

Washington prison system may lead effort to cut inmate population, amid COVID-19 and protests over racial injustice

Sep. 17, 2020 at 6:00 am Updated Sep. 17, 2020 at 11:04 am

By [Nina Shapiro](#)

Seattle Times

Twyla Kill is not used to agreeing with the state prison system. Her husband, serving time at the Monroe Correctional Complex, [sued the state](#) seeking the release of inmates due to COVID-19. She picketed outside the prison.

But she found herself shocked, in a good way, when she saw what the Department of Corrections (DOC) is proposing to save money as the pandemic eats into the state budget.

Needing to show the governor how it could cut 15%, the department [drafted a strategy](#) that had Kill from the first line. "There must be a significant and permanent reduction in prison population," it read. *Permanent*, Kill stressed.

The state's prison system now appears ready to lead the type of changes supported for years by activists and some legislators to counter [increasingly long sentences](#), startling racial disproportionality and what is often termed mass incarceration. While the state's incarceration rate has dipped roughly 9% over the last decade, and is lower than the national average, it is still more than double what it was in 1980.

Washington's incarceration rate

The state's incarceration rate has dipped roughly 9% over the last decade but is still more than double what it was in 1980. The incarceration rate is calculated as the number of state prison inmates per 1,000 residents in Washington.



Source: Washington State Institute for Public Policy

MARK NOWLIN / THE SEATTLE TIMES

This is not the first time DOC, facing a grim budget, has proposed reducing the prison population, and DOC Secretary Stephen Sinclair said the agency has been on the path to reform for the last few years.

But the agency's latest strategy would go further than ever, by recommending bills to the Legislature — from minimizing prison time for some nonviolent offenders to increasing time off for good behavior to bringing back a version of parole, a highly controversial issue that pits the potential for redemption against demands for truth in sentencing.

The changes would shrink the prison population in the next fiscal year by about 30%, according to a letter last week from Sinclair to the Office of Financial Management.

"What used to be an adversary is now an ally," said Gerald Hankerson, president of the NAACP's Alaska-Oregon-Washington State Conference, who has had several conversations with Sinclair over the last month.

This turnabout reflects the way the year's momentous events — COVID-19, its devastating effect on the economy and government budgets, and protests over racial injustice — have come together. The protests, in particular, have thrown a searing spotlight on inequities in the criminal justice system. While most of the attention has been focused on policing so far, it is beginning to spill over to the back end of the system.

"I think this is a transformational moment in our overall movement," said Tarra Simmons, a lawyer and director of the [Civil Survival Project](#), which advocates for previously incarcerated people.

But headwinds are also apparent as President Donald Trump makes law and order a centerpiece of his reelection campaign, highlighting a violent crime spike in cities across the country and chaotic clashes during protests in Portland, Seattle and elsewhere. Washington has been a leader in tough-on-crime policies, enacting the country's first three-strikes law, and recent events have heightened concern about public safety.

The DOC proposals, still in the early stages, may depend on changing budget realities and must find support from Gov. Jay Inslee and legislators before becoming real bills. They come as other big efforts are underway, such as the work of a [Criminal Sentencing Task Force](#) that co-chair Roger Goodman, a Democratic state representative from Kirkland, describes as a "top-to-bottom" review of the system.

To some extent, the state has been forced to shrink the prison population. In April, as inmates sued over danger from the novel coronavirus, the state [Supreme Court ordered](#) DOC to take "all necessary steps" to protect those in their custody. The state [released](#) 1,016 prisoners nearing the end of their sentences.

Meanwhile, the economy spiraled. “Obviously, we’re heading into one of the toughest economic times any of us have ever seen,” Sinclair said.

The state is hoping federal aid may lessen the impact. But Inslee still put agencies on notice to plan for substantial cuts. DOC would have to find more than \$160 million a year in savings.

Inslee gave additional direction to agencies, the DOC secretary recalled: Make cuts with an eye toward racial equity, diversity and inclusion.

