A Primer:

Three Strikes

The Impact After More Than a Decade

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Contents

Acknowledgments

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Introduction

In 1994, California legislators and voters approved a major change in the state's criminal sentencing law, (commonly known as Three Strikes and You're Out). The law was enacted as Chapter 12, Statutes of 1994 (AB 971, Jones) by the Legislature and by the electorate in Proposition 184. As its name suggests, the law requires, among other things, a minimum sentence of 25 years to life for three-time repeat offenders with multiple prior serious or violent felony convictions. The Legislature and voters passed the Three Strikes law after several high profile murders committed by ex-felons raised concern that violent offenders were being released from prison only to commit new, often serious and violent, crimes in the community.

In this piece, we summarize key provisions of Three Strikes and You're Out; discuss the evolution of the law in the courts; estimate the impact of the law on state and local criminal justice systems; and evaluate to what extent the law achieved its original goals. Our findings are based on analysis of available data, review of the literature on Three Strikes, and discussions with state and local criminal justice officials.

Background

The Rationale for Three Strikes. Repeat offenders are perhaps the most difficult of criminal offenders for state and local criminal justice systems to manage. These offenders are considered unresponsive to incarceration as a means of behavior modification, and undeterred by the prospect of serving time in prison. For this reason, longer sentences for this group of offenders have a strong appeal to policy makers and the public. Supporters of Proposition 184 argued that imposing lengthy sentences on repeat offenders would reduce crime in two ways. First, extended sentences, also referred to as sentence enhancements, would remove repeat felons from society for longer periods of time, thereby restricting their ability to commit additional crimes. Second, the threat of such long sentences would discourage some offenders from committing new crimes.

Key Features of Three Strikes. The Three Strikes law imposed longer prison sentences for certain repeat offenders, as well as instituted other changes. Most significantly, it required that a person who is convicted of a felony and who has been previously convicted of one or more violent or serious felonies receive a sentence enhancement. (Figure 1 [see next page] defines several important terms in criminal sentencing law.) The major changes made by the Three Strikes law are as follows:

- ***Second Strike Offense.*** If a person has *one previous* serious or violent felony conviction, the sentence for *any new* felony conviction (not just a serious or violent felony) is *twice* the term otherwise required under law for the new conviction. Offenders sentenced by

Figure 1

Important Terms in Criminal Sentencing

- ***Felony.*** There are three kinds of crimes: infractions, misdemeanors, and felonies. Felonies are the most serious type of crime, and offenders who commit felonies may be sentenced to state prison.
- ***Violent Offense.*** State law (Penal Code [P.C.] 667.5) defines some felonies as "violent." Examples of such felonies include murder, robbery, and rape and other sex offenses.
- ***Serious Offense.*** State law (P.C. 1192.7) defines some felonies as "serious." Serious felonies include the same offenses as violent felonies, but also include other offenses such as burglary of a residence and assault with intent to commit robbery.
- ***Sentence Enhancement.*** This is additional time added to a criminal defendant's sentence for specified reasons relating to the nature of the crime or the offender's criminal history. Examples include the addition of one year for possession of a firearm during the commission of a felony and an additional three years for an offender who commits a violent felony and who has served a prior prison term for a violent felony. The Three Strikes law is an example of a sentence enhancement because strikers receive additional time in prison for their current offense because of their prior convictions for serious or violent crimes.

the courts under this provision are often referred to as "second strikers."

- ***Third Strike Offense.*** If a person has *two or more previous* serious or violent felony convictions, the sentence for *any new* felony conviction (not just a serious or violent felony) is life imprisonment with the minimum term being 25 years. Offenders convicted under this provision are frequently referred to as "third strikers."

- ***Consecutive Sentencing.*** The statute requires consecutive, rather than concurrent, sentencing for mul-

tiple offenses committed by strikers. For example, an offender convicted of two third strike offenses would receive a minimum term of 50 years (two 25-year terms added together) to life.

- ***Unlimited Aggregate Term.*** There is no limit to the number of felonies that can be included in the consecutive sentence.

- ***Time Since Prior Conviction Not Considered.*** The length of time between the prior and new felony conviction does not affect the imposition of the new sentence, so serious and violent felony offenses committed many years before a new offense can be counted as prior strikes.

- ***Probation, Suspension, or Diversion Prohibited.*** Probation may not be granted for the new felony, nor may imposition of the sentence be suspended for any prior offense. The defendant must be committed to state prison and is not eligible for diversion.

- ***Prosecutorial Discretion.*** Prosecutors can move to dismiss, or "strike," prior felonies from consideration during sentencing in the "furtherance of justice."

- ***Limited "Good Time" Credits.*** Strikers cannot reduce the time they spend in prison by more than one-fifth (rather than the standard of one-half) by earning credits from work or education activities.

