  
17 Courthouse and they have trouble finding the Gold Room.

18                   The hearing today is on House Bill 2319,  
19 which was introduced by our colleague, Representative  
20 Ruth Rudy of Center County.

21                   The Bill is referred to as the Three  
22 Strikes and You're In Bill meaning that those convicted  
23 three times of violent offenses would be in prison for  
24 life with no chance for parole.

25                   The offenses that would require mandatory

1 imprisonment for life include murder, voluntary  
2 manslaughter, aggravated assault, kidnapping, rape,  
3 arson, robbery, rioting, homicide by vehicle while  
4 driving under the influence and sexual abuse of  
5 children.

6 We are going to begin today's hearing as I  
7 reach for the agenda with opening remarks that were  
8 authored by Representative Ruth Rudy and will be  
9 presented by her Assistant, Cameron Texter.

10 Representative Rudy is still recovering  
11 from an illness and couldn't be here.

12 So, Cameron, if you would like to proceed?

13 CAMERON TEXTER, called as a witness,  
14 testified as follows:

15 MR. TEXTER: Thank you. It's House Bill  
16 2313, not 2319.

17 "Good morning. Now that the baseball  
18 season fast approaches, the metaphor for  
19 this legislation -- "Three Strikes and  
20 You're In -- In Prison for Life" becomes  
21 even snappier. And yet, I must emphasize  
22 that Representative Ruth C. Rudy's intent  
23 in introducing and pressing for House  
24 Bill 2313 extends beyond catchy slogans  
25 or politics.

1           Representative Rudy aims for good  
2 governmental policy in working for the  
3 Three Strikes Legislation. She sees the  
4 measure as one of the tools needed to  
5 make our streets, homes, schools and  
6 businesses safer.

7           Through this process, Representative  
8 Rudy has listened to criticism offered on  
9 the Bill. She has worked to improve the  
10 proposal. She has moved to narrow the  
11 Bill's focus like a laser beam.  
12 Therefore, once the measure is enacted,  
13 it will act as a net against career  
14 violent criminals who pose a chronic risk  
15 to society.

16           These offenders cause the bulk of  
17 the violent crimes. Studies such as one  
18 conducted by Criminologist Marvin  
19 Wolfgang have shown that 15 percent of  
20 the offenders account for 85 percent of  
21 the violent personal-injury offenses.

22           Representative Rudy geared the Three  
23 Strikes Bill at these offenders. House  
24 Bill 2313 defines those criminals as  
25 persistent violent offenders.

1           These criminals are most dangerous  
2           because they have shown they will  
3           continue their pattern of crime no matter  
4           what sentence they receive or how long  
5           they serve in jail. Representative Rudy  
6           believes we must be tough on all crime  
7           and particularly on violent criminals.

8           She believes violent criminals must  
9           face stiff punishment to pay a penalty  
10          for their offenses.

11          Violent offenders must know that  
12          society will not tolerate their behavior.  
13          Otherwise, their violence and the pain  
14          and suffering it causes will escalate.  
15          Representative Rudy has worked to target  
16          the Bill at the worst offenders."

17          And to go off the written testimony a  
18          little bit, I think a couple cases are poignant in  
19          today's paper. And they kind of grabbed me when I was  
20          eating breakfast this morning.

21          Violent crime, there was a woman who was  
22          killed inside her home while she was folding laundry  
23          and the other two murders that occurred in Pittsburgh  
24          overnight were two good examples of why people need to  
25          feel safe in their homes and in their neighborhoods.

1 And I think in a lot of areas people do not now.

2 The violent offenders and gangs and such  
3 seem to have taken control and feel that they can, you  
4 know, do their offenses and basically rule the streets.

5 Particularly when I read in the paper this  
6 morning there were 18 shots fired outside of this  
7 woman's home. One of the stray shots shot through the  
8 window and shot her in the head. And she fell over in  
9 front of her three-year old.

10 It must be very devastating to that child  
11 and that family. And that is something that they're  
12 going to have to live with the rest of their lives.

13 These offenders, whoever did that, if the  
14 police are able to arrest them and put them in prison,  
15 need to pay for a long time for that kind of offense  
16 because the family will be paying for it and suffering  
17 with it for quite a long time.

18 Those are the reasons why Representative  
19 Rudy is gearing this Bill at the worst offenders.

20 "That is why at the Philadelphia  
21 hearing Representative Rudy unveiled an  
22 amendment that would improve the  
23 legislation by defining a persistent  
24 violent offender as anyone convicted  
25 three times of: Murder, voluntary

1           manslaughter, aggravated assault, assault  
2           by prisoner or kidnapping. Also to be  
3           included is rape and involuntary deviate  
4           sexual intercourse, arson, causing or  
5           risking catastrophe, robbery and sexual  
6           abuse of children."

7           Several other offenses that are included in  
8           the Bill now would be removed from it. Thus, the Bill  
9           would be better focused and narrowed and aimed at the  
10          most violent offenders.

11          "Since Representative Rudy introduced  
12          the measure, she has heard many people  
13          say they favor even stiffer penalties.  
14          They have questioned why someone should  
15          have three strikes. Why not two or even  
16          one? Georgia even followed that line of  
17          thinking by enacting a Two-Strikes Bill  
18          just a week or so ago.

19          Representative Rudy has considered  
20          those questions. She agrees the  
21          Commonwealth must come down hard on all  
22          violent offenders.

23          Thus, Representative Rudy agrees  
24          with a proposal that Corrections  
25          Commissioner Joseph Lehman And Commission



1 Sentencing Executive Director Reamer  
2 offered during the last public hearing in  
3 Philadelphia."

4 I was speaking with Mr. Kramer a little bit  
5 before the hearing and he's going to be speaking about  
6 that a little bit more.

7 "At that time, Mr. Lehman recommended  
8 extending the maximum prison sentences  
9 for violent offenders convicted of the  
10 first and second strike.

11 Representative Rudy agrees with the  
12 Commissioner that those convicted of  
13 felony one crime for a first strike  
14 should have 20 years tacked onto their  
15 jail time, while those with a second  
16 strike felony should face another 30  
17 years imprisonment.

18 Additionally, those with a felony  
19 two conviction as a first strike should  
20 have 10 years added onto their sentences,  
21 while those with a second strike felony  
22 two conviction would face another 20  
23 years. She will draft an amendment to  
24 include this proposal in the Bill.

25 Representative Rudy, however, still

1 believes that after the third strike,  
2 even for a felony II crime, an offender  
3 should serve life or at least what is  
4 known in law enforcement circles as The  
5 Criminal Lifetime.

6 Since introducing the Legislation  
7 Representative Rudy has heard two major  
8 criticisms:

9 That the Bill is not hard enough on  
10 the first- or second-strike violent  
11 offenders.

12 That the Bill will overload prisons  
13 and cost State taxpayers too much money.

14 Representative Rudy believes the  
15 changes she has offered through this  
16 process will tackle both problems. She  
17 believes the Bill will do so by coming  
18 down hard on all persistent violent  
19 offenders, while locking up for life only  
20 those whose behavioral patterns show they  
21 will always threaten lives and public  
22 safety.

23 Critics of this measure also have  
24 questioned how much this Legislation will  
25 cost in the long run.

1           They say Pennsylvania will have to  
2 build too many prisons to handle the  
3 offenders. Some people seem to believe  
4 that Pennsylvania should no longer build  
5 prisons. They seem to assume it costs  
6 the State and its residents nothing to  
7 leave criminals on the streets.

8           While it costs upwards of \$20,000  
9 annually to keep each offender locked up,  
10 various studies have indicated that the  
11 costs of leaving these and other  
12 criminals on the street costs crime  
13 victims and society two, three or four  
14 times that amount yearly. Those expenses  
15 add up through health and psychological  
16 costs, lost productivity and property,  
17 insurance, re-prosecution, law  
18 enforcement and other expenses. There is  
19 no such thing as a free lunch.

20           Additionally, as New York Governor  
21 Mario Cuomo wrote in a recent New York  
22 Times editorial:

23           "If a Three Strikes Law prevented  
24 only one rape, one murder, one assault,  
25 it would have been worth the trouble to

1 pass the Legislation."

2 Representative Rudy believes it  
3 would further be worth the price and  
4 trouble of building new prisons if it  
5 saves at least one life. Yes,  
6 Representative Rudy understands that this  
7 Bill alone will not cure society of the  
8 epidemic of violent crime. It is but one  
9 ingredient in the serum.

10 Yes, we must face the socio-economic  
11 factors, particularly early in a child's  
12 life. Yes, we must tackle juvenile crime  
13 and show young offenders right off the  
14 bat that they won't get away with it.

15 Yes, we must instill family and  
16 other values back into all segments of  
17 society. We also must re-instill hope in  
18 all communities. We must do so by  
19 improving education, increasing job  
20 opportunities, particularly in poor  
21 areas. People need to see they do have a  
22 choice for a better future and a place to  
23 contribute in society. We also must  
24 further explore alternatives to  
25 imprisonment for nonviolent and first-

1           time offenders."

2           A good example of this Mr. Kramer pointed  
3 out to me before the hearing is that now if you are  
4 convicted of a second offense drug crime, possessing a  
5 large amount of drugs, you may face 15 to 30 years in  
6 prison. Whereas attempted murder, you're most likely  
7 going to face 10 years.

8           I would assume, and I would figure  
9 logically speaking that attempted murder and the  
10 violence it causes would be far worse than possession  
11 of a large amount of drugs.

12           "However, Representative Rudy  
13 believes we must get serious with violent  
14 crime and persistent offenders who commit  
15 it. Three States have passed similar  
16 Legislation. Washington and California  
17 now have Three Strikes Laws, while  
18 Georgia has a Two-Strikes Measure, as  
19 pointed out earlier. Of those only  
20 Washington has had experience to compile  
21 statistics or conclusions.

22           As of March 6, eight criminals in  
23 Washington face what they call there  
24 striking out. Three are sex criminals,  
25 all of whom have attempted murder, one

1           successfully. Another is a four-time  
2           armed robber. The other four are career  
3           criminals. We had discussed during the  
4           hearing in Philadelphia the plight of one  
5           of those four. His name is Larry Fisher.  
6           The New York Times described him as a  
7           two-time felon who robbed a convenience  
8           store by holding his finger inside his  
9           jacket and acting as if he had a gun.

10           In fact, this felon had 16 prior  
11           criminal convictions -- six felonies and  
12           10 misdemeanors -- and numerous probation  
13           violations.

14           All total, he and the other three  
15           career criminals had 64 convictions among  
16           them. That's 64 times they were caught  
17           and convicted, gone through the system  
18           and been released. Who knows how many  
19           offenses they had committed? Because of  
20           Washington's Three Strikes Law, these  
21           people will no longer terrorize society.  
22           Pennsylvania can have the same or better  
23           results if the Judiciary Committee  
24           approves Representative Ruth Rudy's Three  
25           Strikes Measure as she proposes to amend

1 it.

2 I thank you very much for your time  
3 and attention. I will be very glad to  
4 answer any questions."

5 ACTING CHAIRMAN LaGROTTA: Cam, thank you.  
6 Representative Dermody?

7 BY REPRESENTATIVE DERMODY:

8 Q Do you have information that indicates that  
9 Pennsylvania isn't sentencing violent offenders for  
10 long terms of incarceration currently?

11 A As I mentioned during my testimony,  
12 currently attempted murder, you may at most get ten  
13 years in prison.

14 Q Attempted murder is a felony of the first  
15 degree, correct?

16 A That's correct.

17 Q Aggravated assault would probably be an  
18 offense that would also be charged as an attempted  
19 murder charge; is that correct?

20 A If it is, yes.

21 Q So, the maximum penalty for one felony, one  
22 would be ten to twenty years, correct?

23 A Correct.

24 Q Representative Lehman's office, or not  
25 Representative Lehman, but Commissioner Lehman's office

1 has suggested about extending the maximum penalty for  
2 those crimes?

3 A Yes.

4 Q Do you have any information that violent  
5 offenders are not getting long prison sentences in the  
6 Commonwealth?

7 A Currently, as Commissioner Lehman stated  
8 during the last hearing, there is a need to better  
9 identify them as he has attempted to do and the  
10 Legislature has discussed through House Bill 684 and  
11 683.

12 Q Identify?

13 A Identifying the most serious offenders,  
14 identifying them and defining them. Now, the specific  
15 statistics, I don't have any here at hand. But he has  
16 stated and Mr. Kramer, I think will speak about it  
17 further in his testimony. The specific needs for  
18 better defining them and for extending some of the  
19 sentences for these violent offenders.

20 Q Extending sentences or terms of maximum  
21 penalties is one thing. Mandating that somebody does  
22 life is a whole other question. That's what I was  
23 trying to get at.

24 I don't -- I think if you look at the  
25 numbers you will see that violent offenders in the



1 Commonwealth, repeat violent offenders, are serving  
2 significant long-term incarceration. Do you have any  
3 information that there are many people on the streets  
4 that have been convicted 64 times with five or six  
5 felonies at this point?

6 A I don't have any right here.

7 Q People who are convicted, let's say if they  
8 come before a Judge two times for violent crimes, will  
9 probably be on parole; do you agree with that?

10 A Yes.

11 Q If the maximum penalty is ten to twenty  
12 years in the Commonwealth and you serve ten years, you  
13 have ten years to walk off to do on the street?

14 A Right.

15 Q If you are convicted of another crime, if  
16 the crime you are convicted of is a violation of your  
17 parole, the Parole Board can place you back in the  
18 prison for the rest of your term; is that correct?

19 A That's correct.

20 Q And that would be in addition to the new  
21 sentence you receive; is that right?

22 A Yes, that's correct.

23 Q Do you have evidence that we need three  
24 strikes and you're out in the Commonwealth. Do you  
25 have numbers that support that these people are not

1 being sentenced to long terms of incarceration now?

2 If a three time rapist comes before a  
3 Court, is there any information that you can show us  
4 that that person is getting out of jail in a few years?

5 A Not in a few years, no. They do serve the  
6 minimum sentence. Pennsylvania, I will agree with you  
7 that Pennsylvania is tougher than most states, many  
8 other states, on the violent offenders.

9 At the same time, though, if a person has  
10 committed three violent offenses and serious violent  
11 offenses such as a murder, rape, et cetera, you know,  
12 who knows.

13 The question is why should that person  
14 continue to walk the streets if they have served long  
15 sentences and then commits another crime. They have  
16 done that and they get released again.

17 The question then is, all right, they have  
18 had three opportunities. They have been out there.  
19 They have shown that they are going to continue it. We  
20 lock them up for life.

21 Q What I want to know is how many of those  
22 people are on the street? Do you have information of  
23 how many of those are back on the street and how long  
24 are their terms before they are on the street. And do  
25 you have numbers to show us how the Parole Board has

1 handled those types of cases?

2 A Sure. The information given to us by the  
3 Corrections Office and Sentencing Commission states  
4 that if this Bill was in effect right now, if it was  
5 law right now, by the year 2000, we would be locking up  
6 between a thousand ten thousand more prisoners.

7 As amended, the amendments that  
8 Representative Rudy has proposed here narrowing the  
9 Bill down and also in extending the sentences, the  
10 total figure then would be about a thousand more.

11 So, these people obviously must be out  
12 there. If they are being released now, they are back  
13 out on the street.

14 Q A thousand to ten thousand?

15 A Yes. They are saying we would have to  
16 build at least -- we put a thousand more people in  
17 prison over the next ten years.

18 Q A thousand over the next ten?

19 A Right.

20 Q Wait, wait.

21 A By the year 2010, they are saying about ten  
22 thousand more would be locked up for life.

23 Q Commissioner Lehman said there would be an  
24 additional -- we'll hear from Mr. Kramer later.

25 I'm confused about whether it would be a

1 thousand people or ten thousand people over the next  
2 ten years.

3 What I would like to see --

4 A By the year 2010.

5 Q If you have some information or some  
6 statistics to show us of Defendants who have been  
7 convicted three times, some of these crimes. What the  
8 terms of sentence are; how long they have been in jail  
9 and what their parole back time is?

10 What I think you are going to find is they  
11 are probably doing 30 to 60 or 40 to 80 years. I think  
12 you will find most of these people are doing long terms  
13 of incarceration.

14 I have some doubts as to whether we need to  
15 take any more Judge's discretion away in sentencing  
16 people based on what Pennsylvania is doing right now  
17 with violent offenders.

18 So, if you can get that information to  
19 us --

20 A Sure, I'll be happy to. I have it back in  
21 my office in Harrisburg, the figures from the  
22 Sentencing Commission. They show that we would be  
23 locking up 200 people more per year and a thousand more  
24 in ten years and then --

25 Q A thousand more in ten?

1 A Right, a thousand more in ten.

2 Q All right.

3 A I'm going by memory now. They said we'd  
4 have to fill ten more prisons within the next ten  
5 years, by the year 2010.

6 Q Just because of this Bill?

7 A That is correct.

8 Q I'll talk to the Commissioner about that.

9 A Obviously, these people are out on the  
10 street or will be out on the street.

11 Q If you can get us the numbers and the  
12 information to show that.

13 A Sure. I'll be happy to.

14 Q Thank you, Mr. Chairman.

15 ACTING CHAIRMAN LaGROTTA: Any questions?

16 (No response.)

17 ACTING CHAIRMAN LaGROTTA: Cameron, thank  
18 you very much. Is Lieutenant Governor's designee here?

19 Okay, would you please give us your  
20 testimony or Mark's testimony and identify yourself?

21 STEVE RAY, called as a witness, testified  
22 as follows:

23 MR. RAY: My name is Steve Ray. I'm the  
24 Lieutenant Governor's Western Pennsylvania  
25 Representative and his Policy Director. I'm here on

1 behalf of the Lieutenant Governor. He's sorry he  
2 couldn't be here today. He had a late scheduling  
3 change and wasn't going to be able to make it this  
4 week.

5 "The Lieutenant Governor would like  
6 to thank the Judiciary Committee for  
7 allowing him the honor of commenting on  
8 this Bill, which would mandate life  
9 sentences for persistent offenders.

10 First, let me commend Representative  
11 Ruth Rudy and her colleagues for  
12 sponsoring this Bill, and working to  
13 ensure the safety of the people of the  
14 Commonwealth.

15 The Lieutenant Governor is  
16 enthusiastically supporting the  
17 principles behind HB 2313. Let me tell  
18 you why:

19 One of the most crucial issues  
20 facing our state today -- and the one to  
21 which he devoted his final weeks as  
22 Acting Governor -- is combatting the  
23 epidemic of crime in our streets. The  
24 statistics are staggering. According to  
25 the Pennsylvania Crime Clock published in

1 the 1992 Pennsylvania Crime Report, one  
2 violent crime occurs in Pennsylvania  
3 every 10 minutes and 41 seconds.

4 One Pennsylvanian is murdered every  
5 morning and every night.

6 A woman is raped in our state every  
7 2 hours and 43 minutes.

8 More than two robberies occur each hour.

9 And there is an aggravated assault almost  
10 every twenty minutes.

11 Our cities, our small towns, and our  
12 streets have become war zones. Many of  
13 the combatants are not adults but  
14 juveniles. Children -- some as young as  
15 10 years old -- are committing heinous  
16 crimes, using every weapon available.  
17 Yet our law enforcement officials are  
18 forced to fight them with one hand tied  
19 behind their backs.

20 We can no longer tolerate this  
21 imbalance of power. We must give law  
22 enforcement officials a fighting chance  
23 to combat these problems. We need anti-  
24 crime initiatives that are both tough and  
25 intelligent.

1           As Acting Governor, the Lieutenant  
2 Governor introduced a series of proposals  
3 designed to ensure that offenders pay the  
4 price for their crimes against society.  
5 Let me briefly review those:

6           One. Enact Three Strikes and You're  
7 Out. The best way to stop crime is to  
8 prevent it before it happens. Perhaps  
9 the best way to do that is to make sure  
10 that those who habitually terrorize our  
11 neighborhoods and streets are locked in  
12 prisons, safely away from those citizens  
13 who work hard and play by the rules.

14           The Lieutenant Governor is very  
15 pleased to support this legislation,  
16 which is commonly referred to as Three  
17 Strikes and You're Out. No person who  
18 has been convicted of three violent  
19 crimes should be allowed to set foot  
20 outside of a jail -- ever. It is time  
21 for repeat offenders to know with  
22 certainty that there will be no leniency  
23 or forgiveness if they repeat violent  
24 offenses.

25           But the Lieutenant Governor feels we



1 must go beyond Three Strikes.

2 Number two. We must make it more  
3 difficult for violent offenders to get to  
4 their third strike. High-risk dangerous  
5 offenders deserve stiffer sentences than  
6 under current law -- prior to their third  
7 offense. The Lieutenant Governor will  
8 seek to raise the maximum sentence for  
9 such dangerous offenders on their first  
10 violent offense to 20 years, and on their  
11 second offense to 30 years. It is  
12 currently 10 years for both.

13 If we combine increasing jail terms  
14 for high-risk dangerous offenders with  
15 smart preventive measures like putting  
16 more policemen on our streets and banning  
17 assault weapons, we can help law-abiding  
18 citizens to feel safe in their homes.

19 Number three. The Lieutenant  
20 Governor will impose the death penalty on  
21 convicted murderers. As Acting Governor,  
22 he signed a death warrant for a convicted  
23 murderer. He will do it again, if called  
24 upon.

25 Number four. We must maximize the

1 resources available for criminal justice  
2 by utilizing alternative sentencing  
3 schemes for non-violent, non-drug dealing  
4 offenders. These alternatives are worth  
5 pursuing for one reason, and one reason  
6 only: They will free up dollars  
7 currently spent needlessly incarcerating  
8 lower-risk offenders, so that we can use  
9 public money more effectively to lock up  
10 the most violent, highest risk criminals  
11 more often and for longer terms.

12 Number five. We need truth in  
13 sentencing. The public deserves to know  
14 that dangerous criminals will serve their  
15 time. We must end parole for violent  
16 offenders, impose a definite prison term,  
17 and insist that the offender serve it.  
18 For non-violent offenses that are so  
19 serious that they require special  
20 attention, the minimum sentence should --  
21 unlike current law -- be allowed to  
22 exceed one-half of the maximum sentence  
23 imposed.

24 Number six. We need a gang-buster  
25 statute. The Lieutenant Governor

1 supports Senator Dawida's proposed  
2 legislation which will essentially apply  
3 anti-racketeering concepts used in  
4 combatting organized crime to street  
5 gangs. This would make it an additional  
6 offense to engage in a pattern of  
7 felonies and will increase sentences for  
8 offenses committed in association with a  
9 street gang. The law would also provide  
10 for confiscation of weapons owned or  
11 possessed for the purpose of illegal  
12 street gang activity; make it a first  
13 degree misdemeanor to knowingly provide  
14 weapons for use by a street gang; and  
15 prohibit juvenile delinquents from owning  
16 firearms for ten years.

