



National Institute of Justice

Research in Brief

Jeremy Travis, Director

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Issues and Findings

Discussed in this Brief: “Three strikes” laws enacted in Washington and California and their impact, provisions of three-strikes laws newly enacted in 24 States, and a comparison of the 24 new laws to preexisting repeat offender sentencing provisions.

Key issues: Between 1993 and 1995, 24 States and the Federal Government added three-strikes legislation to already existing laws that enhanced sentencing for repeat offenders. The rapid expansion of such laws reflects the perception that existing laws were not sufficiently protective of public safety in their application and/or outcome, that new laws were needed to address exceptional incidents that had occurred, or that the intent of current laws was being frustrated by other factors.

Key findings: Effects of three-strikes laws in California and Washington included the following:

- Planners in Washington expected that between 40 and 75 persons would fall under three-strikes provisions each year. However, more than 3 years after the law took effect, only 85 offenders have been admitted to the State prison system under these statutes.
- California’s prison system has admitted a far larger number of “strikes” offenders (over 26,000 as of December 1996) than has any other State’s since April 1994, although those admissions are fewer than originally projected.
- The vast majority of California “strikes” inmates have been sentenced under the two-strikes provision and for nonviolent crimes; all but one of the Washington “strikes” inmates have been sentenced for crimes against persons.

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“Three Strikes and You’re Out”: A Review of State Legislation

by John Clark, James Austin, and D. Alan Henry

In recent years lawmakers at both the State and Federal levels have passed legislation increasing penalties for criminal offenses, particularly violent crimes. These actions came in response to public concerns about crime and the belief that many serious offenders are released from prison too soon. Many such laws have come under the general label of “three strikes and you’re out.” The purpose of these laws is simple: Offenders convicted repeatedly of serious offenses should be removed from society for long periods of time, in many cases for life.

For many years most States have had provisions in their laws that included enhanced sentencing for repeat offenders.¹ Yet between 1993 and 1995, 24 States and the Federal Government enacted new laws using the “three strikes” moniker,² with similarly labeled bills introduced in a number of other States.³

Washington and California were the first States to implement three-strikes laws.⁴ As the laws were being debated, the impact they would have on the two States’ criminal justice systems raised concerns. Critics argued that defendants facing lengthy mandatory sentences would be more likely to demand trials, slowing down the processing of cases and adding

to the problems of court delay and jail crowding—in effect, creating an unfunded mandate for counties and cities. A longer term concern was that as more and more offenders began serving more lengthy terms of incarceration, prison overcrowding, already at crisis levels in many States, would also grow worse.⁵

This Research in Brief examines the three-strikes laws in Washington and California and evaluates their effects to date; describes the differences among new three-strikes laws enacted in 24 States; and compares the provisions of these new laws to each State’s preexisting provisions on repeat offender sentencing.

Three-strikes models: California and Washington

Comparison of the laws’ provisions. The Washington law⁶ took effect in December 1993 following a voter initiative that passed by a three-to-one margin. In March 1994 the Governor signed the California law,⁷ which voters later ratified in a State referendum.

Although they were enacted within months of one another using the same “three strikes and you’re out” rallying cry and include many of the same offenses as

Issues and Findings

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A review of the three-strikes laws passed in the 24 States shows that:

- States have authorized—or in some instances, mandated—longer periods of incarceration for those convicted of violent crimes.
- What constitutes a strike and under what conditions varies between States. There are, however, some constants—violent felonies such as murder, rape, and carjacking are typically included as strikeable offenses.
- There are variations in the number of strikes needed to be “out.” In 20 States three strikes are required. In one State a person is sentenced to life without parole for a second strike.
- States differ as to what sanction will be imposed when sufficient strikes have accumulated. In 12 States mandatory life sentences with no possibility of parole are imposed when a person is out. Parole is possible after a significant period of incarceration in three other States once an offender has struck out.

Provisions for enhanced penalties for repeat offenders existed in 23 of the 24 States before the passage of the latest three-strikes legislation. New laws added to previously enacted statutes in various ways:

- Several States supplemented existing habitual offender laws for *any* felony with new laws that focused only on violent felonies.
- Several States had preexisting habitual offender laws that allowed for, but did not require, enhanced sentences; the new laws make such sentences mandatory.

Early evidence shows that, with the exception of California, most of the laws will have minimal impact on those States’ prison systems because they were drafted to apply to only the most violent repeat offenders. Only broadly defined two-strikes provisions like California’s have the potential to drastically alter existing sentencing practices.

Target audience: State and local legislators and policymakers, prosecutors, public defenders, judges, trial court administrators, and researchers.

Exhibit 1. Comparison of Washington and California Strikes Laws

Type of Offense	Washington	California
Homicide	Murder 1 or 2 Controlled Substance Homicide Homicide by Abuse Manslaughter 1 or 2	Murder
Sexual Offenses	Rape 1 or 2 Child Molestation Incest of Child Sexual Exploitation	Rape Lewd Act on Child Continual Sexual Abuse of Child Penetration by Foreign Object Sexual Penetration by Force Sodomy by Force Oral Copulation by Force
Robbery	Robbery 1 or 2	Robbery
Felony Assault	Attempt Murder Assault 1 or 2	Attempt Murder Assault with a Deadly Weapon on a Peace Officer Assault with a Deadly Weapon by an Inmate Assault with Intent to Rape or Rob
Other Crimes Against Persons	Explosion with Threats to Humans Extortion Kidnaping 1 or 2 Vehicular Assault	Any Felony Resulting in Bodily Harm Arson Causing Bodily Injury Carjacking Exploding Device with Intent to Injure Exploding Device with Intent to Murder Kidnaping Mayhem
Property Crimes	Arson 1 Attempt Arson 1 Burglary	Arson Burglary of Occupied Dwelling Grand Theft with Firearm
Drug Offenses		Drug Sales to Minors
Weapons Offenses	Any Felony with Deadly Weapon Possession of Incendiary Device Possession of Prohibited Explosive Device	Any Felony with Deadly Weapon Any Felony Where Firearm Used
Other	Treason Promoting Prostitution Leading Organized Crime	

strikes (see exhibit 1), the Washington and California laws differ in three important ways.

