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“THREE STRIKES AND YOU’RE OUT”
THE IMPLEMENTATION AND IMPACT OF STRIKE LAWS

Submitted by

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Abstract

Over the past few years 24 states and Congress have passed legislation under the slogan of “Three Strikes and You’re Out.” As part of the general political thrust to mandate increasingly tougher prison terms for repeat offenders, this form of legislation seeks to ensure that habitual offenders receive the toughest sentence available to the state absent the death penalty — life imprisonment without the possibility of parole.

This report reviews the impact these laws have had on crime and the criminal justice system. Surprisingly, with the noted exception of California, there has been virtually no impact on the courts, local jails or state prisons. Nor does there appear to be an impact on crime rates. Even in California where the law was expected to have a major impact it appears that all of the projections were in error.

The report proffers that this form of legislation was carefully crafted to be largely symbolic. However, the gross errors in predicting the impact of these and other laws by some of the most prestigious researchers underscore how little we know about change within the criminal justice system. The common theme that emerges from this report is that the impact of three strikes has been less than anticipated, as the courts, and in particular the prosecutors, have taken steps to minimize the potential effects of the new laws.

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CHAPTER 1

THE THREE STRIKES AND YOU'RE OUT MOVEMENT

In 1993, an initiative was placed on the ballot in the state of Washington to require a term of life imprisonment without the possibility of parole for persons convicted for a third time of certain specified violent or serious felonies. This action was fueled by the tragic death of Diane Ballasiotes, who was murdered by a convicted rapist who had been released from prison. Shortly thereafter, Polly Klass was kidnaped and murdered by a California-released inmate, who also had an extensive prior record of violence. The rallying cry of "three-strikes-and-you're-out" caught on, not only with Washington and California voters, who passed their ballot measures by wide margins, but with legislatures and the public throughout the country. By 1997, 24 other states and the Federal government enacted laws using the "three-strikes-and-you're-out" phrase. In 1994, President Clinton received a long-standing ovation in his State of the Union speech when he endorsed three strikes as a federal sentencing policy.¹

The three strikes movement is the most recent anti-crime policy to sweep the United States. Such reforms have included the Scared Straight Shock Incarceration programs in the 1970's, boot camps, mandatory minimum sentencing for certain crimes (e.g., use of a gun, sell of drugs), and truth in sentencing.² These often short-lived campaigns have widespread appeal to a disenchanted public who, through the media, have perceived the criminal justice system as

¹Gest, Ted (1994, February 7). Reaching for a new fix to an old problem. *U.S. News & World Report*, p.9.

²Surette, Ray (1996). News from nowhere, policy to follow: Media and the social construction of "three strikes and you're out". In David Shichor and Dale K. Sechrest (Eds.), *Three strikes and you're out: Vengeance as public policy*. Thousand Oaks, Ca: Sage Publications.

overly lenient and incapable of protecting them from violent offenders. Highly publicized cases, where the courts or correctional officials have allowed violent and habitual offenders to be released from prison only to commit yet another violent crime, have fueled the public's appetite for harsher sentencing policies to correct a criminal justice system run amok.

The theoretical justification for such policies, and in particular, three strikes and you're out, is grounded in the punitive ideologies of deterrence, incapacitation, and/or just deserts. General deterrence is achieved by delivering swift, certain, and severe punishment (life imprisonment without parole) to habitual offenders in order to suppress the criminal tendencies of potential habitual criminals.³ Knowing that the next conviction will result in life imprisonment, the offender would weigh the consequences of committing another offense or live a crime free life to avoid such punishment. In order for this sequence of events to occur, two critical conditions must exist: (1) offenders must be well informed of the new sentencing policy; and (2) they must believe there is a high probability of arrest and conviction should one's criminal activities persist.

Incapacitation effects may be realized by accurately targeting habitual or career offenders who are unamenable to deterrence and rehabilitation, and must be permanently separated from society. This perspective was popularized by RAND's research in the 1970's and 1980's on habitual offenders. Peter Greenwood and Joan Petersilia were early advocates of sentencing

³ For a summary of this literature, see Gibbs, J.P. (1975). *Crime, punishment, and deterrence*. New York: Elsevier, and, Zimring, F.E., and Hawkins, G.J. (1973). *Deterrence: The legal threat in crime control*. Chicago: Chicago University Press.

reforms that would isolate and incapacitate habitual offenders.⁴ This perspective assumed that (1) the courts could readily identify the so called "career offender" and (2) the offender's career will continue unabated over time.

Both assumptions have been widely criticized. Previous studies have documented that the courts and social scientists have not yet been able to accurately identify the so-called rate offender without also punishing an equal or higher number of "false positives". In Fact, Greenwood's own, but less publicized research discredited his claim that career offenders can be identified or that they even exist. Second, reforms such as "three strikes" run counter to knowledge that criminals' careers are strongly impacted by age. As noted by the national panel on Criminal Careers:

From the perspective of incapacitation, prison capacity is used inefficiently if offenders are imprisoned beyond the time their criminal activity would have terminated if they were free on the street. Therefore, it is reasonable to ask whether "habitual-offender" laws, which mandate very long sentences, may result in incarceration of offenders well after they ceased to be serious risks (Blumstein et al., 1986, p.15).⁵

It should be added, here, that incapacitation effects of a three strikes law on crime rates must be viewed as long term if the goal is simply to extend incarceration. Assuming a portion of the targeted offenders are already being incarcerated, the added benefits are not realized until the offender's "normal" release date has been extended. For example, if the targeted group already serves 10 years, the crime reduction effects will not occur for 10 years after the bill's passage.

⁴Petersilia, J., Greenwood, P.W., and Lavin, M. (1978). *Criminal careers of habitual felons*. Washington, DC: National Institute of Law Enforcement and Criminal Justice, and, Greenwood, P.W., with Abrahamse, A. (1982). *Selective incapacitation*. (Report prepared for the National Institute of Justice), Santa Monica, CA:RAND.

⁵Blumstein, A., Cohen, J., Roth, J.A. and Visher, C. (Eds.). (1986). *Criminal careers and "career criminals"*. Washington, DC: National Academy Press.

The last possible justification for this policy is consistent with wide public and political appeal -- punishment or just deserts. As Shichor and Sechrest noted (1996), three strikes and you're out, in its purest form, is "vengeance as public policy." This ideology requires no empirical validation or justification. As Greenwood and his RAND colleagues (the same scholars who had advocated selective incapacitation as a viable sentencing policy), note in their analysis of the California three strikes law:

It is the "right thing to do." Aside from the savings and other effects, justice demands that those who repeatedly cause injury and loss to others have their freedom revoked. (Greenwood et al., 1996).

This paper examines this highly popular movement on three fronts. First, a review of the various three strikes laws passed by the states since 1993 is presented. Second, a close examination of the three strikes laws in California, Washington, and Georgia is presented. Lastly, a review of the impact of the three strike legislation on the courts, local jails, state prison systems, and the crime rates will be presented. This analysis will show, among other things, that only California passed a three strikes law that was designed to have a substantial impact on the criminal justice process.

CHAPTER 2

THE VARIOUS FORMS OF THREE STRIKES LEGISLATION

I. Diversity Among the States

As of 1996, 24 states and Congress had adopted some form of three strikes legislation. Table 1 summarizes the key provisions of these laws based on a national assessment completed in 1996.⁶ Although there are variations among the states in how they decided the rules of the three strikes laws, there are some common themes.

First, in terms of what constitutes a strike, the vast majority of states include on their list of “strikeable” offenses violent felonies such as murder, rape, robbery, arson, and assaults. Some states have included other nonviolent charges, such as:

- the sale of drugs in Indiana;
- any drug offense punishable by imprisonment for more than five years in Louisiana;
- the sale of drugs to minors, burglary, and weapons possession in California;
- escape in Florida;
- treason in Washington; and
- embezzlement and bribery in South Carolina.

There are also variations in the number of strikes needed to be out, with two strikes bringing about some sentence enhancement in eight states.⁷ California’s law is unique in that it allows for any felony to be counted if the offender has a prior initial conviction for its list of strikeable crimes.

The laws also differ regarding the length of imprisonment that is imposed when the

⁶John Clark, James Austin, and D. Alan Henry, “Three Strikes and You’re Out: A Review of State Legislation,” *Research in Brief*, U.S. Department of Justice, National Institute of Justice, September 1997.

⁷The eight states are Arkansas, California, Georgia, Kansas, Montana, Pennsylvania, South Carolina, and Tennessee.

offender “strikes out,” although most are designed to incapacitate the offender for long periods of time. For example, mandatory life sentences with no possibility of parole are imposed when “out” in Georgia, Montana, Tennessee, Louisiana, South Carolina, Indiana, New Jersey, North Carolina, Virginia, Washington, and Wisconsin.⁸ In California, Colorado, and New Mexico parole is possible after an offender is “out,” but only after a significant period of incarceration. In New Mexico, such offenders are not eligible for parole until after serving 30 years, while those in Colorado must serve 40 years before parole can be considered. In California, a minimum of 25 years must be served before parole eligibility.

Connecticut, Kansas, Arkansas, and Nevada have recently enacted laws enhancing the possible penalties for multiple convictions for specified serious felonies but leave the actual sentence to the discretion of the court. Several states, Florida, North Dakota, Pennsylvania, Utah, and Vermont, provide ranges of sentences for repeat offenders that can extend up to life when certain violent offenses are involved.

II. Comparison of the New Laws with Pre-Existing Sentencing Provisions

To understand the potential symbolic nature of these laws, one must consider how each state sentenced repeat violent offenders *prior to* the enactment of three strikes. In other words, did the new legislation successfully close a loophole in the state’s criminal sanctioning authority as hoped, or was the new law in effect targeting a population already covered by existing laws?

In general, it was the latter condition that existed in all of the states. As shown in Table

⁸ Virginia law does provide for the release of prisoners 65 years of age and older who have served a specified period of imprisonment, and a North Carolina law, separate from the three strikes statute, entitles those sentenced to life without parole to a review of their sentences after serving 25 years.

2, provisions were already in place to enhance penalties for repeat offenders in all 24 of the three strike states before the passage of the latest three-strike legislation. In four of these states, Louisiana, South Carolina, Tennessee, and Maryland the mandatory penalty for a person found to be a repeat violent offender — life in prison without the possibility of parole — already existed and remained unchanged, but the definition of such an offender was expanded under the new legislation.

The definition of a repeat offender was expanded in two additional states, with the penalties remaining the same (Vermont and North Dakota). In at least one state the definition of a repeat violent offender remained essentially the same (third conviction for a violent offense), but the punishment was enhanced. Virginia moved from providing no parole eligibility for those convicted of three separate violent felonies, no matter the sentence, to mandating life sentences with no parole eligibility for this group. In some states, the changes involved both, expanding the definitions of repeat violent offenders, and enhancing the sentences. For example, the habitual offender statute in effect in California prior to the enactment of the three strikes law mandated a sentence of life imprisonment with first parole eligibility after 20 years for persons convicted for the third time of a listed violent offense where separate prison terms were served for the first two convictions. It also provided that upon the fourth conviction for such a felony in which three separate prison terms had been served, the offender was to be sentenced to life without parole.

In summary, from a national perspective the “three strikes and you’re out” movement was largely symbolic. It was not designed to have a significant impact on the criminal justice system. The laws were crafted so that in order to be “struck out” an offender would have to be convicted two or more, often three times for very serious, but rarely committed crimes. Most states knew

that very few offenders have more than two prior convictions for these types of crimes. More significantly, all of the states had existing provisions which allowed the courts to sentence these types of offenders for very lengthy prison terms. Consequently, the vast majority of the targeted offender population was already serving long prison terms for these types of crimes. From this perspective the three strikes law movement is much to do about nothing and is having virtually no impact on current sentencing practices. For example, in Washington, the state that started the three strikes movement, only 115 offenders were admitted to the Washington State prison system on their third strike since 1993.⁹ The Federal Bureau of Prisons reports that no inmates have been sentenced under the three strikes law as of 1998. In Georgia, a two-strike state, Fulton County (Atlanta) reports that less than 10 cases are being prosecuted under the new law per year.¹⁰ The only noted exception to the national trend is California which has sentenced nearly 40,000 offenders to prison under its three strikes law.

The remainder of this report, focuses on the three states of Washington, California and Georgia. Each state has approached the three strikes reform using very different statutory provisions. By implementing very different forms of three strikes legislation each of these states has had very different results, in terms of the impact on the courts, local corrections, state corrections and public safety. However, one common theme that will emerge throughout the entire report is that the impact has been less than anticipated, as the courts, and in particular, the prosecutors, have taken steps to minimize the potential effects of the new laws.

⁹Washington Department of Corrections.

¹⁰ Austin, J., Clark, J., Henry, D.A., and Hardyman, P. (Forthcoming). The Impact of Three Strikes and You're Out in Three States. Washington, DC: National Institute of Justice.

TABLE 1

VARIATIONS IN STATE STRIKE LAWS

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

Table 1 continued...

