Justice Policy
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Still Striking Out:
Ten Years of California's Three Strikes

By Scott Ehlers, Vincent Schiraldi and Jason Ziedenberg

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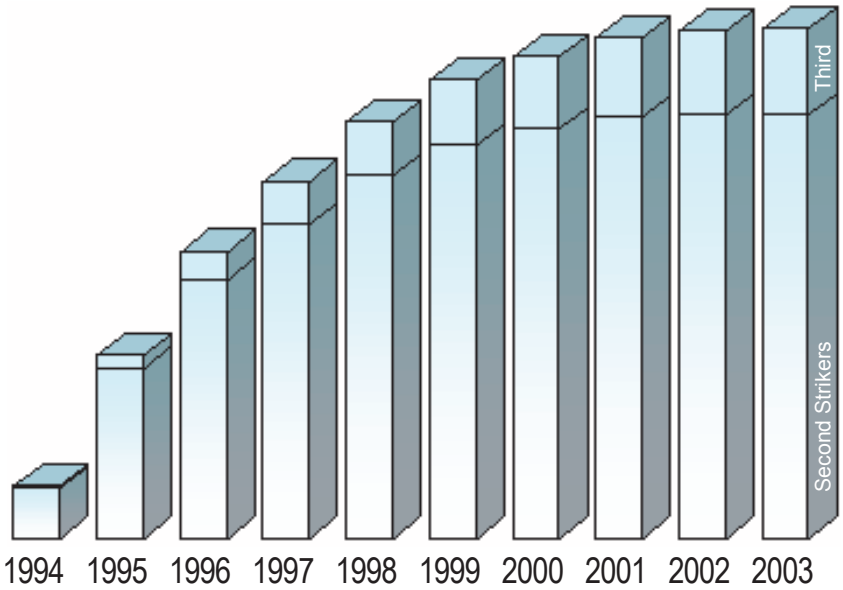

Second & Third Strikers in California Prison Population

POLICY REPORT

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"THERE IS JUST NO WAY TO IGNORE THE POSITIVE IMPACT OF THE 'THREE STRIKES' LAW. CALIFORNIA'S DROP IN CRIME IS OUT-PERFORMING SIMILAR DOWNWARD TRENDS IN OTHER PARTS OF THE NATION."

—Former California Attorney General Dan Lungren, September 25, 1995[1]

"[S]OME AUTHORS (NOTABLY THOSE WITH THE MOST SIMPLISTIC MODELS) ASSERT THAT THE THREE STRIKES LAW PLAYED A DOMINANT ROLE IN THE CRIME DROP EXPERIENCED IN CALIFORNIA AFTER 1994. HOWEVER, NONE OF THE MORE SOPHISTICATED ANALYSES SUGGEST THAT THE THREE STRIKES LAW PLAYED A SIGNIFICANT ROLE IN BRINGING ABOUT THE DECLINE IN CALIFORNIA'S CRIME RATE AFTER ITS PASSAGE. THE MORE SOPHISTICATED STUDIES … FIND THAT THE EFFECTS OF THE LAW WERE MINIMAL AND NOT IN THOSE AREAS WHERE THEY WERE EXPECTED."

— Peter W. Greenwood & Angela Hawken, An Assessment of the Effects of California's Three Strikes Law, March 2002[2]

Introduction

March 7, 2004 marks the ten-year anniversary of the signing of AB 971, California's "Three Strikes and You're Out" law. In November 1994, California voters approved a ballot initiative that was virtually identical, except for one critical difference—the initiative required a vote of the people to alter the law, or a two-thirds vote of the Assembly and Senate.

While other states passed habitual offender laws in the early-to-mid-nineties, California's "Three Strikes" law was much more punitive—and far-reaching—in a number of respects. While other states' "Three Strikes" laws only applied to serious or violent offenses, California's required sentences to be doubled for *any* felony, if the offender had one prior serious or violent felony conviction on their record, or a 25-year-to-life sentence for *any* felony if the offender had two prior serious or violent felony convictions. In addition, persons convicted under the law were not eligible for parole until they served 80 percent of their sentence, while many other prisoners could be paroled after serving 50 percent of their time.

Since the passage of Three Strikes, tens of thousands of persons have been sentenced under the law in California, while a small fraction of that have been sentenced in other states. As an example, today over 42,000 persons—over one-in-four prisoners—are serving a doubled or 25-years-to-life sentence under the California law. As of June 2002, 5,837 offenders[3] (12.5%)[4] were serving prison sentences under Georgia's law. In Washington State, where voters approved the first Three Strikes law in 1993, 260 persons are in prison under the law today.[5]

California's law is also different in another respect—it has generated more questions about the policy impact and effect of the law. Are most 'strikers'—persons serving a prison sentence under a second or third strike—incarcerated for violent behavior? Has the law reduced crime? Has the law led to large increases in prisoners—and taxpayer expenditures on prisons? Is Three Strikes the most cost-effective way to reduce crime? This report will address many of these same questions—10 years after the law came into effect.

Methodology

This policy brief summarizes and analyzes the data and findings from a variety of criminal justice agencies and research entities whose work is national in scope, including the National Archive of Criminal Justice Data, the FBI's *Uniform Crime Report*, the U.S. Justice Department's National Institute of Justice and the U.S. Census Bureau. This report contains original analysis by the Justice Policy Institute of crime and imprisonment data from the California Department of Corrections Data Analysis Unit and the Office of the Attorney General, Criminal Justice Statistics Center. The authors have also reviewed and summarized analyses published by researchers with the RAND Corporation, Boalt Hall School of Law—University of California, Berkeley, and in the *Stanford Law and Policy Review*. In particular, this report replicates and builds upon original research methods and analysis developed by the authors and others with Justice Policy Institute and Center on Juvenile and Criminal Justice.

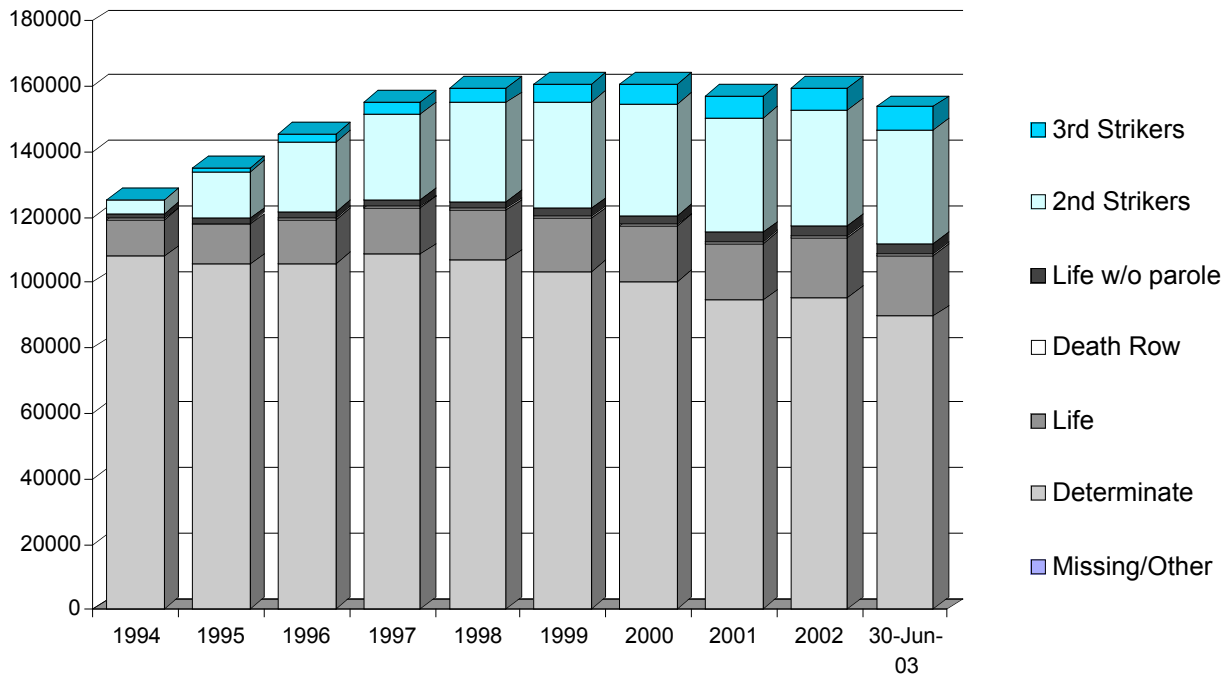
Finding 1: California's Three Strikes law has impacted the size and scope of the California prison population

