No. S262229

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

JEREMIAH IRA WILLIAMS,
Defendant and Appellant.

Fourth Appellate District, Division One, Case No. D074098
San Diego County Superior Court, Case No. SCD268493
The Honorable Kenneth So, Judge

ANSWER BRIEF ON THE MERITS

ROB BONTA (SBN 202668)
Attorney General of California
MICHAEL J. MONGAN (SBN 250374)
Solicitor General
LANCE E. WINTERS (SBN 162357)
Chief Assistant Attorney General
JULIE L. GARLAND (SBN 179657)
Senior Assistant Attorney General
*JOSHUA PATASHNIK (SBN 295120)
Deputy Solicitor General
STEVE OETTING (SBN 142868)
Deputy Attorney General

455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
(415) 510-3896
Josh.Patashnik@doj.ca.gov
Attorneys for Plaintiff and Respondent the People of the State of California

May 19, 2021

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

CONSTITUTIONAL PROVISIONS

COURT RULES

TABLE OF AUTHORITIES
(continued)

Page

OTHER AUTHORITIES

INTRODUCTION

Petitioner Jeremiah Williams is statutorily ineligible for a parole hearing under the "youth offender" parole regime. His convictions—for brutal sexual assaults of two women when he was 24 years old—are subject to a statutory exclusion for offenders who were sentenced under California's One Strike law, which applies to certain aggravated and repeat sex offenses. Williams contends that the Legislature violated his equal protection rights by enacting that exclusion without also categorically excluding all first-degree murderers from the youth offender parole regime.

The treatment of sex offenders in our criminal justice system is a complex subject, worthy of focused attention by the political branches of government. But the analysis of Williams's equal protection claim is straightforward: Because the claim does not involve a suspect classification or implicate a fundamental right, the law is constitutional so long as there is any rational basis for the Legislature to treat the two categories of offenders differently. The Legislature has repeatedly expressed concern that sex offenders pose a greater risk of recidivism than other categories of offenders. Under the rational basis test, the Legislature could permissibly conclude that one-strike offenders like Williams should be ineligible for youth offender parole hearings because of that concern about recidivism and the severity of one-strike offenders' particular sex offenses. That conclusion may be debatable as a matter of policy, but it does not offend the Equal Protection Clause.

LEGAL BACKGROUND

A. Youth offender parole

The "youth offender" parole regime makes parole hearings available to certain offenders who would not otherwise be eligible for parole until later in their sentences, if at all. (Pen. Code, § 3051.)[1] As initially enacted in 2013, the regime applied only to offenders who were under 18 years old at the time they committed their crimes. (Stats. 2013, ch. 312, § 4.)[2] The Legislature later expanded the category of "youth offenders," first to include adult offenders who were under 23 when they committed their crimes (Stats. 2015, ch. 471, § 1), then to include those who were under 26 at the time of their crimes (Stats. 2017, ch. 675, § 1).

The timing of a parole hearing under section 3051 depends on the length of an offender's sentence. Those serving an indeterminate term of 25 years to life or a term of life without parole receive a hearing after 25 years. (§ 3051, subds. (b)(3), (b)(4).) Those serving an indeterminate term shorter than 25 years to life receive a hearing after 20 years. (*Id.*, subd. (b)(2).) And those serving a determinate term receive a hearing after 15 years. (*Id.*, subd. (b)(1).)

---

[1] Except as otherwise noted, all statutory references are to the Penal Code.

[2] The Legislature acted partly in response to precedent imposing constitutional limits on the lengthy incarceration of juvenile offenders without an opportunity for parole consideration. (See *Miller v. Alabama* (2012) 567 U.S. 460; *Graham v. Florida* (2010) 560 U.S. 48.)

The hearing "shall provide for a meaningful opportunity to obtain release." (§ 3051, subd. (e).) In particular, the Board of Parole Hearings must "give great weight to the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law." (*Id.* § 4801, subd. (c); see *id.* § 3051, subd. (d)).

But the Legislature directed that certain classes of offenders are not eligible for the youth offender parole regime: (1) repeat offenders sentenced under the Three Strikes law (§ 3051, subd. (h), citing §§ 1170.12 and 667, subds. (b)-(*i*)); (2) offenders convicted of a sex crime and sentenced under the One Strike law (*ibid.*, citing § 667.61); (3) offenders "sentenced to life in prison without the possibility of parole for a controlling offense that was committed after the person had attained 18 years of age" (*ibid.*); and (4) any offender "who, subsequent to attaining 26 years of age, commits an additional crime for which malice aforethought is a necessary element of the crime or for which the individual is sentenced to life in prison" (*ibid.*).

B. The One Strike law

This case presents the question whether the exclusion of individuals sentenced under the One Strike law, section 667.61, violates the Equal Protection Clause of the Fourteenth Amendment. The Legislature enacted section 667.61 in 1994 to "ensure[]" that certain "serious sexual offenders receive long prison sentences whether or not they have any prior convictions." (*People v. Wutzke* (2002) 28 Cal.4th 923, 929.) The Legislature

acted based on its concern, reflected in "a general statement of purpose in the legislative history," that "the targeted group preys on women and children, cannot be cured of its aberrant impulses, and must be separated from society to prevent reoffense." (*Id.* at pp. 929-930, citing Sen. Com. on Judiciary, Analysis of Sen. Bill No. 26 [1993-1994 1st Ex. Sess.], as introduced Feb. 2, 1994, pp. 9-10.)

Section 667.61 identifies nine serious sex offenses—including rape, spousal rape, sodomy, oral copulation, and continuous sexual abuse of a child—that are potentially eligible for enhanced sentences. (§ 667.61, subd. (c).) But not all individuals convicted of those offenses are subject to the enhanced sentences. Subdivisions (d) and (e) list specific circumstances that may trigger eligibility for one-strike sentencing. Those circumstances generally "reflect the use of violent or predatory means that increase the victim's 'vulnerability.'" (*Wutzke*, *supra*, 28 Cal.4th at p. 930.) They include, for example, that the defendant committed the offense "during the commission of a burglary of the first degree"; "personally inflicted great bodily injury on the victim or another person"; or "personally inflicted bodily harm on the victim who was under 14 years of age." (§ 667.61, subds. (d)(4), (d)(6), (d)(7).) In addition, any offender convicted of one of the nine enumerated offenses for a second or subsequent time is subject to an enhanced sentence without regard to the particular circumstances that trigger the statute's application for first-time offenders. (§ 667.61, subd. (d)(1).)

The length of an offender's enhanced sentence under section 667.61 depends on which of the circumstances in subdivisions (d) and (e) apply to the offense. In general, offenders must be sentenced to 25 years to life for an enumerated offense committed "under one or more of the circumstances specified in subdivision (d) or under two or more of the circumstances specified in subdivision (e)," and to 15 years to life for an offense committed "under one of the circumstances specified in subdivision (e)." (§ 667.61, subds. (a), (b).)[3] Certain offenders who were over 18 when they committed their crimes and whose victims were under 14 must be sentenced to life without the possibility of parole. (See *id.*, subds. (a), (b), (j), (*l*), (n).)

STATEMENT OF THE CASE

A. Factual background

1. Rape and robbery of Jane Doe No. 1

Around 10 p.m. on August 13, 2016, Jane Doe No. 1 was returning to her apartment complex in San Diego. (5 RT 786, 788-789.) As she walked toward her apartment, she noticed a man standing about 50 yards behind her. (5 RT 797.) Later, Jane Doe No. 1 identified the man as appellant Jeremiah

[3] A one-strike offender sentenced to 15 years to life will be eligible for parole consideration directly under the One Strike law sooner than he or she would be eligible under the youth offender parole scheme. (Compare § 667.61, subd. (b), with § 3051, subd. (b)(2) [youth offender parole eligibility beginning during 20th year of incarceration].) This category of offenders thus will not be affected by the outcome of this case.