“One of the challenges for the Department of Corrections is that we don’t arrest people; we don’t sentence people,” Sinclair said. “We don’t pick who comes to us.”

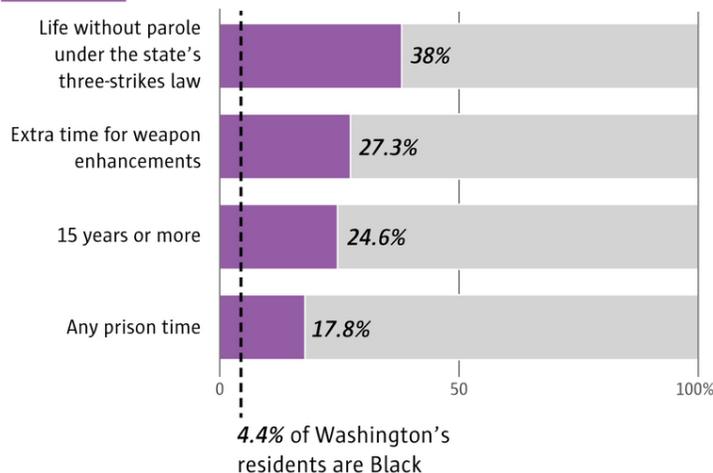
Still, Sinclair, a DOC veteran who has headed the agency since 2017, said staffers dived into a deep demographic analysis. “I got to tell you, it’s kind of exciting.” Sinclair said. What the analysis revealed, he said, is “how skewed some of these things are.”

Black people constitute [4% of Washington’s population](#) but nearly [18% of the state’s roughly 16,000 inmates](#), 25% of those serving 15 years or more (and also those serving life without parole), and 27% of prisoners given extra time for so-called weapon enhancements.

Percentage of Black prisoners serving time by type of sentence

Black people constitute about 4% of Washington’s population, but make up a much higher share of the prison population and those serving long sentences.

Black inmates serving:



Sources: Department of Corrections, U.S. census

EMILY M. ENG / THE SEATTLE TIMES

As a result of a [1995 initiative](#) known as Hard Time for Armed Crime, individuals receive between six months and 10 years for each enhancement if a crime was committed with a gun or other weapon, and multiple enhancements are stacked onto each other.

“Clearly excessive” sentences have resulted, said Goodman, the Kirkland legislator, recalling one man who was sentenced to [more than 80 years](#) on weapons charges alone. The sentencing task force he co-chairs, whose members [include](#) Sinclair and both Democrats and Republicans, is looking at recommending that enhancements run concurrently. Goodman said he intends to introduce a bill to that effect in the next session.

A DOC budget proposal attacks the issue another way. It would allow inmates to use “earned time,” taken off a sentence for good behavior, on weapons enhancements, currently not allowed. The agency is also suggesting increasing the maximum amount of earned time on all sentences from 33% to 50%.

Also on DOC’s list: expanding [a program](#) that allows people to serve the final 150 days of their sentence on electronic home monitoring, and minimizing prison time for nonviolent property offenses.

Then, there is the department’s suggestion for what is often called “second-chance” legislation. Unlike most states, Washington does not have parole, eliminated in the 1980s as tough-on-crime policies took hold and the state moved to [standardize sentences](#).

There have been varying versions of second-chance bills over the years. All have failed. DOC, which most recently remained neutral on such legislation, is now suggesting people who have served 15 years or more should be allowed to petition the [Indeterminate Sentencing Review Board](#). An arm of DOC, the board considers early release for the small number of prisoners now eligible, including adults who committed crimes before July 1984.

The cost savings of a second-chance law would be small, according to DOC administrators, who estimate just over 100 people a year would be released. But Sinclair said, “We know it’s important to the community.”

A broader base of people are calling for reform amid Black Lives Matter protests, he added, and the Legislature is likely to be more receptive.

The NAACP’s Hankerson agrees, and sees DOC backing as key. “It changes the scope of what we should be able to do legislatively,” he said.