17 By placing an emphasis on our most  
18 dangerous offenders, we can significantly  
19 reduce the level of violent crime  
20 plaguing our neighborhoods and  
21 communities. We must ensure that high-  
22 risk dangerous offenders are removed from  
23 the streets and incarcerated. We can  
24 then better direct our attention to the  
25 other programs the Lieutenant Governor

1 has called for -- to make our  
2 neighborhoods safer by placing more  
3 police on the streets and helping them to  
4 do their jobs better, by ridding our  
5 streets of violent weapons, and by  
6 focusing on more effective handling of  
7 juvenile offenders.

8 The Lieutenant Governor wants to  
9 thank the Committee again for allowing  
10 him the opportunity to present his views  
11 on this important issue. He is sorry he  
12 couldn't be here."

13 Probably the best way -- I would be more  
14 than happy to address any questions, but one of the  
15 things the Lieutenant Governor said was that if you had  
16 any questions of him, he's be more than willing to  
17 answer them if you would direct them to our office.  
18 Thank you for your attention.

19 ACTING CHAIRMAN LaGROTTA: After watching  
20 Representative Dermody's questions to the first  
21 witness, you want to make sure you stress the fact that  
22 we should contact Mark.

23 MR. RAY: I'm more than willing to handle  
24 them, but you may get a better answer from the  
25 Lieutenant Governor's office directly.

1                   ACTING CHAIRMAN LaGROTTA:    Let me first  
2 introduce Representative Greg Fajt who has joined us. He  
3 is a member of the Committee.

4                   I would defer to Representative Dermody for  
5 questions.

6 BY REPRESENTATIVE DERMODY:

7                   Q     Just a few.

8                   I agree with the Lieutenant -- thank you for  
9 coming, first of all. I appreciate it. And I do agree  
10 with the Lt. Governor that extending maximum terms of  
11 incarceration makes sense. I agree that we should be  
12 able to impose longer minimums than one-half that  
13 maximum. We just passed a Bill that is in the Senate  
14 that would allow the Judges to do that.

15                   I think I meant by the last series of  
16 questions that I asked, and I am somewhat hesitant to  
17 continue to take away Judges' discretion in sentencing,  
18 particularly when I don't know that we have the  
19 information that indicates that Pennsylvania is putting  
20 violent criminals on the street willy-nilly.

21                   If you would read some of the testimony, you  
22 would think that they are getting short terms of  
23 incarceration and are out walking down the street.

24                   I have some experiences and some background  
25 in it, and I don't believe that is what is happening.

1 So, I would just like to express my concern on taking  
2 away Judge's discretion once again.

3 And two, whether or not you really need it,  
4 whether the statistics, the number of prisoners that  
5 are being released that shouldn't be released are  
6 there.

7 And three, I do agree that we have to amend  
8 the sentencing code to allow Judges to, first of all,  
9 have the crimes, felonies one, have longer maximum  
10 terms and two, impose sentences longer than that.

11 I agree with Representative Rudy and the  
12 Lieutenant Governor on those areas.

13 A The Lieutenant Governor worked closely with  
14 the Corrections Department on putting together this  
15 plan while he was working as Acting Governor.

16 Again, they will probably be better able to  
17 inform you as to the exact answers to questions that  
18 you are trying to get at.

19 I think the other factor behind this is  
20 also the perception question in some ways as to  
21 assuring there is no chance that these people are going  
22 to -- these high risk dangerous offenders are going to  
23 be out committing crimes again.

24 The problem is always the one that gets out  
25 and that causes the fear in the public. Not

1 necessarily that that is happening but that fear is  
2 there.

3 Q If it's not happening, I guess there are  
4 ways we could probably get that. I'd like to know  
5 what's happening. That's all I'm asking. I didn't  
6 mean to be rough on the previous witness. I'd like to  
7 get that information.

8 A I'll make sure that we get you that  
9 information if we can.

10 ACTING CHAIRMAN LaGROTTA: Any other  
11 questions?

12 REPRESENTATIVE FAJT: Yes, I have a  
13 question.

14 ACTING CHAIRMAN LaGROTTA: Go ahead.  
15 BY REPRESENTATIVE FAJT:

16 Q Thank you, Mr. Chairman.

17 Just a couple of thoughts really as opposed  
18 to questions.

19 I think that this issue of Three Strikes  
20 and You're Out is a very sexy issue to politicians  
21 right now. It's easy to stand up in front of a crowd  
22 and say that I'm going to be tough on crime and I think  
23 that all of us need to look at this issue carefully.

24 A couple of cautionary comments.

25 One, we need to be careful about the

1 enumerated crimes we are looking at when we are talking  
2 about Three Strikes and You're Out.

3 I'm sure that at least the members of this  
4 panel and probably most of you in the audience have  
5 heard possible scenarios of somebody committing what  
6 are considered less than aggravating crimes or heinous  
7 crimes in being subject to this Bill.

8 And so I think we need to be careful about  
9 the crimes that we are looking at when we are talking  
10 about Three Strikes and You're Out or Three Strikes and  
11 You're In.

12 Another thing we need to look at is the  
13 cost of incarceration. Right now in Pennsylvania the  
14 two fastest costs in the State Budget are the costs of  
15 prisons and the cost of Medical Assistance.

16 We recently had in front of our Judiciary  
17 Committee the Commissioner of Corrections in  
18 Philadelphia. He gave us an interesting statistic that  
19 I will relate to you and that is that when we sentence  
20 somebody to a 20-year sentence in our state prisons,  
21 the cost of that incarceration is a million dollars. A  
22 million dollars.

23 And so when people say they want to be  
24 tough on crime and they want to lock people up, I think  
25 that all of us have to realize that there is a cost of



1 that position. And in the case of a 20-year sentence,  
2 one million dollars. And that obviously is not a life  
3 sentence as we're talking about here.

4 Again, I'm in favor of the Three Strikes  
5 and You're Out, but I just caution all of the members  
6 and the general public that we have to look at the  
7 crimes that we are enumerating in that legislation and  
8 make sure that they are the aggravating crimes that  
9 people really want individuals locked up for.

10 And number two, we need to look at the cost  
11 of the incarceration.

12 Finally, one other thing that I will talk  
13 about because it's an issue that I am very involved in  
14 in the State Legislature and that is drug and alcohol  
15 abuse.

16 We know that 80 percent of the people that  
17 come into our Criminal Justice System are there because  
18 of drug and alcohol abuse. They either are stealing to  
19 get money to buy drugs. They come from a family where  
20 drugs and alcohol abuse is prevalent and they have no  
21 family structure.

22 And I think that we really need to look at  
23 getting at the root cause of these problems of  
24 incarceration and crime as opposed to continuing to  
25 talk about building more prisons and throwing away the

1 key and that type of thing.

2 We really need to look at the root cause of  
3 the crime. And one of those is the travesty of alcohol  
4 and other drug abuse in Pennsylvania and in the Country  
5 right now.

6 Thank you, Mr. Chairman.

7 ACTING CHAIRMAN LaGROTTA: Thank you,  
8 Representative Fajt.

9 Representative Dermody? I had no  
10 questions.

11 (No response.)

12 ACTING CHAIRMAN LaGROTTA: Steve, thank you  
13 very much.

14 Next on the agenda is Dr. Alfred Blumstein.

15 Doctor, thank you for joining us. If you  
16 would introduce yourself and summarize your written  
17 testimony and we will proceed.

18 DR. ALFRED BLUMSTEIN, called as a witness,  
19 testified as follows:

20 DR. BLUMSTEIN: Good morning. My name is  
21 Alfred Blumstein. I'm on the Faculty of the Heinz  
22 School at Carnegie Mellon and I am delighted to have  
23 the opportunity to serve with Representative Dermody  
24 and Mr. Kramer on this Sentencing Commission.

25 I expected that I would be the subject of

1 considerable vilification in this testimony because of  
2 the enormous political winds that are sweeping the  
3 nation on Three Strikes and You're Out.

4 I was delighted to hear some of the  
5 questions that Representative Dermody was raising.  
6 Because I think they are really right on target in  
7 terms of the concern about what seems to be, I think  
8 history will describe this era as a period of the  
9 greatest wave of legislative mass hysteria since the  
10 McCarthy Period and the Communist Threat.

11 I think we are seeing a variety of societal  
12 problems and almost the standard simplistic solutions  
13 that we have is, well, let's lock them up and let's  
14 lock them up longer rather than trying to get at the  
15 problems. And that wave seems to be extremely  
16 difficult to resist.

17 I recognize that the Three Strikes metaphor  
18 particularly now that April is approaching sounds  
19 particularly exciting. And it has this great sound  
20 bite appeal to the general public, which obviously  
21 affects the legislative process.

22 And the public is understandably quite  
23 anxious about violent crime. Which it is finding an  
24 issue of concern. And I do want to say something about  
25 that later.

1 I believe the anxiety is not unfounded and  
2 indeed I share it. But I don't believe the Three  
3 Strikes Legislation, especially the features involving  
4 life sentence without the possibility of parole, is  
5 going to do anything to solve the violent crime  
6 problem.

7 Indeed, it's going to divert criminal  
8 justice resources away from -- criminal justice  
9 resources and general revenue sources, resources, away  
10 from dealing with the problems that are associated with  
11 violent crimes.

12 So, it could well make matters worse.

13 Let me enumerate some of my concerns about  
14 the flaws in the legislation.

15 It's intended to achieve deterrents, but  
16 it's not going to do much good in that regard. If  
17 you're serious about limiting the strikes to serious  
18 felonies, the point that was made earlier then, the  
19 convicted offender will already be facing a 20-year  
20 sentence or more. These are not folks who are known  
21 for being very rational planners.

22 So, what kind of increment of deterrents do  
23 you think you will get to the individual who is already  
24 facing 20 year sentence. But by saying we are not only  
25 going to keep you in for 20 years, but we are going to

1 keep you in well beyond that.

2 So, I don't expect there is going to be any  
3 criminal deterrents. Indeed, there may well be some  
4 risk for those who are serious about it, that when they  
5 do commit their crime, if they can make the calculation  
6 about the risk of going in for life, they'd go in for  
7 life for murder anyway.

8 So, there is a risk that they would use  
9 that opportunity to get rid of witnesses and thereby  
10 increase the likelihood that they will get off without  
11 any type of penalty and thereby increase the level of  
12 violence in the community.

13 The Bill is intended presumably to increase  
14 incapacitation, to remove criminals from the street,  
15 and that's a profoundly inefficient way to do that. It  
16 will keep people in prison well after their criminal  
17 careers have ended. Very likely by age 40, and almost  
18 certainly by age 50.

19 I have attached a graph which is figure 1,  
20 which shows the age specific rates of being involved in  
21 robbery and burglary.

22 The robbery rates -- burglary is not  
23 terribly relevant. Burglary ends fairly early, in the  
24 mid-20's. But so does robbery and there are very few  
25 people who are still committing robbery at 40 and

1 appreciably fewer at 50.

2 At which point life expectancy is about 25  
3 years. And in those 25 years at a rate of about  
4 \$20,000, we are still going to be spending a half a  
5 million dollars a year for the geriatric services for  
6 those individuals who are in there for life.

7 The cartoon on the back of the testimony, I  
8 think, amply indicates the problem associated with  
9 that. We are quick and ready to act on a kind of issue  
10 that is going to lock them up, but not ready to deal  
11 with some of the other social issues.

12 If a choice arises about whom to release, a  
13 currently violent offender not under this mandatory law  
14 and an aging one required to be maintained under the  
15 law, then the system will have to let go of the  
16 currently serious offenders because the law would  
17 prevent letting out this Three Strikes Offender well  
18 after his career is over.

19 I think the Bill is then an undeserved  
20 insult to the Judiciary, which should have the  
21 discretion of prescribing sentences based on variation  
22 in the offense within any particular crime category,  
23 and the seriousness of the particular offender facing  
24 them.

25 It represents one more step in transferring

1 the discretion from the Commonwealth Judges to the  
2 Prosecutors because they still retain the opportunity  
3 to decide which offense to charge, whether they are  
4 going to use the definition of Strike as the principle  
5 leverage point.

6 They have already amassed considerable  
7 influence and power in this regard. And that's going  
8 to further that imbalance indiscretion from the Judges  
9 to the Prosecutors.

10 It's going to introduce disparity because  
11 you're going to see the most egregious kind of robber  
12 as well as the least serious robber within the felony  
13 category included and one should be clearly treated  
14 seriously and the other shouldn't.

15 It's an unwarranted insult to the parole  
16 decision making process, which can make some years  
17 hence, 20 years hence, a discretionary decision about  
18 what is the status of this individual at this time.  
19 But particularly in terms of the evolution of behavior  
20 that will occur in many people.

21 It undermines the careful efforts that the  
22 Sentencing Commission has gone through in its ten years  
23 to develop a schedule of sentences that is effective,  
24 coherent, proportionate and just. It arbitrarily lays  
25 on some people extremely long and inefficient

1 sentences.

2           The comment was made earlier about we  
3 should be very careful to narrowly restrict the scope  
4 of offenses and I agree totally that if the legislation  
5 goes through, it's essential that it be limited.

6           But we do know that we will then have  
7 created a platform. Whenever there is a heinous X that  
8 isn't included, that X will now be included in the set  
9 of offenses that are included as strikes. And once  
10 that happens, those efforts are irresistible to be  
11 included in the set of offenses that count as strikes.

12           And thereby increase the impact of the  
13 Bill.

14           The Bill is going to use up important  
15 prison capacity that will be much better to be  
16 dedicated to holding people that are currently violent  
17 and are likely to continue to be so.

18           Those numbers are growing and especially  
19 among the young. Figure 2, I find particularly  
20 interesting. It's a bit complicated but let me walk  
21 you through it a bit. Figure 2 tells you the rate of  
22 homicide for people of any particular age from the  
23 years 1965 through 1992.

24           For the period '70 to '85 for example there  
25 wasn't much difference in the rates for all those



1 between the ages of 18 and 24. The line at the bottom  
2 is 16 year olds. Their rate was about half that of the  
3 others.

4 Starting in '85 or so, all those young  
5 people's rates started to go up considerably. For the  
6 16 year olds, for example, they went from 12 per  
7 hundred thousand, which is roughly the national rate,  
8 about 10 per hundred thousand is the national rate --  
9 it more than doubled up to a rate of about 30 per  
10 hundred thousand.

11 The 18 year olds who are solid boxes, the  
12 filled in boxes, also were about the same as the older  
13 folks. They went from about 24 up to, in 1991 a rate  
14 of about 58 per hundred thousand. More than doubled in  
15 that period.

16 The homicide, and look at the X's. The X's  
17 are the 24 year olds. Those have not gone up at all  
18 and you can say the same thing for the people of older  
19 ages.

20 So, the growth in violence that we have  
21 been seeing is a growth in violence by the young. I  
22 attribute much of this to the drug industry, the  
23 presence of guns in the drug industry, the emergence of  
24 guns in the community at large as a result of either  
25 for defense or gaining respect as a result of the

1 factors in the drug industry being out there.

2 So, we have seen real growth in violence.  
3 These are the folks that have to be incapacitated at  
4 the moment. We need the capacity to do it. They  
5 represent the problem, but they won't necessarily  
6 represent the problem twenty years from now.

7 And we certainly want to get them off the  
8 street. But we want to be intelligent about the way we  
9 deal with it and not keep them for the next 50, 60 or  
10 70 years.

11 These are the problems, I think, we should  
12 be working on; ridding our cities of drug markets and  
13 of firearms and in finding ways of giving these  
14 teenagers some hope for the future.

15 The last decade has made it clear that the  
16 efforts of the Criminal Justice System, which again  
17 seem to have been the panacea to our political system  
18 and the one we turn to when we don't have workable  
19 solutions, has not been very effective on the drug  
20 problem.

21 And I am confident that the Three Strikes  
22 Law will not be very effective at dealing with the  
23 violence problem.

24 Rather than pursuing this Me, Too Bill that  
25 is sweeping the nation, I would hope that this

1 Committee and the General Assembly would be working on  
2 helping develop a rational and more effective  
3 sanctioned policy that will maximize the effectiveness  
4 of the Criminal Justice System in controlling crime,  
5 consistent with the Justice requirements of a coherent  
6 and proportional system.

7 That would include letting the Sentencing  
8 Commission establish a schedule of sentences based on  
9 the seriousness of the individual crimes and the prior  
10 record of the offender.

11 Repeal all of the mandatory minimum  
12 sentencing laws which distort that and if the politics  
13 preclude repeal, at least consider establishing a  
14 Sunset Law that sunsets all of the mandatory minimums  
15 at two years or so after a maximum. Still retaining  
16 the possibility of re-enacting them if they still make  
17 sense because they are much more often passed in the  
18 heat of passion and in the period of political  
19 campaigns when we have to do something and we don't  
20 have any better solutions.

21 We have to find other means than the  
22 ludicrously long and effective sentences for dealing  
23 with the insidious drug markets that are polluting our  
24 urban areas.

25 Find ways to keep guns out of the hands of

1 kids and to restrict the firepower of guns that are in  
2 the community.

3 Find a way to control or prohibit assault  
4 weapons in particular would certainly be a first step  
5 in that direction.

6 Permit, but don't require, Judges to give  
7 maximum life sentences to particularly egregious  
8 offenders, the people who are the presumed targets of  
9 the Three Strikes Bill, and keep them in for their 20  
10 years.

11 But retain, don't abandon the opportunity  
12 for a Parole Board to release them when they are  
13 evidently no longer a threat to the community.

14 I think Pennsylvania is fortunate not to  
15 get caught up in the wave of states that passed  
16 determinate sentencing laws of the 1980's.

17 And it was the determinate sentencing laws  
18 that required the California system to let out Mr.  
19 Davis, who was the killer of Polly Klass. It was her  
20 death that created the emotional appeal that has really  
21 spawned these Three Strike Laws.

22 We are not stuck with that. We still have  
23 the indeterminate sentence, the minimum and the maximum  
24 that allows the discretion to keep somebody who we see  
25 as a threat.

1           We have the wisdom to survive the last  
2 frenzy and I hope we have the wisdom to survive this  
3 one also.           I recognize that there may be a  
4 political naivety in my suggestions. But it's  
5 necessary for someone who isn't going to have to run  
6 for office to at least highlight the growing absence of  
7 clothes on the emperor who is now being increasingly  
8 thrust in front of the public as a substitute for  
9 carefully developed and effective policy.

10           I think our mandatory sentences are all of  
11 that sort. The latest sound bite that we are facing is  
12 the Three Strikes Law and that emperor doesn't seem to  
13 be even wearing any underwear.

14           I think that we have to be smart as well as  
15 touch and I don't see any smartness in the Three  
16 Strikes Law at all and it has merely the appearance of  
17 being tough and no opportunity to be effective.

18           ACTING CHAIRMAN LAGROTTA: Thank you very  
19 much. Your testimony was excellent and very well  
20 received.

21           Representative Fajt, do you have any  
22 questions?

23 BY REPRESENTATIVE FAJT:

24           Q Yes, just a quick one.

25           Thank you for your testimony. Maybe to

1 digress a little bit only because of your mention about  
2 the drug issue and we seem to be in agreement on what's  
3 driving the crime, particularly the youth violence.

4 And, again, if you don't feel comfortable  
5 answering this question, don't feel the need to. But I  
6 wonder what your thoughts are on the legalization of  
7 drugs and I will say, at the outset, that I am against  
8 that. But I'm not afraid to having a debate on that  
9 issue as some people are.

10 I think discussion is good on any subject.  
11 But I wanted to get your thoughts on that.

12 A First, let me make clear that I believe the  
13 drug industry and possibly the drug war are  
14 contributing to the violence profoundly.

15 Not only because of the violence within the  
16 industry, but the contamination in the community that  
17 is resulting in propagation of both the firearms, and  
18 you stick firearms in the hands of a sixteen year old,  
19 and all kinds of hell can break loose.

20 So, it really represents a serious threat.  
21 The comment someone else made earlier 80 percent of  
22 prisoners are associated with drugs in one way or  
23 another. Obviously, many of them are there on drug  
24 charges alone and we have been looking at records of  
25 those in prison on mandataries. And they are the most

1 benign of the people in the prisons in terms of prior  
2 records.

3           Again, at least a significant number of  
4 them are entrepreneurs rather than inherent criminals  
5 in the sense of doing violence if left to their own  
6 devices.

7           On the issue of legalization, it's really a  
8 complicated one because there is one nice term that  
9 covers the full spectrum for making marijuana available  
10 to cancer patients to ease their pain. And frankly, I  
11 see no objection to that under medical prescription, to  
12 at the other end putting cocaine on supermarket  
13 shelves, which I see as a horrendous possibility.  
14 Because the more you make it available, there is no  
15 question you will increase the demand.

16           Now, there is no question, for example,  
17 that Prohibition, whatever its evils, diminished the  
18 demand for alcohol. We are seeing a lot more problems  
19 with alcohol then we did during the '20's.

20           So, there is no question that will increase  
21 demand. But we are seeing enormous problems resulting  
22 from the nature of our particular mode of enforcement  
23 today. Which is exclusively criminal justice oriented.

24           What we have to do is put much more  
25 resources in treatment. One way to get treated is to

1     commit a crime so that you can get the treatment from  
2     the Criminal Justice System where resources are not  
3     available in the community.

4             A lot more effort has to be put into  
5     prevention and we have to start looking at, as you  
6     suggested, what alternative means do we have for  
7     regulating this dangerous product, serious drugs.

8             We have been absolutely single minded, and  
9     in this single mindedness have been totally  
10    ineffective, and, I believe, have contributed to other  
11    effects like the effect of the violence.

12            We have to start thinking about other ways  
13    to regulate, restrict access to drugs and inevitably  
14    however we regulate it, we know there will be a black  
15    market emerging to serve those who don't have access to  
16    it.

17            So, there are no legalization panaceas but  
18    I agree with you totally that it's an issue that  
19    desperately has to be looked at to explore  
20    alternatives, to find what the costs are and who will  
21    bear the costs and to find who the beneficiaries will  
22    be and what the nature of those benefits are.

23            I think one of the consequences of the drug  
24    war has been a major impact on the African American  
25    Community in the United States.



1           It has been focused -- arrests have been  
2 focused predominantly on African Americans and I'm not  
3 going to argue because I don't know that it's an  
4 intentional racist issue. It's a fact that African  
5 Americans who sell drugs tend to sell them in the  
6 street and, therefore, become an easy target.

7           African Americans who get arrested for  
8 selling drugs are more likely to end up in prison than  
9 whites who sell drugs are likely to end up in prison.

10           That's not the case for homicides. That's  
11 not the case for robbery. But it is significantly so  
12 the case for drugs. And so that has exacerbated the  
13 racial disproportionality of prison.