First, in Washington all three strikes must be for felonies specifically listed in

the legislation. Under the California law, only the first two convictions need to be from the State’s list of “strikeable” offenses—*any* subsequent felony can count as the third strike. Second, the California law contains a two-strikes feature in

which a person convicted of *any* felony who has one prior conviction for a strikeable offense is to be sentenced to twice the term he or she would otherwise receive. There is no second-strike provision in the Washington law. Third, the sanctions for a third strike differ. The Washington statute requires a life term in prison without the possibility of parole for a person convicted for the third time of any of the “most serious offenses” listed in the law. In California a “third striker” has at least the possibility of eventually being released, albeit after serving a minimum imprisonment of 25 years.⁸

Impact on local courts and jails.

When the three-strikes laws were initially implemented in Washington and California, some analysts projected that the law enacted in California would have a much greater impact on the local criminal justice system than the law passed in Washington because it had a much broader scope.⁹ They predicted that California courts would become overwhelmed as defendants facing enhanced penalties would demand jury trials. The added time to process cases through trials and the reluctance to release pending trial defendants who were facing long prison terms would cause jail populations to explode as the number of admissions and length of jail stays grew.¹⁰

Early evidence from California indicated that these predictions were proving correct. A review of 12,600 two- and three-strikes cases from Los Angeles, for example, showed that two-strikes cases remained pending in court 16 percent longer and three-strikes cases 41 percent longer than nonstrike cases. In addition, strikes cases were three times more likely to go to trial than nonstrike felonies and four times more likely to go to trial

than the same types of cases before the law took effect. This led to a 25-percent increase in jury trials as well as an 11-percent rise in the proportion of the jail population held in pretrial status, from 59 percent before the law was enacted to 70 percent.¹¹ Furthermore, a survey of sheriff’s departments throughout the State showed that the pretrial detainee population had grown statewide, going from 51 percent of the average daily population before three strikes to 61 percent by January 1, 1995.¹²

However, more recent data show that at least some counties in the State are learning to absorb the increases brought about by the law. A survey of eight counties with populations of more than 1 million identified several counties that have successfully disposed of two- and three-strikes cases early in the process.¹³ Under the Delay Reduction Program—a new pilot project in one of Los Angeles County’s Superior Court districts implemented as a result of the added burdens the three-strikes law imposed on the court—the pending caseload of criminal cases has been reduced dramatically.¹⁴

In addition, the most recent data from the Los Angeles Sheriff’s Department suggest that the pace of strikes cases coming into that system may be slow-

ing. The number of two-strikes cases filed by the Los Angeles district attorney declined by 15 percent between the second quarter of 1995 and the second quarter of 1996. Likewise, there was a 28-percent decline between the two periods in the number of three-strikes cases filed. The department reports that it is too early to say whether these findings suggest a trend or whether there is another possible cause.¹⁵

Impact on State prison systems.

The impact of these laws on State corrections has not been as severe as projected in either Washington or California. Planners in Washington had expected that between 40 and 75 persons would fall under three-strikes provisions each year. Even this low projection has not been met. Since December 1993 when the law took effect, only 85 offenders—as compared with the 120–225 that had been projected—have been admitted to the Washington State prison system under its three-strikes law.¹⁶

A similar overestimate has been made of the California law’s impact on its prison system. As of December 31, 1996, a total of 26,074 offenders have been admitted to the California Department of Corrections (CDC) for either a two- or three-strikes sentence.

Exhibit 2. Reduction in California Prison Population Projections

Ending Period	Fall 1995 Original Projections	Fall 1996 Revised Projections ¹	Difference
12/31/95	137,588	135,133	-2,455
06/30/96	146,390	141,017	-5,373
06/30/97	163,695	150,970	-12,725
06/30/98	179,737	159,823	-19,914
06/30/99	196,680	170,344	-26,336
06/30/00	214,963	181,734	-33,229
06/30/01	232,386	193,094	-39,292
Net Increase	94,798	57,961	

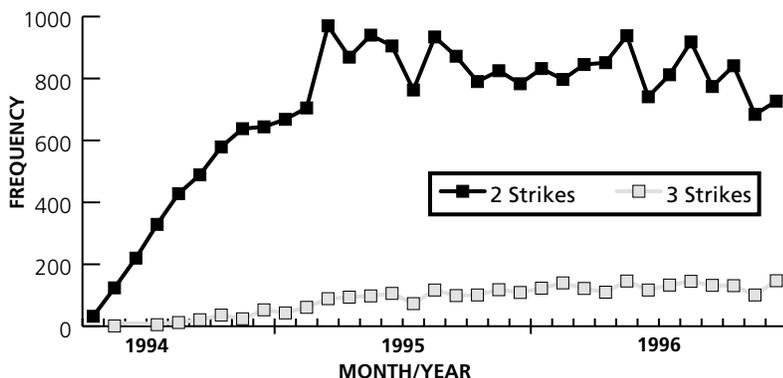
¹Revisions made after law had been in effect for at least 1 year. Sources: California Department of Corrections, Fall 1996; Population Projections, 1996–2001.

