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*Three Strikes Revisited:
An Early Assessment
of Implementation and Effects*

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PREFACE

Three-strikes laws have been among the most salient of a host of get-tough sentencing laws passed by many states and the federal government in recent years. California's version of the three-strikes law has garnered particular notoriety as the one affecting by far the greatest number of offenders. In 1994, RAND published *Three Strikes and You're Out: Estimated Benefits and Costs of California's New Mandatory-Sentencing Law*, the final product of a study led by Peter W. Greenwood. That study predicted large effects on serious crime and on the costs of the state's criminal justice system.

After four years of experience with the California law and similar experience with those of other states, we now revisit this issue. We ask whether crime and incarceration rates in California and other three-strikes states have changed faster than in other states and why California's prison population has not increased more rapidly. We also ask how the California law has affected the criminal justice system and some of its larger counties and how they have responded.

This study was supported under award #95-IJ-CX-0099 from the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. Ongoing RAND research, also funded by NIJ, more broadly addresses the relationship between crime and incarceration rates.

Points of view in this document are those of the authors and do not necessarily represent the official position of the U.S. Department of Justice.

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SUMMARY

Twenty-five states, as well as the federal government, have adopted some version of the "three-strikes-and-you're-out" law. These laws typically invoke an extended sentence (often life in prison) following, usually, three instances of conviction of sufficiently severe crimes. The laws vary widely across states in terms of

- the definition of a "strike" (i.e., which felonies are severe enough to count),
- the conditions under which the sanctions of the law may be triggered,
- the severity of the sanctions.

In most states, the laws are narrow, targeting a specific group of particularly dangerous repeat offenders. Few defendants have been sentenced under such laws. In contrast, the California law is quite broad. It differs from most others in two important ways: sentence enhancements apply when the defendant has only one prior conviction for a serious crime, and the current felony offense that triggers the enhancements need not be serious. Thus in California, tens of thousands of defendants have been sentenced under its three-strikes law.

When adopted, the California three strikes law was expected to affect crime and the criminal justice system in significant ways. In particular, it was intended to reduce serious crime by incapacitating repeat offenders and by deterring others from becoming repeat offenders. RAND predicted a decrease in adult crime relative to the previous law of about 28% over 25 years (equivalent to a decrease of 21% in the overall crime rate).

RAND also predicted greatly increased criminal justice system costs, mostly through construction and operation of the additional prison cells needed to house a larger state prison population. Many local criminal justice agencies predicted that the law would affect their operations as well, mainly because three-strikes defendants were

expected to mount especially vigorous defenses. Vigorous defenses would mean fewer pleas and more jury trials, which in turn would mean a greater workload for prosecutors, courts, and other criminal justice agencies; court backlogs and delays; and jail overcrowding and increased security requirements.

All of these predictions were based on the assumption of universal application. That is, it was assumed that the law would be applied in every case in which the defendant had the requisite prior convictions. This was not an unreasonable assumption, particularly given that the law addresses what are generally considered mitigating factors (such as a lack of recent priors and a non-serious current offense), and specifically eliminates them from consideration. Although the RAND predictions too were based on this assumption, RAND concluded that resource constraints would preclude universal application in practice.

In this report, we revisit the three-strikes issue in an attempt to learn more about the impact of these laws. Our findings may be summarized as follows:

- States with three-strikes laws do not appear to have experienced faster declines in crime since those laws were implemented than have states without such laws. Neither have three-strikes states experienced a greater increase in incarceration rates.
- In California, the prison population has increased since implementation of the three-strikes law, but no faster than before three strikes. Increases in the incarceration rate per conviction (possibly the result of the three-strikes law) and in the number of arrests per crime have been offset by a decrease in the crime rate.
- It does not appear that California's three-strikes law has resulted in dramatic workload increases for all prosecutors and courts. Effects on the number of jury trials and on case backlogs have varied from county to county.

- Such variations may reflect differences in how counties have implemented the law. Some DAs are following the letter of the law more strictly than others.
- The California three-strikes law has not been implemented as thoroughly as envisioned. In some counties, strikes are being dismissed in a quarter to a half of all strike-eligible cases.

Incarceration and Crime Rates Across States. At first glance, the experiences of states with three-strikes laws appear to support the notion that these laws are having an effect. In a sample of eight states with large urban areas and with three-strike laws, incarceration rates have increased in all eight between 1986 and 1996. Moreover, violent-crime rates have been falling in seven of the eight since the early 1990s. However, this does not rule out the possibility that some other national legislative, social, or economic change could be behind these trends. We thus compared trends in those states with trends in nine other states with large urban areas but without three-strikes laws. All of these states also exhibited rising incarceration rates over the same ten-year period, and in eight of the nine, the violent-crime rate has been falling since the early 1990s. When all 17 states were ranked according to growth in incarceration rate or decrease in violent-crime rate, the three-strikes states did not in general rank ahead of states without three-strikes laws. In fact, the difference in ranking between the two groups was not statistically significant.

This analysis thus does not support a conclusion that three-strikes laws have led to more rapid decreases in violent crime or even to more rapid increases in persons incarcerated per violent crime committed. However, it does not rule out the possibility of an effect in California, where the three-strikes law is much broader than those of other states and which is thus not comparable on quite the same basis. Our analysis should be regarded as preliminary in other respects:

- It was based on a sample instead of the full 50 states
- Three-strikes laws will not affect further crime from imprisoned offenders until those offenders have been

incarcerated longer than they would have been under the previous law.

- We did not control for various demographic and policy variables that could confound the results.

Prison Population in California. California's prison population has not increased nearly as much as was predicted. In fact, it has not increased any faster since three strikes went into effect in 1994 than it was increasing in the early 1990s (see Figure S.1¹). Why not? We examined the various components of prison population change: changes in adult population of the state; in crimes committed per adult; in arrests per crime; in complaints filed per arrest; in the probability of obtaining a conviction given a complaint; in the likelihood of a prison term given a conviction; and in length of stay in prison.

The predictions of dramatic prison growth assumed that the three-strikes law would increase the probability that convicted offenders would be imprisoned and the length of the time they would serve. Both of these, of course, should increase the prison population. The rate of imprisonment per conviction has indeed increased substantially, but it is too early yet to see an increase in the length of time served. The arrest rate per crime has gone up dramatically, which should also contribute to prison growth. However, changes in some of the other factors have offset these. Most significant is the decline in the crime rate. When three strikes was implemented in 1994, crime in California had started to drop, but at that point it was unclear whether the drop was just normal, year-to-year statistical variation or the beginning of a trend. Between 1992 (the recent peak year) and 1996 (the latest year for which data is available), it has fallen about 25%. And fewer crimes mean fewer inmates, all other things being equal.

Some might claim that the decrease in the crime rate is itself the result of the three-strikes law. However, the fact that the decline

¹In the figure, the bars show prison population counts. The solid line shows a trend line fitted to the data from the early 1990s; the dotted line is the extension of that trend at the same rate into the future. The dotted-line projection almost exactly matches the actual counts.

started a year before the law was passed does not offer support for this claim. Furthermore, as mentioned above, the law has not been in effect long enough to keep many offenders in prison longer than they would have served anyway. Any effect on crime must thus have come through deterring other offenders. The interstate comparisons do not offer support for such an effect (though, again, California's law is quite different).

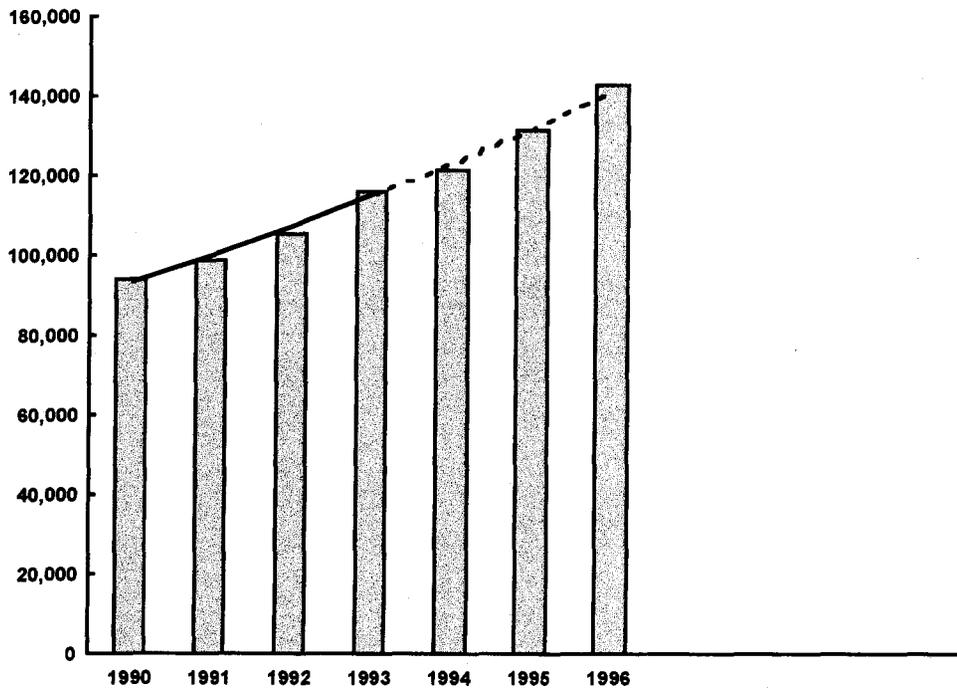


Figure S.1--California prison population

Local Impact and Variation. The California three-strikes law was intended in part to reduce discretion in the judicial process, particularly by judges. Though the latter has in large part been restored by California Supreme Court decisions, important discretion remains in the hands of the District Attorney. Prosecutors, of course, have the authority to decide whether to file charges. They can in the case of some crimes file either a misdemeanor or a felony charge, and only in the latter case are strike sanctions invoked. They can also move to dismiss prior strikes in the "furtherance of justice." It is

such points of discretion that lead to variation in how the law is implemented. In Alameda County, for example, only serious felonies are prosecuted under the three-strikes law. Other counties apply the law less selectively. But even in those counties, priors are being dismissed in a large fraction of cases--as many as half in some counties we studied.

There is some evidence that this variation in local implementation has differentially impacted the criminal justice system in these jurisdictions. Strike cases are more labor-intensive than other felony cases because of the additional research of prior records that is required and because, in many jurisdictions, they are less likely to be settled by plea. Thus, they are more likely to go to jury trial, and they take longer to reach conclusion. The degree to which this occurs, however, varies greatly by jurisdiction (see Figure S.2). San Diego County is a notable exception from the workload pattern just described. There, the overall plea rate is high and the jury trial rate is low, suggesting a policy of aggressive plea bargaining that likely includes three-strikes cases. Moreover, San Diego County is a jurisdiction that successfully adopted system-wide changes to the way three-strikes cases were processed in the interest of forestalling court backlog problems.

Some counties have reported three-strikes case court backlogs and, in turn, civil-case processing delays. But the growth of court backlogs seem to have been stabilized, probably because appellate court decisions have resolved a number of legal uncertainties, especially those regarding judicial discretion. And civil case processing time statewide in California and in many of its jurisdictions has actually decreased in recent years. Some counties have reported effects on local jails--an increase in population and in the fraction awaiting trial, a need for tightened security (three-strikes defendants are considered greater risks of flight), and an increase in lengths of stay. Generally speaking, however, effects on local criminal justice systems have not been nearly as dramatic as was feared at the time of the law's passage.

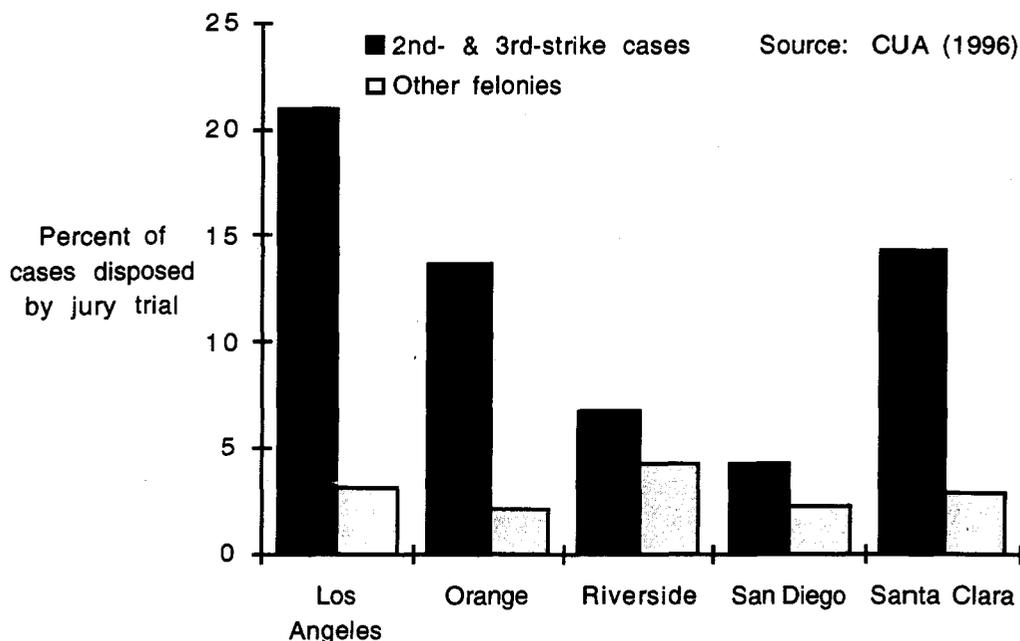


Figure S.2--Percent of cases disposed by jury trial in five California counties.

Conclusion. This study does not provide strong evidence for an effect of three-strikes laws on crime as of this time. Because the California law is so much broader than other three-strikes laws, it is possible that it has had an impact on crime in California even if other laws do not. Although crime began to decline in California before the three-strikes law was passed, it has been declining more rapidly since, and the percentage reduction in California is larger than in most other urban states. In our judgment, the evidence that the law is responsible for the reduction in crime is inconclusive.

Incarceration has increased no faster in states with three-strikes laws than in other states, and in California no faster than it was before the law was passed. In California, the effects on county criminal justice system workloads and operations have been varying but not generally dramatic; implementation also has varied by county but is more selective everywhere than originally assumed.

This study is preliminary in that three-strikes laws have not been in effect for very long. The analyses are based on only a few years of

data, and it is too early to observe some of the expected effects of three strikes. Given the preliminary nature of this study, some important and interesting questions remain unanswered:

- Are the apparently modest impacts of three-strikes laws on incarceration and crime rates only temporary? The predictions of larger effects by previous studies may eventually be borne out. Effects on incarceration may be assessed now through a more detailed analysis of incoming prison cohorts; analyzing the full effects on crime will have to await the passage of enough time that those sentenced under three-strikes begin serving the extended part of their terms--the part to which they would not have been sentenced previously.
- What has driven the selectivity of the law's application in California? We had predicted in 1994 that resource limitations would prevent full implementation of California's three-strikes law. This may have been the case at first, but it now appears that case backlogs are under control. It may be that prosecutors and judges are exercising their discretion to limit the application of full sanctions to what they view as those cases falling within the spirit of the law.
- Are prosecutors using the three-strikes tool effectively to lock up the most dangerous felons? We had previously determined that narrower versions of California's current three-strikes law would be more cost-effective. Is the combined discretion exercised by California's prosecutors essentially converting the law into a more efficient alternative? Further research could answer this question--and possibly improve the criteria prosecutors are now using to direct the law's sanctions to offenders most likely to commit serious crimes in the future.
- Have three-strikes laws really changed the administration of justice very much? Before the three-strikes era, most states, including California, had laws providing for extended sentences for repeat offenders. An assessment of the true costs and

benefits of these laws would have to take the previous legal baseline into account; that is, it would have to count only costs and benefits *in addition to* those that would have accrued had the previous laws remained in effect. Such an assessment remains to be done.

These questions are important because they play a role in determining whether three-strikes laws are cost-effective. This determination should be of interest to taxpayers and to policymakers with the responsibility of wisely spending tax dollars.

1. INTRODUCTION

Concerned by high rates of criminality among those released from prison, many states have over the past five years passed mandatory-sentencing laws for repeat offenders. While these laws vary greatly in scope, they generally require judges to impose greatly extended sentences for persons convicted of serious crimes when they are convicted of similar crimes again. In some states, a third conviction requires a sentence of 25 years to life.

Over the same period of time, violent-crime rates have been falling rapidly. Some public officials have claimed a connection between the two--that a long trend toward extended sentences was finally bearing fruit by incapacitating many serious offenders and deterring others from committing crimes. Is this easy political rhetoric or can some basis for it be demonstrated? Are mandatory-sentencing laws for repeat offenders associated with lower crime rates?

In this report we take some preliminary steps toward determining whether such a relationship exists. We also seek to determine, for that matter, whether there is an association between mandatory-sentencing laws and incarceration rates. For one of the most salient characteristics of such laws is that, despite the media attention to their passage, their direct effects are typically limited to a small number of criminals.

There is one dramatic exception to that generalization--California's "three strikes" law. Under California's law, some of the crimes that trigger extended sentences are less serious--and more commonly committed--than those in other states. As a result, thousands of cases are affected each year. Early projections indicated that these cases would impose an enormous burden on the criminal justice system, and, as a result, system costs would soar. However, a substantial decrease in crime was also predicted. Of course, these projections were predicated upon full implementation of the law. Have any of these predictions come to pass? Has the law been fully implemented? We also seek to answer these questions.

In the subsequent chapters, we take these issues up in the order discussed above. We compare incarceration and crime trends across states to determine whether patterns differ between three-strikes and non-three-strikes states (Chapter 2). We analyze incarceration in California to quantify the effects the state's three-strikes law has had on the criminal justice system (Chapter 3), and we examine implementation at the county level in California (Chapter 4). We conclude with a brief summary of findings and a discussion of some important and interesting questions yet to be fully examined (Chapter 5.) First, though, we offer some background on the types of laws whose effects we are examining and on the way they effect the balance of power in the courtroom.

MANDATORY-SENTENCING LAWS AND HOW THEY WORK

Mandatory-sentencing laws for repeat offenders, or "three-strikes" laws, have been implemented in 26 states and for federal offenses since the first such law was passed in Washington state in 1993. While they share a common name, three-strikes laws are quite diverse. The offenses triggering sanctions and the sanctions themselves vary widely.

California's three-strikes law¹ is by far the broadest in the nation. It may be of some interest how it got that way. Several different versions of a three-strikes law were introduced in the California legislature in early 1994, after it became apparent that a ballot measure containing a broad version of the law, authored by the parent of a young murder victim, would qualify for the November ballot. The intent of all these laws was to increase the prison terms of serious repeat offenders, and remove the discretion of judges to deviate from the sentence enhancements set forth in the law. The version that was voted into law, almost unanimously, by the legislature in March of 1994 was almost identical to the text of the proposed ballot measure, and was the toughest version of the law being considered. Eight months later the Proposition (184) still appeared on the November ballot and was passed with 72 percent in favor (Schichor and Sechrest, 1996, p. v).

¹See Appendix A for the text of the law.

In California, any of an extended list of serious offenses² may count as first or second strike. After one strike has accrued, any of approximately 500 felonies triggers the following sanctions: the sentence prescribed by law is doubled, it must be served in state prison, and "good time" credits earned toward an early release can amount to no more than 20 percent of the full sentence. Any serious felony subsequent to the first strike also results in accrual of a second strike. Once a second strike has been earned, any subsequent felony triggers the third strike and an automatic 25-year-to-life sentence (at least 20 years of which must be served). The triggering of additional sanctions by any felony following a strike (first or second) is principally responsible for the California law's broad impact. Through 1996, California had sentenced 26,074 prisoners under the enhanced sanctions of its law. This number had increased to 35,411 by the end of 1997 (Lungren, 1998).

The laws of most states limit strikes-eligible offenses to a small number of violent felonies, and require three strikes to trigger a mandatory sentence such as life with out parole, or 25 years to life. In some states, the law can be triggered by more or fewer strikes. Maryland's law, for example, mandates life without parole when an offender accrues four strikes from a short list of violent felonies, provided that separate prison terms were served for the first three offenses. Georgia's law stipulates mandatory life without parole after the second violent felony conviction from a list of specified offenses. However, the number of offenses covered by Georgia's law is far fewer than those covered by California's (Clark, Austin, and Henry, 1997).

Another factor that affects the impact of the implementation of a three-strikes law is the extent to which the new law differs from preexisting sentencing legislation. Indiana already had a law requiring

²California recognizes certain offenses as "serious" or "violent," and the three-strikes law explicitly applies to both categories. However, since "serious" offenses include all "violent" offenses, for economy of reference we will speak only of "serious" crimes in reference to California's law. Among "violent" crimes are murder, rape, and felonies involving substantial physical injury or use of a firearm. Among "serious" crimes are those just listed as violent, robbery, residential burglary, and providing narcotics to children. See Appendix B for a full list.

enhanced sentencing for a third felony conviction; the new three-strikes law required that the mandatory sentence be life without parole. Louisiana's preexisting law required a sentence of life without parole for the third conviction from a list of violent and drug felonies, or for a fourth felony conviction if at least two of the prior convictions were on the list. The new law differed primarily in that the four-strike provision would be invoked if any one of the prior convictions were on the list of specified offenses.³

Not surprisingly, as a result of these smaller triggering-offense lists and incremental changes, much smaller numbers of offenders have been sentenced under these laws. For example, by the end of 1996, Washington had admitted only 85 offenders to prison under its law, which went into effect a year earlier than California's (Clark, Austin, and Henry, 1997).• By September of that year, six states which had implemented three strikes in 1994 or 1995 had not sentenced any offenders under the law. • Twelve other states and the federal system each had ten or fewer three-strikes convictions (Campaign for an Effective Crime Policy, 1996).

MANDATORY SENTENCING AND THE COURTROOM BALANCE OF POWER

To some degree, sentencing policies and reforms involve a tug-of-war between the judicial, executive, and legislative branches of government for control over criminal justice matters. This conflict has been very clear in California, where battles over discretion in three-strikes cases have been fought in the courtroom and in the legislature. As drafted, the California three-strikes law was intended to limit judicial discretion by imposing mandatory sentences; it was also intended to limit the discretion of both judges and prosecutors by prohibiting plea bargaining

³California also had mandatory-sentencing provisions for repeat offenders prior to the passage of its three-strikes law. Those provisions included a sentence 20 years to life for a third incarceration for a violent felony; an extra 10 years for a third serious-felony conviction; and an extra 5 years for a second serious-felony conviction (where by "extra" we mean in addition to the sentence specified by law for the crime charged). The 1994 law greatly expanded repeat offender sanctions by lowering the seriousness of the felony needed to invoke sanctions and reducing good time from 50 percent to 20 percent (Greenwood et al., 1994, p. 7).

with strikes. Three California Supreme Court decisions have addressed the issue of judicial discretion, on balance restoring some of the traditional power of judges to take mitigating factors into account. Some background on the courtroom balance of power and this struggle will be useful in understanding the following chapters.