14           That was a long answer to, I think, a very  
15 important question. And I think it really has to be  
16 examined with considerable care and diligence and with  
17 great concern about the degree to which the drug abuse  
18 will expand.

19           But I think no one wants to go back to  
20 Prohibition today in part because they know about the  
21 side consequences there. But once you open that  
22 Pandora's Box and legalize in any form, it's very tough  
23 to go back there also.

24           Q     Thank you.

25           ACTING CHAIRMAN LaGROTTA: Frank?

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REPRESENTATIVE DERMODY: No.

ACTING CHAIRMAN LaGROTTA: Doctor, thank  
you very much.

(The following two pages were submitted for  
the record.)

Figure 1

## Robbery and Burglary Rates in 1992

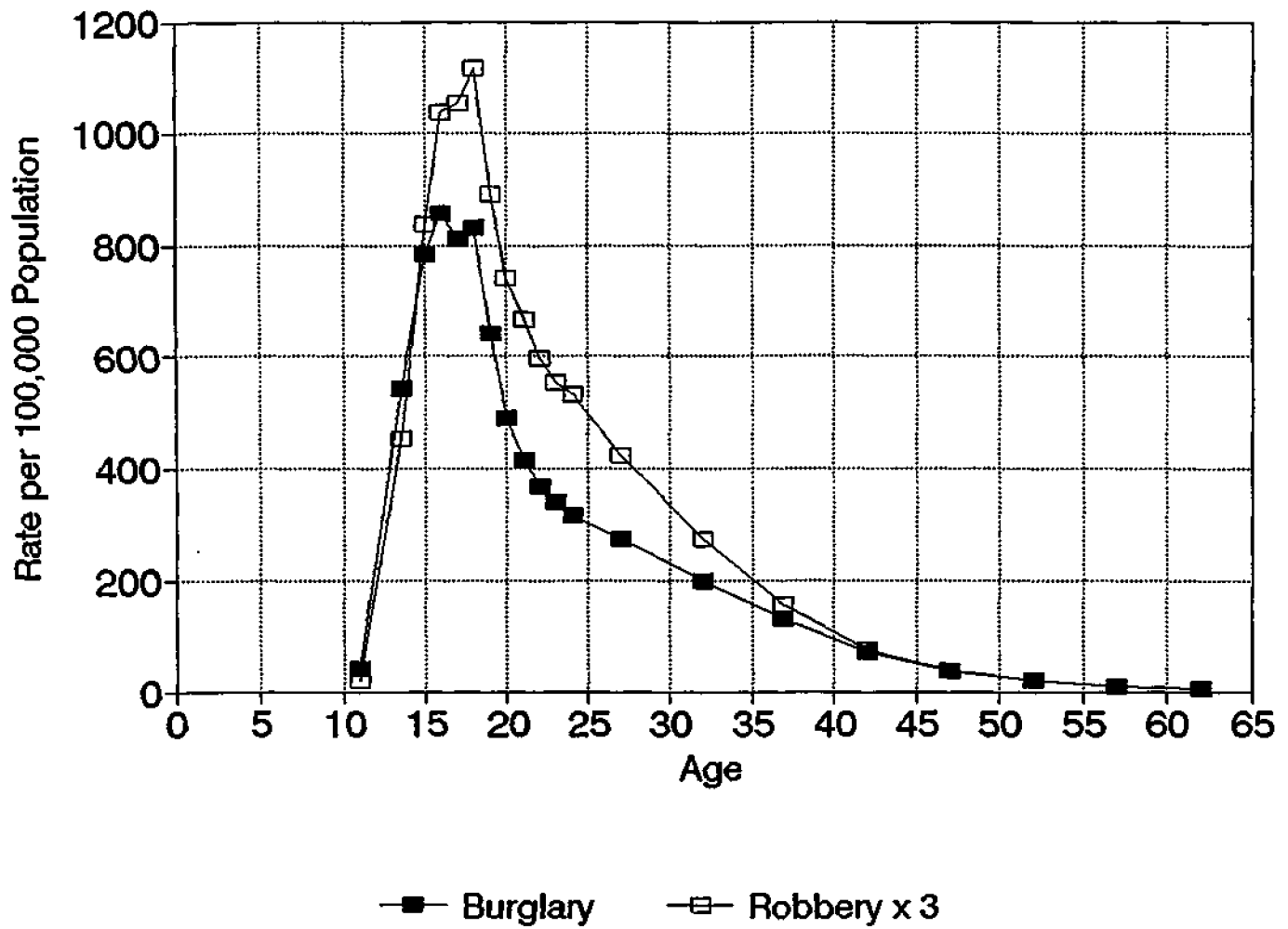
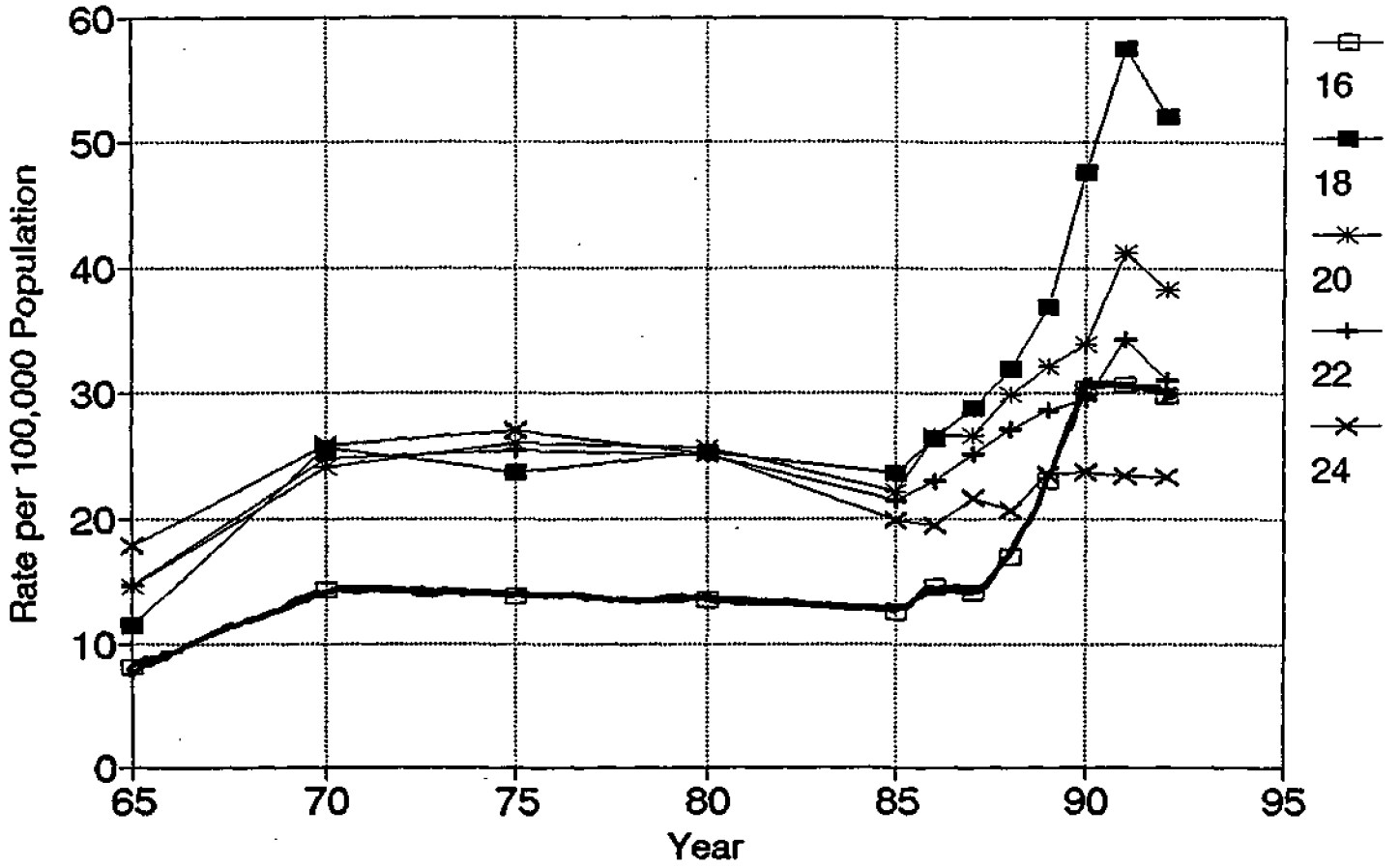


Figure 2

### Trends in Age-Specific Murder Rate Trends for Individual Ages



1 ACTING CHAIRMAN LaGROTTA: Joe Mascari.

2 JOSEPH F. MASCARI, JR., called as a  
3 witness, testified as follows:

4 MR. MASCARI: "My son is going to graduate  
5 from college in May, and I'm very proud  
6 of him. A lot of people, most of them  
7 professionals, told my wife and I that he  
8 would never get into college, much less  
9 graduate, because of his learning  
10 disability. He worked hard all through  
11 his early grades with his mother at his  
12 side, encouraging and helping him through  
13 his difficult times. He succeeded in  
14 getting into college. All those trying  
15 years will have been worth it when his  
16 name is called as one of the 1994  
17 graduates. I will be there, but my son's  
18 mother won't. She wasn't around to see  
19 him pass his driver's test on the first  
20 try. A personal triumph, since it took  
21 his sister three tries. She wasn't  
22 around when he graduated from high school  
23 with a "B" average; quite an  
24 accomplishment for a boy with a learning  
25 disability. She hasn't been around for

1 the last eight years to savor all the  
2 special moments that every parent enjoys  
3 because she is dead. She was murdered by  
4 a man who wanted to see what was in her  
5 purse. This animal stabbed her eleven  
6 times, strangled her twice, and dragged  
7 her still breathing body to a dark, damp  
8 coal bin underneath our home, sealed the  
9 door from the outside, and left her to  
10 die. She was in that tomb for about an  
11 hour before she succumbed. He could have  
12 saved her life at any time, but he chose  
13 not to.

14 He was sentenced to life in prison.  
15 My children were sentenced to life  
16 without a mother.

17 The Membership of V.O.I.C.E., the  
18 Organization I represent today, applauds  
19 your efforts with this Bill. Three  
20 Strikes and You're Out, is a good Bill  
21 that can be made better. If the final  
22 draft is so watered down that it can only  
23 be applied during the fifth week in  
24 February, don't look for our approval for  
25 this Bill. Our group is in favor of any

1 Bill that is tough on crime and gentle on  
2 its victims, and this Bill is just that.  
3 It accomplishes this by putting the  
4 violent recidivist behind bars forever.  
5 The violent chronic offender makes up a  
6 small portion of our society, but he  
7 commits a staggering number of crimes ...  
8 well over 100 per year for many of these  
9 violent predators. Our primary goal  
10 should be to identify and incarcerate  
11 this hard-core group of animals.

12 We should look at juvenile records.  
13 If these misfits have at least two  
14 violent felonies count as juveniles,  
15 those felonies should count as strikes.  
16 We should not back down from our goal to  
17 make Pennsylvania a safer place because  
18 of someone's age. We should feel lucky  
19 that we caught them early enough to  
20 prevent the victim rate from rising. I'm  
21 sure the British tourist who was murdered  
22 in Florida by a fourteen year old with  
23 fifty-one arrests would agree, if he were  
24 alive.

25 Common sense tells us that

1           incapacitating these chronic offenders  
2           will reduce the level of violence in our  
3           society. While we can debate the  
4           rehabilitation and deterrent effect of  
5           imprisonment, there can be no doubt that  
6           chronic criminals are not committing  
7           crimes while they are in prison.

8           Moreover, the experience of the past  
9           thirty years supports the common sense  
10          notion that tough laws and their  
11          enforcement works. The 1960's and 1970's  
12          had skyrocketing crime rates. As  
13          incarceration rates fell, violent crime  
14          rates soared, nearly quadrupling from  
15          1960 to 1980. The tougher approach to  
16          the 1980's turned this around ---  
17          dramatically slowing the increase in  
18          crime and bringing about some  
19          decreases, notwithstanding the wave of  
20          violence associated with drug trafficking  
21          during this period. There is little  
22          doubt that there is less crime today than  
23          there would have been had we not  
24          substantially increased the incarceration  
25          rate or criminals in the 1980's. The



1 challenge for today is to build upon and  
2 increase these partial successes of the  
3 last decade. We have within our grasp  
4 the opportunity of bringing about real  
5 reductions in the level of violent crime  
6 in this State. We must continue to  
7 target and incapacitate the chronic  
8 offender. This Bill, when passed, will  
9 do that.

10 There are people who will come  
11 before you and already have and say that  
12 we don't want a geriatric prison  
13 population. They believe that three-time  
14 losers should be released after twenty-  
15 five or thirty years of good behavior.  
16 They will argue that it's too expensive  
17 to keep an elderly inmate who probably  
18 isn't dangerous anymore, anyway. What's  
19 the reason? My answer to that is to ask  
20 yourselves what are the reasons for  
21 incarceration? Let's look at them, they  
22 are deterrence, incapacitation, and  
23 retribution. Notice that I left out  
24 rehabilitation. We do not rehabilitate,  
25 and the 70% plus figure of repeat

1 offenders proves that. We should not  
2 look at successful behavior in prison as  
3 a guideline for anything. It hasn't  
4 worked in the past or the present, and it  
5 certainly will not work in the future,  
6 even for elderly prisoners. But, we are  
7 using it as a guideline for the parole of  
8 violent offenders today. As for the  
9 geriatric prison population, I say let  
10 them be a reminder to those criminals who  
11 are in for one or two strikes that this  
12 could be their future if they don't turn  
13 their lives around.

14 There will be others who will come  
15 before you and tell you to look at the  
16 sociological problems that the three-time  
17 loser has, and that we need to help him  
18 overcome them so he will be a good person  
19 and not revert to a life of crime. We  
20 should not give up on him and throw away  
21 the key. Haven't we been doing this for  
22 the last thirty years? Haven't we come  
23 to the conclusion that it just doesn't  
24 work? Shouldn't we be telling all of the  
25 people who believe that there are no

1 "bad" boys or girls to attend the funeral  
2 of a murder victim and witness the  
3 permanent pain and anguish the chronic,  
4 violent offender inflicts on the victim's  
5 loved ones? Shouldn't we be looking at  
6 the body count that these animals are  
7 causing to pile up and say enough is  
8 enough?

9 The people of Pennsylvania are fed  
10 up with chronic violent offenders and are  
11 not going to take it anymore. The  
12 message will be loud and clear: No  
13 parole, no excuses, no way.

14 As for the cost of keeping an  
15 elderly prisoner, who do you think is  
16 going to hire this convict when he is out  
17 on the street? If you owned a business,  
18 would you, knowing full well that he has  
19 been convicted of three violent felonies?  
20 I am a business owner, and I certainly  
21 would not. The State is going to end up  
22 supporting this individual anyway, so it  
23 might as well be in surroundings that  
24 will guarantee the people that he will  
25 not be committing any more crimes and he

1           can serve some usefulness as an example  
2           to the younger inmates that we do not  
3           tolerate violent crime in Pennsylvania.

4           Prisons are expensive to build and  
5           to run, but the people of Pennsylvania  
6           are willing to pay. They demonstrated  
7           that just a few years ago when that exact  
8           question was put on the ballot. The  
9           voters responded with overwhelming  
10          support. The conclusion is that all of  
11          us want to be protected from violent  
12          chronic offenders. Personally, I would  
13          give all my worldly possessions I will  
14          ever have to have my wife back for just  
15          one day this May to see our son  
16          graduate."

17                    ACTING CHAIRMAN LaGROTTA: Thank you, Joe.

18                    Frank, do you have any questions?

19   BY REPRESENTATIVE DERMODY:

20           Q     I want to thank you for your very powerful  
21           testimony. I worked in this Courthouse probably a  
22           little less than six years prosecuting mainly  
23           aggravated assaults, rapes, homicide cases and dealt  
24           with victims and families of victims like yourself and  
25           seen the devastation and the havoc wreaked upon us by

1 these people.

2 The Defendant who murdered your wife, was  
3 he a repeat offender? Had he had a prior record  
4 before?

5 A No, he did not.

6 Q And he is doing life right now?

7 A He is doing life right now for first degree  
8 murder, correct.

9 Q Was the death penalty a question in the  
10 case at all?

11 A No, it wasn't. It was never sought after.

12 Q I think you're right. I think we have to  
13 look at the question of juvenile, violent juvenile  
14 offenders, how their records are maintained, what  
15 repercussions that those records have. Because clearly  
16 the records show that they are more involved in violent  
17 crimes than ever before.

18 For the most part, I guess what we were  
19 trying to get at earlier is to see what the numbers  
20 show for the Commonwealth because sentences are getting  
21 much tougher in the Commonwealth over the last several  
22 years.

23 Particularly on repeat violent offenders.  
24 The option for life is what should be there and I would  
25 like to see what the parole records are and what the

1 repeat sentences are. I don't know if you have those  
2 numbers for us.

3 A The only thing I have to say about your  
4 comment was that being in the position that I am right  
5 now and I speak with crime victims every day, not only  
6 around the State of Pennsylvania, but around the  
7 country, unfortunately.

8 If this Bill could save one less funeral,  
9 one, and I know I'm paraphrasing what Mario Cuomo said  
10 in his statement. But it would be worth it.

11 If you have never gone to a murder victim's  
12 funeral, I just hope you never have to.

13 Q Thank you.

14 ACTING CHAIRMAN LaGROTTA: Thank you, Joe.

15 John Kramer, Executive Director of the  
16 Pennsylvania Sentencing Commission.

17 JOHN KRAMER, called as a witness, testified  
18 as follows:

19 ACTING CHAIRMAN LaGROTTA: John, if you  
20 would proceed.

21 MR. KRAMER: Thank you, Members of the  
22 House Judiciary Committee and Staff. I'll paraphrase  
23 my comments today and I have passed out my remarks and  
24 I also, I think, Frank, you should have a copy of the  
25 Impact Projections. That's an extra copy, you may keep

1 that.

2           There are several issues -- I'm not going  
3 to go into the issue of the Projected Impact. I think  
4 for one reason, Representative Rudy has already  
5 suggested considerable changes in terms of dropping  
6 some offenses, et cetera.

7           So, whatever impact numbers there would be  
8 now, I'm sure we'll have to run those numbers when we  
9 see the amendments and we have those changes. We can  
10 take care of them.

11           We will be working on that and that's  
12 certainly very important. It's really -- the question  
13 that comes to the bottom line of that, whatever that  
14 number may eventually be is really a cost benefit  
15 issue. And that's really what I want to talk about for  
16 the next couple of moments.

17           It's how do we assess this Legislation in  
18 terms of cost and benefit.

19           Now, my role -- the Pennsylvania Commission  
20 on Sentencing is a Legislative Agency. Basically, I  
21 see myself here as an advisor, as a respondent to  
22 issues you have raised and you have to decide whether  
23 or not you want to pass the legislation.

24           But my role is to bring what we know from  
25 the Social Science point of view to the table. One of

1 the things when we look at the purposes of the  
2 legislation and considering the cost benefit of what we  
3 are trying to attain here is the issue of whether or  
4 not this particular piece of legislation is effective.

5 One of the things that earlier legislation  
6 that I had been involved with and supported is 683 and  
7 684. And there is a subtle difference here that I just  
8 want you to be aware of.

9 The difference here is between the use of  
10 the word persistent offender and high-risk dangerous  
11 offender. There is an overlap between those two  
12 groups. They are not the same body. They are not the  
13 same circle if you think of it.

14 They are somewhat different and so as we  
15 talk about getting at persistent offenders, the numbers  
16 become large. Because you begin to talk about more in  
17 terms of theft offenders and those that really are the  
18 more persistent, probably than the dangerous.

19 Once we undertake the purpose of trying to  
20 identify and selectively incapacitate high-risk  
21 dangerous offenders, then we take on a very difficult  
22 task.

23 And there are a couple of things I have  
24 concerns about this legislation and have noted before.  
25 And I want to highlight in that process.



1           One of those is that the assumption here in  
2 terms of the incapacitation model is that one can do it  
3 by prior convictions.

4           Let me just say that there is no data to  
5 support that as a very good model for predicting high-  
6 risk dangerous offenders.

7           So, if in a sense part of the belief system  
8 that you have in passing this legislation is that you  
9 are going to incapacitate the high-risk dangerous  
10 offender, I would submit that there are some things  
11 that I think you ought to debate and consider in this  
12 particular piece of legislation.

13           One of those are the factors that you have  
14 to consider. We in the guidelines, as Representative  
15 Dermody well knows, we consider juvenile offenses in  
16 our prior records scores. We do that. Because  
17 juvenile offenses are important considerations of the  
18 risk of an individual and also the culpability.

19           I say that in looking at it from a point of  
20 view in terms of culpability, that the intent of the  
21 offender from an incapacitated point of view, it helps  
22 us to identify more likely those people that are going  
23 to continue to commit a crime.

24           Secondly, prior convictions, as I say is  
25 already part of the problem. One key area and

1 Professor Blumstein was talking about it this morning.  
2 The average age of the people identified under this  
3 legislation is 31 and a half years.

4 And if you look to the last chart, just  
5 take it to the last page of my testimony, if you look  
6 at that particular chart and, again, we are thinking of  
7 cost benefit to this.

8 When you wait until the third strike, you  
9 effectively have waited until that person, if you look  
10 at that chart, when a person is 39, and this is a tough  
11 chart to follow.

12 What Professor Blumstein was showing you  
13 earlier were arrest patterns by age for particular  
14 offenses.

15 What this chart is looking at is residual  
16 criminal career. In other words, offenders who have  
17 committed an offense at 31 and a half, how long do we  
18 expect their career to end in terms of criminality? We  
19 are talking about the length of individual offenders  
20 until they terminate their criminal behavior, not just  
21 patterns of arrest.

22 There is just a subtle difference, but it  
23 is an important issue for you to be sensitive to.  
24 Because that's what we're dealing with.

25 If you look at the offenders and think in

1 terms of the mean residual career length, you can see  
2 that offenders who are still committing offenses at age  
3 31 have at least another ten years until their criminal  
4 careers are beginning to decline precipitously.

5           Around age 41 is generally the age at which  
6 we see the likelihood of those people dropping out.  
7 That means, as Professor Blumstein was indicating, that  
8 when you go to 40 to 50 to 60 to 70, the cost benefit  
9 of what you are getting is less and less in terms of  
10 what you're putting your space into and how many people  
11 you are going to have.

12           My conversations with the District  
13 Attorney's Association has been that they see that as  
14 being a critical crisis down the road created by this  
15 kind of legislation because what is going to happen is  
16 you are going to have these offenders stacking up and  
17 the legislature is going to have the problem of trying  
18 to decide well, what are we going to do with all of  
19 these new offenders.