Williams and DNA evidence connected him to the crime scene. (See *post*, p. 18.)

Williams asked Jane Doe No. 1 if she needed any help carrying the items in her hands; she told him she could manage fine. (5 RT 797.) When she reached her apartment, Jane Doe No. 1 turned and saw Williams at the other end of her hallway. (5 RT 800.) She approached him, asked him if he needed assistance, directed him to a site map, and then returned to unlock her apartment door. (5 RT 804-806.) Before she could get her door open, Williams attacked her and knocked her to the ground. (5 RT 806-807.) He ordered her not to scream, pointed a gun at her head, and demanded money and her necklace. (5 RT 807-809.) Because she did not have cash, she offered to take him to an ATM machine. (5 RT 808.) He told her that he did not want to kill her, but he would if he had to. (5 RT 818.)

Williams then ordered Jane Doe No. 1 into her apartment. (5 RT 818.) Reluctant to comply, she repeated that she would take him to an ATM. (*Ibid.*) He strangled her and again ordered her to go inside the apartment, which she did. (5 RT 818-820.) When they entered the living room, he grabbed her by the neck and began choking her. (5 RT 822.) He once again demanded money, and she gave him around $300. (5 RT 823, 825.) He warned her that if she called the police, he would come back and kill her. (5 RT 825.) He began punching her in the face, and then dragged her into the bedroom. (5 RT 826-828, 830.) There, he digitally penetrated her multiple times, forced her to orally copulate him, and then vaginally raped her. (5 RT 833-839.)

Williams then ordered Jane Doe No. 1 into the bathroom. (5 RT 840.) He demanded that she give him more valuables. (5 RT 840-841.) Afraid that he intended to kill her, she gave him a pair of earrings. (*Ibid.*) He ordered her into the bathtub, where he washed her off with a washcloth and closed the shower curtain. (5 RT 841-844.)

Uncertain whether Williams was still in the apartment, Jane Doe No. 1 waited in the shower for about half an hour. (5 RT 845.) When she was certain he had left, she emerged and discovered that he had taken her laptop and phone. (5 RT 844.) She contacted a neighbor, who drove her to the hospital. (5 RT 847.)

As a result of the attack, Jane Doe No. 1 suffered a fractured jaw that never properly healed, causing the left side of her face to be lower than the right. (5 RT 850-851.) She had bruising on her face that lasted six months and was unable to walk for a week. (5 RT 850.)

2. Assault of Jane Doe No. 2

Jane Doe No. 2 advertised her services as a sex worker on Backpage.com, which led her to meet Williams at a motel in Mission Valley on the evening of August 14, 2016 (7 RT 1215-1221, 1224)—one day after the rape and robbery of Jane Doe No. 1. When Williams arrived, an argument ensued, and he started choking Jane Doe No. 2, asking her whether she wanted to die. (7 RT 1228.) She begged for her life, but he continued choking her; she was convinced he was going to kill her. (*Ibid.*)

At some point, Jane Doe No. 2 lost consciousness. (7 RT 1236.) She testified that when she regained consciousness, she was bent over and Williams was sodomizing her. (*Ibid*.) She screamed and tried to fight back, but he once again began choking her and also punched her in the head. (7 RT 1238.) She again lost consciousness. (7 RT 1239.) After she regained consciousness, she began to scream again, and Williams told her to shut up or else he would shoot her. (7 RT 1239-1240.) He hit her on the head with a gun, opening a deep wound. (6 RT 1122; 7 RT 1255-1256.) A motel guest who heard the screams and looked through the window saw Williams strike Jane Doe No. 2 with enough force to send her flying across the room. (6 RT 1083.)

Completely naked, Jane Doe No. 2 ran to the window and broke it with her bare hands. (6 RT 1086; 7 RT 1245.) With blood streaming down her face, she climbed out the window. (7 RT 1247.) Williams emerged from the room a short time later, also naked but holding a gun. (6 RT 1088.) He told the motel guest to mind his own business and then fled the scene. (6 RT 1090, 1095.)

Concerned she would get in trouble for prostitution, Jane Doe No. 2 did not want to report to the police what happened to her. (7 RT 1243, 1250.) She called a friend, who picked her up before the police arrived and took her back to his home. (7 RT 1248, 1251.) She had blood everywhere and was hysterical. (7 RT 1361.) She was in a great deal of pain. (7 RT 1254.)

When police arrived at the motel, they discovered blood throughout the room. (6 RT 1070, 1166, 1171, 1176.) Officers

detained Williams about a quarter of a mile away; he was wearing shorts, from which a gun protruded, and was sweating and covered in blood. (6 RT 1124-1125.)

When the pain did not subside after two days, Jane Doe No. 2 went to the hospital. (7 RT 1254.) Once there, she agreed to speak with the police and underwent a sexual assault examination. (7 RT 1264-1265.)

B. Procedural history

1. Trial court proceedings

Williams was charged in San Diego County Superior Court with first degree robbery (§§ 211, 212.5, subd. (a); count 1); four counts of making a criminal threat (§ 422; counts 2, 8, 9 & 11); two counts of forcible rape (§ 261, subd. (a)(2); counts 3 & 6); sexual penetration by use of force (§ 289, subd. (a); count 4); forcible oral copulation (§ 288a, subd. (c)(2)(A); count 5);[4] burglary of an inhabited dwelling (§§ 459, 460, subd. (a); count 7); sodomy by use of force, encompassing assault and battery as lesser included offenses (§§ 240, 242, 286, subd. (c)(2)(A); count 10); assault with a deadly weapon (§ 245, subd. (a)(1); count 12); and false imprisonment by violence (§§ 236, 237, subd. (a); count 13). Counts 1 through 8 pertained to Jane Doe No. 1; counts 9-13 pertained to Jane Doe No. 2. (3 CT 590-615.)

The evidence at trial showed that Williams's DNA was found on a comforter in Jane Doe No. 1's room. (10 RT 1948-1949,

---

[4] Section 288a was later renumbered as section 287. (Stats. 2018, ch. 423, § 49.)

1961, 1963-1965.) Jane Doe No. 1's jewelry box was located in a backpack in the motel room where the attack on Jane Doe No. 2 occurred. (5 RT 861-864; 6 RT 1165, 1178-1179.) Although Jane Doe No. 1 was unable to identify Williams in a lineup, she later identified him when she saw him in person at the preliminary hearing. (5 RT 838, 852-853; 12 RT 2311.) She also identified the type of shoes Williams was wearing; shoes matching that description were recovered from his residence. (5 RT 860; 6 RT 1179; 8 RT 1543.) Cell phone data revealed that Williams was in the vicinity of Jane Doe No. 1's apartment on the night of the attack. (9 RT 1714, 1720.)

Jane Doe No. 2 also identified Williams at the preliminary hearing. (12 RT 2311-2312.) Her DNA was found on Williams's handgun and body. (9 RT 1797-1810, 1812; 10 RT 2056.)

The jury convicted Williams on all counts except count 10, sodomy of Jane Doe No. 2 by use of force; as to that count, the jury convicted Williams of the lesser included offenses of assault and battery. (3 CT 590-615.) The jury also returned a number of enhancements and special findings. It found that Williams personally used a firearm within the meaning of section 12022.53, subdivision (b), to commit counts 1, 3, 4, 5, and 6; and that he personally used a firearm within the meaning of section 12022.5, subdivision (a), to commit counts 2, 7, and 11. (3 CT 590-607, 613.) In committing counts 3, 4, 5, and 6, Williams kidnapped Jane Doe No. 1; committed the offenses in the commission of a burglary; and inflicted great bodily injury within the meaning of section 667.61, subdivisions (a), (c), (d), and (e),

and 12022.8. (3 CT 592-606.) Another person (the victim) was present in the residence during the commission of the burglary. (§ 667.5, subd. (c)(21).)

The trial court sentenced Williams to a total term of 100 years to life plus 86 years and two months. It also imposed a variety of fines and fees, including restitution to the two victims. (14 RT 3222-3223.)