Exhibit 3. Number of Two- and Three-Strikes Cases Admitted to CDC by Month

Date	Two Strikes	Three Strikes	Total
1994			
April	32	-	32
May	124	1	125
June	220	-	220
July	329	5	334
August	428	12	440
September	489	21	510
October	579	36	615
November	638	24	662
December	644	53	697
1995			
January	668	43	711
February	705	61	766
March	970	89	1,059
April	869	94	963
May	940	98	1,038
June	905	106	1,011
July	763	73	836
August	934	117	1,051
September	872	99	971
October	790	101	891
November	825	118	943
December	783	109	892
1996			
January	832	123	955
February	797	140	937
March	845	122	967
April	851	110	961
May	938	146	1,084
June	741	117	858
July	812	133	945
August	918	145	1,063
September	774	132	906
October	841	131	972
November	684	101	785
December	727	147	874
TOTAL	23,267	2,807	26,074

Source: California Department of Corrections

Exhibit 4. Number of Two- and Three-Strikes Cases Admitted to CDC by Month, April 1994–December 1996



Of this number, nearly 90 percent were sentenced under the two-strikes provision.¹⁷ Although the sheer number of cases affected by the law is significantly higher than for any other State, the numbers are not as great as originally projected. Consequently, CDC recently lowered its 5-year projection by nearly 40,000 inmates (see exhibit 2), principally because there have not been as many two-strikes admissions as expected and because judges have modified their sentencing practices for the two-strikes cases. CDC had estimated that judges would choose longer sentences within the ranges provided by the law. More directly, CDC had expected 42 percent of the two-strikers to be sentenced at the “low” range of sentences but has found that approximately 60 percent are being sentenced at this range. They have resulted in shorter-than-expected sentence lengths or shorter stays in prison.

Exhibit 3 shows the number of CDC admissions for two- and three-strikes cases by month; exhibit 4 portrays these data in graph form. As expected, there was a dramatic increase in the first 12 months, but the number of admissions has unexpectedly leveled off and even declined slightly.

Finally, there is tremendous variation in the application of the law by county. Exhibit 5 shows the differential use of the law in five major counties. San Francisco and Alameda counties have rarely applied the law; San Diego and Sacramento, which have comparable populations and crime rates, have been far more active in using the law. Los Angeles County is the most frequent user of the law—11,656 offenders have been sent to prison, nearly half of all the State’s cases.

One recent development that might further reduce these revised projections

Exhibit 5. Comparison of Selected Counties on Use of Two and Three Strikes

County	Resident Population	Violent Crime ¹		Property Crime ²		2 Strikes Prison Admission	3 Strikes Prison Admission
		N	Rate ³	N	Rate ³		
San Diego	2,627,659	13,463	874	71,764	5,287	2,613	324
Alameda	2,170,116	9,809	1,138	35,118	6,192	290	36
Los Angeles	9,146,057	90,817	1,682	257,602	5,367	10,495	1,161
San Francisco	1,642,731	13,365	1,088	56,767	5,609	284	19
Sacramento	1,433,067	4,850	806	34,635	6,233	1,057	183
Statewide Totals	31,211,000	336,381	1,078	1,678,884	5,379	23,889	2,900

Sources: U.S. Department of Justice, Federal Bureau of Investigation, *Uniform Crime Reports: Crime in the United States, 1993*; California Department of Corrections, 1997.

¹ Violent crimes are offenses of murder, forcible rape, robbery, and aggravated assault.

² Property crimes are offenses of burglary, larceny-theft, and motor vehicle theft. Data are not included for arson.

³ Rate = incidents per 100,000 population.

is a California Supreme Court ruling that allows judicial discretion in applying the law.¹⁸ This ruling may well further limit the use of the law and could create a major logjam of appeals for the nearly 26,000 inmates sentenced under the law who may be eligible for resentencing.

Profile of inmates sentenced under strikes laws. In contrasting the attributes of inmates sentenced under the strikes laws in the two States (see exhibit 6), it is noteworthy that a majority of California inmates have been sentenced for nonviolent crimes, while all but one of the Washington inmates have been sentenced for crimes against persons. The Washington inmates are also older, probably reflective of the State’s narrower “strike zone.”

Exhibit 7 presents a more detailed analysis by sentence length of the offenses for which California inmates have been convicted.¹⁹ Excluding violent crimes, the typical sentence for a two-strikes property or drug offense ranges from 3 to 5 years. The sentence length increases dramatically for a third strike with ranges from 26 to 44 years. The majority of drug offenses are either simple possession or possession with intent to sell.

Relative to classification data, the majority of two-strikers are either minimum- or low medium-custody inmates with little history of prior institutional

problems (see exhibit 8). The same basic trend exists for three-strikers, although a greater proportion are classified in the higher custody levels,

Exhibit 6. Comparison of Washington State and California Prison Admissions as of March 1, 1996

	Washington 3 Strikes		California			
	N	%	2 Strikes		3 Strikes	
	N	%	N	%	N	%
Total Intake	53	100.0	15,230	91.2	1,477	8.8
Sex						
Male	52	98.1	14,456	94.9	1,455	98.5
Female	1	1.9	774	5.1	22	1.5
Age						
Under 20	0	0.0	1,111	7.3	105	7.1
20–29	10	18.9	7,118	46.7	636	43.1
30–39	21	39.6	5,197	34.1	521	35.3
40–49	20	37.7	1,540	10.1	170	11.5
50+	2	3.8	264	1.7	45	3.0
Race/Ethnicity						
Black	21	39.6	5,657	37.1	649	43.9
Hispanic	1	1.9	4,981	32.7	400	27.1
White	30	56.6	4,043	26.5	373	25.3
Other	1	1.9	549	3.6	55	3.7
Current Offense*						
Person	52	98.1	2,198	14.5	367	25.5
Property	1	1.9	6,251	41.1	558	38.8
Drugs	0	0.0	4,802	31.6	312	22.0
Other	0	0.0	1,943	12.8	198	13.8
Sentence Length						
Life	53	100.0	27	0.2	8	0.5
Other than Life	0	0.0	15,203	99.8	1,469	99.5
Average Sentence		N/A	4.9 Years		37.4 Years	

* Due to missing data on current offense for California cases, the number of two- and three-strikes inmates do not total to 15,230 and 1,477, respectively.

Source: California Department of Corrections and Washington Department of Corrections.

