

# The Impact of “Strikes” in Sentencing Decisions: Punishment for Only Some Habitual Offenders

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*Sentencing research has continued to address how legal and extralegal variables influence sentencing decisions. However, little attention has been given to how the implementation of habitual offender laws has influenced the sentencing of repeat, violent offenders. In this study, criminal history record and prior strike offenses are used to measure sentence length of convicted felony offenders in Washington State. By using both additive and interactive models, findings show that the influence of criminal history record and prior strikes on sentencing decisions is indirectly related to offense type (i.e., person, property, sex, and drug cases). Findings shed light on the various measures of prior record and their role in sentencing research.*

**Keywords:** *three-strikes; sentencing; incarceration; offense seriousness*

The impact of both legal and extralegal factors on the sentencing process has been the subject of extensive research (Albonetti, 1991, 1997; Crawford, 2000; Crawford, Chiricos, & Kleck, 1998; DiIulio, 1991; Kramer & Ulmer, 1996; Miethe & Moore, 1986; Myers & Talarico, 1987; Steffensmeier, Ulmer, & Kramer, 1998; Ulmer & Kramer, 1996; Tonry, 1995; Zatz, 1987; Zimring & Hawkins, 1991). As criminal offenders continue to be sentenced under schemes intended to reduce crime and forestall victimization, public policymakers and criminal justice officials alike are learning about the relative impact of such sentencing mechanisms. The high rate of violent crimes committed by adult recidivists have prompted the enactment of three strikes and habitual offender laws specifically directed at incapacitating serious, violent criminal offenders. While most research on three strikes laws has focused on the application and overall effectiveness of such laws (see Austin, Clark, Hardyman, & Henry, 1999; Cushman, 1996; Greenwood et al., 1994; Zimring, Hawkins, & Kamin, 2001), little focus

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has been given to how specific dimensions of an offender's criminal record impact the sentencing process of persistent, violent offenders. Identifying how strike offenses in criminal histories influence sentencing decisions is clearly needed to develop a more comprehensive understanding of these sentencing schemes.

This study will examine the advent of the State of Washington's Persistent Offender Accountability Act, a "three strikes" law enacted by direct, popular vote in 1993. The manifest intent of the public initiative was to deter repeat offenders by establishing the certainty of life imprisonment for the commission of a third serious crime. In particular, this study focuses on how the sentencing process of habitual felons in the state of Washington has been impacted by strike offenses. Primary emphasis will be accorded to identifying how legal factors, specifically criminal record and prior strike offenses, influence the sentencing process of offenders convicted of different types of offenses. Lastly, this study will discuss the role that different legal variables have in future sentencing research.

### CRIME CONTROL THROUGH SENTENCE SEVERITY

Between 1993 and 1995, 24 states and the federal government enacted laws mandating life imprisonment for persons convicted of a third violent felony—the "three strikes" label (Clark, Austin, & Henry, 1998; U.S. Department of Justice, 1997a).<sup>1</sup> Since the intent of these statutes is to imprison offenders for life, they directly impact the prison population. Currently, there are more than 2 million incarcerated offenders in facilities throughout the country (U.S. Department of Justice, 2000). Particularly alarming is the growth in violent and drug offenders within state prisons. Data on jail and prison populations indicate that the overcrowding problem within correctional facilities is steadily increasing across the country despite record levels of new jail and prison construction (U.S. Department of Justice, 1997b).

#### **Criminal History Record in Sentencing Decisions**

Criminal history plays quite an important role in the sentencing process in virtually all jurisdictions. Statutory enhancements for repeat offenders exist in most states where there is widespread public support for harsher penalties. Although state and federal sentencing guidelines in the United States rely heavily on criminal history, there is considerable variability in

the definition of criminal record. Legal research has utilized arrest record, convictions, incarceration, and a combination of other measures to classify criminal history record. The legal definition of a "strike" also varies from state to state, though violent felonies such as homicide, rape, assault, and arson are included in most habitual offender provisions. State laws also vary in the number of strikes an offender needs to be incarcerated for an extended period of time. Although studies have examined the effect of different measures of prior record (see Moore & Miethe, 1986; Welch, Gruhl, & Spohn, 1984), different jurisdictions define criminal record and respond to recidivist offenders in very different ways (Roberts, 1997). The U.S. Department of Justice (1991) found that prosecutors do not view serious offenders as a homogeneous group. Instead, they often judge separately whether a particular defendant commits crimes at high rates, whether the offender is dangerous, and whether the offender is a persistent offender. The tenuous relationship between offense seriousness, criminal history, and punishment reflects the complicated nature of expected and imposed sanctions. Therefore, sentencing practices should be examined in different jurisdictions to capture any possible differences in the implementation of crime control policies.

Experts in the sentencing field have demonstrated how legally prescribed factors such as offense seriousness and criminal history record significantly impact not only sentence length (Forst & Rhodes, 1982; Spohn & Cederblom, 1991; Talarico, 1979) but also sentencing departures (Albonetti, 1997; Kempf-Leonard & Sample, 2001; Kramer & Ulmer, 1996; Steffensmeier & Demuth, 2000; Ulmer, 1997). Kramer and Steffensmeier (1993) found that seriousness of offense and prior record account for a very large share of explained variation in both in/out decisions and sentence length. Research has also shown that the use of certain measures of prior record result in specific outcomes. For example, prior felony convictions and prior incarcerations have been found to be significantly associated with sentence severity, whereas other measures have not (e.g., previous arrest and previous felony arrests) (Welch et al., 1984).