2. Appellate proceedings

The Fourth District Court of Appeal, Division One, affirmed the judgment in all respects. (Petition for Review, Exhibit [Opn.], p. 57.) As relevant here, the court rejected Williams's argument that the statutory provision excluding him from the youth offender parole regime, as a one-strike offender sentenced under section 667.61, violated the Equal Protection Clause. (*Id.* at pp. 45-54; see *ante*, pp. 10-13.) Williams was 24 years old when he committed the crimes; absent the statutory exclusion of one-strike offenders, he would be eligible for a youth offender parole hearing at a future date. (Opn., p. 47.)

The court explained that "[i]n order to succeed on his equal-protection claim, defendant initially must show that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner." (Opn., p. 47, citing *People v. Wilkinson* (2004) 33 Cal.4th 821, 836.) The court assumed without deciding that Williams had made such a showing by pointing to the fact that, in contrast to one-strike offenders, some offenders convicted of first-degree murder

remained eligible for youth offender parole consideration. (*Id.* at p. 48.)

Reviewing Williams's equal protection claim under the rational basis standard, the court noted that there was a division of authority. (Opn., pp. 48-52.) In *People v. Edwards* (2019) 34 Cal.App.5th 183, the First District held that "equal protection require[s] one-strike offenders to be afforded a youth offender parole hearing under section 3051, finding 'unconstitutional' the carve-out of such offenders in subdivision (h) of that statute." (Opn., pp. 48-49, quoting *Edwards*, *supra*, at p. 197.) In contrast, in *People v. Bell* (2016) 3 Cal.App.5th 865, the Second District held that "the 'threat of recidivism gives rise to a rational basis for the Legislature's decision to exclude one-strike offenders from section 3051.'" (Opn., p. 51, quoting *Bell*, *supra*, at p. 879.)[5] Since the decision below in this case, other courts of appeal have issued decisions on both sides of the conflict.[6]

---

[5] This Court granted review in *Bell* and transferred the case to the Second District for reconsideration in light of *People v. Contreras* (2018) 4 Cal.5th 349. (*People v. Bell* (2018) 234 Cal.Rptr.3d 74 [mem.].) Unlike in this case, the defendant in *Bell* was a juvenile at the time of his offense (*Bell*, *supra*, 3 Cal.App.5th at p. 868), so this Court's decision in *Contreras* regarding the Eighth Amendment constraints on lengthy sentences for juvenile offenders affected his case. (Opn., p. 50, fn. 18; see also *post*, pp. 38-41.) On remand, the court of appeal reversed the defendant's sentence and remanded the case for resentencing in light of *Contreras*. (*People v. Bell* (Aug. 2, 2018, No. B263022) 2018 WL 3655658, at *1.)

[6] In addition to *Bell* and the decision below, two other published opinions have concluded that the exclusion of one-

(continued…)

Here, the court of appeal held that the statute survives rational basis review. (Opn., pp. 52-54.) The court reasoned that "the threat of recidivism by violent sexual offenders—as demonstrated by the Legislature's enactment of several comprehensive statutory schemes to curb such recidivism among such offenders—provides a rational basis for the Legislature's decision to exclude one-strikers from the reach of section 3051." (Opn., pp. 53-54; accord *id.* at pp. 51-52, citing *Bell*, *supra*, 3 Cal.App.5th at pp. 878-880.) The court acknowledged that *Edwards* viewed this Court's decision in *People v. Contreras* (2018) 4 Cal.5th 349 as supporting the conclusion that the exclusion of one-strike offenders from the youth offender parole scheme violated equal protection. (Opn., p. 53.) But the court explained that "*Edwards*' reliance on *Contreras* [was] misplaced for two reasons." (*Ibid.*) First, *Contreras* involved an Eighth Amendment challenge rather than an equal protection claim.

(…continued)

strike offenders from youth offender parole consideration does not violate equal protection. (*People v. Moseley* (2021) 59 Cal.App.5th 1160, 1169-1170 [Second District, Division Two; currently pending in this Court as No. S267309]; *People v. Miranda* (2021) 62 Cal.App.5th 162, 276 Cal.Rptr.3d 503, 522-525 [Fourth District, Division Two].) In addition to *Edwards*, Division One of the Second District also held that the exclusion violates equal protection. (*In re Woods* (2021) 62 Cal.App.5th 740, 276 Cal.Rptr.3d 895, 900-908; but see *id.* at pp. 909-913 [dis. opn. of Bendix, J.].) Division Five of the First District reached the same conclusion in an unpublished opinion. (See *People v. Omar Williams* (Apr. 7, 2020, No. A157031) 2020 WL 1819763 [currently pending in this Court as No. S262191].)

(*Ibid.*) And second, "*Contreras* only addressed the constitutional implications of *juvenile* offenders" sentenced to lengthy terms of incarceration; it did not address offenders who committed their crimes as adults, like Williams. (*Ibid.*)

Ultimately, the court of appeal concluded that "[g]iven the deferential standard we apply in determining rationality for equal protection purposes, and given our view that the risk of recidivism provides a rational basis for the Legislature to treat violent felony sex offenders sentenced under the one strike law differently than murderers or others who commit serious crimes," Williams's equal protection claim lacked merit. (Opn., p. 54, citing *People v. Turnage* (2012) 55 Cal.4th 62, 74.)

This Court granted Williams's petition for review, limited to the following issue: "Does Penal Code section 3051, subdivision (h), violate the equal protection clause of the Fourteenth Amendment by excluding young adults convicted and sentenced for serious sex crimes under the One Strike law (Pen. Code, § 667.61) from youth offender parole consideration, while young adults convicted of first degree murder are entitled to such consideration?" (Order of July 22, 2020.)

ARGUMENT

I. THE LEGISLATURE'S EXCLUSION OF ONE-STRIKE OFFENDERS FROM THE YOUTH OFFENDER PAROLE SCHEME DOES NOT VIOLATE EQUAL PROTECTION

The only question before this Court is whether the Legislature violated the Equal Protection Clause by excluding one-strike offenders like Williams from youth offender parole consideration while not categorically excluding all young adults

convicted of first-degree murder. Because Williams's claim does not involve a suspect classification or implicate a fundamental right, that question is subject to rational basis review. Under that standard, the Legislature has broad discretion to define crimes and specify punishment; equal protection is satisfied so long as there is any plausible justification for the Legislature's classification. The State acknowledges that there is an ongoing and important policy debate over the proper treatment of sex offenders in our criminal justice system—including whether they pose a greater recidivism risk than other categories of offenders. However that debate is ultimately resolved, the answer to the legal question before this Court is straightforward: The Legislature has long expressed special concern about high rates of recidivism among sex offenders relative to other categories of offenders. And it could rationally rely on that concern, along with the particularly serious nature of one-strike sex offenses, as a basis for excluding one-strike offenders from consideration under the youth offender parole regime without categorically excluding all first-degree murderers.

A. Rational basis review applies to Williams's equal protection claim

The constitutional guarantee "of equal protection ensures that the government does not treat a group of people unequally without some justification." (*People v. Chatman* (2018) 4 Cal.5th 277, 288.)[7] "The extent of justification required to survive equal

[7] This Court's "precedent has not distinguished the state and federal guarantees of equal protection for claims arising from (continued…)

protection scrutiny in a specific context depends on the nature or effect of the classification at issue." (*Ibid.*) Where the government draws a distinction that is "based on a suspect classification such as race" or gender, or that "affect[s] a fundamental right," varying degrees of heightened scrutiny apply. (*Ibid.*; see also, e.g., *People v. Wilkinson* (2004) 33 Cal.4th 821, 836.) But "where the law challenged neither draws a suspect classification nor burdens fundamental rights," courts ask only whether there is a "*rational* relationship between [the] disparity in treatment and some legitimate government purpose." (*Chatman*, *supra*, 4 Cal.5th at pp. 288-289.)