Exhibit 7. California Sentence by Offense by Two- and Three-Strikes Laws as of March 1, 1996

Offense	2 Strikes			3 Strikes		
	Number of Offenses	%	Sentence in Years	Number of Offenses	%	Sentence in Years
Murder 1st	6	0.0	77.0	1	0.0	85.0
Murder 2nd	22	0.2	26.0	4	0.3	39.3
Manslaughter	22	0.2	15.0	3	0.2	43.0
Robbery	929	6.1	10.0	180	12.5	44.8
Assault	988	6.5	6.9	127	8.8	44.3
Rape	18	0.1	37.2	7	0.5	93.1
Other Sex Crime	188	1.2	12.1	37	2.6	67.1
Kidnaping	15	0.1	20.7	8	0.6	42.5
Burglary	2,147	14.1	5.4	269	18.7	33.6
Grand Theft	419	2.8	3.2	19	1.3	26.0
Petty Theft with Prior	1,928	12.7	3.3	131	9.1	28.0
Receive Stolen Property	658	4.3	3.7	63	4.4	26.9
Auto Theft	721	4.7	3.7	50	3.5	36.1
Forgery/Fraud	241	15.9	3.6	16	1.1	27.5
Other Property Crime	137	0.9	3.4	10	0.7	27.8
Drug Possession	3,064	20.2	3.1	172	11.9	27.2
Drug Possession for Sale	843	5.5	4.9	55	3.8	29.3
Drug Sale/Manufacture	724	4.8	6.1	61	4.2	29.5
Other Drug Offense	171	1.1	5.9	29	2.0	30.9
Weapons Possession	1,162	7.6	4.2	140	9.2	43.7
Other Offense	781	5.1	4.6	58	4.0	41.3

Source: California Department of Corrections Data Tape—Classification File.

Exhibit 8. Classification Attributes of California’s Prisoners Sentenced Under Two- and Three-Strikes Laws as of March 1, 1996

Classification Attributes	Two Strikers (N=15,230)	Three Strikers (N=1,477)
Custody Level		
Minimum (I)	26.7%	16.5%
Low Medium (II)	26.7%	17.1%
High Medium (III)	27.6%	24.2%
Maximum (IV)	11.3%	34.7%
Unclassified	7.7%	7.4%
No Prior Military Service	97.8%	96.6%
No High School Degree	83.7%	82.1%
Not Married	82.8%	77.9%
No Prior Walkaways	95.1%	90.1%
No Prior Assaults on Inmates	98.3%	95.6%
No Prior Assaults on Staff	99.2%	97.1%
No Prior Escapes	99.3%	98.8%
No Prior Disciplinarys	94.8%	87.0%
No Current Disciplinarys	45.0%	52.2%
Satisfactory Work/Program	39.0%	51.3%

Source: California Department of Corrections Data Tape—Classification File.

largely due to their lengthy prison terms. The sentence length is a major determinant of an inmate’s custody level within CDC. A special task force has been created by CDC to determine whether the CDC classification system should be adjusted to ensure that two-strikers and three-strikers are not being overclassified.

Three-strikes variations in other States

The strikes laws in California and Washington demonstrate that although statutes may share the same title, “three strikes and you’re out” can have dramatically different meanings across States. A review of the provisions of the 24 States that have enacted this type of legislation, summarized in exhibit 9, reveals differences in:

- How a “strike zone” is defined.
- How many strikes are required to be “out.”
- What it means to be “out.”

Strike zone defined. The strike zone—what constitutes a strike and under what conditions—varies from State to State. There are some constants—violent felonies such as murder, rape, robbery, arson, aggravated assault, and carjacking are typically included as strike offenses in such legislation. But States have included other charges, such as the following:

- In Indiana—the sale of drugs.
- In Louisiana—any drug offense punishable by imprisonment for more than 5 years.
- In California—the sale of drugs to minors.
- In Florida—escape.
- In Washington—treason.
- In South Carolina—embezzlement and bribery.

Two States define strikeable offenses based on the prior charge and the sentence imposed. Maryland and Tennessee both require that a sentence of incarceration must have been imposed in order for listed offenses to qualify as strikes.

Some States have established different levels of strikeable offenses. For example, in Georgia, a second conviction for a defined violent felony mandates a sentence of life without parole, while a fourth felony conviction of any kind requires that the maximum sentence allowable for the charge be imposed.

How many strikes are required to be “out.” There are also variations in the number of strikes needed to be

Exhibit 9. Variations in State Strikes Laws

State	Strike Zone Defined	Strikes Needed To Be “Out”	Meaning of “Out”
Arkansas	Murder, kidnaping, robbery, rape, terrorist act	Two	Not less than 40 years in prison; no parole
	First-degree battery; firing gun from vehicle; use of prohibited weapon; conspiracy to commit murder, kidnaping, robbery, rape, first-degree battery, or first-degree sexual abuse	Three	Range of no parole sentences, depending on the offense
California	Any felony if one prior felony conviction from list of strikeable offenses (see exhibit 1)	Two	Mandatory sentence of twice the term for the offense involved
	Any felony if two prior felony convictions from list of strikeable offenses	Three	Mandatory indeterminate life sentence, with no parole eligibility for 25 years
Colorado	Any Class 1 or 2 felony or any Class 3 felony that is violent	Three	Mandatory life in prison with no parole eligibility for 40 years
Connecticut	Murder, attempt murder, assault with intent to kill, manslaughter, arson, kidnaping, aggravated sexual assault, robbery, first-degree assault	Two	Up to 40 years in prison
		Three	Up to life in prison
Florida	Any forcible felony, aggravated stalking, aggravated child abuse, lewd or indecent conduct, escape	Three	Life if third strike involves first-degree felony, 30–40 years if second-degree felony, 10–15 years if third-degree felony
Georgia	Murder, armed robbery, kidnaping, rape, aggravated child molestation, aggravated sodomy, aggravated sexual battery	Two	Mandatory life without parole
	Any felony	Four	Mandatory maximum sentence for the charge
Indiana	Murder, rape, sexual battery with weapon, child molestation, arson, robbery, burglary with weapon or resulting in serious injury, drug dealing	Three	Mandatory life without possibility of parole
Kansas	Any felony against a person	Two	Court may double term specified in sentencing guidelines
	Any felony against a person	Three	Court may triple term specified in sentencing guidelines
Louisiana	Murder, attempt murder, manslaughter, rape, armed robbery, kidnaping, any drug offense punishable by more than 5 years, any felony punishable by more than 12 years	Three	Mandatory life in prison with no parole eligibility