Sentencing research has also identified the importance in using interactive rather than additive models in predicting sentencing decisions. Steffensmeier et al. (1998) used offense type and severity, number of convictions, and offenders' prior record to study disparity and found that, like other sentencing research, offense seriousness and prior record impact sentencing decisions but do so to varying degrees based on offenders' race, sex, and age. Crawford (2000) reviewed race and sex in sentencing practices in Florida and found that female offenders were rarely sentenced under habitual offender statutes. However, the law was used more on African American

women and applied far more in certain geographic areas. Spohn and Holleran (2000) took a multijurisdictional approach and examined the interaction between age, race, sex, and employment status and found that when controlling for legal factors, young Black and Hispanic males faced greater chances of imprisonment than middle-aged White males. Such findings highlight the need for research that takes into account the intersection of factors that influence sentencing decisions.

### **The Application of Habitual Offender Laws**

Washington's Sentencing Reform Act of 1981 was designed to ensure that punishments for criminal offenses are proportionate to the seriousness of the offense and the offender's criminal history (Revised Code of Washington 9.94A). This is achieved by weighing prior convictions more heavily once a pattern of offending is established (State of Washington Sentencing Guidelines Commission, 2002). The result is a higher offender score (i.e., criminal history) for recidivists who commit the same kind of offense. In 1993, Washington's Sentencing Reform Act was amended to define a new type of offense termed "most serious offense" and a new type of offender, the "persistent offender." The new measure dictates that third-time most serious offenders be sentenced to life imprisonment without the possibility of parole. The law defines most serious offense rather broadly, encompassing all Class A felonies,<sup>2</sup> including the attempt, solicitation, or conspiracy to commit any of those offenses; any Class B felony offense with a finding of sexual motivation; and any other felony committed with a deadly weapon. Thus, a persistent offender is one who prior to the commission of the present most serious offense, had been convicted on at least two prior occasions of most serious offenses. Like other states, this initiative is not Washington's only law aimed at habitual recidivists. Washington State had an existing "habitual criminal" statute that incapacitated repeat offenders for an extended period of time (Revised Code of Washington 9.92.090).

The implementation of habitual offender laws does not ensure their uniform application. Criminal justice officials and practitioners can exercise their discretion to avoid the application of a law they consider unduly harsh. For example, in the charging stage, prosecutors may file charges that circumvent the application of certain laws. During the sentencing phase, judges may impose sentences that fall outside of sentencing guideline structures. The uncertainty in not knowing the risk of recidivism by offenders directly impacts the types of sentences delivered by judges. One way judges manage this uncertainty is by applying stereotypes and characteristics

associated with recidivism (Albonetti, 1991). Nevertheless, uncertainty is likely to persist, leading judges to impose more severe sentences for certain offenders. Factors underlying judges' level of uncertainty in the sentencing decisions of habitual offenders are not well known at this time. To further explore how judges in general deal with uncertainty, Albonetti encouraged the examination of "offense specific and jurisdictional specific decisions" (p. 262).

Although research has examined the characteristics of offenders most likely to be sentenced as habitual offenders, current sentencing research has not addressed how criminal record and prior strikes impact sentencing decisions of repeat offenders. Crawford et al. (1998) found that prior record and offense severity increased the likelihood of being sentenced as habitual offenders. Interestingly, they found that this impact is mitigated by an offender's race, with prior record impacting Whites more severely than Blacks. Institutional pressures within the court may also impact sentencing outcomes. Peterson and Hagan (1984) identified how organizational pressure encouraged the use of plea bargaining in specific cases when faced with political pressures. The interaction between pressures to impose habitual offender laws and use plea bargaining could result in varying applications of the law.

Although the importance of measuring prior record in sentencing decisions is widely recognized, recent research has shown that the use of certain prior record measures reduces the effect of extralegal variables. Engen and Gainey (2000) proposed the use of presumptive sentence (midpoint to guideline range) as a predictor in sentencing decisions. Using Washington State data, they found that the use of the midpoint as a legal factor not only improved model fit but also reduced the effect of sex and race/ethnicity. Ulmer (2000) suggested caution in using legal variables other than offense's seriousness and prior offenses without a clear understanding of sentencing structures. Moreover, he indicated "that extralegal differences can persist even when one controls for legally prescribed factors to the maximum extent possible with typical sentencing guidelines data" (Ulmer, 2000, p. 1239). Although studies present the importance in understanding how different legal variables work in the context of sentencing guidelines, they do not address how different legal variables may impact sentencing outcomes of habitual offenders. That is, research has yet to examine the influence that *multiple* legal variables have in the sentencing process of repeat offenders.

Because the legislative intent underlying the three strikes law in Washington State is to incarcerate offenders convicted of multiple (three)

felonies, criminal history record becomes crucial in conviction and sentencing decisions. To fully assess the sentencing process, special consideration must be paid to both criminal record and offense seriousness (U.S. Department of Justice, 1999a). The U.S. Department of Justice (1999c) stated that offense seriousness and criminal record are indicators that produce "likeness" of cases but do not produce "alike" cases in culpability and future threat. Therefore, it is possible that offenses type and strike status of the current offense interact with prior record to differently impact repeat offenders.