Williams's equal protection claim is based on an alleged disparity in treatment between "young adults convicted and sentenced for serious sex crimes under the One Strike law" and "young adults convicted of first degree murder." (Order Granting Review (July 22, 2020).)[8] That disparity does not turn on any

---

(…continued)

allegedly unequal consequences associated with different types of criminal offenses." (*Chatman*, *supra*, 4 Cal.5th at p. 287.) Williams does not assert that there is any difference between the state and federal guarantees for purposes of this case; as framed by the Court, the issue presented here focuses exclusively on the federal Equal Protection Clause.

[8] The court of appeal below "assume[d]" without deciding that Williams made a "show[ing] that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner." (Opn. pp. 47, 48.) Because the court below did not reach that issue, this brief does not address it and this Court need not resolve it here. (See *post*, pp. 35-37.)

suspect classification, nor does it implicate a fundamental right. Rather, the gravamen of the claim is that the Legislature has allowed a "lesser" offense to be "punished more severely" than a "greater" offense. (*Wilkinson*, *supra*, 33 Cal.4th at p. 838.) Rational basis review governs such a claim because "[a] defendant . . . 'does not have a fundamental interest in a specific term of imprisonment or in the designation a particular crime receives.'" (*Ibid.*) Indeed, "[a]pplication of the strict scrutiny standard in this context would be incompatible with the broad discretion the Legislature traditionally has been understood to exercise in defining crimes and specifying punishment." (*Ibid.*) It would represent "a highly intrusive judicial reexamination of legislative classifications" that would "intrude too heavily on the police power and the Legislature's prerogative to set criminal justice policy." (*Id.* at pp. 837, 838, internal quotation marks, alterations, and citation omitted.)[9]

A defining feature of rational basis review is its "deferential nature." (*People v. Turnage* (2012) 55 Cal.4th 62, 77.) Equal protection is satisfied if "there is any reasonably conceivable state of facts that could provide a rational basis for the classification." (*Kasler v. Lockyer* (2000) 23 Cal.4th 472, 482, italics omitted.) "A

---

[9] Williams suggests in passing that strict scrutiny should apply here because the challenged statutory scheme "determines the length of incarceration," which "infringes on 'a fundamental interest.'" (OBM 26.) But this Court has expressly rejected that theory. (*Wilkinson, supra*, 33 Cal.4th at pp. 837-838.) In other parts of his brief, Williams appears to acknowledge that the "[r]ational [b]asis" test applies. (OBM 33; *see id.* at pp. 33-40.)

classification is not arbitrary or irrational simply because there is an imperfect fit between means and ends, or because it may be to some extent both underinclusive and overinclusive." (*Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 887, internal quotation marks and citations omitted.) "Nor does the logic behind a potential justification need to be persuasive or sensible—rather than simply rational." (*Chatman*, *supra*, 4 Cal.5th at p. 289.)

Rational basis review does not demand an extensive showing in defense of the Legislature's chosen policy. The Legislature's "underlying rationale" need not "be empirically substantiated," and it does not matter "whether lawmakers ever actually articulated the purpose they sought to achieve." (*Johnson*, *supra*, 60 Cal.4th at p. 881.) Rather, "a court may engage in 'rational speculation' as to the justifications for the legislative choice"—regardless of whether "such speculation has 'a foundation in the record'"—and a challenger must "'negative every conceivable basis' that might support the disputed statutory disparity." (*Ibid.*, citations omitted.) "If a plausible basis exists for the disparity, courts may not second-guess its 'wisdom, fairness, or logic.'" (*Ibid.*; see also *Turnage*, *supra*, 55 Cal.4th at p. 77 ["When conducting rational basis review, we must accept any gross generalizations and rough accommodations that the Legislature seems to have made."].)

B. The Legislature had a rational basis for excluding one-strike offenders

Over the years, the Legislature has enacted a variety of policies stemming from its concern that sex offenders present a

greater risk of recidivism than offenders convicted of other types of serious felonies. There is an active debate over whether and to what extent the data support such concerns and, more generally, over how our criminal justice system should treat sex offenders. (See *post*, pp. 29-33.) As that debate continues, the Legislature will surely consider whether to change current laws, including the one at issue in this case. But however that policy process plays out, the answer to the constitutional question here is clear. In the context of an equal protection claim governed by rational basis review, the Legislature could constitutionally rely on its concern about heightened recidivism risk among sex offenders—combined with the very serious nature of one-strike offenses—to exclude one-strike offenders from youth offender parole consideration without categorically excluding all first-degree murderers.

When the Legislature enacted the One Strike law, it made clear that it was motivated in substantial part by concerns about recidivism among serious sex offenders. The "general statement of purpose in the legislative history" explains that "long prison sentences" are warranted for one-strike offenders because they "cannot be cured of [their] aberrant impulses, and must be separated from society to prevent reoffense." (*People v. Wutzke* (2002) 28 Cal.4th 923, 929-930.) The statute generally provides for lengthy sentences for offenders whose crimes "involve the use of force or fear" in connection with a sex offense. (*Id.* at p. 930; see § 667.61, subd. (c).) It applies to repeat sex offenders and those who commit sex offenses under circumstances that "reflect

the use of violent or predatory means that increase the victim's 'vulnerability.'" (*Wutzke*, *supra*, 28 Cal.4th at p. 930; see § 667.61, subds. (d), (e); see also, e.g., *People v. Palmore* (2000) 79 Cal.App.4th 1290, 1296.) In other words, to protect public safety, the One Strike law authorizes lengthy prison sentences for *both* "recidivist sexual offenders *and* first time offenders who commit certain sexual crimes under aggravated circumstances." (*People v. Hammer* (2003) 30 Cal.4th 756, 768.)

In other contexts, the Legislature has also enacted laws addressing its concern that sex offenders generally present a heightened risk of recidivism relative to other categories of offenders. For example, it has provided that sexually violent predators may be civilly committed even after serving a sentence. (Welf. & Inst. Code, § 6600 et seq.) It has required certain sex offenders to register for life after they are released from custody. (Pen. Code, § 290 et seq.) And it has directed that evidence of prior sex offenses is admissible at some criminal trials to show propensity. (Evid. Code, § 1108). The One Strike law's goal of reducing recidivism by providing for long prison sentences for aggravated sex offenders aligns with this general approach.[10]

The court below correctly inferred that similar concerns about recidivism and the grave threat presented by aggravated

---

[10] The court of appeal below considered the same examples in applying rational basis review to the youth offender parole scheme, as have other courts. (See Opn., pp. 51-52; see also *Moseley*, *supra*, 59 Cal.App.5th at p. 1170; *Bell*, *supra*, 3 Cal.App.5th at pp. 878-880.)

sex offenses led the Legislature to exclude one-strike offenders from the youth offender parole scheme. (See Opn., pp. 53-54.) Apart from one-strike offenders, section 3051 excludes other categories of offenders who are especially prone to recidivism or who have committed particularly serious crimes. The Legislature excluded offenders sentenced under the Three Strikes law (§ 3051, subd. (h), citing §§ 1170.12; 667, subds. (b)-(*i*)), underscoring its concerns about recidivism. It also excluded young adult offenders "sentenced to life in prison without the possibility of parole for a controlling offense that was committed after the person had attained 18 years of age" (*ibid.*), reflecting its desire to prevent individuals convicted of the most serious felonies from obtaining parole.[11] Those other exclusions are consistent with the Legislature's decision to exclude one-strike offenders based on its concerns that they generally present a heightened recidivism risk and have committed especially serious crimes.