State	Strike Zone Defined	Strikes Needed To Be "Out"	Meaning of "Out"
Louisiana	Murder, attempted murder, manslaughter, rape, armed robbery, kidnaping, any drug offense punishable by more than five years, any felony punishable by more than 12 years.	Three	Mandatory life in prison with no parole eligibility.
	Any four felony convictions if at least one was on the above list.	Four	Mandatory life in prison with no parole eligibility.
Maryland	Murder, rape, robbery, first or second degree sexual offense, arson, burglary, kidnaping, car jacking, manslaughter, use of a firearm in felony, assault with intent to murder, rape, rob, or commit sexual offense.	Four, with separate prison terms served for first three strikes.	Mandatory life in prison with no parole eligibility.
Montana	Deliberate homicide, aggravated kidnaping, sexual intercourse without consent, ritual abuse of a minor.	Two	Mandatory life in prison with no parole eligibility.
	Mitigated deliberate homicide, aggravated assault, kidnaping, robbery.	Three	Mandatory life in prison with no parole eligibility.
Nevada	Murder, robbery, kidnaping, battery, abuse of children, arson, home invasion.	Three	Life without parole: with parole possible after 10 years; or 25 years with parole possible after 10 years.
New Jersey	Murder, robbery, car-jacking.	Three	Mandatory life in prison with no parole eligibility.
New Mexico	Murder, shooting at or from a vehicle and causing harm, kidnaping, criminal sexual penetration, armed robbery resulting in harm.	Three	Mandatory life in prison with parole eligibility after 30 years.
North Carolina	47 violent felonies; separate indictment required finding that offender is "violent habitual offender."	Three	Mandatory life in prison with no parole eligibility.
North Dakota	Any Class A, B, or C felony.	Two	If second strike was for Class A felony, court may impose an extended sentence of up to life; if Class B felony, up to 20 years; If Class C felony, up to 10 years.
Pennsylvania	Murder, voluntary manslaughter, rape, involuntary deviate sexual intercourse, arson, kidnaping, robbery, aggravated assault.	Two	Enhanced sentence of up to 10 years.
	Same offenses.	Three	Enhanced sentence of up to 25 years.

Table 1 continued...

State	Strike Zone Defined	Strikes Needed To Be "Out"	Meaning of "Out"
South Carolina	Murder, voluntary manslaughter, homicide by child abuse, rape, kidnaping, armed robbery, drug trafficking, embezzlement, bribery, certain accessory and attempt offenses.	Two	Mandatory life in prison with no parole eligibility.
Tennessee	Murder, especially aggravated kidnaping, especially aggravated robbery, aggravated rape, rape of a child, aggravated arson. Same as above, plus rape, and aggravated sexual battery.	Two, if prison term served for first strike. Three, if separate prison terms served.	Mandatory life in prison with no parole eligibility. Mandatory life in prison with no parole eligibility for first two strikes.
Utah	Any first or second degree felony.	Three	Court may sentence from five years up to life.
Vermont	Murder, manslaughter, arson causing death, assault and robbery with weapon or causing bodily injury, aggravated assault, kidnaping, maiming, aggravated sexual assault, aggravated domestic assault, lewd conduct with child.	Three	Court may sentence up to life in prison.
Virginia	Murder, kidnaping, robbery, car jacking, sexual assault, conspiracy to commit any of above.	Three	Mandatory life in prison with no parole eligibility.
Washington	Charges listed in Table 3.	Three	Mandatory life in prison with no parole eligibility.
Wisconsin	Murder, manslaughter, vehicular homicide, aggravated battery, abuse of children, robbery, sexual assault, taking hostages, kidnaping, arson, burglary.	Three	Mandatory life in prison with no parole eligibility.

TABLE 2

COMPARISON OF NEW STRIKE LAWS
WITH PRE-EXISTING SENTENCING PROVISION

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

Table 2 continued...

State	Features of New Strike Legislation	Year Implemented	Features of Pre-Existing Sentencing Laws
Maryland	Life without parole for fourth violent felony conviction for which separate prison terms were served for the first three.	1994	Same law, except that car jacking and armed car jacking were not on the list of offenses receiving this sentence.
Montana	Mandatory life without parole for second conviction for certain offenses and third conviction for other offenses.	1995	Persistent offender statute allowing extended sentence of five to 100 years, to be served consecutively to any other sentence, for person convicted of any felony with one or more prior felony convictions.
Nevada	Range of options for enhancing sentence upon third conviction for violent felony.	1995	Same options, but upon conviction for violent felony if three prior felony convictions of any kind.
New Jersey	Mandatory life without parole for third conviction for certain violent felonies.	1995	Rarely invoked "persistent offender" provision allowing sentence of one degree higher than the conviction offense upon third felony conviction for first, second, or third degree felony.
New Mexico	Mandatory life with parole eligibility after 30 years for third violent felony conviction.	1994	Mandatory increased sentence of one year upon second felony conviction, of four years upon third, and of eight years upon fourth or more.
North Carolina	Mandatory life without parole for third conviction for violent offense.	1994	"Habitual Criminal" statute mandating an additional consecutive term of 25 years upon third conviction for any felony, with the court specifying minimum number of years to be served before parole eligibility.
North Dakota	Enhanced sentences for second conviction for Class A, B, or C felony.	1995	Enhanced sentences for second conviction for only Class A or B felony.
Pennsylvania	Mandatory minimum enhanced sentence of 10 years for second conviction for violent crimes; and 25 years for third such conviction.	1995	Mandatory minimum enhanced sentence of five years for second or subsequent conviction for certain specified crimes of violence.
South Carolina	Mandatory life without parole for second conviction for specified felonies.	1995	Mandatory life without parole for third conviction for same specified felonies.
Tennessee	Mandatory life without parole for second conviction for designated violent felonies; same for third conviction for other violent felonies.	1995	Mandatory life without parole for third violent felony conviction.

Table 2 continued...

State	Features of New Strike Legislation	Year Implemented	Features of Pre-Existing Sentencing Laws
Utah	Second and third degree felonies sentenced as first degree felons, and first degree felons not eligible for probation if have two prior convictions for any felonies and a present conviction for a violent felony.	1995	Second and third degree felonies receive enhanced sentence of five years to life if have two prior convictions at least as severe as second degree felonies.
Vermont	Up to life with no probation eligibility or suspended sentence and no early release for third conviction for violent crimes; up to life for fourth felony conviction of any kind.	1995	Up to life for fourth felony conviction.
Virginia	Mandatory life without parole upon third conviction for specified violent felonies.	1994	No parole eligibility if convicted of three specified violent felonies separate violent felonies or drug distribution charges.
Washington	Mandatory life without parole upon third conviction for specified violent felonies.	1993	Number of prior convictions factored into Offender Score on state's Sentencing Guidelines.
Wisconsin	Mandatory life without parole upon third conviction for specified serious offenses.	1994	For repeat felony offenders, up to ten years can be added to sentences of ten years or more; six years can be added to sentences of one to ten years.

CHAPTER 3

A CLOSER LOOK AT THE THREE STRIKES LAWS IN WASHINGTON, CALIFORNIA, AND GEORGIA

I. Introduction

As suggested above, just what constitutes the legislative game of “three strikes and you’re out” varies dramatically from state to state. While most of the states have adopted what must be viewed as symbolic laws, in that they were never designed to alter traditional sentencing practices, a handful have implemented laws which were intended to change sentencing practices in a meaningful and punitive manner. In this chapter, we examine in greater detail the laws adopted by three states (California, Georgia, and Washington). Washington state, which pioneered the three strikes movement, represents most states, in that its law produced a rather narrow strike zone which required three strikes. The other two states either broaden the strike zone (California) and/or lowered the threshold to a two-strike criteria. Table 3 summarizes the strikeable offenses for each of these states. California has the greatest number of possible strikes whereas Washington state and Georgia’s list is far more limited. However, there are other provisions associated with each law that have important consequences on how each law was implemented.

II. The Traditional Three Strikes Law - Washington State

Officially entitled the “Persistent Offender Accountability Act,”¹¹ the Washington strike law requires that any person convicted for the third time of an offense listed in Table 3 is to receive a mandatory sentence of life in prison without the possibility of parole.

¹¹Revised Code of Washington §9.94A.

Since only a small percentage of offenders are likely to have three convictions involving the strikeable offenses, these offenders would have received substantial sentences under pre-existing repeat offender sentencing laws. Thus, the impact of the law has been barely felt at the state and local levels. Only 97 third strikers were sentenced to mandatory life terms in the first three-and-one-half years since the law was in effect.

Despite its limited use, the strike laws have been challenged in court on several grounds. In a trio of cases, the Washington Supreme Court upheld the constitutionality of the law, rejecting claims that it violated the “separation of powers” by removing discretion from prosecutors and judges, that it constituted cruel and unusual punishment by mandating life sentences with no possibility of parole, and that it violated equal protection and due process provisions of the state and federal constitutions.¹²

III. Widening the Strike Zone and Lowering the Count to Two Strikes -- California

There are two, nearly identical versions of the California strike law. The first, found in the California Penal Code §667(b)-(j), was passed by the legislature and signed into law by the governor on March 7, 1994. The second, found in Penal Code §1170.12, was enacted by voters as Proposition 184 on November 8, 1994.

The legislative history of this bill requires some elaboration. The legislative version of the law was initially introduced in the California legislature on March 1, 1993, but no action was taken on the bill during the 1993 session. Meanwhile, after adjournment of the 1993 legislative session, a petition began to circulate among voters to include a proposition on the November 1994 ballot that would, by voter initiative, enact the three strikes law. While the petition was

¹²*State v. Thorne*, Wash SupCt, No. 63413-1; *State v. Manussier*, Wash SupCt, No. 61906-9; and *State v. Rivers*, Wash SupCt, No. 63412-2.

circulating, a three-strike bill was reintroduced in the 1994 legislative session. This was done in an attempt to circumvent the voters' initiative which was seen as more difficult to amend if passed. Under California law, voter initiatives can only be amended by a vote of the electorate or by two-thirds vote of each house of the legislature.

By the time the bill had passed, enough signatures had been collected to qualify Proposition 184 for the November ballot. The only difference between the two versions of the law was that the voter initiative did not state explicitly, as does the legislature's version, that juvenile adjudications and out-of-state prior convictions are to be counted as strikes.

Two provisions in the California law¹³ make it one of the most severe in the country. First, the law provides for a greatly expanded "strike zone," or charges that constitute a strike. The strike zone for the first two strikes, listed in Table 1, is similar to that in other states – serious and violent felonies. The third strike in California, however, is *any* felony – a provision found in no other state's strike laws. Persons with two or more convictions for qualifying offenses, who are convicted of a third felony, of any kind are to be sentenced to an indeterminate term of life in prison. The minimum term is calculated as the greater of: (1) three times the term otherwise provided for the current conviction; (2) 25 years; or (3) the term provided by law for the current charge plus any applicable sentence enhancements.¹⁴

¹³Unless specific reference is being made to the legislative version of the law or the voter initiative version, any discussion of the law is meant to apply to the provisions that both versions share.

¹⁴California law provides for several sentence enhancements, based on either the circumstances of the offense or the offender's prior criminal record. For example, any person convicted of a serious felony who has prior convictions for serious felonies is to receive a five-year sentence enhancement for each such prior conviction. This enhancement is added on after the strike sentence has been calculated, and must be served consecutively. California Penal Code §667(a).

Second, the California law contains a two-strike penalty in which a person convicted of *any* felony who has one prior conviction for a strikeable offense is to be sentenced to double the term provided for the offense, and must serve at least 80 percent of the sentence before being released from prison. Under California's criminal code, non-strike inmates typically serve less than half their sentence. Only six other states have two strikes provisions, all of which limit the offenses that trigger a strike penalty to those that are serious or violent.¹⁵

The intent of the legislature in enacting the law is stated explicitly in the statute that its purpose is "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."¹⁶ The law was designed to limit the discretion of system officials by prohibiting plea bargaining.¹⁷ Also, if the offender is to be sentenced as a second or third striker, the law mandates that the court may not grant probation, suspend the sentence, place the offender on diversion, or commit the offender to any facility other than a state prison.¹⁸

Even with these explicitly stated limitations on discretion, the law conveys a great deal of authority to the prosecutor to determine the ultimate sentence that the offender will receive if convicted. While the law requires that the prosecution provide evidence of each prior conviction for a qualifying offense, it permits the prosecutor to discount a prior conviction for a qualifying offense if there is insufficient evidence to prove the prior conviction, or if the prosecutor

¹⁵Clark, et al., *supra* note 2.

¹⁶Penal Code §667(b).

¹⁷Penal Code §667(g).

¹⁸Penal Code §667(c)(2) and (c)(4).

believes that a two or three strike sentence would not be "in the furtherance of justice."¹⁹ It is this latter clause that allows individual district attorneys throughout the state of California to establish their own policies on how the law should be applied.

At the state level, attention was focused on the potential impact of the new law on the prison system. The California Department of Corrections (CDC) projected that the prison inmate population would more than double in five years from its 1993 level of 115,534 to 245,554 by 1999 – with 80,000 of these additional inmates being second or third strikers. The "stacking effect" of so many prisoners, who would have to remain in prison by virtue of the law would result in a prison population of approximately 500,000 inmates by the year 2035, of which half would be second and third strikers.²⁰ RAND projected that the prison population would quickly rise to over 350,000 by the year 2000 and eventually plateau at nearly 450,000.²¹

At first glance, it would appear that California's law has indeed had a major impact on the criminal justice system and the prison system. As of 1998, over 40,000 offenders have been sentenced to California's prisons under two or three strikes provision. However, as will be shown below, the projected effects of the law have not been realized as the state's local criminal justice system (the courts in particular) have found ways to circumvent the law and use it along local political and organizational interests.