The following study sets out to examine how criminal history record and prior strike offenses impact the sentencing process in Washington State. Within Washington, Minnesota, and Oregon, the original goals of sentencing guidelines were to reduce sentence disparities based on sex and race/ethnicity (U.S. Department of Justice, 1999b). Subsequent laws based on selective incapacitation used to increase sentencing severity and reduce crime rates may reveal that such goals are not attainable without jeopardizing the objectives of equity and those of an effective crime control policy. As such, the effect that extralegal variables have in the sentencing process cannot be ignored. By measuring how extralegal variables, criminal history record, and prior strike offenses impact sentencing decisions of serious offenses (e.g., murder/manslaughter, rape, assault) and less serious felonies (e.g., minor assaults, theft, and drug), this study will not only shed light on the application of habitual offender laws but also expand the examination of legally relevant variables in the sentencing process.

## DATA AND METHODS

The data for this study were obtained from the State of Washington Sentencing Guidelines Commission. Data consist of all convictions from July 1993 through June 1997 involving either the sentencing of a strike offense or the sentencing of a nonstrike felony offense by an offender who had at least one strike in his or her criminal history record.<sup>3</sup> A total of 19,403 convictions containing the strike offense criteria were obtained from the commission for the 5 years under examination. Two primary analyses are conducted to examine how criminal record and prior strikes impact sentence length. The first analysis uses ordinary least squares (OLS) to estimate the direct effect of legal and extralegal variables on sentence length received (measured in months). To measure how criminal record and prior strikes indirectly influence offense seriousness in sentencing decisions, separate multivariate analyses are performed for different types of offenses. Regression models are estimated to predict sentence length of person (i.e., murder/

manslaughter, robbery, Assaults 1 and 2, Assault 3, and kidnapping), property (i.e., burglary, residential burglary, theft, motor vehicle theft, and possession of stolen property), sex (i.e., rape and other sex offenses), and drug offenses. Not all included offenses in the data are classified as strike offenses. In particular, Assault 3, residential burglary, theft, motor vehicle theft, possession of stolen property, and drug offenses are not classified as most serious offenses under Washington's habitual offender law.

Prior record is measured by using two different criminal history components. Offender score (criminal record) ranging from 0 to 9 and number of prior strike offenses, ranging from 1 to 10, encompass not only prior felony convictions but also cumulative convictions that under habitual offender laws result in lengthier sentences. Studies have demonstrated the need to identify the best-suited legal factors impacting sentencing decisions (Engen & Gainey, 2000; Ulmer, 2000). To better understand sentencing decisions, specific dimensions of prior record must be included. To examine such effects, offender score and strike offenses are both used rather than one cumulative prior record variable. By using these two variables along with other legal measures, this study captures the direct and indirect effects of prior record components that, as mandated, should increase sentence severity across all offenses. The application of habitual offender laws in the sentencing process could either produce severe sanctions as intended or produce unexpected leniency in sentencing decisions for specific types of repeat offenders. Level of offense seriousness (ranging from 0 to 15), number of counts (ranging from 0 to 10), and use of a weapon (weapon involved = 1; weapon not involved = 0) are also included in the analyses. To control for possible changes over time, a proxy for year has also been created and coded into four dummy variables (July 1993 through June 1997, with July 1993 through June 1994 as the reference category).

All models include controls for extralegal variables. Race/ethnicity is coded into four dummy variables: Black, Asian, Hispanic, and Native American, with Whites as the reference category. The sex of the offender (male = 1; female = 0), age (age of defendant at time of conviction), and mode of disposition (guilty plea = 1; bench or jury trial = 0) are also included. Sex offenders who received a suspended sentence of jail term and outpatient or inpatient treatment under the Special Sex Offender Sentencing Alternative law have been excluded from the analyses. Also, first-time offenders who received a first offense waiver that allows for broad discretion in sentencing were removed from the analyses. Because analyses are limited to only sentence length decisions (a minimum of 30 days) and not to those decisions of whether to imprison offenders or not, a two-stage

analytical procedure is used to correct for sample selection bias (Berk, 1983; Peterson & Hagan, 1984; Spohn & Cederblom, 1991; Steffensmeier et al., 1998; Ulmer, 1997; Ulmer & Kramer, 1996).<sup>4</sup> As with other sentencing data, information on the processing of offenders before the sentencing process is not included in these data. Therefore, this study focuses solely on the sentencing process. By using sentencing data on offenders who have been convicted of at least one strike offense, this study examines a sample of serious, violent offenders. Although these are all offenders who have been convicted of a strike, the severity of their offenses varies. Indeed, the classification of less serious offenses as strikes is one of the major controversies surrounding habitual offender laws. This study will therefore examine how offense seriousness and prior record interact to influence the sentencing process of habitual offenders. Descriptive statistics for all variables are presented in Table 1.<sup>5</sup>

## FINDINGS

The results of the additive effects are found in Table 2. Although the focus of this study is on how legal measures impact sentencing decisions, findings reveal some race/ethnic, sex, and age differences. Interestingly, Hispanic and Black offenders received shorter sentences than White offenders, whereas male and younger offenders received longer sentences than female and older offenders. Findings on offense type show that the majority of offenses significantly increased offenders' sentence length. The only offense that had a negative effect on sentence length was burglary. Offenders convicted of burglary cases on average received sentence lengths 7.5 months shorter than offenders convicted of robbery.