As a result of these provisions, the Three Strikes law significantly increases the length of time some repeat offenders spend in state prison. For example, consider a defendant who has prior convictions for assault on a police officer and bur-

Figure 2

Illustrations of Prison Sentencing Under Three Strikes Prior Law Versus Current Law

Scenarios	Crimes Committed		Time to Serve in Prison[a]	
	New Offense	Prior Offense[b]	Prior Law	Current Law
No Prior Offense				
Any felony with:				
• No prior felony	Burglary of residence	None	2 years	Same
Second Strike Offense				
Any felony with:				
• One prior serious/violent felony	Burglary of residence	One prior burglary of residence	4.5 years	10.4 years
Third Strike Offense				
Nonviolent/ nonserious felony with:				
• Two prior serious/violent felonies	Receiving stolen property	One prior assault on a peace officer, and one prior burglary of a residence	2 years	25 years to life
Serious/violent felony with:				
• Two prior serious/violent felonies	Robbery	One prior burglary of a residence, and one prior robbery	7 years	25 years to life

[a] Assumes the offender (1) receives typical prison sentence for the new offense, (2) receives sentence enhancements for prior offenses, and (3) earns maximum credits from participation in work/education programs.

[b] Assumes prior offense resulted in a prison sentence.

glary of a residence, both considered serious or violent crimes. Subsequently, he is convicted for receiving stolen property, a nonserious and nonviolent felony. Before the enactment of Three Strikes, he would typically have served two years for the property offense. Under the Three Strikes law, he would be sentenced to life in prison. Figure 2 illustrates how sentencing under the Three Strikes law differs from the prior law under different scenarios of current and prior offenses.

The Legal Evolution Of California's Three Strikes Law

Since the enactment of the Three Strikes law in 1994, there have been a number of legal challenges to its provision, summarized in the text box on the next page. The most significant of these challenges concerned the constitutionality of the measure. Specifically, the Three Strikes law made it possible for a repeat offender to receive a prison sentence of 25 years to life for a nonserious or nonviolent felony (for example, petty theft with a prior), thereby raising legal questions about the federal Constitution's Eighth Amendment protection against cruel and unusual punishment. Related legal challenges also have argued that Three Strikes violates the "proportionality rule" in sentencing (the idea that "the time should fit the crime") because a relatively minor crime committed by a repeat offender could result in a much harsher punishment than a violent crime committed by a first-time offender. In addition, the law appeared to grant prosecutorial, or executive, discretion while limiting judicial discretion in sentencing, which raised constitutional questions about separation of powers. As a result of these and other concerns, there have been a number of challenges to various aspects of the law.

While some court rulings have limited the law, other rulings have upheld most provisions of the law. As regards the issue of cruel and unusual punishment, the U.S. Supreme Court

Three Strikes Legal Milestones

Ewing v. California—*Three Strikes Law Not Cruel and Unusual Punishment.*

- The Ewing case involved a repeat offender sentenced to prison for 25 years to life under the Three Strikes law for stealing golf clubs from a Los Angeles country club, a nonserious, nonviolent offense.

- Ewing argued that the sentence violated the Eighth Amendment's prohibition against cruel and unusual punishment. In the past, the court had interpreted the Eighth Amendment to prohibit the imposition of a sentence that is grossly disproportionate to the severity of the crime.

- In 2003, the U.S. Supreme Court, in a 5-4 decision, upheld the constitutionality of California's Three Strikes law. The court argued, "Ewing's sentence is justified by the State's public safety interest in incapacitating and deterring recidivist felons…." and that "selecting sentencing rationales is generally a policy choice to be made by state legislatures, not federal courts."

People v. Superior Court (Romero)—*Judges Can Strike Prior Convictions.*

- The issue here was whether a judge, under the authority granted by Penal Code Section 1385 to dismiss an action in furtherance of justice, may

strike prior felony convictions on his/her own motion in Three Strikes cases.

- On June 20, 1996, the state Supreme Court ruled that the court has the discretion to dismiss prior serious or violent felony convictions under the Three Strikes law.

People v. Fuhrman—*Multiple Strikes From Single Incident.*

- In the Fuhrman case, the trial court sentenced Fuhrman to a total prison term of 58 years to life under the Three Strikes law. The defendant appealed claiming that the trial court should have dismissed one of the prior convictions since both convictions arose from a single court proceeding.

- In 1997, the state Supreme Court upheld the lower court decision. The court declared that "because the statutory language was clear and unambiguous, and because the phrase brought and tried separately was not expressly mentioned, it was not necessary for the two prior offenses to result from separate incidents."

ruled in *Ewing v. California* that it is constitutional to sentence a repeat offender to an indeterminate life sentence for the commission of a nonserious or nonviolent felony. In *People v. Superior Court (Romero)*, the state Supreme Court ruled that Three Strikes did not eliminate judicial discretion to dismiss prior serious or violent felony convictions.

Numerous other important issues relating to the implementation of the law have been resolved through the courts. For example, the courts have determined that "wobblers" (crimes that can be considered either a misdemeanor or a felony) can trigger second and third strike enhancements, juvenile convictions can count as strike offenses, and multiple strikes can be charged from a single crime or incident.

Implications. The major legal issues raised by challengers to the law have now been addressed by the courts, and the legal outcomes ultimately have had significant implications affecting the implementation of the law. In particular, the decisions permitting the application of the Three Strikes law to nonserious, nonviolent offenses has allowed many offenders to be sentenced to prison for extended periods, costing the state hundreds of millions of dollars. In addition, the court's decision that judges have discretion to dismiss prior strikes contributes to a pattern of variation in the application of Three Strikes penalties across counties. These impacts are discussed in more detail below.