In the felony adjudication process, there are several points where decisions must be made, and at which discretion can be exercised. After the police arrest a suspect, they decide whether to file charges. The prosecutor can then screen cases to determine which ones are worth prosecuting. The case may then go to a preliminary hearing, where more cases may be screened out by the court. At a defendant's arraignment, the prosecutor makes further decisions about what charges to press against the defendant. Dropped or reduced charges are not uncommon. For example, felony charges may be reduced to misdemeanors in exchange for guilty pleas (McIntyre and Lippman, 1970). After a defendant is charged, he may plead guilty or assert his innocence. The ensuing trial may be held before a judge or a jury. If a defendant is found to be guilty, the judge (in non-capital cases) then decides what sentence will be imposed.

Three-strikes laws, like other mandatory minimum sentencing laws, place restrictions on the discretion that can be exercised in the sentencing process. The drafters of California's three-strikes legislation intended that if a defendant were found guilty and had two prior convictions, the judge would have no legal recourse but to sentence him to 25 years to life (Vitiello, 1997a). The California law's sanctions allowed no room for judicial discretion; prosecutors could move to dismiss prior strikes if "in the furtherance of justice" or if they would have trouble proving the prior conviction in court, but no such authority was granted to judges. Many judges argue that these laws tie their hands while leaving prosecutorial discretion untouched, and that this upsets the balance of power in the courtroom (Vincent and Hofer, 1994). Furthermore, some have argued that three strikes violates the separation-of-powers doctrine by allowing the legislature to implement policies that restrict the authority of judicial officials (Vitiello, 1997b).

A 1996 California Supreme Court case, *People v. Superior Court (Romero)*,⁴ sought to right this perceived imbalance. The Supreme Court ruled unanimously that a judge can dismiss a prior conviction so that it does not count as a strike, if doing so is "in the furtherance of justice." The action would be subject to review by a higher court. Dismissal of a second strike, for example, would result in only a doubling of the normal prison sentence for a crime instead of the 25 years to life required when a defendant already has two strikes. Dismissed "strikes" could include situations such as prior convictions that occurred many years ago (including juvenile felony convictions), serious but nonviolent prior convictions, or prior felony drug convictions, for defendants whose current conviction is for a nonviolent felony. The decision in *Romero* was based on the fact that the three-strikes law would otherwise allow prosecutors much more authority than judges to exercise discretion in strike cases.

A second California Supreme Court decision, *People v. Superior Court (Alvarez)*,⁵ addressed "wobblers," i.e., crimes that can be charged as either a misdemeanor or a felony (these convictions include such crimes as petty theft with a prior theft conviction, commercial burglary, and welfare fraud). If charged by the prosecutor as a felony, such crimes would trigger the application of three-strikes sanctions to an offender with prior convictions for serious felonies. Under *Alvarez*, the trial judge could declare the crime to be a misdemeanor at sentencing.

In early 1998 the California Supreme Court filed an opinion on a Los Angeles three strikes case, *People v. Williams*.⁶ With this opinion the court further defined the circumstances under which a judge could consider the dismissal of a prior serious-felony conviction under the three strikes law. Specifically, the court asserted,

in reviewing such a ruling, the court in question must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's

⁴13 Cal.4th 497, 917 P.2d 628, 53 Cal.Rptr.2d 789.

⁵14 Cal.4th 968, 928 P.2d 1171, 60 Cal.Rptr.2d 93.

⁶17 Cal.4th 148.

spirit in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.

Prior to the *Romero* and *Alvarez* rulings, some prosecutors challenged judges who attempted to exercise such discretion in three-strikes cases. Following the rulings, judges in some California courts have used their authority to dismiss "strikes" and reduce "wobblers."⁷ Depending on how frequently judges exercise this authority, these rulings are likely to affect how and to what extent the three-strikes law is implemented in California. However, the rulings are too recent for their overall impact--in terms of the crime rates, incarceration rates, and criminal justice system workload indicators that are addressed in this report--to be observable.

Prosecutorial discretion has actually been used more widely than judicial discretion in some California jurisdictions. This is addressed in detail in Chapter 4. The issue of judicial and prosecutorial discretion is highly relevant to the impacts of laws such as three strikes on courts and prisons and possibly on crime rates. Points at which judicial or prosecutorial discretion may be exercised may function as "safety valves" to relieve pressures from overloaded criminal justice systems. Such discretion may reduce the strain on court and prison resources, and may increase effectiveness in reducing crime, if it is exercised appropriately, by accurately selecting out the most dangerous or risky defendants for its application. However, it would also be expected to diminish the law's total impact on crime.

⁷ A January 23, 1997 article in the *San Francisco Reporter* found that judges dismissed prior strike convictions in 5.5% (35 out of 639) of all strikes cases. In Contra Costa County, judges dismissed prior convictions in 3 out of 57 habeas corpus petitions. The Los Angeles District Attorney's office reported that judges exercised discretion to dismiss a prior strike or to reduce a "wobbler" to a misdemeanor in 13.7 percent of cases (Calif Assembly Committee on Public Safety, 1997).

2. COMPARING EFFECTS ACROSS STATES

What can be said at this time about the effects of three-strikes laws on incarceration and crime in the states implementing them? It is insufficient, of course, to simply compare incarceration and crime rates before and after three strikes in these states. Any changes discovered could be caused by some trend other than the passage of three-strikes laws. Among the possibilities that have been suggested: an improving economy, a maturation of cocaine markets, a reluctance of a new generation of gang members to repeat the decimation of the preceding one. Instead, we compare incarceration and crime trends in states that have passed three-strikes laws with those trends in states that have not. Thus, if there is some overall national development that is driving down crime, we would claim a three-strikes effect only if crime rates fell further in three-strikes states than in others.

To avoid state-specific fortuities and sampling error in general, we examine incarceration and crime rates in a number of states. As our sample, we take 17 states with large metropolitan areas.¹ Nine of these states have Three Strikes policies in place: California (Three Strikes implemented in 1994), Colorado (1994), Florida (1995), Georgia (1995), Maryland (1994), New Jersey (1995), Pennsylvania (1995), Washington (1993), and Wisconsin (1994). The eight that do not have Three Strikes laws are Arizona, Illinois, Massachusetts, Michigan, Minnesota, New York, Ohio, and Texas.

We will be careful in the following discussion not to infer more than is possible from this analysis. Failure to find an association between three-strikes laws and falling crime rates means it is not very likely that such an association prevails *in general*. It does not mean that three-strikes laws have no effect in *any* state. California's law, in particular, differs greatly from those of other states, making it difficult to draw inferences about that law from a cross-state analysis.

¹This is the same sample used by Zimring and Hawkins in their 1995 study, *Incapacitation*.

(For a full discussion of the limitations of the analysis, see the end of this chapter.)

DO THREE-STRIKES STATES INCAPACITATE MORE FELONS?

Figures 3.1a and b show felony incarceration rates from 1986 to 1996 for the nine three-strikes states in our sample.² This rate is equal to the number of offenders in prison with sentences of over a year, divided by the number of violent crimes over the course of the year (in thousands). Note we are not interested here in the number of persons sent to prison per capita, as that could be affected by the number of crimes per capita. If three strikes were working as hoped, the crime rate should be falling faster in three-strikes states. To be fair to three strikes, then, we take a measure of "toughness."

The graphs show that the incarceration rate has been rising in all three-strikes states. In Colorado, in particular, the rate was increasing gently in the early 1990s, then took off more steeply as soon as the three-strikes law was passed. By 1996, there were over two-and-a-half times as many inmates per violent crime in Colorado as there were in 1986. The average increase over all three-strikes states in the sample was 101 percent. Even in Maryland, where the trend seems overall a bit flatter than the rest, there were a third again as many incarcerations per 1000 violent crimes in 1996 as there were ten years

²This and other figures in this chapter have been divided into "a" and "b" panels to make it easier to distinguish the lines graphed. Nothing is intended by the assignment of states to "a" or "b" panels. The source of incarceration data was the Bureau of Justice Statistics, *Correctional Populations in the United States [year]* and *Prisoners in [year]* publications series. Texas and Massachusetts incarceration data have been modified to include prisoners held in jail due to prison overcrowding. Texas data from 1988 to 1993 were provided by Pablo Martinez of the Texas Criminal Justice Policy Council. In 1986 and 1987 there was no prison backlog, and from 1994 through the present, the backlog numbers have been included in prison data reported to the Bureau of Justice Statistics. The source for data on inmates held in jail due to prison overcrowding in Massachusetts, 1986-1994 is the Bureau of Justice Statistics, *Prisoners in [year]* bulletin series. Massachusetts began including inmates held in jail due to prison crowding in their reported overall prison population statistics in 1995. Incarceration per violent crime is calculated from these statistics and the rates of violent crime. The source for the crime rate statistics is FBI, *Uniform Crime Reports*, 1986-1996.

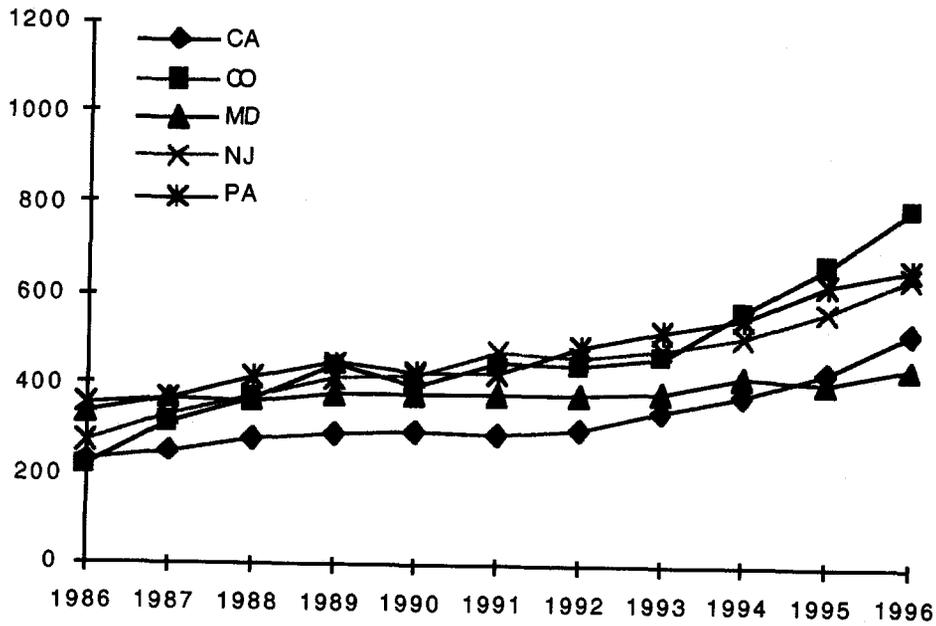


Figure 3.1a--Prison Inmates per Thousand Violent Crimes in States with Three-Strikes Laws

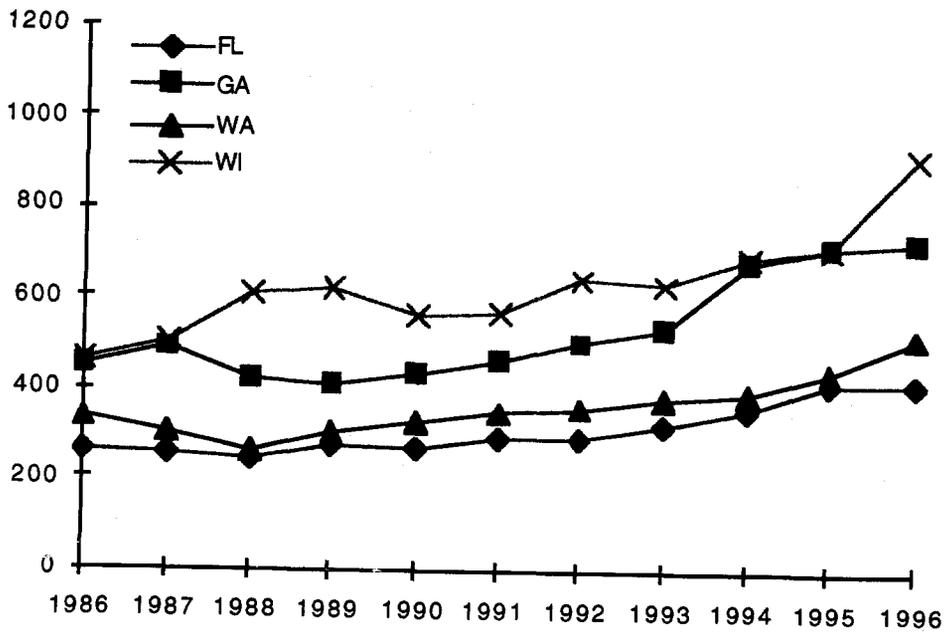


Figure 3.1b--Prison Inmates per Thousand Violent Crimes in States with Three-Strikes Laws (cont.)

earlier. Moreover, all the states except for Georgia show faster growth in their incarceration rates since the passage of their three-strikes laws then in the years before.³

However, incarceration rates have also been rising in non-three-strikes states--by an average of 104 percent over the ten-year period (see Figures 3.2a and b). Even in Massachusetts, where the trend looks flatter than in the other states, the incarceration rate rose by a quarter between 1986 and 1996. And in Texas, the incarceration rate doubled over the period. Furthermore, in all states, incarceration rates rose faster in the three-strikes era (1992-96)⁴ than before (1986-92).⁵

Incarceration rates rose in both three-strikes states and others during the three-strikes era, but how fast did they rise? The bars in Figure 3.3 show percentage changes between 1992 and 1996; the states are ordered from lowest to highest rate of change, and the bars representing three-strikes states are given a darker color. We see that there are more three-strikes states among the top two-thirds than in the bottom third. However, a statistical test (Wilcoxon rank-sum) reveals that we cannot assert with high confidence that this apparent sorting is not the result of chance.

³In calculating "before" and "after," we assume the laws might have had some effect in the year of passage. Thus, for a law passed in 1994, "before" refers to the average annual change between 1986 and 1993, and "after" refers to the average annual change between 1993 and 1996.

⁴The three-strikes era continues, of course, but 1996 is the latest year for which we have data.

⁵Quite apart from the rates of change, which are what most concern us here, it is interesting to note the wide variation in the number of inmates per violent crime--from around 300 in Massachusetts and Minnesota in 1996 to over 1000 in Texas. What motivates such differences? We can only speculate. Perhaps Texans perceive that more imprisonment is needed to achieve desired levels of crime reduction through incapacitation and deterrence. Perhaps they believe that more punishment is warranted for breaking laws than do the residents of other states. Perhaps they recognize benefits not directly related to crime reduction when ex-offenders are kept off the street. Whatever the benefit sought, it is presumably worth an extra 700 prisoners per violent crime.

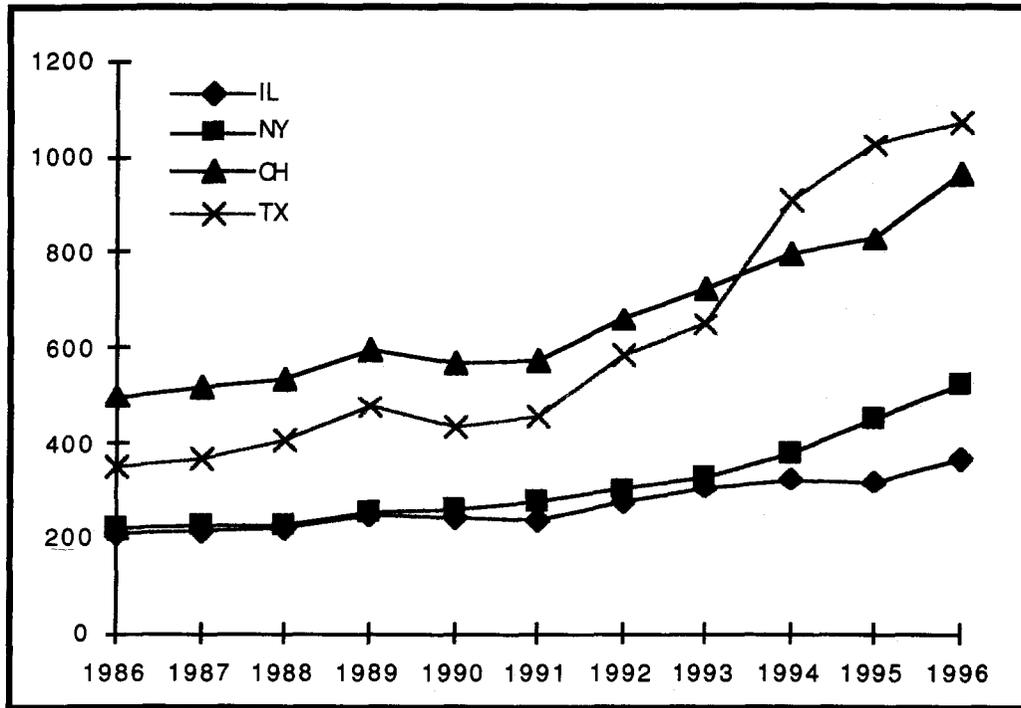


Figure 3.2a--Prison Inmates per Thousand Violent Crimes
in States Without Three-Strikes Laws

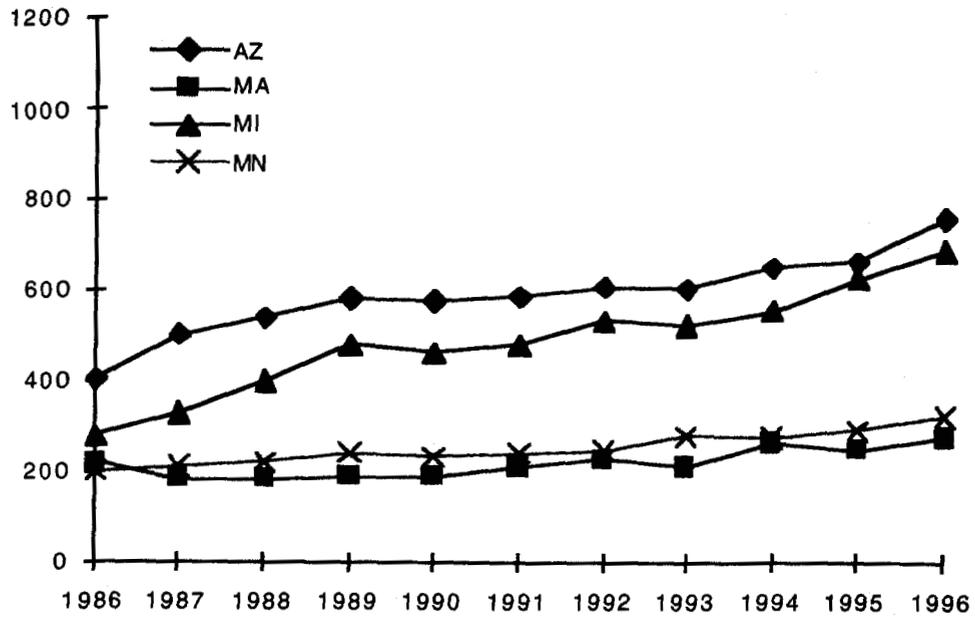


Figure 3.2b--Prison Inmates per Thousand Violent Crimes in States Without Three-Strikes Laws (cont.)

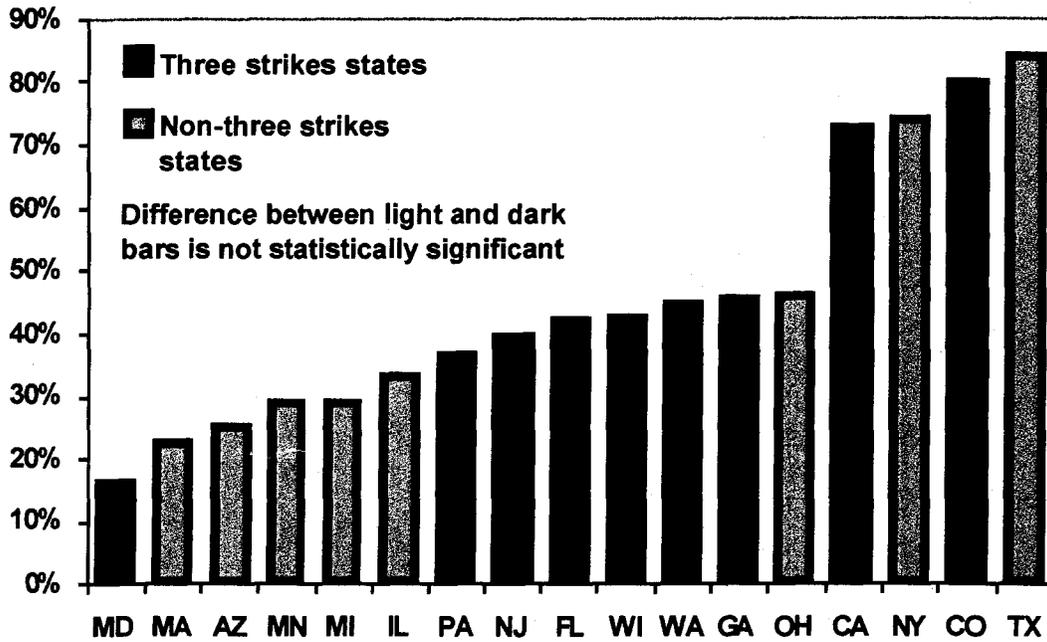


Figure 3.3--Relative Change in Rate of Felony Incarceration per 1000 Violent Crimes, 1992 vs. 1996

It does not, then, seem appropriate to attribute the rising incarceration rates in three-strikes states--even the quicker rise since the laws' passage--to three strikes per se, as similar trends have been occurring in the other states. This should not be surprising in view of the small number of offenders affected by three-strikes laws in all states except California. The graphs appear to show that all states have been busy passing laws to make it more likely that violent offenders will serve prison terms. The effects of those laws have apparently swamped the influence of the relatively small number of offenders affected by three-strikes laws.

Because the California law has been applied to tens of thousands of offenders, we would expect its effect to be more pronounced. Note from Figure 3.3 that California does rank among those states with faster growing rates of felony incarceration. Three states are higher, two of which have not passed three-strikes laws.

ARE THREE-STRIKES STATES EXPERIENCING A FASTER DROP IN CRIME?

Given the results just presented, we would not expect crime to be falling much faster in three-strikes states as a result of incarceration of violent offenders at a greater rate. There is still the possibility, however, that habitual offenders are being deterred from committing crimes out of fear of the more severe consequences they now face. To determine whether that might be the case, we now examine crime rates themselves. We consider the FBI's "index" crimes--murder, forcible rape, aggravated assault, robbery, burglary, auto theft, other kinds of theft, and arson--and the first four of those alone, recognized by the FBI as "violent" crimes. In both cases, we follow the FBI in presenting rates per 100,000 residents.

Figures 3.4a and b show the index crime trends for states passing three-strikes laws while Figures 3.5a and b show index crime trends for states without three-strikes laws. California, the state with the strongest three-strikes law, exhibits an overall downward trend over the period shown, with a more rapid drop after the passage of its law. The index crime profile for New York--a state without a three-strikes law--is similar, and a few other states show such a pattern. The index crime rates in several states (e.g., Pennsylvania, Illinois) have not varied more than 10 percent from their 1986 values. However, in two of these states with three-strikes laws (Florida, Wisconsin), the crime rates seem to have turned downward in recent years. In a few states, the crime rate moved up, then down, and Maryland has bucked the trend by moving up overall, though it seems to have plateaued.