20           Remember Professor Blumstein's chart that  
21 age with 16's and 17's and 18's, those are really  
22 missed in this legislation because they are not three  
23 strike people. They are not dealt with in terms of --  
24 we rely upon, as I think we should, judicial  
25 empowerment to deal with those offenders.

1           So, when you look at the patterns of  
2 behavior and you look at the proposal, you will see  
3 that Commissioner Joe Lehman and I have submitted as  
4 part of the discussion, you'll see that when you look  
5 at the patterns of behavior, you need to look at the  
6 offenders earlier.

7           You need to think about other factors that  
8 need to be considered in the sentencing decision to  
9 increase your likelihood of being able to identify the  
10 real high-risk dangerous people.

11           And then you need to empower the Courts to  
12 give sentences commensurate with that kind of  
13 information.

14           So, we have to have more information and we  
15 have to have more empowerment to the Courts. And  
16 that's what we are suggesting both in 683 and 684. And  
17 we are suggesting in the attached statement that I have  
18 here.

19           That's Joe Lehman. He and I did this  
20 jointly as you will see when you read the statement  
21 that you have. With high-risk dangerous, you can give  
22 a minimum or one-half the maximum. That means that you  
23 can give a 15 to 20 or whatever. If you have a second  
24 conviction for a felony one, we suggest that that be  
25 raised.

1           It is ironical to me that this General  
2 Assembly has passed to a Law a 30-year maximum sentence  
3 or 15-year minimum sentence for drug offenders and has  
4 a maximum 20 years for murder three, rape, involuntary  
5 deviate sexual intercourse and a 10-year maximum on  
6 attempted murder.

7           It's a felony two in Pennsylvania, which is  
8 an irony that is interesting and inconsistent. What  
9 I'm suggesting and what we are suggesting is that you  
10 have incorporated into the legislation the  
11 identification and use of other information in the  
12 identification of people as high-risk dangerous; that  
13 you look at that very carefully for empowering the  
14 Court and sentencing guidelines would be empowered  
15 under 683 and 684 to identify these people.

16           The legislation should indicate what we  
17 would do under the guidelines and that is set a two-  
18 stage process.

19           First, look at the persistent offender.  
20 Secondly, as a second stage, with additional  
21 information, identify the high-risk dangerous offender.  
22 It really requires a two-stage information process.

23           And that is what the Judges are there for.  
24 Representative Dermody has raised this issue. This is  
25 a very, very, difficult decision process. And the

1 information that is there is complex. And I think the  
2 Three Strikes and You're Out oversimplifies the  
3 information Judges need to know to be able to make good  
4 decisions about that.

5 In effect, what is going to happen with  
6 this kind of legislation, if you notice the statement  
7 that Mr. Hoffman makes using our sentencing data about  
8 what we think the impact would be, the real question  
9 mark is who are the prosecutors going to apply this to.

10 That's the real crucial issue. We are  
11 empowering the prosecutors, not judges.

12 I think in terms of future information, the  
13 people you should be empowering are the judges to give  
14 tougher sentences for some of these offenders and give  
15 them and make sure they have the information before  
16 them to make good, reasonable and as accurate as we can  
17 make, decisions about these offenders.

18 That's basically, in a nutshell what Joe  
19 and I have been talking about, what we started with 683  
20 and 684, why that high-risk dangerous offender  
21 classification is in there and why it is a difficult  
22 thing to understand what the Commission would do with  
23 it. Why the kinds of factors and other things that are  
24 needed to identify those offenders is left open to the  
25 Commission.

1           As a part of 683 and 684, this Legislation  
2 is not inconsistent with that concept. It's just that  
3 we would like to see more information made a part of  
4 this kind of enactment and more power given to the  
5 Court for first and second offenders.

6           That's the group right now that is  
7 particularly in the violence prone years. I'll stop  
8 with that and take questions.

9           ACTING CHAIRMAN LaGROTTA: Attorney Scott?

10          BY MR. SCOTT:

11           Q     John, over the last year I have worked  
12 closely with you and Dr. Blumstein and I understand the  
13 cost benefit. I understand the definitions that you  
14 have raised.

15           And while there are some people that might  
16 be philosophically in line with your concerns, how do  
17 you address the last testifier's plea, Mr. Mascari,  
18 concerning -- he's hitting it on a one-on-one basis,  
19 something that is personal. He is the Co-Chair of  
20 V.O.I.C.E.

21           How do we rectify that with the public?

22           A     First off, I have a daughter who was a  
23 victim of violent crime. So I am not -- I come at this  
24 both as perhaps the father of a victim as well as  
25 Executive Director of the Sentencing Commission.

1 I have never found those two issues  
2 inconsistent.

3 As he indicated in his testimony, in his  
4 particular case nothing we could have done would have  
5 changed it.

6 This was a first offender that committed this  
7 particular murder. Neither my proposal nor his would  
8 have gotten at that particular situation.

9 What I'm saying is in fact directly to  
10 potential victims that if we wait until Three Strikes  
11 You're Out, in many cases if we don't raise the concerns  
12 earlier and consider other types of information and  
13 empower Judges under circumstances to deal with that --

14 In some respect what I'm saying is I don't  
15 think we have empowered Judges to deal with the violent  
16 offender unless there have been multiple convictions and  
17 then they can do the consecutive sentences.

18 I think what we are talking about in 683 and  
19 684 and with the combination of some aspects of this, I  
20 think we are talking about much more protective issues  
21 after a first offense potentially, a second offense and  
22 using other information.

23 So I think it's consistent.

24 I get concerned about life without parole  
25 because I see the backing up. I think we have



1 increased the Department of Corrections Budget from \$93  
2 million to \$604 million over the last 13 years. That's  
3 a considerable growth.

4 That's an investment the Legislature has  
5 made. I think this Legislature is to be congratulated  
6 for the fact that other States have gotten so far  
7 behind, they are under court order and people are going  
8 home, if you look at Florida and you look at Texas.

9 Now, part of my responsibility to this  
10 Legislature is to say let's be cautious and not put  
11 ourselves into a Florida or Texas scenario in which the  
12 Courts are basically taking control of the Corrections  
13 Department. And let's try to benefit our citizens,  
14 potential victims and past victims, by legislation that  
15 gets at people, allows Courts, empowers Courts earlier  
16 in the process and deals severely but not unnecessarily  
17 with offenders.

18 The issue of the 55, 45-year old offender,  
19 the one that the Washington Three Strikes, if you saw  
20 the paper in the last week, who we would classify as a  
21 persistent offender.

22 The question is do we want to invest the  
23 resources between the ages of 65 and 75 and 80 and 85  
24 to incapacitate that particular offender. I'm not sure  
25 that you sitting there in your wisdom really want to

1 make that investment for the next generation. That's  
2 the question.

3           Again, it's a benefit. If we thought it  
4 was going to be a major benefit in protecting citizens,  
5 then probably you might say, of course, we would do  
6 that.

7           That's an essential responsibility. I just  
8 don't see that as being of the benefit, the deterrent  
9 benefit, that he indicated or thought it might have.

10           I don't see that happening and, in fact,  
11 one of the issues of concern about it, in case  
12 Professor Blumstein mentioned it, but there are cases  
13 in New York, I think, that were cited in a couple of  
14 newspaper articles and that's my only source on this.

15           Some of the individuals filing under this  
16 classification are particularly aggressive because of  
17 the issue of Three Strikes and You're Out. They are,  
18 in a sense, nothing to lose situations. And I think we  
19 have to be careful of that issue as well. Although I  
20 have just heard reports of that and I'm not suggesting  
21 that I know much about that at this point.

22           So, I think what we are talking about -- I  
23 think 683 and 684, while misunderstood by many, has  
24 been an attempt to empower what Joe and I have  
25 suggested in here and it extends maximums which I think

1 in many cases are exceptionally reasonable to further  
2 empower judges to enact protective, selective  
3 incapacitation information.

4 Q Thank you.

5 ACTING CHAIRMAN LaGROTTA: Representative  
6 Dermody?

7 BY REPRESENTATIVE DERMODY:

8 Q Just briefly, John, there have been several  
9 articles in the newspapers out here and we have  
10 probably confirmed it today. But in general, the crime  
11 rate has gone down over the last several years. But  
12 the violent crime rate has increased significantly.

13 And what you are saying is we have to get  
14 the violent offenders and they are younger. The  
15 youthful violent offenders. So, it's crucial for us to  
16 give the judges the tools they need to sentence people.

17 Now, the House passed a version.

18 A That's right.

19 Q Of the Sentencing Reform. It's in the  
20 Senate right now.

21 It includes the ability for judges to  
22 sentence --

23 A That's right. I think as a Member of the  
24 Commission, if you remember, the proposed changes we  
25 worked through, one of the difficulties with those, if

1 you think about the chart. I don't have it in front of  
2 me, but if you think about how we are currently limited  
3 because we are dealing with minimums because that's the  
4 potential release date.

5 So, many of our sentences, when you get to  
6 people who have prior convictions, we have no way of  
7 increasing the penalties for those offenders because  
8 current statutes limit the minimum to be no greater  
9 than one-half of the maximum.

10 We end up increasing things a few months  
11 because we can't do any more to those offenders. I  
12 think both the Commission, in a sense -- I'm saying I  
13 think that the guidelines as well as judges need to be  
14 empowered through some action similar to what we are  
15 proposing here as well as House Bill 683, 684, which  
16 would allow judges to go past one half the maximum.

17 Q I agree. Thank you.

18 ACTING CHAIRMAN LaGROTTA: Cam?

19 BY MR. TEXTER:

20 Q You mentioned during your testimony that  
21 right now juveniles are not included. Do you see any  
22 way they should be included, they should be involved,  
23 they should be considered -- the record?

24 A Well, what we do -- what I'm saying is in  
25 the sentencing guidelines we specifically include

1 juvenile adjudications. So, a person -- there is a lot  
2 of misinformation about what is considered or not  
3 considered in current sentencing.

4 In Pennsylvania, when a person is being  
5 sentenced in a Criminal Court today, in the Allegheny  
6 County Courthouse, that offender will have a criminal  
7 history score calculated on the sentencing guidelines.

8 That guideline calculation requires that  
9 the Court look back into the juvenile record. We  
10 focused on the ages 14 to 18 and we focus if the  
11 current conviction is a felony. Under those  
12 circumstances, that unpeels, opens up the juvenile  
13 adjudication record for that particular person and  
14 those offenses are treated the same as if they were an  
15 adult conviction.

16 So, if you have a robbery felony one  
17 conviction as a 16-year old, we treat that the same as  
18 if you were a 25-year old. Some might even argue in  
19 terms of predicted issues that that younger age issue  
20 of robbery would even be more influential.

21 We have also proposed to increase the role  
22 of prior record for serious violent crimes, the  
23 weighing of them, the value of them, in terms of  
24 increasing the severity of the penalties. But we do --  
25 now, the legislation as it was originally defined did

1 not include juvenile adjudication.

2 The District Attorneys and -- remember, I  
3 mentioned to you about previously convicted -- the  
4 definition that I had faxed to the District Attorneys  
5 Association as a proposal includes in there the  
6 definition of previously convicted juvenile  
7 adjudications as well as adult convictions as part of  
8 that process.

9 Anything, when you are talking about high-  
10 risk danger, we are going to have to open up juvenile  
11 adjudications or we are going to be working with not one  
12 arm tied behind our back, but we are going to be  
13 working with inadequate information.

14 Q At the last hearing Glen Abraham talked  
15 about having the juvenile record considered as one  
16 strike or two strikes, et cetera. I haven't seen your  
17 proposal and I know you said you would send me a copy  
18 of it. But I know Representative Rudy would like to  
19 see that.

20 Are you saying then that record should be  
21 included as a strike or anything?

22 A As I said, my concept of this is not so  
23 much a strike.

24 Q That's the way she put it.

25 A I would consider that in terms of

1 information that the Court needs to have and in the  
2 terms of the way we calculate it needs to be considered  
3 by the Court and it might have different values under  
4 different circumstances.

5 And it might have different values  
6 particularly if you are thinking about identifying  
7 high-risk dangerous offenders rather than just  
8 persistent offenders.

9 Age, at the onset of delinquency, for  
10 example, becomes information that is often used to  
11 predict. Those are things that really need to be  
12 looked at empirically.

13 If I'd have my druthers for coming before  
14 you and saying this is what we should do, I would take  
15 financial resources from the State and present to  
16 Professor Blumstein an issue of providing us  
17 information of what kind of information would allow us  
18 to identify the best way possible high-risk dangerous  
19 offenders.

20 And then things that might well come up on  
21 there is age at onset of delinquency and other kinds of  
22 information, the delinquent record and incarcerations  
23 and other things that may come up to help us make those  
24 kinds of determinations.

25 ACTING CHAIRMAN LaGROTTA: Representative

1 Dermody?

2 BY REPRESENTATIVE DERMODY:

3 Q John, just a few more questions. I talked  
4 earlier and I don't know what kind of information you  
5 have just off the top of your head or whether you have  
6 it at all, but we discussed my feel for what, let's say  
7 a three time loser for rape, if any of those people are  
8 out on the street today.

9 After having walked before a Court with  
10 this type of a record for these types of offenses that  
11 are enumerated in the Bill, what types of sentences  
12 those people are serving right now.

13 A Well, I know what the guidelines call for.  
14 I can't off the top remember the average or whatever,  
15 but three times -- remember, we created a category  
16 called repeat violent offender. We maxed that person  
17 out. What I'm saying is that max limit right now for  
18 the one conviction, assuming one conviction, the max is  
19 at 10 and 20.

20 What we would like to see is let the Judge  
21 go longer than that and perhaps for second convictions  
22 have longer maximums. There are a couple of things  
23 that we are suggesting to increase that.

24 Right now, many of those kinds of cases you  
25 would be getting consecutive sentences.



1           So, you would be going far beyond, I would  
2 expect, ten years. Unquestionably, you are going to  
3 have average sentences of greater than ten years,  
4 minimum sentences. Maximums are going to be at least  
5 double that. Average time served is going to be  
6 considerably longer than that minimum number, too.

7           Q     We are talking about some long sentences,  
8 plus they have no way of getting out.

9                     Also, they would be consecutive sentences.  
10 It's my experience, and I think the Commission, if you  
11 do the numbers and see what types of sentences they are  
12 serving, you will be able to argue about consecutive  
13 sentences on the Sentencing Commission, which we  
14 continue to allow the Judges to impose them.

15                    So, what happens is, if you are charged  
16 with a rape and there are several other offenses that  
17 usually go along with that that are part of the  
18 conviction and the Judge may sentence you on each  
19 individual offense.

20                    So, instead of that ten to twenty, it's  
21 probably now 25 to 50. So, you have a -- with a parole  
22 time that is incredible, plus an offender is probably  
23 before the Court on parole.

24           A     That's right. And again, you have with the  
25 Parole Board with that kind of an offender, you have to

1 assume the Parole Board is going to look carefully at  
2 that offender in terms of repeat offenses and be very  
3 cautious in terms of the release of those kinds of  
4 offenders.

5 I don't have information on what the Parole  
6 Board does. I do have quarrels sometimes with Parole  
7 Board decision making.

8 Q I do, too.

9 A But, with those two caveats aside, my sense  
10 of that kind of repeat rape offender, for example, is  
11 going to do probably commensurate with what this Bill  
12 would do.

13 Q That's right. I guess that's what I was  
14 trying to get at.

15 A I think the one thing that you were getting  
16 at, and I will just interject. I think that the Judges  
17 -- we elect Judges in Pennsylvania. I think that  
18 basically, not to be a defender of the Judges, but I  
19 think this implication here is that Judges are not  
20 doing what they should be doing. And I think when I  
21 kept using the word empowering, I think we ought to  
22 empower Judges to do, to give them the latitude to do  
23 what they think they need to do and to give them the  
24 information to do it.

25 I think that's a crucial decision process

1 and that discretion, I think, is very, very important.  
2 I think they have done a good job with that  
3 historically in Pennsylvania.

4 Prison populations have risen from 10,000  
5 in 1980 to 26,000 today. We project that they will  
6 continue to increase. Our concern has been that a  
7 number of those offenders are non-violent offenders and  
8 that we have not empowered judges adequately with the  
9 violent offenders.

10 Q The information or the statistics on what  
11 those types of offenders are certainly is realistic and  
12 that's available to us and you have that compiled?

13 A Yes, we do it by transaction. One limit is  
14 that we would try to do it by transaction rather than  
15 -- so, we'll miss consecutive sentences.

16 Q To some degree you miss the consecutives?

17 A Yes. But we can do some checking through  
18 the Department of Corrections and I did speak to the  
19 gentleman from the Lieutenant Governor's Office and  
20 said we would do some analysis for them and, of course,  
21 we'll get that information to you as well.

22 Q Would we be able to get something from the  
23 Parole Board on the back time these people would be  
24 serving also?

25 Again, that's consecutive to any additional

1 sentence that they would receive for the current crime?

2 A We have struggled getting that kind of  
3 information. It should be available. I think the  
4 question is an honorable question.

5 For some reason we have never been quite  
6 comfortable with that kind of information and how  
7 accurate it is.

8 If anything, though, the information we  
9 will have would be conservative. In other words, it  
10 will underestimate what a person can serve rather than  
11 overestimate.

12 So, I think anything we show you will be  
13 low numbers in terms of length of time served to parole  
14 and low in terms of information on what kind of back  
15 time a person gets or revocation time they get for  
16 violating probation.

17 All of those things -- we are going to miss  
18 times when they come back in rather than --

19 Q It will be a low ball number?

20 A That's all I want to caution you about.

21 Q Thank you.

22 ACTING CHAIRMAN LaGROTTA: John, thank you  
23 very much.

24 (The following was submitted for the  
25 record:)

1           "Mr. Chairman, members and staff  
2 of the House Judiciary Committee, thank  
3 you for inviting me to testify before you  
4 on House Bill 2313. In my testimony I  
5 will address two issues that are  
6 important to consider as you deliberate  
7 on this legislation. First, I will  
8 review the projected impact of this  
9 legislation. Second, I will discuss the  
10 purposes of H.B. 2313 and potential  
11 shortcomings in fulfilling these  
12 purposes. After I complete my remarks,  
13 Commissioner Joseph Lehman will discuss  
14 the general parameters of an alternative  
15 proposal we have been working on.

16           **PROJECTED IMPACT**

17           As currently written H.B. 2313  
18 mandates "life without parole" for third  
19 time offenders convicted for any of  
20 approximately 38 felonies. The  
21 Correctional Population Projection  
22 Committee analyzed our 1992 data and  
23 concluded that there were 1662 offenders  
24 to which this legislation would apply.  
25 If all those eligible for the life

1 without parole sentence have the  
2 provisions of H.B. 2313 applied to them,  
3 the Committee anticipates that by the  
4 year 2000 there will be an additional  
5 7,655 inmates in state prison. This  
6 number will continue to build until the  
7 death rate and commutations equal the  
8 increased number of offenders  
9 incarcerated because of this bill. This  
10 committee recognizes the increased costs  
11 associated with these offenders and, of  
12 course, must balance the increased costs  
13 with the benefits accruing from the bill.

14 Representative Ruth Rudy, sponsor of  
15 House Bill 2313, indicates that this  
16 legislation is similar to legislation  
17 adopted in Washington. However,  
18 Washington's legislation is much more  
19 narrowly defined and thus is projected to  
20 increase prison populations by only 93  
21 inmates by the year 2000 compared to the  
22 projected 7655 impact for Pennsylvania.  
23 This is primarily because H.B. 2313 much  
24 more broadly defines the term violent  
25 offender.

1                   **PURPOSES OF THE LEGISLATION**

2                   Representative Ruth Rudy's goal with  
3                   this bill is to selectively incapacitate  
4                   the relatively small core of high risk  
5                   dangerous offenders. The concept of the  
6                   legislation builds on the research of  
7                   Marvin Wolfgang and his associates  
8                   (Wolfgang et. al. 1972; Wolfgang et al.  
9                   1987; and Tracy, Wolfgang and Figlio  
10                  1990) at the University of Pennsylvania  
11                  and that of the RAND Corporation. This  
12                  research finds that a relatively small  
13                  number of offenders are  
14                  disproportionately responsible for  
15                  violent crime. The obvious conclusion is  
16                  that if we can identify such offenders  
17                  early and incapacitate them then we will  
18                  net a considerable benefit to the  
19                  protection of the public. This  
20                  legislation attempts to do this by giving  
21                  those with two prior convictions for one  
22                  of the 38 violent felonies, and who have  
23                  been convicted for a third such felony, a  
24                  sentence of life without parole. There  
25                  are several issues that I suggest you

1 consider when deliberating on this  
2 legislation.

3 First, the offenders identified  
4 under this legislation have an average  
5 age of 31.5 years. When we study repeat  
6 offenders we find that, in general,  
7 offenders' criminal behavior patterns  
8 tend to decline with age. The question  
9 for this committee is twofold. First,  
10 are we capturing offenders under this  
11 bill at the end of their career? Second,  
12 if the offenders are not at the end of  
13 their criminal careers, what length of  
14 incarceration is necessary to fulfill the  
15 selective incapacitative goal?

16 Figure 1 represents behavior  
17 patterns as found by Al Blumstein and  
18 Jacqueline Cohen (Blumstein et. al.  
19 1986:93). They characterize criminal  
20 careers in terms of Period I, "break-in  
21 period", Period II, "stable period", and  
22 Period III, "wear out period." For  
23 offenders who persist in criminality into  
24 their thirties, they identify age 41 as  
25 the time when the residual career



1 (expected time remaining) begins to  
2 decline. Figure 1 indicates that life  
3 sentences for "persisters" at age 30  
4 exaggerates the projected length of  
5 criminal careers. It suggests that a  
6 period of confinement of ten to twenty  
7 years depending on the severity of the  
8 current offense, prior offenses, and  
9 other factors that help determine the  
10 future risk of the offender would be as  
11 effective and much less costly.

12 Second, the legislation attempts to  
13 identify high risk dangerous offenders.  
14 Clearly, the philosophy is that if the  
15 offender has committed two or more prior  
16 felony offenses identified in the bill  
17 then they are a risk for serious future  
18 such offenses. This philosophy can be  
19 characterized as "the best predictor of  
20 future behavior is past behavior." This  
21 is true in general. However, previous  
22 research indicates that the ability to  
23 predict future criminality based on prior  
24 convictions is limited. For example,  
25 Blumstein et. al. (94) conclude:

1           At virtually all stages of  
2           criminal careers, the factors  
3           that distinguish the highest-  
4           rate offenders are still only  
5           incompletely known, but  
6           certainly include the  
7           following:

- 8           - high frequency of prior offending
- 9           - early onset of delinquency as a  
10          juvenile;
- 11          - drug use, measured either  
12          currently or over time; and
- 13          - unstable employment in the  
14          recent past.