IV. Another Version of the Two Strikes Law with a First Strike Provision -- Georgia

In November 1994, voters in Georgia approved by an 81 percent to 19 percent margin a ballot measure amending the state's sentencing laws to require that any person convicted on two

¹⁹Penal Code §667(f)(2).

²⁰California Department of Corrections.

²¹Greenwood et al. (1996).

occasions for the following crimes would be sentenced to life imprisonment without the possibility of parole: murder, armed robbery, kidnaping, rape, aggravated child molestation, aggravated sodomy, and aggravated sexual battery.

The law took effect January 1, 1995²² and supplemented pre-existing Georgia law that contains the following two provisions for repeat offenders:

- Upon the second conviction for any felony, the offender may, at the discretion of the judge, be sentenced "to undergo the longest period of time prescribed for the punishment of the subsequent offense" for which the offender is convicted.
- Upon the fourth conviction for any felony, the offender must serve the maximum time imposed, and not be eligible for parole until that maximum time has been served.

The law was also changed to require that persons convicted of any one of the strikeable offenses for the first time would be sentenced to a mandatory minimum prison term of ten years, with no possibility of parole or early release, thus creating a one-strike provision.

The Georgia law differs from California's two strikes provision in at least four ways:

- it includes fewer offenses as strikes;
- it requires that all strikes be limited to the seven major offenses listed above, as opposed to California where any subsequent felony conviction can count as a strike;
- the second strike in Georgia leads to life imprisonment without parole while the second strike in California results in doubling the presumptive sentence and limiting the amount of good-time credit an inmate can earn; and
- the Georgia law has a mandatory minimum penalty for first strikers.

With respect to Washington, Georgia's law is different in that the life sentence is imposed

²²Official Code of Georgia Annotated §17-10-7. (b)(2).

after a second strike rather than after a third strike, but the list of strikeable offenses in Georgia is also much shorter.²³

Soon after the law was adopted, litigation was filed challenging the constitutionality of the statute, claiming that it constitutes cruel and unusual punishment, and that it violates due process and equal protection requirements. On June 3, 1996, the Georgia Supreme Court upheld the law against these challenges.²⁴

²³Relative to other states, the Georgia law is similar to those enacted in 1995 in Tennessee, South Carolina, and Montana in that they all require life imprisonment without parole for the second conviction for specified violent offenses.

²⁴*Ortiz v. The State*, Supreme Court of Georgia, S96A0585, June 3, 1996.

TABLE 3
WASHINGTON, CALIFORNIA, AND GEORGIA STRIKEABLE OFFENSES

Washington	California	Georgia
Any class A felony	Murder	Murder
Conspiracy or solicitation to commit class A felony	Voluntary Manslaughter	Rape
Assault in the second degree	Rape	Armed Robbery
Child molestation in the second degree	Lewd Act on Child Under 14	Kidnaping
Controlled substance homicide	Continual Sexual Abuse of Child	Aggravated Sodomy
Extortion in the first degree	Forcible Penetration by Foreign Object	Aggravated Sexual Battery
Incest against a child under age fourteen	Sexual Penetration by Force	Aggravated Child Molestation
Indecent liberties	Forcible Sodomy	
Kidnaping in the second degree	Forcible Oral Copulation	
Leading organized crime	Robbery	
Manslaughter in the first or second degree	Assault with a Deadly Weapon on Peace Officer	
Promoting prostitution in the first degree	Assault with a Deadly Weapon by Inmate	
Rape in the third degree	Assault with Intent to Rape or Rob	
Robbery in the second degree	Any Felony Resulting in Bodily Harm	
Sexual exploitation	Arson Causing Bodily Injury	
Vehicular assault	Exploding Device with Intent to Injure or Murder	
Vehicular homicide when caused by impaired or reckless driver	Kidnaping	
Any other class B felony with sexual motivation	Mayhem	
Any other felony with deadly weapon	Arson	
	Residential Burglary	
	Grand Theft with Firearm	
	Drug Sales to Minors	
	Any Felony with Deadly Weapon	
	Any Felony where Firearm Used	
	Attempt to commit any of these offenses	

Prepared by Pretrial Services Resource Center.

CHAPTER 4

RESEARCH METHODOLOGY

I. Introduction

This study was originally intended to examine how California and Washington state implemented their very different versions of the three strikes law (a process evaluation), and the effects these laws had on the courts, local corrections and the state prison systems. However, it became clear that the Washington strike law, which was written much more narrowly than the California law, was having no impact on the court and correctional systems in Washington. In fact, as of the end of 1998, less than 150 offenders had been sentenced to prison as strikers in Washington, compared to nearly 40,000 in California. As will be shown later on in this report, because California's impact has been largely associated with its two strikes provision, the project was expanded to include another state with a two strikes component and one that was not located on the west coast. After a careful review of the various states that had adopted two strikes initiatives, Georgia was selected as the third state to be evaluated because of its geographic location and its implementation of the law.

In this chapter, a brief description of the research methods used to evaluate Georgia and California are presented. The state of Washington was not included in the analysis because only a limited number of offenders have been sentenced under the three strikes law. The process evaluation relied upon an array of interviews (with court officials, prosecutors, public defendants, judges, and jail officials) and case processing data that could be used to describe how the courts interpreted and responded to the task of implementing the new laws. Impact data were limited to pre and post law comparisons in an effort to determine how each state's law altered the

criminal court process and, ultimately the correctional system and crime rate trends, as well.

II. Impact on the Courts and Local Corrections

One hypothesis concerning the impact of the three strikes law was that it would result in considerable delays in the processing of felony cases through the court system ,as defendants charged with strikes would having nothing to lose, slow the process down by demanding trials which would clog the court system. It was also anticipated that the laws would result in jail overcrowding as pretrial detainees would remain in custody more frequently and for longer periods of time. Some jail officials predicted that the laws would increase the rate of staff assaults and escapes, as inmates would become more brazen in their institutional behavior once they realized they would be sentenced to life if convicted.

There was also a concern that the laws, contrary to the promise of providing more uniformity in sentencing practices would actually increase disparity. This could occur given the enormous discretionary powers provided to prosecutors on whether to charge a defendant with a two or three strikes provision.

To determine whether this impact was uniform in counties across each state, several counties in California and Georgia were selected for in-depth analysis (San Francisco County, Kern County, and Los Angeles County in California, and Fulton County, DeKalb County, and Chatham County in Georgia). In both states, the counties selected were intended to reflect the diversity in both state's population and criminal justice policies. For each of these six counties, several site visits were made by the research staff to conduct interviews with local criminal justice officials and to collect data on sampled cases that could be used to make pre and post three strikes law comparisons.

A. *California Court Data*

In California, Los Angeles County, with a population of 9,369,800, or 29 percent of the population of the entire state, is over three times larger than the next largest county.

Additionally, 32 percent of all superior court felony filings statewide originated from Los Angeles County – significantly more than any other county. Since the impact of the law on the smallest counties would likely be much less severe, two mid-sized counties were sought. Both Kern County and San Francisco County fit this description. Kern County has a population of 624,700, ranking it 14th in the state in population size, and San Francisco County ranks 11th in the state with 755,300 residents. In fiscal year (FY) 1996/97, 2.7 percent of the felony filings in the state originated from Kern County, and 2.2 percent from San Francisco.

A second criterion that was used in the selection of the California counties was how the law was being applied. Early reports from California suggested that prosecutors in various counties were taking different approaches to applying the law. Thus, to best test the impact various applications of the law had on local courts and corrections, it was necessary to select at least one county that had a different approach to applying the law. From published newspaper reports, it was discovered that the district attorney in San Francisco had implemented a policy of selective use of the law, applying it only in the worst cases. In fact, he had expressed his intended policy during his campaign for the office of district attorney.²⁵ On the other hand, the policies of the district attorney in Kern County – who was widely regarded as one of the law's chief backers statewide – and the Los Angeles County district attorney, were to apply the law in

²⁵“Hallinan Limits ‘3 Strikes’ to Violent Crime.” *The San Francisco Recorder*, January 17, 1996.

every case that was eligible.

To augment the interviews and review of available data from Los Angeles, a sample was drawn of cases coming into the system from a period two years before the law took effect and two months after its enactment. Two steps were taken in drawing the sample. First, all felony cases filed in the Municipal Courts in Los Angeles County over a randomly selected five-day period in the month of May in 1994 (before the law took effect) and in 1996 (after the law took effect) were identified. Second, from that list, the final sample list of all defendants who were eligible based on their past criminal history and present charge as second or third strikers were identified. The sample of cases from the period before the law took effect was made up of cases that would have been two or three strike cases had the law been in effect at that time. These cases were identified as such by an assistant district attorney.

The baseline sample – cases that would have been eligible for two or three strike penalties had the law been in effect at the time – was comprised of 151 cases (Table 4). Of these, 112 were potential second strike cases, and 39 were potential third strike cases. The study sample – actual strike cases – numbered 162, 113 were second strike cases, and 49 were third strike cases.

These cases were tracked from the point of arrest until the point of final disposition, focusing on bail decisions, charging decisions, type of dispositions, time to disposition, and sentencing decisions.

TABLE 4

LOS ANGELES BASELINE AND STRIKE SAMPLE

	Second Strikers	Third Strikers	Total
1994 - baseline group	112	39	151
1996- study group	113	49	162

B. Georgia Court Data

In Georgia, since less strikers were anticipated due to the much shorter list of strikeable offenses – indeed many smaller counties could expect a strike case to be a rare event, particularly a second strike case – it was believed that targeting the three largest counties in the state was the only viable option. According to Georgia Department of Correction data, Fulton County, DeKalb County, and Chatham County rank in the top three (in that order) of sending inmates to the state prison system.

Similar to California’s county level data, before and after samples of strike cases were drawn from Fulton, DeKalb and Chatham Counties, but the steps taken to identify the samples differed. The Georgia Bureau of Investigation provided a list of all defendants charged with any one of the seven strikeable offenses in all three counties during the last six months of 1994 and 1996 (see Table 5).

The sample list in DeKalb and Chatham Counties constituted all cases filed during these time periods, minus those that were voided.²⁶ In DeKalb County, the baseline sample (1994) was comprised of 119 cases, 115 of them were defendants charged with their first strikes, and four of them were charged with their second strike. The study sample (1996) is made up of 129 cases.

²⁶Cases were voided from the sample for two reasons. Upon investigating the cases, it was found that some involved charges that were not strikeable offenses; i.e., the charge may have been attempted armed robbery instead of armed robbery, or sexual battery rather than aggravated sexual battery. In other instances, the cases that appeared on the list could not be located in the court’s computer systems. This was particularly a problem in DeKalb County, where a large number of cases were voided.

126 of them first strikers, and three of them second strikers. In Chatham County, the baseline sample was made up of 84 cases, 80 of them first strikers and four of them second strikers. The study sample has 91 cases, 84 of them first strikers, and seven of them second strikers.

In Fulton County, where the volume of cases coming into the system is substantially higher than in the other two counties, the samples were drawn by randomly selecting 150 strike cases from the list of all those entering the system in the last six months of 1994 and 1996. As Table 5 shows, there were 335 strike cases filed in Fulton County during the last six months of 1994, and 347 cases during the same period in 1996. Minus the voided cases, the baseline sample in Fulton County has 136 cases, and the study sample is comprised of 137 cases. Table 6 breaks down the sample into first and second strikers in each of the counties. As with the Los Angeles County sample, cases from the three Georgia counties were tracked from arrest to final disposition.

III. Impact on State Prison Systems

The second level of impact examined the effects of the three strikes laws on the correctional systems of California, Washington, and Georgia. Prior to the enactment of the law in both states, there was considerable concern that the laws could greatly increase the state prison populations. The correctional system impact analysis focused upon:

- the accuracy of the prison population growth assumptions and estimates;
- the size and attributes of the state correctional population sentenced under the laws; and
- the short- and long-term changes in the administrative and operational processes of state correctional facilities resulting from the presence of the strike populations.

TABLE 5
SAMPLE SELECTION OF CASES WITH STRIKE CHARGES

County	Defendants	Sample Selection Method	Voided Cases	Final Sample Size
DeKalb				
1994	173	100% of all cases	54	119
1996	209	100% of all cases	80	129
Chatham				
1994	106	100% of all cases	22	84
1996	94	100% of all cases	3	91
Fulton				
1994	335	Random selection of 150 cases	14	136
1996	347	Random selection of 150 cases	13	137
Totals	1,264		186	696

TABLE 6
GEORGIA COUNTIES' STRIKE SAMPLE

	First Strikers	Second Strikers	Total
DeKalb County			
1994 - baseline group	115	4	119
1996 - study group	126	3	129
Chatham County			
1994 - baseline group	80	4	84
1996 - study group	84	7	91
Fulton County			
1994 - baseline group	128	8	136
1996 - study group	128	9	137
Totals	661	35	696

To assess the impact of the laws on the state correctional systems, both qualitative and quantitative data were collected from multiple sources within the departments of corrections. In each state, individual level data were secured for all inmates admitted to prison, as either a three, or two strike case. These data included demographic information, current offense, and classification data and were used to both profile and monitor the number and types of offenders sentenced under the law. Interviews were also conducted with administrative, supervisory, and line level staff. Through individual interviews and focus groups, project staff solicited state officials' perceptions of the law's impact on the department's fiscal, operational, and planning processes.