After the Three Strikes law passed, researchers and analysts predicted significant growth in California's prison population—and huge costs to the taxpayers to pay for it. The California Department of Corrections originally projected that the law would result in an additional 80,000 prisoners in the population by 1999, bringing the total prison population to 245,000.[6] RAND estimated that the law would cost taxpayers an extra $4.5 billion to $6.5 billion *per year*.[7] Luckily for California taxpayers, neither prediction came true because "the law has not been applied with 'full implementation,'"[8] as expected by the Department of Corrections and RAND. Over time, prosecutors and judges have used their discretion to dismiss prior strikes, and the voters passed Proposition 36, the Substance Abuse and Crime Prevention Act, in the 2000 elections. Prop. 36 required drug possession offenders, including Three-Strikes-eligible offenders who have been out of prison for five years, to be eligible for drug treatment instead of being incarcerated. These two factors have slowed the pace of incarceration under the law.

While there may not be as many "strikers" in the prison population as originally projected, the law has still resulted in more people serving much longer sentences. As shown in Figure 1, the California prison population grew from 125,473 in 1994, to 153,783 in June 2003, a 22.6 percent increase. An increasingly larger part of that population is made up of people serving a second or third strike.

FIGURE 1: PRISON POPULATION BREAKDOWN, 1994-2003

Strikers Make up an Increasingly Larger Part of the Prison Population



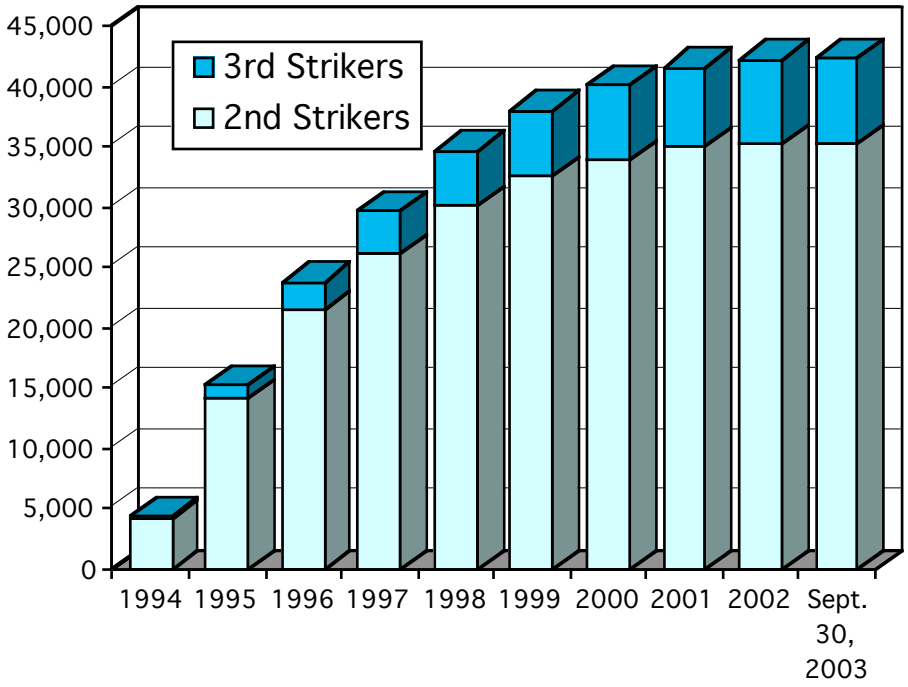
Source: 1994-2002: "Number of Felons in the Institution Population by Sentence Type on December 31, 1994 through December 31, 2002," Data Analysis Unit, Estimates and Statistical Analysis Section, Offender Information Services Branch, California Department of Corrections (November 2003); June 30, 2003: Table 10, "Prison Census Data, Total Institution Pop, Offenders by Sentence Status and Gender, June 30, 2003," Data Analysis Unit, Estimates and Statistical Analysis Section, Offender Information Services Branch, California Department of Corrections (August 2003).

Not surprisingly, the second and third strike population has grown significantly over the past ten years. Specifically:

- The third strike population grew from 254 in 1994 to 7,234 in September 2003, a 2,709 percent increase. There are over 28 times as many third strikers in prison today as in 1994.
- The second strike population grew from 4,154 in 1994 to 35,211 in September 2003, a 747 percent increase.
- All strikers combined increased from 4,408 in 1994 to 42,445 in September 2003, an 863 percent increase. Ten years after Three Strikes' passage, there are nearly ten times as many strikers in prison as there were at year-end 1994.

FIGURE 2: STIKERS IN THE CALIFORNIA PRISON POPULATION, 1994-2003

Striker Population Increases Almost Ten-Fold in Ten Years



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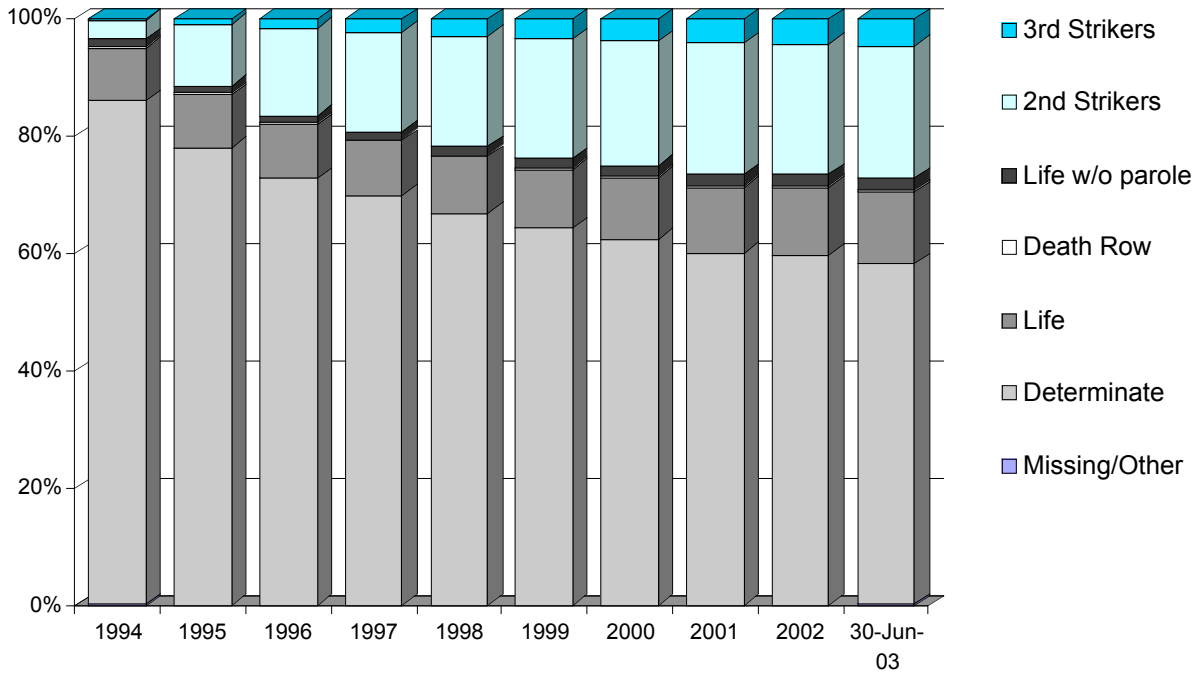
As many analysts predicted, an increasingly larger percentage of California's prison population is now made up of offenders sentenced under the Three Strikes law. At the end of 1994, 3.5 percent of California's prison population was made up of second and third strikers. By June 2003, more than one out of every four California prisoners (27.2%) were second or third strikers.