Hankerson said he is especially pleased by the second-chance provision. Though he takes issue with the details, saying he prefers a “community board” rather than one overseen by the department, he said the proposal recognizes that “people have earned the right to be home.”

It's a notion that is central to his life. In 2009, then-Gov. Christine Gregoire [granted Hankerson clemency](#). He had then served 22 years of a life sentence in connection with a killing he said he played no willing part in, and became a leader in prison groups seeking to improve their surroundings and the outside world, the Concerned Lifers Organization and the Black Prisoners' Caucus.

Simmons also has lived the experiences she works on. After time in prison on charges including theft and drug possession, she graduated from law school and [fought to take the bar](#). The Bremerton resident now hopes to influence criminal justice legislation directly, [running for a House seat](#) in the 23rd District as a Democrat.

DOC weighing in "gives us more power, for sure," she said.

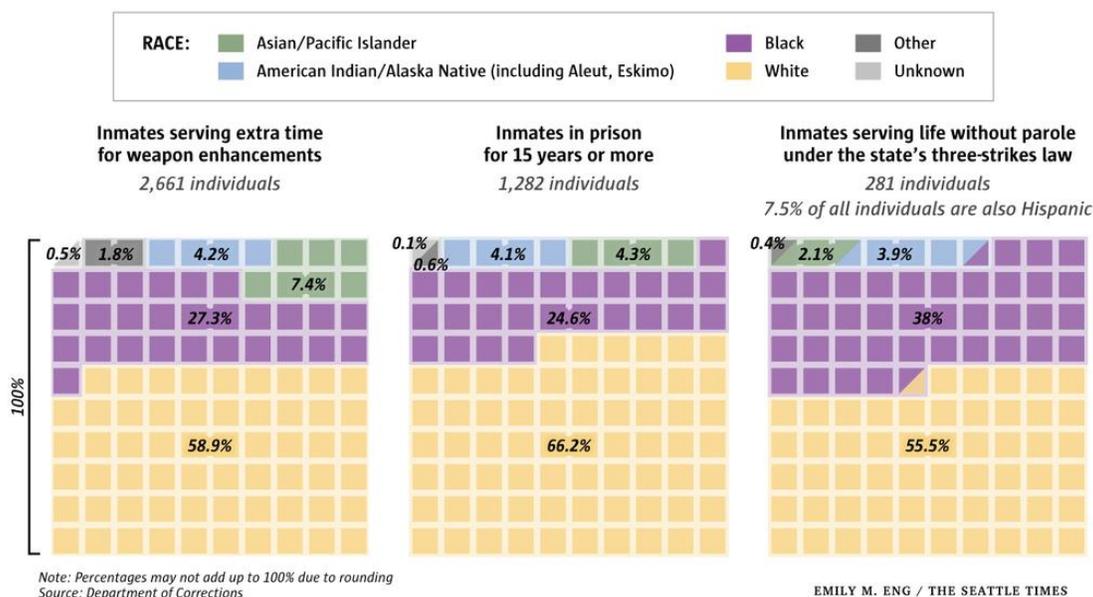
Longtime lawmakers are more measured. A large contingent of people opposes any legislation that would change sentences retroactively, said Sen. Jeannie Darneille, a Tacoma Democrat.

Case in point: In 2019, Darneille sponsored a bill to remove second-degree robbery from the list of offenses deemed a "strike" under the state's "three-strikes" law, which mandates life in prison without parole for people convicted repeatedly of certain offenses. Second-degree robbery is generally defined as not involving a deadly weapon or significant injury.

Passed by initiative in 1993, the law has brought especially glaring racial disproportionality. Of 281 people serving three-strikes sentences, according to DOC, 38% are Black — roughly nine times the percentage of Black people in Washington.

Racial makeup of inmates serving different types of sentences

The Department of Corrections conducted a newly detailed analysis of the race of prisoners by different types of sentences, and found striking disproportionality.