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State	Strike Zone Defined	Strikes Needed To Be "Out"	Meaning of "Out"
Louisiana <i>(continued)</i>	Any four felony convictions if at least one was on the above list	Four	Mandatory life in prison with no parole eligibility
Maryland	Murder; rape; robbery; first- or second-degree sexual offense; arson; burglary; kidnaping; carjacking; manslaughter; use of firearm in felony; assault with intent to murder, rape, rob, or commit sexual offense	Four, with separate prison terms served for first three strikes	Mandatory life in prison with no parole eligibility
Montana	Deliberate homicide, aggravated kidnaping, sexual intercourse without consent, ritual abuse of a minor	Two	Mandatory life in prison with no parole eligibility
	Mitigated deliberate homicide, aggravated assault, kidnaping, robbery	Three	Mandatory life in prison with no parole eligibility
Nevada	Murder, robbery, kidnaping, battery, abuse of child, arson, home invasion	Three	Court has option to sentence offender to one of the following: life without parole; life with parole possible after 10 years, or 25 years with parole possible after 10 years
New Jersey	Murder, robbery, carjacking	Three	Mandatory life in prison with no parole eligibility
New Mexico	Murder, shooting at or from vehicle and causing harm, kidnaping, criminal sexual penetration, armed robbery resulting in harm	Three	Mandatory life in prison with parole eligibility after 30 years
North Carolina	47 violent felonies; separate indictment is required with finding that offender is "violent habitual offender"	Three	Mandatory life in prison with no parole eligibility
North Dakota	Any Class A, B, or C felony	Two	If second strike is for Class A felony, court may impose extended sentence of up to life; if Class B felony, up to 20 years; if Class C felony, up to 10 years
Pennsylvania	Murder, voluntary manslaughter, rape, involuntary deviate sexual intercourse, arson, kidnaping, robbery, aggravated assault	Two	Enhanced sentence of up to 10 years
	Same offenses	Three	Enhanced sentence of up to 25 years
South Carolina	Murder, voluntary manslaughter, homicide by child abuse, rape, kidnaping, armed robbery, drug trafficking, embezzlement, bribery, certain accessory and attempt offenses	Two	Mandatory life in prison with no parole eligibility

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“out.” In South Carolina, a person convicted a second time for any of a list of “most serious offenses” is sentenced to life without parole. There is no third strike.

Three strikes are required to be “out” in 20 States, but seven of them—Arkansas, California, Connecticut, Kansas, Montana, Pennsylvania, and Tennessee—also have enhanced sentences for two strikes, depending on the offense.

What it means to be “out.” Finally, States differ as to what sanction will be imposed when sufficient strikes have accumulated. Mandatory life sentences with no possibility of parole are imposed when a person is out in Georgia, Indiana, Louisiana, Maryland, Montana, New Jersey, North Carolina, South Carolina, Tennessee, Virginia, Washington, and Wisconsin.²⁰

In three States, parole is possible after an offender is “out,” but only after a significant period of incarceration. In New Mexico, such offenders are eligible for parole after serving 30 years, while those in Colorado must serve 40 years before parole can be considered. In California, a minimum of 25 years must be served before parole eligibility.

Most three-strikes laws involve mandatory minimum sentences. Four States—Connecticut, Kansas, Arkansas, and Nevada—have recently enacted laws enhancing the possible penalties for multiple convictions for specified serious felonies but leave the actual sentence to the discretion of the court.

- In Connecticut, judges can sentence an offender to 40 years in prison for a second conviction for specified serious felonies and to life in prison for a third such conviction.

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State	Strike Zone Defined	Strikes Needed To Be "Out"	Meaning of "Out"
Tennessee	Murder, especially aggravated kidnaping, especially aggravated robbery, aggravated rape, rape of a child, aggravated arson	Two, if prison term served for first strike	Mandatory life in prison with no parole eligibility
	Same as above, plus rape, aggravated sexual battery, aggravated robbery, especially aggravated burglary, especially aggravated child abuse, aggravated sexual exploitation of child	Three, if separate prison terms served for first two strikes	Mandatory life in prison with no parole eligibility
Utah	Any first- or second-degree felony	Three	Court may sentence from 5 years up to life
Vermont	Murder, manslaughter, arson causing death, assault and robbery with weapon or causing bodily injury, aggravated assault, kidnaping, maiming, aggravated sexual assault, aggravated domestic assault, lewd conduct with child	Three	Court may sentence up to life in prison
Virginia	Murder, kidnaping, robbery, carjacking, sexual assault, conspiracy to commit any of above	Three	Mandatory life in prison with no parole eligibility
Washington	Charges listed in exhibit 1	Three	Mandatory life in prison with no parole eligibility
Wisconsin	Murder, manslaughter, vehicular homicide, aggravated battery, abuse of child, robbery, sexual assault, taking hostages, kidnaping, arson, burglary	Three	Mandatory life in prison with no parole eligibility

- In Kansas, the legislature enacted sentencing guidelines that provide judges with a sentencing range based on the offense and the offender’s prior record. A recent amendment allows judges to double guideline sentences for offenders convicted of certain listed violent felonies for the second time and to triple them for those convicted a third time.
- In Arkansas, a judge may choose either a mandatory sentence short of life imprisonment or a life sentence for a second or third strikeable offense.

- Similar provisions exist in the Nevada law, which give the judge the option on a third-strike conviction of imposing a life sentence without parole, a life sentence with parole possible after 10 years, or a 25-year sentence with parole possible after 10 years.

Five States—Florida, North Dakota, Pennsylvania, Utah, and Vermont—provide sentence ranges up to life, depending on the State, when certain violent offenses are committed by repeat offenders.

Comparing preexisting provisions.

To accurately describe the impact of three-strikes laws on a State’s justice and corrections systems, one must first consider how each State was equipped to respond to repeat violent offenders *prior to* enactment of a three-strikes law. Did the new legislation successfully close a loophole in the State’s criminal sanctioning authority as hoped, or was the new law in effect targeting a population already covered by existing laws?