None of these overall ten-year trends--downward, flat, or upward (then in some cases downward)--is associated with having or not having a three-strikes law. Particularly damaging to the case for three strikes is that the current downward crime trend prevailing in some states started before the three-strikes laws were implemented. Out of the nine three-strikes states, crime rates turned down prior to the passage of three-strikes laws in three (including California), afterwards in four; in two the rates have gone up since passage of three-strikes laws. Meanwhile, five of the eight states without three-strikes laws have

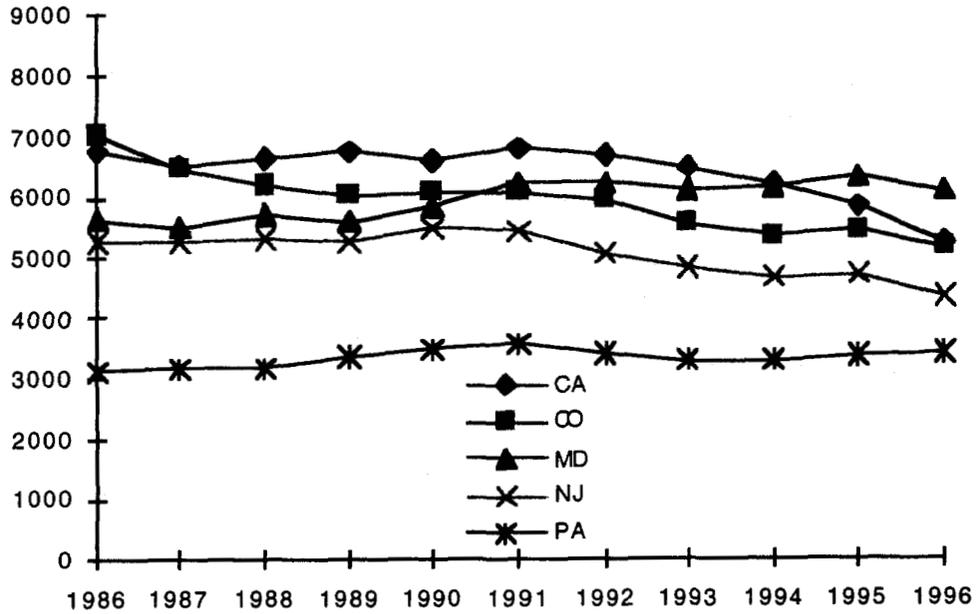


Figure 3.4a--Index Crimes per 100,000 Residents in States with Three-Strikes Laws

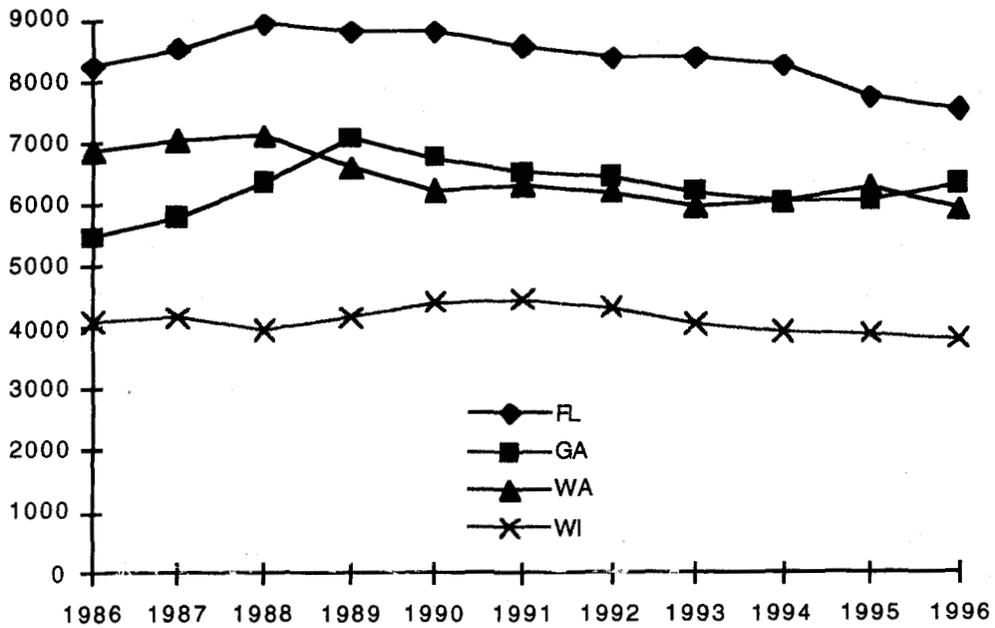


Figure 3.4b--Index Crimes per 100,000 Residents in States with Three-Strikes Laws (cont.)

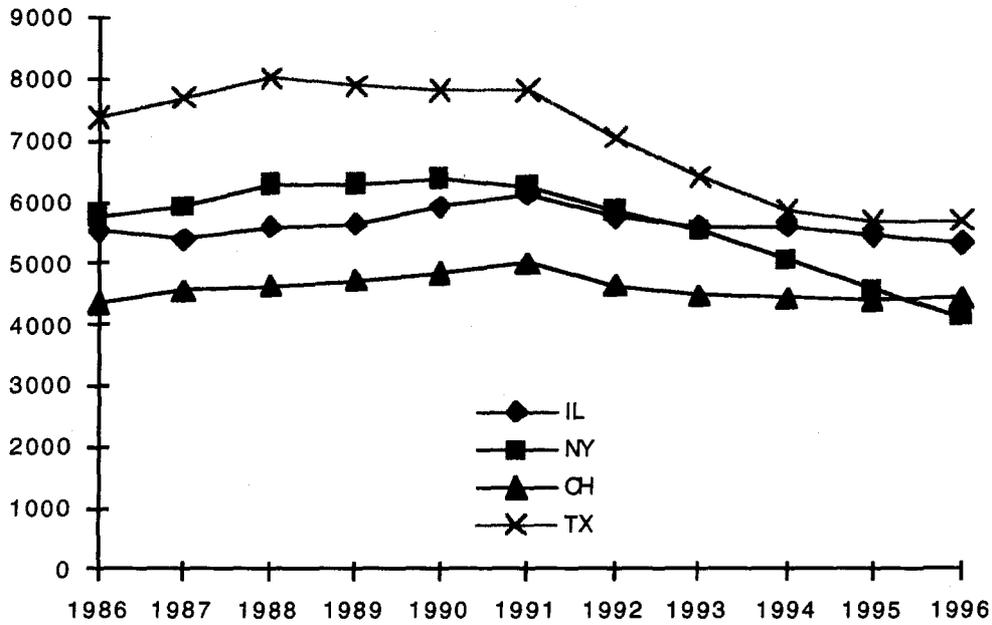


Figure 3.5a--Index Crimes per 100,000 Residents in States Without Three-Strikes Laws

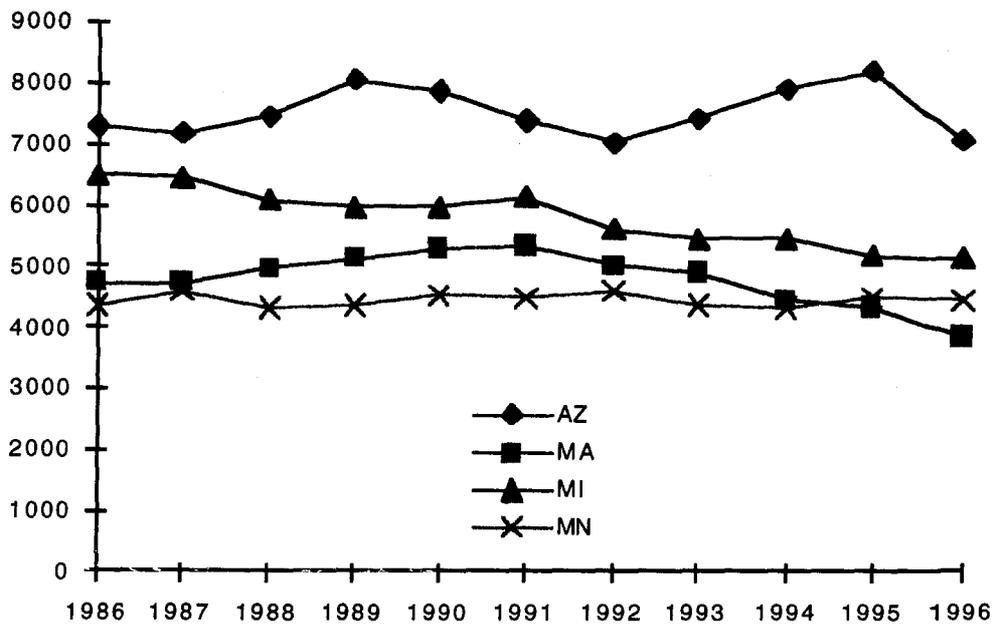


Figure 3.5b--Index Crimes per 100,000 Residents in States Without Three-Strikes Laws (cont.)

experienced steadily decreasing crime rates since 1992; the other three have shown an upturn in at least one year.

Perhaps, however, three-strikes laws have increased the speed at which the crime rate has declined. If we examine these rates of fall, the results appear at first glance more favorable to such laws. In California, the index crime rate decreased 1.4% from 1991-92 and 3.3% from 1992-93. But since the three-strikes law has gone into effect, the declines have been 4.4%, 5.6%, and 10.7% in successive years. All the other three-strikes states except Georgia and Pennsylvania also experienced some faster drop in the most recent years. This is consistent with the belief that Three Strikes had an impact on crime rates in these states. The picture is less clear in the non-three-strikes states. Some (e.g., Texas, Ohio) have not experienced accelerated declines recently. But others have: Massachusetts' index crime rate declined 2.2% from 1994 to 1995, and then dropped 11.6% from 1995 to 1996. Arizona's index crime rate had increased slightly in each of the years from 1992 to 1995, but dropped 14.0% from 1995 to 1996.

For a clearer, more systematic comparison, Figure 3.6 duplicates the analysis in Figure 3.3 for index crime rates. Here, instead of searching for a year or two of more rapid decline, which may or may not be meaningful, we compare all states on the basis of decline in the index crime rate between 1992 and 1996. Though there are several three-strikes states among those with more rapidly dropping crime, there are a few non-three-strikes states also. There are four of each below the median (right side of the figure). Consistent with this inspection, the Wilcoxon test fails: there is no statistically significant association between having passed a three-strikes law (or not having done so) and position in the series of states ranked by the rate at which the index crime rate fell between 1992 and 1996.

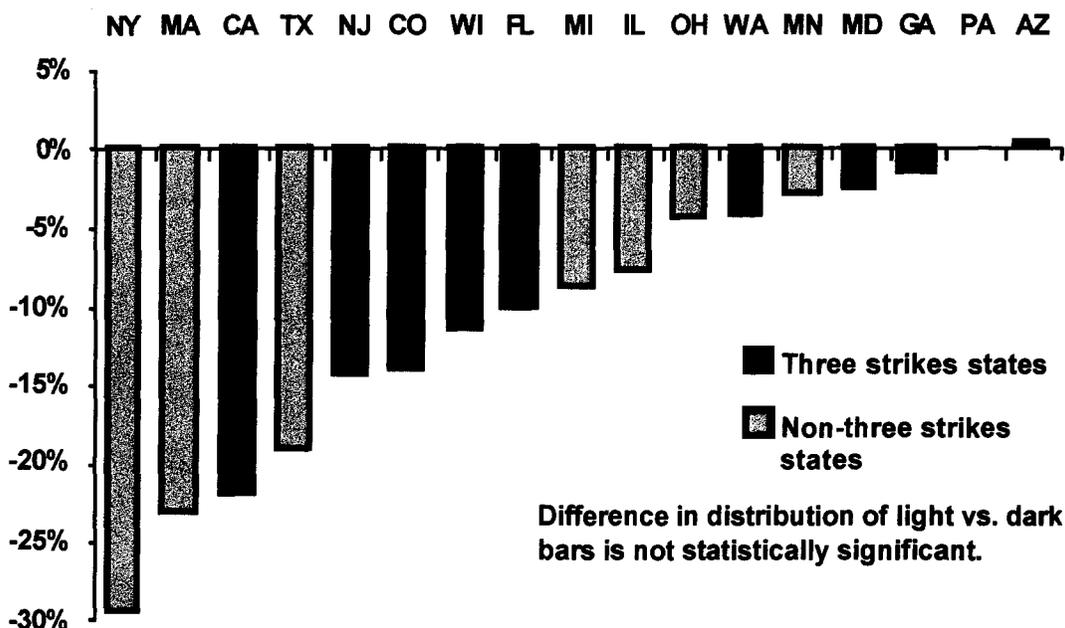


Figure 3.6: Relative Change in Index Crime rate, 1992 vs. 1996

Though the law in California is broad, the driving impetus for passage of three-strikes laws has not been to prevent auto theft or larceny but to lock up dangerous criminals who have demonstrated a repeated tendency toward violence. Perhaps, then, a fairer test for the success of three-strikes laws would be an analysis of that minority of index crimes classified as violent. Figures 3.7, 3.8, and 3.9 repeat the preceding analysis, but this time for violent crimes.

Here, there is less variation among the ten-year trends. Most go up, then down. A few (e.g., Wisconsin, Arizona) go down before heading up, and two (Maryland again, Pennsylvania) trend upwards generally. But most states are trending downwards after a peak sometime in the last ten years. These late drops are about as frequent among non-three-strikes states as among three-strikes states. When the states are ranked by the rate at which crime fell during the three-strikes era (Figure 3.9), the placement of three-strikes states appears virtually random. Our statistical test bears that out.

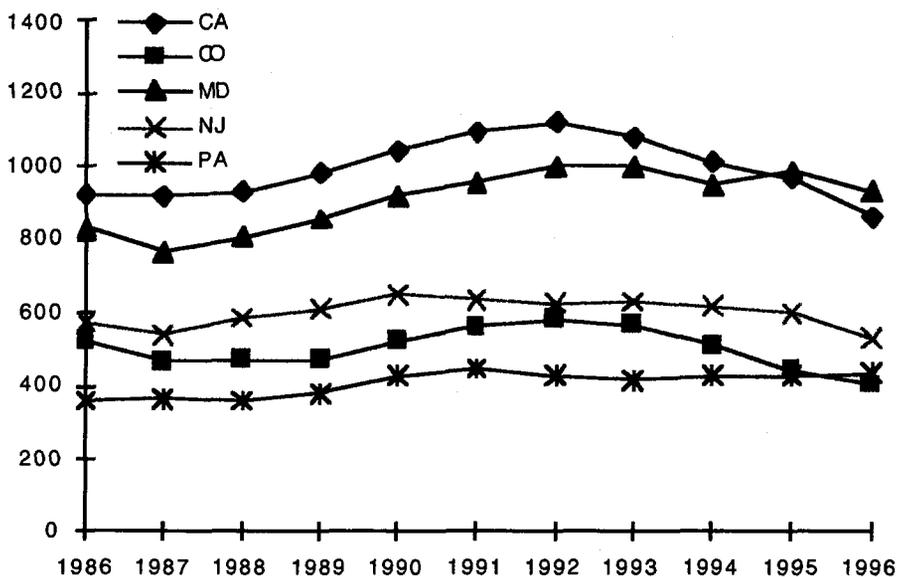


Figure 3.7a--Violent Crimes per 100,000 Residents in States With Three-Strikes Laws

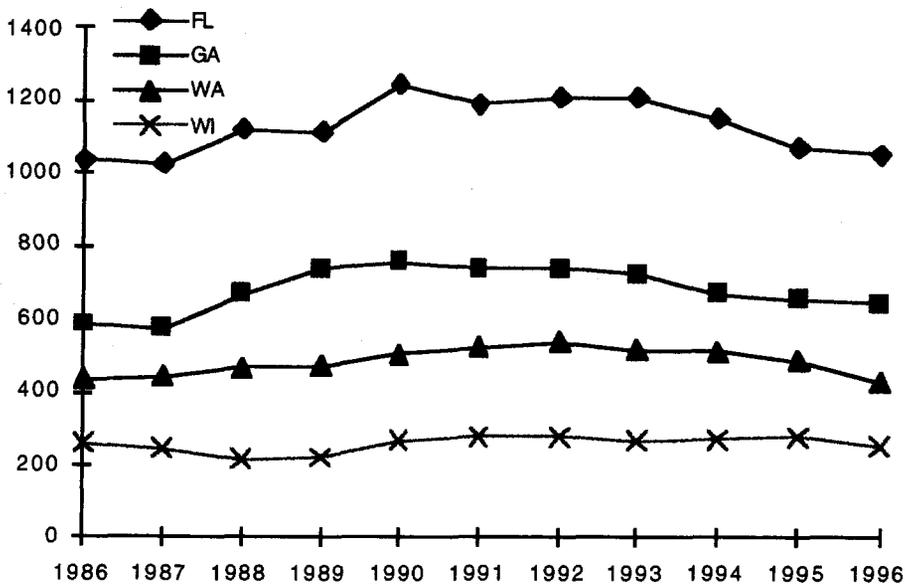


Figure 3.7b--Violent Crimes per 100,000 Residents in States With Three-Strikes Laws (cont.)

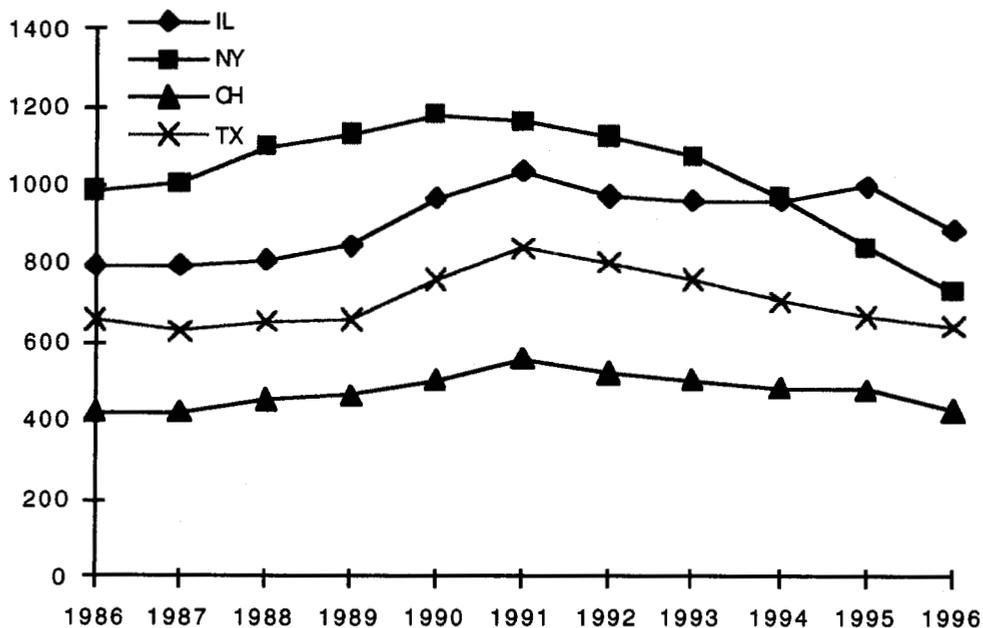


Figure 3.8a--Violent Crimes per 100,000 Residents in States Without Three-Strikes Laws

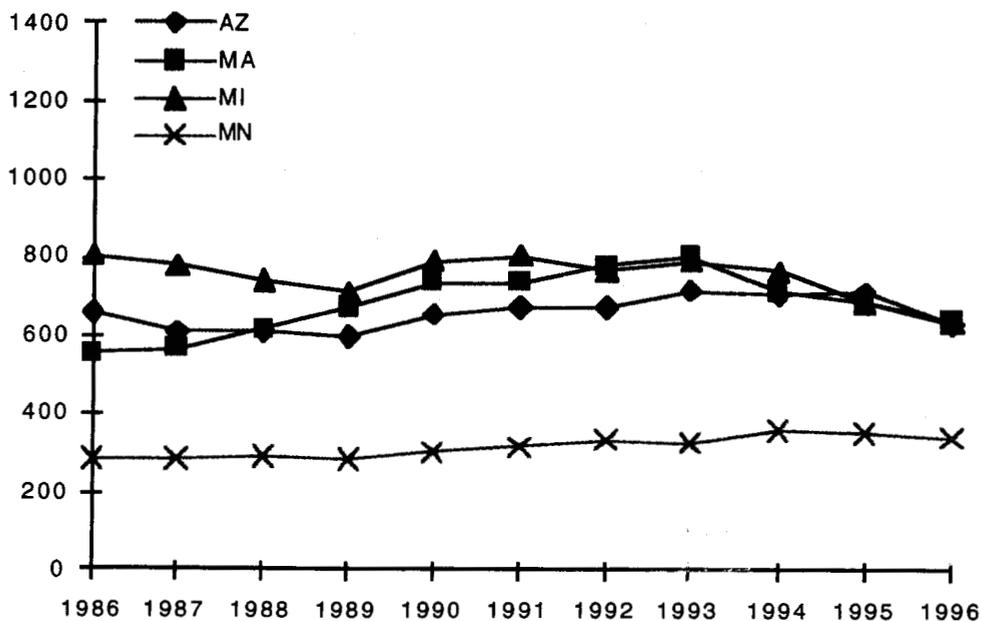


Figure 3.8b--Violent Crimes per 100,000 Residents in States Without Three-Strikes Laws (cont.)

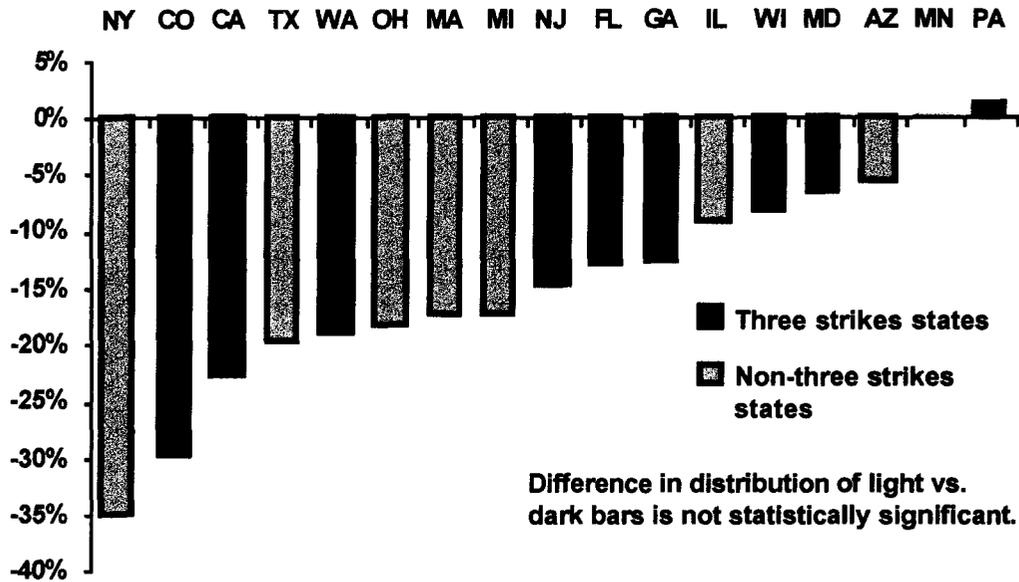


Figure 3.9: Relative Change in Violent Crime rate, 1992 vs. 1996

CONCLUSION

This initial examination of crime rates across states with Three Strikes laws does not clearly support the hypothesis that such laws have driven down crime more rapidly than would have been the case otherwise. It does not even appear that three-strikes laws have increased incarceration in relation to violent crimes committed.