15           My concern is that although this  
16           bill attempts to identify high risk  
17           dangerous offenders, it suffers by not  
18           taking into account the full range of  
19           information that should be considered in  
20           determining dangerous offenders. To  
21           identify high risk dangerous offenders as  
22           accurately as possible requires careful  
23           research. I encourage you to ensure that  
24           ultimately we conduct such research.  
25           Careful research will maximize the

1 effectiveness of our ability to identify  
2 dangerous offenders and to establish  
3 sentencing policy that protects the  
4 public with minimum burden to the  
5 taxpayers.

6 Conclusion

7 In conclusion, I have three serious  
8 concerns with the manner in which the  
9 legislation attacks the incapacitation of  
10 the violent, persistent offender. First,  
11 the legislation waits too long to  
12 consider incapacitating violent  
13 offenders. Senate Bill 683-684 allow for  
14 earlier identification of such offenders  
15 when incapacitation will be more  
16 effective. Second, it incapacitates  
17 offenders for a significant period of  
18 time when research tells us they are not  
19 a serious threat to the community and  
20 when the cost of their incarceration and  
21 health care is excessive. Third, the  
22 identification fails to consider the  
23 range of factors that research tells us  
24 is necessary to identify high risk  
25 dangerous."

1 "Testimony of Corrections

2 Commissioner Joseph D. Lehman before the  
3 House Judiciary Committee on HB 2313 ("3  
4 Strikes -- You're In!"), Philadelphia,  
5 PA,  
6 February 17th, 1994.

7 Chairman Caltagirone and other  
8 committee members, I appreciate the  
9 opportunity to appear before you once  
10 more on this important piece of  
11 legislation -- "3 strikes and you're in."

12 Today I join John Kramer, Executive  
13 Director of the Pennsylvania Commission  
14 on Sentencing. John and I have given a  
15 great deal of thought to this  
16 legislation. John will begin with what  
17 we believe are some problems with the  
18 concept's underlying assumptions and I  
19 will follow and make some suggestions on  
20 how the concept of "3 strikes and you're  
21 out" might be improved upon.

22 John has framed his comments around  
23 two areas of concern -- the problem of  
24 predicting future criminal behavior  
25 simply on the basis of prior record and

1 the impact of aging on criminal careers.

2 First, in relation to the problem of  
3 prediction our recommendation to you is  
4 that you use the concept of "High Risk  
5 Dangerous Offender" as defined in SB 684  
6 to define the criteria and methodology  
7 for making the prediction decision.

8 In SB 684, as it was passed by the  
9 House this last December, an offender  
10 convicted of one of the enumerated  
11 offenses may be designated as a High Risk  
12 Dangerous Offender based on a finding  
13 made by the sentencing court that the  
14 individual meets certain specified  
15 criteria which are related to the notion  
16 of dangerousness. Some of the criteria  
17 are defined in the bill itself and  
18 additional criteria are to be developed  
19 by the Commission on Sentencing.

20 Second, in relation to age, instead  
21 of mandating a sentence of life without  
22 parole, we recommend progressively longer  
23 sentences be tied to the number of  
24 "strikes" that an offender has at the  
25 time of sentencing.

1           Third, we would also suggest  
2           proportionality is and should remain an  
3           important "justice" principle in  
4           punishing offenders. Therefore, in  
5           addition to the progressively longer  
6           sentences authorized based on the number  
7           of strikes, we are recommending a two-  
8           tier sanctioning regimen based on whether  
9           the crime for which the offender is being  
10          sentenced is a Felony 1 or Felony 2.

11           Although we are recommending that a  
12          distinction be made between a Felony I  
13          and Felony II in establishing the tiers,  
14          we do not believe that a similar  
15          distinction is necessary for establishing  
16          the number of priors for determining the  
17          number of strikes.

18           Fourth, we believe that the public's  
19          primary concern is incapacitating the  
20          violent and dangerous offender. The  
21          offenses enumerated as serious either at  
22          the Felony I or II level should be  
23          restricted to crimes of violence, i.e.,  
24          person offenses as opposed to drug or  
25          property offenses.

1           Based on these changes we would  
2 recommend the following:

3           The first tier involving violent  
4 felony I offenses would be structured to  
5 provide the following sentences:

6           Strike One for a Violent Felony I: If  
7 the court sentences the offender as a  
8 High Risk Dangerous Offender, the maximum  
9 sentence of total confinement allowed  
10 would be extended to 20 years.

11           Strike Two for a Violent Felony I: If  
12 the court sentences the offender as a  
13 High Risk Dangerous Offender, the maximum  
14 sentence of total confinement allowed  
15 would be extended to 30 years.

16           Strike Three for a Violent Felony I: If  
17 the court sentences the offender as a  
18 High Risk Dangerous Offender, the maximum  
19 sentence of total confinement allowed  
20 would be life.

21           The second tier involving Violent  
22 Felony II offenses would be structured to  
23 provide the following sentences:

24           Strike One for a Violent Felony I: If  
25 the court sentences the offender as a

1 High Risk Dangerous Offender, the maximum  
2 sentence of total confinement allowed  
3 would be extended to 10 years.

4 Strike Two for a Violent Felony II: If  
5 the court sentences the offender as a  
6 High Risk Dangerous Offender, the maximum  
7 sentence of total confinement allowed  
8 would be extended to 20 years.

9 Strike Three for a Violent Felony III:  
10 If the court sentences the offender as a  
11 High Risk Dangerous Offender, the maximum  
12 sentence of total confinement allowed  
13 would be extended to 30 years.

14 If the intent of the legislation is  
15 to allow for longer periods of  
16 incapacitation for the violent and  
17 dangerous offender, the changes we  
18 recommend do so. They, at the same time,  
19 attend to the concerns that we have  
20 outlined in relation prediction and the  
21 "aging out" process of the criminal  
22 career. We recommend your consideration  
23 of these changes."  
24  
25



### Violent Felony I

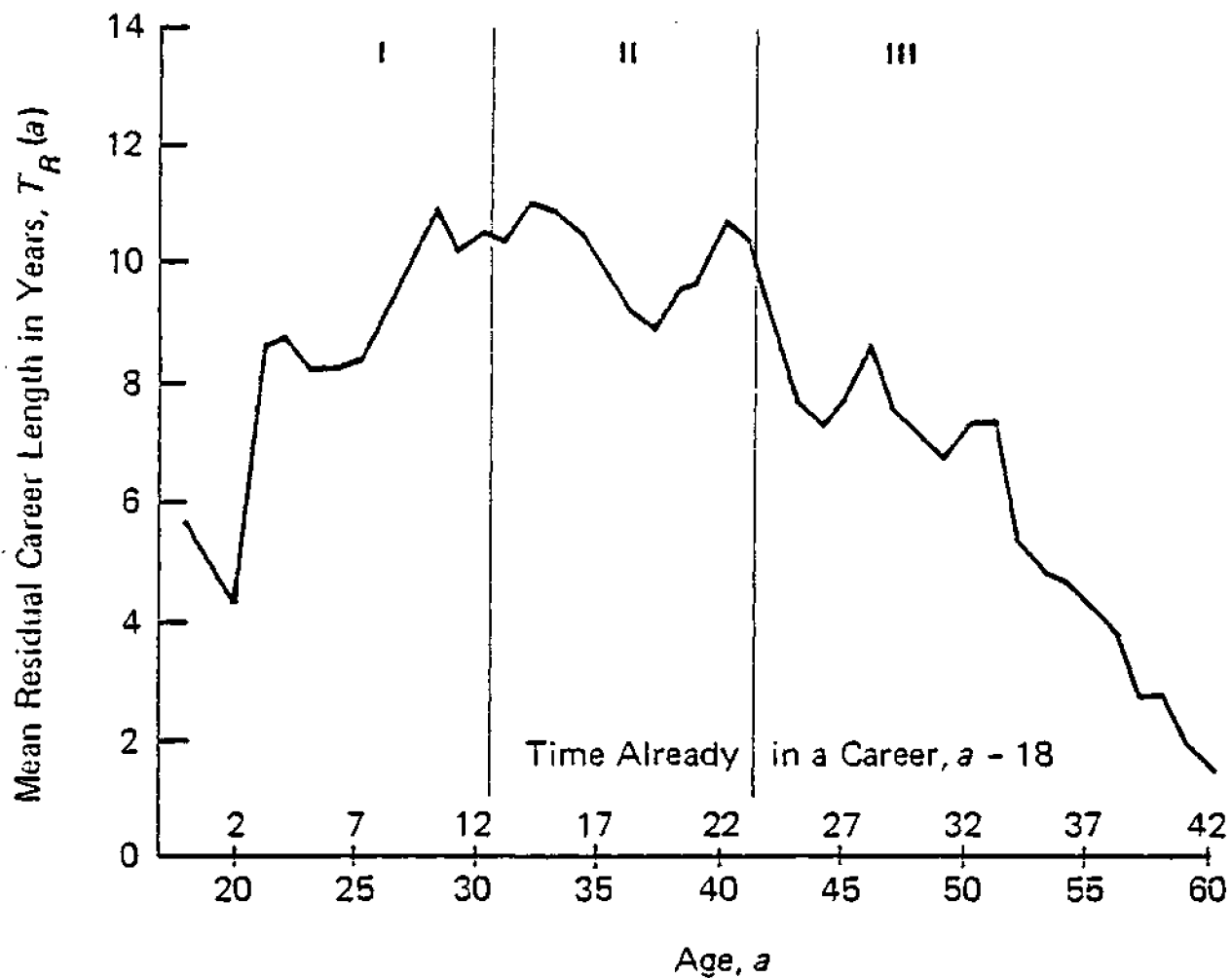
(with a court determination that the defendant is a "high-risk dangerous offender")

Maximum Sentence of Total Confinement	Strike One	Strike Two	Strike Three
Current:	10 years	10 years	10 years
Proposed:	20 years	30 years	Life

### Violent Felony II

(with a court determination that the defendant is a "high-risk dangerous offender")

Maximum Sentence of Total Confinement	Strike One	Strike Two	Strike Three
Current:	5 years	5 years	5 years
Proposed:	10 years	20 years	30 years



**FIGURE 3-4** Variation in mean residual career length ( $T_R$ ) with time already in a career (18- to 20-year-old starters only). Source: Blumstein and Cohen (1982:Figure 12).

1                   ACTING CHAIRMAN LaGROTTA: Next on the  
2 agenda today we have Bob Bidinotto, who is an Author.

3                   It's a pleasure.

4                   BOB BIDINOTTO, called as a witness,  
5 testified as follows:

6                   ACTING CHAIRMAN LaGROTTA: Bob, you have  
7 written testimony, I suppose?

8                   MR. BIDINOTTO: Yes, I do. It should be  
9 over there on the table.

10                  ACTING CHAIRMAN LaGROTTA: If you would be  
11 kind enough to summarize that for us and we'll see if  
12 there are any questions.

13                  I have decided why it takes 14 to 16 years  
14 to become a Chairman of a Committee because when you  
15 chair these hearings, you have to be able to go from  
16 side to side and remember everyone's name and point to  
17 them and allow them to ask questions.

18                  I think the Seniority Rule, as it stands in  
19 the Legislature is certainly important. A freshman or  
20 a second termmer could never undertake such a difficult  
21 task as chairing a committee hearing.

22                  MR. BIDINOTTO: First, I want to thank you  
23 for the invitation to be here. I wanted to speak in  
24 favor of Representative Rudy's Bill to imprison violent  
25 crime felons for life.

1           And besides the remarks I am offering right  
2 here, I have appended to the remarks I passed out here  
3 a considerable amount of statistical support material  
4 and other material that should be of some interest to  
5 people weighing the various sides of this issue.

6           I am a staff writer for Reader's Digest,  
7 among other things. My work for Reader's Digest takes  
8 me over the Country. The piece I did on sex offenders  
9 a few years ago took me to 18 cities.

10           I have talked to people in the System, out  
11 of the System, people victimized by the System, people  
12 victimized by the people of the System.

13           In virtually every one of the cases that I  
14 have investigated and had any familiarity with, the  
15 perpetrators have been chronic offenders whose criminal  
16 careers would have been cut short and whose worst deeds  
17 could have been prevented had the System operated the  
18 way rational systems should.

19           Yet, these offenders have chronically been  
20 diverted into alternatives to incarceration. They had  
21 been released early and often. They went through and  
22 passed through multiple revolving doors of our very lax  
23 Justice System.

24           And once freed, they were able to prey once  
25 again on innocent people. I have no doubt that if

1 enacted, House Bill 2313 will make Pennsylvania a safer  
2 place. It will incapacitate some unknown number of  
3 chronic offenders while deterring others.

4 But in these few moments I would like to  
5 warn you about some potential loopholes of a Bill that  
6 I endorse.

7 Number one, when do we start counting the  
8 strikes? A criminal record amassed by a juvenile, even  
9 for chronic and violent crimes, is usually sealed or  
10 expunged when he reached adulthood.

11 Now, we have heard testimony indicating  
12 that my understanding of that might be unclear, but in  
13 most of the States I have studied, this has been the  
14 case. And we do know that the dry cleaning of his  
15 criminal history records for juveniles can allow a  
16 juvenile rapist or an armed robber to resume a pattern  
17 of violence with a clean adult record in most  
18 jurisdictions.

19 Now, that may be, under the current  
20 sentencing provisions, there may be a difference in  
21 that in most of the jurisdictions I've looked at. But  
22 I looked, for example, in the case of this six-year old  
23 girl in New Jersey who was just brutally assaulted and  
24 murdered. Abducted and murdered.

25 Her suspected killer had previously been

1 convicted of multiple sex offenses against children.  
2 But he had been convicted as a juvenile and his records  
3 were sealed.

4 Now, if it is the wisdom of the Legislature  
5 to pass 2313, his latest crime in this particular  
6 individual's case had he been in Pennsylvania and this  
7 Bill would have been passed, his latest crime would  
8 have only counted as his first strike. And I find that  
9 ludicrous.

10 The offenses listed in this Bill are not  
11 the sort committed by minor delinquents who might be  
12 rehabilitated. Vicious crimes of violence, even by a  
13 juvenile, ought to be counted as individual strikes.

14 So, I would urge the following amendments.  
15 First, that no juvenile record which includes any of  
16 the violent felonies specified by this Bill may ever be  
17 sealed or expunged.

18 Second, that such a juvenile record should  
19 be incorporated with the individual's adult criminal  
20 record at sentencing. So that an accurate and full  
21 portrait of the individual's criminal history can  
22 emerge and his true number of strikes can be computed.

23 Now, something that hasn't come up is the  
24 impact of plea bargaining on the System and on the  
25 computations of strikes.

1           Today as we all know between 70 and 90  
2 percent of criminal convictions are the result of  
3 courthouse deals in which the charges are bargained  
4 away or reduced in exchange for a guilty plea to a  
5 lesser crime.

6           Thus, a rapist may plead guilty to  
7 attempted rape or burglary. An armed robber may dodge  
8 mandatory minimum sentence for carrying a gun by  
9 pleading down to a simple robbery. A kidnapper may be  
10 convicted for unlawful restraint. A child molester may  
11 plea out to contributing to the delinquency of a minor.

12           Violent crimes thereby become nonviolent  
13 and multiple felonies become single misdemeanors.

14           "Because pleas sanitize criminal  
15 histories, the system could take forever  
16 to record three strikes even against a  
17 violent and chronic predator. This  
18 wholesale falsification of criminal  
19 charges and criminal histories can and  
20 will undermine the intent and  
21 effectiveness of this bill, unless  
22 prudent restrictions are placed upon plea  
23 bargains.

24           Jurisdictions such as Oakland  
25 County, Michigan, have dispensed almost

1 entirely with plea bargaining and found  
2 that their court systems actually  
3 function more efficiently, more speedily  
4 and more justly as a result. In its own  
5 recently-passed three strikes law,  
6 California placed restrictions on plea  
7 bargaining of crimes of violence. I urge  
8 this body to investigate the California  
9 law in this regard, and to severely  
10 restrict this odious and unnecessary  
11 practice, at least as regards the crimes  
12 specified in this bill.

13           Number three, Would Higher Maximum  
14 Sentences Help? Corrections Commissioner  
15 Lehman, as has been discussed, is an  
16 outspoken opponent of longer prison  
17 terms. Yet, in February, he proposed to  
18 this committee an amendment to the bill  
19 which he said would lengthen the maximum  
20 sentences for first- and second-time  
21 violent offenders labeled high-risk  
22 dangerous offenders."

23           Now, I have a number of problems with 683  
24 and 684, designations of high-risk dangerous offenders,  
25 who makes the designations, how they are applied, to



1 whom and under what circumstances.

2 Leaving all that aside for a moment, let me  
3 just single in on one proposal.

4 "Commissioner Lehman's proposal I find  
5 fundamentally toothless. It does not  
6 propose longer mandatory minimum  
7 sentences for high risk dangerous  
8 offenders. The Commissioner spoke only  
9 of raising the maximum sentences for the  
10 first and second strikes of such  
11 offenders. Yet he should know full well,  
12 and I'm sure he does, that the maximum  
13 terms imposed on inmates are utterly  
14 meaningless. Almost nobody serves a  
15 maximum term; right now 80 percent of all  
16 people who go before the Parole Board  
17 automatically rubber stamp their minimum  
18 as many of you know."

19 When 683 and 684 go into effect, the impact  
20 of that is to remove from Parole Board jurisdiction an  
21 even greater number of those that would remain. I can  
22 not see how changing the maximum term is a big bargain  
23 since we are already talking about minimums rather than  
24 maximums in the case of the overwhelming majority of  
25 inmates.

1           "Longer terms for the first and  
2 second strikes is a good idea; but to  
3 make it work, I suggest that you raise  
4 the minimum sentence for a first strike  
5 offense, and then double that minimum for  
6 the second strike. That's exactly what  
7 they've just done in California.

8           What about sentencing alternatives?

9 Disturbing comments that I've read from  
10 sponsors of this legislation endorse the  
11 expanded use of alternatives to  
12 incarceration for so-called nonviolent  
13 offenders to free up prison space, should  
14 this bill become law.

15           The idea is to save money by not  
16 building more prisons. But, as Professor  
17 John DiIulio of Princeton, an expert on  
18 criminal justice, wrote recently, "Most  
19 of the 'property offenders' behind bars  
20 have long criminal histories and a  
21 propensity for violence. Within three  
22 years ... 20 percent of released property  
23 offenders are rearrested for a violent  
24 crime."

25           The Federal Bureau of Justice

1           Statistics reports that 94 percent of all  
2           state prison inmates have been convicted  
3           either for violent crimes or repeated  
4           felonies. Contrary to the claims that  
5           our prisons are loaded with minor  
6           criminals, only six percent of all state  
7           prison inmates are first-time convicted  
8           criminals serving time for a non-violent  
9           offense. Just 3.5 percent are first-time  
10          convicted drug offenders. One percent  
11          are drug possessors.

12                 In truth, it is very difficult to  
13                 get into a state prison, and the  
14                 overwhelming majority of the current  
15                 inmate population deserves to be there.  
16                 And there are plenty more on the streets  
17                 who ought to join them.

18                 Of the 4.5 million convicted  
19                 criminals supposedly under correctional  
20                 supervision today, fully 75 percent --  
21                 over three million -- are already being  
22                 managed, not behind bars, but on the  
23                 streets, on parole or probation. What  
24                 are the results:

25                         The Bureau of Justice Statistics

1 tracked 108,000 prison inmates for three  
2 years after their release. 63 percent  
3 were rearrested for some 326,000 serious  
4 new crimes, including 2300 homicides,  
5 23,000 assaults and nearly 4000 forcible  
6 sex crimes. that was just a small cohort  
7 of the people released that year.

8 Between 1986 and '89, the Bureau  
9 also tracked 79,000 felony probationers,  
10 and found that 62 percent violated  
11 probation or were re-arrested for another  
12 felony."

13 I could go on about the Illinois experience  
14 whereas they in the 1980's did something akin to the  
15 impact of 683, which was to on average release a great  
16 number of thousands of inmates a few months early.

17 They released 21,000 inmates an average of  
18 three months early. The calculated result by Dr. James  
19 Austin of the National Council on Crime and Delinquency  
20 who was a supporter of these kind of releases,  
21 incidentally, his calculation: 23 homicides, 32 rapes,  
22 262 arsons, 681 robberies, over 2400 burglaries, 2500  
23 assaults and it goes on and on, just from those early  
24 releases.

25 I have been all over the Country in the

1 homes of crime victims. People who have been taken  
2 advantage of by people in all of these alternatives to  
3 incarceration.

4 They are not only more dangerous to  
5 society, they are demonstrably more expensive, more  
6 expensive than the typical prison.

7 "David Cavanagh and Mark Kleiman of  
8 Harvard determined that the \$60 million  
9 for example that Illinois thought that  
10 they were saving by freeing inmates early  
11 in the 1980's was offset by \$304 million  
12 in damages and costs to crime victims.  
13 Other studies -- by both Cavanagh and  
14 Kleiman, by Ed Zedlewski of the National  
15 Institute for Justice all conclude that  
16 the typical cost if you are talking about  
17 cost benefit ratios, the cost of the  
18 typical state prison inmates on the  
19 streets cost society anywhere from two to  
20 50 times more damage than the cost of a  
21 cell for the society we are in.

22 For chronic and violent offenders,  
23 and I specify chronic and violent,  
24 either/or, prisons are a social and  
25 economic bargain.

1           Contrary to popular myth, spending  
2           on prisons is not threatening to bankrupt  
3           our state coffers either. In 1990,  
4           Pennsylvania ranked only 46th out of the  
5           50 states in spending on all of its  
6           correctional activities combined. By  
7           1992, of each dollar of total  
8           Pennsylvania state government spending,  
9           only 1.3 cents went toward building and  
10          operating state prisons. Even in fiscal  
11          1993-94, spending on our state  
12          correctional institutions is a mere 3.77  
13          cents of each dollar of total state fund  
14          expenditures.

15                 In short, though public safety is  
16                 and should be the number one priority of  
17                 government, for too long we in  
18                 Pennsylvania have been directing state  
19                 funds elsewhere.

20                 I believe Representative Rudy's bill  
21                 can begin to reassert proper priorities  
22                 -- but only if we don't start dumping  
23                 other categories of criminals out of our  
24                 prisons to make room for those whom the  
25                 bill targets. That has been the pathway

1 to disaster in places such as Minnesota,  
2 Oregon and Washington -- all three  
3 considered model states by many of the  
4 people involved in setting up the  
5 correction system here and the sentencing  
6 system of sentencing alternatives. The  
7 public mood on this is clear: if forced  
8 to choose, people of this Commonwealth  
9 would rather have potholes on their  
10 streets than predators. So if a  
11 budgetary decision has to be made, let's  
12 make it in the order of what all of the  
13 polls say are the public's concerns.