To determine the extent to which the new three-strikes laws differ from pre-existing sentencing provisions, officials in each of the 24 three-strikes States were contacted and asked to provide copies of the new three-strikes legislation along with any preexisting habitual or repeat offender statutes.

These statutes, summarized in exhibit 10, show that there were provisions for enhanced penalties for repeat offenders in all but 1 (Kansas) of the 24 States before the passage of the latest three-strikes legislation. In Louisiana, Maryland, South Carolina, and Tennessee, the mandatory penalty for a repeat violent offender—life in prison without the possibility of parole—already existed and remained unchanged, but the definition of such an offender was expanded under the new legislation.

- Preexisting law in Louisiana mandated life in prison without parole for a third conviction for certain violent and drug felonies. It also required life imprisonment with no parole for any fourth or subsequent felony conviction if *at least two* of the felonies were among the listed violent or drug offenses. The three-strikes provisions were not changed, but the four-strikes provisions now require a sentence of

life without parole if *any* of the four felonies are on the list of violent or drug felonies.

- Maryland added carjacking and armed carjacking to a preexisting law that mandates a term of life in prison without parole on the fourth conviction for a listed crime of violence, if separate prison terms have been served for the first three such convictions.

- South Carolina, which since 1976 had a law mandating life imprisonment without parole on the third conviction for a violent felony, reduced the number of such convictions needed to two.

- Tennessee likewise had a preexisting three-strikes law with a penalty of life imprisonment without parole. Amendments to this law—enacted in 1994 and 1995—expanded the number of charges that qualify for a three-strikes sentence and added a new two-strikes category for the most serious violent offenses.

Two States—North Dakota and Vermont—expanded the definition of a repeat offender:

- Under preexisting law, an offender in North Dakota would receive an enhanced sentence on the second conviction for Class A or B offenses. The new law expands the preexisting statute to include Class C offenses.

- In Vermont, which had allowed sentencing of up to life in prison for an offender convicted of *any* felony for the fourth time, a new law allows for a life sentence on the *third* conviction for a listed violent offense while retaining the fourth conviction provision.

- In Virginia the definition of a repeat violent offender remained essentially the same (third conviction for a violent offense), but the punishment was enhanced. The State moved from providing

Exhibit 10. Comparison of New Strikes Laws With Preexisting Sentencing Provisions

State	Features of New Strikes Legislation	Year Implemented	Features of Preexisting Sentencing Laws
Arkansas	Range of no parole sentences starting at 40 years for second conviction for specified violent felonies; no parole sentences for third conviction for other specified felonies	1995	Extended prison terms for repeat offenders, broken down by seriousness of new conviction and number of prior convictions
California	Mandatory doubling of sentence for any felony if one prior serious or violent felony conviction; mandatory life for any third felony if two prior serious or violent felony convictions	1994	Life with no parole eligibility before 20 years for third violent felony conviction where separate prison terms were served for the first two convictions; life without parole for fourth violent felony conviction
Colorado	Mandatory life in prison with no parole eligibility for 40 years for third conviction for Class 1 or 2 felony or Class 3 felony that is violent	1994	Mandatory tripling of presumptive sentence for third conviction for any Class 1, 2, 3, 4, or 5 violent felony within 10-year period
Connecticut	Up to life in prison for third conviction for many violent offenses	1994	On second violent felony conviction in which period of imprisonment was served for the first, court could sentence as Class A felony
Florida	Added new category of “violent career criminal” to existing habitual offender statute; for third conviction for specified violent offense, life if first-degree felony, 30–40 years if second-degree felony, 10–15 years if third-degree felony	1995	Categories of habitual felony offender and habitual violent offender; range of enhanced sentences
Georgia	Mandatory life without parole for second specified violent felony conviction	1995	On fourth felony conviction offender must serve maximum time imposed and not be eligible for parole until maximum sentence served
Indiana	Mandatory life without parole for third specified violent felony conviction	1994	Habitual offender law requiring enhanced sentencing on third felony conviction
Kansas	Allows court to double sentencing guidelines for second and third convictions for many “person felonies”	1994	No provisions for enhancing sentences on guidelines for repeat offenders
Louisiana	Mandatory life without parole for third specified felony conviction or for fourth felony conviction, including at least one conviction for specified felonies	1994	Same law, except that for fourth felony conviction, at least two of the convictions must have been among listed violent or drug offenses
Maryland	Life without parole for fourth violent felony conviction for which separate prison terms were served for the first three	1994	Same law, except that carjacking and armed carjacking were not on the list of offenses receiving this sentence
Montana	Mandatory life without parole for second conviction for certain offenses and third conviction for other offenses	1995	Persistent offender statute allowing extended sentence of 5–100 years, to be served consecutively with any other sentence, for person convicted of any felony with one or more prior felony convictions within previous 5 years