FIGURE 3: PERCENTAGE MAKE-UP OF CALIFORNIA'S PRISON POPULATION BY COMMITMENT TYPE

Strikers Make Up A Growing Percentage of Prison Population



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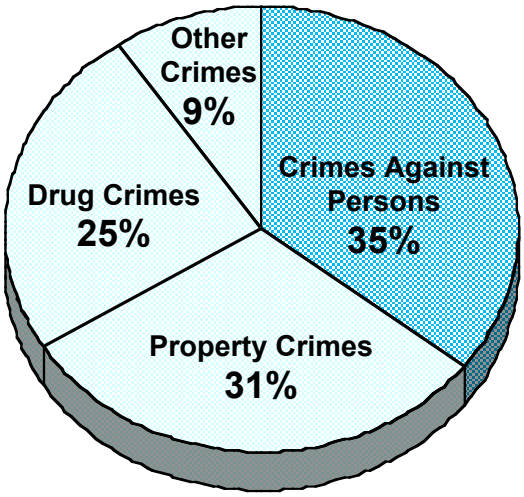
Finding 2: The Three Strikes law has a disproportionate effect on people convicted of non-violent offenses

One of the key policy questions regarding the impact of the Three Strikes law is, has the law disproportionately incarcerated people for non-violent crimes? In fact, people sentenced under the Three Strikes law are more likely to be serving a sentence under the law for non-violent offenses than violent ones. As of September 2003[9]:

- For 57 percent of third strikers, the offense which triggered their 25-years-to-life in prison was a non-violent[10] offense;
- nearly two-thirds (64.5%) of second and third strikers were serving time in prison for a non-violent offense;
- there were over ten times as many third strikers serving life sentences for drug possession (672) as second-degree murder (62);
- there were more third strikers serving 25-years-to-life for drug possession (672) than third strikers in prison for second-degree murder (62), assault with a deadly weapon (379), and rape (119) combined;
- the number of persons serving a 25-years-to-life sentence for petty theft under the Three Strikes law was 177 times higher in 2003 than 1994, increasing from 2 in 1994 to 354 in September 2003;

FIGURE 4: STRIKERS IN THE PRISON POPULATION BY OFFENSE CATEGORY (SEPT. 30, 2003)



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Finding 3: The Three Strikes law disproportionately impacts African Americans and Latinos[11]

Since its inception, policy analysts have questioned whether Three Strikes would have a disproportionate impact on African Americans and Latinos. Social scientists have shown that despite the fact that racial and ethnic minorities are incarcerated at rates much higher than Whites, rates of criminal behavior and offending are similar between groups for a wide variety of offenses.[12] Research has shown that, the more low-level the offense—such as the kinds of crimes for which most "strikers" are serving time—the less difference between rates of criminal behavior between Whites, African Americans and Latinos.

As with other kinds of criminal justice policies, Three Strikes has been shown to have a disproportionate impact on racial and ethnic communities. Using the latest census data and prison population figures, the authors have created a "Three Strikes Rate"—the number of "strikers" in the prison population per 100,000 residents in California.

- The African-American incarceration rate for third strikes (143 per 100,000 African-American residents) is 12 times higher than the third strike incarceration rate for Whites (12 per 100,000 White residents).

- The Latino incarceration rate for a third strike (17 per 100,000 Latino residents) is 45 percent higher than the third strike incarceration rate for Whites (12 per 100,000 White residents).

- For second and third strikes sentences combined, the African-American incarceration rate (704.5 per 100,000 African-American residents) is over 10 times higher than the White incarceration rate (69.9).

- For second and third strikes sentences combined, the Latino incarceration rate (124.8) is over 78 percent higher than the White incarceration rate (69.9).

FIGURE 5: SECOND AND THIRD STRIKERS IN THE CALIFORNIA PRISON POPULATION BY RACE/ETHNICITY, 2003

African Americans and Latinos are Incarcerated Under the Three Strikes Law at Higher Rates than Whites

Racial/ Ethnic Group	CA Population, 2000	Second Strikers	Third Strikers	Total Strikers in Prison Pop.	Third Strikers Per 100,000 Residents	Strikers Per 100,000 Residents
Black	2,269,400	12,747 36.20%	3,241 44.80%	15,988 37.67%	143	705
Hispanic (Mexican)*	10,974,414	11,852 33.66%	1,849 25.56%	13,701 32.28%	17	125
White	15,818,060	9,216 26.17%	1,833 25.34%	11,049 26.03%	12	70
Other	4,809,774	1,396 3.96%	311 4.30%	1,707 4.02%	6	35
Total	33,871,648	35,211 100.00%	7,234 100.00%	42,445 100.00%	21	125

Source: California Population, 2000: "California QuickFacts from the U.S. Census Bureau," U.S. Census Bureau (online at: http://quickfacts.census.gov/qfd/states/06000.html); Striker data: "Table Three: Second and Third Strikers in the Institution Population by Gender, Racial/Ethnic Group and Type of Conviction as of September 30, 2003," *Second and Third Strikers in the Institution Population*, Data Analysis Unit, Estimates and Statistical Analysis Section, Offender Information Services Branch, California Department of Corrections (November 2003). The "Hispanic (Mexican)" ethnic category is the designation/title used by the California Department of Corrections.

FIGURE 6: RATES OF INCARCERATION UNDER THREE STRIKES FOR AFRICAN AMERICANS AND LATINOS AS COMPARED TO WHITES

	Third Strikers Per 100,000 Residents	Strikers Per 100,000 Residents
Black to White Ratio	12.32	10.09
Hispanic to White Ratio	1.45	1.79

Source: California Population, 2000: "California QuickFacts from the U.S. Census Bureau," U.S. Census Bureau (online at: http://quickfacts.census.gov/qfd/states/06000.html); Striker data: "Table Three: Second and Third Strikers in the Institution Population by Gender, Racial/Ethnic Group and Type of Conviction as of September 30, 2003," *Second and Third Strikers in the Institution Population*, Data Analysis Unit, Estimates and Statistical Analysis Section, Offender Information Services Branch, California Department of Corrections (November 2003).

FIGURE 7: THIRD-STRIKERS PER 100,000 RESIDENTS BY RACE/ETHNICITY

African Americans and Latinos "Strike Out" More Frequently Than Whites

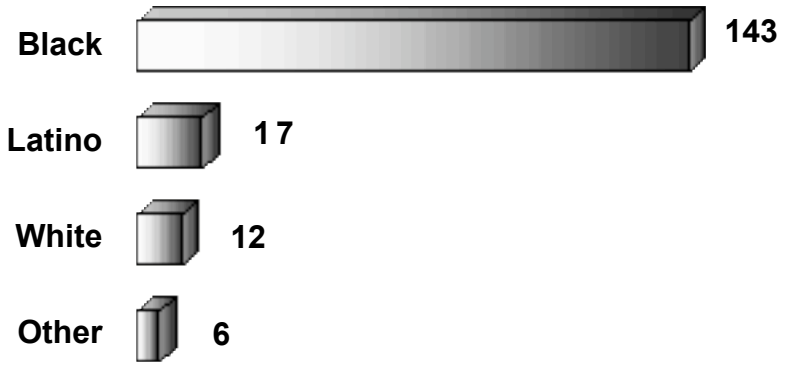

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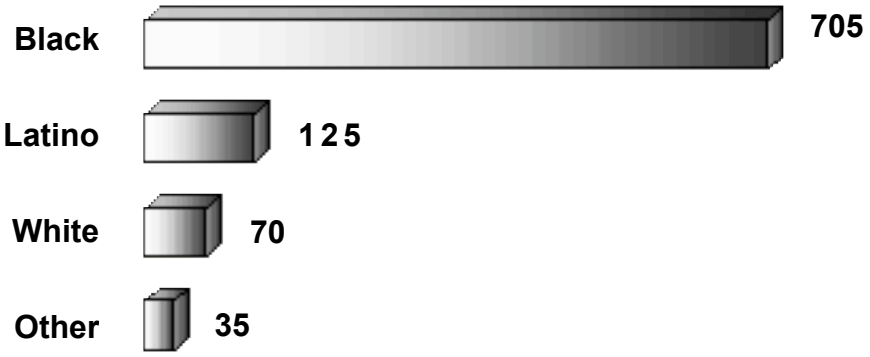
FIGURE 8: INCARCERATION RATE OF ALL STRIKERS IN PRISON PER 100,000 RESIDENTS BY RACE/ETHNICITY

African Americans and Latinos have Higher Rates of Incarceration Under Three Strikes than Whites



Source: California Population, 2000: "California QuickFacts from the U.S. Census Bureau, "U.S. Census Bureau (online at: http://quickfacts.census.gov/qfd/states/06000.html); Striker data: "Table Three: Second and Third Strikers in the Institution Population by Gender, Racial/Ethnic Group and Type of Conviction as of September 30, 2003," *Second and Third Strikers in the Institution Population*, Data Analysis Unit, Estimates and Statistical Analysis Section, Offender Information Services Branch, California Department of Corrections (November 2003).