It is important to note, however, that this cross-state analysis does not rule out the possibility that three-strikes laws may be having an effect in certain states. In particular, California's law differs substantially from the others and it is difficult to draw inferences about it from this analysis. Other characteristics of this preliminary analysis keep us from reaching more definitive conclusions:

- Two-thirds of the states are excluded. The states that are included do account for most of the country's population and most of its crime problem. However, it is difficult to detect

statistically significant differences between groups of only eight or nine states each.

- Only a short time has passed since the enactment of three-strikes laws, and 1997 data were not yet available at the time of this analysis. Even allowing for an effect in the year of passage, that leaves only three years' experience for four of the three-strikes states and only two years for four others. For three-strikes laws acting principally through extending the terms of offenders who would be imprisoned anyway, no incapacitative effect could be detected until those extensions began to be served. For example, if a law acted principally by extending sentences of those who would have been sentenced to five-year terms anyway, no incapacitative effect would be observed until at least five years after the law's passage. This is not as true of California's law, some of whose provisions should have had immediate impact, and in all cases deterrent effects might have been observed.
- We used the same effect criterion for all states. As three-strikes laws do vary substantially from state to state, it may be more appropriate to examine trends in different sets of crimes for different states or small groups of states. Such an approach, however, makes selection of comparison states and detection of significant differences problematic.
- We take no account of the statutory and enforcement context of three-strikes laws. Variations in existing laws may affect the crime and incarceration patterns in states with and without the law. Some states that implemented Three Strikes had pre-existing habitual offender statutes which were very similar to Three Strikes, while in California, for example, the law dramatically changed sentencing rules. Some states that have not passed three-strikes laws may already have a strong emphasis on incarceration. And it is not just the statutory context that is important. Texas added greatly to its prison capacity in 1994, which allowed it to continue increasing its incarceration rate even without a three-strikes law.

California, which has a broader repeat offender law, has not increased its prison capacity enough to implement it fully. Other enforcement actions may have made it more difficult for us to detect three-strikes effects. Innovative policing strategies in New York and Massachusetts, both non-three-strikes states, may have held crime down in those states. If these two states are pulled from Figures 3.6 and 3.9, the picture begins to look somewhat different. But we do not have systematic knowledge of the effectiveness and prevalence of such strategies.

- More generally, we have not controlled for various demographic and policy parameters that could have complicated the recognition of effects.

More sophisticated statistical analyses should be performed in the future to further examine the impacts of Three Strikes. Such analyses should include more states, more control variables, more recent data, and more specific measures of crime rates, and they should take into account pre-existing and co-existing criminal justice policies.

Finally, it is important to recognize that an analysis of three-strikes laws is just that; it has no necessary implications for the effectiveness of incarceration policies in general. Indeed, to those who believe more incarceration reduces crime, we may be asking the wrong question. It may not be of much interest to them that three-strikes laws affecting small numbers of offenders have undetectable effects on aggregate crime measures. The more interesting question may be, How do state-to-state differences in incarceration trends relate to differences in crime rates? This question is being taken up in RAND research now under way.

3. A CLOSER LOOK AT INCARCERATION IN CALIFORNIA

Early in 1994, near the time when California's voters approved the three-strikes initiative, projections by RAND and the California Department of Corrections (CDC) suggested that one consequence of the law would be a big increase in California's prison population over what might otherwise have been expected. As shown in Figure 3.1, CDC predicted a gain of approximately 120,000 prisoners--a doubling of the population--between 1994 and 1999, while RAND predicted a gain of about 150,000 over the same period. These numbers were in contrast to CDC's projection of a 40,000-prisoner gain (about 25% increase) without three strikes. These big increases in prison population haven't materialized, or at least, haven't materialized yet. As Figure 3.1 shows, CDC projections in subsequent years have been scaled back.

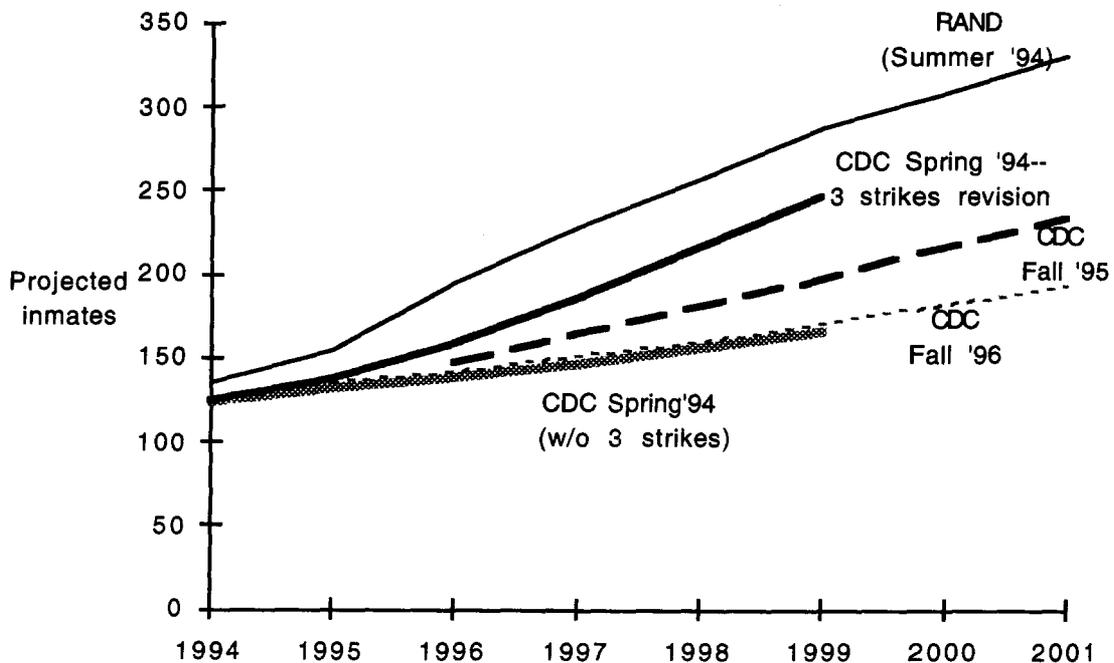


Figure 3.1--California prison population projections by RAND and the California Department of Corrections

The 1994 predictions of rapid and large prison growth were based on the assumption of universal application of the law. That is, it was assumed that the law would be applied in every case in which the defendant had the requisite prior convictions. This was not an unreasonable assumption, for three reasons. First, it was the simplest assumption; it did not require a guess as to what extent the law might not be implemented. Second, it represented the worst case for costs and burdens--a useful case for planning purposes--along with the best case for benefits, thus providing the opportunity to predict what might be achieved for those costs and burdens. Third, and most important, the law was clearly intended to be a radical departure from business as usual and provided little latitude for waiving its severe sanctions. In particular, it placed the initiative to waive priors with prosecutors (not judges), required that even they allege all known priors, and allowed no means to palliate the severity of its sanctions. The time lapsed since the priors, the defendant's recent criminal history, the seriousness of the current offense, and other facts of the case that are often considered mitigating factors were of no consequence. However, the law has not been implemented to the extent assumed in these predictions. The degree to which the law has been fully implemented is discussed in the next chapter. Here, we address how and why the prison population has deviated from these early predictions.

In Figure 3.2, we show the actual prison population (bars) compared to the growth that could be expected by extrapolating the growth between 1990 and 1993 (solid and dotted line).¹ Between 1994 and 1996, the prison population kept nearly perfect pace with what could have been predicted in 1994 by fitting a simple growth curve through the previous four years of data. The growth curve indicates about 2,000 fewer prisoners in 1996 than the actual population, about a 1.4% difference--too small to draw any substantive conclusion.

¹ Data sources for this and all subsequent figures, as well as the details of the analysis, are provided in Appendix C.

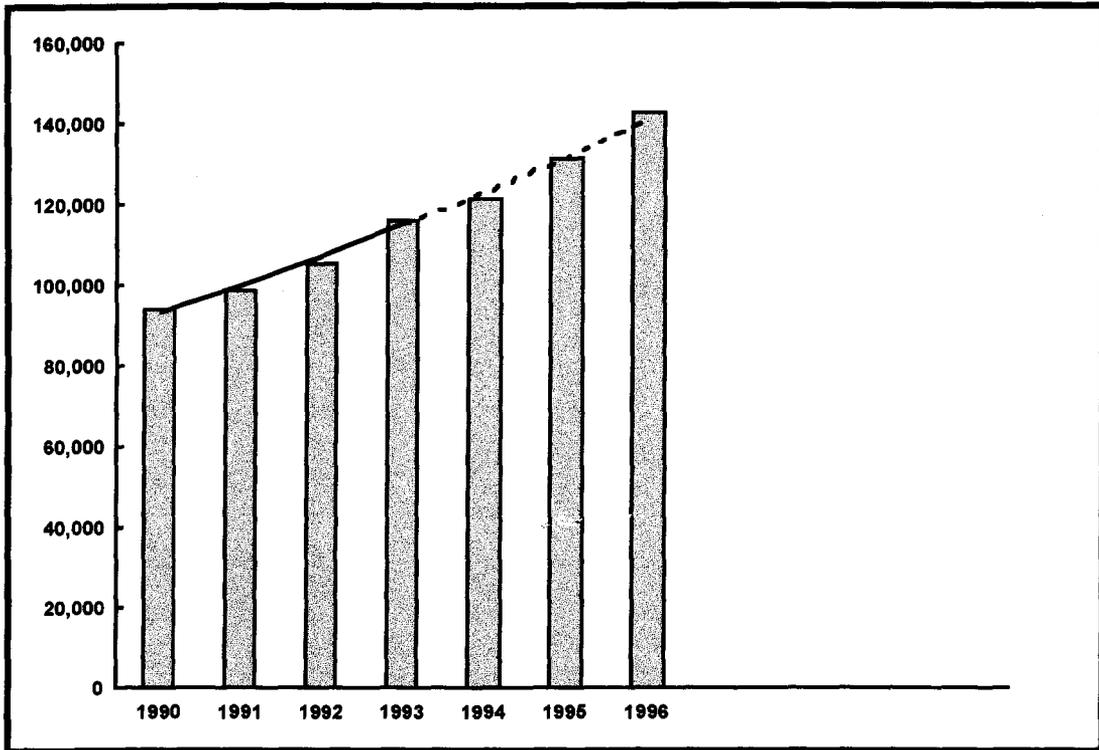


Figure 3.2--California prison population

This is not to say, however, that California's three-strikes law had no effect on the state's prison population. That population is the product of the following interrelated factors:

1. The size of the adult population
2. The crime rate
3. The probability of an arrest
4. The probability of a complaint being filed
5. The probability of conviction
6. The probability of going to prison
7. The length of time served

In this chapter, we examine the trends in all seven factors in California. For each, we calculate the percentage deviation in the post-three-strikes level above or below the level indicated by the pre-three-strikes trend. The prison population would also be higher or lower by that same percentage had the factors subsequent in the product

chain held to their pre-three-strikes trends.² We show that several of these factors deviated dramatically from their pre-three-strikes trends, and those deviations that tended to increase the prison population were almost exactly offset by deviations that tended to decrease it. Trends in several of these factors might have been affected by Three Strikes policy.

Note that, in contrast to our approach in Chapter 2, we do not use comparison trends from other states. Interstate differences in criminal justice procedures make such comparisons impractical for our current purpose. However, we are not here trying to demonstrate effects of the three-strikes law but instead to show points in the process where it could have had an effect.

ANALYSIS BY CONTRIBUTING FACTOR

Population. First of all, simple demographic changes played virtually no role in what has happened. Figure 3.3 shows the adult population of California (specifically, the adult population at risk of committing crime--persons ages 18-69), from 1990 through 1996. The bars indicate what was actually observed; the line traces out a growth curve fitted to the years 1990 through 1993. The growth curve tracks the actual population counts so closely it is difficult to see the difference. In 1996, the growth curve projection shows about 50,000 more persons than were actually counted, a difference of only 0.26% and one thus in all likelihood much smaller than the error incurred in estimating the population in the first place.

The implications for prison population are likewise small. If the actual and projected values had been the same for all other components, the 0.26% difference between actual and projected adult population at risk would have implied a difference of only 363 out of some 140,000 in the prisoner count (see Table 3.1).³

²In other words, if factor 1 had gone up by 1 percent and factors 2 through 7 had held to their pre-three-strikes trends, the prison population would also have gone up by 1 percent.

³ Here, and in what follows, we express values to full precision only so the reader can follow the calculations.

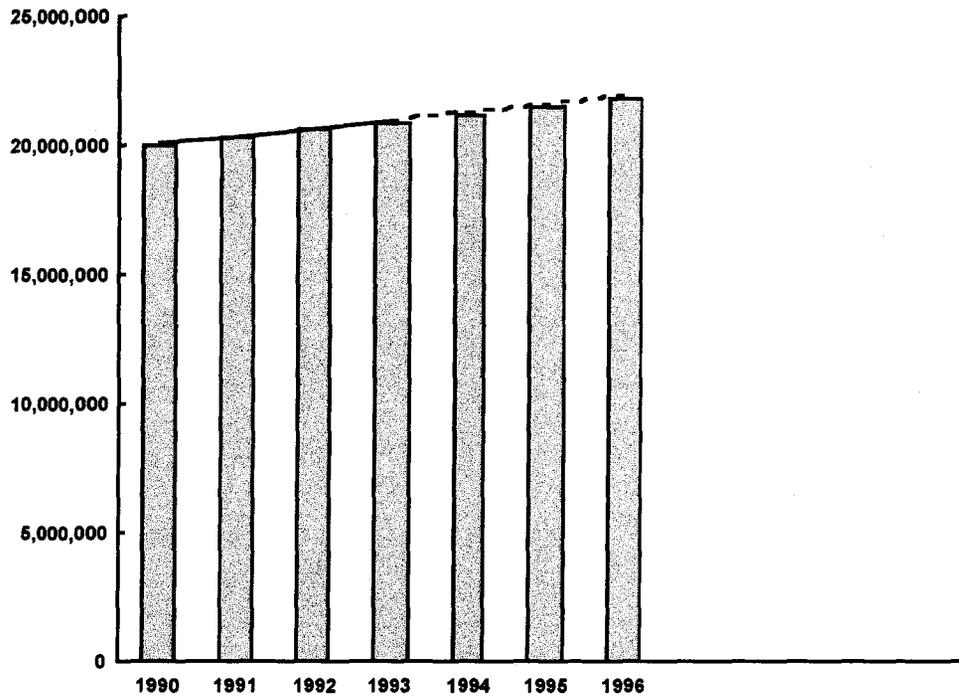


Figure 3.3--Adult population at risk in California

Table 3.1
Population change analysis

Component	Item	Value
Adult population at risk	Projected	21,882,238
	Actual	21,825,735
	Difference	-56,503
	Relative difference	-0.26%
Prison population	Original projection	140,772
	Relative difference	-0.26%
	Difference	-363
	New projection	140,409

Crime rate. Now let's look at the crime rate. Offenders are imprisoned partly in the hopes that doing so will reduce the crime rate, but the crime rate also affects the number of persons in prison. Other things equal, fewer crimes should mean fewer arrests, fewer convictions, and eventually, fewer people in prison.

Figure 3.4 shows the dramatic drop in the California index crime rate (i.e., number of California index crimes⁴ per 100,000 adult population at risk) after 1993. This is a major change, too large to be attributed to errors in measurement, errors in prediction, or demographic changes. Had the nearly flat trend seen between 1990 and 1993 continued through 1996, the California index crime rate in 1996 would have been about 5,200 crimes per 100,000 persons; what was actually seen was 3,800 per 100,000. This implies there were about 300,000 fewer such crimes in 1996 than might have been projected four years earlier.

Whether the drop should be attributed all or in part to Three Strikes is debatable, as is explained in Chapter 2. Note that the decrease preceded implementation of Three Strikes in 1994, but the rate of decrease has been greater more recently. Many other things influence the crime rate, such as policing, prevention efforts, the condition of drug markets, the economy, etc.

In Table 3.2, we calculate the percentage drop in the crime rate relative to that predicted by the 1990-1993 trend to be 27 percent. We then apply that percentage reduction to the revised prison population estimate from the bottom of Table 3.1. We estimate that had the values of all subsequent factors not deviated from their pre-three-strikes trends, this drop in the crime rate would have reduced the prison population by almost 40,000 prisoners.

⁴ California index crimes are homicide, rape, robbery, aggravated assault, burglary, and motor vehicle theft.

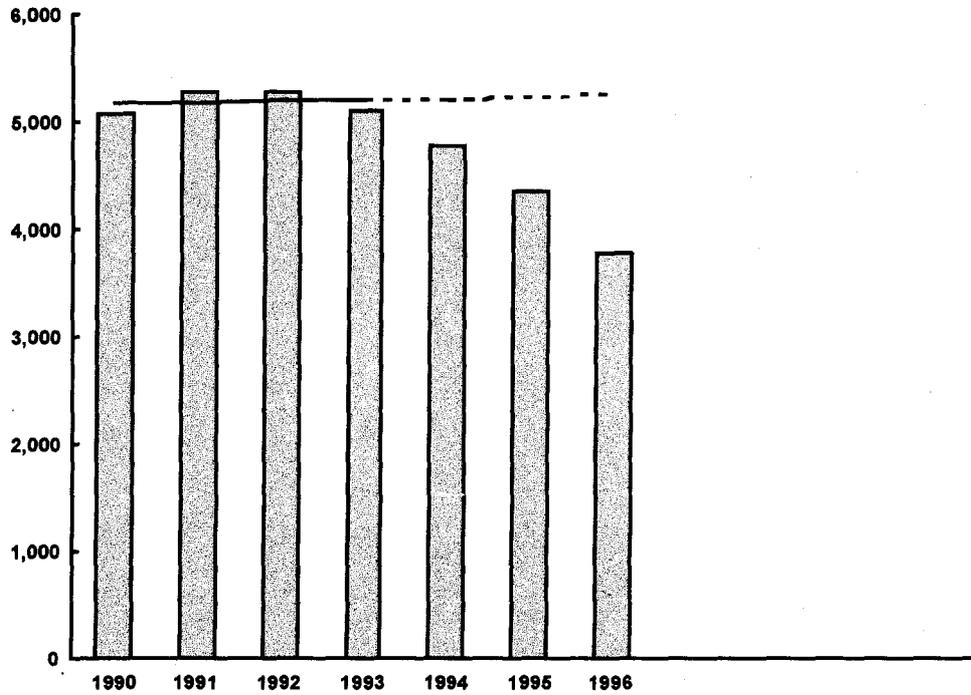


Figure 3.4--California index crimes per 100,000 adult population at risk

Table 3.2
Crime rate change analysis

Component	Item	Value
Crime rate (per 100,000)	Projected	5,233
	Actual	3,797
	Difference	-1,436
	Relative difference	-27.44%
Prison population	Previous projection	140,409
	Relative difference	-27.44%
	Difference	-38,532
	New projection	101,877

Arrests per crime. Another component that didn't follow the early 90s trend was the probability of an arrest given a crime. Figure 3.5 shows the number of arrests (for a California index crime) per 100 (California index) crimes. Based on the years 1990 through 1993, this

rate appears to have been declining. Part of this apparent decline is attributable to the sharp drop between 1990 and 1991. However, even ignoring the 1990-1991 drop and looking only at the years 1991 through 1993, it is clear that this rate has been rising faster than one might have expected on the basis of what one could observe in the data for years before 1994. In 1996 this arrest rate was 29 percent higher than what it would have been had the 1990-93 trend continued.

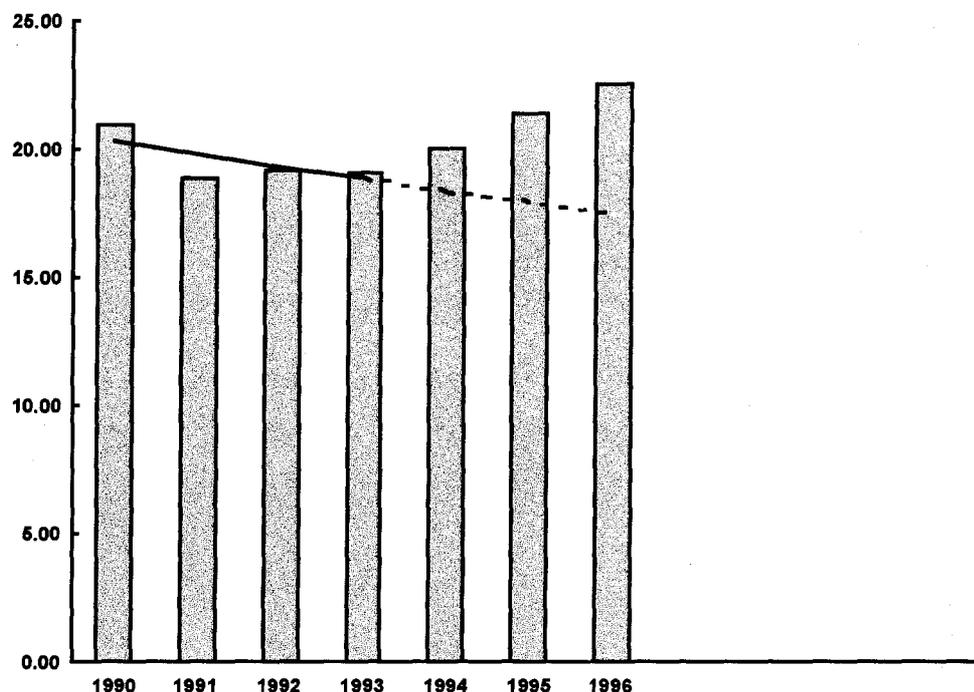


Figure 3.5-Arrests per 100 California index crimes

One explanation for this change in arrest rate could be better police work, or just more police on the street, which has clearly been the case after passage by the federal government of the 1994 Crime Bill.⁵ Another possible explanation could be some change in the characteristics of cases that made them easier to solve (e.g., fewer drive-by shootings) or produced more arrests per case (which is generally true of cases involving younger offenders, since they are more

⁵ Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322).

likely than older offenders to commit crimes in groups). Or, perhaps the reduction in crime rate reduced the workload on responding patrol officers and detectives, so that they had more time to devote to each case. It is unlikely that Three Strikes per se has had much effect on the number of arrests per crime.

Whatever the reason, and no matter what the crime rate, if arrests rise and the arrested persons go to prison at about the same rate as before, the prison population will increase. We estimate that had the fraction of arrested persons prosecuted, convicted, and sent to prison not deviated from previous trends, the increase in this arrest rate would have led to about 30,000 additional prisoners (see Table 3.3). This would have offset about three-quarters of the 40,000 deficit in prison population attributed to the drop in the crime rate that was calculated in the previous section. However, as we show next, the fate of the arrested population was not what might have been expected on the basis of simple trends.