Continued on next page

Continued from page 10

State	Features of New Strikes Legislation	Year Implemented	Features of Preexisting Sentencing Laws
Nevada	Range of options for enhancing sentence on third conviction for violent felony	1995	Same options, but on conviction for violent felony if three prior felony convictions of any kind
New Jersey	Mandatory life without parole for third conviction for certain violent felonies	1995	Rarely invoked “persistent offender” provision allowing sentence of one degree higher than the conviction offense on third felony conviction for first-, second-, or third-degree felony
New Mexico	Mandatory life with parole eligibility after 30 years for third violent felony conviction	1994	Mandatory increased sentence of 1 year on second felony conviction, 4 years on third, and 8 years on fourth or more
North Carolina	Mandatory life without parole for third conviction for violent offense	1994	Habitual criminal statute mandating an additional consecutive term of 25 years on third conviction for any felony, with the court specifying minimum number of years to be served before parole eligibility
North Dakota	Enhanced sentences for second conviction for Class A, B, or C felony	1995	Enhanced sentences for second conviction for only Class A or B felony
Pennsylvania	Mandatory minimum enhanced sentence of 10 years for second conviction for crime of violence and 25 years for third such conviction	1995	Mandatory minimum enhanced sentence of 5 years for second or subsequent conviction for certain specified crimes of violence
South Carolina	Mandatory life without parole for second conviction for specified felonies	1995	Mandatory life without parole for third conviction for same specified felonies
Tennessee	Mandatory life without parole for second conviction for designated violent felonies; same for third conviction for other violent felonies	1995	Mandatory life without parole for third violent felony conviction
Utah	Second- and third-degree felony offenders sentenced as first-degree felons, and first-degree felons not eligible for probation, if they have two prior convictions for any felonies and a present conviction for a violent felony	1995	Second- and third-degree felonies receive enhanced sentence of 5 years to life if offender has two prior convictions at least as severe as second-degree felonies
Vermont	Up to life with no suspended sentence or no probation eligibility and no early release for third conviction for crime of violence; up to life for fourth felony conviction of any kind	1995	Up to life for fourth felony conviction
Virginia	Mandatory life without parole on third conviction for specified violent felonies or drug distribution charges	1994	No parole eligibility if convicted of three separate violent felonies
Washington	Mandatory life without parole on third conviction for specified violent felonies	1993	Number of prior convictions factored into offender score on State’s sentencing guidelines
Wisconsin	Mandatory life without parole on third conviction for specified serious offenses	1994	For repeat felony offenders, up to 10 years can be added to sentences of 10 years or more; 6 years can be added to sentences of 1–10 years

no parole eligibility, no matter the sentence, for those convicted of three separate violent felonies to mandating life sentences with no parole eligibility for this group.

Several States supplemented existing habitual offender laws for *any* felony with new laws that focused only on violent felonies.

- Preexisting Colorado law required a tripling of the presumptive sentence for persons convicted of any Class 1, 2, 3, 4, or 5 violent felony three times within a 10-year period. The new three-strikes law, which mandates a life sentence with no parole eligibility for 40 years for a third violent offense conviction, does not contain the 10-year time period of the preexisting law.

- New Mexico took a similar path, adding life imprisonment with parole eligibility after 30 years for a third violent felony conviction to a preexisting provision calling for a mandatory added term of imprisonment of 1 year on a second felony conviction, 4 years on a third conviction, and 8 years on a fourth or subsequent conviction.

- A new law in Indiana mandating life in prison without parole on a third conviction for certain violent offenses supplements a preexisting law that requires an enhanced sentence on a third conviction for any felony.

- Under preexisting law in Georgia, offenders convicted of any felony for a fourth time must serve the maximum sentence imposed before parole eligibility. A new provision was added to this statute mandating life in prison without parole on the second conviction for a specified violent felony.

- An habitual criminal law in North Carolina required an additional consecutive sentence of 25 years on the

third conviction for any felony. Provisions mandating life without parole on the third conviction for violent felonies have been added to the preexisting law.

In some States, the changes involved both expanding the definitions of repeat violent offenders and enhancing the sentences.

- The habitual offender statute that was in effect in California prior to the enactment of the three-strikes law mandated a sentence of life imprisonment with first parole eligibility after 20 years for persons who were convicted for a third time of a listed violent offense and who had served separate prison terms for the first two convictions. It also provided that on the fourth conviction for such a felony in which three separate prison terms had been served, the offender was to be sentenced to life without parole. The new law does not require any prison time to have been served for a listed felony to count as a first or second strike nor that the third strike be a violent felony. It does, however, require a minimum of 25 years to be served for the third strike and contains enhanced penalties for a second strike.

- Preexisting Pennsylvania law mandated an extended prison term of 5 years for the second or subsequent conviction for certain specified crimes of violence. The new law expands the list of violent offenses and amends the extended mandatory minimum prison term from 5 to 10 years for a second conviction and to 25 years for a third such conviction.

- Before enactment of the three-strikes law in Washington, which requires life without parole on a third conviction for specified violent offenses, sentences for offenders were calculated using the State’s sentencing guidelines.

Other States had preexisting habitual offender laws that allowed for enhanced sentences, but such sentences were not mandatory.

- Preexisting Florida law allowed the court to sentence habitual violent felony offenders to extended prison terms, including up to life in certain instances. The recent law creates a new category of “violent career criminal” and establishes mandatory sentences ranging from 10 to 15 years for a third-degree felony, 30 to 40 years for a second-degree felony, and life imprisonment for a first-degree felony.

- Until New Jersey enacted a law in 1995 mandating life in prison without parole for a third conviction for certain violent offenses, it was left to the discretion of the sentencing judge to determine if the third conviction for a first-, second-, or third-degree felony warranted an extended term of imprisonment.

- A Wisconsin law that allowed the court to extend sentences by up to 10 years for repeat offenders in certain cases was supplemented in 1994 with a three-strikes law requiring a term of life imprisonment without parole on the third conviction for listed felony offenses.

- A similar preexisting statute in Montana provided the court with a sentencing range of 5 to 100 years as an extended term to be served consecutively with the original sentence for those convicted of a felony twice within 5 years. The new law requires a sentence of life without parole for those convicted of certain violent offenses for the second time and of other violent offenses for the third time.

Since many of the new strikes laws target offenders who would have already received lengthy prison terms

under preexisting repeat offender statutes, it is not likely that these laws will have a significant impact on the courts, jails, or prison systems in those States. However, even though the actual number of cases in the 24 States is expected to be small, it is too early to determine the impact more specifically because the laws have not been in place long and serious cases, as described in these strike statutes, by their nature take longer to reach disposition.

Conclusion

“Three strikes and you’re out” as a typology for criminal justice sanctioning is not easily defined. No common definitions exist for the terms “three,” “strike,” or “out” across the States. However, certain factors are associated with all of the three-strikes laws passed in the 24 States. The first is the authorization—or in some instances, mandate—for longer periods of incarceration for those convicted of violent crimes.