Finding 4: Three Strikes has not been associated with larger drops in crime

One of the key policy questions surrounding the Three Strikes law is whether or not it reduces crime, either by keeping repeat offenders in prison for longer periods of time (incapacitation) or by deterring would-be offenders from committing crimes out of fear of the longer sentences (deterrence). Over the last 10 years, researchers have tested these theories in a number of different ways, including by comparing jurisdictions within California, as well as comparing California's crime rate to that of other states around the country.

Peter Greenwood, former director of the RAND Corporation's Criminal Justice Program, recently summarized research findings around the impact of the Three Strikes law on crime rates:

> "Stolzenberg and D'Alessio (1997) analyzed serious crime trends in California's ten largest cities, using monthly data for 1985-1995. Their analysis suggests that the three strikes law did not reduce the California Crime Index below the level that would have been expected given the prevailing downward trend that had begun before the implementation of the law." *Journal of Crime and Delinquency.*[13]
>
> "Macallair and Males (1999) and Austin et al. (1999) compared the crime rates of California counties that applied the law at higher and lower rates, expecting that counties with more extensive three strikes enforcement should experience a larger drop in crime than those less likely to invoke the law. Both studies suggest no clear pattern of crime reduction associated with the rate of three strikes application." *Stanford Law and Policy Review.*[14]
>
> "A simulation study by Auerhahn (2001) suggests that the three strikes law has not made California streets safer. If a selective incapacitation policy is successful, "dangerousness" should be maximized in the incarceration population and minimized in the rest of the population. Her analysis shows that the three strikes law has not been particularly successful in the selective incapacitation of dangerous offenders (a primary motivation for the law); the average dangerousness of the prison population has declined and that of the rest of the population has increased." *State University of New York Press*[15]

A subsequent policy question is, why has Three Strikes not had the impact on crime that its proponents thought it would? One explanation is that strikers account for relatively little crime, violent or otherwise. As Prof. Franklin Zimring and his colleagues point out in their book, *Punishment and Democracy: Three Strikes and You're Out in California*, even if all arrestees who met the criteria under the Three Strikes law "were to disappear from the earth without a trace," only 10.6 percent of felony crimes would be avoided.[16]

Methodology: County-By-County Comparisons of Three Strikes Use and Crime

Five years ago, the Justice Policy Institute sought to determine whether the long mandatory minimum sentences under the Three Strikes law were reducing crime. The research noted: "Since California counties enforce the 'Three Strikes' law in different ways, it was hypothesized that counties that employed a strict enforcement policy would experience higher levels of crime reduction."[17]

To test the theory, the authors updated this 1999 analysis, and examined official county-by-county reported crime and arrest statistics between 1993 and 2002 (the latest available) for California's 12 largest counties, including: Alameda, Contra Costa, Fresno, Los Angeles, Orange, Riverside, San Bernadino, San Francisco, Sacramento, Santa Clara, San Diego, and Ventura county. These counties account for over three-fourths of the state's population and four-fifths of its major crime. We compared the six counties that used the Three Strikes law more heavily with the six counties that used the law less frequently to see if there were differences in the homicide rate, violent crime rate, and the index crime rate. The counties' use of the Three Strikes law and their ranking was based on the number of strikers in the prison population per 1,000 felony arrests per year, averaged out over the nine years from 1994 through 2002.

As the table and graph below show, counties that used the Three Strikes law at a higher rate did not experience greater reductions in crime than counties that used the law less frequently. In fact, San Francisco, the county that used the law least frequently (at approximately one-fifth the average rate of the 12 largest counties), achieved higher reductions in its violent crime rate than any other county.

FIGURE 9: COUNTY RANKINGS BY USE OF THE THREE STRIKES LAW AND CHANGES IN VARIOUS CRIME RATES, 12 LARGEST COUNTIES IN CALIFORNIA

Striker Use Rate Ranking	County	Change in Homicide Rate (1993-2002)	Change in Index Crime Rate (1993-2002)	Change in Violent Crime Rate (1993-2002)	Change in Property Crime Rate (1993-2002)	Average Striker Rate (1994-2002)
1	**San Diego**	-67.39%	-40.84%	-44.53%	-46.99%	117.25
2	**Los Angeles**	-44.55%	-43.30%	-46.27%	-48.67%	110.10
3	**Riverside**	-44.54%	-42.42%	-46.61%	-48.17%	81.24
4	**Sacramento**	-50.39%	-29.96%	-30.90%	-38.67%	76.11
5	**Santa Clara**	-43.59%	-41.02%	-30.15%	-44.87%	70.36
6	**Fresno**	-56.73%	-26.05%	-44.24%	-47.73%	66.42
7	**Orange**	-65.79%	-47.02%	-46.84%	-56.82%	66.39
8	**Ventura**	-55.00%	-41.33%	-47.90%	-51.48%	54.27
9	**San Bernardino**	-51.85%	-40.72%	-47.88%	-46.82%	53.27
10	**Contra Costa**	-62.60%	-24.59%	-47.14%	-22.01%	40.89
11	**Alameda**	-34.90%	-38.11%	-51.62%	-33.98%	23.42
12	**San Francisco**	-50.00%	-42.52%	-57.24%	-47.92%	12.30

	Change in Homicide Rate (1993-2002)	Change in Index Crime Rate (1993-2002)	Change in Violent Crime Rate (1993-2002)	Change in Property Crime Rate (1993-2002)	Average Striker Rate (1994-2002)
Counties Using Three Strikes Law MOST	-51.20%	-37.26%	-40.45%	**-45.85%**	86.91
Counties Using Three Strikes Law LEAST	**-53.36%**	**-39.05%**	**-49.77%**	-43.17%	41.76

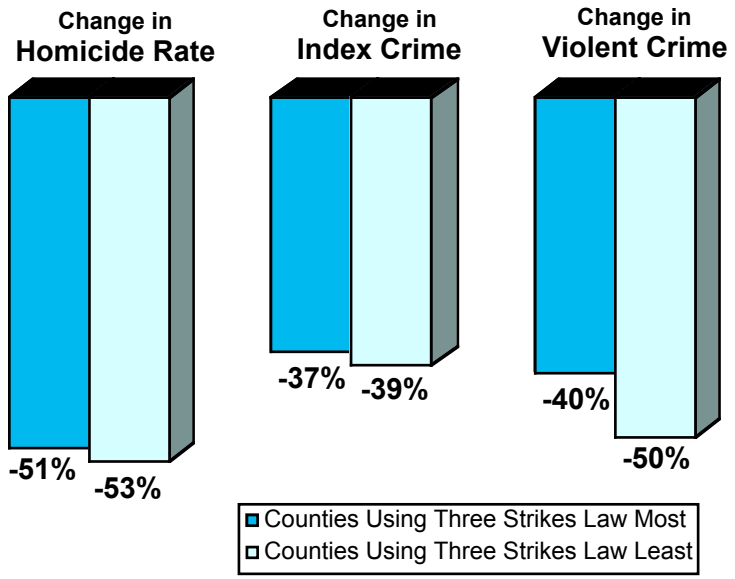
Source: 1993-2002 County Crime Rates: provided by Linda Nance, Office of the Attorney General, Criminal Justice Statistics Center, Special Request Unit; Strikers in the Prison Population, by County, 1994-2002: "Number of Offenders in the Institution Population by County of Commitment and Sentence Type on December 31, 1994 through December 31, 2002," provided by Cindy Solis, Data Analysis Unit, Estimates and Statistical Analysis Section, Offender Information Services Branch, California Department of Corrections (November 2003); Felony Arrests: Office of the Attorney General, Criminal Justice Statistics Center. Online at: http://justice.hdcdojnet.state.ca.us/cjsc_stats/prof02/index.htm; Average Striker Rate: the average annual number of second and third strikers in the prison population by county of commitment per 1,000 felony arrests in the county, 1993-2002.