Darneille's bill passed — but only after she agreed it [wouldn't be retroactive](#), leaving 64 inmates with a second-degree robbery strike in prison for life, according to a [legislative report](#). "It was a bitter pill to have to take," Darneille said. She said she will keep trying to make it retroactive.

But John Carlson, the conservative talk-radio host and sponsor of the three-strikes initiative, warned that any more tinkering with the law might cause him to run a new initiative that would not only restore robbery two but add *more* crimes as strikes.

"The mood is definitely out there," Carlson said.

Increasing violent crime, exemplified by a more than 40% increase in [Seattle's homicide rate](#), has people worried about public safety and a "broken criminal justice system," he said.

If the government can't assure public safety, added Sen. Mike Padden of Spokane Valley, you will see "people taking that into their own hands" — in other words, he clarified, "vigilantism." He said he wasn't alluding to any specific recent event, but his remarks evoked a chilling aspect of clashes between racial-justice protesters and counter-protesters.

Padden, the top Republican on the Senate Law and Justice Committee, hadn't seen the DOC budget proposals, but expressed skepticism about reducing sentences. "How far do you go down this road?" he asked, referring to the 1,000 released because of the pandemic.

Of that total, [288 were incarcerated again](#) as of Sept. 8, at least temporarily, almost all due violations of release conditions such as drug use or unauthorized visitors in their housing, according to DOC. Five are facing new felony charges.

Republicans aren't the only ones worried about safety. Sen. Manka Dhingra, a Redmond Democrat who is a King County prosecutor on leave and leading proponent of sentencing reform, calls for careful reentry plans when people are released from prison, including notifying domestic violence victims.

And DOC qualifies all its proposals by saying, in its budget strategy, that they "are not sustainable and create community risk" unless coupled with more spending on supporting people who are released, in order to reduce recidivism. Administrators say they are seeking to reinvest \$48 million of savings over the next two years to help them move post-release supervision to a "coaching" model, rather than one simply tasked with monitoring and applying sanctions.

That model "makes a lot of sense to us," said Russell Brown, executive director of the Washington Association of Prosecuting Attorneys, an important player in criminal justice debates. The plans for beefing up reentry is one of the things he said his association will be watching closely as this season of proposed reforms gets underway.



Twyla Kill's husband sued the Monroe Correctional Complex, seen here, in March, seeking the release of inmates as a way to stem the spread of COVID-19. She found herself shocked, in a good way, when she saw what the Department of Corrections is proposing to save money as the pandemic eats into the state budget: "a significant and permanent reduction in prison population." (Mike Siegel / The Seattle Times)



Visitors have their temperatures checked before entering the Monroe Correctional Complex. Inmates at the prison and their families raised alarm this spring after some inmates tested positive for COVID-19. The virus, its devastating effect on the economy and government budgets, and protests over racial injustice have come together, with the state's prison system now appearing ready to lead the type of changes supported for years by activists and some legislators. (Mike Siegel / The Seattle Times)



Twyla Kill, whose husband sued Washington state, seeking the release of prisoners to stem the spread of the coronavirus, says she was shocked to see the state Department of Corrections wants to permanently reduce the prison population. (Courtesy of Twyla Kill)



Twyla Kill's husband, serving time at the Monroe Correctional Complex, seen here, sued the state in March seeking the release of inmates due to COVID-19. She picketed the prison. (Steve Ringman / The Seattle Times)



Gerald Hankerson, president of the NAACP's Alaska, Oregon and Washington State Conference, says the state prison system has turned from an adversary to an ally. (Ellen M. Banner / The Seattle Times)



Tarra Simmons, a legislative candidate and head of an organization advocating for people who have been in prison, believes the Department of Correction's proposals will add power to reform efforts. (Mike Siegel / The Seattle Times)



State Department of Corrections Secretary Stephen Sinclair says a new look at racial demographics among prisoners made the agency realize “how skewed some of these things are.” (Courtesy of State Department of Corrections)