A closer look at legally relevant criteria reveals several significant effects on sentence length. The number of counts and offense seriousness positively impact offenders' sentence length. The presence of a weapon during the commission of an offense also has a considerable effect on sentence length decisions. Offenders who possessed a weapon received, on average, sentences 18.7 months longer than those who did not use a weapon. Findings on criminal history record show that judges sentenced offenders with extensive prior records more harshly. As expected, offenders with strike offenses in their criminal history record received lengthier sentences. In regard to mode of disposition, offenders who plead guilty received sentences much shorter than offenders who had a bench or jury trial. To further examine the effect of criminal record, separate OLS analyses for person, property, sex, and drug offenders were conducted. As such, the following



**Table 1: Descriptive Statistics for Variables and Coding Scheme**

| <i>Variable</i>         | <i>Code</i>  | <i>N</i> | <i>Mean</i> | <i>Frequency</i> |
|-------------------------|--|----------|-------------|------------------|
| Age of defendant        | Age in years   | 17,540   | 29.73       |                  |
| Sex of defendant        | Male = 1   | 16,039   |             | 93.4             |
|                         | Female = 0   | 1,125    |             | 6.6              |
| Race of defendant       | 4 dummy variables,<br>White = omitted<br>category    | 10,502   |             | 62.7             |
| Black                   |  | 4,358    |             | 26.0             |
| Asian                   |  | 384      |             | 2.3              |
| Native American         |  | 478      |             | 2.9              |
| Hispanic                |  | 1,019    |             | 6.1              |
| Type of offense         | 11 dummy variables,<br>Robbery = omitted<br>category | 2,340    |             | 13.2             |
| Person offense          |  |          |             |                  |
| Murder/manslaughter     |  | 724      |             | 4.1              |
| Assaults 1 and 2        |  | 3,558    |             | 20.1             |
| Assault 3               |  | 467      |             | 2.6              |
| Property offense        |  |          |             |                  |
| Burglary                |  | 429      |             | 2.4              |
| Residential burglary    |  | 907      |             | 5.1              |
| Theft                   |  | 850      |             | 4.8              |
| Motor vehicle theft     |  | 275      |             | 1.5              |
| Stolen property         |  | 135      |             | 0.8              |
| Sex offense             |  |          |             |                  |
| Rape                    |  | 553      |             | 3.1              |
| Other sex offenses      |  | 1,383    |             | 7.8              |
| Drug offense            |  | 2,552    |             | 14.4             |
| Other offense           |  | 2,531    |             | 14.3             |
| Year of sentence        | 4 dummy variables, 1993 =<br>omitted category        | 3,307    |             | 18.6             |
| 1994                    |  | 3,336    |             | 18.7             |
| 1995                    |  | 3,624    |             | 20.4             |
| 1996                    |  | 3,688    |             | 20.8             |
| 1997                    |  | 3,797    |             | 21.4             |
| Counts                  | 1 to 10  | 17,742   | 1.189       |                  |
| Weapon involved         | Yes = 1  | 1,236    |             | 7.0              |
|                         | No = 0   | 16,506   |             | 93.0             |
| Offense seriousness     | 0 to 14  | 17,742   | 4.946       |                  |
| Score                   | 0 to 9   | 17,742   | 2.313       |                  |
| Prior strike offenses   | 0 to 10  | 17,742   | .57         |                  |
| Guilty plea disposition | Guilty plea = 1                                      | 15,755   |             | 88.8             |
|                         | Jury or bench trial = 0                              | 1,987    |             | 11.2             |
| Length of sentence      | Sentence in months                                   | 17,742   | 33.798      |                  |

**Table 2: The Effect of Prior Offense Variables on Prison Term (in months): Ordinary Least Squares Results**

|                                     | b               | Beta  |
|-------------------------------------|-----------------|-------|
| Intercept                           | -50.904 (1.871) |       |
| Age                                 | -.054 (0.026)   | -.009 |
| Sex                                 | 1.864* (0.992)  | .008  |
| Race/ethnicity                      |                 |       |
| African American                    | -1.470 (0.589)  | -.011 |
| Asian                               | .787* (1.645)   | .002  |
| Native American                     | -1.857* (1.474) | -.005 |
| Hispanic                            | -3.029 (1.045)  | -.013 |
| Block of 11 offense dummy variables | —               | —     |
| Counts                              | 7.000 (0.422)   | .076  |
| Weapon involved                     | 18.750 (1.003)  | .084  |
| Offense seriousness                 | 10.927 (0.111)  | .631  |
| Score                               | 7.052 (.130)    | .309  |
| Prior strike offenses               | 6.408 (0.490)   | .072  |
| Guilty plea                         | -14.079 (0.820) | -.077 |
| Year                                |                 |       |
| 1994                                | 2.683 (0.795)   | .018  |
| 1995                                | 3.414 (0.779)   | .024  |
| 1996                                | 3.546 (0.779)   | .025  |
| 1997                                | 4.552 (0.773)   | .033  |
| Hazard rate                         | 62.179 (2.836)  | .103  |
| Number of cases                     | 16,634          |       |
| Adjusted $R^2$                      | .697            |       |

Note: Whites, robbery offenses, and 1993 (sentenced year) are reference categories. Standard errors appear in parentheses.