The Legislature's actions in this area were presumably informed by the widespread "public perception" that "recidivism is a more serious problem among sex offenders than other criminals." (Bedarf, Comment, *Examining Sex Offender Community Notification Laws* (1995) 83 Cal. L. Rev. 885, 893.) "Beginning in the late 1970s," criminologists and other social

---

[11] The Eighth Amendment limits the imposition of life without parole and functionally equivalent prison sentences for juvenile offenders, and prohibits such sentences for non-homicide crimes (including one-strike offenses) committed by juveniles. (See *Contreras*, *supra*, 4 Cal.5th at pp. 359-360; *post*, pp. 38-41.)

scientists increasingly became concerned that "serious sex offenders . . . have significant rates of recidivism" relative to other categories of offenders. (*Id.* at p. 894; see also *id.*, fns. 49-53, citing Groth et al., *Undetected Recidivism Among Rapists and Child Molesters* (1982) 28 Crime and Delinq. 450, 451-457, and Soothill & Gibbens, *Recidivism of Sexual Offenders: A Re-Appraisal* (1978) 18 Brit. J. Criminology 267, 267-268.)

Studies in the 1980s were widely understood to substantiate those concerns. (Bedarf, *supra*, 83 Cal. L. Rev. at pp. 895-896, and fns. 58-64.)[12] For instance, a 1988 study by the California Department of Justice concluded that "[s]ex offenders as a group are highly recidivistic, particularly among those who commit rape."[13] It found that "nearly half (49.4 percent)" of sex offenders "were rearrested for some type of offense and almost twenty percent (19.7) for a subsequent sex offense," and that "[s]ex offenders whose first arrest was for rape by force or threat had the highest recidivism rate."[14] While the study did not find that sex offenders were more likely than other categories of offenders to be re-arrested generally, it did find that sex offenders were more than five times as likely as other offenders to be arrested

---

[12] Citing Lewis, Report to the California State Legislature, *Effectiveness of Statutory Requirements for the Registration of Sex Offenders* 1, 7 (1988), and Beck & Shipley, U.S. Dep't of Justice, *Recidivism of Prisoners Released in 1983* 1, 6 (1989), available at https://www.bjs.gov/content/pub/pdf/rpr83.pdf.

[13] Lewis, *supra* note 12, at p. 2.

[14] *Id.* at p. 1.

for a sex offense following release from prison.[15] Similarly, a 1989 study by the United States Department of Justice found that "[r]eleased rapists were 10.5 times more likely than nonrapists to have a subsequent arrest for rape" and that released prisoners who had been convicted of rape or sexual assault were among the categories of offenders with the highest "likelihood of rearrest for a similar crime."[16]

No doubt, this is a subject on which there is active scholarly debate, in part because "recidivism rates for sex offenders are unusually hard to establish, owing to gross underreporting of sex crimes." (Furby et al., *Sex Offender Recidivism: A Review* (1989) 105 Psych. Bulletin 3, 3; see also Soothill, *Sex Offender Recidivism* (2010) 39 Crime & Justice 145, 156-167 [discussing methodological challenges of measuring sex offender recidivism rates].) The academic literature reflects uncertainty and disagreement regarding the risk of recidivism among sex offenders. As Justice Bendix of the Second District Court of Appeal observed after surveying the academic literature, "[s]ocial science has produced statistics about recidivism by sex offenders that arguably would support both sides in this debate." (*In re Woods* (2021) 62 Cal.App.5th 740, 276 Cal.Rptr.3d 895, 910 [dis. opn. of Bendix, J.]) And some commentators, particularly in

---

[15] *Id.* at p. 8 [showing that 19.7 percent of sex offenders were re-arrested for a subsequent sex offense, while between 1.6 percent and 3.7 percent of other categories of offenders were re-arrested for a sex offense].

[16] Beck & Shipley, *supra* note 12, at p. 6 & tbl. 10.

recent years, have argued that "the commonly held belief that sex offenders have a high rate of reoffending is not supported by the evidence." (Lave, *Arizona's Sex Offender Laws: Recommendations for Reform* (2020) 52 Ariz. St. L.J. 925, 926.)[17]

That debate will continue in the years to come, and the Legislature will have the benefit of further research when making policy choices in this area. As to the constitutional question before this Court, however, the Legislature's demonstrated concern that sex offenders pose a disproportionate risk of recidivism provides a rational basis for its decision to exclude one-strike offenders from the youth offender parole scheme. (See Opn., pp. 52-54; *People v. Moseley* (2021) 59 Cal.App.5th 1160, 1169-1170.) Indeed, the U.S. Supreme Court has recognized that States "could conclude that a conviction for a sex offense provides evidence of substantial risk of recidivism," in light of "grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness as a class." (*Smith v. Doe* (2003) 538 U.S. 84, 103; see also *McKune v. Lile* (2002) 536 U.S. 24, 33-34 [plurality opn.] ["When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault."].)[18]

---

[17] See also, e.g., Ahluwalia, *Civil Commitment of Sexually Violent Predators* (2006) 4 Cardozo Pub. L. Pol'y & Ethics J. 489, 494; Bedarf, *supra*, 83 Cal. L. Rev. at pp. 896-898.

[18] *Smith* involved a challenge to a state law under the Ex Post Facto Clause rather than the Equal Protection Clause. (538 (continued…)

The Legislature's recidivism justification for excluding one-strike offenders from youth offender parole consideration is at least as "plausible" (*Johnson*, *supra*, 60 Cal.4th at p. 881) as other imputed legislative rationales that satisfy rational basis review. In *Johnson*, for example, this Court concluded that it was rational for the Legislature to require sex offender registration for offenders convicted of nonforcible oral copulation with a minor while affording trial courts discretion over whether to require registration for offenders convicted of unlawful sexual intercourse with a minor. (*Id.* at pp. 881-888.) The Court acknowledged that unlawful sexual intercourse "may seem just as deserving of mandatory registration as nonforcible oral copulation offenses," if not more so. (*Id.* at p. 885.) But it noted a variety of reasons why the Legislature might have chosen to make registration mandatory for oral copulation but not unlawful

---

(…continued)

U.S. at pp. 89, 92.) But its determination that a State could rationally conclude that sex offenders pose a heightened risk of recidivism is equally relevant in the equal protection context: *Smith* discussed that issue in the course of analyzing whether sex offender registration schemes had a "rational connection to a nonpunitive purpose," which is a relevant consideration under the Ex Post Facto Clause. (*Id.* at p. 97; *see id.* at pp. 102-103.) Similarly, while *Lile* involved a claim that a state program providing incentives to sex offenders to participate in a "rehabilitation program" that "require[d] the participant to confront his past crimes" violated the Fifth Amendment's privilege against self-incrimination, the Court's discussion explained that the program was motivated by widespread concern about high rates of recidivism among sex-offenders. (536 U.S. at pp. 29, 33 [plurality opn.].)

sexual intercourse. (*Ibid.*) Among other things, offenders might generally be "more successful in manipulating minors to engage in oral copulation" than sexual intercourse because oral copulation is widely viewed as being "lower in risk." (*Id.* at p. 883.) "[T]he Legislature could plausibly assume that," as a result, offenders convicted of oral copulation "have more opportunities to reoffend than those engaging in sexual intercourse, and, for that reason, are especially prone to recidivism and require ongoing surveillance." (*Id.* at pp. 883-884.)

Similarly, in *Turnage*, this Court held that a rational basis existed for the Legislature to punish as a felony the placement of a "false or facsimile bomb" without a showing that the act "cause[d] another person to be placed in sustained fear," even though it required such a showing to punish the separate crime of placing a "'false or facsimile of a weapon of mass destruction' (WMD)" as a felony. (55 Cal.4th at p. 67.) The Legislature could have made a rational determination that because bombs generally are readily recognizable as harmful, "sustained fear is inherent in any bomb threat," making it unnecessary to require a separate showing in each case. (*Id.* at p. 76.) In contrast, even though WMDs may be "commonly associated with widespread damage and inescapable harm," "[t]he Legislature could have assumed that not every false WMD" crime can be expected to cause sustained fear because WMDs may include "exotic substances" or "unusual items" less readily recognized by the public as harmful. (*Id.* at pp. 76-77.) On that basis, the Legislature could rationally have determined that an "affirmative

showing" of such fear should be required as an element of the WMD felony offense. (*Id.* at p. 77.)