Impact of Three Strikes on The Criminal Justice System

In this section, we discuss the impact of the Three Strikes law on the state's prison system, as well as the courts and local jails.

State Corrections

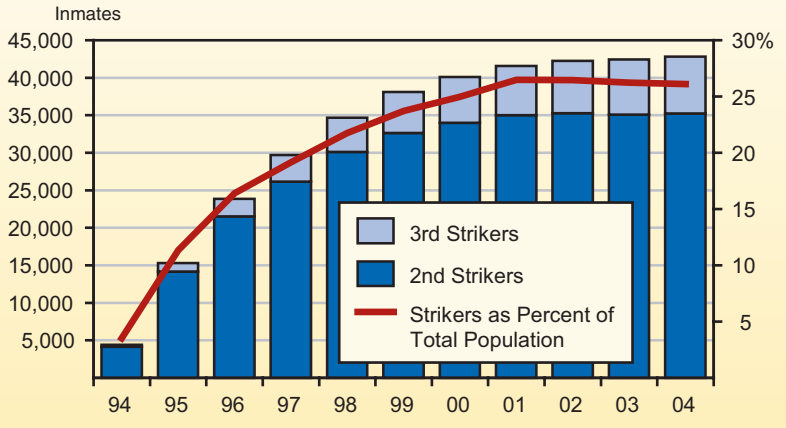
Impact on the Prison Population. Since its implementation, the Three Strikes law has had a major effect on the make-up of the prison population. Since 1994, the courts have sent over 80,000 second strikers and 7,500 third strikers to state prison. (More than half of these second strikers have served their time and have been released.) As of December 31, 2004, there were almost 43,000 inmates serving time in prison under the Three Strikes law, making up about 26 percent of the total prison population. Of the striker population, more than 35,000 are second strikers, and about 7,500 are third strikers. Figure 3 (see next page) shows the growth of the second and third striker inmate population from 1994 through 2004. As the figure shows, the striker population in prison grew quickly in the first years of the law. However, the rate of growth has slowed significantly in recent years as many second strikers complete their sentence and are paroled.

In 1994, analysts predicted that Three Strikes would result in over 100,000 additional inmates in state prison by 2003. Clearly, that rate of growth has not occurred. A number of factors have probably contributed to a lower prison population, including the use of discretion by judges and district attor-

Figure 3

Growth in the Three Strikes Inmate Population in State Prison

1994-2004



neys to dismiss prior strikes in some cases. While courts do not track how often such discretion is used, some surveys of district attorneys conducted by Jennifer Walsh of California State University, Los Angeles, for example, suggest that prior strikes might be dismissed in 25 percent to 45 percent of third strike cases, resulting in shorter sentences for those offenders.

Roughly One-Third of Strikers Convicted for Crimes Against Persons. The most common offenses for which strikers are currently serving time in prison include robbery, burglary, assault, and possession of drugs. Approximately 37 percent of strikers were convicted for crimes against persons, such as robbery and assault. Figure 4 shows the striker population by offense category with the most common offenses listed.

Little More Than Half of Strikers Are Convicted of Nonserious/Nonviolent Offenses. Based on information provided by the California Department of Corrections and Rehabilita-

Figure 4

Striker Population by Offense Category

(December 2004)

Offense	Third Strikers	Second Strikers	Total Number	Total Percent
Crimes Against Persons	**3,277**	**12,728**	**16,005**	**37%**
Robbery	1,706	4,886	6,592	15
Assault With a Deadly Weapon	426	2,443	2,869	7
Assault/Battery	391	2,470	2,861	7
Property Crimes	**2,344**	**10,391**	**12,735**	**30%**
1st Degree Burglary	880	2,609	3,489	8
2nd Degree Burglary	466	1,967	2,433	6
Petty Theft With a Prior	356	2,007	2,363	6
Drug Crimes	**1,282**	**8,654**	**9,936**	**23%**
Possession of a Controlled Substance	677	4,453	5,130	12
Possession of Controlled Substance for Sale	302	2,282	2,584	6
Sale of Controlled Substance	197	1,195	1,392	3
Other Crimes[a]	**671**	**3,463**	**4,134**	**10%**
Possession of a Weapon	412	1,865	2,277	5
Totals	**7,574**	**35,236**	**42,810**	**100%**

[a] For example, arson and driving under the influence.

tion (CDCR)—formerly the Department of Corrections, 44 percent of all inmate strikers were convicted of a serious or violent current offense, while 56 percent were convicted of nonserious or nonviolent offenses. It is likely that these figures somewhat under-report the percentage of strikers whose current offense activity was actually serious or violent. This could occur in some cases because district attorneys choose to prosecute strikers for nonserious, nonviolent offenses that may be easier to prove in court knowing that the Three Strikes

sentence enhancement will still apply. The extent to which this occurs is unknown. Figure 5 shows the number of striker inmates in prison convicted for serious and violent crimes as compared to the number convicted for nonserious, nonviolent offenses.