\*Not significant at  $p < .05$ .

OLS models assess the indirect effects of legal variables on the sentencing process while controlling for extralegal variables.<sup>6</sup>

Table 3 contains results from the separate person offense models. Criminal history record, as measured by offender score, significantly increased sentence length of all person offenses (i.e., on average, murder/manslaughter offenders received an additional 18 months whereas Assault 3 offenders received an additional 4.5 months in sentence length). Prior strike offenses significantly impacted three of the four person offenses. Murder/manslaughter cases were the only person offenses not affected by prior strikes. Given the seriousness of the offense, judges may have placed minimal weight on prior strike offenses. The positive effect of prior strikes on sentence lengths in both serious (i.e., robbery) and less serious (i.e.,

**Table 3: The Effect of Prior Offense Variables on Sentencing Decisions by Type of Person Offense**

|                       | <i>Murder/Manslaughter</i> |             | <i>Robbery</i> |             | <i>Assaults 1 and 2</i> |             | <i>Assault 3</i> |             |
|-----------------------|----------------------------|-------------|----------------|-------------|-------------------------|-------------|------------------|-------------|
|                       | b                          | <i>Beta</i> | b              | <i>Beta</i> | b                       | <i>Beta</i> | b                | <i>Beta</i> |
| Counts                | 14.443* (7.670)            | .046        | 5.911 (.638)   | .096        | 12.163 (.729)           | .146        | .485* (.651)     | .019        |
| Weapon involved       | 45.509 (10.828)            | .107        | 25.137 (1.163) | .224        | 15.758 (.909)           | .142        | 11.619 (1.275)   | .225        |
| Offense seriousness   | 34.162 (1.244)             | .658        | 7.159 (.155)   | .485        | 14.855 (.169)           | .738        | —                | —           |
| Score                 | 17.995 (2.281)             | .275        | 7.471 (.198)   | .513        | 5.640 (.243)            | .261        | 4.534 (.139)     | .887        |
| Prior strike offenses | 7.453* (7.378)             | .033        | 2.379 (.502)   | .059        | 2.374 (.784)            | .032        | -3.054 (.682)    | -.110       |
| Guilty plea           | -35.365 (6.658)            | -.126       | -8.866 (1.288) | -.068       | -7.663 (1.173)          | -.055       | -.245* (1.064)   | -.005       |
| Number of cases       | 655                        |             | 2,196          |             | 3,297                   |             | 423              |             |
| Adjusted $R^2$        | .660                       |             | .805           |             | .786                    |             | .764             |             |

Note: Models include all variables listed in Table 1. Standard errors appear in parentheses.

\*Not significant at  $p < .05$ .

Assaults 1 and 2) cases is not surprising in that both are classified as strike offenses. Offenders sentenced for less serious assaults (i.e., Assault 3) did receive shorter sentences. In these less injurious cases, judges appear to not increase but rather reduce sentence length given the presence of prior strikes in criminal record.

Models of property cases show how offender score varies across offenses (see Table 4). For example, offenders sentenced in burglary cases on average received an additional 9 months (for each additional one-unit increase in offender score), whereas offenders sentenced for motor vehicle theft received sentences 2.6 months longer. The different effects of offender score could once again be attributed to the seriousness of the case. Offenders sentenced for the more serious property cases (i.e., burglary and residential burglary) received longer sentences than those sentenced for less serious property offenses (i.e., theft and motor vehicle theft). Interestingly, prior strikes had no significant impact in any of the property offense models. These findings demonstrate the varying effects criminal history variables can have within offense type.

Findings in Table 5 indicate that offender score significantly increased the sentence length of sex offenders. Rape and other sex offenders with more serious criminal records received far more severe sentences than those offenders with less serious criminal histories. There appears to be less variation in the effect of criminal history record in sex cases. Rape offenders with more serious criminal histories received nearly an additional year in sentence length, whereas those sentenced for other sex offenses received 11 months. Strike offense in criminal record did not significantly increase sentence length for either rape or other sex offenses. In fact, the number of counts involved in the case had the same impact that criminal history record had on sentence length. Interestingly, although the presence of a weapon increased sentence length for all person and property offenses, the effect was strongest in rape cases. Rape cases involving a weapon received on average sentences 88 months longer than those rape cases where no weapon was used.

Among drug cases, both offender score and number of prior strikes significantly impacted sentence length (see Table 5). Drug offenders with more serious criminal records were punished more harshly than those offenders with less serious prior records. However, prior strikes in drug cases negatively impacted sentence length. Although crime control efforts have placed an enormous amount of attention on drug offenders, offense-specific models show that judges are less inclined to further enhance sentence lengths for these offenders. Although offender score (i.e., criminal history record)