Table 3.3
Arrest-per-crime change analysis

Component	Item	Value
Arrests per 100 crimes	Projected	17.4
	Actual	22.5
	Difference	5.1
	Relative difference	29.38%
Prison population	Previous projection	101,877
	Relative difference	29.38%
	Difference	29,927
	New projection	131,803

Complaints per arrest. In order for an arrest to lead to a prison sentence, a prosecutor must first file a complaint. Figure 3.6 suggests that prior to 1994, the probability of a complaint resulting from an (adult felony) arrest had been rising, but in 1996 there was a distinct drop in this rate, a difference of 7 percent between the trend and the

actual value.⁶ One possible explanation for this drop is that when the rate of arrests per crime increases (as it has since 1993--see Figure 3.5), the quality of those arrests may be diluted, and more of them are rejected by the prosecutors office. If Three Strikes has greatly increase prosecutorial workload as some have argued, it may also have affected the complaint rate. In any case, we estimate that the drop in the complaint rate has led to about 10,000 fewer persons than expected had the subsequent three steps followed their pre-three-strikes trends (see Table 3.4).

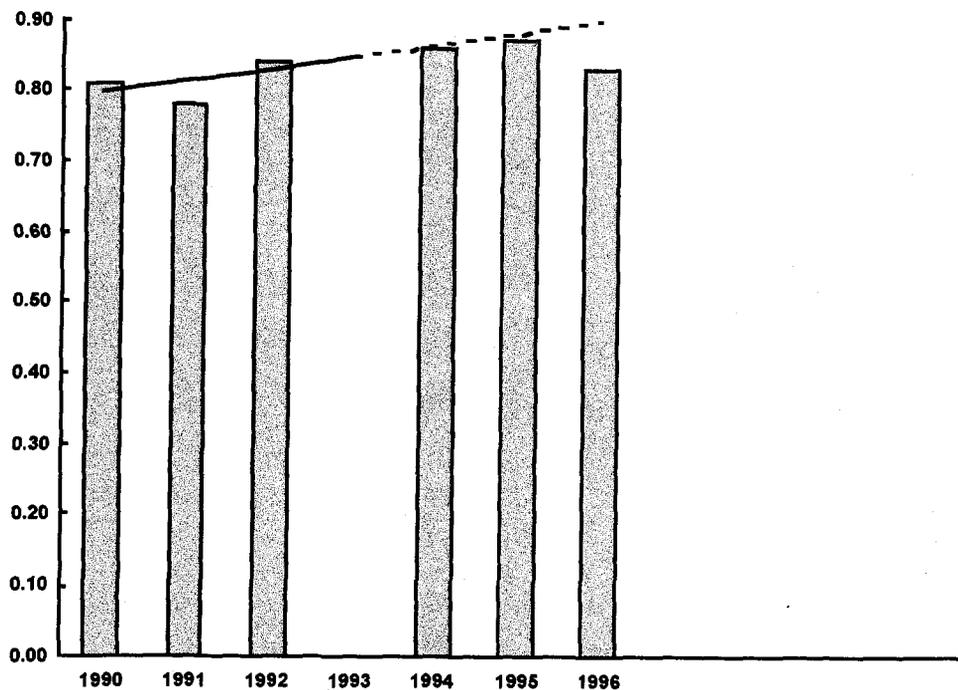


Figure 3.6--Complaints filed per arrest

⁶ The 1993 data is excluded from this analysis because there is reason to believe it is inaccurate. See Appendix C for a more detailed explanation.

Table 3.4
Complaints/arrest change analysis

Component	Item	Value
Complaints per arrest	Projected	0.90
	Actual	0.83
	Difference	-0.06
	Relative difference	-7.24%
Prison population	Previous projection	131,803
	Relative difference	-7.24%
	Difference	-9.539
	New projection	122,264

Convictions per complaint. As Figure 3.7 shows, in the last three years the number of convictions reached per complaint filed (for adult felony arrests) is lower than what would have been expected on the basis of the 1990-1993 trend.⁷ The conviction rate may be lower than suggested by the 1990-1992 trend because three-strike defendants are more likely to take their cases to trial. In the case of a third-strikes defendant, the DA can offer little to induce a guilty plea (since the 25-year-to-life sentence is mandatory) and thus the defendant has nothing to lose by insisting on a jury trial. First- and second-strike defendants can be induced to plead guilty, but some may be willing to gamble with a trial because they do not want to accumulate a strike on their records. Or the conviction rate may be lower because of prosecutorial inefficiencies caused by workload pressures. We will have more to say about this issue in the next chapter.

⁷ Again, we omit the 1993 data because there is reason to believe it is inaccurate. See Appendix C.

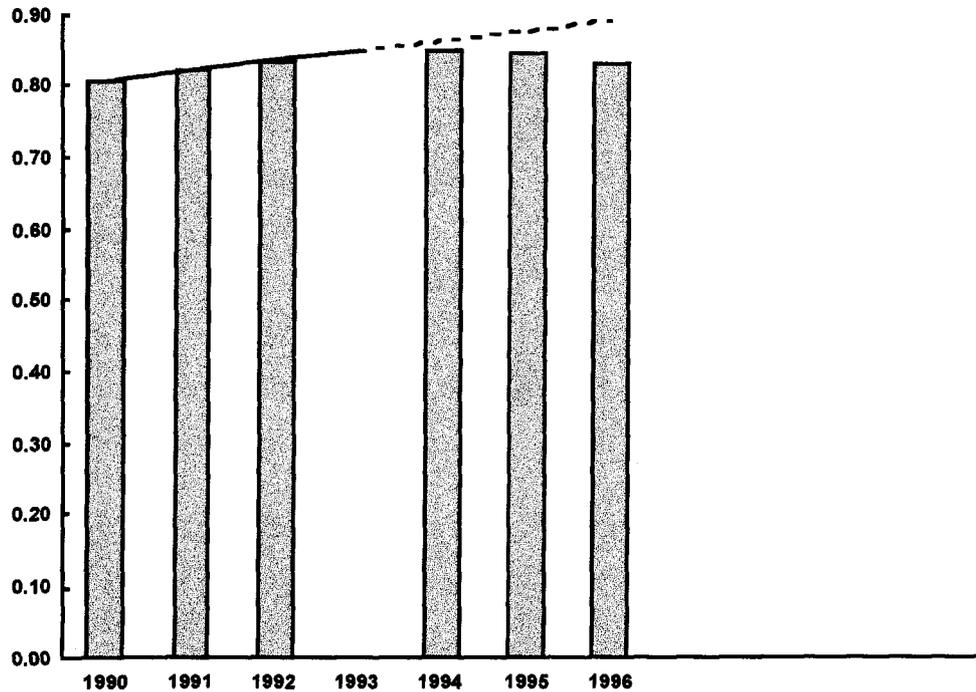


Figure 3.7-Convictions per complaint

We estimate that this difference accounts for about 8,000 fewer prisoners than might otherwise have been expected, had the two following steps adhered to their pre-three-strikes trends. See Table 3.5.

Prison admissions per conviction. Figure 3.8 shows what some might interpret as a clear consequence of Three Strikes. Given a conviction, the probability of a prison sentence (as opposed to a jail sentence, probation, or some other alternative sanction) was about the same in all four years from 1990 through 1993, and the fitted growth curve is nearly flat. Since 1994, this rate has been increasing--one of the intended consequences of Three Strikes. By 1996, the rate of prison admissions per convictions was 23 percent above the pre-three-strikes trend line. Given changes in the trends discussed above, we estimate that this sharp increase in the incarceration rate would have accounted for about 27,000 additional prisoners, had the one remaining factor, length of stay, followed the trend set before 1994 (see Table 3.6).

Table 3.5
Convictions/complaint change analysis

Component	Item	Value
Convictions per complaint	Projected	0.89
	Actual	0.83
	Difference	-0.06
	Relative difference	-6.27%
Prison population	Previous projection	122,264
	Relative difference	-6.27%
	Difference	-7,667
	New projection	114,597

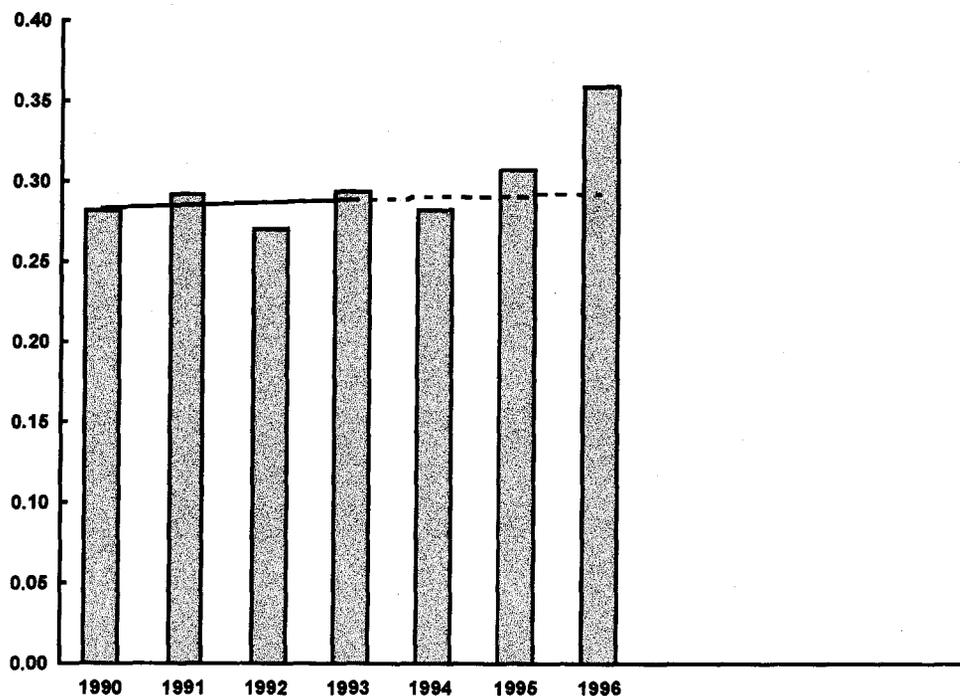


Figure 3.8--Prison admission per conviction

Table 3.6

Incarceration/conviction change analysis

Component	Item	Value
Incarcerations per conviction	Projected	0.29
	Actual	0.36
	Difference	0.07
	Relative difference	23.20%
Prison population	Previous projection	114,597
	Relative difference	23.20%
	Difference	26,585
	New projection	141,182

Length of Stay (Inmates per Admission). The size of the prison population is determined solely by the number of admissions and the length of time each prisoner remains imprisoned. In steady-state, where the prison population and number of admissions (and, necessarily, the average length of stay and the number of releases) remain constant from one year to the next, these numbers are related by a simple formula:

$$\text{Inmates} = \text{Admissions} \times \text{Average length of stay}$$

Even in a non-steady state situation, the number of inmates divided by the number of admissions is related to how long inmates are staying. For example, if from one year to the next the number of inmates increases faster than the number of admissions, the only explanation is that the prisoners are staying longer.

Figure 3.9 shows the ratio of inmates to admissions from 1990 through 1996. Note that this is generally increasing, as are the number of admissions, meaning that prisoners are staying longer. There was only a very small increase in this measure in 1996 over what the trend line indicates, about 1 percent. Three Strikes is supposed to increase length of stay, and perhaps it has, but it is probably too early to see that effect in the data. Many of the serious offenders to whom the three-strikes law is primarily directed would probably have gotten sentences of at least three years anyway. Thus, we would not see this

effect until the prisons contain (significant numbers of) offenders who are serving the additional time given them by the provisions of the Three Strikes law, beyond what they would have served prior to Three Strikes. We estimate that this increase in length of stay accounts only for about 1,500 additional prisoners, probably smaller than the margin of error in this rough analysis (see Table 3.7).

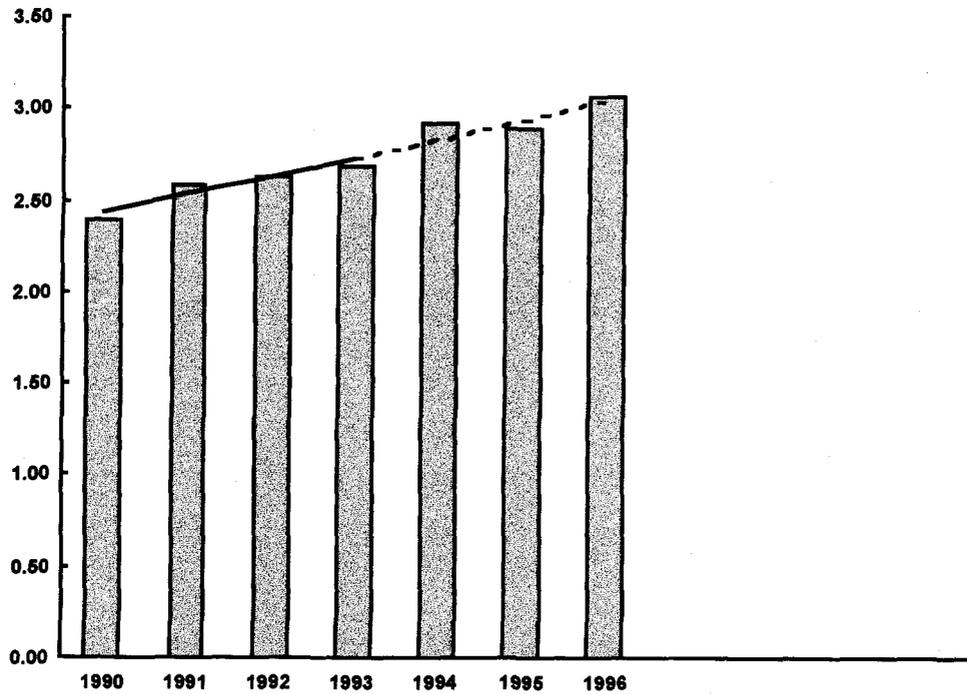


Figure 3.9--Prison inmates per admission

Table 3.7

Prison inmates/admission change analysis

Component	Item	Value
Inmates per admission	Projected	3.04
	Actual	3.07
	Difference	0.03
	Relative difference	1.11%
Prison population	Previous projection	141,182
	Relative difference	1.11%
	Difference	1,568
	New projection	142,750

IMPLICATIONS

When California's three-strikes law was passed, the state's prison inmate population was already growing. Was passage of California's three-strikes law associated with faster growth? Yes, but the increase in growth is slight. Had the prison population kept growing at the rate at which it was growing between 1990 and 1993, it would have reached 140,772 in 1996. Instead, it reached 142,750, a difference of only about 2,000 inmates.

But prison population growth is the product of a number of factors, and it's possible that those *potentially* increased by three strikes *actually* were increased, but that those increases were offset by decreases in other factors. To find out whether that was true, we projected each contributing factor to 1996 on the basis of its 1990-1993 trend and made successive adjustments accordingly to the original projection of 140,772. Table 3.8 summarizes the analysis in this chapter.

One contributing factor, for example, is the adult population. Other things equal, the more people, the more inmates. What we found is that the actual adult population was 0.3 percent lower in 1996 than a projection based on the 1990-93 trend would have led us to suppose. Other things equal, this should have led to an inmate population 0.3

Table 3.8
Summary of change components

Contributing factor	Relative difference between projected and actual value ^a	Projected prison population after adjusting for relative difference	Change in prison population
Projected 1996 prison population		140,772	
Adult population	-0.3%	140,409	-363
Crimes/100,000 adults	-27.4%	101,877	-38,532
Arrests/100 crimes	29.4%	131,803	29,927
Complaints/Arrest	-7.2%	122,264	-9,539
Convictions/Complaint	-6.3%	114,597	-7,667
Incarcerations/Conviction	23.2%	141,182	26,585
Prisoners/Admission	1.1%	142,750	1,568
Sum of changes			1,978

^aActual value minus projected value, divided by projected value, times 100%.

percent lower than the 140,772 we began with. That amounts to 363 fewer prisoners. Each other factor also accounts for some deviation in the prisoner count in 1996 from that projected, depending on how much the actual value of the factor deviated from its 1990-93 trend line:

1. The crime rate, which was flat between 1990-93, has dropped, perhaps accounting for almost 40,000 fewer prisoners.
2. The number of arrests per crime has risen sharply, which might have put 30,000 additional offenders in prison, in spite of the drop in crime.
3. Counteracting the trend in the number of arrests per crime, however, the probability that an arrest will result in a court filing has dropped, removing about 10,000 prisoners in spite of the increase in the arrest rate.
4. The probability of a conviction given a case is filed has also decreased, removing about 8,000 prisoners.
6. Nevertheless, once an offender is convicted, he is more likely to go to prison than he would have been had the 1990-93 rate of

increase in this probability prevailed. This may account for about 27,000 additional prisoners.

7. Furthermore, length of stay for persons sent to prison has increased a bit faster than it had been, perhaps adding another 1,500 prisoners.

When we add up all of these implied differences from the 1990-93 trend lines, we arrive, of course, at the total deviation of the inmate population in 1996 from that implied by the overall 1990-93 trend line: the small difference of about 2,000 inmates (i.e., $1,978 = 142,750 - 140,772$). Thus, in spite of a seemingly drastic change in public policy that some thought would greatly increase California's prison population, the 1996 population was about what would have been expected from the trend observed before that policy change. Factors that might have increased the prison population above what was indicated by the 1990-1993 trends have been offset by changes in other factors. The likelihood of incarceration given conviction has increased at a faster rate; this is possibly a consequence of three strikes. And the number of arrests per crime has also gone up (a change that is less likely to be related to three strikes). The number of complaints per arrest and the number of convictions per complaint, however, have gone down (again, three strikes is of uncertain relevance here). More importantly, the crime rate has also gone down. Some would hypothesize that the decrease in the crime rate was a result of the three-strikes law--that the law deterred so many crimes that the expected increase in the number of prisoners did not materialize. However, the analysis in Chapter 2 provides little support for such a hypothesis. The drop in crime appears to be part of a national trend common to three-strikes and non-three-strikes states and thus unrelated to the passage of such laws.

4. EFFECTS AND RESPONSES AT THE COUNTY LEVEL IN CALIFORNIA

Thus far, we have addressed the effects of three-strikes laws on incarceration and crime in various states and on case disposition statewide in California. In this chapter, we consider implementation of the California three-strikes law at the local (i.e., county) level, along with the burden the law places on counties and local court jurisdictions. First, we summarize the anticipated local-level impacts. Then, we discuss how some counties have implemented the law and the variation between them. Third, we describe evidence of actual impacts (or the lack thereof).

We focus upon Los Angeles, San Diego, and Santa Clara counties. These three counties represent over 40 percent of the state's population and a large fraction of its criminal justice activity; in addition, they display some interesting contrasts. While their experiences may not be generalizable, they illustrate some of the variation among counties and provide evidence of impact on local systems.

ANTICIPATED IMPACTS ON LOCAL SYSTEMS

With the passage of the three-strikes law, many people predicted numerous negative impacts of the law on the criminal justice system (at least in the short term). Prior to, or shortly after, implementation of the three-strikes legislation, several counties and the state attempted to estimate the potential impact of the legislation on local criminal justice systems and county resources. The majority of these studies assumed full implementation¹ of the law. Such a scenario was expected to strain the courts, prosecution, criminal defense, jails and probation services, while affecting unrelated county services as funds were reallocated to cover criminal justice costs.

Many of the extra burdens predicted were based on the assumption that strike-eligible defendants, faced with mandatory penalties, would no longer have any incentive to enter guilty pleas. Even offenders

¹Meaning that the law's sanctions are sought in the case of every defendant eligible for them.

charged with their first serious or violent felony were expected to fight vigorously in order to avoid a conviction that would count as a strike. In some places, it was estimated that the number of jury trials would triple (LAO, 1995). However, some county officials projected little change in processing patterns given that such offenders were rarely offered pleas prior to passage of three strikes.

Fewer pleas in the early stages of processing would mean more preliminary hearings at the Municipal Court level. At the Superior Court level, more and larger jury pools would need to be called, particularly considering the larger number of juror dismissals allowed in cases potentially involving life sentences. Concerns about court security, because three-strikes defendant would be more likely to attempt escape, were raised. It was anticipated that three-strikes cases would preempt court resources previously available to handle the processing of other cases--particularly for civil cases, which are not subject to "speedy trial" requirements.

It was also predicted that both the prosecutor's and public defender's offices² would be impacted by this legislation. For example, to determine which cases are strike-eligible, both office staffs would need to spend additional time researching offender histories.

An increase in the number and change in the character of jail inmates was expected. Three-strikes-eligible offenders would generally be considered a greater "risk of flight" given the increased sanctions they would face. As a consequence, bail for these offenders would be expected to be higher or would be denied at a higher rate than previously. This, combined with the extended case processing associated with jury trials, would mean that jails would be called upon to house more pre-trial detainees, for longer periods and with greater security requirements. At the same time, the number of offenders sentenced to county jail would be expected to drop, as strike offenders are required to serve their sentence in a state prison facility. Nonetheless, the

² A large fraction of all felony cases are handled by some form of indigent defender (the figure is estimated to be 90% in L.A.), and the fraction for three-strikes cases is believed to be the same. (Interview with Alex Ricciardulli, Los Angeles Public Defender's Office, 7/15/98.)

overall increase in criminal justice expenditures as a result of three strikes was expected to be substantial (again, at least initially).

IMPLEMENTATION OF THREE STRIKES AT THE COUNTY LEVEL

As noted previously, the majority of early impact projections were based on an assumption of full implementation. In fact, the manner and extent to which this legislation was implemented varied considerably across counties, greatly affecting the actual impact of the legislation. This variation can influence which repeat offenders are subject to the conditions of the three-strikes law, and, ultimately, how effective and efficient is the law in incapacitating those likely to commit future offenses and thus in reducing overall crime rates.

Variation in implementation of the three-strikes law should not be surprising. Arrest and prosecution, as well as public defense, probation and the jails, are the responsibility of local jurisdictions. Local control and the resulting variation among jurisdictions mean that many parts of the penal code are implemented differently in different communities. The community influences how its criminal justice resources are allocated--in particular, which crimes and criminals are pursued aggressively and which are not. The three-strikes law, although intended in part to reduce variation in the system, is by no means immune to it.³

In this section, we discuss how the three-strikes law is being implemented in Los Angeles, San Diego, and Santa Clara. We focus on the actions of prosecutors because the law allows them more discretion than it does other actors. We will also, however, examine some system-wide responses to the three-strikes law.

Prosecutors

The District Attorney decides whether and how to charge crimes. To avoid invoking the three-strikes law, the District Attorney can decide not to file any charges, not to file all applicable charges, or to file less serious charges. "Wobblers" are crimes that can be charged by the District Attorney as either a felony or a misdemeanor, thus possibly

³For further discussion of this issue see Feeley and Kamin (1996).

invoking or definitely avoiding three-strikes sanctions.⁴ A variety of factors may influence the DA's decision about what to charge; among them is the desire to encourage the defendant to plead guilty. Plea bargaining⁵ is proscribed by law if the charge is a serious⁶ felony, unless there is insufficient evidence to prove the people's case⁷; the law also prohibits its use to reduce the count of prior convictions (to avoid three-strikes sanctions).⁸ However, a prosecutor may move to dismiss an alleged prior serious felony conviction in the furtherance of justice or if there is insufficient evidence to prove that prior.⁹ These exceptions imply further discretion in the hands of the District Attorney because there is latitude in how "furtherance of justice" and "insufficient evidence" are interpreted.

Moreover, the prosecutor may simply be unaware of the relevant priors. Out-of-state convictions and convictions that occurred long before the current offense can be particularly difficult to find and prove. Whether or not priors are found, and whether or not the evidence to prove them is sufficient, is sometimes a function of the resources allocated to the task.