IV. Impact on Crime Rates

The third level of impact examined the effect of the law on reported crime rates. In order to make this assessment we compared pre and post three strikes crime rate trends between states that had adopted three strike laws, and those that had not. All this was done while attempting to control, as best as possible, for pre three strikes crime rates and the size of a state.

The California Crime Index (CCI) presents data on the number of reported crimes per 100,000 residents for each of California's 58 counties. The Uniform Crime Report (UCR) presents crime rate data for the United States, broken down by state and local jurisdictions. These data were used to compare recent crime trends in states with strike laws against states without strike laws.

Finally, within California, interviews were conducted with inmates who had been incarcerated under the California law. Six institutions were identified as interview sites from among the 32 CDC institutions. Institutions were selected based upon the number of strikers

within the facility and location (California Institution for Women, California Institution for Men, California Rehabilitation Center for Women, California Rehabilitation Center, San Quentin, and California State Prison at Lancaster). A sample of 54 inmates sentenced under the California strike law, who were housed in these six institutions as of February 1997 were selected randomly. The sample of strikers was stratified by sentence type (two strikers versus three strikers), offense category (violent, property, drug, and other), and gender. Because several inmates selected in the random sample were unavailable for interviewing, had been transferred to other facilities, or were making court appearances,²⁷ only 32 inmates were interviewed (17 second strikers and 15 third strikers). Despite the low sample numbers, the demographic and criminal offense characteristics of the sample were similar to the original 54 randomly selected inmates and the entire universe of two and three strikers.²⁸

²⁷The largest portion of the "refusals" was from California State Prison at Lancaster (CSP-LA). This was primarily due to the institution's procedures for notifying the inmates about the study and obtaining their consent to participate. At CSP-LA, the strikers selected were notified of the study via a memorandum from the CDC and instructed to submit a signed research consent form to the community resources coordinator if they were interested in participating. Nearly half did not respond to the memorandum. In contrast, only two inmates refused to be interviewed at the other facilities. At those facilities, project staff were permitted to personally explain the study and the purpose of the interview to potential interviewees. The data suggest that our sample of interviewees was representative of the original random sample and the population of Strikers within CDC. Because we purposely over sampled for females, our sample differed from the CDC striker population with respect to gender.

²⁸Each inmate was individually interviewed without CDC staff present and was assured that the information provided would remain confidential and would only be used for research purposes. Upon consent of the inmate and the local facility, the interview was tape recorded to facilitate review and analysis of the data. The interviews averaged one hour in length, ranging from 30 to 90 minutes. A standard interview protocol was used for each interview (see Appendix A). None of the strikers refused to have the interview taped recorded. However, three of the six institutions did not allow tape recorders to be brought into the facility and could not provide access to a CDC portable recorder.

CHAPTER 5

IMPACT ON THE COURTS

I. The California Experience

A. Legal Challenges

The California law has generated much publicity for the harsh sentences that have been imposed for offenses that are portrayed as minor. Likewise, the California law has produced a great deal of litigation in the California appellate courts.²⁹ Among the many constitutional issues the courts have had to address are: whether the law is unconstitutionally vague,³⁰ whether the sentences required by the law constitute cruel and unusual punishment,³¹ whether requiring strike offenders to serve 80 percent of their sentences through limitation on good time credits that do not extend to non-strike offenders is a violation of equal protection,³² and whether counting as a strike a prior conviction that occurred before the enactment of the law violates ex post facto constitutional provisions.³³ On each of these issues, the courts have ruled that the law meets state

²⁹These cases are compiled and summarized in: Judge J. Richard Couzens, *The Three Strikes Sentencing Law*, Placer County Superior Court, Auburn, CA, 1997.

³⁰*People v. Sipe*, 36 Cal.App.4th 468; *People v. Hamilton*, 40 Cal.App.4th 1615; *People v. Kinsey*, 40 Cal.App.4th 1621; and *People v. Askey*, 49 Cal.App.4th 381.

³¹*People v. Ayon*, 46 Cal.App.4th 385; *People v. Cartwright*, 39 Cal.App.4th 1123; *People v. Askey*, 49 Cal.App.4th 381; *People v. Bailey*, 37 Cal.App.4th 871; *People v. Campos*, 38 Cal.App.4th 1669; *People v. Cooper*, 43 Cal.App.4th 815; *People v. Diaz*, 41 Cal.App.4th 1424; *People v. Gore*, 37 Cal.App.4th 1009; *People v. Ingram*, 40 Cal.App.4th 1397; *People v. Kinsey*, 40 Cal.App.4th 1621; *People v. Patton*, 40 Cal.App.4th 413; *People v. Reese*, 42 Cal.App.4th 1113; *People v. Rodriguez*, 44 Cal.App.4th 583; and *People v. Ruiz*, 44 Cal.App.4th 1653.

³²*People v. Cooper*, 43 Cal.App.4th 815; *People v. Applin*, 40 Cal.App.4th 404; *People v. Brantley*, 40 Cal.App.4th 1538; *People v. Kilborn*, 40 Cal.App.4th 1325; *People v. McCain*, 36 Cal.App.4th 817; *People v. Sipe*, 36 Cal.App.4th 468; and *People v. Spears*, 40 Cal.App.4th 1683.

³³*People v. Hatcher*, 33 Cal.App.4th 1526; *People v. Reed*, 33 Cal.App.4th 1608; *People v. Anderson*, 35 Cal.App.4th 587; *People v. Sipe*, 36 Cal.App.4th 468; *People v. Green*, 36 Cal.App.4th 280; *People v. Hill*, 37 Cal.App.4th 220; *Gonzales v. Superior Court*, 37 Cal.App.4th 1302; *People v. Murillo*, 39 Cal.App.4th 1298;

and federal constitutional requirements.

Several legal issues have arisen that ultimately were resolved by the California Supreme Court. The state's highest court has ruled that out-of-state prior convictions for offenses with comparable elements to offenses that are strikes in California should count as prior strikes,³⁴ as should prior juvenile adjudications if the juvenile was at least 16 years of age when the offense was committed.³⁵

Two other issues addressed the discretion retained by the court under the law given its clear mandatory sentencing language. One of these issues concerned what are known as "wobblers." A "wobbler" offense is one where the judge, by statute, has discretion to sentence either as a felony or misdemeanor. Taking a case in which one Court of Appeals had overturned a trial court's decision to declare a charge in a strike case a misdemeanor (several other Courts of Appeal had affirmed that a trial court retained the right to do this under the three strikes law), the Supreme Court ruled in *People v. Superior Court (Alvarez)* that nothing in either the legislature's or the electorate's version of the law limits the judge's statutory discretion regarding wobblers.

People v. Cartwright, 39 Cal.App.4th 1123; *People v. Ingram*, 40 Cal.App.4th 1397; *People v. Hamilton*, 40 Cal.App.4th 1615; *People v. Kinsey*, 40 Cal.App.4th 1621; and *People v. Nelson*, 42 Cal.App.4th 131.

³⁴*People v. Hazleton*, Calif SupCt, No. S051561.

³⁵*People v. Davis*, CalifSupCt, No. S053934. The dispute before the court centered around language in the law that also required that the juvenile was found to be a "fit and proper subject to be dealt with under juvenile court law." (§6679d)(3)(C) This phrase refers to the process of determining whether a juvenile should be prosecuted in adult court. Under California law, a juvenile can be prosecuted in adult court if the juvenile court waives jurisdiction by finding the juvenile to be unfit for the juvenile justice system. In the case before the Supreme Court, the defendant, Davis, had a prior juvenile adjudication for felony assault, but there was never any effort to waive that case to adult court, thus there was never a hearing to determine his fitness for juvenile court. Davis contended that since there was never a determination that he was fit for juvenile court, the juvenile adjudication for assault should not be counted as a prior strike. The Supreme Court disagreed, ruling that adjudication of a case in juvenile court is an implicit finding of fitness.

The court did state, however, that it would be an abuse of discretion on the part of a trial judge to reduce a felony to a misdemeanor just to avoid the two or three strike penalty. The trial court must consider the defendant's background and the nature of the offense in exercising this discretion.³⁶

The other issue relating to the court's discretion arose when a trial court decided, over the prosecutor's objections, to discount a prior felony conviction in a three strike case and sentenced the defendant to six years in prison. The prosecution appealed, arguing that the court had no authority under the three strikes law to discount prior convictions, and this discretion rested solely with the prosecution. The Court of Appeals agreed and overturned the trial court's decision. The California Supreme Court in *People v. Superior Court (Romero)*, sided with the trial court, ruling that nothing in the law denies judges this authority. The Supreme Court also suggested, but did not rule, that any law that would deny judges this authority would violate the separation of powers.³⁷

The first three of these decisions drew little concern about changing the way the law was being applied throughout the state since there was little division on the issues presented in these cases in the lower courts. But the *Romero* decision, which was issued in June 1996, had the potential to create an enormous impact. The appellate courts, which published more than 20 opinions on the issue of judicial authority to disregard prior convictions, were sharply divided. Many ruled that judges had no authority to disregard prior convictions, several ruled that such

³⁶*People v. Superior Court (Alvarez)*, Calif SupCt, No. S053029.

³⁷*People v. Superior Court (Romero)*, Calif SupCt, No. S045097.

authority did exist, and others ruled that such authority existed, but in very limited circumstances.³⁸ By the time the Supreme Court's decision was announced, the law had been in effect for over two years and 16,000 offenders had been sentenced under its provisions. The decision in *Romero* was met with concerns that many of these offenders would have to be brought back to court from prison for re-sentencing. Concern was also expressed by many political leaders that the Supreme Court was substantially "watering down" the three strikes law by giving judges back the discretion that the law originally was intended to limit.

As will be noted later on in this report, in the aftermath of *Romero*, the actions of trial judges have quieted these concerns. Judges have not been bringing offenders back in large numbers for re-sentencing, and have been using their authority to strike priors sparingly.³⁹

B. Statewide Impact on the California Courts

Given the broad scope of the strike law, state agencies in California began analyzing the impact the law was having on local systems statewide, soon after the law went into effect. A survey done by the Administrative Office of the California Courts approximately a year and a half after the strike law took effect showed the impact that the law was having on the work of the municipal and superior courts.⁴⁰ The survey found that 67 percent of responding municipal

³⁸Judge J. Richard Couzens, "To Strike or Not to Strike; That Is the Question," *Court News*, Judicial Council of California, February-March 1996.

³⁹For example, in Santa Clara and Contra Costa Counties, judges were discounting priors in about five percent of strike cases. In Los Angeles County, the discount rate has been approximately 14 percent. "The '3 Strikes' Crisis That Didn't Happen," *The San Francisco Recorder*, January 23, 1997.

⁴⁰Trial courts in California are comprised of the municipal courts and the superior courts. The municipal courts are responsible for all matters, including trial and sentencing, of persons charged with misdemeanors. Municipal courts also set bail and conduct preliminary hearings in the approximately 250,000 felony cases filed in municipal court each year, and have jurisdiction in cases involving infractions, in civil cases where the matter in dispute is no greater than \$25,000, and in small claims cases not exceeding \$5,000. There are 109 municipal courts

courts noted an increase in the number of preliminary hearings due to the three strikes law. Forty-six percent of the courts noted an increase in the length of the preliminary hearing, and 40 percent reported more pre-preliminary hearing appearances.⁴¹

Some of these early concerns resulted in actions taken by the state to expand the capacity of the courts to handle what many thought would be a significant increase on the courts' felony trial workloads. In 1996, the legislature passed, and the governor signed a measure providing \$3.5 million in funding for a "Three Strikes Relief Team." Retired judges were assigned to courts experiencing excessive backlog as a result of the strike law to make sure that two and three strike cases were not being dismissed due to lack of judicial resources. Up to 30 retired judges were deployed to backlogged superior courts throughout the state.⁴²

More recent data, however, show that the number of superior court preliminary hearings are actually decreasing statewide (see Table 7).⁴³ There was a 13 percent increase in the number of felony trials between FY 1993-94 and FY 1994-95, the first full year that the law was in effect, even though there was only a two percent increase in felony filings during the same period. Moreover, the felony trial rate grew by four percent the following year, while felony filings decreased by three percent. However, the following year showed declines in the number of preliminary hearings, felony cases filed, and felony trials. If one looks just at the rate of trials per 100 felony cases filed, there has been no change since 1988.

statewide, with approximately 675 municipal court judges.

⁴¹Administrative Office of the Courts, *The Impact of the Three Strikes Law on Superior and Municipal Court Survey #2, July-December 1995*.

⁴²*Court News*, Judicial Council of California. Administrative Office of the Courts, February/March, 1997.

⁴³There are 58 counties in the state, each with its own superior court. There are approximately 800 superior courts judges in the state, who handle approximately 160,000 felony cases each year, as well as probate, juvenile proceedings, and civil matters over \$25,000.

TABLE 7
FELONY JURY TRIALS IN SUPERIOR COURT

Fiscal Year	Preliminary Hearings	Felony Cases Filed	Felony Trials	Trial Per 100 Preliminary Hearings	Trial Per 100 Cases Filed
Pre Three Strikes and You're Out Law					
FY 88/89	75,615	132,635	5,386	7	4
FY 89/90	80,596	151,115	5,481	7	4
FY 90/91	79,907	159,419	5,389	7	3
FY 91/92	85,375	164,635	5,716	7	3
FY 92/93	87,742	163,432	5,740	7	4
FY 93/94	79,439	154,959	5,485	7	4
Post Three Strikes and You're Out Law					
FY 94/95	85,119	158,959	6,167	7	4
FY 95/96	73,487	153,394	6,397	9	4

Source: California Administrative Office of the Courts, Judicial Council of California.