Figure 5

Less Than Half of Strikers Are Incarcerated for Serious/Violent Commitment Offenses

(December 2004)

	Current Commitment Offense					
	Serious/Violent		Nonserious/ Nonviolent		Totals	
	Number	Percent	Number	Percent	Number	Percent
Second Strikers	14,608	41%	20,627	59%	35,235	100%
Third Strikers	4,079	54	3,496	46	7,575	100
Totals	**18,687**	**44%**	**24,123**	**56%**	**42,810**	**100%**

While more than half of the strikers in prison are there because their current offenses are nonserious and nonviolent, strikers do have more serious criminal histories, on average, than other state inmates. For example, second and third strikers have been convicted for an average of three prior felony offenses, including an average of two prior serious or violent felonies. By comparison, the rest of the inmate population has an average of one prior felony offense, including 0.2 serious or violent felonies. Figure 6 compares the offense histories of all strikers—as well as second and third strikers—and other state inmates.

Even those strikers who are in prison because their current offenses were nonserious and nonviolent have lengthier criminal histories than nonstrikers. Second and third strikers

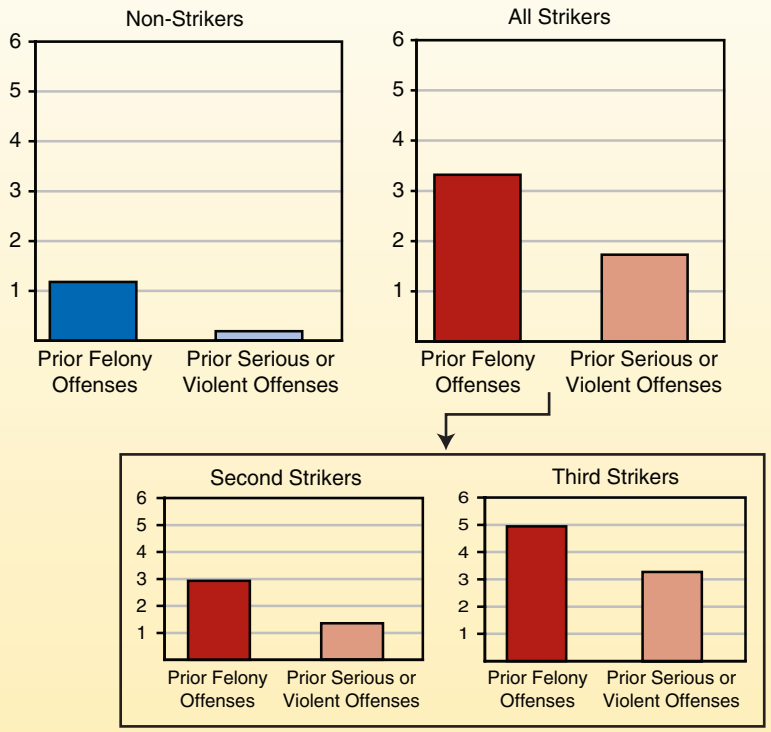
whose current offenses are nonserious and nonviolent average four and five prior felony offenses, respectively, compared to one prior felony offense on average for the rest of the inmate population.

Increased Length of Prison Stay. Because the law increases the length of sentences, it has raised the average length of stay for the prison population. The average time served by all felons before their first release to parole was 21 months in

Figure 6

Strikers Have Lengthier and More Serious Criminal Histories Than Other Offenders

Average Number of Prior Felony Offenses



1994, prior to the implementation of the Three Strikes law. By 2004, this average had increased by 19 percent to 25 months. In part, this increase has occurred because second strikers serve longer sentences than the average for all prison inmates. Second strikers released to parole in 2004 served 43 months on average. The additional time in prison for second strikers costs the state approximately $60,000 per striker.

In addition, inmates serving life sentences for a third strike conviction are in prison for longer than would have been the case in the absence of the Three Strikes law, particularly those whose current offense is nonserious or nonviolent. The cost of their additional time in prison because of Three Strikes is difficult to estimate because many of them would have returned to prison even in the absence of Three Strikes for new offenses or parole violations. In addition, because third strikers are serving indeterminate sentences, it is not clear when they will be released from prison. This decision will be made by the Board of Parole Hearings (formerly the Board of Prison Terms) for each inmate. It is worth noting that no third strikers have been released from prison, and the earliest any are eligible for release to parole is 2019.

Once third strikers become eligible for parole consideration, this will likely create significant additional workload and require additional resources for the board. The number of lifer hearings is projected to more than double from about 4,500 held by the Board of Prison Terms in 2003.

Inmate Population Aging. The average age of the inmate population has risen from 32 to 36 since 1994. Moreover, the number of inmates 50 years of age and older has increased from about 5,500 to 16,300 between 1994 and 2004. This aging prison population is likely due to two factors. The first and probably more significant factor is the enactment of sentencing laws (such as the Three Strikes law) to provide longer terms,

and in some cases life terms. Such laws, designed to incarcerate offenders for longer periods, result in a larger and older prison population in the long run. Thus, as the third striker population grows and ages—probably at least until 2014—the overall prison population will likely grow older, as well. The second factor is that the aging of the prison population simply reflects the aging of the citizenry as a whole. The so-called "baby boom" generation is getting older, and so are the criminals of the baby boom generation.