These cases underscore the "considerable latitude" afforded to the Legislature under rational basis review in "defining and setting the consequences of criminal offenses." (*Johnson*, *supra*, 60 Cal.4th at p. 887.) Where, as here, a court can identify a "rational relationship between a disparity in treatment and some legitimate government purpose," (*Chatman*, *supra*, 4 Cal.5th at pp. 288-289, italics omitted), the Equal Protection Clause is satisfied.[19]

C. Williams's arguments are unpersuasive

Neither Williams nor the court of appeal decisions that have found an equal protection violation in this context identifies any sound basis for concluding that the Legislature lacked a rational basis for excluding one-strike offenders from the youth offender parole scheme.

1. Williams first argues that one-strike offenders are "similarly situated" to individuals convicted of first-degree murder and other offenders who remain eligible for youth offender parole consideration. (OBM 28-33.) But the question whether an equal protection claimant is "similarly situated" to a

---

[19] The lower courts have also rejected equal protection challenges to the Legislature's decision to exclude from youth offender parole consideration three-strikes offenders (*People v. Wilkes* (2020) 46 Cal.App.5th 1159, 1164-1167) and adult offenders sentenced to life without parole (see, e.g., *People v. Jackson* (2021) 61 Cal.App.5th 189, 196-200; *People v. Acosta* (2021) 60 Cal.App.5th 769, 777-781).

member of a comparator group is distinct from the question whether the Legislature had a rational basis for treating them differently.[20] Here, the court of appeal did not reach the question whether Williams was similarly situated to first-degree murderers or any other offenders. (Opn., pp. 47-48.) As the courts of appeal have observed, "[i]n general, offenders who commit different crimes are not similarly situated" for equal protection purposes. (*People v. Sanchez* (2020) 48 Cal.App.5th 914, 920; see also *Moseley*, *supra*, 59 Cal.App.5th at p. 1169 ["youthful sex offenders and youthful murderers are not similarly situated because offenders who commit different crimes are not similarly situated"].)[21]

But this Court need not address that issue here. Even assuming (as the court of appeal did) that the two groups are similarly situated, the circumstances here establish a rational basis for the Legislature to exclude one-strike offenders from the

---

[20] The "similarly situated" inquiry seeks to identify an appropriate comparator group "for purposes of the law challenged." (*In re C.B.* (2018) 6 Cal.5th 118, 134; see also, e.g., *Gallinger v. Becerra* (9th Cir. 2018) 898 F.3d 1012, 1016 ["Once we have identified a classified group, we look for a control group, [citation], composed of individuals who are similarly situated to those in the classified group in respects that are relevant to the state's challenged policy, [citation]."].)

[21] Courts thus routinely reject equal protection claims premised on the theory that it is irrational for the Legislature ever to permit any crime to be punished more harshly than (or as harshly as) murder. (See, *e.g.*, *Sanchez*, *supra*, 48 Cal.App.5th at pp. 920-921; *People v. Ordonez* (1991) 226 Cal.App.3d 1207, 1237-1239; *People v. Flores* (1986) 178 Cal.App.3d 74, 85-88.)

youth offender parole regime. (*Ante*, pp. 27-35; Opn., pp. 53-54; cf. *Johnson*, *supra*, 60 Cal.4th at p. 882 [declining to address the "similarly situated" prong and rejecting the equal protection claim under rational basis review].)

2. Williams next argues that one-strike offenders are less culpable than first-degree murderers because non-homicide offenders are "'categorically less deserving of the most serious forms of punishment than are murderers.'" (OBM 29, quoting *Graham v. Florida* (2010) 560 U.S. 48, 69.) That argument, which relies on Eighth Amendment precedent involving juvenile offenders, is misplaced here in the context of an adult offender like Williams asserting an equal protection claim that is subject to rational basis review.

To begin with, the Legislature *did* exclude from the youth offender parole scheme all offenders over 18 who are sentenced to life without parole (§ 3051, subd. (h)), many of whom are first-degree murderers (see § 190.2 [defining circumstances in which first-degree murder is punishable by death or life without parole]). As to first-degree murderers who are not sentenced to life without parole, there is a rational basis for making them eligible for parole consideration even though their crimes generally are more heinous than those committed by one-strike offenders. The Legislature could have rationally treated one-strike offenders differently on the view that its concerns about "controlling crime and preventing recidivism in sex offenders" (*Johnson*, *supra*, 60 Cal.4th at pp. 881-882) justified the exclusion of one-strike offenders from youth offender parole consideration

even if their offenses, while very serious, are not as heinous as first-degree murder. (See *ante*, pp. 28-33.)

Williams contends that the U.S. Supreme Court's decision in *Graham* and this Court's decision in *People v. Contreras* (2018) 4 Cal.5th 349 support his position. (OBM 33-35; see also *People v. Edwards* (2019) 34 Cal.App.5th 183, 196-197; *Woods*, *supra*, 276 Cal.Rptr.3d at pp. 903-904.) But *Contreras* and *Graham* are distinguishable: they addressed Eighth Amendment claims that were not subject to rational basis review; and they involved *juvenile* offenders who were under 18 when they committed their offenses, as opposed to *adult* offenders like Williams who were between the ages of 18 and 26 at the time of their crimes. (*Contreras*, *supra*, 4 Cal.5th at p. 356; *Graham*, *supra*, 560 U.S. at p. 52.) Neither decision suggests that the exclusion of adult one-strike offenders like Williams from parole consideration fails rational basis review under the Equal Protection Clause.

As Williams observes, *Contreras* noted that the defendants in that case had raised an argument that the exclusion of "*juvenile* One Strike offenders" from youth offender parole consideration "violates principles of equal protection and the Eighth Amendment." (*Contreras*, *supra*, 4 Cal.5th at p. 382, italics added; see OBM 35.) But the Court ultimately "declined to resolve those contentions," instead observing "that the current penal scheme for juveniles may warrant additional legislative attention." (*Contreras*, *supra*, at p. 382.)

To be sure, the Court "note[d] defendants' contention" that it was "anomalous" for the Legislature to treat "juvenile One Strike

offenders" differently from "juveniles convicted of special circumstance murder and sentenced to LWOP," in light of "the high court's observation that 'defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers.'" (*Contreras*, *supra*, 4 Cal.5th at p. 382, quoting *Graham*, *supra*, 560 U.S. at p. 69.) But *Graham* discussed the relative moral culpability of different kinds of offenders to explain why the Eighth Amendment prohibits sentencing a juvenile non-homicide offender to life without parole or its functional equivalent. (See *Graham*, *supra*, at pp. 52, 69.) Neither *Graham* nor *Contreras* undermines the principle that courts conducting rational basis review under the Equal Protection Clause should not "second-guess the Legislature's policy judgments in defining degrees of culpability and punishment." (*People v. Soto* (2018) 4 Cal.5th 968, 985 [conc. & dis. opn. of Liu, J.]; *ante*, pp. 24-26.)[22]

---

[22] For example, the Legislature has determined that certain one-strike offenders should be eligible for prison sentences as long as, or longer than, certain first-degree murderers. (Compare, e.g., § 667.61, subds. (a), (b), (j), (*l*) [one-strike offenses punishable by a prison term of 15 years to life, 25 years to life, or life without parole], with § 190 [first-degree murder punishable by death or a prison term of 25 years to life or life without parole].) And a non-homicide offender who commits multiple crimes, like Williams, may be subject to a sentence that in aggregate is longer than the sentence some first-degree murderers may receive. (See generally § 669, subd. (a).) *Contreras* and *Graham* do not suggest that statutory schemes like these violate the Equal Protection Clause.