As expected, the trial rate for felony non-strike cases is four percent, compared to nine percent for second strike cases, and 41 percent for third strike cases. But because the two and three strike cases represent such a small percentage of all trials, the law has not had a major impact on the overall trial rate.

C. The Differential Implementation of the Law by the Counties

These statewide trends lead to two conclusions, that the law did not have as great an impact as originally estimated, and there have been considerable variations among the counties in its application. As noted earlier, the law's provision that allowed prosecutors to drop charges or not request application of the two or three strikes provision in the "interest of justice" afforded them great discretion in deciding whether to charge defendants with a two or three strike provision in the "interest of justice."

Just how widespread this variation is can be seen in Table 8 which shows the use of the two and three strikes law in six major but diverse California counties. Alameda and San Francisco county are “low use” counties while San Diego and Sacramento counties are “high” rate users, and Kern county lies between the two extremes. Los Angeles, dominates all of the other counties, in that its adherence to the law’s application surpasses all others at an extremely high rate. The rest of this chapter seeks to explain the role of prosecutorial discretion in producing such disparate rates in how the law has been applied in three counties selected for a more intense analysis (Kern, San Francisco, and Los Angeles).

D. A Closer Look at the Implementation and Impact in Three Counties

One of the major questions to be assessed is whether the law has had an impact on the work of the court. We have already noted that on a statewide level, there have been declines in two major indicators of the courts’ work load (preliminary hearings and felony cases filed) but there has been an increase in jury trials. Could it be that the three strikes law has increased pressures for defendants to seek a jury trial, knowing the profound consequences of being found guilty and sentenced as a two or three strike offender?

In general terms, the three case study counties showed very different trends with respect to felony cases filed and jury trials held. San Francisco has reported sharp declines in both the number of felony cases filed and jury trials since the adoption of the three strikes law. Kern County reported a slight increase in court filings but a sharp increase in trials. Los Angeles has shown a small decline in felony filings and a slight increase in jury trials. What follows are descriptions of how each county sought to implement the law according to their local politics and the resulting effects on the court’s work.

TABLE 8

**COMPARISON OF SELECTED COUNTIES ON USE OF
SECOND AND THIRD STRIKES**

County	Resident Population	Violent Crime 1997		Property Crime 1997		2 Strike Prison Admissions 1998		3 Strike Prison Admissions 1998	
		N	Rate	N	Rate	N	%	N	%
San Diego	2,763,400	18,006	651.6	39,891	1,443.5	4,250	10.9	441	9.0
Alameda	1,398,500	13,428	960.2	26,367	1,885.4	489	1.3	67	1.4
Los Angeles	9,524,600	106,673	1,120.0	156,356	1,641.6	16,715	42.8	2062	42.2
San Francisco	777,400	8,608	1,107.3	14,706	1,891.7	346	0.9	24	0.5
Sacramento	1,146,800	8,938	779.4	32,896	2,868.5	1,719	4.6	277	5.7
Kern	634,400	4,094	645.3	11,161	1,759.3	1,017	2.8	243	5.0
Statewide Totals	31,211,000	336,381	1,078	1,678,884	5,379	27,051	100.0	3,281	100.0

Sources: U.S. Department of Justice, Federal Bureau of Investigation, Uniform Crime Reports: Crime in the United States, 1998.

Note: Violent crimes consist of murder, forcible rape, robbery, and aggravated assault while property crimes consist of burglary, larceny-theft, and motor vehicle theft.

TABLE 9

SUPERIOR COURT FELONY CASE FILINGS
KERN, SAN FRANCISCO, AND LOS ANGELES

Year	San Francisco	Kern	Los Angeles	Statewide
Pre Three Strikes Law				
FY 90/91	4,091	4,306	55,571	159,419
FY 91/92	5,337	4,728	54,849	164,635
FY 92/93	6,437	4,592	51,527	163,432
FY 93/94	5,593	4,934	48,286	154,959
FY 90/94 Average	5,365	4,640	52,558	160,611
Post Three Strikes Law				
FY 94/95	4,603	5,140	50,297	158,923
FY 95/96	3,833	4,884	47,467	153,883
FY 96/97	3,551	4,368	47,467	161,580
FY 94-97 Average	3,996	4,797	48,410	158,129
% Change in Average for FY 90-93 & 94-97	-25.5%	3.4%	-7.9%	-1.5%

Source: Judicial Council of California, Annual Reports from 1995, 1996, and 1997.

TABLE 10

**SUPERIOR COURT JURY TRIALS
SAN FRANCISCO, KERN, AND LOS ANGELES**

Year	San Francisco	Kern	Los Angeles	Statewide
Pre Three Strikes Law				
FY 90/91	125	262	1,737	5,389
FY 91/92	109	228	1,887	5,716
FY 92/93	143	184	2,166	5,740
FY 93/94	155	203	1,834	5,485
FY 90/94 Average	133	219	1,906	5,583
Post Three Strikes Law				
FY 94/95	154	262	2,038	6,167
FY 95/96	103	295	2,075	6,397
FY 96/97	81	340	1,841	5,904
FY 94/97 Ave.	113	299	1,985	6,156
% Change in Average for FY 90-93 & FY 94-97	-15.3%	36.4%	4.1%	10.3%

Source: Judicial Council of California, Annual Reports from 1995, 1996, and 1997

Before proceeding with this analysis, it should be noted that the level and quality of data available varied considerably for each county. At the state level, there is no statistical reporting of the three and two strike cases. Even at the local level, some counties are unable to report on how many cases have been prosecuted under the new law. Los Angeles county was able to create a pre strikes cohort of felony cases that could have been prosecuted under the new strikes law had it existed at that time. But even that data must be viewed with some level of suspicion

as it is unable to control for what will emerge from the following analysis of three case studies of prosecutorial discretion. Consequently, our analysis is not standardized for the three counties but relies upon data available for each county. Nonetheless, they do provide insights on the impact or lack thereof for the California strikes law.

1. San Francisco County

Court officials in San Francisco did not begin capturing data on the number of strike cases filed until September 1996. In the six months between September 1996 and February 1997, only 45 strike cases were filed. Of these, 20 were third strike cases and 25 were second strike cases. Based on a total of several thousand felony cases filed each year, it's clear that the law is having little consequences on court's business. For the reasons cited below, San Francisco has chosen to limit the strike zone for a very select group of offenders.

When the strike law was on the ballot as Proposition 184 in November 1994, only one county in the state – San Francisco – voted to reject the measure. This vote reflected the long tradition of San Francisco residents being less conservative than the rest of the state on crime and social issues. As a result of public sentiment about the strike law, the district attorney's office ran into several problems in obtaining strike convictions in the months immediately following the enactment of the law. For example, in the first strike case that was set to be prosecuted, the victim, a 71-year-old woman whose car was broken into, refused to testify against the defendant when she learned that the defendant was facing a mandatory life sentence as a third striker.⁴⁴ Just days later, a municipal court judge, in a case involving a wobbler, reduced a felony charge to a misdemeanor, exposing the defendant to a maximum sentence of one year in jail, rather than the

⁴⁴San Francisco *Daily Journal*, April 25, 1994.

25 year to life sentence that the district attorney's office was seeking.⁴⁵ As a result of these early difficulties and given public sentiment about the law, the district attorney's office began discounting prior convictions in a number of cases.

In his successful 1995 campaign to become district attorney, former defense lawyer Terence Hallinan openly criticized the strike law and its interpretation by the current district attorney. Once in office, one of Hallinan's first actions was to announce a new policy on strike cases: using the discretion conveyed by the law to the district attorney to discount prior strikes "in the furtherance of justice," strike penalties would no longer be sought for persons charged with nonviolent offenses.⁴⁶ Cases of strike defendants, i.e., those with the requisite history of convictions for strikeable offenses, who are charged with violent crimes are reviewed by a committee of assistant district attorneys to determine whether strike penalties will be sought.⁴⁷

One expectation of the strike law was that it might change bail-setting practices of municipal court judges.⁴⁸ The greater potential penalty that a strike defendant would face if convicted could create an incentive to flee to avoid prosecution. To address that flight risk, judges might set higher bails in strike cases. In our interviews with municipal court officials, it was reported that judges do tend to set high bail in strike cases, but since these cases involve very

⁴⁵San Francisco *Daily Journal*, April 28, 1994.

⁴⁶San Francisco *Daily Journal*, February 25, 1996

⁴⁷ The same phenomenon was noted by Malcolm Feeley and Sam Kamin in their early study of the effects of the California law in Alameda county-- another low use county.

"The Alameda County prosecutor's office is even more direct (than San Francisco) in its adaptive response to the law it did not want. According to Chief Deputy Richard Igelhart, a case will not be brought as a third strike unless the current felony is either serious or violent despite the fact that the language of the statute mandates the charging of any felony as a third strike".

⁴⁸There is one municipal court in San Francisco County, with 20 judges.

serious charges, it was likely that very high bails would have been set anyway. System officials reported no noticeable differences in the number, nature, or duration of preliminary hearings regarding strike cases when compared to other cases involving violent offenses.

As suggested above, the impact of the law at the superior court level has been minimal.⁴⁹ Of the approximately 800 felony cases that were pending in that court as of February 1997, only 31, or less than four percent, were strike cases – 17 second strikes and 14 third strikes. System officials report that the strike cases that are tried would most likely have gone to trial anyway, given the seriousness of the charges.

However, there has been some impact on the system when strike cases do go to trial. Empancling a jury in a strike case has required more resources. In a typical felony case, 60 jurors are empaneled for the jury selection process. Given the public sentiment against the strike law in San Francisco, courts have been empaneling at least 75 jurors for second strike trials, and between 100 and 120 for third strike trials.

The public defender's office also reports that a strike trial puts enormous pressure on attorneys and investigators, who must give a third strike case almost as much attention as a capital case. Public defenders will often employ expert witnesses to testify in strike cases, depleting the office's expert witness fund, making it difficult to provide this resource in non-strike cases. Yet, the consensus of system officials in San Francisco County is that the strike law has had a minimal impact on the processing of cases in that jurisdiction. Nevertheless, all of this could change with a change in the policies of the district attorneys office.

2. Kern County

The policy of the Kern County district attorneys office regarding strike cases was to

⁴⁹The superior court bench in the county is comprised of 29 judges.

rigorously adhere to the section of the law that says that strikes must be filed. This policy is reflected in their statistics showing that by January 31, 1997, the prosecutors had filed 353 third strike cases and 776 second strike cases (Table 11). Nearly half of the persons charged as a third striker have ended up with a third strike sentence, with almost 12 percent still pending trial or sentencing. Nearly 22 percent received a sentence less than that prescribed for a third striker. Twenty percent of the third strike cases ended in dismissal or acquittal.

TABLE 11
COURT DISPOSITIONS OF FELONY CASES FILED AS
TWO AND THREE STRIKE CASES IN KERN COUNTY

Court Outcomes	Two Strike Cases	Three Strike Cases
Number of Cases	776	353
Percent pending sentencing	2.3%	1.1%
Percent pending trial	4.4%	10.5%
Percent convicted and sentenced as a two or third striker	72.2%	46.5%
Percent sentenced as less than a two or third striker	10.7%	21.5%
Percent cases dismissed	8.8%	16.7%
Percent ending in acquittal	1.5%	3.7%

Source: Superior Court of Kern County.

As for second strike cases, nearly three quarters ended with a second strike sentence, with about eight percent still pending. Only 11 percent of persons charged as two-strikers received less than a two strike sentence.

Even though the number of three and two strike cases filed in Kern County was much higher than in San Francisco, the consensus of court officials is that the strike law has had no impact on the court in a number of key areas. First, with respect to pretrial release decision

making of municipal court judges, the court reported that most defendants with criminal histories that include serious felonies, and who are charged with a new felony, were not being released before the strike law.⁵⁰ In superior court, even though an estimated 80 to 85 percent of third strike cases and 20 to 25 percent of second strike cases go to trial, compared to an overall felony trial rate in Kern County of 5 percent,⁵¹ officials reported that many of these cases would have gone to trial anyway because of the seriousness of the charge and the extent of the criminal record. As one official noted, Kern County has always had a higher percentage of cases going to trial than other California counties because of the district attorney's reputation as being "stingy" on plea bargains.

As noted earlier in Table 10, the number of felony trials held in superior court has been going up since the law was adopted. However, system officials report that the strike law does not appear to have slowed down the processing of cases, with no increase in the backlog of cases since the strike law was enacted. To accommodate the larger number of felony trials, one family court judge has been shifted to hearing criminal cases, with the family court slot filled by a new commissioner's position. Thus, although the law has increased the number of trials, it has not been so great as to significantly clog the courts.

3. Los Angeles County

In Los Angeles, the overall pattern observed was an initial backlog of cases associated with the new law followed by a general easing of the situation as the courts developed new methods for handling felony cases in general. There is no question that the number of cases filed and tried has been greatest in this county. The district attorney's office in Los Angeles has been

⁵⁰There are four municipal courts in Kern County, with a total of 15 municipal court judges.