Significant Findings of the County-by-County Comparisons

- The average rate of incarceration under the Three Strikes law for counties that used the law more heavily (86.91 strikers per 1,000 felony arrests) was more than double the rate of incarceration for counties that used the law less frequently (41.76 strikers per 1,000 felony arrests).
- The six large counties using Three Strikes least frequently had a decline in violent crime that was 22.5% greater than was experienced by the six large counties using Three Strikes the most frequently.
- The six heavy-using counties also experienced slightly smaller declines in homicide rates (-51.2% vs. -53.4%) and index crime (-37.3% vs. -39.1) compared to those counties using Three Strikes less frequently.
- Ironically, although Three Strikes was designed to target violent offenders, the only category of crime in which the heavy-using counties experienced slightly larger declines was for property crimes.

FIGURE 10: COUNTY COMPARSISONS ON DROPS IN VARIOUS CRIME RATES, 1993-2002

Counties using the Three Strikes Law More Heavily Had Lower Drops in Crime



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State-by-state comparison: How has California's crime decline stacked up against other non-Three Strikes states?

Since 1993, 25 states and the federal government have passed some form of "three strikes" law for repeat offenders. California's law, however, is much broader than any other state's in terms of what constitutes a strike and how many offenders have been incarcerated. California's law is the only one that applies to *any* felony—violent and non-violent alike. California is one of the few states that has a "second strike" provision, which means that persons with one prior serious or violent felony conviction will receive a doubled sentence for any subsequent felony conviction. As a result, California's Three Strikes law has lengthened the terms of incarceration for tens of thousands more offenders.

Another way in which researchers have sought to answer the question of whether Three Strikes has reduced crime is to compare the change in crime rates of California and other Three Strikes states to non-Three Strikes states. Some of the major research includes the following:

- The RAND Corporation: "States with three-strikes laws do not appear to have experienced faster declines in crime since those laws were implemented than have states without such laws. Neither have three-strikes states experienced a greater increase in incarceration rates."18

- U.S. Justice Department's National Institute of Justice: Austin et al. examined data for three Three Strikes states—California, Washington, and Georgia—and three non-Three Strikes states—Texas, Massachusetts, and Michigan. They found that "all six states showed trends in their crime rate patterns which are not consistent with those who argued that adoption of these laws would produce independent effects on crime reduction." They also determined that "California, which is the only state to aggressively implement a three strikes law, has shown no superior reductions in crime rates."19

- The Rand Corporation: Chen "found no evidence that three strikes laws had a significant effect on incarceration rates or violent crime trends. The only statistically significant effect found was for a property crime trend in California (motor vehicle theft)."20

Methodology: State-by-State comparisons

One other study that compared Three Strikes with non-Three Strikes states was conducted by the Justice Policy Institute in 1997. *Striking Out: The Crime Control Impact of "Three Strikes" Laws* found that "both violent crime and nonviolent crime in non-three-strikes states fared better than for three strikes states. In fact, from 1994-1995, violent crime in non-three-strikes states fell nearly three times more rapidly than in three-strikes states."[21]

In that same report, JPI compared the crime rate change in New York City—a city in a non-Three Strikes state—to Los Angeles. From 1994 to 1995, New York City saw all crime categories decline at a much higher rate than Los Angeles, despite Los Angeles County's heavy use of the Three Strikes law.

In this section we will replicate the authors' 1997 research, but with some important differences. First, the number of states that are considered "Three Strikes states" in this report is greatly expanded because many states passed their Three Strikes law in 1995 and 1996, too late to be included as a Three Strikes state in the authors' previous analysis.[22] Secondly, the authors compare the State of California to the State of New York, rather than focusing specifically on Los Angeles and New York City.

Significant Findings

The tables below compare the average change in the violent crime rate and index crime rate between Three Strikes and non-Three Strikes states between the years 1990 and 2002, 1993 and 2002, as well as comparing the average violent crime rate and index crime rate for the states in 2002. The tables also include the same comparisons for the states of California and New York.

FIGURE 11: DROPS IN VIOLENT AND OVERALL CRIME IN THREE STRIKES AND NON-THREE-STRIKES STATES

VIOLENT CRIME	Three Strikes States	Non-Three Strikes States	California	New York
Average Change in Violent Crime Rate 1990-2002	-13.77%	-17.16%	-43.23%	-58%
Average Change in Violent Crime Rate 1993-2002	-20.24%	-22.48%	-44.94%	-53.80%
Average Violent Crime Rate, 2002	457.48	418.48	593.4	496

INDEX CRIME	Three Strikes States	Non-Three Strikes States	California	New York
Average Change in Index Crime Rate 1990-2002	-24.49%	-20.55%	-40.28%	-55.94%
Average Change in Index Crime Rate 1993-2002	-22.14%	-17.18%	-38.92%	-49.49%
Average Index Crime Rate, 2002	4089.82	4018.08	3943.7	2803.7

Source: 1990-2001: FBI, *Uniform Crime Reports*, prepared by the National Archive of Criminal Justice Data (downloaded: Oct. 20, 2003); 2002: FBI, *2002 Uniform Crime Report*.

When comparing Three Strikes states to non-Three Strikes states, the authors found:

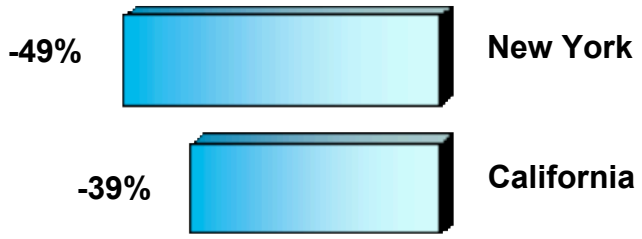
- Non-Three Strikes states had a larger average drop in violent crime between 1990 and 2002, as well as between 1993 and 2002.
- Non-Three Strikes states had a lower average violent crime rate in 2002 than Three Strikes states.
- Non-Three Strikes states had a violent crime rate that was 29.5 percent lower than California's in 2002, despite eight years of Three Strikes use.
- Three Strikes states had a larger average drop in index crimes between 1990 and 2002, as well as between 1993 and 2002.
- In 2002, Three Strikes states had a slightly higher average index crime rate than non-Three Strikes states.
- California's Index Crime Rate in 2002 was 1.8 percent lower than non-Three Strikes states. However, if one excludes Washington, D.C. from the non-Three Strikes states, California's 2002 Index Crime rate is actually 2.2 percent higher than non-Three Strikes states.

When comparing New York and California, the authors found:

- New York—a non-Three Strikes state—had much larger drops in total crime and violent crime than California. New York's index crime rate dropped 27.2 percent more (49.5% vs. 38.9%) and New York's violent crime rate dropped 19.8 percent more (53.8% vs. 44.9%) than California's.
- California's 2002 crime rates are much higher than New York's, even though California enacted its Three Strikes law eight years earlier. As of 2002, California's index crime rate (3943.7) was 40.7 percent higher than New York's (2803.7). California's 2002 violent crime rate (593.4) was 19.6 percent higher than New York's (496).
- Between 1994 and 2002, New York's incarceration rate dropped 5.7 percent, while California's grew 17.7 percent. New York's prison population grew by 315, or .4 percent, while California's grew by 34,724, or 27.6 percent.