**Table 4: The Effect of Prior Offense Variables on Sentencing Decisions by Type of Property Offense**

|                       | <i>Burglary</i> |             | <i>Residential Burglary</i> |             | <i>Theft</i>   |             | <i>Motor Vehicle Theft</i> |             | <i>Stolen Property</i> |             |
|-----------------------|-----------------|-------------|-----------------------------|-------------|----------------|-------------|----------------------------|-------------|------------------------|-------------|
|                       | b               | <i>Beta</i> | b                           | <i>Beta</i> | b              | <i>Beta</i> | b                          | <i>Beta</i> | b                      | <i>Beta</i> |
| Counts                | 3.807 (1.194)   | .095        | 2.828 (.459)                | .095        | .297* (.267)   | .019        | .529* (.387)               | .035        | -.505* (.873)          | -.021       |
| Weapon involved       | 32.296 (2.925)  | .301        | 22.258 (3.994)              | .084        | —              | —           | 22.746 (2.673)             | .243        | —                      | —           |
| Offense seriousness   | —               | —           | 6.874 (.636)                | .157        | 6.250 (.316)   | .328        | —                          | —           | —                      | —           |
| Score                 | 8.989 (.431)    | .710        | 6.786 (.636)                | .157        | 3.783 (.079)   | .951        | 2.693 (.085)               | .994        | 5.295 (.210)           | .976        |
| Prior strike offenses | 2.243* (1.480)  | .048        | 1.639* (5.762)              | -.092       | -.891* (1.189) | -.012       | .110* (.899)               | .003        | .265* (1.795)          | .005        |
| Guilty plea           | -6.503 (2.505)  | -.072       | -2.870 (1.270)              | -.032       | -1.842* (.990) | -.030       | -1.306* (.758)             | -.045       | -.853* (1.883)         | -.016       |
| Number of cases       | 384             |             | 831                         |             | 788            |             | 240                        |             | 112                    |             |
| Adjusted $R^2$        | .724            |             | .830                        |             | .792           |             | .847                       |             | .868                   |             |

Note: Models include all variables listed in Table 1. Standard errors appear in parentheses.

\*Not significant at  $p < .05$ .

**Table 5: The Effect of Prior Offense Variables on Sentencing Decisions by Sex and Drug Offenses**

|                       | <i>Rape</i>     |             | <i>Other Sex Offenses</i> |             | <i>Drug Offenses</i> |             |
|-----------------------|-----------------|-------------|---------------------------|-------------|----------------------|-------------|
|                       | b               | <i>Beta</i> | b                         | <i>Beta</i> | b                    | <i>Beta</i> |
| Counts                | 41.429 (3.301)  | .336        | 17.548 (1.840)            | .190        | 3.594 (.526)         | .066        |
| Weapon involved       | 87.534 (15.392) | .138        | —                         |             | 13.855 (1.219)       | .129        |
| Offense seriousness   | 13.681 (.863)   | .404        | 18.967 (.601)             | .576        | 5.430 (.085)         | .629        |
| Score                 | 11.572 (1.258)  | .339        | 10.786 (.601)             | .484        | 5.984 (.108)         | .562        |
| Prior strike offenses | .079* (4.191)   | .001        | -1.385* (1.785)           | -.018       | -3.601 (.841)        | -.047       |
| Guilty plea           | -13.426 (5.085) | -.065       | -10.309 (2.384)           | -.071       | -7.690 (.770)        | -.094       |
| Number of cases       | 502             |             | 1,271                     |             | 2,394                |             |
| Adjusted $R^2$        | .725            |             | .670                      |             | .807                 |             |

Note: Models include all variables listed in Table 1. Standard errors appear in parentheses.

\*Not significant at  $p < .05$ .

significantly increased sentence length, prior strikes in record only served to lessen the imposed sanction.

## SUMMARY AND DISCUSSION

Sentencing literature has documented the importance of measuring the interactive effects between legal and extralegal factors. Interestingly, the implementation of enhanced sentencing schemes has resulted in minimal research that focuses on how divergent forms of criminal history record directly and indirectly impact sentencing decisions. This study set out to examine the relationship between specific dimensions of prior record and the sentencing process of offenders who have been sentenced under Washington's Habitual Offender Act. Data from the Washington State Sentencing Guidelines Commission were used to examine how criminal record and prior strike offenses impact sentencing decisions in person, property, sex, and drug cases.

Findings on the direct effects of legal variables show that judges impose more severe sentences to offenders convicted of strike offenses such as murder/manslaughter, assault, and sex offenses. However, judges sentenced offenders convicted of less serious offenses just as severely. In fact, drug offenders who have been the target of increased penalties received

longer sentences than offenders sentenced for robbery. Findings also reveal that certain strike offenses receive less severe sanctions. In particular, offenders convicted of burglary received shorter sentences than robbery offenders. Findings on prior record indicate that judges impose lengthier sentences to offenders with more serious criminal histories. In fact, the effect of offender score is greater than the effect of prior strikes in the examined analyses. To fully assess the relationship between legal variables and sentence length, separate multivariate analyses were conducted to capture possible interactive effects between prior record variables and offense type.

Indirect effects of criminal history record and offense type show that in cases involving person offenses, both offender score and prior strikes influence sentence length. Specifically, offender score increased sentences in murder/manslaughter, robbery, and Assaults 1, 2, and 3 cases. The more serious measure of criminal record (i.e., prior strikes) increased sentence length in only robbery and Assaults 1 and 2 cases. In minor assault cases (i.e., Assault 3), prior strikes actually reduced sentence length. Analyses of property and sex offenses indicate that judges impose more severe sentences to those offenders with extensive criminal histories. Although the number of strikes in criminal record had no significant effect on the sentence length of property and sex offenders, prior strikes reduced sentence lengths in drug cases.