Policy Guidelines. There is no state-wide policy describing how prosecutors should exercise their discretion. Instead, there appears to

⁴ In California, many non-serious felonies are wobblers. See Chapter 1 for a discussion of the Alvarez case, in which the California Supreme Court ruled that the trial court can declare a wobbler a misdemeanor at sentencing.

⁵ Plea bargaining means any negotiation between a defendant (or counsel) and a prosecutor or judge, whereby the defendant agrees to plead guilty or nolo contendere in exchange for concessions or assurances relating to a charge or sentence (PC 1192.7(b)). Note that DAs can encourage a guilty plea in a second-strike case by (e.g.) offering to recommend a lower base sentence (which is doubled by the three-strikes law), but the bargaining options in third-strike cases are more limited.

⁶ California law distinguishes between violent and serious felonies. In essence, all violent felonies are also serious felonies (but not vice versa). In this document, as in the California Penal Code, the term serious felonies means serious and/or violent felonies.

⁷ PC 1192.7(a).

⁸ PC 667.1(g).

⁹ See Chapter 1 for a discussion of the Romero case, in which the California Supreme Court ruled that the trial court also has the authority to dismiss a prior conviction in the furtherance of justice.

be important variation in filing and case settlement policies among jurisdictions (CUA, p. 33). Let's examine three of these local policies.

In the San Diego County District Attorney's office, before March 1995, decisions regarding the dismissal of priors, plea bargaining, and charging of wobblers as felonies had been made largely ad hoc, leading to concerns regarding consistency. In response to these concerns, the District Attorney's office developed the following policies (Thompson, 1996).

- *Dismissal of priors.* The guidelines note that only in rare instances should a prosecutor consider the dismissal of a prior in the furtherance of justice and that such action should only be taken when "the imposition of sentence would result in a miscarriage of justice." Allowable circumstances are the following:
 - The current offense is de minimis in nature.
 - Prior serious felonies are remote in time.
 - The underlying facts of the priors undermine the culpability ordinarily attached to such crimes.
 - The defendant has no history of violence or weapon possession.
 - The defendant has not served a term in state prison.
 - The defendant has a history of mental illness.

The guidelines emphasize that none of these factors automatically authorize the dismissal of a prior. Instead, the case must be viewed as a whole, taking into consideration the background, character and prospects of the defendant, in order to determine whether the case lies outside the spirit of the three strikes law.¹⁰ Although the list of factors is specific, the guidelines offer no formula for how to weigh the facts of the case or for determining in which cases to dismiss priors.

¹⁰ Interview with Charles Nickel, San Diego DA's office, 4/10/98.

In all cases, appropriate prior approval within the District Attorney's office is required for a prosecutor to move to dismiss a prior conviction.

- *Plea bargaining.* The guidelines state, ". . . in exceptional circumstances the dismissal of a prior conviction to obtain a plea may be warranted as being in the furtherance of justice." Such circumstances include "those occasions where adherence to a rigid policy prohibiting such a disposition will likely result in an acquittal and the release of a dangerous felon into the community" (Thompson, 1996, p. 4).
- *Wobblers.* Determination as to whether a case will be filed as a misdemeanor or felony is to be made in the same manner as it would have prior to passage of the three-strikes law. Under no circumstances is filing status to be influenced by the fact that a case is strike-eligible.

The three strikes filing and case dismissal policies in Los Angeles (LA DA, 1994) are similar but not identical to those in San Diego. As in the San Diego policy, the L.A. policy states that only in rare instances should the prosecution move to dismiss a prior felony conviction in the furtherance of justice. While specific rationales are not provided, in most of the cases in Los Angeles County in which a prior is dismissed (which are not in practice all that rare), the priors are old, the defendant appears to lead a relatively crime-free life, and the current offense is minor; or the prosecution's case is weak (Abrahamson, 1996). As in San Diego, prior (D.A. office) approval is required for the dismissal of a prior conviction. And as in San Diego, the dismissal of a prior conviction to obtain a plea may be warranted as in the furtherance of justice only in exceptional circumstances, such as when conviction is unlikely thus leading to the release of a dangerous felon. In contrast to San Diego, however, when the defendant has one or two strikes, wobblers are to be filed as felonies in all but rare exceptions.

The Santa Clara County District Attorney's office has established a committee of experienced prosecutors who review each three-strikes

case to consider whether priors should be dismissed as allowed by law.¹¹ While the District Attorney has not formally listed the circumstances under which priors may be dismissed, the reasons cited for dismissing a strike¹² are much the same as those outlined in San Diego's guidelines and implied by LA practice.

In each of these counties, the policies leave significant room for discretion on the part of the prosecutor. For example, the San Diego DA's office acknowledges that the appropriate prosecution of such cases cannot rely upon a mechanical application of the law, but instead depends upon informed judgment on the part of the prosecutor in determining which cases are within the spirit of, and thus should be prosecuted under, the three-strikes law. Thus, three strikes is being selectively implemented, not fully implemented as originally assumed. Moreover, such discretion opens the door to variation in implementation.

To the extent that county policies and practices differ, such variation may reflect differential interpretation of the law, differential caseload pressure on the DA's office, or an attempt on the part of the DA to reflect community norms. While the San Diego DA publicly criticized the version of three strikes passed by voter initiative, he has acknowledged the will of the people and has taken the stance that he will enforce the law fully.¹³ On the other hand, Santa Clara's DA, though personally supportive of the law, believes that the populace of his county relies upon his office to screen out cases undeserving of three-strikes sanctions given the circumstances of the case.¹⁴ In Alameda County where 55% voted in favor of the three strikes measure (compared to 72% statewide), the DA has decided to prosecute cases under the three-strikes law only when the crimes involved are serious (Walters, 1995). In San Francisco, where the three strikes initiative was defeated 57% to 42%, the DA has expressed a personal

¹¹ In Los Angeles, a less formal group of deputy district attorneys has convened on a weekly basis to review specific cases, but the final decisions remain in the hands of the head deputies (Abrahamson, 1996a).

¹² Interviews with Kennedy, Marshall, Fahrenholz, Storton, of the Santa Clara DA's office.

¹³ Interview with Paul Pfingst. San Diego County DA. 9/17/97.

¹⁴ Interview with George Kennedy, Santa Clara County District Attorney, 1/6/98.

dislike for the legislation and the DA's office has reason to believe juries are reluctant to impose three-strikes sanctions. As stated by the head of the San Francisco DA's three strikes panel, "We're not going to ask for 25 years to life sentences when a guy commits an auto burglary and steals a car radio. We tried it a couple of times and got kicked in the teeth by the jury" (Perry and Dolan, 1996).

Such differences are likely to lead to sentencing disparity in similar cases. Interestingly, such disparity can occur even within a jurisdiction. Although LA prosecutors are guided by policy, each supervising prosecutor is given authority to make three strikes decisions. Thus, a defendant's chance of receiving a reduced sentence varies substantially depending on courthouse. Reportedly, a three strikes defendant in a jurisdiction such as San Fernando has twice the chance of a plea bargain as a defendant prosecuted in Norwalk (Krikorian et al., 1996).

Outcomes. What is not clear is how policy or procedural differences play out in terms of differences in the types or numbers of offenders who are prosecuted under the three-strikes law, or whether similar cases are treated differently in different jurisdictions. Different reports of dismissal rates are inconsistent, and it is not clear that these various rates are really comparable measures. They range from 20-44% in Los Angeles, 20-60% in San Diego, and 40-50% in Santa Clara.¹⁵

Further evidence of jurisdictional variation is evident from court statistics. The Superior Court Administrators in six of the eight largest California counties were able to provide at least some information about the processing of three-strikes cases.¹⁶ More

¹⁵ A 1996 L.A. Times article reports that priors are dismissed in Los Angeles in about 44% of the eligible cases, and in San Diego in about 25% of the cases (Perry and Dolan, 1996). A 1996 Sacramento Bee article reports prosecutors exercised their discretion to dismiss priors in Los Angeles and San Diego in 20-25% of the cases, and in Santa Clara in 40-45% of the cases (Furillo, 1996). A study by the San Diego Municipal Court Special Projects Unit suggest a 60% dismissal rate. And the Santa Clara DA's office reports that they dismiss priors in about 50% of the cases.

¹⁶ These court statistics, derived from a survey of Superior Court Administrators that covers the period from 7/1/94 through 12/30/95, are

filings are under three strikes in Los Angeles County (12.9%) than elsewhere (7.0%-11.6%). The fraction of three-strikes cases referred to Superior Court via plea (vs. held for trial) is lower in Los Angeles County (10.4 percent) than elsewhere (13.8 to 39.6 percent). Three-strike cases are less likely to be settled in Superior Court by a guilty plea in L.A. (67.3%) than elsewhere (82.7%-95.5%). Although all of these statistics are consistent with differential filing and settlement practices, they also could reflect differential arrestee populations. For example, per-capita total prison commitments, as well as two- and three-strike prison commitments, are much higher in Los Angeles County than in the seven other large counties. Thus, before conclusions can be drawn about differences in filing and settlement practices between jurisdictions, a more in depth examination of case dispositions must be made, with analytic correction for differences in arrestee populations.

System Responses

The three-strikes law has accentuated the need for cooperation and coordination among criminal justice agencies working in the same jurisdiction. Counties have taken different coordinative approaches.

In San Diego, the Superior Court, in cooperation with the DA and the public defender, implemented a direct calendaring system in which all three-strikes cases were handled by one of three three-strikes teams whose objective was to reach timely dispositions of three-strikes cases and ensure consistency in sentencing.¹⁷ (According to criminal justice officials in San Diego, following the Romero decision, the direct calendaring system was discontinued. It was assumed that many priors would be dismissed by judges, and thus cases would be processed much as they had before three strikes.)

Other special measures to meet the challenges posed by three-strike cases have been implemented elsewhere. For example, some

reported by the Center for Urban Analysis (1976). The data in Los Angeles are more complete and available than elsewhere, which may be why three-strike workload problems were detected early in Los Angeles but not in other counties. Separate statistics on three-strikes cases are not routinely collected in all California counties.

¹⁷ Interview with Judge Howatt, Presiding judge, San Diego Superior Court, 10/3/97.

counties, such as Santa Clara, have shifted judges from the Municipal to the Superior Court and from civil courts to criminal courts, and have tapped retired judges to hear criminal cases.¹⁸ Sacramento and San Joaquin are two that have engaged in "trial blitzes"--intensive, short-term initiatives intended to reduce the case backlog to a more acceptable level by allowing the court to take aggressive control of the calendar (CUA, 1996).

Some counties have augmented the budgets of local criminal justice agencies. For example, the County of Los Angeles increased the budgets of its criminal justice agencies by \$10.2M to help them cope with three strikes. In October 1994, Santa Clara County approved allocation of \$1.3 million in reserve funds to affected county criminal justice agencies.¹⁹ Riverside, San Bernardino, and Orange are other large counties that reported specific allocations to cover the additional costs of the three-strikes caseload (CUA, 1996). On the other hand, San Diego has not reported the need for additional resources to handle its three-strikes caseload, but special county-level funding for public safety purposes (including Proposition 172 funds) has eased the burden.

LOCAL IMPACTS OF THE THREE-STRIKES LAW

We have shown that the three-strikes law has not been fully implemented--i.e., many eligible defendants are not fully prosecuted to the extent allowed--and that there is variation across counties in how

¹⁸ Interviews with Steven Love, Court Administrator, Santa Clara Superior Court, and Judge Katherine Gallagher, Supervising Judge, Criminal Division, Santa Clara Superior Court.

¹⁹ This money was to be used to fund 9 additional DA positions (\$423,261), 13 PD positions (\$489,644) and 12 Superior Court positions (\$399,295). \$25,000 was granted to the Sheriff's department to be used for equipment and supplies for court security (unlike most California counties, the Santa Clara Sheriff's department does not have responsibility for local jails). (Memo to Santa Clara Board of Supervisors, 10/13/94, from George T. Newell, Acting County Executive, Subject: Emergency Appropriation for Criminal Justice System.) Though the initial Santa Clara projections appear to have overstated the actual impact of 3S legislation, the additional positions added in 1994 have been retained, now covered with general fund monies carved from the budgets of other county agencies. (Interview with K. Sada, SC Office of the Chief Executive.)

the law has been implemented. Thus, the impact of the law on the criminal justice system has not been as dramatic as originally expected.

Prosecutor And Criminal Court Workload

The fraction of filings that are three-strike cases ranges from 7.0 to 12.9 percent in eight large California counties, while in the same counties three-strikes cases as a fraction of dispositions range from 3.4% to 8.6% (CUA, 1996). These percentages may be too small to affect traditional workload indicators. However, they are large enough to affect local criminal justice agency operations, when the special characteristics of three-strikes cases are taken into account.

Comparing Three-Strikes with Other Felony Cases. Three-strikes cases are more labor intensive than other felony cases. They generally require additional attention from prosecutorial and court support staff. Prosecutorial support staff are required to conduct more stringent and thorough criminal history checks on all potentially strike-eligible offenders. (While prior record checks are generally required, they tend to be more rigorous when prior convictions enhance the current sentence, as in three-strikes cases.) Also, fewer cases are resolved by plea (see Figure 4.1) and more cases require jury trials (see Figure 4.2). Although some DAs report that the time spent trying a three-strikes case before a jury is relatively brief²⁰, any case brought to trial takes much longer and thus consumes more prosecutorial resources than does a case settled by plea. A case that goes to jury trial also affects court resources because it stays in the system longer and requires more appearances; moreover, larger jury pools are necessary.

Another indicator of possible change in prosecutor and court workload is case processing time. The Los Angeles County District Attorney reports, from a July 1996 sample of cases, that case processing time for 2nd-strike cases averages 137 days and for 3rd-strike cases averages 197 days (Office of LA DA, 1995). A liberal estimate of the average processing time for all criminal cases in Los Angeles County (derived from data reported in CUA, 1996) is 111 days (compared to 78

²⁰ Interview with Greg McLain, SD DA, 10/3/97.

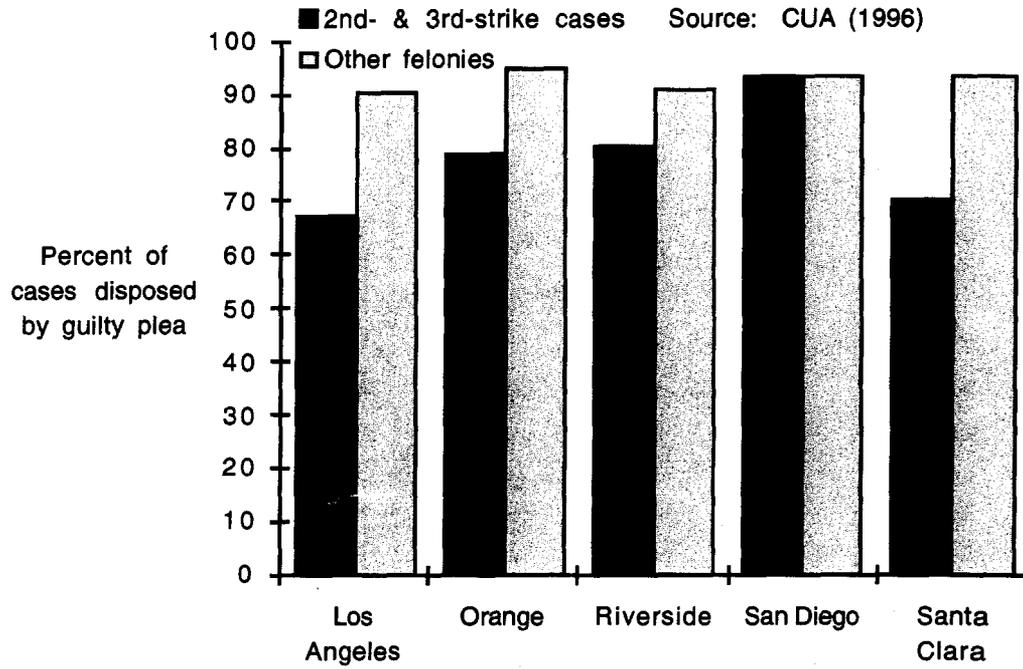


Figure 4.1--Fraction of cases disposed by guilty plea

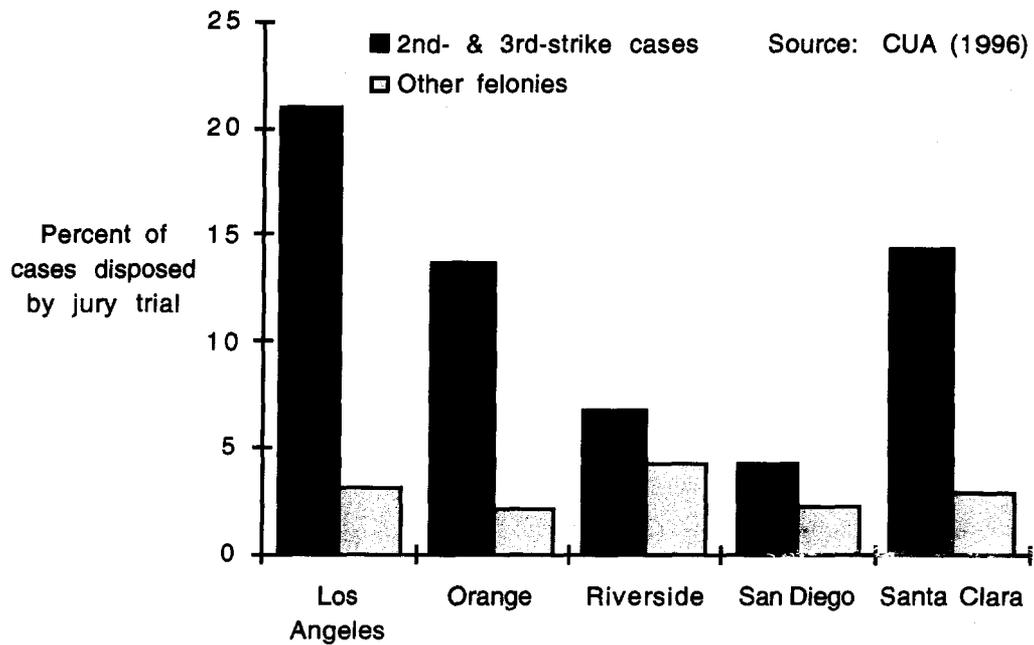


Figure 4.2--Fraction of cases disposed by jury trial

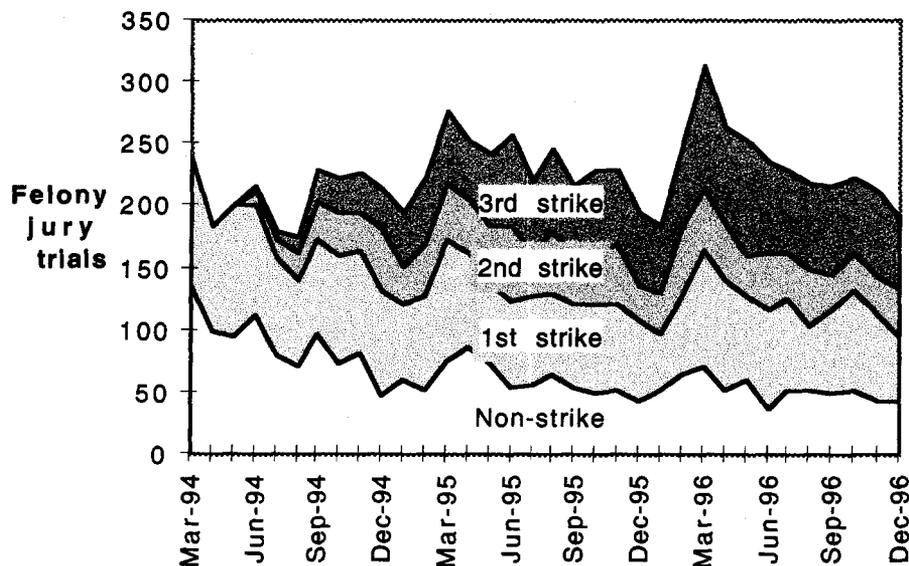
days in Orange County and 107 days in Santa Clara). Other court indicators suggest heavier workload for three-strikes cases than other felony cases (CUA, 1996).

However, from these statistics that compare three-strikes cases to other cases, it is unclear whether the workload is greater for three-strikes cases than it would be for similar cases without the three-strikes law. Perhaps jury trial rates, plea rates, and case processing times for such cases have not changed. The question of prosecutorial workload has been argued both ways²¹, but it cannot be resolved definitively without trend data separating three-strikes-eligible and non-three-strikes-eligible cases.

Shortly after implementation of the three-strikes law (and its direct calendaring system), the San Diego Municipal Court (1995) conducted a study designed to assess the impact of the legislation on court resources and operations. The study compared processing of a sample of the felony cases filed before three strikes (between January 1 and November 15, 1993) with an unmatched sample of 367 cases filed after three-strikes (all those filed between June 1 and 14, 1994). Though these sampling techniques do not allow inference of statistically sound conclusions, the report suggests interesting patterns in case processing trends. The study found that, of pre-three-strikes cases eligible to generate strikes or strike sanctions under the law, the majority had been settled at the Municipal Court level (i.e., by plea). Post-three-strikes, the majority of such cases were being settled at the Superior Court level. An analysis of median case processing times shows an increase for all case types, with the largest increase for third-strike-eligible cases (an extra 81 days), and the smallest increase for non-strike cases (2 days more). Eight of thirteen cases (post-three-strikes) originally deemed three-strikes-eligible were reduced prior to sentencing; of the five cases sentenced under the three-strikes law, three were sentenced below the mandated minimum.

²¹ Los Angeles officials argue the burden has been great (CCJCC, 1995), while the San Diego DA's office argues there has been little impact on prosecutorial workload. Note from Figures 4.1 and 4.2 the contrasting plea and jury trial rates in these two jurisdictions

Number of Jury Trials. Some counties have reported an increase in the number of jury trials. According to data from the Los Angeles County District Attorney, the number of jury trials in the county decreased slightly in 1993, increased slightly in 1994, and increased sharply in 1995. Data from the California Administrative Office of the Courts show a substantial drop in dispositions by jury trial in FY94 followed by a small rise the following year. Both indicate the numbers stabilized subsequently. This, according to CCJCC (1995), "may be more a reflection of the constraints on resources available to the Superior Court, District Attorney, and Public Defender as opposed to the demand for trials." Figure 4.3 shows that the fraction of jury trials that are non- and first-strike cases decreased between 3/94 and 12/96, either because filings have been decreasing (see Chapter 3 for a discussion of statewide statistics) or there is pressure to settle these lesser cases to make room for the more serious second- and third-strike cases.