Moreover, neither decision addressed whether concerns about heightened recidivism risk could provide a rational basis for excluding one-strike offenders from youth offender parole consideration. *Contreras* held that the goal of "incapacitation" could not justify sentencing a juvenile offender to 50 years or more in prison without the possibility of parole. (*Contreras*, *supra*, 4 Cal.5th at p. 369; see *Graham*, *supra*, 560 U.S. at p. 72 [similar with respect to life imprisonment].) The Court explained that "a judgment that a juvenile offender will be incorrigible for the next 50 years is no less 'questionable' than a judgment that the juvenile offender will be incorrigible 'forever,'" which *Graham* held insufficient to justify a sentence of life without parole for a juvenile offender. (*Contreras*, *supra*, at p. 369, quoting *Graham*, *supra*, at pp. 72-73.) While that principle would entitle a juvenile one-strike offender subject to a sentence identical to Williams's sentence to relief under the Eighth Amendment, it does not establish that it would be irrational under the Equal Protection Clause to exclude non-juvenile one-strike offenders like Williams from youth offender parole consideration based on recidivism concerns.

Because Williams is not a juvenile offender—he was 24 years old at the time of his crimes—and does not assert an Eighth Amendment claim, this case presents no occasion for the Court to address whether the exclusion of *juvenile* one-strike offenders from youth offender parole consideration may raise constitutional concerns. And apart from the Equal Protection Clause, other safeguards exist to prevent juvenile one-strike

offenders from receiving unduly lengthy sentences. One-strike offenses are non-homicide offenses, so the Eighth Amendment prohibits sentencing juvenile offenders to life without parole or its "functional[] equivalent," such as a sentence of "50 years to life." (*Contreras*, *supra*, 4 Cal.5th at p. 369; see *id.* at pp. 359-360.) In addition, many juvenile one-strike offenders will be eligible for parole on a timeline similar to that of the youth offender parole scheme anyway. (Compare § 667.61, subds. (a)-(b), with § 3051, subd. (b).) Rejecting Williams's equal protection claim will not foreclose relief to juvenile one-strike offenders who may wish to challenge their sentences in future cases.

Relatedly, although Williams does not advance this argument, the court of appeal in *Woods* thought that "providing early parole consideration to youthful murderers but denying it to youthful One Strike offenders[] creates an incentive for the rapist to kill his victim" and is irrational for that reason as well. (*Woods*, *supra*, 276 Cal.Rptr.3d at p. 907; cf. *Contreras*, *supra*, 4 Cal.5th at p. 382 [noting similar argument in the juvenile offender context].) That concern is unfounded, at least as to adult offenders like Williams, because "[t]he penalty for a defendant" over the age of 18 who rapes and murders a victim "is death or imprisonment . . . for life without the possibility of parole," and thus such a defendant would be ineligible for youth offender parole in any event. (§ 190.2, subds. (a), (a)(17)(C); § 189, subd. (a) [defining first degree murder].)

3. Williams also argues that the Legislature lacked a rational basis for excluding one-strike offenders while not

categorically excluding individuals "sentenced as habitual sexual offenders pursuant to section 667.71" or other serious first-time sex offenders. (OBM 31; *see id.* at pp. 30-33; see also *Woods*, *supra*, 276 Cal.Rptr.3d at pp. 906-907 [articulating similar rationale].) Williams did not advance that argument in the court below or in his petition for review. (See Opn., pp. 47-54; Appellant's Opening Brief in the Court of Appeal (July 3, 2019), pp. 75-78.) And it is not encompassed within the issue presented, which asks only whether the Legislature violated the Equal Protection Clause by excluding one-strike offenders from youth offender parole consideration "while *young adults convicted of first degree murder* are entitled to such consideration." (Order Granting Review (July 22, 2020), italics added; see Rules of Court, rule 8.516(a)(1).) Because this argument was "raised for the first time in defendant's opening brief on the merits in this [C]ourt," the Court should not entertain it. (*People v. Cookson* (1991) 54 Cal.3d 1091, 1100.)

In any event, the argument lacks merit. As an initial matter, there is substantial overlap between the One Strike law (§ 667.61) and the habitual sex offender law (§ 667.71); many offenders will qualify under both "alternative sentencing schemes." (*People v. Snow* (2003) 105 Cal.App.4th 271, 282.)[23] In those cases, "a

[23] For instance, an individual convicted for a second time of a sex offense such as rape, sexual penetration, sodomy, oral copulation, or continuous sexual offense of a child will qualify for sentencing under both schemes. (Compare § 667.61, subds. (a), (c), (d)(1), with § 667.71, subds. (a), (c).)

sentence may be imposed under one of the sentencing schemes, but not both, and the decision to choose which sentencing scheme to impose is within the reasonable discretion of the sentencing court." (*Ibid*.) When such an offender is sentenced under the One Strike law, he or she becomes statutorily ineligible for youth offender parole consideration, even if the offender could also have been sentenced under the habitual sex offender law.

Moreover, the Legislature rationally could have concluded that one-strike offenders generally present a greater overall threat to public safety than offenders sentenced pursuant to the habitual sex offender law. Where the two statutes do not overlap, the principal difference is that the habitual sex offender law "is designed to address *solely* recidivism," whereas the One Strike law "target[s] recidivist sexual offenders *and* first time offenders who commit certain sexual crimes under aggravated circumstances." (*Hammer*, *supra*, 30 Cal.4th at p. 768; see *ante*, pp. 11-13.) In other words, the habitual sex offender law applies to a broader swath of recidivist sexual offenders, whereas the One Strike law applies to certain serious re-offenders *and* to certain first-time aggravated sex offenders. The Legislature could rationally have determined that one-strike offenders should be excluded from youth offender parole consideration because of the combination of a heightened risk of recidivism (relative to non–sex offenders) *and* the more serious nature of their crimes (relative to other sex offenders). (See *ante*, pp. 28-29.)

Williams also argues that the Legislature violated his equal protection rights because it did not exclude "[o]thers convicted of

equally serious sex crimes," such as offenders convicted of "the crime of sexual intercourse with a child 10 or younger." (OBM 32, citing § 288.7, subd. (a).) That argument fails for similar reasons. Again, Williams did not raise the argument until his opening brief on the merits and it is outside the scope of the issue presented. And here too, many individuals convicted of the crimes highlighted by Williams will be eligible for one-strike sentences. For instance, although a violation of section 288.7 is not itself an offense subject to the One Strike law, many individuals convicted of that offense could also be convicted of a lewd or lascivious act, which is subject to the One Strike law.[24] In any event, the Legislature could rationally have determined that one-strike offenders on balance present a greater threat to public safety than individuals convicted of the offenses Williams cites, because one-strike offenders are either repeat sex offenders or first-time offenders whose crimes generally "reflect the use of violent or predatory means that increase the victim's 'vulnerability.'" (*Wutzke*, *supra*, 28 Cal.4th at p. 930.) In contrast, the crimes referenced by Williams—while very serious—may not involve those characteristics.

---

[24] See § 667.61, subd. (c)(8) [specifying that a "[l]ewd or lascivious act, in violation of subdivision (a) of Section 288" is a one-strike predicate offense]; § 288, subd. (a) ["a person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes" defined in Part 1 of the Penal Code, "upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony"].