14 In a recent editorial, the Spokane  
15 Washington Spokesman-Review, which had  
16 opposed their state's three strikes law,  
17 did an about-face. "We grudgingly admit  
18 that the new law appears to be working,"  
19 the paper conceded. the editors  
20 described a number of success stories  
21 from the new law and then, after  
22 repeating their initial worries about  
23 higher prison costs, about minor  
24 criminals being swept up in the net, and  
25 elderly felons taking up all the cell

1 space, the editorial writers admitted:

2 "Maybe we've done too much hand-  
3 wringing."

4 Now is no time for hand-wringing in  
5 Pennsylvania. The public will is clear,  
6 and the need is great. This proposed  
7 bill is no panacea, but -- especially if  
8 amended as I would suggest, I think it  
9 could be a large first step toward  
10 reclaiming our streets and schools for  
11 our families and children. It really all  
12 boils down to a matter of values and  
13 priorities; and for the public, I believe  
14 this bill is a litmus test of yours. I  
15 urge you not to disappoint them."

16 In the interest of time, I will forestall  
17 all the comments I could make about prior testimony.  
18 But if you have any questions, I'll be happy to  
19 entertain them.

20 ACTING CHAIRMAN LaGROTTA: Thank you, Bob.

21 Representative Dermody?

22 BY REPRESENTATIVE DERMODY:

23 Q Bob, thank you very much. I agree. I was  
24 a Prosecutor for six years. I worked with victims of  
25 rape, homicides, child abuse cases, everything, you



1 name it. I understand what you are saying.

2           However, I think the people out there are  
3 willing to pay to lock people up. There is no  
4 question. I think we should lock people up. I guess  
5 I'm wondering are we sure we are not locking violent  
6 people up.

7           I think we are doing a better job than most  
8 in locking up violent offenders for a long time. And  
9 before we start saying we're going to start tying  
10 judge's hands some more, we ought to find out exactly  
11 who we are locking up and how long we are locking them  
12 up for.

13           A     I can sympathize with the concern there. I  
14 have my own problems, for example. And I have voiced  
15 them and I'm not a stereotypical, you know, meat eater  
16 on these issues.

17           For example, the drug laws, I have very  
18 unconventional views on drug laws from most people who  
19 I would normally associate with. And they find me a  
20 black sheep on many of those kinds of issues.

21           However, having said that, the quotations  
22 that I have seen from the Corrections Commissioner over  
23 the last five or six years, not five or six years,  
24 since about 1991, has made it abundantly clear that he  
25 is hoping to top off and ultimately reduce the

1 correctional population in this State over a period of  
2 about ten years by three or four thousand people.

3 Q I think what my point was, is we are  
4 looking and talking about repeat violent offenders.  
5 The question is, and I think we have to address, and  
6 what this Bill, I think, is trying to address, is  
7 locking them up for a long time.

8 The question is whether it should be for  
9 life or not. My point is I think we are locking them  
10 up for a long time. I want to verify that.

11 A I believe that we are in this State. I  
12 believe we are locking them up for a long time. I  
13 think that is good.

14 I also believe, though, that the public is  
15 making a statement that is somewhat different from a  
16 deterrent statement.

17 Q I'm not talking about deterrents. I'm  
18 talking about taking them off the streets. They don't  
19 wreak any more havoc.

20 A Exactly.

21 Q It's not a deterrent.

22 A There were arguments in the prior testimony  
23 about deterrent impacts, about selective  
24 incapacitation, about trying to figure out who is  
25 dangerous and who is not.

1           The thrust of the current legislation  
2 pending 683 and so forth, 684, is to orient the System  
3 away from a kind of automatic locking up of the three  
4 time loser toward a kind of a systemic triage in which  
5 we are all going or the normal parole and probation  
6 people, the Judges and Courts, are going to continue to  
7 try to better refine their predictive abilities in  
8 order to come up with the high risk dangerous  
9 offenders.

10           My exploration of the predictive literature  
11 is, for example, Joan Peter Cilia (phonetic), of Rand,  
12 recently I saw a piece by her in which she said the  
13 predictive ability is about one in three for violence.  
14 You would do better by flipping a coin.

15           Q     I understand that. And I agree with you.

16           A     And you know, you have alluded to the  
17 difficulties of parole decision making and some  
18 problems you may have with that. What I'm saying is I  
19 have no confidence that the criteria imposed about the  
20 predictive prospects, predicting high risk dangerous  
21 offenders, can be any better than what we have right  
22 now.

23           They don't seem to do that very well.

24           Q     You can't do it. I wanted to talk a little  
25 bit about what you testified about 683 and 684 because

1 as I read that, I don't know that the Bill authorizes  
2 early releases. That is, authorize release before you  
3 serve your minimum term. It does not do that.

4 Wait. What I think it does, I think if you  
5 get a sentence of ten to twenty years, and we can't  
6 predict your behavior on the outside. I think the  
7 Parole Board can't, the three people that make the  
8 parole decision can't. So, we are trying to make this  
9 decision by other standards.

10 I think what the Bill does is you do ten  
11 years and you have been good in prison, that type of  
12 thing, they are trying to look at the presumptive  
13 release is what you are talking about.

14 However, unlike Illinois, nobody was  
15 getting released before their ten years. If your  
16 sentence was ten to twenty in the Commonwealth, you are  
17 going to do your ten and if you are good, you are going  
18 to hit the street.

19 You have to have the Parole Officer with  
20 the Parole Plan. You won't necessarily have to go  
21 before the Board. What we are saying, though, is going  
22 before the Board makes no difference anyway because the  
23 Board can't predict any better than you and I.

24 A The only thing that 683 does is remove from  
25 Parole Board jurisdiction the entire class of criminal

1 inmate with the exception of those labelled high risk  
2 dangerous.

3 In other words, what we are talking about,  
4 though everybody is saying we need more accountability  
5 in the System, we are talking about a situation here in  
6 which we are saying we are removing the judgment of the  
7 parole authorities from an entire class. In fact, the  
8 majority of offenders. And having a presumptive  
9 release at their earliest possible date.

10 Q Not an early release.

11 A Okay, but the earliest possible date.

12 Q If your sentence is ten to twenty, an early  
13 release is eight years in the Commonwealth, correct?

14 A Ten to twenty, an early release, yes.

15 Q Would be eight years, but if you serve your  
16 minimum, you're eligible for parole at ten. We are  
17 saying you're eligible for parole if you are not a high  
18 risk dangerous offender if this passes as it is. I  
19 just have a quarrel with your saying early release.  
20 Because I don't believe it is.

21 A Well, nobody likes the terminology. Let's  
22 put it this way. It averages out earlier than it is  
23 right now or else the correctional people wouldn't be  
24 promoting it.

25 Q The only reason people are doing 110 or 125

1 percent of their minimum is because the Parole Board  
2 isn't hand-stamping the cases. They are overworked.  
3 They can't get to them.

4 We have beds we need. If we say we can't  
5 predict behavior on the outside 125 percent any better  
6 than 100 percent, you might as well do 100 percent -- I  
7 would argue with you.

8 A The only difference I have with you on this  
9 is we are not disagreeing at all on the mechanics of  
10 how it works. The disagreement is that the public  
11 would not really care all that much whether its  
12 bureaucratic inertia that is holding guys longer on  
13 average or whether or not it is the legislative intent.  
14 I think right now they are concerned.

15 They are concerned that people, the people  
16 in the state prison system are -- you have to work  
17 together. And they are the worst criminals in the  
18 State. And, because of that, any way you slice and  
19 dice it on average those people who are going to be  
20 released three months early, whether by simply making  
21 the system more efficient or whether they are going to  
22 be released on average three months early by  
23 legislative intent doesn't make much difference to the  
24 guy on the street.

25 We know what the three months did in

1 Illinois.

2 Q It's not early.

3 A But I'm saying the effect.

4 Illinois let them out before the minimum  
5 time. But it has no difference for the composition of  
6 the state prison population is what I'm saying. We're  
7 talking about apples and apples as far as the inmates  
8 are concerned. And three months earlier will cause  
9 definite damage.

10 Q They are under supervision, just like they  
11 would at 125 percent. They have a parole plan.

12 A They were in Illinois.

13 Q Early release is wrong. You are using a  
14 term that is inaccurate. That's all I'm saying.

15 A I'm talking about accelerated -- whatever  
16 you want to call it, accelerated down to the minimum or  
17 at the minimum. I'm satisfied with minimum. But I  
18 find my druthers are rather having it longer than  
19 shorter. That's the bottom line.

20 Q Just two quick points. I think 683 and 684  
21 removes the requirement that a Judge sentence that your  
22 minimum be one-half your max.

23 A Yes, it does, which is something we can  
24 support.

25 Q And, indeed, the Judge has the opportunity

1 to increase the minimum penalties.

2 A Yes.

3 Q I'm talking about giving Judges discretion  
4 on the front end, particularly for first time violent  
5 offenders. This would do that, and I think that's  
6 important.

7 Secondly, I have worked in the System for a  
8 long time and everybody talks plea bargain like it's an  
9 awful thing. Like somebody who grew up downstairs  
10 taking money. There are reasons. If somebody is  
11 charged with a rape, that some D.A. has to sit there  
12 and not prosecute a rape.

13 There are reasons why you end up with  
14 another charge. I don't think it's fair -- I don't  
15 mean to say that the people should understand that  
16 sometimes there are reasons why a case has to be done  
17 differently than what was originally charged.

18 Sometimes charging decisions are wrong.  
19 Sometimes you don't have witnesses. There are  
20 problems.

21 A I am very familiar with the rationale for  
22 the process. I have found that there are a number of  
23 jurisdictions that have tried to dispense with it in  
24 whole or in part. And they have had counter-intuitive  
25 success.



1           We would normally think, my gosh, they are  
2 going to flood the system with people. Everybody is  
3 going to want to go to trial. It hasn't happened.

4           Q     Allegheny County, for one. But Bob  
5 Colville is very tough on plea-bargaining.

6           A     And the one I'm most familiar is Oakland  
7 County in Michigan. The entire State of Alaska did it  
8 for, I think, a period for over a decade.

9           Q     To tell you the truth, there has to be  
10 instances where somebody comes in to try a case and  
11 it's a rape and for whatever reason or another, they  
12 can't proceed with that case as it is and they proceed  
13 with another charge.

14                     They probably quit calling it a plea-  
15 bargain.

16           A     No, no. They have -- the difference here  
17 is, for instance, in Oakland County, they have  
18 specified the exceptions. They have made it an  
19 exceptional thing rather than the rule. And like over  
20 90 percent of their things are not plea-bargains.

21                     They will do it in a very rare case, but it  
22 is very strict criteria as to when they will do it.  
23 And I would just suggest that if this legislation is  
24 going ahead, that you might look at what they did in  
25 California and some of these other examples to see how

1 that might work.

2 That's just one suggestion.

3 Q I appreciate your testimony. And I  
4 appreciate you coming by.

5 A Thank you.

6 ACTING CHAIRMAN LaGROTTA: Thank you, Bob.

7 (The following was submitted for the  
8 record:)

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## ROBERT JAMES BIDINOTTO

ROBERT JAMES BIDINOTTO is a Staff Writer for Reader's Digest, an award-winning investigative journalist and a lecturer who specializes in cultural and political issues.

He is perhaps best known for his article "Getting Away With Murder" in the July 1988 Reader's Digest. That investigative piece stirred a national controversy about crime and prison furlough programs during the 1988 presidential election campaign, and helped make convicted killer Willie Horton a household name. The Almanac of American Politics 1990 called Bidinotto's article "the most influential piece of journalism in the whole campaign." It was honored by the American Society of Magazine Editors as one of five finalists for best magazine story of 1988 in the "public interest" category.

He is the author of Crime and Consequences, a monograph on the criminal justice system acclaimed by social scientists, law enforcement professionals and victims' rights organizations. He has also written investigative pieces for Reader's Digest on parole and probation, sex offenders and the secrecy of criminal "rap sheets." During the National Victims' Rights Week ceremony in New York City on April 21, 1991, a coalition of 22 victim groups gave Bidinotto their 1991 Media Award, "for sensitivity and fairness in reporting victims' issues."

Bidinotto's writing on environmental issues includes investigative articles for Reader's Digest on global warming and the 1989 Alar scare. The latter was singled out for editorial praise by Barron's, by The American Vegetable Grower and by Priorities, the journal of the American Council on Science and Health. He has also published a monograph, The Green Machine, which analyzes the environmental movement and philosophy.

The author's wide-ranging work has been cited in such major media outlets as U. S. News & World Report, The Los Angeles Times, The Washington Post, The Boston Herald, The Spectator in London, The Alberta Report in Canada and many other newspapers and magazines, as well as on cable television's Financial News Network. In 1985, the Free Press Association awarded him its prestigious Mencken Award in the category of Best Feature Story, for an article on government regulation of broadcasting.

Bidinotto studied economics at Grove City College before launching his writing career. For several years, he was contributing editor for Oasis magazine and On Principle, a political newsletter. Subsequently his many articles, essays, book and film reviews appeared in Success, The Boston Herald, The American Spectator, The City Journal, Reason and many others. He is a frequent public speaker and guest on radio and television talk shows, such as "Geraldo," CNN's "Sonya Live," CNBC's "Rivera Live" and the Canadian Broadcasting Corporation radio network.

Bidinotto works from his home near Pittsburgh, where he lives with his wife, daughter and a houseful of pets. Between his other projects, he is writing "a long novel of ideas."

## DECLINING PUNITIVITY: A COMMENTARY

1. The Crime Wave. The "crime rate" -- that is, the number of crimes per 100,000 people -- is several times higher than it was in 1960. Victimization surveys show that, with increased incarceration during the 1980s, crime rates have fallen somewhat. But they still remain at a plateau far higher than they were in the 1950s or 1960s.

For example, murder and auto theft are the most fully reported of violent and property crimes. In 1960, there were 5 murders per 100,000 people; by 1990, there were 9.4 per 100,000. In 1960, the auto theft rate was 182 per 100,000; by 1990, it had soared to 657 per 100,000.

Crime is also becoming more violent. In 1961, there was one violent crime for every 11 reported property crimes. By 1990, there was a violent crime for every 7 property crimes.

2. The Turning Point: The 1960s. Crime rates remained relatively flat until about 1963, when they began to increase rapidly. Simultaneously, the actual number of inmates began to fall sharply. By 1970, the ratio of inmates to reported crimes, as well as the expected prison time per crime, were only a fraction what they had been in 1950. The odds of a criminal avoiding prison for his offenses had roughly quadrupled.

From 1961-1974, the percentage of crimes resulting in arrest, the percentage of arrests resulting in incarceration, the total number of inmates, and the length of prison terms, all plunged dramatically.

3. The Shifting Odds. The chart shows that "expected prison time per crime" is dramatically less in 1990 than in the 1950s or 1960s. But some critics argue that better crime recording today exaggerates the problem. Patrick Langan of the Bureau of Justice Statistics offers instead these statistics for "expected prison time per crime, in months served":

	ROBBERY	AGGRAVATED ASSAULT	BURGLARY
1960	1.8 months	0.6 months	0.5 months
1990	1.3 months	0.4 months	0.2 months

But his revised figures still show that by 1990, robbers received just 72% of the "time per crime" they used to receive in 1960, while assault perpetrators got only 66% of the punishment, and burglars a mere 40%.

4. The Revolving Door. During the 1980s, counter-trends were undermining the so-called "incarceration binge" and its impact on crime rates.

True, if arrested, one's odds of going to prison had increased substantially. But meanwhile, the odds of being arrested for a crime had been declining. So had the odds of serving a long sentence.

To address overcrowding, prison officials have been accelerating early paroles and increasing "time off for good behavior," thus undermining tougher sentencing laws. As the chart shows, the median time served by all inmates actually has nose-dived. While this average decline is in part due to the influx of more drug offenders, serving shorter sentences, the decline in time served is true even within most crime categories. Today, robbers, burglars, assault perpetrators and thieves all serve far less time than they did in 1960, and under much better prison conditions.

5. The Bottom Line. Thanks to falling arrest rates, expanded use of probation and "alternatives to incarceration," better prison conditions, and earlier release of incarcerated inmates, overall punitivity today remains far lower than in 1960. This is so despite the so-called "incarceration binge" of the 1980s. And reformers are now actively working to accelerate these trends toward leniency.

## CRIME WITHOUT PUNISHMENT

Compiled by Robert James Bidinotto

YEAR	REPORTED CRIMES	CRIMES/100,000 Violent/Property	# OF INMATES	INMATES/ REPORTED CRIMES	MEDIAN SENTENCE SERVED (in mos.)	EXPECTED PRISON TIME PER CRIME, (in_days) <sup>†</sup>
1950	1,784,700	153.6	1567.3	166,123	0.093	
1951	1,882,160	149.7	1625.8	165,640	0.088	21
1952	2,030,860	161.5	1635.8	168,200	0.083	
1953	2,153,390	168.7	1661.8	173,547	0.081	22
1954	2,261,840	168.9	1681.8	182,848	0.081	21
1955	2,256,840	160.5	1661.2	185,780	0.082	
1956	2,557,500	160.7	1854.5	189,421	0.074	
1957	2,790,660	164.3	1982.5	195,256	0.070	21
1960	3,384,160	160.9	1726.3	212,957	0.063	21
1961	3,487,990	158.1	1747.9	220,149	0.063	
1962	3,752,210	162.3	1857.5	218,830	0.058	
1963	4,109,470	168.2	2012.1	217,283	0.053	
1964	4,564,620	190.6	2197.5	214,336	0.047	21
1965	4,739,390	200.2	2248.8	210,395	0.044	
1966	5,223,480	220.0	2450.9	199,654	0.038	
1967	5,903,430	253.2	2736.5	194,896	0.033	19
1968	6,720,210	298.4	3071.8	187,914	0.028	18
1969	7,410,870	328.7	3351.3	196,007	0.026	18
1970	8,098,000	363.5	3621.0	196,429	0.024	18
1971	8,588,200	396.0	3768.8	198,061	0.023	
1972	8,248,800	401.0	3560.4	196,183	0.024	
1973	8,718,110	417.4	3737.0	204,349	0.023	
1974	10,253,520	461.1	4389.3	218,205	0.021	18
1975	11,256,580	481.5	4800.2	240,593	0.021	
1976	11,349,770	467.8	4819.5	263,291	0.023	
1977	10,984,500	475.9	4601.7	278,141	0.025	18
1978	11,209,000	497.8	4642.5	293,546	0.026	18
1979	12,249,500	548.9	5016.6	301,470	0.028	19
1980	13,408,300	596.6	5353.3	329,821	0.025	19
1981	13,423,800	594.3	5263.9	369,930	0.028	17
1982	12,974,400	571.1	5032.5	413,806	0.032	16
1983	12,108,600	537.7	4637.4	436,855	0.036	19*
1984	11,881,800	539.2	4492.1	462,002	0.039	17*
1985	12,430,026	556.0	4650.5	502,507	0.040	
1986	13,210,844	617.3	4862.6	544,972	0.041	15
1987	13,508,700	609.7	4940.3	585,084	0.043	14
1988	13,923,130	637.2	5027.1	631,669	0.045	13
1989	14,251,400	663.7	5077.9	712,557	0.050	13
1990	14,475,600	731.8	5088.5	771,243	0.053	13
1991	14,872,900	758				8.31

\* Lawrence Greenfield and Patrick Langan of BJS reported these two numbers as 13 months. See their Trends in Prison Populations, Nov. 1987, Table 12.

† Based upon total estimated crime. See below, "Computations."

**SOURCES:**

Reported crimes 1950-57; also expected prison time per crime (thru 1984); also median sentence served (thru 1984): Morgan Reynolds, Crime Pays: But So Does Imprisonment (Dallas: National Center for Policy Analysis, 3/90), Table A-1.

Reported crimes 1960-90; also crimes per 100,000 people (violent/property), 1960-90: Sourcebook of Criminal Justice Statistics 1991 (Washington: Bureau of Justice Statistics, 1992), Table 3.127, p. 372.

Expected prison time per crime, 1986-89: this writer's computations; may differ from method employed by Reynolds.

Crimes per 100,000 people (violent/property), 1950-57; also number of inmates, 1950-1979: Charles Murray, Losing Ground (New York: Basic Books, 1984), Appendix, Tables 18 and 23.

Number of inmates, 1980-1990: Prisoners in 1990 (Washington: Bureau of Justice Statistics, May 1991), Table 1, p. 1.

Median sentence served, 1986-89: National Corrections Reporting Program (Washington: Bureau of Justice Statistics, annual issues). See each year's issue, Table 2-3.

**COMPUTATIONS:**

1. In his calculations of "expected prison time per crime," for each year Morgan Reynolds multiplied the probability of arrest by the probability of prosecution if arrested, then by the probability of conviction if prosecuted, and the probability of imprisonment if convicted. He next multiplied the resulting figure by the median sentence served. Finally, he adjusted that figure to account for unreported crimes committed that year. (Victimization surveys show that only 35-40% of all serious crimes are reported.)

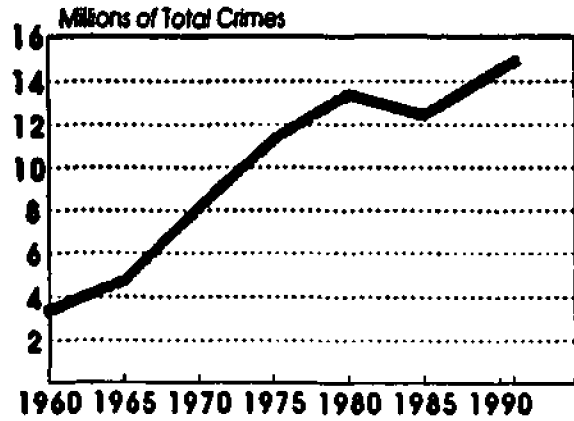
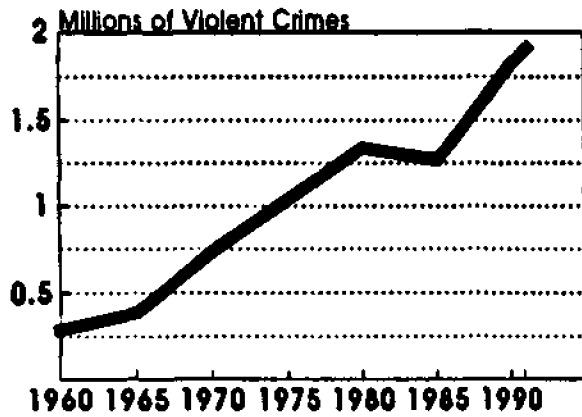
The result is what Reynolds calls "expected time in prison" -- that is, the number of prison days that one can expect to serve per crime committed. Reynolds notes that changes in "expected time" reflect changes in the odds of being punished for any given crime.