FIGURE 12: REDUCTIONS IN INDEX CRIME RATES, 1993-2002

New York's Overall Crime Rate Dropped More Than California's Between 1993 and 2002



Source: 1990-2001: FBI, *Uniform Crime Reports*, prepared by the National Archive of Criminal Justice Data (downloaded: Oct. 20, 2003); 2002: FBI, *2002 Uniform Crime Report*.

FIGURE 13: REDUCTIONS IN VIOLENT CRIME RATES, 1993-2002

New York's Violent Crime Dropped More Than California's Between 1993 and 2002

Source: 1990-2001: FBI, *Uniform Crime Reports*, prepared by the National Archive of Criminal Justice Data (downloaded: Oct. 20, 2003); 2002: FBI, *2002 Uniform Crime Report*.

Finding 5: Three Strikes has had a significant fiscal impact in California

Since before the passage of Proposition 184, the Three Strikes ballot initiative, criminal justice researchers have been attempting to quantify how much Three Strikes was going to cost California taxpayers. While the original estimates turned out to be seriously over-inflated due to a number of factors, the law has nonetheless had a significant fiscal impact.

Researchers also have sought to answer the question: could the crime control goals of Three Strikes be achieved by implementing other, less-costly policies? The previous comparison of the changes in crime between Three Strikes states and non-Three Strikes states shows that states without such laws have fared quite well in terms of crime-control.

Research by RAND has found that alternative crime control policies can also be more cost-effective. Their 1998 report, *Diverting Children from a Life of Crime: Measuring Costs and Benefits*, compared the cost-effectiveness of four childhood intervention programs—home visits and early childcare; parent training; graduation incentives; and delinquent supervision—with the Three Strikes law. The results? Parent training, graduation incentives, and delinquent supervision were more cost-effective in terms of the number of serious crimes prevented per dollars expended. Graduation incentives were four times more cost-effective: while it would cost $3,881 per serious crime prevented, Three Strikes was expected to cost $16,000 per serious felony prevented.

Other research has shown that the Three Strikes law may result in many older offenders being incarcerated for excessive periods of time, despite the fact that they will be aging out of their crime-prone years. Chen found that one of the few significant changes that occurred in California after Three Strikes passed was that the proportion of prison inmates over 50 increased.[23] Researchers from the University of Saskatchewan determined that 30 percent of Canadian offenders who would have been incarcerated for 25-years-to-life under the Three Strikes law if they had lived in California did not go on to commit any future violent offenses. In the Sentencing Project's *Aging Behind Bars: "Three Strikes" Seven Years Later*, researchers Ryan King and Marc Mauer note that despite the fact that arrest rates for violent crimes drop about 50 percent after the age of 39, the average third striker enters prison at the age of 36 to serve a minimum of 21 years. Finally, the Campaign for Effective Crime Policies notes that "the cost of incarceration for older prisoners is two to three times that for younger, healthier ones."[24]

What have been the increased costs associated with longer imprisonment under Three Strikes?

One question that has not been extensively researched since the passage of Three Strikes is: What additional costs have been imposed on California taxpayers because of the Three Strikes law?

Austin et al. estimated the added incarceration costs of Three Strikes to be $3.17 billion as of 1996.[25] Los Angeles County claimed that the law imposed $64 million in added trial and jail costs in the first year alone and over $200 million by 1998.[26] No additional cost estimates have been done since then—until now.

Methodology: Estimating the increased incarceration costs under Three Strikes

To calculate the added incarceration costs of Three Strikes, the authors analyzed the following pieces of information:

- annual cost of incarceration;
- number of persons sentenced under Three Strikes;
- estimated average amount of time-served (or to be served) in jail and prison after the passage of Three Strikes; and
- estimated average amount of time served (or to be served) in jail and prison if Three Strikes had not passed.

The basic formula for calculating the added incarceration costs of Three Strikes is as follows:

[(number of Three Strikes offenders admitted to prison)
X
(average time-served (or to be served) in jail and prison after Three Strikes passed)
X
(annual cost of incarceration)]

(minus)

[(number of Three Strikes offenders admitted to prison)
X
(average time-served (or to be served) in jail and prison *if Three Strikes had not passed*)
X
(annual cost of incarceration)]

The authors made the following assumptions in our calculations to account for missing data:

- **Total number of strikers admitted to prison since 1994**—while the data for the number of second and third strikers in the prison population is complete, the Department of Corrections could not tell us how many second strikers had been released from prison since the law went into effect. In October 1999, the Legislative Analyst reported that "more than 10,000 second strikers have already been released from prison to parole." Assuming that second strikers continued to be released at the same rate (2,000 per year), we conservatively projected that 18,000 second strikers had been released since the law went into effect. For purposes of this analysis, we assumed that all of these offenders were property, drug, and "other" offenders because most violent offenders are still likely to be in prison.

- **Average (mean) time to serve for third strikers**—Because data was not available from the Department of Corrections, we used the 25-year mandatory minimum sentence for third strikers. This estimate should be considered highly conservative because defendants sentenced on third strikes can be sentenced to sentences that are longer than 25 years to life, but not shorter.

- **Average (mean) time to serve for third strikers without Three Strikes**—These averages were calculated using the current third striker population's offender make-up and the average time-served for such offenders as reported in the Department of Corrections' report, *Time Served on Prison Sentence: Felons First Released to Parole by Offense Calendar Year 2002*.

- **Average (mean) time to serve for second strikers**—This average for all second strikers, 7.27 years (87.2 months), is 80 percent of the average sentence of second strikers currently in the CDC population (107 months). Strikers must serve 80 percent of their sentence. The average sentence for current second strikers was provided by Cindy Solis in the Data Analysis Unit of the Offender Information Services Branch of the CDC. Specific offense category averages are estimates that are proportional to the types of second strikers in the population and the mean minimum time to serve for all second strikers.

- **Average (mean) time to serve for second strikers without Three Strikes**—These estimates are based on offenses committed by "second striker" inmates in the population as of September 30, 2003, and mean time served, by offense, as reported in *Time Served on Prison Sentence: Felons First Released to Parole by Offense Calendar Year 2002*, California Department of Corrections, April 2003.

- **Number and type of second strikers released**—As previously mentioned, the LAO reported that 10,000 second strikers had been released as of October 1999. Assuming a similar rate of release (2,000 per year), we estimated that a total of 18,000 second strikers had been released as of September 2003. The types of second strikers released are based on the second striker population serving time for non-violent offenses.

- **Average (mean) time served for second strikers-released**—We doubled the average time served for similar offenders released to parole in 2002. This estimate should, again, be considered highly conservative since under Three Strikes, sentences are doubled *and* defendants must serve 80 percent of the doubled sentence. Prior to Three Strikes, most prisoners could earn up to 50 percent off their sentences for good time/work time.

- **Average (mean) time served for second strikers-released without Three Strikes**—These averages were based on the types of offenders who are currently in the second striker population and the average time served for these types of offenders who were released to parole in 2002.

What follows are our calculations for the added incarceration costs due to Three Strikes. These figures represent the added costs of incarcerating (in jail and prison) second and third strikers who have already been released and those who are currently in the prison population. We consider this to be a conservative estimate, as these figures do not take into account offenders who would have been eligible for sentencing under the Three Strikes law, but whose sentence was reduced pursuant to the discretion of the prosecutor or judge, but nonetheless are serving longer terms of imprisonment than they otherwise would have if the Three Strikes law had not passed.

These figures also do not take into consideration the significant added costs of caring for more elderly prisoners, or the average 7,200 second strikers and 384 third strikers who will be added to the prison population every year for years to come. Also, this estimate does not include the "collateral consequences" and the costs of incarceration that have been quantified by the authors and others elsewhere, which can include lost tax revenue from people otherwise employed and various kinds of costs of the impact of incarceration on families and communities.