The aging of the prison population over the past decade has the potential for significant fiscal consequences. As inmates age, the cost of housing them increases due to age-related illness and the associated health care costs, as well as the security and transportation costs of moving these inmates between prisons and local hospitals. Estimates are that housing and caring for elderly inmates costs between two and three times more than the $35,000 it costs in 2005-06 to incarcerate the average inmate. Therefore, as the striker population continues to grow and age in prison, the state costs to incarcerate them will also continue to escalate.

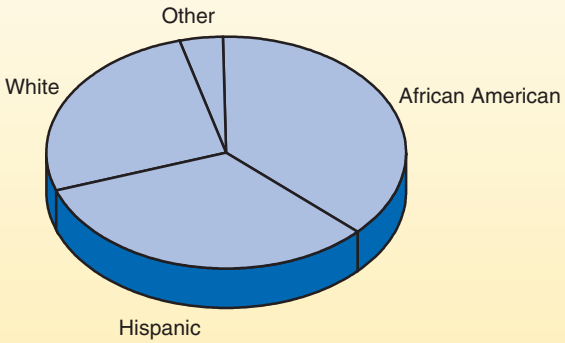
Racial Composition of Strikers. African Americans make up the largest group of second and third strikers (37 percent), followed by Hispanics (33 percent), and whites (26 percent). This racial composition is similar to that in the total prison population. However, African Americans make up 45 percent of the third striker population, which is 15 percent higher than in the total prison population. Figure 7 (see next page) shows the racial composition of the striker population.

Changes to Parole Supervision. Since about 2000, the CDCR has altered how it supervises parolees who have two or more serious or violent felony convictions on their record—those for whom their next felony conviction would make them eligible for a third strike sentence. Specifically, the department

Figure 7

Second and Third Strikers in the Inmate Population by Race

December 2004



has developed second striker caseloads where parole agents specialize in supervising these parolees on reduced caseloads. The purpose of creating these specialized caseloads, according to the department, is to allow parole agents to more closely monitor these parolees and provide services that could assist in preventing parolees from reoffending and receiving third strike convictions. The department reports that as of March 2005, there were almost 12,000 parolees on second striker caseloads. The additional cost to supervise these parolees in specialized caseloads is approximately $20 million annually.

What Has Three Strikes Cost the State? Analyses in 1994 suggested that the Three Strikes law would result in additional state prison operations costs of a few billion dollars annually by 2003, increasing to $6 billion dollars annually by 2026 as the full impact of the law was realized. There would

also be one-time prison construction costs totaling $20 billion by 2026 necessary to house strikers in prison.

It now appears that these estimates were high. The budget for CDCR has increased by about $3 billion since 1994-95, but much of this growth can be attributed to costs unrelated to Three Strikes, such as increased medical costs and higher numbers of parole violators returned to prison. In fact, the current cost of housing strikers is approximately $1.5 billion annually. However, many of these offenders would be in prison for their current or a subsequent offense even in the absence of Three Strikes. Taking this into consideration, we estimate that the additional operating costs resulting from the Three Strikes law is about one half billion dollars annually. The primary reasons for the difference between early estimates and the fiscal impact that has actually occurred are (1) the use of judicial discretion to dismiss prior strikes, and (2) variation among counties in how often they prosecute offenders under the Three Strikes law. Both of these factors—discussed in more detail later in this piece—have reduced the number of inmates who have been sentenced under Three Strikes compared to what would have occurred if such judicial and prosecutorial discretion were not allowed.

As regards prison construction costs, the state has not built any new prisons specifically for striker inmates. The department has activated seven new prisons (and deactivated another) to accommodate the total growth in the prison population since 1994. The total capital outlay costs for these seven prisons was $1.8 billion. However, it is difficult to identify the portion of these costs that is attributable to Three Strikes. Only a portion of the total growth in the inmate population is attributable to Three Strikes. Also, all of these prison construction projects, with the exception of one (Kern Valley State Prison), were planned even before the passage of Three Strikes. In

addition, the department utilizes more double-celling, as well as double- and triple-bunking in dorms, thereby reducing the amount of construction that might otherwise have occurred.

In addition to direct prison costs, the Three Strikes law may have also had indirect fiscal impacts on state and local governments. For example, some offenders who are incarcerated for longer periods under Three Strikes are unable to commit additional crimes that result in victim-related government costs (for example, health care costs). Alternatively, there could be foregone tax revenue to the extent that some offenders incarcerated under Three Strikes might have paid some taxes otherwise. The extent and magnitude of these impacts is unknown.

Courts

Application of the Law Varies by County. Based on discussions with representatives of the courts and district attorneys offices, we conclude that local county justice systems have developed various strategies for handling their Three Strikes caseloads, based on different policy priorities and fiscal constraints. Thus, the manner in which the law is implemented at the local level by prosecutors and judges varies across counties. In some counties, for example, prosecutors seek Three Strikes enhancements only in certain cases, such as for certain types of crimes that are particular problems in their county or where the current offense is serious or violent. In other counties, prosecutors seek Three Strikes enhancements in most eligible cases. Similarly, judges vary in how often they dismiss prior strikes, based on discretion afforded to them under the *Romero* decision. In addition, variation in the application of Three Strikes not only exists across counties, but can also occur within counties. In particular, prosecution practices change over time as counties experience turnover of district attorneys

and judges and as they develop new methods for handling Three Strikes cases.