One may also arrive at rough approximations of these figures, by dividing the prison days inmates serve, by the total number of crimes actually committed, as follows: Multiply the median sentence served (in months) by 30 to arrive at a median sentence in days. Then multiply by the total number of inmates. Divide the resulting figure by the total number of crimes committed that year (including unreported crimes). The answer will be roughly the "expected time," in days. This is the method this writer employed for the years 1986-89.

2. The ratio of "inmates/crimes reported" is another way of gauging the amount of punishment meted out for criminal activity. It is simply the result of dividing the total annual number of prison inmates by the total annual number of crimes committed. Changes in the ratio of inmates to crimes reflects changing odds of being incarcerated.

State officials must address a simple fact: The United States is in the grip of a violent crime wave.

### Number of Crimes Committed



Source: FBI.

As the above graph shows, the number of violent crimes has jumped dramatically in the last thirty years, over three times the rate in the 1990s than in 1960. Measuring the increase in terms of population over the same time period, the U.S. population has increased by 41 percent, while the violent crime rate has increased by more than 500 percent. As Heritage Foundation Distinguished Fellow William J. Bennett, former National

### Crime Numbers and Rates

Year	Violent Crimes	Violent Crime Rate (per 10,000)	Total Crimes	Total Crime Rate (per 10,000)	Total Population (in millions)
1960	288,460	16.1	3,384,200	188.7	179.3
1965	387,390	20.0	4,739,400	249.9	193.5
1970	738,820	36.4	8,098,000	398.5	203.2
1975	1,039,710	48.8	11,292,400	529.9	213.1
1980	1,344,520	59.7	13,408,300	595.0	225.3
1985	1,273,280	53.3	12,431,400	520.5	238.7
1990	1,820,130	73.2	14,475,600	582.0	248.7
1991	1,911,770	75.8	14,872,900	589.8	252.2

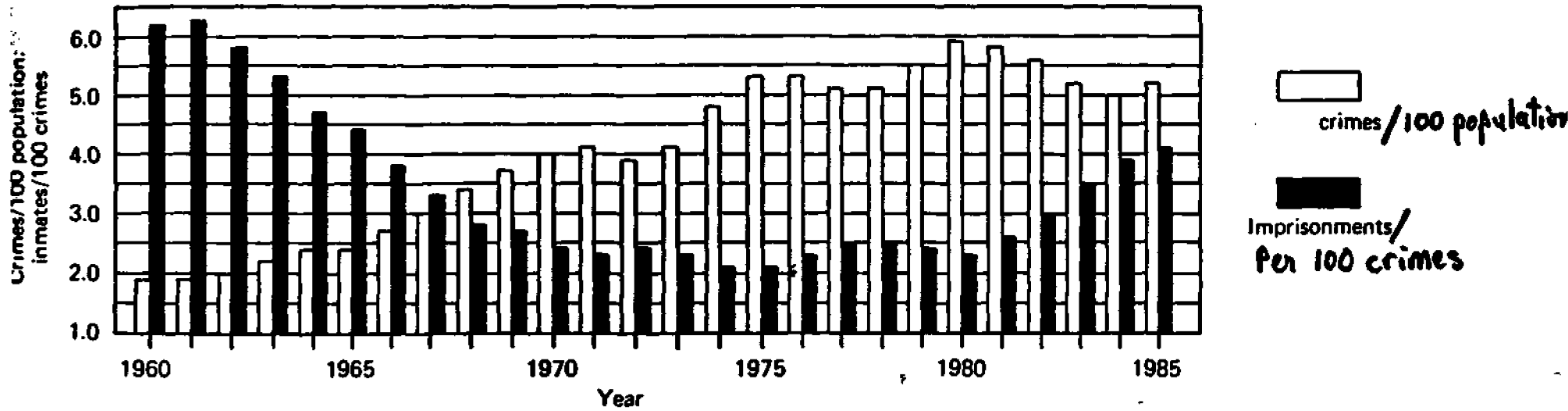
Source: FBI

Drug Control Policy Director, observes, "The rate of violent crime in the U.S. is worse than in any other industrialized country."<sup>3</sup>

As noted, the victims of violent crime tend to be disproportionately poor and members of racial and ethnic minorities, particularly blacks. "Given current crime rates," observes Bennett, "eight out of every ten Americans can expect to be a victim of violent crime at least once in their lives."<sup>4</sup>

3 See William J. Bennett, *The Index of Leading Cultural Indicators*, published jointly by Empower America, The Heritage Foundation, and the Free Congress Foundation, Washington D.C. 1993, p. 2.

4 *Ibid.*



**Figure 11-2 Crime Rates and Prison Risks: 1960–1985** (Edwin Zedlewski, *Making Confinement Decisions* [Washington, D.C.: U.S. Department of Justice, 1987], p. 5)

The inverse relationship  
between crime rates and  
imprisonment.



## 94% of inmates had been convicted of a violent crime or had a previous sentence to probation or incarceration

(Note: data below are based on convictions, not arrests.)

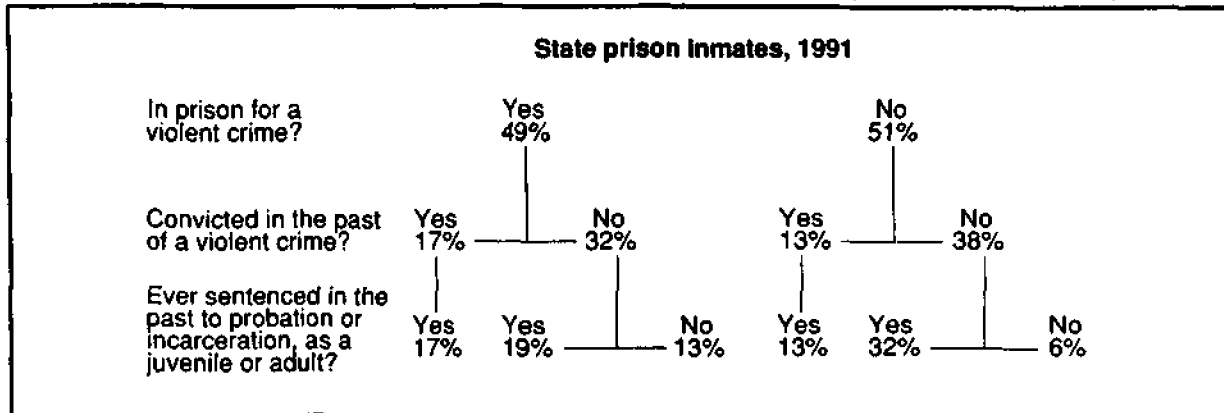


Fig. 18

### Most nonviolent first-time offenders were serving a sentence for a drug offense

Six percent of prisoners were nonviolent offenders with no prior sentence to probation or incarceration. Of these, 42% were in prison for drug trafficking, 19% for drug possession, and 12% for burglary.

The percentage of nonviolent recidivists — inmates whose current and past sentences were for property, drug, or public-order offenses only — rose from 28% of all inmates in 1986 to 32% in 1991. Drug offenders in prison accounted for much of this increase: 18% of nonviolent recidivists were drug offenders in 1986, compared to 36% in 1991.

### Over 60% of inmates in 1991 had been incarcerated in the past

Among prison inmates previously incarcerated, most (91%) had been in jail or prison for an offense within the 5 years before their current offense. About 3%

### Inmate surveys provide a unique source of criminal history information

Prisoners reported in detail past sentences to probation or incarceration that they had served as juveniles or adults. The survey's wealth of new information on current and prior sentences, when combined with its other data, provides a striking portrait of who is in prison. This depiction, with its essential element of criminal history, gives an empirical base to examine issues like appropriate punishment and assessment of risk to society.

This survey alone permits detailed research with nationally representative data. Official records are often incomplete, are not easily compared across jurisdictions, and lack crucial personal data.

of the previously incarcerated inmates had remained out of jail or prison for at least 10 years before being arrested for their current offense. About 5% had been incarcerated only as a juvenile in the past.

About 38% of all inmates had not been incarcerated before:

- 19% were sentenced for the first time.
- 19% had received only sentences to probation.

### Few inmates had been sentenced for only minor offenses in the past

One percent of all inmates had been sentenced to probation or incarceration in the past for only minor offenses, including drunkenness, vagrancy, loitering, disorderly conduct, or minor traffic offenses.

In total, 19% of inmates had current and past nonviolent offenses and had —

- a record of only minor offenses or
- no prior sentences to incarceration, or
- no incarceration for at least 10 years before the current offense.

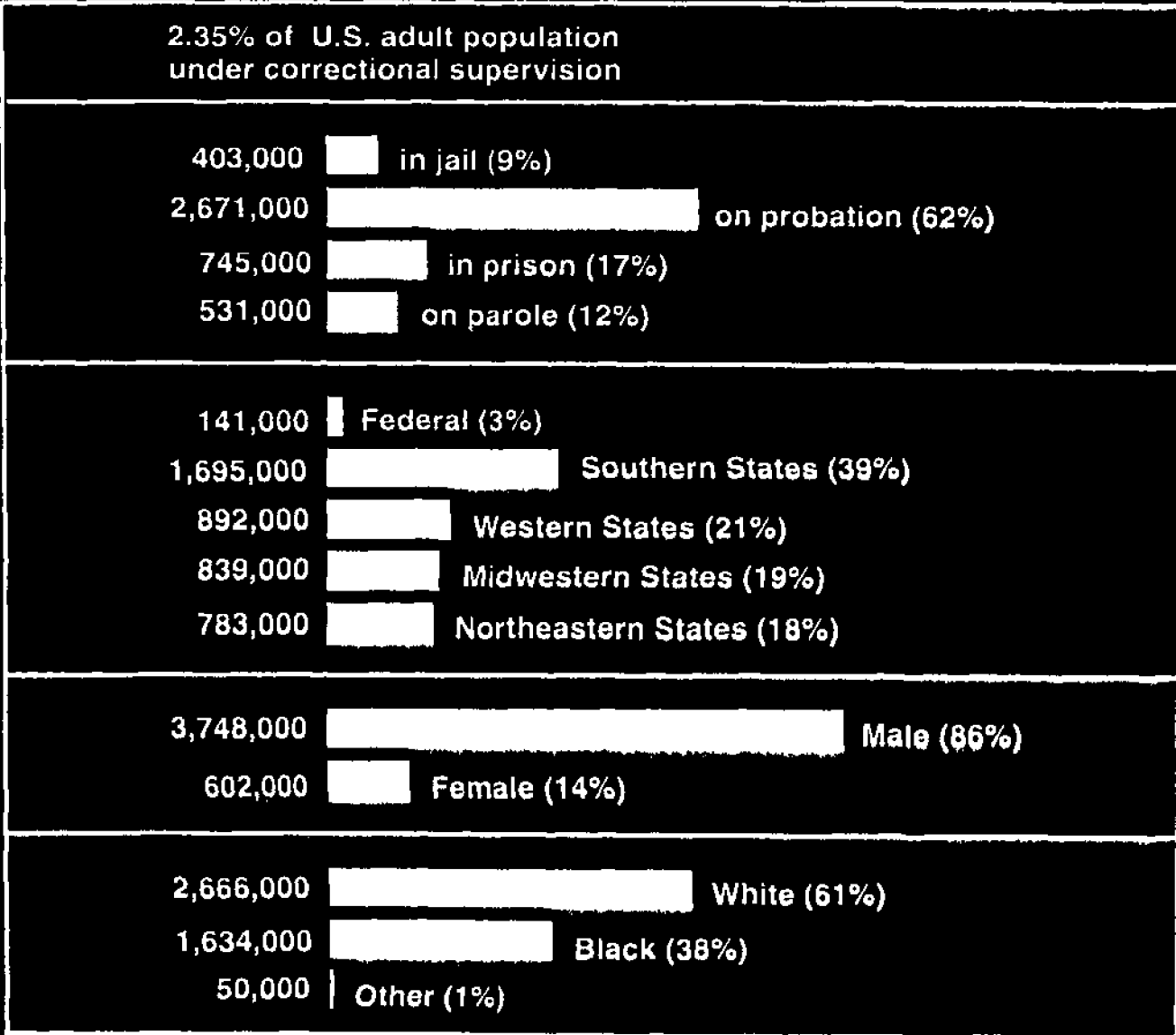
Characteristic of prior sentences	Percent of all inmates
Total	100%
First sentence	19%
Prior sentence	81%
To probation/incarceration	81
Minor offenses only	1
As a juvenile only	8
To probation only	19
As a juvenile only	5
To incarceration	61
As a juvenile only	3
Number of inmates	697,853



# Bureau of Justice Statistics

## Correctional Populations in the United States, 1990

*4,350,000 Total*



# America's Soaring Prison Population

PATRICK A. LANGAN

Factors widely reported to explain record prison population increases since 1973 were generally not substantiated in national data. No clear evidence was found that prosecutors were increasingly using mandatory prison sentencing laws, that judges were imposing longer prison sentences than previously, or that parole boards were making prisoners serve longer before their first release. Changes since 1973 in population demographics and in police-recorded crime and arrest rates were found to have only a modest impact on prison population growth. The war on drugs was found to have only a small impact despite increased drug arrest and imprisonment rates. One change found to have a major impact was the increased chance of a prison sentence after arrest for nearly every type of crime. This change has helped to drive incarceration rates to their highest levels ever. Accompanying rising incarceration rates have been gradual reductions in U.S. crime rates after 1973, according to annual crime victimization surveys. The possibility that rising incarceration rates are helping to reduce crime must be weighed in debates about America's prisons.

THE PRISON POPULATION IN THE UNITED STATES HAS grown in most years since 1926, when the federal government began keeping annual records (1). What is exceptional today is the pace of growth. For example, latest figures show that on 31 December 1989, state prisons nationwide held a record 610,000 inmates (2), or 63,000 more than on the same day the year before. Keeping up with that level of growth requires building the equivalent of a 1000-bed prison every 6 days (3).

Record growth in 1989 continues an upward trend that began in 1973, following a decade of declining prison population (Fig. 1). Before 1973, it was rare for the prison population to grow by more than 7% in a single year (1927, 1930, and 1947). Since 1973, that level has become the norm (1974, 1975, 1976, 1981, 1982, and 1985-1989). Moreover, the four largest percentage increases ever recorded have all occurred since 1973. Propelled by so many record increases, the U.S. prison population has tripled in size in only 16 years.

What accounts for today's rapid growth? The war on drugs, the baby boom, mandatory sentencing laws, longer sentences, and parole boards keeping felons behind bars longer are causes proposed by some criminologists. I have examined historical trends in state prison populations for evidence of these factors. In some cases no

evidence was found. In others, the evidence suggested a modest role at best. A major source of prison population growth overlooked by criminologists is rising chances of a state prison sentence following arrest.

Examine here state prison populations exclusively. State prisons include penitentiaries, reformatories, half-way houses, and all other correctional facilities operated by the states. All prisons are long-term facilities for persons convicted of serious crimes, called felonies. State prisons are distinguished from federal prisons by whether conviction occurs in a state or a federal court. Today, state prisons hold 92% of the nation's prison population. State prisons also differ from jails. Jails are operated by county and city governments and are short-term facilities for persons convicted of less serious crimes, misdemeanors, and for nonconvicted persons awaiting trial.

## How Prison Population Growth Is Measured

The prison population continually changes, with prisoners entering and leaving daily. The problem of keeping track of this ever-changing population was tackled by statisticians working 140 years ago on the census of 1850, the first-ever federal government census of the nation's prisons. Their solution was to take a single "snapshot" count of the prison population every census year, always on the same day. That allowed comparison of the 1-day count from year to year.

From 1850 until 1926, measurements of the prison population were taken about every 10 years, usually in connection with the decennial census. In 1926, the federal government began gathering and reporting national statistics annually. The new statistical series, named National Prisoner Statistics (NPS), has now been in operation for 64 consecutive years.

During the 64 years of record keeping, there were 48 years in which admissions (the number of prisoners admitted in the year) exceeded releases (the number released). Admissions exceeded releases, and growth in prison populations occurred, either when the flow of persons into prison increased or the flow out decreased. Criminologists claim that both account for today's growth. In particular, demographic changes and mandatory sentencing laws are credited with accelerating the flow in; longer sentences and toughening prison release policies are credited with slowing the flow out (4).

Evidence of these trends was sought in three NPS data collections: two recurring censuses of prison records that compiled information (sentence length, conviction offense, and so on) on all persons admitted in the year ("admission census") and on all persons released in the year ("release census"), and a sample inmate interview survey conducted in 1974 and 1986 that collected detailed information on persons in prison on the day of the survey ("inmate survey") (5).

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### *Recidivism of Prisoners*

In 1987 BJS initiated efforts to create a National Recidivism Reporting System (NRRS), designed to link criminal history information from the FBI and participating States to build databases on selected offenders. The pilot test for NRRS was a 6-year followup of a representative sample of almost 4,000 persons (representing 11,347 prison releases), age 17 to 22 at the time of their release, who were discharged from prisons in 22 States in 1978. In 1988 BJS designed and built a second NRRS database containing more than 300,000 criminal history records on a representative sample of 16,355 persons (representing about 109,000 prison releases) discharged from prisons in 11 States in 1983 and followed for 3 years.

This latter study revealed that —

- within 3 years of their release, 63% of the prison releasees had been rearrested for new charges of felonies or serious misdemeanors, 47% had been reconvicted, and 41% had been returned to prison or jail

- the estimated 68,000 prison releasees from the 11 States who were rearrested within 3 years accumulated 326,000 new arrest charges (an average of 4.8 charges per arrestee), including almost 50,000 arrests for violent crimes — 2,300 arrests for homicides, 17,000 robbery arrests, 23,000 arrests for assault, nearly 4,000 arrests for rape and sexual assault

- the 109,000 prisoners were estimated to have acquired 1.7 million arrest charges over their criminal careers

- about 1 in 8 rearrests occurred in States other than the State in which the prisoners had been imprisoned at the time of their release in 1983

- recidivism rates were inversely related to age at release and directly related to the number of prior arrests — for example, an estimated 94% of prisoners age 18 to 24 with 11 or more prior arrests were rearrested after their release in 1983

- nearly 1 in 3 released violent offenders and 1 in 5 released property offenders were rearrested within 3 years for a violent crime.

BJS efforts to measure recidivism have continued with the development of a new database on a representative sample of 35,000 persons arrested for the first time in 1978 and 1984 in 8 States and tracked by their criminal history records through 1991. These data will provide estimates of the incidence, prevalence, and seriousness of offending and will permit the analysis of trends in recidivism, criminal career patterns, and the effects of alternative criminal justice sanctions.

#### **About the table on page 1, after Sources**

- During the first 6 months of 1991, the Nation's State and Federal prison populations grew by 30,149 inmates, an increase of just under 4%.

- On June 30, 1991, prison populations were a record 804,524 inmates or about 303 prisoners with a sentence of more than 1 year per 100,000 residents.

- The growth during the first half of 1991 equaled about 1,160 additional inmates per week, lower than the 1,642 weekly increase during the same period of 1990 and the 1,839 weekly gain during the first 6 months of 1989.



## Bureau of Justice Statistics Special Report

# Recidivism of felons on probation, 1986-89

By Patrick A. Langan, Ph.D.  
BJS Statistician  
and  
Mark A. Cunliff  
National Association of  
Criminal Justice Planners

State courts in 32 counties across 17 States sentenced 79,000 felons to probation in 1986. Within 3 years of sentencing, while still on probation, 43% of these felons were rearrested for a felony. Half of the arrests were for a violent crime (murder, rape, robbery, or aggravated assault) or a drug offense (drug trafficking or drug possession).

These findings are from the Nation's largest followup survey of felons on probation, using a sample that represented a fourth of the total 306,000 felons sentenced to probation in 1986. Survey findings are based on criminal history records and information from probation agency files. The other findings include the following:

- Sixty-two percent of the probationers followed either had a disciplinary hearing for violating a condition of their probation or were arrested for another felony.
- Within 3 years, 46% of all probationers had been sent to prison or jail or had absconded (meaning their whereabouts were unknown or they had failed to report).
- A probation department often recommends in writing an appropriate sentence to the judge, who may accept or reject the recommendation. Of the 79,000 probationers in the followup survey, 21% had not

Probation supervision in the community accounts for about 60% of the 4.3 million adults serving a sentence on a given day in the United States. Offenders convicted of felonies comprise about half of the probation population nationwide. While convicted felons on probation outnumber the populations of San Diego or Detroit, little research across multiple jurisdictions has examined possible public-safety consequences of felony probation.

This report describes subsequent arrests and levels of compliance with court-ordered requirements of a sample of felony probationers drawn from 17 States. Within 3 years of sentencing in 1986, nearly 2 in 3 had been either arrested for a new felony or charged with violating

their supervision requirements. Among those discharged from supervision, about half with financial obligations had not fully paid, and about a third of those ordered to fill special conditions had failed to satisfy those conditions. Overall, the data suggest that a relatively small fraction of felony probationers fully comply with all of the orders of the court.

We deeply appreciate the cooperation of probation agencies in the 32 counties in which this followup study was conducted. Without their assistance this research would not have been possible.

Steven D. Dillingham, Ph.D.  
Director

been recommended for supervision in the community.

- The 21% of probationers who were not recommended for probation were nearly twice as likely to have their sentence revoked and to be sent to prison (37%) as those recommended for probation (22%).
- As a condition of their freedom, 53% of all felony probationers had a special condition to satisfy and 84% had a financial penalty to pay.
- The most commonly imposed special conditions required drug testing (31%), drug treatment (23%), or alcohol treatment (14%).

• Types of financial penalties included victim restitution (29%), court costs (48%), and probation supervision fees (32%).

• The average financial penalty was \$1,800; victim restitution with an average of \$3,400; court costs, \$560; and supervision, \$680.

• Among probationers completing their probation term within the 3-year period covered in the survey, 69% of those with special conditions had fully satisfied all conditions and 47% of those with a financial penalty had paid their penalty in full.

### WHAT IS THE TRUE COST OF INCARCERATION IN PENNSYLVANIA?

One common rationale for early prison release programs and alternatives to incarceration is the alleged exorbitant cost of prisons.

The claim is made by Corrections Commissioner Joseph Lehman that prison spending is excessive and takes valuable money away from other programs, where it could be better spent. ("State Captured by High Prison Costs," New Castle News, 3/11/93). It is suggested that prison spending constitutes an excessive portion of the Pa. state budget, and unduly burdens residents.

In fact, the share of total Pennsylvania state spending going to build, operate and maintain state prisons is very small. And so is the amount of state spending on prisons per capita.

Here are some statistics which put these issues in perspective.

