

drafted now, with the assistance of Judiciary Committee staff which would say if you are going to do this in this portion of the new law, then the only way that motor vehicular homicide could be a basis for invoking this 25-year minimum sentence is that two of those felonies would have to be motor vehicular homicide, not just another crime of violence, but motor vehicular homicide. Then if you have the kind of person that Senator Crosby mentioned, who has done this before and has...and does it again, then whatever the third felony is, that person is subject to this new language, if you adopt it, but I have to try to make something clear here, if I can. I am opposed to changing the habitual criminal statute at all. I am opposed to putting the mandatory 10-year sentence. I am opposed to the part that will create a mandatory 25-year sentence. I was talking to Senator Brashear, and because he is a lawyer and some of these points are technical, and I had made the observation to him, and if anybody is aware of my observation not being correct, I'd like them to bring it forth, when a prosecutor does charge a person with being an habitual criminal, and the person is convicted of the underlying third felony that justifies that charge being brought, there is no judge where that has happened who has been deemed soft in the imposition of a penalty under the habitual criminal statute. There is no need to do this. It is a political maneuver. It takes away all discretion of a judge. Right now if a prosecutor were vindictive, if a prosecutor were going to behave in a discriminatory manner, he could bring the criminal, the habitual charge against a black person who committed three felonies, none of which is violent, but he wouldn't have to bring it against the white person who committed three violent felonies. The way the law is now a judge could take that into consideration, and even if the person would wind up being convicted of the third felony and the habitual criminal statute applied, he wouldn't, or she wouldn't have to impose this harsh sentence that the Governor's bill is trying to put in place. You take away the discretion of the judge to correct by means of a sentence improprieties by a prosecutor. By bringing the charge and levying or charging the person with being a habitual criminal is not a violation of the prosecutor's discretion, but you could check and see if in applying this discretion the prosecutor is unfair, the power of the judge to sentence can correct and remove some of those unfairnesses. So I really am opposed to all of these amendments to the habitual criminal statute because there has been no showing by anybody that any of them is necessary.