One way to gauge the extent to which prosecutorial and judicial discretion is used in the application of the Three Strikes law is to examine the rate at which strikers are sent to prison from various counties. Figure 8 shows, for the 15 largest California counties, the number of strikers in prison per 100,000 felony arrests for each county. (These counties account for about 90 percent of the state's striker population.) In total, this rate gives a measure of the likelihood of incarceration in each county under Three Strikes, regardless of county size or crime rate. As the data in Figure 8 (see next page) show, there is considerable variation among counties in the likelihood that an offender who is arrested would be prosecuted and convicted under the Three Strikes law. For example, Kern County with 1,518 strikers per 100,000 adult felony arrests is over 13 times more likely to send an arrestee to state prison with a strike enhancement than San Francisco County (113 strikers per 100,000 adult felony arrests).

It is important to note that there may also be differences in crime patterns, as well as law enforcement strategies and priorities, that could contribute to the variation in the rate of Third Strikes sentences among counties. For example, the percentage of crimes that are serious or violent can vary from county to county, thereby resulting in differences in the percent of offenders who are eligible for prosecution under the Three Strikes law.

More Cases Going to Trial. The rate of felony cases decided by jury trial increased almost 10 percent after the enactment of Three Strikes. While courts do not track striker cases, it seems likely—based on our discussions with district attorneys, judges, and others—that the Three Strikes law has been one of the primary causes for this increase in the rate of cases going to trial. According to court professionals, many

Figure 8

Rate of Striker Commitments Vary by County

(December 2004)

County	Strikers			Rate of Strikers in Prison (Per 100,000 Adult Felony Arrests)
	Third	Second	Total	
Kern	390	1,263	1,653	1,518
San Diego	613	3,527	4,140	1,357
Los Angeles	2,958	14,043	17,001	1,327
Riverside	333	1,809	2,142	1,205
Santa Clara	431	1,353	1,784	1,205
Sacramento	457	1,574	2,031	1,003
San Joaquin	104	731	835	917
San Mateo	81	366	447	871
Fresno	171	907	1,078	865
Orange	366	1,796	2,162	849
San Bernardino	504	1,924	2,428	824
Ventura	67	475	542	803
Contra Costa	79	323	402	355
Alameda	116	507	623	323
San Francisco	35	196	231	113

defendants do not plea bargain their striker cases. This is because even a defendant who agrees to a plea is still likely to receive a lengthy sentence. For this reason, many choose to go to court in the hopes of avoiding a conviction altogether. This trend towards cases being resolved more frequently by trials and less by plea bargains requires greater court resources for criminal cases.

County Jails

More Pretrial Inmates. More criminal cases going to trial under the Three Strikes law has resulted in a similar increase in the number of inmates held in local jails. Between 1993 and 2004, the number of jail beds filled with pretrial inmates has

increased by about 16,000 beds. This reflects an increase of about 14 percent in the percent of jail beds filled by pretrial inmates. Some unknown amount of this increase is likely due to Three Strikes. In particular, these are inmates who, in the absence of Three Strikes, would have had their cases resolved relatively quickly by plea bargain and would already have been transferred to state prison.

According to a 2004 report by the Corrections Standards Authority (CSA), formerly the Board of Corrections, the increase in the proportion of pretrial inmates has significant implications for operating costs of jails because these inmates are often assigned to higher levels of security and require more resources as they go through the legal process. The amount of additional costs for county jails to hold pretrial inmates is unknown.

It should be noted that, even as more pretrial inmates are in jail, the number of inmates released from jails early due to overcrowding actually declined by 45 percent between 1995 and 2004, based on a report by the CSA. This finding suggests that jails have been able to accommodate the additional workload from Three Strikes.

Summary of Impact of Three Strikes on Criminal Justice System. Three Strikes has increased the sentence length of a significant proportion of the inmate population, resulting in a growing and aging prison population. The fiscal impact of the measure has been significant at both the state and local level. We estimate that the additional state operational costs resulting from Three Strikes are about one half billion dollars annually, and the state will likely face significantly higher future costs resulting from this measure as the striker population continues to grow and age. In addition, local courts and jails face unknown, but significant increased costs for prosecuting and incarcerating offenders tried under the Three Strikes law.

The Impact of Three Strikes On Public Safety

Projected Public Safety Impact. The primary justification given by supporters for the Three Strikes law was that it would reduce crime in California in two ways. First, the law would remove repeat offenders from communities for longer periods of time, eliminating the possibility that they could commit new crimes during that period—referred to as an "incapacitation" effect. Second, some advocates of Three Strikes suggested that the severe punishment options associated with the law would deter some potential offenders, thereby preventing some crime that might otherwise occur—a deterrent effect.