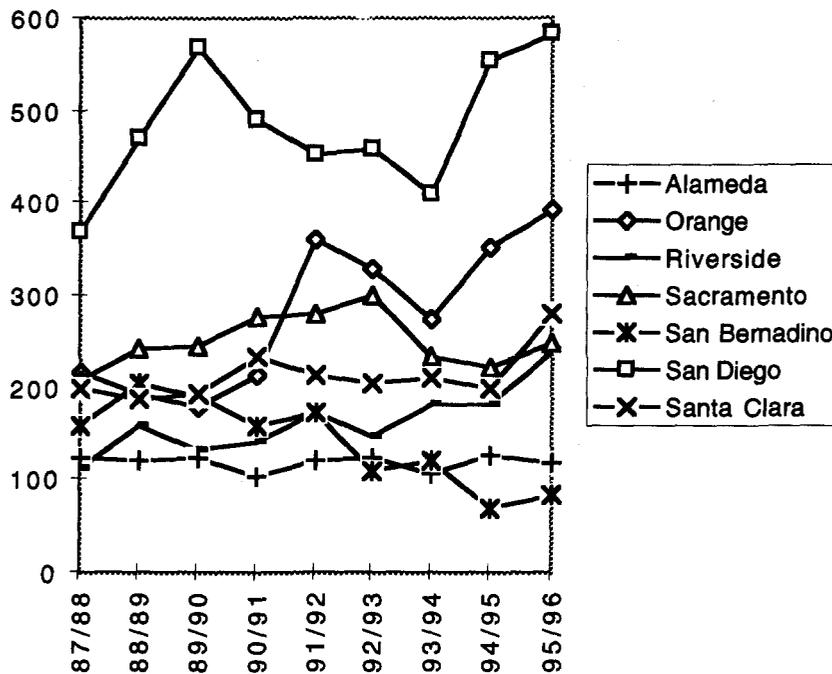


Source: LA DA

Figure 4.3--Jury Trials by "Strike Level" in Los Angeles County

In Figure 4.4 is depicted the number of dispositions by jury trial over an eight-year period in the seven California counties with

population over one million (except Los Angeles)²². San Diego²³ and Orange County experienced increases in jury trials in the first full fiscal year the three-strikes law was in effect, while Santa Clara (as well as Riverside) experienced an increase a year later. That last finding is consistent with the greater backlog of cases in Santa Clara (compared to LA and SD) in 1995 (CUA, 1996). The other large counties did not experience large increases in the number of jury trials following passage of the three-strikes law. Statewide, however, the number of dispositions by jury trial appears to have increased.



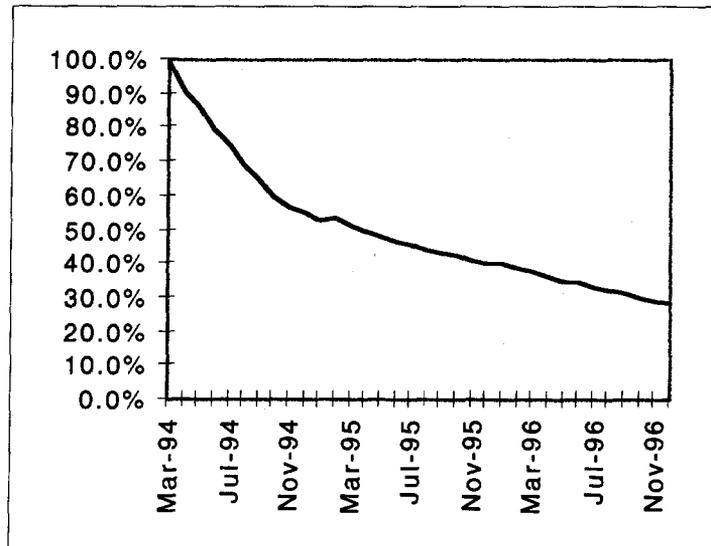
Source: AOC

**Figure 4.4--Dispositions by Jury Trial
in Seven Large California Counties**

²² These data (as well as data for many of the subsequent figures) provided by the AOC reports are gathered by fiscal year, which runs from July 1 to June 30. In the figure labels XX/YY, XX indicates the calendar year in which the fiscal year began, and YY indicates the calendar year in which the fiscal year ended.

²³ However, according to statistics reported by the San Diego County Superior Court, only 8% (86/1,017) of the cases filed as third-strike cases and 3% (87/3,215) of the cases filed as second-strike case between 7/1/95 and 12/31/95 went to jury trial (SD Superior Court, 1996).

Backlog of Three-Strikes Cases. A growing backlog may be taken to be evidence of a burden on the criminal justice system. Some counties have indeed reported a backlog. CUA (1996) shows that the ratio of three-strikes cases disposed to those filed (between July 1, 1994, and December 31, 1995) ranged from 45% in Santa Clara through 56% in LA to 74% in San Diego counties. In Los Angeles, of all cases between 3/94 and 9/95, 37% of 2nd-strike cases and 53% of 3rd-strike cases were pending, compared to 32% of felony cases; it was noted that three-strike cases have resulted in a "new high level of backlogged cases" in LA (CCJCC, 1995). However, trend data are required to determine whether these backlogs are stable or growing. In Los Angeles County, the percentage of filed second- and third-strike cases pending has been steadily decreasing²⁴ (see Figure 4.5). (The latest figure, 28.5%, corresponds to about 2,400 second-strike cases and 4,500 third-strike cases.) Nonetheless, three-strikes cases represent an ever increasing percentage of total cases pending (Garcetti, 1997).



Source: LA DA

Figure 4.5. Percentage of Filed Second- and Third-Strike Cases Pending, Los Angeles County

²⁴ Early cases were more likely to be burdened with appeals; as higher courts have resolved these issues, this burden will dissipate.

Other Workload Measures. In an AOC survey (Calif. AOC, 1996) covering the period from July through December 1995, 28 percent of responding Superior Courts (15 of 54) reported a greater than 10 percent increase in judicial workload for criminal cases (the measure was subjective). These 15 jurisdictions accounted for 58% of statewide felony filings in FY94-95. The report also stated that 39% of responding Municipal Courts reported a greater than 10% increase in judicial workload for felony cases. As suggested by the minority percentages, however, courts varied in their experiences. Jurisdictions in which the proportion of three-strike cases was high or that were large were more likely to attribute the workload increase to the three-strikes law.

Summary. While some counties report that the three-strikes law has greatly affected court and prosecutor workload, others report little or no impact. There is some evidence that the number of jury trials has increased, especially in jurisdictions where a large fraction of felony cases are strike-eligible. Case processing time appears to be longer for three-strikes cases than other cases. A backlog of three-strikes cases emerged in many counties, but has subsequently begun to subside. From existing data, however, it is not possible to determine the extent to which the workload associated with three-strikes cases differs from that associated with similar cases before the three-strikes law.

Jail Burden

Some counties report a significant impact of three strikes on local jails. For example, in Los Angeles County, the percentage of the jail population that was deemed high-security increased from 36% to 57% between March 1994 and June 1996²⁵ (Office of the LA County DA, 1996). Higher-security inmates may require more jail resources, but "high-security" may not be consistently defined²⁶. The fraction that were

²⁵ In 9/95, the percentage was 62%. The normal variance is not reported.

²⁶ If three-strikes defendants are classified as higher risk because they are three-strikes defendants when they would not have been before passage of the law, jail workload need not have increased on this account alone.

pre-adjudicated increase from 59% to 66% in the same period²⁷ (Office of the LA County DA, 1996). The average length of stay (ALOS) for three-strikes defendants awaiting adjudication is longer than for similar defendants prior to the three-strikes law (i.e., defendants that would have been eligible for three-strikes sanctions were the law in effect). Stays of second-strike-eligible defendants grew from 88 days to 107 on average, while stays of third-strike-eligible defendants increased from 96 days to 177 (CCJCC, 1995).²⁸ (The ALOS for the entire jail population is only 36 days.) These pre-adjudicated inmates displace other pre-trial detainees, sentenced misdemeanants and felons.

In Santa Clara County, the fraction of the jail population that is pre-adjudicated increased from 58% to 65% between January 1994 and January 1997, and average lengths of stay for three-strikes defendants have also been increasing (see Figure 4.6). On the other hand, San Diego County officials report no significant shift in jail population size or composition, and they do not view recent efforts at facility hardening and replacement as being necessitated by a change in population brought on by three strikes. Jail capacity limitations, which have been in place for several years, have resulted in a jail system already practiced in releasing all offenders who, based upon either security or sentence status, are eligible for release from county facilities. (However, this begs the question of whether more are now released or whether those released are more dangerous than they were before the three-strikes law went into effect. To our knowledge, no one has examined this issue empirically.)

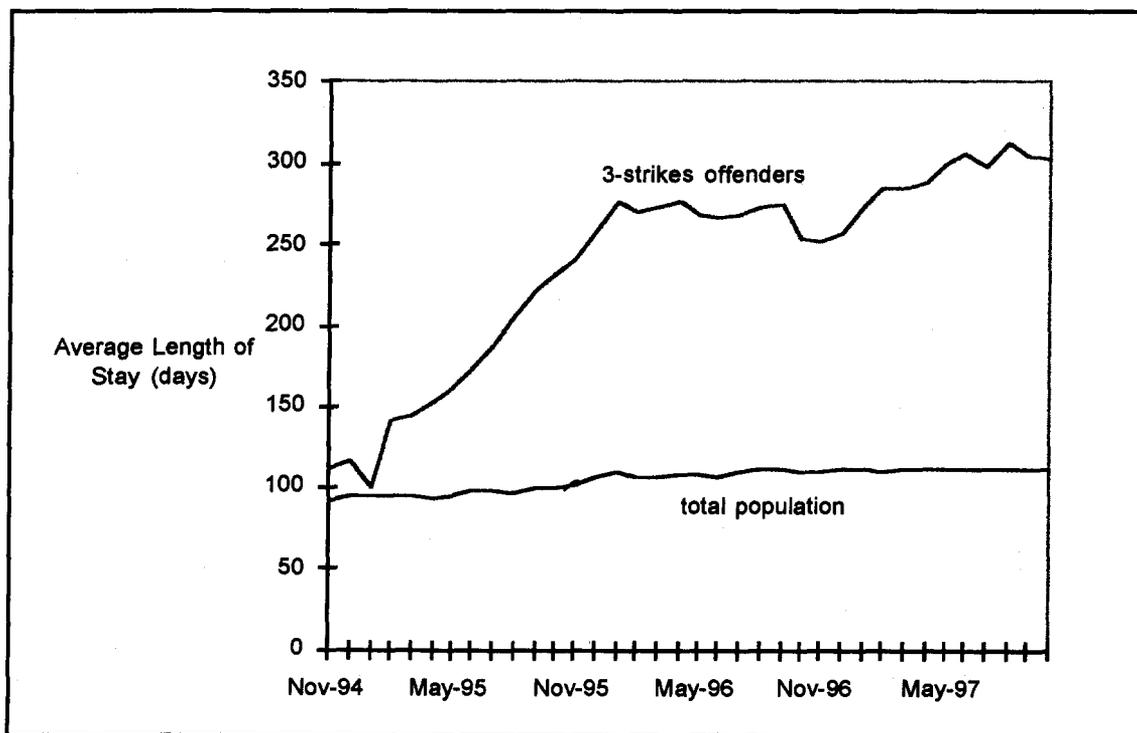
Impact on Non-Three-Strikes Cases

Criminal Cases. If resources have been shifted to three-strikes cases from other cases, the latter might suffer from increased delays and processing time. This could lead to a higher rate of plea-bargaining for non-strike cases. Less prosecutor attention could result

²⁷ In 9/95, the percentage was 70%. Again, the normal variance is not reported.

²⁸ The post-three-strikes numbers reflect those in custody on 9/30/95, and are lower bounds since the sample was still in custody at the time of the survey. Other reports of ALOS for three-strikes defendants are similar or longer.

in a lower conviction rate at trial. To determine whether such effects have occurred, one would need trend data that differentiates between cases that would and would not be three-strikes eligible--data which are not available.²⁹ However, since strike-related cases are a small fraction (less than 10 percent) of all those disposed, overall data may principally reflect the effect of three strikes on non-strike-related cases. In this section, we examine some of these overall trends for such an effect.



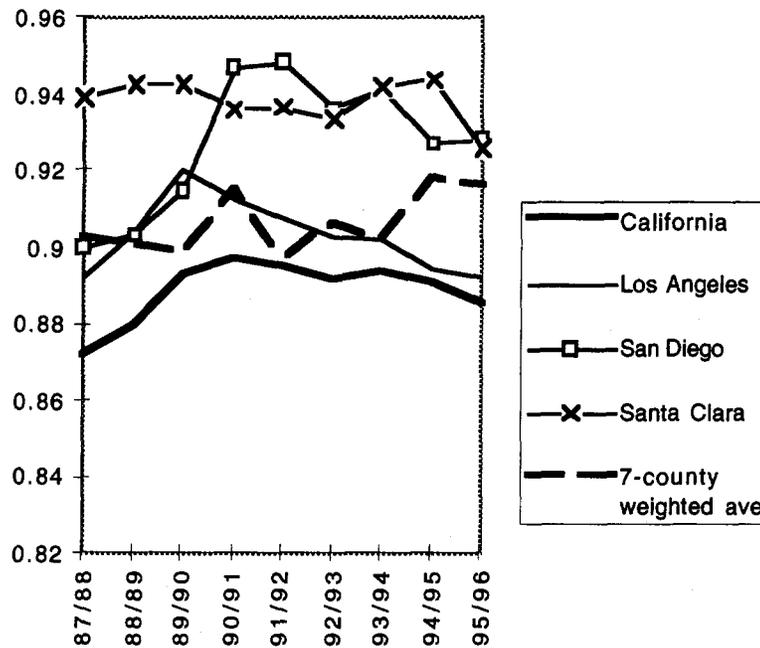
Source: Santa Clara Department of Correction Monthly Average Population Database

Figure 4.6--Average Length of Stay of Santa Clara County Jail Population

First, overall trend data (see Figure 4.7) show no dramatic change in plea rate after implementation of three-strikes; the recent slight decline in some counties could be but isn't necessarily a consequence of three strikes. Neither is there evidence of a growing criminal case

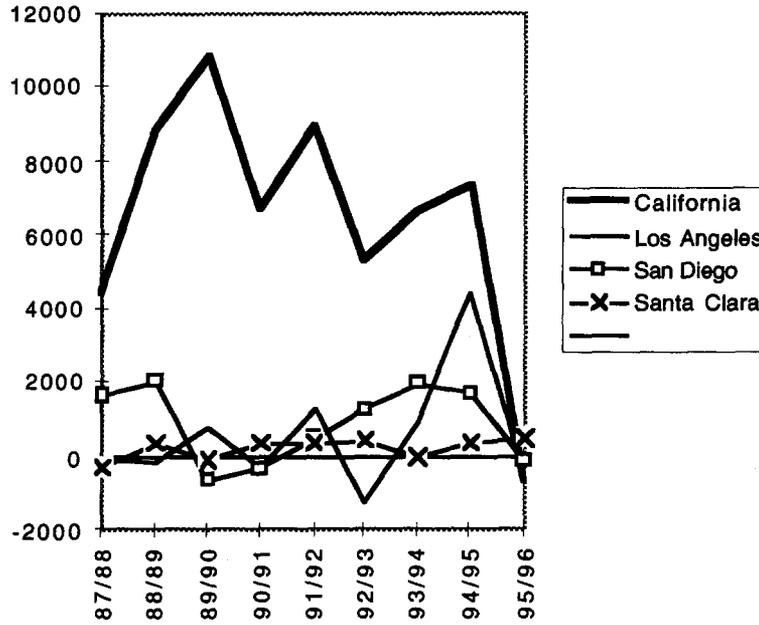
²⁹ In turn, in non-strike cases the conviction offenses might be lesser and the sanctions less severe. Moreover, sentences served might be reduced because of shorter sentences or early release due to prison overcrowding. Data to answer these questions are not available.

backlog in most counties (see Figure 4.8). In Los Angeles County, an increase in the gap between criminal filings and dispositions that occurred in FY 94-95 disappeared in FY 95-96. San Diego County also saw improvement in its filings-disposition gap that year. On the other hand, in Santa Clara County, the gap between criminal filings and dispositions reached a nine year high in FY 95-96. Statewide, the longstanding gap between criminal filings and dispositions was greatly reduced in FY95-96. Finally, Los Angeles shows an obvious trend in conviction rate, but San Diego and Santa Clara do not (see Figure 4.9).



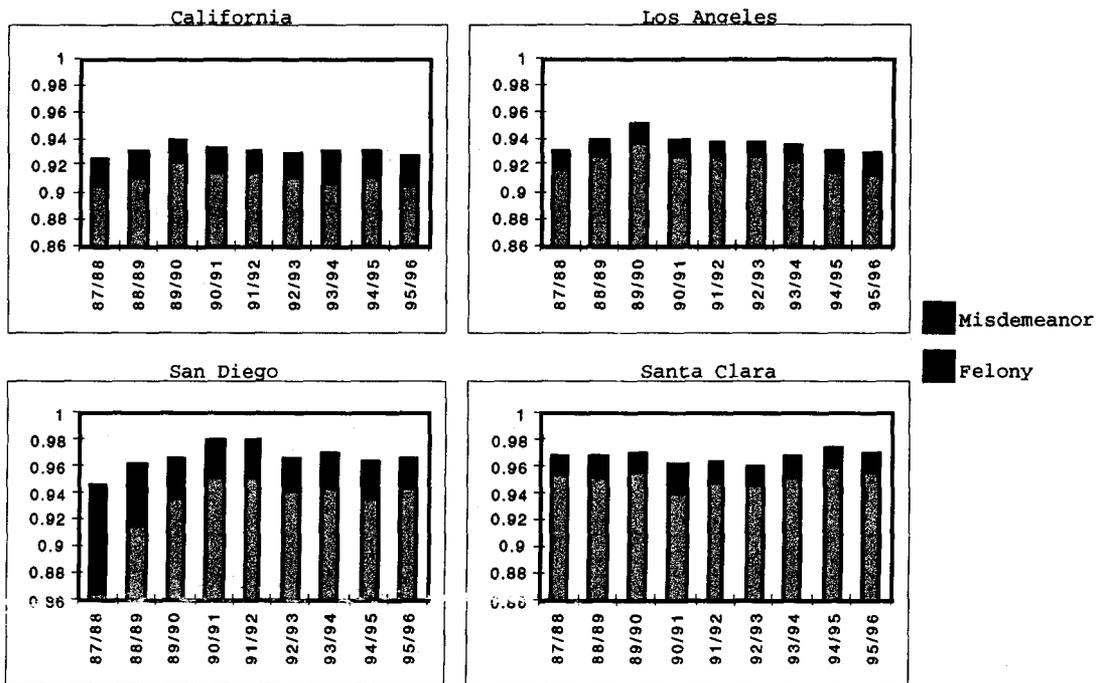
Source: AOC

Figure 4.7--Fraction of Criminal Cases in Superior Court Disposed by Guilty Plea



Source: AOC

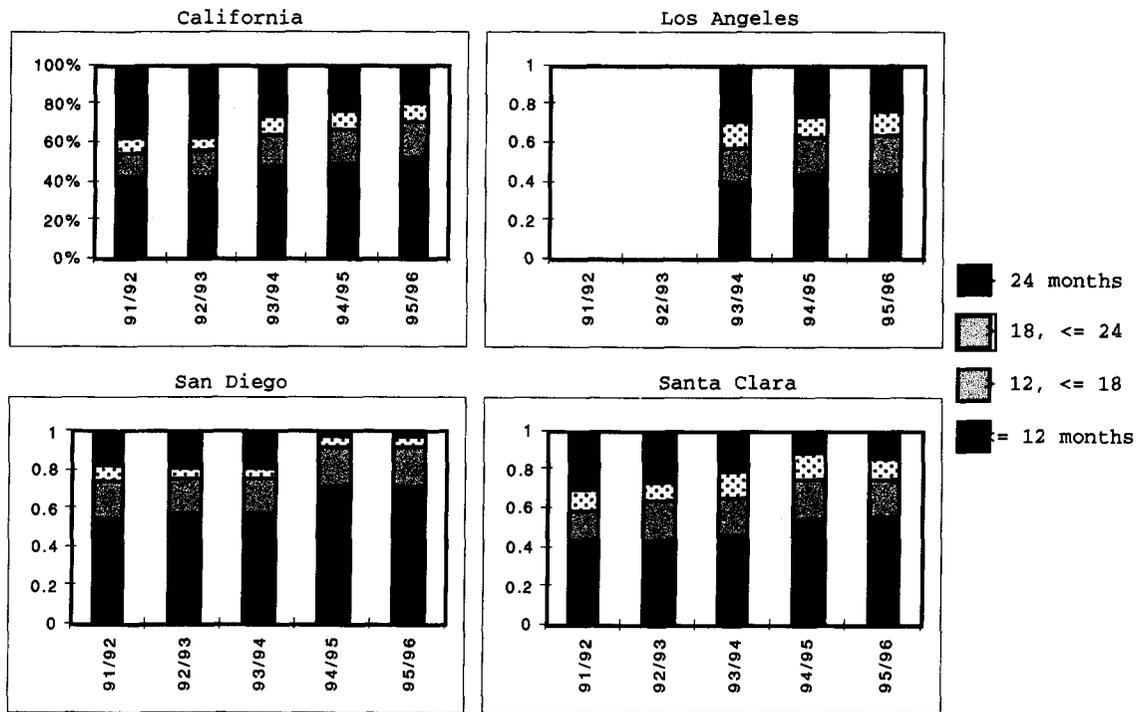
Figure 4.8--Gap Between Criminal Filings and Dispositions



Source: AOC

Figure 4.9--Fraction of Superior Court Criminal Dispositions That Are Convictions

Civil Cases. An increase in civil trial processing time would be expected if increased demand for court resources from criminal matters forces postponement of civil matters. Some counties have reported a backlog of civil cases (LAO, 1996). For example, in Los Angeles County, a large fraction of designated civil courts have been devoted to criminal trials and the 24-month disposition level fell from 94% in 1992 (which was the second highest among 45 urban jurisdictions in the country) to 79% right after implementation of three strikes (CCJCC, 1995). However, according to AOC data, civil trial processing time has been *decreasing* in California since FY 91-92 and in L.A. since FY 93-94 (see Figure 4.10).



Source: AOC

Figure 4.10. Civil Case Processing Time

CONCLUSIONS

Although the three-strikes law was intended in part to reduce discretion in the judicial process, important discretion remains in the hands of local criminal justice authorities. The key agent in this process is the District Attorney, since prosecutors have the authority

to decide whether to file charges and (along with judges) whether to dismiss priors. The three-strikes law provides for prosecutorial discretion in that it allows priors to be dismissed in the furtherance of justice; it is the interpretation of "furtherance of justice" that leads to variation in how the law is implemented. Clearly, prosecutorial (along with post-Romero judicial) discretion could effect the effectiveness and the efficiency of the three-strikes law. However, with the available data, it is difficult to adjust for underlying differences (such as crime and arrest rates) in order to determine the extent to which local discretion has affected outcomes. And data to determine whether similar cases before and after implementation of three strikes is not currently available.

There is some evidence that variation in local implementation has differentially impacted the criminal justice system. Some counties report that three strikes has increased the number of jury trials, further backlogged the court system, changed jail operations, etc., but others claim no such effects. Specifically, it appears that three strikes has affected court and (in some counties) prosecutor workload. It has had some effect on jail operations, the import of which is unclear, while the impact on non-strike cases seems to be minor in most counties. More generally, there is little indication of major problems in local criminal justice operations. However, workload pressure could affect prosecutorial filing and settlement policies, and it has forced greater interagency coordination. This suggests adaptation of local criminal justice systems to the pressures caused by the new law.