These findings clearly demonstrate the importance of capturing how legal variables impact the sentencing process of offenders sentenced under persistent offender laws. The incapacitation of offenders is based on the assumption that judges will impose sentences as laws prescribe. This study has shown that offense type, offense seriousness, criminal record, and prior strikes interact to produce varying sentencing decisions. Prior literature that has addressed the multiple operationalization of criminal history record (see Crawford, 2000; Engen & Gainey, 2000; Moore & Miethe, 1986; Roberts, 1997; Ulmer, 2000; Welch et al., 1984) has enhanced our understanding of legal variables and the impact they have on sentencing outcomes. Results from this study indicate that criminal history variables impact sentence length of serious and less serious offenses in different ways.

Attempts to use legal indicators to measure sentence length should use caution when only assessing direct effects. Findings here show differences in sentence length not only between but also within offense types. Although prior strike offenses increase sentence length in robbery and Assaults 1 and 2 cases, strikes reduce sentence length in minor assault cases (i.e., Assault 3). These findings illustrate how prior strike offenses in offenders' record increase sentence length in more serious offenses and decrease sentence

length in less serious cases. Contrary to the findings in the additive model, interactive effects show that strikes actually decrease sentence length in both minor assaults and drug cases. These findings would have remained unidentified had only main effects been explored. Sentencing outcomes from this habitual offender law clearly indicate that only offenders sentenced for certain serious person offenses will be penalized for having existing prior strike offenses in their criminal record.

Findings on burglary cases highlight the importance of examining legal criteria more closely. Given the varying levels of support for three strikes legislation across jurisdictions (Austin et al., 1999; Zimring et al., 2001), counties implement and respond to sentencing criteria in different ways. Although sentencing research has shown that property offenses, specifically burglary cases, disproportionately impact certain offenders (e.g., African Americans), findings here show that prior strikes directly reduced sentence lengths in burglary cases. This effect, however, disappeared once offense-specific analyses were conducted. These findings stress the importance of continuing to model and also explore whether such findings vary across local jurisdictions.

A continual examination of other offense characteristics is also important given that weapon use significantly increased sentence length in all examined offenses. Washington State, like other states, has a sentence enhancement provision for offenders who commit a felony offense with a deadly weapon. Although data in this study did not contain information on whether a deadly weapon enhancement was imposed, cases involving a weapon were sanctioned far more severely. In fact, the sentences of offenders who used a weapon and had extensive prior records were considerably lengthy. Thus, laws created to deal more harshly with repeat offenders and offenses-specific characteristics both significantly influence sentencing outcomes.

Although prior research has documented the extent to which racial/ethnic variables influence the sentencing process even when controlling for legal variables (Crawford, 2000; Spohn & Cederblom, 1991; Spohn & Holleran, 2000; Steffensmeier et al., 1998; Zimring et al., 2001), findings from this study indicate the need to explore how specific dimensions of prior record interact with race/ethnic variables in sentencing decisions. Findings also reveal that offenders sentenced under Washington's habitual offender law received shorter sentences once they plead guilty. Consistent with prior research that shows how pleading guilty interacts directly and indirectly with offense and defendant characteristics (Albonetti, 1998; Peterson & Hagan, 1984), this study also found that the influence of



pleading guilty varies across offense types. Future research on the possible interactive effects between race/ethnicity, mode of disposition, and different dimensions of criminal history would expand current knowledge on sentencing outcomes of habitual offenders. Once again, analyses of specific jurisdictions may uncover unique working processes that differently affect legal and extralegal variables in sentencing decisions.

The results from these analyses call for additional research on the different components of criminal history record. Findings in this study show that sentence length decisions are influenced not only directly by criminal history record but also by the interaction between prior history and offense type. Interactive effects reveal that prior strikes increase sentence length in some cases (i.e., robbery, Assaults 1 and 2) while decreasing sentences in others (i.e., Assault 3 and drug). Future research in this area should not only recognize the variability of prior record indicators but also recognize the possible interactive effects between extralegal variables and case characteristics. Although this study has taken us closer to uncovering the impact that habitual offender laws have on the sentencing process, work still remains to more fully capture the influence that legal variables have on sentencing outcomes.