⁵¹Extrapolated from *1996 Annual Report*, Judicial Council of California, p. 118.

filing an average of 200 third strike and 500 second strike cases each month since the law took effect. Through September 1996, the office had filed 15,638 second strike cases and 6,179 third strike cases. The second strike filings represented 9.0 percent of all felony filings through that date; the third strike filings represented 3.6 percent of all felony filings.

The written policy of the district attorneys office on filing and prosecuting strike cases reads:

“Only in rare (emphasis in original) instances should the prosecution move to dismiss a prior felony conviction allegation under the ‘in the furtherance of justice’ standard” of the strike law. Furthermore, such action should only be taken when the sentence that would be imposed under the strike law “would result in a miscarriage of justice.”

Dismissing a prior can only be done with the written approval of the head deputy in charge of the branch district attorneys office.⁵²

In order to assess the impact of this law, the county created a sample of felony cases processed in 1992 who could have been charged with a second or third strike provision, had the law existed. This sample of cases was then compared with cases being prosecuted under the strikes law in 1992. Although it is not clear from the data submitted by the county as to the equivalency of these two samples, they do provide some explanation for initial problems encountered by the courts as they struggled to implement the law.

With respect to pretrial release, similar to Kern County, very few three and two strike defendants were released.⁵³ As shown in Table 12, approximately 10 percent of the two and three strike cases were released by the municipal courts in 1994. However, as was the case in Kern County, these types of cases were rarely released prior to law, so there is little reason to

⁵²Special Directive 94-04 of the Los Angeles County District Attorneys Office. May 2, 1994.

⁵³There are 24 municipal courts in Los Angeles County, with nearly 200 municipal court judges – almost half of which sit in the city of Los Angeles.

claim that the law reduced pretrial release rates.

To explore whether there was any difference in the bail-setting practices of municipal court judges as a result of the law, we compared the bail amounts that kept strikeable defendants in jail in the 1994 group to their counterparts in 1992, and found that much higher bail amounts were being set in the strike cases. As Table 12 also shows, the average bail amounts that kept defendants in jail were much higher for every charge in the study group than in the baseline group. In interviews with system officials regarding this, it was reported that even though bail is likely to be set higher in strike cases because of concerns about flight, since most of these defendants had extensive criminal histories and were facing new felony charges, they were likely to remain in jail on high bails regardless.

Officials reported that both the number of preliminary hearings held in strike cases and the length of time required to conduct them initially increased. As more defendants facing strikes are demanding preliminary hearings, and prosecutors and defenders are litigating more vigorously at these hearings, judges and attorneys report that it can take longer to move these cases out of municipal court and onto a superior court calendar. It was also reported that more motions tend to be filed in strike cases in municipal court.

TABLE 12

**PRETRIAL RELEASE AND BAIL AMOUNTS
LOS ANGELES COUNTY
1992 AND 1994 FOR PRE AND POST TWO AND THREE STRIKE LAW CASES**

Defendants	1992	1994
Pre-Trial Release Rates		
Second Strikers	90%	89%
Third Strikers	87%	96%
Charge		
Murder	\$1,050,000	No Cases
Rape	\$145,000	\$170,000
Robbery	\$35,550	\$196,785
Assault	\$32,000	\$303,000
Burglary	\$22,727	\$151,875
Theft	\$14,566	\$89,062
Drug Trafficking	\$21,600	\$108,500
Drug Possession	\$14,583	\$137,058
Other Crime		
Against Person	\$95,000	\$120,000
Other Property	\$21,625	\$150,000
Public Order	\$23,750	No Cases
Felony Traffic	\$52,500	\$178,750
Weapons	\$20,000	\$104,125

Source - Los Angeles Countywide Criminal Justice Coordination Committee

The impact that these developments have had on the overall workload of the municipal court varies, depending on the size of the court. For example, municipal court judges from smaller suburban Los Angeles courts noted little overall impact on workload, while their counterparts in the larger municipal courts serving the urban parts of the county noted large increases. Another impact at the municipal court level has been an increase in the number of *Marsden* hearings, in which the court considers the defendant's requests for a new attorney, and

an increase in the number of defendants wishing to represent themselves. Judges and attorneys noted that the law has brought about greater distrust of clients for their attorneys because defendants facing strike sentences “don’t know who else to blame” for the serious situation they are in. As with the increase in preliminary hearings, these added hearings fall most heavily on the large urban municipal courts.

Finally, municipal court officials reported that strike defendants are much less likely to plead guilty to a charge in municipal court, having the case proceed to superior court instead. Data from the municipal courts show that second and third strike cases have a different disposition pattern than all felonies combined. As seen in Table 13, second and third strike cases are much more likely to be sent to superior court for adjudication, and much less likely to be sent to that court for sentencing after a plea has been accepted in municipal court. Strike cases are also much less likely to be reduced or dismissed in municipal court.

TABLE 13
MUNICIPAL COURT DISPOSITIONS
LOS ANGELES COUNTY

Disposition	All Felonies	Second Strikes	Third Strikes
Sent to Superior Court for adjudication	49%	65%	77%
Pled guilty, sent to Superior Court for sentencing	21%	10%	2%
Reduced/dismissed/other	30%	24%	20%

Source: Los Angeles Countywide Criminal Justice Coordination Committee.

Once a strike case reaches superior court, officials reported that defendants continued to

press their cases to trial.⁵⁴ The data in Table 14 supports this. The percentage of second strike defendants pleading guilty declined from 77 percent in 1992 to 60 percent in 1994, and the third strike defendants decreased from 64 percent in 1992 to 41 percent in 1994.

These results are supported from other data from the county. While five percent of non-strike cases have been going to trial in Los Angeles County, 14 percent of second strike cases, and 44 percent of third strike cases are tried.⁵⁵ The number of felony jury trials in Superior Court rose from 2,331 in 1993 to 2,776 in 1995.⁵⁶ However, this number has now declined as shown earlier in Table 10.

⁵⁴The superior court bench is made up of 238 judges.

⁵⁵Administrative Office of the Courts, *supra* note 32.

⁵⁶Information Systems Advisory Body, *Impact of Three Strikes Law in Los Angeles County: Briefing for the Countywide Criminal Justice Coordination Committee*, October 16, 1996.

TABLE 14

**ADJUDICATION TYPE AND TIME TILL ADJUDICATION
1992 AND 1994 COHORTS**

	1992	1994
Court Disposition		
Second Strike Cases		
Dismissed	19%	26%
Not Guilty		2%
Plead Guilty	77%	60%
Found Guilty		10%
Pending	4%*	1%**
Third Strike Cases		
Dismissed	18%	12%
Not Guilty	3%	4%
Plead Guilty	64%	41%
Found Guilty		30%
Pending	13%*	12%**
Time Till Disposition		
Second Strike Cases		
1-3 months	77%	40%
4-6 months	14%	35%
7-9 months	5%	11%
10-12 months	---	5%
> 12 months	4%	11%
Third Strike Cases		
1-3 months	56%	14%
4-6 months	23%	25%
7-9 months	8%	16%
10-12 months	---	10%
> 12 months	13%	37%

*Still pending after 12 months

**Still pending after 27 months

Strike cases (as expected) are taking longer to prosecute. Data from the two sample groups presented in Table 12 show, for example, that nearly three times as many two and three strike cases were pending after one year in the 1994 group compared to the potential strike cases from 1992. Data provided by the district attorneys office show that, while strike cases make up only 13 percent of all felony filings in Superior Court, they comprised 40 percent of all felony cases pending in the court in September 1996 and make up half the trials.⁵⁷

As a result of the initial increase in the number of jury trials, the superior court was forced to delay civil trials. Approximately 420 civil trials were postponed from their scheduled date during FY 1994-95 so that judges assigned to the civil division could take criminal trials.⁵⁸ Not only does such a delay diminish the importance of civil justice, it also creates a serious logistical problem for security in courtrooms and buildings designed for civil trials.

The increased number of jury trials has led to a 15 percent rise in the number of jurors summoned for jury duty, leaving court officials to struggle to find space to put the extra jurors. Officials also reported that with the larger jury pools required for strike cases, juror frustration has grown as a higher percentage of summoned jurors are never selected to serve on a case.

The district attorneys' office is required under the law to research prior convictions to determine if they qualify as strikes. This task can be particularly time consuming when checking out-of-county or out-of-state convictions. The check involves looking at more than just the offense that the person was convicted of, but at the details of the offense. For example, since residential burglary qualifies as a prior strike but commercial burglary does not, and the prior conviction offense on the criminal record would simply read "burglary," more investigation is

⁵⁷*Impact of the "Three Strikes Law" on the Criminal Justice System in Los Angeles County*, Countywide Criminal Justice Coordination Committee, November 15, 1995.

⁵⁸*Ibid.*

necessary. All of this must be completed before the new case is even filed. With the high volume of strike cases that are filed in Los Angeles County, this task has added substantially to the workload of the district attorney's office.

The initial increase in the number of preliminary hearings and trials has also placed increased demands on the district attorneys. Preparation for both preliminary hearings and trials takes longer in strike cases than non-strike cases, and as one supervising district attorney noted, conducting these hearings represents the biggest expense to the office in terms of lawyer time.

The public defender's office in Los Angeles County represents defendants in 67 percent of all felony cases, but 76 percent of all strike cases. As with the deputy district attorneys, assistant public defenders are spending much more time preparing for and having preliminary hearings and trials associated with strike cases. The office has calculated that the strike law has led to an 18 percent increase in the hours spent in investigations to prepare for the additional trials, a 15 percent increase in the workload of the paralegal staff to investigate prior convictions, and an 8 percent increase in the workload of clerical staff. After the law's enactment, 36 new lawyers were added to a pre-strike staff of 560 attorneys, but 20 of these new positions were later lost in budget cutbacks.

Public defenders in Los Angeles County have experienced increased stress levels since the strike law took effect, according to officials in that office, with many attorneys asking to be relieved of felony trials and transferred to misdemeanor courts. The attorneys also report a change in their relationships with clients as their clients blame them for the harsh penalties they are facing. This has led to an increase in the number of complaints about public defenders filed with the bar by defendants and their families. It has also led to lawsuits filed against the office by clients, and even reported assaults on public defenders.

As soon as the strike law was enacted, Los Angeles County criminal justice system officials began coordinating efforts to respond to the effects of the new law. The Countywide Criminal Justice Coordination Committee (a group composed of high-level county criminal justice officials from all relevant agencies) that meets once a month to coordinate the activities of the criminal justice system, established several subcommittees to analyze and monitor the impact of the law. These subcommittees were instrumental in helping the system document the changes that were taking place, and to plan responses to meet challenges posed by the implementation of the strike law.

One of the responses the system developed was to expand and improve an Early Disposition Program in the county's municipal courts. Senior level deputy district attorneys and assistant public defenders review felony cases coming into the municipal court, identifying those that might be easily resolved at an early point. Once the two parties agree on those cases, the pretrial services program conducts an extensive record check of the defendants, who are then brought before the court within 48 hours of the initial municipal court appearance for a disposition hearing. A version of this program had been operating in some of the county's 24 municipal courts before the strike law, but it did not exist in the largest municipal court, which handles half of the felony cases filed in the county. A year after implementation of the program in that court, approximately 220 cases per month were reaching early resolution.

A second response is a Delay Reduction Program, which began in March 1996. This program involves a concerted effort by superior and municipal court judges to process cases in an expedient manner. Under the program, prospective attorneys must provide assurance at the outset that they will be able to proceed to trial within 60 days of superior court arraignment. Those who cannot, are not appointed. The program also limits the number of continuances,

requires that all pretrial motions be made in writing, and that disclosure of discovery materials be made at least 30 days before the trial. The program's goal, based on standards of the American Bar Association, is to have 90 percent of cases resolved in the first 120 days.

The impact that these two programs – which are aimed at all felony cases, not just those that are strikes – has been dramatic. In July 1995, there were 3,500 felony cases pending in Superior Court, the highest number ever. By March 1996, the inventory of pending cases was cut to 2,700. By June 1996, it was down to 2,100 cases, and in January 1997 to 1,800. Furthermore, in July 1995 there were 1,300 cases on the superior court calendar that were over 120 days old. By January 1997, there were only 600 such cases. In July 1995, up to 30 percent of civil court time was being spent conducting criminal trials. By January 1997, this figure had been cut to four percent.

While neither of these programs directly addressed strike cases, the philosophy of the officials who planned and implemented them was that the problems brought about by the strike cases would to an extent, take care of themselves if the system could develop more efficient processing of all cases.