PA. 1990 POPULATION (US Census)	FISCAL YEAR	PA. STATE SPENDING:		PA. STATE SPENDING, DOLLARS PER CAPITA:	
		TOTAL:	ON PRISONS:	TOTAL:	ON PRISONS:
11,882,000	'90	\$24.53 bill.	\$309 mill.	\$2064.55	\$26.00
	'92	\$33.62 bill.	\$453 mill.	\$2799.00	\$38.14

### SOME OTHER COMPARISONS

- A. Share of each Pa. state dollar spent that went to prisons alone in 1990 and 1992: **1.3 cents.**
- B. Share of each Pa. state dollar spent that went to all corrections activities combined in fiscal 1990: **1.9 cents.**
  - 1990 average for all state governments: 3.9 cents.
  - Pa. ranking with other states on this: 46th out of 50 states.)
- C. Percent of each Pa. state total direct expenditure dollar going to all justice activities combined in fiscal 1990: **3.8 percent.**
  - 1990 average for all state governments: 6.4 percent.
  - Pa. ranking with other states on this: 45th out of 50 states.
- D. Pa. fiscal 1992 General Fund expenditures on corrections, as a percentage of total General Fund expenditures: **3.3 percent.**
  - 1992 average for all state governments: 5.9 percent.
- E. Pa. fiscal 1993-94 total state expenditures on state correctional institutions, as a percentage of total state Fund expenditures: **3.77 percent.**

SOURCES: See following page.

**SOURCES FOR...**

- 1990 total Pa. spending: World Almanac 1992, p. 154. (U. S. Census Bureau, U. S. Commerce Dept.) Note: incorporates more categories than reflected in Governor's Budget.
- 1990 Pa. state prison spending: Sourcebook on Criminal Justice Statistics, 1992, Table 1.7, p. 10. See column "Institutions/Amount."
- 1990 state spending, dollars per capita:  
 Total: Divide \$24.531 billion total spending by state population.  
 Prisons: Divide \$308,978,000 prison spending by state population.
- 1992 total Pa. spending: World Almanac 1994, p. 105. (U. S. Census Bureau, U. S. Dept. of Commerce.) Note: incorporates more categories than reflected in Governor's Budget.
- 1992 Pa. state prison spending: Governor's Executive Budget, 1993-94, page E12.02, row 1.
- 1992 state spending, dollars per capita:  
 Total: World Almanac 1994, p. 105. NOTE: Actual division of this figure by the 1990 population figure gives a result of \$2829.66. This implies that the Almanac used either a slightly different figure for total state spending in this category, or a higher estimated population figure of about 12 million.  
 Prisons: Divide \$453,194,000 1992 prison spending by 1990 population.

**SOURCES FOR...**

- A. Divide state prison spending by total state spending.
- B. Justice Expenditure and Employment, 1990, U. S. Bureau of Justice Statistics, September 1992, page 8, Table 12, "Corrections."
- C. Ibid. See column "Total."
- D. 1992 Expenditure Report, National Association of State Budget Officers, April 1993, page 81, Table A-23.
- E. Governor's Executive Budget, 1993-94. Calculated by combining the total budgeted from General Fund for correctional institutions (\$624,279,000, from page A-9 of the Budget), plus capital spending (\$33,356,000, from page F12 of the Budget), or \$657,635,000 total state spending on correctional institutions. Divided this figure by the budgeted total for General and Special Funds of \$17,423,832 (from page A-13 of the Budget), to arrive at 3.77 percent. NOTE: This share for 1993-94, which incorporates both General Fund and capital spending, is still far below the 1992 national average of 5.9 percent for state General Fund spending alone.

## One Man's Tangles With the Law

**June 1, 1989:** Juvon Edmunds charged with burglarizing his mother's home in northwest Philadelphia. As in all of the following instances, except where noted, Mr. Edmunds was released without bail, under terms of a court-ordered moratorium on admissions to the city's overcrowded jails.

**June 22:** Failed to appear in court. Arrest warrant issued.

**July 19:** Charged with stealing liquor from a bar and released.

**Aug. 9:** Failed to appear in court. Arrest warrant issued.

**Sept. 28:** Failed to appear in court.

**Oct. 6:** Charged with burglary of a college and released.

**Oct. 9:** Charged with burglary of a home and released.

**Oct. 10:** Charged with burglary of a home and released.

**Oct. 13, 18, 20:** Failed to make court appearances.

**Oct. 21:** Charged with burglary of a church and released.

**Oct. 22:** Charged with burglary of a home. Suspect unable to make bail, set at \$5,000.

**Oct. 25:** Prosecutor withdraws a burglary case because witness is unavailable; other cases rescheduled; arrest warrants withdrawn; suspect released.

**Dec. 4:** Pleads guilty to stealing liquor from a bar; sentenced to one year's probation.

**Jan. 10, 1990:** Charged with retail theft and released.

**Jan. 14:** Charged with retail theft and released.

**Jan. 16:** Charged with burglary of office and released.

**Jan. 17:** Charged with burglary of a home and a church and released.

**Jan. 18, 19:** Failed to appear in court.

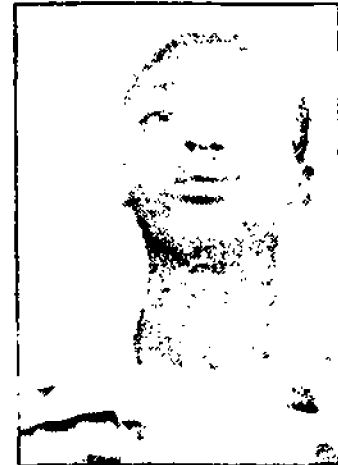
**Jan. 20:** Charged with burglary of a school; bail set at \$30,000; District Attorney obtains permission from Federal judge to exempt this case from the prison cap and hold defendant for trial.

**Jan. 26:** Pleads guilty to one burglary; two other charges dropped for lack of evidence.

**Feb. 15:** Pleads guilty to retail theft; sentenced to five days in jail.

**March 14:** Pleads guilty to five burglary charges.

**March 28:** Pleads guilty to two more burglary charges. Sentenced to six concurrent terms of 4 to 10 years each. Now in state prison. ←



Juvon Edmunds  
Age 24



UPma 02/12/1993 Robber shoots three customers, killed by bartender

PITTSBURGH (UPI) A RECENTLY PAROLED MURDERER was killed and three bar patrons wounded early Friday when a holdup at a Pittsburgh tavern erupted in fire.

Det. Jim Cavanaugh said a lone gunman walked into Our Bar & Cafe in the city's Northside about 12:45 a.m. The man tossed a plastic bag in the direction of bartender and owner Richard Schmitt and ordered him to fill it with money.

Schmitt put some money in the bag and gave it to the robber, police said. But as the suspect was backing out the door, two of the bar patrons rushed him. "The gunman started shooting," Cavanaugh said. "The bartender got a handgun from behind the bar and returned fire. The suspect, who police did not identify, fell dead of a gunshot wound to the chest.

Among the wounded was Ronald Horvath, 48, a customer who was shot in the abdomen and hospitalized in critical condition. Fred Lindow, 52, was listed in good condition with an arm wound. Reginald Peterson, 36, suffered a wound to the ankle and was in good condition.

CAVANAUGH SAID THE SUSPECT HAD BEEN RELEASED FROM PRISON ABOUT TWO WEEKS AGO AFTER SERVING TIME FOR MURDER AND BANK ROBBERY.

UPma 02/14/1993 Police: slain suspect had robbed bar before

PITTSBURGH (UPI) -- Police said Saturday a robber killed in a gunfight at a Pittsburgh tavern was THE SAME MAN WHO ROBBED THE BAR A WEEK EARLIER.

Samuel Carter, 49, died of a gunshot wound to the chest during a shootout at the Our Bar and Cafe early Friday in the city's North Side.

Detectives said Carter, WHO WAS RECENTLY PAROLED AFTER SERVING 20 YEARS IN PRISON FOR A 1972 MURDER AND BANK ROBBERY, SHOT AND WOUNDED THREE BAR PATRONS BEFORE HE WAS KILLED BY BARTENDER RICHARD SCHMITT, the owner of the tavern.

Police said Carter had robbed the bar the week before, prompting Schmitt, 53, to purchase a handgun.

Detectives said Carter walked into the bar about 12:45 a.m., tossed a plastic bag at Schmitt and ordered him to fill it with money. Schmitt put some money in the bag and gave it to Carter, police said. But as the suspect was backing out the door, two of the bar patrons rushed him.

"The gunman started shooting," said Det. Jim Cavanaugh. "The bartender got a handgun from behind the bar and returned fire.

Police said eight shots were fired. When the smoke cleared, Carter was dead and three bar patrons were bleeding from wounds. Ronald Horvath, 48, a corrections officer, was hospitalized in critical condition with a wound to the abdomen. Fred Lindow, 52, was listed in good condition with an arm wound. Reginald Peterson, 36, suffered a wound to the ankle and was in good condition.

Police said a coroner's inquest of the incident would be conducted but it was unlikely charges will be filed against the bar owner.

"We don't anticipate charging Schmitt," said Cmdr. Ronald Freeman. "The robber was committing a felony. He was the one who started shooting at Schmitt and the patrons."

*PA - Paroled Killer repeats*

UPma 04/21/93 Pittsburgh paroled killer convicted of second-degree murder

PITTSBURGH (UPI) -- A Pittsburgh man has been convicted of second-degree murder, robbery and firearms violations for the March 1992 shooting of a Wilkinsburg man.

Deron Scott, 27, was convicted Tuesday in the death of Arthur Glenn, 38. Glenn's body was found in a Wilkinsburg house where police say he had been living as a squatter.

Prosecutors say Scott killed Glenn while trying to rob him of crack cocaine.

SCOTT PREVIOUSLY WAS CONVICTED OF THIRD-DEGREE MURDER IN THE JUNE 1983 SHOOTING DEATH OF KEVIN COLES, 26, of Wilkinsburg. SCOTT WAS SENTENCED TO THREE TO 10 YEARS in the Coles' case.

Common Pleas Judge Lawrence O'Toole scheduled sentencing for June 21 in Glenn's death. Scott faces a mandatory life sentence with no chance of parole.

1                   ACTING CHAIRMAN LaGROTTA: Well, I failed  
2 my first test as Chairman. We have to be done at 12:30  
3 and we have one more witness, Pamela Beck, who is the  
4 mother of a young crime victim.

5                   Would you like to come forward. Do you  
6 have written testimony, Ms. Beck?

7                   PAMELA BECK, called as a witness, testified  
8 as follows:

9                   MS. BECK: Yes, I do.

10                  ACTING CHAIRMAN LaGROTTA: Fine.

11                  MS. BECK: I have submitted it.

12                  ACTING CHAIRMAN LaGROTTA: Well, that would  
13 be fine. If you would summarize it and I say that in  
14 all due respect. Because we have committed ourselves  
15 to the great county of Allegheny to be evacuated from  
16 this room at 12:30.

17                  MS. BECK: Okay. I won't take much of your  
18 time. I don't have a lot of statistics. What I do  
19 have is a story and I'm sure you have all seen my  
20 little blond darling going in and out of the room.

21                  I want you to keep that in mind as I tell  
22 you what happened here.

23                  Cory is eleven. When he was eight years  
24 old, he was abducted and molested and it was very  
25 terrifying. He was told that if he told anybody, he

1 was going to be chopped in pieces and buried in the  
2 woods and nobody would ever find him.

3 His hands were tied and his feet were tied.  
4 And his mouth was taped with electrical tape. Now,  
5 quite obviously this wasn't an impulsive act. Quite  
6 obviously, this had to have been planned. Nobody  
7 impulsively grabs surgical tape to tape a mouth.

8 Two weeks before my son was abducted and  
9 molested, the young man that abducted and molested him  
10 was placed on probation in Westmoreland County for  
11 abducting and molesting another child.

12 My son and this child were not the only  
13 children. There are five other children whose parents  
14 were terrorized into not speaking. But, of course,  
15 that's not on the record. That's not my point.

16 My point is this is a juvenile crime.

17 I realize this Bill does not actually point  
18 the finger at juvenile crime. My thing is this boy is  
19 now 18 years old. He is no longer a juvenile. He is  
20 no longer on probation, parole.

21 He has had absolutely no guidelines as far  
22 as what he is allowed and not allowed to do. He is  
23 just as you and I are. He can play with any young  
24 child he wants. He does not even have to stay away  
25 from my child.

1                   From what I understand of this boy's  
2 history, and I'm not reading word for word from this.  
3 I feel I can tell you better, you know, just off the  
4 cuff here.

5                   I have researched everything that I can  
6 read from Reader's Digest on up to every psychology  
7 book that you can check out of the library. I have  
8 sent to Washington, D.C. to the statistics on juvenile  
9 crime.

10                  This boy is a pedophile. There is not a  
11 known treatment for pedophiles. There is not a known  
12 deterrent for a pedophile. We're not going to deter  
13 him and we are not going to treat him. But why let him  
14 out on the street? He's 18 now. He knows what the  
15 penalty is.

16                  I will guarantee you that and I will  
17 personally send you the article that before this summer  
18 is done, there will be another victim. And if the  
19 victim is unhurt, other than being molested, don't  
20 think that is not violent.

21                  I could bring in my son's mental health  
22 record, my son's school record. A child that was a  
23 lovely child that I am not even allowed to hug because  
24 he can't tolerate it.

25                  His grades went from A's and B's to D's and

1 E's. Socially, he's had such a severe problem that I  
2 have sat and cried over this. This man now that  
3 molested my son is able to walk around unmolested. By  
4 this summer's end, I can guarantee you that there will  
5 be another victim.

6 And as I was sitting back there and I was  
7 hearing the back and forth between Mr. Dermody and the  
8 last witness about plea bargains. I had a sister  
9 murdered three years ago. It was bargained down from  
10 first degree murder down to third degree manslaughter.

11 When I questioned it, I was 21 at the time,  
12 they told me it was to save the State the cost of a  
13 trial.

14 REPRESENTATIVE DERMODY: I wouldn't condone  
15 that.

16 MS. BECK: I'm not pointing a finger at  
17 you. I'm telling you, all of you, that what they did,  
18 in effect, was put a price on my sister's life. You  
19 don't put a price on these lives. There is not a price  
20 on my son's life and the next victim.

21 And, as I said, this young man was seen in  
22 the woods with a four-year old child the day before  
23 yesterday. I'm not saying the child was molested. I'm  
24 saying he's being primed for it. There will be another  
25 victim. This boy will go into an adult Court with this

1 one crime.

2 Now, they may recognize that he had prior  
3 adjudications, okay, but I have talked to the D.A.'s  
4 office that handled my son's problem. He will go in,  
5 he will be placed on probation and ordered to go to  
6 treatment.

7 That is more than likely what will happen.  
8 That is wrong. That is wrong. This three strikes and  
9 you're out, at least it gives them something to think  
10 about. At least they are not going to think, oh, if I  
11 get the right Judge and my attorney can go in there and  
12 sweet talk and I put on a good appearance, I'll get out  
13 of this.

14 That's wrong. And people know they can do  
15 it. And I mean I understand, you know, you are people  
16 with a power here. I'm telling you what the little  
17 people think. I'm telling you as the mother of a crime  
18 victim, be it juvenile or adult.

19 So, that's my story.

20 BY REPRESENTATIVE DERMODY:

21 Q How many prior adjudications before your  
22 son's?

23 A One, but two weeks and one day before.

24 Q Two weeks and one day before there was a  
25 juvenile adjudication?

1           A     He was placed on probation two weeks and one  
2 day.

3           Q     For the same type of offense?

4           A     Exactly; it was identical.

5           Q     How old was he?

6           A     He was 17.

7           Q     He was still 17 in your son's case?

8           A     Yes. He is now 18. He is no longer on  
9 probation; no longer on parole.

10          Q     What were the charges?

11          A     The charges were reduced from molestation to  
12 corruption of a minor.

13                     And what was the special one, I'm trying to  
14 think.

15       BY ACTING CHAIRMAN LaGROTTA:

16          Q     Deviant sexual behavior?

17          A     Yes.

18                     That little blonde, blue-eyed -- I won't say  
19 angel, believe me. I'm well aware of his shortcomings.  
20 He went into a courthouse with a bunch of adults, sat at  
21 the witness stand, and you all know how attorneys will  
22 ask a child the same question and keep twisting it around  
23 to see if they get a different answer.

24                     The attorney for the boy looked at my son and  
25 said Cory, isn't it true that he said -- and he said I



1 did not, sir.

2 My son was the most unimpeachable witness  
3 they ever had in that courtroom.

4 BY REPRESENTATIVE DERMODY:

5 Q How old was your son when he testified?

6 A When he testified, he was nine and a half;  
7 he's a real hero.

8 I'm so proud of my son. I'm not proud of the  
9 fact that we can go out our front door and this boy can  
10 be sitting on my porch right now. There is nothing I can  
11 do about it.

12 Like I said, I know for a fact that by the  
13 end of this summer -- I'm angry.

14 I understand that you can't deal with this  
15 from an emotional viewpoint, but I am; I can't deal with  
16 it from any other viewpoint.

17 I have been going through this for three  
18 years. I have seen my son deteriorate. I have seen me  
19 get to the point where I can't watch a movie on TV, most  
20 movies, because most movies have this in it.

21 It's not just what happened to my son.  
22 It's -- you look in the paper and you see that so and so  
23 committed a murder and you read the prior history, twenty  
24 years ago they were convicted.

25 It's like it doesn't affect them. If you

1 or I -- if you go out and you go grocery shopping and  
2 you write a bad check, I don't know about you, but when  
3 that comes back bounced, I'm panicked. There is a  
4 penalty. You did something wrong.

5 It doesn't seem to affect these people and  
6 I think these are the people this Bill is about because  
7 it makes them think.

8 It's not a matter of pleasing a Judge or  
9 having a great attorney. Do you know what I mean?

10 Sometimes I think that that helps them. I  
11 get very verbal. This really is very close to my  
12 heart.

13 ACTING CHAIRMAN LaGROTTA: Do you have any  
14 questions?

15 MR. TEXTER: I just want to point out that  
16 Ms. Beck asked to testify. She had seen an article in  
17 her local paper about it and called Representative Rudy  
18 and came forward on her own and asked to testify. I  
19 wanted to congratulate her for coming forward and  
20 having the strength in order to tell this story.

21 MS. BECK: I would stand on a rooftop and  
22 tell it. This boy -- I mean just as a minor aside --  
23 is out. And the other day I saw him and every little  
24 child in the neighborhood playing.

25 BY REPRESENTATIVE DERMODY:

1 Q I know. I have tried those cases in this  
2 Commonwealth and in this Courthouse and I understand  
3 that there is no cure.

4 A There is not and there is not a deterrent.

5 Q My last case in this Courthouse was a  
6 pedophile who had been sentenced the third time in  
7 Carlisle for -- he had a one to twenty year sentence,  
8 if you can believe that.

9 So, he is on parole for twenty years. And  
10 was placed in an apartment house as part of his parole  
11 plan that had several families with children.

12 And, he did as he was supposed to do and we  
13 ended up finally convicting him. And it was the third  
14 trial because the child he molested was slow. And we  
15 couldn't get through a case without a mistrial because  
16 he would blurt out prior incidents or criminal conduct  
17 of the Defendant and the Judge would declare a  
18 mistrial.

19 The third time we finally convicted him and  
20 he got the sentence he deserved with some back time. I  
21 understand what you are saying.

22 A I mean, I have been told that my sister was  
23 murdered 17 years ago and you are supposed to forgive  
24 and I understand that. Until that kind of violent  
25 crime has touched you, you don't ever know how you

1 feel.

2 And all of the legislating and all of the  
3 reading of newspapers, they are never going to make me  
4 see the point that we need to rehabilitate and we need  
5 to have a kind heart any more. I did, but I don't any  
6 more.

7 All I have to do is look -- as an aside,  
8 two weeks after my son finally told us he was  
9 absolutely molested. I mean, we knew that he was, he  
10 sprayed hair spray on himself and set himself on fire  
11 and was in West Penn Burn Unit for two weeks, and was  
12 off school for a month. And his hand was hideously  
13 burned and we all felt that psychologically that was an  
14 offshoot.

15 ACTING CHAIRMAN LaGROTTA: I'm sure it was.

16 MS. BECK: We have gone through this for  
17 three years. I would like to see it end. I can't see  
18 it end knowing this boy is out, that there is no  
19 parole, there is no probation, nobody is watching over  
20 him.

21 BY ACTING CHAIRMAN LaGROTTA:

22 Q Does your son get counseling now?

23 A That's a good one. We went through  
24 Children's Bureau and he went to counseling for a year.  
25 The day he told the counselor that he had actually been

1 molested, he said I can't see him any more because it  
2 wasn't a family member. So, it wasn't an incestuous  
3 or familial molestation.

4 And I don't know if you gentlemen know  
5 this, but Pennsylvania is the only State in 50 states  
6 that differentiates between familia and incestuous  
7 molestation and stranger molestation.

8 Completely different set of laws, complete  
9 different set of criteria.

10 Q Is there counseling available?

11 A Finally, we have gotten some.

12 BY REPRESENTATIVE DERMODY:

13 Q There are certain crime victim groups.

14 A No. My pediatrician has been wonderful. I  
15 called 1-800 For-A-Child. They called Child Line in  
16 Harrisburg who verified this. This is how it's handled  
17 in Pennsylvania.

18 They were absolutely appalled and I'm  
19 appalled.

20 BY ACTING CHAIRMAN LaGROTTA:

21 Q But there still should be some kind of  
22 counseling for a child who is showing some emotional --

23 A Allegheny Valley Mental Health is a fine  
24 group. However, a child that has been molested and,  
25 believe it or not, when they have been molested by a

1 family member, and statistically this has been shown they  
2 are a little bit more secure and not as frightened as  
3 they are by a stranger.

4 Well, most of the groups don't want to deal  
5 with that kind of fright on top of the trauma of the  
6 molestation.

7 So Allegheny Valley Mental Health is fine if  
8 you are depressed. Do you know what I mean?

9 He needs the intensive, and the groups that  
10 provide the intensive don't want to deal with this. And  
11 I can guarantee this because my pediatrician has called,  
12 I have called, I have written.

13 That's not pertinent to this; that's what I'm  
14 telling you.

15 ACTING CHAIRMAN LaGROTTA: Well, thank you.  
16 It's been very difficult for you and as Mr. Mascari  
17 before you, it's difficult to relate personal  
18 experiences.

19 Thank you.

20 MS. BECK: Thank you for listening.

21 ACTING CHAIRMAN LaGROTTA: Thank you all for  
22 coming. We'll adjourn the hearing now and move on.

23 Thank you.

24 (The hearing concluded at 12:47 p.m.)

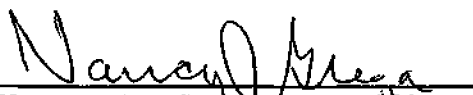
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C E R T I F I C A T E

I hereby certify that the proceedings and evidence taken by me in the above-entitled matter are fully and accurately indicated in my notes and that this is a true and correct transcript of same.

  
Nancy J. Grega, RPR/lhc