APPENDIX  
Correlation Matrix of Independent  
and Dependent Variables Examined

|                            | 1      | 2      | 3      | 4      | 5      | 6      | 7      | 8      | 9      | 10     | 11     | 12     | 13     | 14     | 15    | 16     | 17     | 18 |
|----------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|-------|--------|--------|----|
| 1. Age                     | 1      |        |        |        |        |        |        |        |        |        |        |        |        |        |       |        |        |    |
| 2. Sex                     | -0.011 | 1      |        |        |        |        |        |        |        |        |        |        |        |        |       |        |        |    |
| 3. African<br>American     | -0.015 | -0.054 | 1      |        |        |        |        |        |        |        |        |        |        |        |       |        |        |    |
| 4. Asian<br>Native         | -0.062 | 0.019  | -0.090 | 1      |        |        |        |        |        |        |        |        |        |        |       |        |        |    |
| 5. Native<br>American      | -0.012 | -0.038 | -0.101 | -0.026 | 1      |        |        |        |        |        |        |        |        |        |       |        |        |    |
| 6. Hispanic                | -0.055 | 0.044  | -0.151 | -0.039 | -0.043 | 1      |        |        |        |        |        |        |        |        |       |        |        |    |
| 7. YR_94                   | 0.0104 | 0.015  | 0.005  | 0.001  | 0.002  | -0.010 | 1      |        |        |        |        |        |        |        |       |        |        |    |
| 8. YR_95                   | -0.017 | 0.007  | 0.004  | 0.015  | 0.007  | -0.002 | -0.243 | 1      |        |        |        |        |        |        |       |        |        |    |
| 9. YR_96                   | 0.011  | -0.004 | 0.010  | 0.004  | -0.009 | 0.002  | -0.246 | -0.259 | 1      |        |        |        |        |        |       |        |        |    |
| 10. YR_97                  | 0.008  | -0.026 | -0.018 | -0.000 | 0.004  | 0.016  | -0.250 | -0.264 | -0.26  | 1      |        |        |        |        |       |        |        |    |
| 11. Counts                 | 0.000  | 0.026  | -0.031 | -0.011 | -0.011 | -0.026 | -0.008 | -0.003 | -0.000 | 0.024  | 1      |        |        |        |       |        |        |    |
| 12. Weapon                 | -0.051 | 0.017  | -0.009 | 0.065  | 0.000  | 0.021  | -0.009 | 0.003  | 0.014  | 0.004  | 0.046  | 1      |        |        |       |        |        |    |
| 13. Offense<br>seriousness | -0.009 | 0.020  | -0.046 | 0.050  | -0.001 | 0.028  | 0.030  | 0.004  | -0.006 | -0.049 | 0.037  | 0.121  | 1      |        |       |        |        |    |
| 14. Offender<br>score      | 0.072  | 0.057  | 0.112  | -0.072 | -0.027 | -0.089 | -0.024 | -0.001 | 0.001  | 0.035  | 0.326  | -0.048 | -0.130 | 1      |       |        |        |    |
| 15. Strikes                | 0.044  | 0.062  | 0.118  | -0.060 | -0.016 | -0.076 | -0.013 | -0.005 | -0.000 | 0.016  | 0.058  | -0.096 | -0.247 | 0.528  | 1     |        |        |    |
| 16. Guilty plea            | -0.069 | -0.022 | -0.037 | -0.002 | 0.018  | 0.028  | 0.010  | -0.015 | -0.002 | 0.034  | -0.073 | -0.125 | -0.260 | -0.054 | 0.032 | 1      |        |    |
| 17. Hazard                 | 0.031  | -0.016 | -0.045 | -0.012 | -0.013 | -0.024 | -0.000 | 0.000  | -0.025 | -0.012 | -0.063 | -0.058 | -0.235 | -0.153 | 0.122 | 0.069  | 1      |    |
| 18. Sentence<br>term       | 0.014  | 0.044  | -0.011 | 0.026  | -0.014 | -0.021 | 0.010  | 0.007  | 0.003  | -0.011 | 0.192  | 0.1543 | 0.688  | 0.231  | 0.045 | -0.304 | -0.108 | 1  |

123 Note: Correlation matrix does not contain the 11 dummy offense variables. Matrix of all independent and dependent variables available upon request.

## NOTES

1. States with three strikes laws include Arkansas, California, Colorado, Connecticut, Florida, Georgia, Indiana, Kansas, Louisiana, Maryland, Montana, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wisconsin (Clark, Austin, & Henry, 1998; U.S. Department of Justice, 1997a).

2. Class A felonies in Washington include aggravated first degree murder; first degree arson; first degree assault; first degree assault of a child; first degree bail jumping with murder; first degree burglary; first degree child molestation; damaging a building or facility by explosion with threat to people; creating, delivering, or possessing a counterfeit controlled substance; manufacturing, delivering, or possessing, with intent to deliver, narcotics; endangering life and property with threat to people; possession of explosive devices; homicide by abuse; first degree kidnapping; leading organized crime; first degree murder; second degree murder; delivery by someone over 18 of a schedule one or schedule two narcotic to someone under 18; possession of incendiary device; first degree rape of a child; second degree rape of a child; first degree robbery; setting a spring gun; treason; use of a machine gun in a felony {Revised Code of Washington 9.94A (21)}. Initiative 593 specifically lists as "most serious offenses" the following: second degree assault; second degree assault of a child; second degree child molestation; controlled substance homicide; first degree extortion; first degree incest; indecent liberties; second degree kidnapping; leading organized crime; first degree manslaughter; second degree manslaughter; first degree promoting prostitution; third degree rape; second degree robbery; sexual exploitation; vehicular assault; and vehicular homicide while under the influence of alcohol or drugs, or reckless operation of a vehicle (Revised Code of Washington 9.94A).

3. For a review of the State of Washington Sentencing Guidelines Commission, please see Engen and Gainey (2000).

4. As reported in Engen and Gainey (2000), data from the Washington State Sentencing Guidelines Commission do not classify which sentences are sentencing decision or pretrial time-served decisions. Because these analyses contain a far more serious felony offender sample (offenders convicted of strike offenses or who had at least one strike in their criminal history) than that used by Engen and Gainey, 96% of the sample received sentence lengths of 30 days or more.

5. Correlation matrix of all variables included in the analyses is presented in the appendix.

6. Results from full models are available upon request.

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