II. The Georgia Experience

A. Application of the Law

As noted, the Georgia strike law took effect January 1, 1995. More than two years later, state officials were raising concerns that judges and prosecutors were not following the mandatory provisions of the law in a number of cases. In fact, a March 1997 review by the State Board of Pardons and Paroles of the more than 600 strike offense convictions (obtained to that date), revealed that in 86 of these cases, the offender received less than the mandatory prison

term.⁵⁹ The state's attorney general notified the judges and prosecutors involved in these cases, yet in only two cases were sentences changed. In the remaining cases, prosecutors either reduced the charges to a non-strikeable offense and maintained the original sentence, or made no change at all.⁶⁰

A number of reasons for failing to impose the mandatory prison terms were provided by those involved. Some judges and prosecutors claimed that they simply did not know of the existence of the law, or in the rush of moving cases through the system they forgot about the mandatory sentencing provisions.⁶¹

There were other, more practical reasons offered. Some prosecutors noted that the cases were not strong enough to bring before a jury so they presented plea agreements that involved lesser sentences for strike offenses. As one prosecutor noted:

"Everything is not so simple that it can be put into little pigeonholes and categories. We have to look at all aspects of a case . . . the type of witnesses, the type of victim. How good is the evidence? Every case has its own unique aspects."⁶²

Other prosecutors thought the sentences were too harsh. One prosecutor, in explaining why he did not seek the mandatory 10-year sentences for two first-time-offending youths convicted of armed robbery, noted that:

"We didn't want to destroy and crush them with a 10-year sentence. We were trying to serve justice in this case, and sometimes we think justice has to be tempered with mercy if it is to be real justice."⁶³

⁵⁹ *The Atlanta Journal/Constitution*, March 2, 1997.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*

One judge noted his displeasure with the law, stating that:

“[t]here’s always an exception to the rule, and the judge ought to have some discretion to modify it. The legislation is taking the judge out of the loop in sentencing, and I don’t like it.”⁶⁴

This sentiment was echoed by one judge interviewed by the research team who expressed the belief that the possibility of parole should exist in most sentences to give the offender an incentive to participate in rehabilitation programs while in prison.

B. The Experience of Three Counties

Tracking the impact of the strike law on local courts in Georgia was much more problematic due to the lack of available data. While the strike law in California was the subject of many studies and reports at both state and local levels, similar efforts have not taken place in Georgia. It is understandable that given the much more narrow scope of the law in Georgia, officials did not expect the kind of impact that California officials projected, and thus have not been focused on documenting its local impact. As with California, we attempted to make pre and post law comparisons on a number of court processing measures

As noted in the discussion of impact in California, one expectation of the strike law is that it will change pretrial release decision making – judges will be more inclined to hold defendants before trial out of concerns of higher risks of flight because of the severity of the potential prison terms. In Georgia, bail is typically set at the municipal court level. However, under Georgia pretrial release statutes, only superior court judges can set bail for a number of serious offenses, including all seven of the strikes.⁶⁵

⁶⁴ Ibid.

⁶⁵ Official Code of Georgia Annotated §17-6-1.

Table 15 shows that officials' assumptions about the extent of the impact were well-grounded. As the table shows, strike cases make up a very small proportion of all felonies filed in Superior Court in Chatham, DeKalb, and Fulton Counties. In none of the three counties did the number of strike cases exceed seven percent of the total of all felonies filed. Furthermore, when strike charges are filed, the overwhelming majority (90%) are first strikes. Table 16 shows that the majority of the first strike cases were for the crimes of armed robbery (55%), followed by murder (17%), and rape (16%). As will be the case for the remainder of the tables shown in this chapter, there is no value or purpose of showing the results of the two strikes analysis as the number of cases are too few for meaningful comparisons by the three counties.

TABLE 15

**COMPARISON OF FIRST AND SECOND STRIKE CASES TO
TOTAL FELONY FILINGS IN THE THREE COUNTIES**

	Chatham	DeKalb	Fulton	Totals
First Six Months of 1994				
Felony Filings	2,346	4,460	8,991	15,797
Strike Cases	84	119	155	358
First Strike Cases	80	115	128	323
Percent That Are Strike Cases	7%	5%	3%	2%
Percent That Are First Strike Cases	3%	3%	1%	2%
Percent of Strike cases that are First Strike Cases	95%	97%	83%	90%
First Six Months of 1996				
Felony Filings	2,399	5,542	8,451	16,392
Strike Cases	89	129	156	374
First Strike Cases	84	126	128	338
Percent That Are Strike Cases	7%	5%	4%	2%
Percent That Are First Strike Cases	4%	2%	2%	2%
Percent of Strike Cases that are First Strike Cases	94%	98%	82%	90%

Source: Pretrial Services Resource Center

TABLE 16

**FIRST STRIKE OFFENSES BY CHARGE
IN THE THREE GEORGIA COUNTIES**

Crime Type	Chatham		DeKalb		Fulton		Total	
	N	%	N	%	N	%	N	%
Murder	22	13%	38	16%	54	21%	114	17%
Rape	16	10%	53	22%	34	13%	103	16%
Armed Robbery	107	65%	126	52%	129	50%	362	55%
Kidnap	14	9%	12	5%	13	5%	39	6%
Agg. Sodomy	3	2%	5	2%	23	9%	31	5%
Agg. Sexual Battery	1	1%	4	2%	2	1%	7	1%
Agg. Child Molestation	1	1%	3	1%	1	0%	5	1%
Totals	164	100%	241	100%	256	100%	661	100%

As to the impact of the law on bail-setting practices of superior court judges, as Table 17 shows, there were no major differences in the percentage of defendants detained in each of the three counties over the two sample periods. Table 18 explores this further by examining the reasons for detention for those who remained detained. There was very little difference in the reasons for detention between the pre and post strike law time periods, in both Chatham County and DeKalb Counties. Most defendants were held without bail. However, there was a major increase in the percentage of first strike defendants held without bond in Fulton County in 1996. This trend may be explained by the fact that there was a large number of defendants for whom the reason for detention was unknown in that county in 1994. Regardless, the number of cases are so small to be of little if any significance.

TABLE 17

NUMBER AND PERCENT OF DEFENDANTS CHARGED WITH A FIRST STRIKE
DETAINED IN THE THREE GEORGIA COUNTIES

Defendants	Chatham		DeKalb		Fulton		Totals	
	1994	1996	1994	1996	1994	1996	1994	1996
First Strikers	56	66	75	84	63	54	194	204
Percent	70%	79%	65%	67%	49%	42%	60%	60%

TABLE 18

REASON FOR DETENTION OF THE FIRST STRIKE CASES
IN THE THREE GEORGIA COUNTIES

Reason for Non-Release	Chatham		DeKalb		Fulton	
	1994	1996	1994	1996	1994	1996
Held W/O Bond	56	55	70	77	22	35
Percentage	81%	83%	92%	92%	35%	63%
Could not Post Bail	7	7	6	7	24	18
Percentage	10%	11%	8%	8%	38%	33%

It was also expected, as was found to be the case in California, that defendants facing strike charges would demand trials as the only way to avoid the long mandatory sentences. However, since the strike offenses in Georgia include only very serious charges (offenses that would bring long sentences even without the strike law), these cases would have in all likelihood gone to trial anyway. Since the Georgia court data on the types of cases going to trial was unavailable, we examined adjudication outcomes for the two groups in the three counties.

Table 19 shows that there were little differences in adjudication types in the three counties during both periods. The only major difference is the substantially higher percentage of cases that were still pending in Fulton County after two years from the 1996 group.⁶⁶

TABLE 19
COURT DISPOSITIONS OF ONE AND TWO STRIKE CASES
IN THE THREE GEORGIA COUNTIES

	Chatham County		DeKalb County		Fulton County	
	1994	1996	1994	1996	1994	1996
First Strike						
Dismissed	22 28%	25 30%	53 46%	58 47%	61 48%	40 32%
Not Guilty	2 3%	3 4%	6 5%	4 3%	4 3%	5 4%
Pled Guilty	47 59%	42 50%	44 38%	46 37%	45 35%	34 27%
Found Guilty	6 8%	10 12%	10 7%	6 5%	9 7%	4 3%
Pending**	1 1%	1 1%	0 --	5 4%	2 2%	34 27%

*The adjudication type of the remaining second strikers was unknown.

**These cases were still pending as of the end of October, 1998.

Table 20 shows that the percentage of cases taking more than one year to reach disposition more than doubled in Fulton County in the 1996 sample for first strikers, while the disposition times did not vary significantly in Chatham and DeKalb Counties. In interviews, court officials in Fulton County noted that cases have been taking longer to reach disposition in the past few years, but attributed this to factors other than the strike law. One explanation

⁶⁶The cases were tracked through the end of October, 1998, meaning the pending cases had been open for at least 22 months.

repeatedly given was that when the Olympic Games ended in Atlanta in 1995, police who had been preoccupied in planning for the Games, returned to the streets and increased the number of arrests. But here again, the number of cases affected is too small to be of significance.

TABLE 20
TIME TO ADJUDICATION
IN THE THREE GEORGIA COUNTIES

Adjudication Time	Chatham County		DeKalb County		Fulton County	
	1994	1996	1994	1996	1994	1996
First Strikes						
1-3 months	24 31%	19 23%	27 24%	23 18%	35 29%	24 21%
4-6 months	7 9%	12 14%	34 30%	21 17%	24 20%	8 7%
7-9 months	18 23%	15 18%	23 20%	28 22%	19 16%	9 8%
10-12 months	9 12%	18 22%	14 12%	19 15%	15 12%	10 9%
13-22 months	16 21%	19 23%	11 10%	29 23%	16 13%	30 26%
> 22 months	4 5%	1 1%	5 4%	6 5%	12 10%	36 31%
Average time to disposition	8.2 months	8.1 months	7.1 months	8.4 months	8.2 months	9.3 months

CHAPTER 6

THE IMPACT ON LOCAL JAILS

I. Introduction

Concerns were raised in a number of jurisdictions, and especially California, that passage of the new laws would result in a crowding situation for the jails due to a number of factors associated with the law's provisions. First, the pretrial population might well increase as fewer defendants who are charged and detained under the three strikes provisions are unable to secure pretrial release. Second, these same inmates might be less likely to plea bargain their cases and request a jury trial. Since jury trials take a much longer period to complete, the average length of stay for these inmates in pretrial status may well also increase. It may also be true that if the new law is impacting the state prison system, there may be undue delays in how quickly inmates who have been convicted for these crimes are transported from the county jail system to the state prison.

Finally, from a jail management perspective, three strikes inmates could pose a higher security risk, which may require higher security supervision. One could argue that three strike inmates might be more likely to attempt escape knowing that if convicted they would receive a life sentence and transfer to a more secure state prison. After conviction and while awaiting transfer to the state prisons, these inmates might prove to be disruptive and possibly violent given that they would have little to gain by conforming to the rules of jail.

In this section of the report we examine the impact of the new legislation in California and Georgia.

II. Impact in California

Fifty-seven of California's 58 counties operate one or more jail facilities. Approximately 70,000 inmates inhabit these jails on any given day. As expected, the Los Angeles County system is the state's and probably the nation's largest jail system (along with New York City) housing over 20,000 inmates on any given day. Twenty-six of the state's jails are either in litigation or under court order because of jail overcrowding, representing 74 percent of the state's average daily jail population. Many of these jails must restrict admissions or implement early release measures because of overcrowding problems.

When the California strikes law was passed, many of the counties expressed some of the concerns raised above. In order to track the impact of the law on the jails, the California Board of Corrections conducted a survey in 1996 of 15 jails representing two thirds of the state jail inmate population. However, in reporting these findings, it must be emphasized that much of the data are either estimates or self-reported by jail officials with no independent verification of the key statistics.

With respect to overcrowding, the survey showed that the average length of stay for pretrial detainees had risen from approximately 44 days on March 1, 1994 (just before the strike law took effect) to 50 days on January 1, 1995, and to 54 days on January 1, 1996. The same survey showed that the average length of stay for pretrial detainees awaiting trial for a third strike was 205 days.⁶⁷ There was insufficient data to determine whether the new law was having an adverse impact on jail operations. However, it was noted that some jurisdictions, especially Los Angeles County, had adopted a policy of classifying all two and three strike inmates as maximum

⁶⁷California Board of Corrections, *"Three Strikes, You're Out": Impact on California's Criminal Justice System and Options for Ongoing Monitoring*, September 1996.

custody and segregating them from the other inmate population. These administrative decisions were obviously having an impact on jail management.

In support of the survey self-report data, state-level jail population data show an increase in the size of the pre-trial population (Table 21). However, one must also note that the increases observed between 1994 and 1996 were consistent with a historical increase that began as late as 1988 — well before the three strikes law was adopted. Furthermore, the 1998 data show a slight decline.

TABLE 21

**AVERAGE DAILY POPULATION OF UNSENTENCED INMATES
IN CALIFORNIA JAILS
1986-1998**

Jurisdiction	1986		1988		1990		1992		1994		1996		1998	
	N	% Total of Pop	N	% Total of Pop	N	% Total of Pop	N	% Total of Pop	N	% Total of Pop	N	% Total of Pop	N	% Total of Pop
Statewide	26,330	47	31,957	50	37,619	53	38,110	54	39,122	57	42,539	59	45,303	57
Los Angeles	9,310	48	10,357	47	13,102	58	12,465	57	11,999	60	12,243	66	11,663	55
Kern	777	37	1,002	44	827	37	1,627	93	1,009	55	1,423	69	1,389	66
San Francisco	891	56	1,102	65	1,222	70	1,793	81	1,898	90	1,100	56	1,430	58

Source: California Board of Corrections.

Collectively, these trends suggest that the three strikes law may be contributing moderately to the overcrowding situation. When looking at individual counties, however, it becomes clear that the new law's impact on the jails varies largely in part to how vigorously the local district attorney applies the law.

San Francisco illustrates how fluctuations in the pretrial population cannot be linked to the new law. It will be recalled that the strike law could not have an impact on the jail population as the law was rarely invoked by the district attorney. Nonetheless, there was an increase in the proportion of inmates held at pretrial reaching a peak of 90 percent in 1994 and then declining sharply thereafter. These fluctuations may be related to actions taken by the county in response to a long-standing lawsuit on jail crowding and nothing to do with three strikes and you're out.⁶⁸ Currently, sentenced inmates are serving an average of 55 percent of their sentences before being granted early release by the sheriff.