It is possible that the Legislature could have excluded certain other serious sex offenses from youth offender parole consideration alongside one-strike offenses in a manner that "would have furthered the legislative purpose"; but that "does not undermine [the] conclusion that the classification adopted by the Legislature" satisfies rational basis review. (*People v. Valdez* (2009) 174 Cal.App.4th 1528, 1532.) A statute may be "to some extent . . . underinclusive" without violating the Equal Protection Clause. (*Johnson*, *supra*, 60 Cal.4th at p. 887.) And "[a] legislature need not run the risk of losing an entire remedial scheme simply because it failed . . . to cover every evil that might conceivably have been attacked." (*Kasler*, *supra*, 23 Cal.4th at p. 488.) Williams's argument overlooks the basic principle that, under rational basis review, courts should not "second-guess the Legislature's policy judgments in defining degrees of culpability and punishment." (*Soto*, *supra*, 4 Cal.5th at p. 985 [conc. & dis. opn. of Liu, J.].)[25]

4. Finally, Williams contends that "there is no basis for the assumption that a youthful sex offender is more likely to recidivate and is less amenable to rehabilitation than other

---

[25] See also, e.g., *Turnage*, *supra*, 55 Cal.4th at p. 74 ["It is both the prerogative and the duty of the Legislature to define degrees of culpability and punishment, and to distinguish between crimes in this regard."]; *People v. Alvarez* (2001) 88 Cal.App.4th 1110, 1117 ["The judicial inquiry commences with great deference to the Legislature. Fixing the penalty for crimes is the province of the Legislature, which is in the best position to evaluate the gravity of different crimes and to make judgments among different penological approaches."]

young offenders." (OBM 33; see *id.* at pp. 36-40; see also *Edwards*, *supra*, 34 Cal.App.5th at pp. 198-199 [faulting the State for not "cit[ing] . . . evidence that violent rapists recidivate more than other felons"].) He asserts that "numerous long-term studies and research about recidivism of sex offenders in general and youthful offenders specifically . . . largely debunk long-held assumptions about such offenders." (OBM 37-38.) For example, he notes a study finding that the "recidivism rate of young offenders . . . is much lower than" the "rate for adult offenders." (*Id.* at p. 38.) And he suggests that the U.S. Supreme Court's interpretation of sex offender recidivism data was "misleading." (*Id.* at p. 39, citing *Lile*, *supra*, 536 U.S. at p. 33; see *ante*, pp. 32-33 & fn. 18.)

There is certainly room for debate about the assumptions and studies Williams challenges (see *ante*, pp. 29-32), but Williams's arguments on that subject are properly directed to the Legislature and to the electorate. Under the rational basis standard governing Williams's equal protection claim, the reasoning underlying the Legislature's classification need not "be empirically substantiated" or have "'foundation in the record.'" (*Johnson*, *supra*, 60 Cal.4th at p. 881, quoting *Turnage*, *supra*, 55 Cal.4th at p. 75.) As long as "a plausible basis exists" for the classification, "courts may not second-guess its 'wisdom, fairness, or logic.'" (*Johnson*, *supra*, at p. 881; see also *ante*, pp. 25-26.)

As discussed, the Legislature's exclusion of one-strike offenders from youth offender parole consideration reflects the view that sex offenders generally present heightened recidivism

concerns relative to other types of offenders. (*Ante*, pp. 28-29.) Williams acknowledges that this view is grounded in "long-held assumptions." (AOB 38.) Even if new or re-interpreted social science data raise questions about some of those assumptions, under the rational basis test, the Legislature could permissibly conclude that sex offenders generally present a heightened risk of recidivism relative to other serious felony offenders and rely on that concern as a basis for excluding one-strike offenders from youth offender parole hearings.[26]

Williams's critique of the scholarship in this area does not establish that the Legislature has acted irrationally here. For instance, Williams asserts that certain studies supporting the theory that sex offenders present unique recidivism concerns show only that many categories of offenders, including sex offenders, are more likely than other types of offenders to be re-arrested for the specific type of crime they previously committed. (See OBM 39-40.) Even if that were true, the Legislature could still rationally perceive a heightened risk that one-strike offenders will commit a second aggravated sex offense, and conclude that it warrants their exclusion from youth offender parole consideration because of the very serious nature of the aggravated sex offenses subject to enhanced sentences under the One Strike law.

---

[26] Were the Court to conclude otherwise, it would cast doubt not only on section 3051, but also on the other statutes that rest in part on the Legislature's concern about heightened recidivism risk among sex offenders. (*Ante*, p. 28.)

In fact, however, Williams misreads the studies. As Williams acknowledges (see OBM 39), the USDOJ study found that "released rapists" are more likely than released murderers to be re-arrested for the same crime.[27] Indeed, the study found that offenders convicted of rape had the highest "[r]elative likelihood of rearrest" for the same type offense out of any category of offenders. (*Ante*, p. 31.)[28] While it is undoubtedly true that sex offenders and first degree murderers "*both* recidivate" to some degree (*Woods*, *supra*, 276 Cal.Rptr.3d at p. 906), the Legislature could rationally have determined that recidivism is generally a more serious concern among one-strike offenders.

And contrary to Williams's view (see OBM 33, 40), the Legislature did not need to cite studies or other evidence specifically demonstrating that youthful sex offenders in particular present concerns regarding recidivism. Under rational basis review, "the Equal Protection Clause does not demand a surveyor's precision" (*Hughes v. Alexandria Scrap Corp.* (1976) 426 U.S. 794, 814), and "[a] classification is not arbitrary or irrational simply because" it is "to some extent . . . overinclusive" (*Johnson*, *supra*, 60 Cal.4th at p. 887). The Legislature could rationally have determined that all sex offenders, including those who commit their crimes while under the age of 25, generally present a heightened risk of recidivism. That conclusion, while

---

[27] Beck & Shipley, *supra* note 12, at p. 6.

[28] *Id.*, tbl. 10.

subject to debate, falls well within the "considerable latitude" afforded to the Legislature in "defining and setting the consequences of criminal offenses." (*Ibid.*)

CONCLUSION

The judgment of the court of appeal should be affirmed.

Respectfully submitted,

ROB BONTA
Attorney General of California
MICHAEL J. MONGAN
Solicitor General
LANCE E. WINTERS
Chief Assistant Attorney General
JULIE L. GARLAND
Senior Assistant Attorney General
/s/ Joshua Patashnik
JOSHUA PATASHNIK
Deputy Solicitor General
STEVE OETTING
Deputy Attorney General

May 19, 2021

CERTIFICATE OF COMPLIANCE

I certify that the attached Answer Brief on the Merits uses a 13 point Century Schoolbook font and contains 10,422 words.

Dated: May 19, 2021

ROB BONTA
Attorney General of California

/s/ Joshua Patashnik
JOSHUA PATASHNIK
Deputy Solicitor General

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. WILLIAMS**
Case Number: **S262229**
Lower Court Case Number: **D074098**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **Josh.Patashnik@doj.ca.gov**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	S262229 Answer Brief on the Merits

Service Recipients:

Person Served	Email Address	Type	Date / Time
Nancy King Court Added 163477	njking51@gmail.com	e-Serve	5/19/2021 11:35:53 AM
Joshua Patashnik Office of the Attorney General 295120	josh.patashnik@doj.ca.gov	e-Serve	5/19/2021 11:35:53 AM
Steven Oetting Office of the Attorney General 142868	Steve.Oetting@doj.ca.gov	e-Serve	5/19/2021 11:35:53 AM
Walter Hernandez Office of the Attorney General	walter.hernandez@doj.ca.gov	e-Serve	5/19/2021 11:35:53 AM
Eniola Longe-Atkin Department of Justice, Office of the Attorney General-San Diego	Eniola.LongeAtkin@doj.ca.gov	e-Serve	5/19/2021 11:35:53 AM
Amanda Murray Office of the Attorney General, Dept of Justice 223829	amanda.murray@doj.ca.gov	e-Serve	5/19/2021 11:35:53 AM
Alicia Curiel Department of Justice, Office of the Attorney General-San Diego	alicia.curiel@doj.ca.gov	e-Serve	5/19/2021 11:35:53 AM
Appellate Defenders Appellate Defenders, Inc.	eservice-court@adi-sandiego.com	e-Serve	5/19/2021 11:35:53 AM
Eileen Manning-Villar Pacific Juvenile Defender Center 201115	pjdcamicus@gmail.com	e-Serve	5/19/2021 11:35:53 AM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

5/19/2021

Date

/s/Joshua Patashnik

Signature

Patashnik, Joshua (295120)

Last Name, First Name (PNum)

Office of the Attorney General

Law Firm