Principle Findings

Despite our conservative assumptions, the authors found that the Three Strikes law has had significant fiscal impacts on the state budget, as well as prison sentences. As calculated in Figure 14, those prisoners added to the prison system under Three Strikes between March 1994 and September 2003 have cost or will cost taxpayers an additional $10.5 billion in prison and jail expenditures. Of the costs calculated herein, $6.2 billion in added costs are a result of longer prison terms for non-violent offenses. Strikers currently in the prison population for non-violent offenses will serve 164,314 additional years behind bars than if they had been convicted prior to the passage of Three Strikes.

It bears noting that these are gross estimates and are the best estimations possible given the admittedly limited state of the available data. While the authors do not pretend that they are exact in nature, they do provide a general scope of the additional prison costs attendant upon nearly the first 10 years of Three Strikes. The authors recommend that legislators or the executive branch commission their own study to provide for a more exact accounting of the additional costs incurred because of Three Strikes.

FIGURE 14: ESTIMATED ADDED INCARCERATION COSTS & YEARS FOR STRIKERS CURRENTLY IN THE PRISON POPULATION AND THOSE ALREADY RELEASED UNDER THE THREE STRIKES LAW

Three Strikes has Added Over $6.1 Billion in Incarceration Costs and 164,000 Added Years for Incarceration of Non-Violent Offenders

Offense Type	CDC Cost per Inmate Year *	Mean Minimum Time to Serve in Years		# Inmates Serving Sentence (Sept. 2003)	Cost of Incarceration		Added Costs Due to Three Strikes	Added Years of Incarcer-ation Due to Three Strikes
		With Three Strikes**	Without Three Strikes***		After Three Strikes	Before Three Strikes		
THIRD STRIKERS								
Personal	$30,929	25	4.30	3,095	$2,365,295,275	$407,140,335	$1,958,154,940	63,311.29
Property	$30,929	25	2.24	2,270	$1,755,220,750	$157,117,516	$1,598,103,234	51,670.06
Drugs	$30,929	25	1.97	1,271	$982,768,975	$77,278,426	$905,490,549	29,276.43
Other	$30,929	25	1.68	634	$490,224,650	$32,907,941	$457,316,709	14,786.02
Total	**$30,929**			**7,234**	**$5,593,509,650**	**$674,444,218**	**$4,919,065,432**	**159,043.79**
SECOND STRIKERS								
Personal	$30,929	10.88	4.03	11,362	$3,823,391,208	$1,417,581,486	$2,405,809,722	77,784.92
Property	$30,929	5.55	2.06	9,517	$1,632,432,439	$605,249,601	$1,027,182,838	33,210.99
Drugs	$30,929	5.27	1.95	8,195	$1,335,999,842	$495,342,626	$840,657,216	27,180.23
Other	$30,929	4.45	1.65	2,922	$402,599,655	$149,270,055	$253,329,600	8,190.68
Total	**$30,929**	**7.27**	**2.70**	**31,996**	**$7,191,124,464**	**$2,667,443,769**	**$4,523,680,695**	**146,260.17**
SECOND STRIKERS – RELEASED*								
Personal	$30,929	*Assumption: No Second Strikers Convicted of Crimes Against Persons Have Been Released*						
Property	$30,929	4.11	2.06	8,302.12	$1,055,974,878	$527,987,439	$527,987,439	
Drugs	$30,929	3.91	1.95	7,148.88	$864,220,924	$432,110,462	$432,110,462	
Other	$30,929	3.30	1.65	2,549.00	$260,430,454	$130,215,227	$130,215,227	
Total	**$30,929**			**18,000 (estimate)**			**$1,090,313,128**	

Total Estimated Added Incarceration Costs Due to Three Strikes	Total Estimated Added Incarceration Costs for Non-Violent Offenders Due to Three Strikes	Total Estimated Added Years of Incarceration For Current Population Due to Three Strikes	Total Estimated Added Years of Incarceration For Current Non-Violent Offender Population Due to Three Strikes
$10,533,059,255	**$6,172,393,274**	**305,304 years**	**164,314 years**

*"CDC Cost per Inmate Year" from "Facts and Figures, Third Quarter 2004," California Department of Corrections website: http://www.corr.ca.gov/CommunicationsOffice/facts_figures.asp.

**Mean minimum time to serve in years with Three Strikes for "Three Strikers" is equal to 25 years, the mandatory minimum number of years a Third Striker must serve per *In re Cervera*, 24 Cal. 4th 1073.

Total mean minimum time to serve with Three Strikes for all "Second Strikers" is 80% of the average sentence length of Second Strikers in the population (109 months). Source: California Department of Corrections, email from Cindy Solis. Specific offense category averages are estimates that are proportional to the types of Second Strikers in the population and the mean minimum time to serve for all Second Strikers.

Mean minimum time to serve with Three Strikes for "Second Strikers-Released" is double the average time served for similar offenders released in 2002, as reported in *Time Served on Prison Sentence: Felons First Released to Parole by Offense Calendar Year 2002*, California Department of Corrections, April 2003.

***Mean minimum time to serve without Three Strikes for "Third Strikers" based on offenses committed by "Third Striker" inmates in the population as of September 30, 2003, and mean time served, by offense, as reported in *Time Served on Prison Sentence: Felons First Released to Parole by Offense Calendar Year 2002*, California Department of Corrections, April 2003.

Mean minimum time to serve without Three Strikes for "Second Strikers" based on offenses committed by "Second Striker" inmates in the population as of September 30, 2003, and mean time served, by offense, as reported in *Time Served on Prison Sentence: Felons First Released to Parole by Offense Calendar Year 2002*, California Department of Corrections, April 2003.

Mean minimum time to serve without Three Strikes for "Second Strikers-Released" based on offenses committed by "Second Striker" inmates in the population as of September 30, 2003, and mean time served, by offense, as reported in *Time Served on Prison Sentence: Felons First Released to Parole by Offense Calendar Year 2002*, California Department of Corrections, April 2003.

****Total number of released "Second Strikers" based on *The "Three Strikes and You're Out" Law's Impact on State Prisons: An Update*, (Oct. 1999) Legislative Analyst's Office, p. 2. At the time of that report, 10,000 second strikers had been released. Assuming a similar rate of release (2,000 per year), we estimated that a total of 18,000 Second Strikers had been released as of September 2003. Offense category estimates based on non-violent Second-Striker offender population, September 30, 2003.

Additional Court Costs Due to Three Strikes

While it is difficult to quantify, another area of the criminal justice system that has been impacted by California's Three Strikes law is the trial courts. As previously mentioned, in 1998, Los Angeles County sought to have up to $200 million in added costs from Three Strikes reimbursed by the state by taking their case to the Commission on State Mandates. While the Commission ultimately ruled against the county on the grounds that the added costs of Three Strikes were subject to the "crimes and infractions" exclusion of the law, the Commission never disputed Los Angeles County's claims of added expenses.

In September 1996, California's Administrative Office of the Courts published its second survey of superior and municipal courts to determine how Three Strikes had impacted them.[27] The survey found that Three Strikes:[28]

- Increased judicial workloads: Fifteen superior courts (accounting for 58 percent of California's felony filings) "estimated that their judicial workload for criminal cases increased more than 10 percent as a result of the three-strikes law."

- Increased the number of cases going to trial: "The median trial rate was 4 percent for non-strike cases, 9 percent for second-strike cases, and 41 percent for third-strike cases." Municipal courts "reported that strike cases were more likely to go to the preliminary hearing stage than non-strike cases." According to the Administrative Office of the Courts, "there were 21 percent more felony trials statewide in 1995-96 than in 1992-93."[29]

- Shifted resources from civil to criminal cases: Judicial resources—judges, staff, and courtrooms—were shifted from civil cases to criminal cases. Seventeen of the surveyed counties "attributed a growing backlog of civil cases to this reduction in judicial resources."

- Increased administrative workloads: Forty-five percent of superior courts and 40 percent of municipal courts reported that the Three Strikes law "has noticeably increased their administrative workload."