Crime Rates Since 1994. The overall crime rate in California, as measured by the Department of Justice's California Crime Index, began declining before the passage of the Three Strikes law. In fact, the overall crime rate declined by 10 percent between 1991 and 1994. The crime rate continued to decline after Three Strikes, falling by 43 percent statewide between 1994 and 1999, though it has risen by about 11 percent since 1999. Similarly, the violent crime rate declined by 8 percent between 1991 and 1994 and then fell an additional 43 percent between 1994 and 2003. It is important to note that these reductions appear to be part of a national trend of falling crime rates. National crime rates—as reported by the Federal Bureau of Investigation's Uniform Crime Report—declined 31 percent between 1991 and 2003, with violent crime declining 37 percent over that period. Researchers have identified a

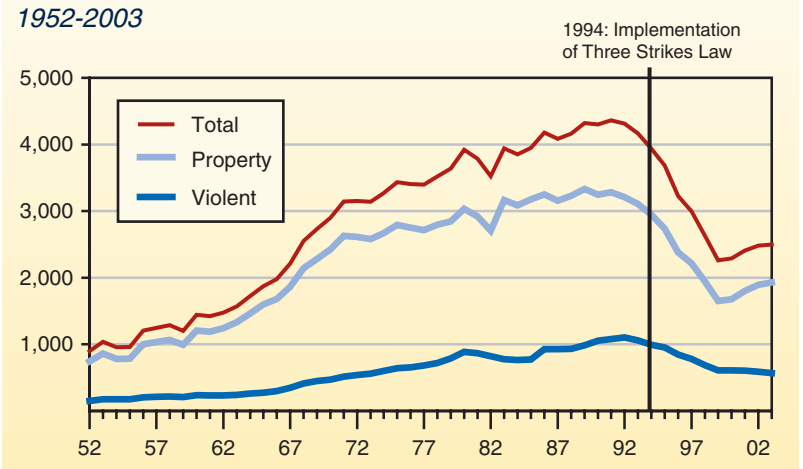
variety of factors that probably contributed to these reductions in national crime rates during much of the 1990s including a strong economy, more effective law enforcement practices, demographic changes, and a decline in handgun use. The overall crime trend for California since 1952 is seen in Figure 9.

Estimated Public Safety Impact of Three Strikes. The principle difficulty in accurately evaluating the public safety impact of Three Strikes is distinguishing between the impact associated solely with the initiative and changes that would have occurred in the crime rate in the absence of Three Strikes. In other words, if Three Strikes had not been enacted, would crime rates have continued to fall anyway? Or, did Three Strikes accelerate the pace or lengthen the duration of these declining crime rates?

Our survey of the literature, as well as discussions with leading criminologists, found that there is little consensus

Figure 9

California Crime Rate
Rate Per 100,000 Population



among researchers about the impact of Three Strikes on public safety, even after more than ten years of application. Some early reports attributed much of the drop in crime in the mid-1990s to the Three Strikes law. For example, reports issued by the Attorney General in 1998 and the Secretary of State in 1999 asserted that the dramatic decline in California crime rates following the implementation of Three Strikes clearly demonstrated its positive impact on public safety. The Attorney General's report also noted that though crime rates were dropping nationwide, California's crime rates dropped even more than those of other states after 1994.

Other analyses, including research by the RAND Institute, have cast some doubt on these early reports, as well as the subsequent impact of Three Strikes on public safety. A variety of reports by academic researchers suggest that the measure has likely had a modest impact on the state's crime rate, which is not nearly as large as early projections estimated. For example, a study by James Austin and colleagues at George Washington University analyzed the difference in enforcement of the Three Strikes law across counties. If Three Strikes works as intended, one would expect that those counties that used the law more often would experience significantly greater reductions in crime than those that did not use it as often. However, the county comparison study did not find significantly different outcomes across different counties, suggesting that the Three Strikes law was not the primary cause of the significant drop in crime after 1994.

Figure 10 (see next page) compares the crime rates for eight California counties in 1994 and 2003. These counties represent the four counties that have the highest commitment rate of second and third strikers as well as the four counties with the lowest commitment rate (see Figure 8 earlier in this report). Figure 10 shows that all eight counties experienced

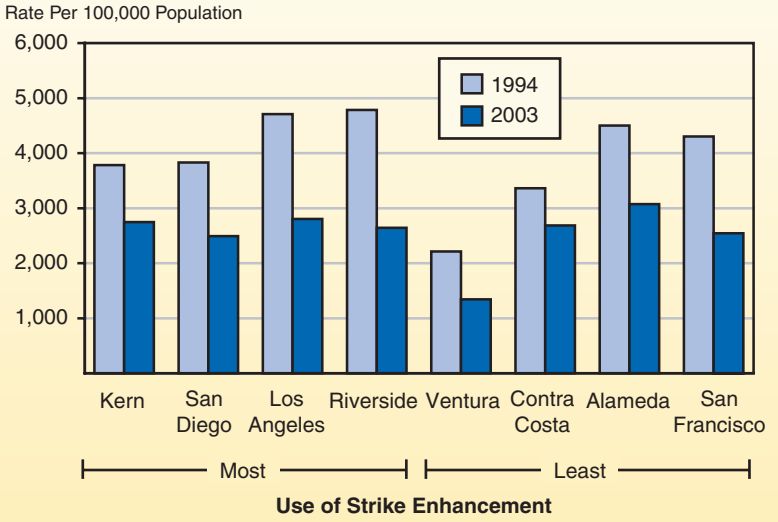
reductions in crime rates as measured by the Department of Justice's California Crime Index. Also, the reduction in the crime rate was similar for the two groups. Specifically, the four large counties *most likely* to send strikers to prison in the last ten years (Kern, Los Angeles, San Diego, and Riverside) have seen crime rates drop by an average of 37 percent from 1994 through 2003. The four large counties *least likely* to send strikers to prison (Ventura, Contra Costa, Alameda, and San Francisco) saw crime rates drop by an average of 33 percent over the same period.