5. FINDINGS AND DISCUSSION

Three-strikes laws are generally expected to reduce sentencing discretion and increase incarceration, thus decreasing crime. In this study, we have addressed three strikes from several perspectives. We have considered three-strikes laws collectively to determine if states with such laws exhibit a greater increase in incarceration or a greater decrease in crime than do states without them. We have looked at the factors that contribute to the incarceration rate to understand why the growth in incarceration in California since implementation of three strikes has not been nearly as dramatic as expected. And we have examined how, and to what extent, county-level criminal justice officials--especially prosecutors--have implemented the California three-strikes law.

We have found little evidence that three-strikes laws have had an impact on crime rates or on incarceration rates. Specifically, the difference between crime rates in urban states with and without three-strikes laws is not statistically significant. In California, whose three-strikes law is by far the broadest, the evidence of impact on crime is inconclusive. While the decline in crime preceded implementation of three strikes, the rate of decline has accelerated since implementation; however, other states have demonstrated similar crime trends.

Nor is the difference between incarceration rates in urban states with and without three-strikes laws statistically significant. And the impact of the California three-strikes law on incarceration has been modest. The growth in the California prison population since implementation of three strikes has been no greater than would have been expected on the basis of the trend established in the early 1990s, before three strikes. The rate of incarcerations per conviction has increased, which is consistent with a principal objective of the law. But it is too soon to observe another principal objective of the law--increasing the length of time served. Other factors have also influenced prison growth: crime has declined and the number of arrests

per crime has increased. The positive and negative factors essentially cancel each other out, leaving prison growth no greater or less than it was before implementation of the three-strikes law.

The apparently limited effects of the California three-strikes law are not really surprising when implementation at the local level is considered. Predictions of rapid, large growth in the California prison population were based on the assumption of universal application. Universal application means that every defendant to which the law could be applied would be fully prosecuted under it--i.e., that any prior conviction satisfying the definition of a strike would be counted. However, it is clear that prosecutors (and judges, as a result of the *Romero* decision) are dismissing a significant fraction of these priors, so the law is being applied not universally and rigidly, but selectively.

This prosecutorial (as well as judicial) discretion suggests the probability of variation between jurisdictions. And, in fact, there is evidence of variation in plea rates, jury trial rates, court backlogs, etc. But with available data, it is difficult to measure how much of this variation is a consequence of differences in the extent of discretion exercised and how much is a consequence of other underlying differences (such as the level and nature of criminal activity in the jurisdiction).

Three-strikes cases appear to consume additional criminal justice resources. However, it is difficult to determine whether resource-related differences between three-strikes cases and other felony cases reflect real changes caused by the new law, or whether similar cases before implementation of the law were no less burdensome. And although there is evidence that in some counties three strikes has affected criminal justice agencies, court and prosecutorial workload, and jail operations, in general the burden on the local criminal justice system has not been overwhelming.

However, this analysis must be considered preliminary for a number of reasons. First, it is too soon for some of the most significant consequences of three strikes, such as an increase in sentence served, to be evident. Second, appropriate data are not available to resolve some important issues, such as the effects of the three-strikes law on

case processing and the impact of local discretion on the overall effectiveness of three strikes. Third, more sophisticated and complicated analyses that account for underlying differences in jurisdictions are necessary to discern what could prove to be subtle but important effects of the law. Given the preliminary nature of this analysis, it is appropriate to conclude with some questions, some speculations about the answers, and some suggestions for future research.

Are the modest impacts described here only temporary?

We have cautioned readers that data do not allow us to estimate the effect of the three-strikes law on average sentence length, either for the prison population as a whole or for those directly affected by the law. It is very likely that increases in average time served eventually will begin to exert a growing influence on the overall prison population level. Analysis of this issue requires estimated release dates for incoming cohorts of prison inmates.

A similar caution applies to our inability to yet see any effects of three-strikes laws when comparing crime rates in states that have such laws with rates in states that do not. We can only say that there does not appear to be a deterrent effect, and even that assertion needs to be conditioned by methodological concerns detailed in Chapter 2. (Some of these concerns are being addressed in ongoing research). Assessment of an incapacitative effect must await the passage of enough time so that those imprisoned under the new laws begin serving the portion of their terms in excess of what they would have received previously. It is reasonable to expect, however, that substantial effects on crime will eventually show up at least in California, where the law is most broadly applied. An earlier RAND assessment (Greenwood et al., 1994) predicted a 28 percent reduction in serious crime committed by adults if the California law were fully implemented.

Why has the implementation of the California three-strikes law at the local level been selective instead of universal?

It is clear that California's three-strikes law is being applied in a fairly selective manner across the state. It could be argued that this selective application was motivated in the early days of implementation by the need to respond to the increased workload that wider application of the law would entail. In theory, the infusion of additional resources into the system would produce more widespread application of the law.

However, even if this was true in the early days, it appears that it is not any longer. Most jurisdictions do not seem to be experiencing growing, unmanageable backlogs as a result of their prosecution of three-strike cases. This suggests that the limiting factor in the application of the law may no longer be the availability of resources. Instead, application may be limited by the combined sense of judges, prosecutors, and defense counsels as to what type of sentence is both fair and appropriate in particular circumstances--i.e., what constitutes furtherance of justice. In Chapter 4, we describe the official three-strikes policies of the District Attorneys in a few jurisdictions; however, even in jurisdictions with written three-strikes policies, decisions about how to charge cases (which influence or determine the ultimate sentences) remain in the hands of the prosecutor and are made subjectively.¹ It would be interesting to know how these selective case settlement practices vary across the state, and what characteristics of the local environment and court system appear to influence them.

What are the characteristics of the defendants to which the law is now applied, and are they the defendants at highest risk for recidivism?

It is well known that a small fraction of offenders commits a large fraction of offenses. In fact, this is a primary rationale for

¹Some benefits may be derived from clear filing and settlement policies limiting the law's application to those cases most likely to hold up as three-strikes cases in court and those in which the defendants are most likely to reoffend. Such policies may reduce the number of three-strikes cases going to trial, in part because they may simplify the plea-bargaining process.

the three-strikes laws passed across the country. The intent is to make a relatively large dent in serious crime by keeping a relatively small number of repeat offenders off the streets for long periods. California's three-strikes law is among the least efficient of these laws because the number of offenders affected is not that small. Why is this a problem? Past record does not predict future criminal activity with certainty (Greenwood, 1982; Blumstein, 1986). Thus, many of the defendants with serious priors are quite likely to commit future serious crimes, but some are not. The wider the net is cast, the more likely it will catch individuals whose future criminality will not be sufficient to justify the cost of a long lock-up. As Greenwood et al. (1994) showed, more narrowly targeted three-strikes laws would be more cost-effective than California's current law, assuming all alternatives are fully implemented.² This implies that California's current law will be more cost-effective if it is selectively implemented through the exercise of discretion on the part of prosecutors and judges to direct the law's sanctions toward those most likely to reoffend.

Nonetheless, it is unclear whether prosecutors have sufficient information to use such a tool appropriately, whether they can selectively and justly apply the law to the cases in which the defendant is most likely to commit future serious crime.³ It is very important, for any serious assessment of the law, to know what factors prosecutors use to discriminate among cases. It would then, at least in theory, be possible to test how successful is the exercise of prosecutorial

²All laws resulting in prison sentences of 20 years or more are inefficient in some degree because most criminal careers--even those of violent criminals--do not last that long. Thus, they keep offenders locked up beyond the point at which they would have continued offending had they been free. This is not to say that sentences of 20 years or more are not justifiable on other grounds, e.g., just deserts.

³ Another issue is whether the power wielded by the prosecutor under a mandatory sentencing system such as three strikes is appropriate. Critics of mandatory sentencing (and other similarly restrictive sentencing reforms) contend that they do little to reduce or remove sentencing discretion; instead, they result in a displacement of discretion, shifting the sentencing decision from the judge to the District Attorney. The latter determines which cases are filed, what

discretion. This might be done by examining recidivism in a sample of cases, some of which were not fully prosecuted, controlling for the quality of evidence and judicial discretion. Such a study could help inform prosecutorial discretion in future cases.

Has the three-strikes law really changed the administration of justice very much?

Although three-strikes cases appear to be more labor-intensive than other felony cases, it is not clear that similar cases before implementation of three strikes were any less burdensome to local criminal justice systems. Moreover, the law is intended to increase time served. But even before three strikes was voted into law, California prosecutors and judges had access to a wide array of enhancements that could be used to lengthen sentences for serious felons. Prior time in prison, the use of a gun, and the infliction of great bodily injury are all criteria for lengthening terms over those prescribed in the statutes governing specific crimes.

In a cost-effectiveness analysis, to properly account for the costs of the law, only those costs that are a consequence of the law should be included. To understand the degree to which three strikes really effects case outcomes, it is essential that we learn how similar cases were treated prior to implementation of the three-strikes law. It would be very instructive to conduct a detailed comparison of a representative, matched sample of cases from before and after implementation.

type of plea is offered, and--in the case of three strikes--when priors are dismissed.

APPENDIX A

CALIFORNIA'S THREE-STRIKES LAW
(PENAL CODE SECTION 667)

- a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.
- (2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.
- (3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.
- (4) As used in this subdivision, "serious felony" means a serious felony listed in subdivision (c) of Section 1192.7.
- (5) This subdivision shall not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of subdivision (c) of Section 1192.7.
- (b) It is the intent of the Legislature in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of serious and/or violent felony offenses.
- (c) Notwithstanding any other law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one

or more prior felony convictions as defined in subdivision (d), the court shall adhere to each of the following:

- (1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.
- (2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.
- (3) The length of time between the prior felony conviction and the current felony conviction shall not affect the imposition of sentence.
- (4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.
- (5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.
- (6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e).
- (7) If there is a current conviction for more than one serious or violent felony as described in paragraph (6), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.
- (8) Any sentence imposed pursuant to subdivision (e) will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

(d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i), inclusive, a prior conviction of a felony shall be defined as:

- (1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior felony for purposes of subdivisions (b) to (i), inclusive:
 - (A) The suspension of imposition of judgment or sentence.
 - (B) The stay of execution of sentence.
 - (C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.
 - (D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.
- (2) A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular felony as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.
- (3) A prior juvenile adjudication shall constitute a prior felony conviction for purposes of sentence enhancement if:
 - (A) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

- (B) The prior offense is listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) or (2) as a felony.
 - (C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law.
 - (D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.
- (e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any other enhancement or punishment provisions which may apply, the following shall apply where a defendant has a prior felony conviction:
- (1) If a defendant has one prior felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.
 - (2) (A) If a defendant has two or more prior felony convictions as defined in subdivision (d) that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of:
 - (i) Three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior felony convictions.
 - (ii) Imprisonment in the state prison for 25 years.
 - (iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

- (B) The indeterminate term described in subparagraph (A) shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.
- (f) (1) Notwithstanding any other law, subdivisions (b) to (i), inclusive, shall be applied in every case in which a defendant has a prior felony conviction as defined in subdivision (d). The prosecuting attorney shall plead and prove each prior felony conviction except as provided in paragraph (2).
- (2) The prosecuting attorney may move to dismiss or strike a prior felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.
- (g) Prior felony convictions shall not be used in plea bargaining as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior felony conviction allegation except as provided in paragraph (2) of subdivision (f).
- (h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as they existed on June 30, 1993.
- (i) If any provision of subdivisions (b) to (h), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.
- (j) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by roll call

vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

APPENDIX B

CRIMES CLASSIFIED IN CALIFORNIA AS SERIOUS OR VIOLENT

In California, certain crimes are classified as "serious" or "violent" or both. The penal-code sections containing the two lists are 667.8 and 1192.7, respectively. These classifications are used by the current three-strikes legislation and by pre-existing repeat offense legislation as a basis for specifying sanctions. Here, we offer a paraphrased version of the two lists. We have grouped like crimes together and have omitted some items that are included within others. We begin with "violent" crimes, all of which are also categorized as "serious." We then list "serious" crimes not classified as "violent."

CRIMES CLASSIFIED AS BOTH "SERIOUS" AND "VIOLENT"

- Murder or voluntary manslaughter.
- Attempted murder, including explosion of a destructive device with intent to murder (or attempts to do so).
- Mayhem.
- Rape, sodomy, oral copulation, or genital or anal penetration with a foreign object, committed by force or threat of force against the victim or another person.
- Aiding or abetting rape or penetration by a foreign object.
- Lewd acts performed on a child under 14.
- Any felony punishable by death or life imprisonment.
- Any felony involving substantial physical injury (except to an accomplice) or use of a firearm.
- Robbery perpetrated in any kind of residence.
- Arson.
- Carjacking.
- Kidnapping a child under 14 (parents excepted, unless intent to commit a lewd act is involved).

OTHER CRIMES CLASSIFIED AS "SERIOUS"

- Assault with intent to commit rape or robbery.
- Assault with a deadly weapon or instrument on a peace officer.
- Assault by a life prisoner on a noninmate.
- Assault with a deadly weapon by an inmate.
- Exploding a destructive device or any explosive causing substantial physical injury or with intent to injure.
- Burglary of any kind of residence.
- Robbery or bank robbery.
- Grand theft involving a firearm.
- Kidnapping.
- Holding of a hostage by a state prison inmate.
- Any felony involving use of a dangerous weapon.
- Furnishing or offering to furnish heroin, cocaine, phencyclidine, or any methamphetamine-related drug to a minor, or conspiring to do so.
- Any attempt to commit any crime classified as "serious," except for assaults.

APPENDIX C

DATA USED IN ANALYSIS OF CALIFORNIA'S PRISON POPULATION

All data used in Chapter 3 come from the serial *Crime and Delinquency in California* published annually by the California Department of Justice. We use data from the 1995 and 1996 reports. Data for 1997 will not be released until July 1998 (after that, we could update this chapter).

Seven data series are used, namely:

1. The adult population at risk
2. California index crimes
3. Arrests for California index crimes
4. Complaints filed
5. Persons convicted
6. New prison admissions
7. The size of the prison population

We describe each of these data series in turn.

ADULT POPULATION

The *adult population at risk* is defined to be the number of adults aged 18 through 69. In general, persons under age 18 are classified as juveniles and are not sent to prison unless special steps are taken to remand them to the adult courts. While young persons over 18 are sometimes sent to a juvenile institution, most go to prison if they receive an incarceration sentence. Persons over 69 are rarely sent to prison. So the population age 18 through 69 represents the bulk of persons sent to prison, and constitutes the base that the California Department of Justice uses to calculate imprisonment rates. Accordingly, we use it here. Table C.1 shows these counts for the years 1990 through 1996.

Table C.1
Adult Population at Risk, 1990-1996¹

<u>Year</u>	<u>Value</u>
1990	20,027,633
1991	20,356,984
1992	20,661,120
1993	20,923,632
1994	21,193,571
1995	21,505,839
1996	21,825,735

CALIFORNIA INDEX CRIMES

The California Department of Justice defines *California index crimes* to be homicide, forcible rape, robbery, aggravated assault, burglary and motor vehicle theft. This list differs from the crimes known as index crimes by the Uniform Crime Reporting (UCR) Program of the Federal Bureau of Investigation. The UCR index crimes include, in addition to the six California index crimes, larceny-theft and arson. Theft accounts for nearly as many crimes as all six California index crimes; many thefts are misdemeanors, not felonies, and thus would not be sanctioned by a prison sentence. Arson accounts for very few crimes. In Chapter 3 we use counts of California index crimes known to the police, and arrests of adults for these crimes, to measure the amount of crime and arrest activity (see Table C.2).

COMPLAINTS AND CONVICTIONS

After an arrest is made, a police agency may decide to release the arrestee with no further action, or it may bring the arrest to the attention of the prosecutor's office, and the prosecutor may or may not decide to charge the arrested person with a crime. If the prosecutor decides to charge, a complaint is filed against the arrested person. After a complaint is filed, the arrested person may plead guilty or may be convicted in a trial; either outcome is considered a conviction. Counts of complaints filed and convictions are published for a sample of

¹ C&D 1996, Table 58, page 175.

all (not just CA index crime) adult felony arrests. These are displayed in Table C.3.

Table C.2

California Index Crimes:
Number of crimes known to the police and number of adult arrests²

Year	Crimes	Arrests						Total
		Homi- cide	Forc- ible Rape	Rob- bery	Aggra- vated Assault	Bur- glary	Motor Vehicle Theft	
1990	1,017,665	3,224	4,218	24,264	95,402	56,166	30,120	213,394
1991	1,073,613	3,024	3,752	23,386	92,792	53,105	27,350	203,409
1992	1,092,832	2,742	3,471	22,990	97,655	55,286	28,221	210,365
1993	1,068,996	2,658	3,040	21,324	99,179	51,385	27,071	204,657
1994	1,011,663	2,421	2,846	19,037	105,173	47,306	25,785	202,568
1995	939,132	2,300	2,772	18,455	109,192	44,223	23,873	200,815
1996	828,649	2,146	2,719	17,284	105,684	40,050	18,909	186,792

Table C.3

Complaints and Convictions³

Year	Cases Disposed	Complaints filed					Percent	
		Released	Denied	Dis- missed	Con- victed	Total	Com- plaints	Convic- tions
1990	258,734	15,444	33,503	40,444	169,343	209,787	81.1%	65.5%
1991	303,707	20,222	45,736	42,002	195,727	237,729	78.3%	64.4%
1992	284,810	12,273	32,284	40,134	200,119	240,253	84.4%	70.3%
1993	258,320	6,029	14,075	30,353	207,863	238,216	92.2%	80.5%
1994	285,745	10,736	29,311	37,705	207,993	245,698	86.0%	72.8%
1995	271,428	8,310	26,733	36,650	199,735	236,385	87.1%	73.6%
1996	285,038	10,488	37,521	39,720	197,309	237,029	83.2%	69.2%

We use percent of the disposed arrests for which complaints were filed and for which convictions were obtained, and apply those percentages to the number of arrests for California index crimes already shown in Table C.2. Table C.4 shows this calculation. According to the California Department of Justice, counts for 1993, 1994, 1995, and 1996 represent preliminary data because the OBTS (Offender-Based Transaction

² C&D 1996, Table 1, page 110; C&D 1995, Table 22, page 128; for 1996, C&D 1996, Table 22, page 122.

³ C&D 1995, Table 39, page 156; C&D 1996, Table 39, page 158.

Statistics) files upon which the counts are based remain open. Apparently, counts for these years lack information about a substantial fraction of arrests that were actually disposed. We assume that while they do not represent all disposed arrests, they represent a fair sample of those arrests. Moreover, counts for 1993 were "lower ... than normal because of fingerprint and disposition processing priorities. In addition, processing priorities caused the 1993 file to be underrepresented in the ... releases and ... denied categories."⁴ Thus we exclude 1993 data from our analysis. That is, the trends for complaint per arrest and conviction per complaint are based on 1990-1992 only, not on 1990-1993 as for the other factors.

Table C.4
Complaints and Convictions for California Index Crimes⁵

Year	Arrests for CA Index Crimes	Percent Com- plaints	Percent Convic- tions	Complaints for CA Index Crimes	Convic- tions for CA Index Crimes
1990	213,394	81.1%	65.5%	173,024	139,668
1991	203,409	78.3%	64.4%	159,220	131,089
1992	210,365	84.4%	70.3%	177,455	147,811
1993	204,657	92.2%	80.5%	188,729	164,682
1994	202,568	86.0%	72.8%	174,178	147,449
1995	200,815	87.1%	73.6%	174,889	147,773
1996	186,792	83.2%	69.2%	155,331	129,301

NEW PRISON ADMISSIONS AND PRISON INMATE POPULATION

The California Department of Justice reports two conflicting data series of the number of persons sent to prison each year. The first series, which is collected from the courts, records the number reported to have been sentenced to prison. The second series comes from the California Department of Corrections and records how many showed up. Differences between these two series are probably due to delays and errors in obtaining court data, and other bureaucratic problems. For our analysis, we use the numbers reported by the Department of

⁴ C&D 1996, page 158.

⁵ Arrests from Table 2, disposition percentages from Table 3.

Corrections, as that institution probably has a better ability, and a greater incentive, to correctly report the number of admissions and the number of inmates. These numbers are given in Table C.5.

Table C.5
Adult Prison Population⁶

Year	New	
	Admissions	Inmates
1990	39,495	94,586
1991	38,253	99,029
1992	40,158	105,910
1993	43,149	116,082
1994	41,582	121,493
1995	45,459	131,556
1996	46,465	142,750

SUMMARY OF DATA USED IN THE ANALYSIS

Putting the data together from the previous tables, Table C.6 summarizes all the counts used in the analysis of this chapter, Table C.7 the actual rates, and Table C.8 the projected rates.

Table C.6
Counts of inmates, adult population, and criminal justice events

Year	Inmates	Adult Population	Crimes	Arrests	Com-plaints	Convic-tions	Prison Admits
1990	94,586	20,027,633	1,017,665	213,394	173,024	139,668	39,495
1991	99,029	20,356,984	1,073,613	203,409	159,220	131,089	38,253
1992	105,910	20,661,120	1,092,832	210,365	177,455	147,811	40,158
1993	116,082	20,923,632	1,068,996	204,657	188,729	164,682	43,149
1994	121,493	21,193,571	1,011,663	202,568	174,178	147,449	41,582
1995	131,556	21,505,839	939,132	200,815	174,889	147,773	45,459
1996	142,750	21,825,735	828,649	186,792	155,331	129,301	46,465

⁶ C&D 1995, Table 47, page 164; C&D 1996, Table 47, page 166. C&D 1995, Table 44, page 160; 1996, C&D 1996, Table 44, page 162.

Table C.7
Actual Rates

Year	Inmates	Adult Population	Crimes		Com-plaints per Arrest	Convic-tions/Com-plaint	Admis-sions/Con-viction	Inmates per Admis-sion
			per 100,000 Adults	Arrests per 100 Crimes				
1990	94,586	20,027,633	5,081	20.97	0.81	0.81	0.28	2.39
1991	99,029	20,356,984	5,274	18.95	0.78	0.82	0.29	2.59
1992	105,910	20,661,120	5,289	19.25	0.84	0.83	0.27	2.64
1993	116,082	20,923,632	5,109	19.14			0.29	2.69
1994	121,493	21,193,571	4,773	20.02	0.86	0.85	0.28	2.92
1995	131,556	21,505,839	4,367	21.38	0.87	0.84	0.31	2.89
1996	142,750	21,825,735	3,797	22.54	0.83	0.83	0.36	3.07

Table C.8
Projected Rates

Year	Inmates	Adult Population	Crimes		Com-plaints per Arrest	Convic-tions/Com-plaint	Admis-sions/C on-viction	Inmates per Admis-sion
			per 100,000 Adults	Arrests per 100 Crimes				
1990	93,524	20,045,370	5,173	20.33	0.80	0.81	0.28	2.44
1991	100,121	20,340,441	5,183	19.81	0.81	0.82	0.28	2.53
1992	107,182	20,639,855	5,193	19.31	0.83	0.83	0.29	2.62
1993	114,742	20,943,676	5,203	18.82	0.84	0.85	0.29	2.72
1994	122,834	21,251,970	5,213	18.34	0.86	0.86	0.29	2.82
1995	131,498	21,564,802	5,223	17.88	0.88	0.87	0.29	2.93
1996	140,772	21,882,238	5,233	17.42	0.90	0.89	0.29	3.04

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