Because Three Strikes was causing cases to get backed up during the early years of Three Strikes, the 1996-1997 State Budget Act contained an additional $3.5 million for the Three Strikes Relief Team, a "special team of retired judges ... formed to assist trial courts that are swamped with three-strike cases."[30]

Finding 6: Three Strikes has impacted the children of prisoners

The number of parents serving extra-long prison sentences under the Three Strikes law is critical because their children—and ultimately, society—are adversely affected as well. As the California Research Bureau noted:

"Children whose parents have been arrested and incarcerated ... have experienced the trauma of sudden separation from their sole caregiver, and most are vulnerable to feelings of fear, anxiety, anger, sadness, depression and guilt. They may be moved from caretaker to caretaker. The behavioral consequences can be severe, absent positive intervention—emotional withdrawal, failure in school, delinquency and risk of intergenerational incarceration."[31]

As such, it seems reasonable to ask, how many children have a striker parent behind bars? How many thousands of added years are people spending locked up instead of being at home playing a role in the lives of their children, families and communities?

To estimate the number of children that have a striker parent behind bars, we examined a number of different studies, all of which provided similar results. According to the California Research Bureau, California's prisons contained 165,000 prisoners with approximately 195,000 children, or 1.18 children per inmate.[32] The Bureau of Justice Statistics found that nearly 1.5 million minor children had a parent in a U.S. prison in 1999, which averages out to each state prisoner having 1.075 children.[33] Finally, according to a database of 150 strikers maintained by Families to Amend California's Three Strikes, the average striker had 1.1 children.

If we assume that the average striker in prison today has 1.1 children, that means there are approximately 46,700 children with a parent serving a second or third strike sentence in California today.

While many of these parents would have been imprisoned without the Three Strikes law, the fact is that they are imprisoned for much longer periods of time under Three Strikes. In Figure

14, where the authors calculated the estimated added incarceration costs of Three Strikes, we estimated that current strikers will serve an additional 305,304 years behind bars as compared to the number of years they would have served if Three Strikes had not passed.

In summary, approximately 46,700 children of strikers will be away from their parents for an additional 305,304 years because of the Three Strikes law. Put another way, each of the 46,700 children with a striker parent will spend an average of 6.5 years longer away from their parent under Three Strikes as compared to before Three Strikes passed.

Research has shown that children with parents in prison are more likely to exhibit low self-esteem, depression, emotional withdrawal, and inappropriate or disruptive behavior in school. Some studies have shown that children of incarcerated parents are at a higher risk of becoming delinquent or engaging in criminal behavior. These impacts are linked to the larger effect of incarceration on the family, which can include the loss of financial and emotional support as well as the social stigma of having a family member imprisoned, and the loss of child care which enables other family members to work.[34]

Discussion: Current policy options under consideration for Three Strikes

From the preceding sections, the authors have provided data and analysis showing that:

- Most strikers are in prison for non-violent offenses.
- The Three Strikes law disproportionately impacts African-Americans and Latinos.
- There is no evidence of a crime reduction benefit, either between counties or states, attendant upon the Three Strikes law.
- Three Strikes has cost taxpayers over $10 billion in added incarceration and court costs.
- Three Strikes has resulted in over 46,000 children living without their incarcerated parents for many more years than if Three Strikes had not passed.

As previously mentioned, it takes a two-thirds vote of the legislature or a vote of the people to enact even the most minor of amendments to the Three Strikes law. Over the last ten years, there have been numerous legislative proposals to amend Three Strikes, most of which have not passed. One of the first proposals, SB 2048, was introduced by Sens. John Vasconcellos and Tom Hayden in 1998. As originally introduced, the bill would have amended the Three Strikes law so that it only applied to persons whose current offense was a serious or violent felony, rather than all felonies. However, by the time it was sent to then-Governor Wilson's desk, the bill had been downgraded to a "study bill," whose only purpose was to "examine the costs and benefits of the 'three strikes' law."[35] A study bill was too much for Governor Wilson though. He vetoed it on September 13, 1998, concluding in his veto message: "There are many mysteries in life, the efficiency of 'Three Strikes' however, is not one of them."

There have been other attempts to amend Three Strikes since 1998, only one of which has been successful. In the 2000 election, California voters overwhelmingly approved Proposition

36, which requires that first- and second-time drug possession offenders receive drug treatment instead of being incarcerated. Even third strikers can receive treatment instead of a 25-years-to-life prison sentence if they have been out of prison for five years before being arrested for drug possession.

Today, there are two proposals to amend Three Strikes in much more significant ways, both of which would reduce the number of non-violent offenders being sentenced under the law, saving the taxpayers hundreds of millions, if not billions of dollars. In the legislature, AB 112 was introduced by Assemblywoman Jackie Goldberg in 2003. The bill, like Sen. Vasconcellos' 1998 legislation, would amend Three Strikes so that it only applies to serious or violent felonies.

Another proposal to amend the law is a ballot initiative that is being circulated by Citizens Against Violent Crime (http://www.amend3strikes.com/). The initiative would amend the law so that it only applies to serious or violent felonies, and would reduce the number of crimes that qualify as serious or violent. The initiative would also allow persons who have already been imprisoned to be re-sentenced to a shorter term of incarceration if their crime qualifies under the new law.

CAVC's legislation would substantially reduce correctional costs. According to the Legislative Analyst and Director of Finance, the fiscal impact of the measure would be: "significant net savings to the state ranging from several tens of millions of dollars to several hundreds of millions of dollars annually due to lower prison operating costs...." The fiscal analysis goes on to note that "potential state deferral of several hundreds of millions of dollars in capital outlay costs associated with delayed construction of additional prison beds" is possible.

Conclusion

With California facing a $15 billion budget gap this year,[36] and scant evidence that Three Strikes is either targeting the violent offenders it was aimed at or providing the kind of crime-control impact its backers had hoped, California policymakers should seriously consider amending or abolishing their ten-year experiment with the nation's most costly and punitive Three Strikes law.

Endnotes

[1] Schiraldi, Vincent and Tara-Jen Ambrosio. *Striking Out: The Crime Control Impact of "Three-Strikes" Laws*. (March 1997) Washington, DC: Justice Policy Institute, p. 1.

[2] Greenwood, Peter W. and Hawken, Angela. *An Assessment of the Effects of California's Three Strikes Law*. (March 2002) Los Angeles, California: Greenwood & Associates, p. 9.

[3] Owens, Brian and Phillips, Nancy. *Georgia's Aging Inmate Population*. (date unknown) Georgia Department of Corrections, p. 2. Online at: http://www.dcor.state.ga.us/pdf/agingpop.pdf.

[4] Percentage based on the June 18, 2002 Georgia prison population of 46,639. Source: Georgia Department of Corrections. *Inmate Statistical Profile*. (June 18, 2002), p. 2.

[5] Washington Sentencing Guidelines Commission. *Two-Strikes and Three-Strikes: Persistent Offender Sentencing in Washington State Through June 2003*. (October 8, 2003) pp. 13, 18.

[6] Zimring, Franklin E., Hawkins, Gordon, and Kamin, Sam. *Punishment and Democracy: Three Strikes and You're Out in California*. (2001) New York, NY: Oxford University Press, p. 133.

[7] Greenwood et al., *Three Strikes and You're Out: Estimated Benefits and Costs of California's New Mandatory Sentencing Law*. (1998) Santa Monica, CA: Rand Corp., p. xii.

[8] Greenwood and Hawken, p. 9.

[9] Source: Table 1: "Second and Third Strikers in the Institution Population by Offense Category, Offense Group and Admission or Return Status as of September 30, 2003," *Second and Third Strikers in the Institution Population*, Data Analysis Unit, Estimates and Statistical Analysis Section, Offender Information Services Branch, California Department of Corrections (September 30, 2003); "Number of Felons in the Institution Population by Sentence Type on December 31, 1994 through December 31, 2002," Data Analysis Unit, Estimates and Statistical Analysis Section, Offender Information Services Branch, California Department of Corrections (November 2003).

[10] "Non-violent" includes all crimes that are not characterized as "crimes against persons" by the California Dept. of Corrections.

[11] As this report draws on primary source materials from governments, the table headings reflect the way governments and the original researchers have defined racial or ethnic identities, including use of the term Black and Hispanic.

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