In addition, *violent* crime rates declined by about the same amount in the counties that were less likely to send strikers to prison as the comparison counties. The violent crime rate in those counties *least likely* to send strikers to prison declined

Figure 10

Counties Experience Similar Decreases in Crime Rates Regardless of Strike Enhancements

1994 Through 2003



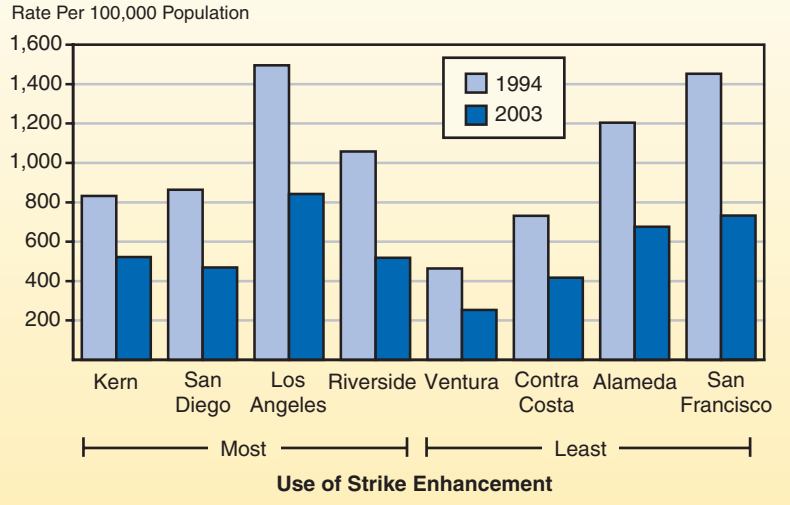
by an average of 45 percent, while the violent crime rate in the counties *most likely* to send strikers to prison declined by an average of 44 percent. Figure 11 shows the downward change in violent crime rates in these eight large counties.

Unfortunately, there remains no clear consensus about the public safety impact of the Three Strikes measure. In particular, data limitations (such as the number of offenders eligible for prosecution under Three Strikes) and the inherent difficulty of estimating the number of crimes prevented make it difficult to conclusively evaluate the law's impact on crime and safety. For now it remains an open question as to how much safer California's citizens are as a result of Three Strikes.

Figure 11

Counties Experience Declines in Violent Crime Rates Regardless of Strike Enhancements

1994 Through 2003



Why Might Three Strikes Have Had Less of a Public Safety Impact than Originally Projected? There have been several explanations given by researchers for why Three Strikes may not have had as large a public safety impact as originally predicted. First, the differences in the application of the Three Strikes law by counties mitigates the full impact of Three Strikes by reducing the number of offenders who are sentenced to prison for longer periods. Second, if the state's crime rate was declining independently of Three Strikes due to other criminal justice or societal factors, this trend might have resulted in fewer Three Strikes eligible cases compared to earlier projections. Third, some research by Frank Zimring of the University of California, Berkley and colleagues suggests that strikers as a group commit a relatively small proportion—about 11 percent—of the state's total number of felonies. Therefore, the incarceration of these offenders would not have a large impact on the overall crime rate. Fourth, some criminal justice research suggests that—for a variety of reasons—the threat of harsh sentences does not have a significant deterrent effect on criminal activity.

Conclusion—The Future of Three Strikes

In November 2004, California voters considered Proposition 66, which aimed to significantly revise the Three Strikes law. In rejecting Proposition 66, voters seemed to reaffirm their support for the measure. Though the proposition failed to pass, the level of support for it (47 percent) does suggest some sentiment among California citizens to reconsider aspects of the law, including the provision of sentences of 25 years to life for offenders whose most recent crime is nonserious and nonviolent. The Legislature has also considered similar legislation in recent years. Should the Legislature or voters act to revise the Three Strikes law, the impacts could be significant depending on the nature of the changes made. For example, had Proposition 66 passed, it likely would have resulted in reduced future prison incarceration costs of several hundreds of millions of dollars annually.

While it now appears likely that the Three Strikes law will not be revised, at least for the near future, it remains possible that the local implementation of the current law could change over time. For example, Three Strikes was enacted and implemented at a time of declining crime rates. This may in part explain why the number of individuals prosecuted under the law is not as high as originally anticipated. However, should the crime rate climb or public concerns about safety grow, the law could be applied more often at the local level, resulting in increased state corrections and local criminal justice costs.

As long as the Three Strikes law is applied generally as it has been since its enactment in 1994, state and local criminal justice systems will continue to be affected in important ways. In particular, the prison inmate population will continue to grow as more second and third strikers are sent to prison. The number of third strikers will increase until at least 2019 when the first third strikers will be eligible for parole hearings. The continued growth, as well as aging, of the striker population is likely to have significant implications for the prison system for the foreseeable future, including increased operating and capital outlay costs.