Other similarities include the following:

- All but 1 (Kansas) of the 24 States had preexisting laws that targeted repeat violent offenders; the breadth of those preexisting statutes will, to a large extent, determine the impact of the new laws in each State.
- All of the statutes either increase the period of incarceration for violent crime, expand the number of crimes that are included in the violent crime category, or both. In some instances laws simply changed the period of incarceration for a particular crime from a range to a mandated fixed number of years.
- In the majority of States, the new legislation has reduced judicial discretion

at the sentencing phase of the criminal justice process. This appears to continue the recent trend of legislatively imposed limitations on judges' decisions, as evidenced by the expansion of mandatory minimum sentence legislation and sentencing guidelines.

The rapid expansion of three-strikes laws, regardless of how they are defined, reflects the perceptions that existing laws did not adequately protect public safety in their application and/or outcome, that exceptional incidents had occurred that the new laws would address, or that the intent of current laws was being frustrated by other factors such as prison crowding. Whether the perceptions were accurate and what the impact will be of the new laws are questions that cannot yet be answered.

Early evidence suggests that most of the laws will have minimal impact on their respective State prison systems. States have drafted these laws so they would be applied to only the most violent repeat offenders. In most States these offenders were already receiving lengthy prison terms under existing statutes. Only broadly defined two-strikes provisions such as California's have the potential to radically alter existing sentencing practices; even in that State, indications are that judicial interpretations of the law—recently supported by a State Supreme Court decision—as well as prosecutorial discretion in how the law is applied may blunt the anticipated increases.

Followup research will continue to track in detail the impact of three-strikes laws on each stage of the criminal justice process (including bail setting, detention, time to trial, type of trial, plea negotiations, and jail and prison population levels), as well as

the budget ramifications of any changes that have taken place. The following questions need to be addressed to learn more about this sentencing reform effort and its impact:

- Is there a measurable effect on crime in States where such laws were passed?
- If yes, does this effect differ from what is occurring in States that have not adopted such laws?
- In States that are considering three-strikes legislation but have not yet enacted it, what are likely to be the features of such laws?
- What factors differentiate States that have not adopted three-strikes legislation from those that have?
- To what extent are the laws modified over time by practice or new legislation to moderate their use?
- To what extent are there variations in the application of the laws, both across and within courts and counties?
- To what extent does different application of the law to inmates with similar offenses and prior records affect their behavior within the prison and jail systems?
- What features of two- and three-strikes laws are associated with compliance (or lack of compliance) with the laws' provisions by prosecutors and judges?
- What impact have these sentencing reforms had on public perceptions of the criminal justice system and its ability to incapacitate dangerous offenders?
- Based on the early experiences of California and Washington State, what lessons can be learned about projecting the impact of sentencing reforms on the courts, corrections, and crime?

John Clark is a Senior Associate at the Pretrial Services Resource Center. James Austin, Ph.D., is Executive Vice President of the National Council on Crime and Delinquency. D. Alan Henry is Executive Director of the Pretrial Services Resource Center. The project was supported by contract 95-IJ-CX-0026 awarded to the National Council on Crime and Delinquency by the National Institute of Justice.

Notes

1. Bureau of Justice Assistance, *National Assessment of Structured Sentencing*, U.S. Department of Justice, February 1996.
2. Donna Lyons, "Three Strikes" *Legislation Update*, National Conference of State Legislatures, December 1995.
3. Michael G. Turner et al., "Three Strikes and You're Out' Legislation: A National Assessment," *Federal Probation*, Vol. 59, No. 8, September 1995.
4. Several States have had such legislation on the books for many years. For example, South Dakota has had three-strikes-type legislation since 1877.
5. James Austin, "Three Strikes and You're Out': The Likely Consequences on the Courts, Prisons, and Crime in California and Washington State," *St. Louis University Public Law Review*, Vol. 14, No. 1, 1994.
6. Wash. Rev. Code Ann. § 9.94A.030 (West 1994).
7. Cal. Penal Code § 667 (Deering 1994).
8. The Washington law does contain a provision retaining the Governor's

authority to grant a pardon or clemency, but it also recommends that no person sentenced under this law to life in prison without parole be granted clemency until the offender has reached 60 years of age and is judged to be no longer a threat to society.

9. Austin, 1994.

10. Austin, 1994.

11. Countywide Criminal Justice Coordination Committee, "Impact of the 'Three Strikes Law' on the Criminal Justice System in Los Angeles County," November 15, 1995. Because the jail system is limited in the number of inmates it can house as a result of a Federal court order and constraints on the sheriff's budget, the use of early release mechanisms for lower risk sentenced offenders has been accelerated to make room for the growing number of two- and three-strikes cases. This policy has not increased the size of the jail population, but it has changed its composition.

12. State Sheriffs' Association, *Three Strikes Jail Population Report*, 1995.

13. Center for Urban Analysis, Santa Clara County Office of the County Executive, "Comparing Administration of the 'Three-Strikes Law' in the County of Los Angeles with Other Large California Counties," May 1996.

14. In mid-1995 an all-time high of approximately 3,500 cases were pending in Los Angeles Central District Court. With the Delay Reduction Program, that backlog was reduced to approximately 1,800 cases by January 1997.

15. Los Angeles County Sheriff's Department, "'Three Strikes' Law—Impact on Jail: Summary Analysis," August 31, 1996.

16. Washington Department of Corrections.

17. California Department of Corrections.

18. *People v. Superior Court (Romero)* (1996), 13 Cal. 4th 497, 53 Cal. Rptr. 2d 789, 917 P.2d 628.

19. The California law requires two-strikers to receive sentences twice as long as normally expected and to serve 80 percent of their sentences less pre-trial custody credits. Three-strikers must serve their entire sentences. Prior to the law's enactment, inmates served slightly less than 50 percent of their sentences.

20. Virginia law does provide for the release of prisoners 65 years of age and older who have served a specified period of imprisonment, and a North Carolina law separate from the three-strikes statute entitles those sentenced to life without parole to a review of their sentences after serving 25 years.

Findings and conclusions of the research reported here are those of the authors and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

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Greenwood, Peter W., Ph.D.

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