The Los Angeles County jail system also saw its pre adjudicated population rise from 59 percent of the total population just before the third strike law took effect to 70 percent within 18 months after the law's enactment.⁶⁹ Because the number of cases being prosecuted under the new law were so much larger in this county, it's more likely that it would have an impact on jail overcrowding.

The first explanation is that jail admissions and those linked to the three strikes law may have increased. Table 23 shows that while three and two strike bookings have steadily increased since 1994, the total number of pretrial bookings have actually *declined* substantially since 1994

⁶⁸The county jail is a 2,600 bed facility that is under court order to cap its population at 90 percent, or 2,340 inmates.

⁶⁹The county jail system, which is under court ordered population ceilings, holds an average of 19,000 to 20,000 inmates.

from 212,140 to 175,158 in 212,140 to 175,158 in 1998. Moreover, three and two strike bookings together represent less than five percent of total bookings. Therefore, it does not appear that substantially more pretrial detainees are being admitted to jail as a result of the strike law.

TABLE 22

AVERAGE LENGTH OF STAY IN CALIFORNIA JAILS

In Days

Jurisdiction	1986	1988	1990	1992	1994	1996	1998
Statewide	15.7	16.3	17.8	19.2	20.2	21.59	24.4
Los Angeles	30.7	31.5	31.8	31.9	34.1	35.3	NA
Kern	21.4	22.9	19.7	22.1	19.6	25.1	NA
San Francisco	11.4	10.0	12.8	15.7	15.3	13.7	NA

Source: California Board of Correction.

The second potential explanation would be that the strikers have a longer length of stay. As shown in Table 24, second and third strike inmates have substantially longer lengths of stay at the jail than the total inmate population. However, the key question of what their length of stay would have been absent the new law cannot be answered by these data. It's likely that at a minimum, they would have spent at least the 1998 average length of stay. Even with this conservative estimate, the most that one could attribute to the new law would be approximately 1,800 inmates or about 10 percent of the inmate population. This is not a small number, but one must be reminded that without a matched pre-law comparison group, it's not possible to make a definitive conclusion regarding the laws's impact because other factors may be confounding the analysis.

TABLE 23
COMPARISON OF LOS ANGELES COUNTY JAIL BOOKINGS

Year	1994	1995	1996	1997	1998
Total Booked	212,140	192,392	192,886	188,773	175,158
3 rd Strike Bookings	1,587	1,865	1,705	1,948	2,057
Percent	0.8%	1.0%	0.9%	1.0%	1.2%
2 nd Strike Bookings	3,435	4,964	5,367	5,805	5,737
Percent	1.6%	2.6%	2.8%	3.1%	3.3%

Source: Los Angeles County Sheriff's Department

TABLE 24
AVERAGE LENGTH OF STAY (L.A.C.J.) BY STATUS

Pretrial Status	1994-1998 L.A.C.J.	1998 L.A.C.J	1998 Bookings	1998 ADP	Law Impact
General Population	38 days	44 days	167,364	20,162	NA
3 rd Strike Bookings	185 days	159 days	1,948	848	613

2 nd Strike Bookings	112 days	122 days	5,805	1,939	1,240
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Source: Los Angeles County Sheriff's Department

For example, with a federal court-imposed cap on the population on the county's jail facilities, the jail must release inmates when the population exceeds the cap. As a result, offenders sentenced to serve time in the county jail currently were serving only 35 percent of their sentences three years after the law went into effect. In addition, persons arrested on misdemeanor charges without a warrant are no longer accepted into the jail.

This situation exists in Kern County. Before the strike law took effect, the jail population was comprised of approximately 60 percent sentenced and 40 percent unsentenced inmates.⁷⁰ The composition is currently reversed, as the pretrial detainee population has increased with the rise in the number of trials. However, it's difficult to link this change to the new law. There are six facilities in the county jail system. One of those jails had been under a consent decree for many years due to overcrowding, but that decree was dissolved in 1996 as the jail population was brought down just as the new law was taking effect. Here again, policy actions associated with external factors are probably more responsible for the changes in the jail population as opposed to the law itself.

III. Impact on Jails in Georgia

Information from Georgia is instructive as it shows the same trends as California. All three Georgia counties included in this study have experienced rising jail populations. DeKalb County, for example, has seen its jail population grow by about one-third since January 1995, when the law took effect (data before this date were not available from the jail). Charts 1 and 2 summarize the average daily population, admissions, and average length of stay. These three indicators show a steady increase since the law took effect. Moreover since there are no pre 1995 data available for this county, it's not possible to make any conclusions regarding the law's

⁷⁰

impact.

Chatham and Fulton County were able to provide pre and post 1995 jail population data (Charts 3, 4, and 5). As shown in Chart 3, Chatham County has witnessed a steady rise in its jail population since 1988 despite a substantial decrease in its admissions from 1989 through 1994. The 1995 through 1998 increase is significant but simply cannot be associated with the strikes law. The county reports 14,000 to 17,000 admissions per year while the number of two and one strikes cases is less than 100 cases per year.

Fulton County jail experienced a steady rise in average daily population rates between 1987 and 1995, and then a sharp increase beginning in 1996. This pattern may be explained by a similarly large increase in the number of jail admissions beginning at the same time, and to a lesser extent, a more gradual increase in average length of stay (see Chart 5).

In summary there are four major reasons why the increase in the jail populations cannot be attributed to the new strikes law adopted in 1995. First and most significantly, there are not a large number of strike cases coming into the system. The three largest counties received only an estimated 716 strike cases in all of 1996 (see Table 17).

Second, since the Georgia strikeable offenses are all very serious, most defendants charged with these offenses were being detained pretrial both before and after the strike law was enacted in both DeKalb and Chatham Counties. Moreover, in Fulton County, more strike defendants were actually being released in the 1996 group than in the 1994 group.

Third, in two of the counties – DeKalb and Chatham – there has not been a major difference in the time taken to adjudicate these cases, and thus the time spent in pretrial detention, both before and after the strike law took effect. As shown in Chapter 4, only Fulton County experienced a dramatic increase in the percent of cases taking longer than one year to adjudicate. In interviews with system officials, however, this increase was attributed to an increase in the number of arrests that occurred after the completion of the Atlanta Olympic Games in the summer of 1996, a view that is borne out by looking at how jail admissions soared

in Fulton beginning in 1996.

Fourth, it is clear from the Chatham County and Fulton County average daily population data that the steady growth in the jail population in those two jurisdictions traces back to at least the late 1980s.

Figure 1

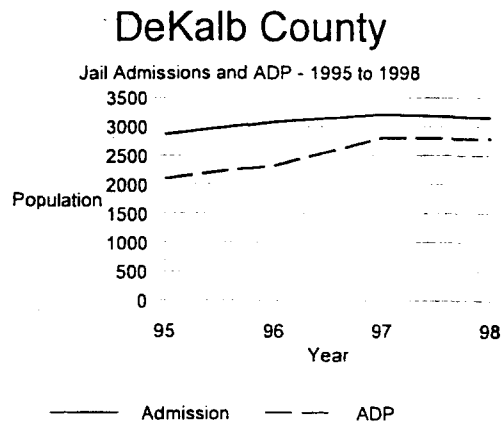


Figure 2

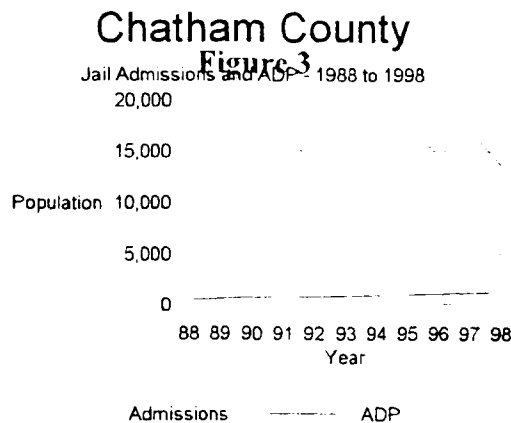
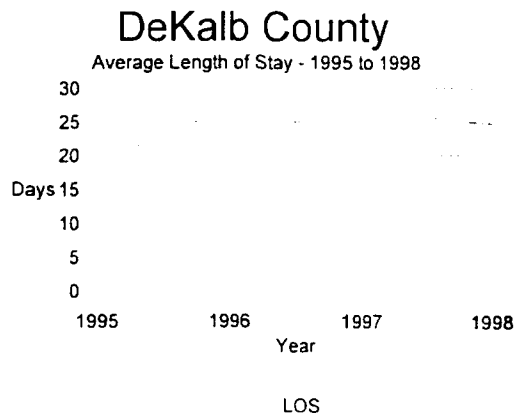


Figure 4

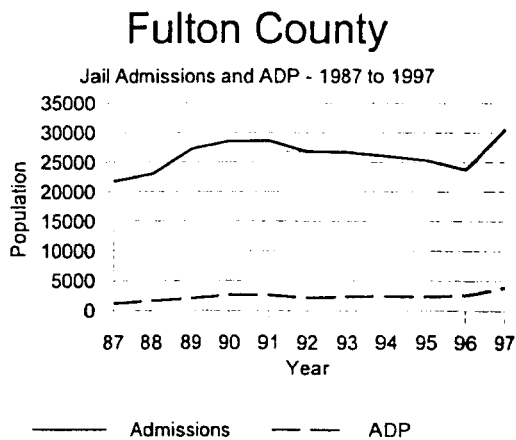
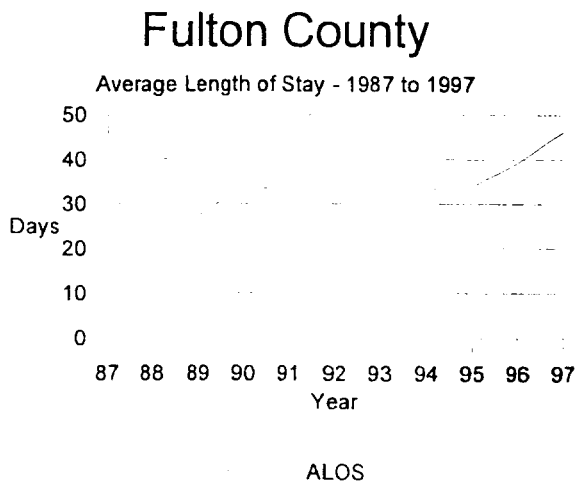


Figure 5



CHAPTER 7

IMPACT ON STATE PRISON SYSTEMS

I. Introduction

This chapter reviews the effects of the three strikes laws on the prison systems. As indicated by the national survey data and individual data for the three states presented thus far, with the exception of California, there has been no effects on prison systems simply because the number of inmates sentenced to prison have been so few. But as will be shown in this chapter, even though the California Department of Corrections (CDC) has received over 45,000 inmates to date (most of whom are two strike cases), the law has not had the impact policy makers had projected with respect to prison overcrowding and prison operations.

II. Projected Versus Observed Population Projections

Both Washington and California made formal impact assessments of how the new laws would impact the prison population. As shown below, while Washington projected a much lower impact than California, both proved to be too high, as the courts found numerous ways to circumvent the law's intent, as reported in Chapter 4.

A. *Washington State*

Between December 1993 when the Washington law took effect and May 31, 1997, only 97 offenders were admitted to the Washington State prison system on their third strike, compared to the 120 to 225 that had been projected.⁷¹ Planners in Washington had expected that between 40 and 75 persons would fall under the three strike provisions each year. Even this low projection has not been met, with monthly admissions ranging from zero to six inmates, averaging only 2.3 offenders per month, in the first three-and-one-half years of the laws

⁷¹Washington Department of Corrections.

existence.

State officials attribute this difference between the observed and projected commitment rates primarily to the fact that the original projections were based upon the number of prior incarcerations and convictions for strikeable offenses, rather than the number of offenders sentenced for strikes. The projections were also overestimated because the preliminary definitions as to what would constitute a strike were vague. The original projections anticipated that prior convictions for drug trafficking would constitute strikes, but the law as implemented did not include any drug-related offenses as strikes. The Washington Department of Corrections has not recalculated the projected impact of the law, but expect the current rate of admissions to continue.

B. California

California officials also overestimated the impact of its strike law on the prison system. Although the sheer number of cases sentenced under the law are significantly higher than for any other state, the numbers are not nearly as great as originally projected.⁷² The first CDC population projection considered the impact of the strike law when it was still being considered by the state legislature. This projection asserted that the institutional population would more than double within a six-year period, from 120,379 in January 1994 to 245,554 inmates by December 1999 (Table 25).⁷³

Very quickly, the CDC began to adjust downward the projected impact of the strike law. When revised figures were calculated in the Fall of 1994, the five-year projection was reduced by

⁷²This analysis is not intended to be a criticism of CDC population projections methodology. The CDC projections are used to illustrate the gross over-estimation of the impact of the California strike law.

⁷³California Department of Corrections. (Spring 1994) *Population Projections, 1994-1999 (Including Update for Three Strikes Law)*.

17,218 inmates. As seen in Table 25, with each successive biannual population projection, the CDC has lowered its estimation of the impact of the strike law. The most recent 1998 projection is now equivalent with the original 1993 with both of them showing a projected inmate population of approximately 170,000 by 1999.

Table 25 shows the number of CDC admissions for second and third strike offenders by month. As expected, there was a dramatic increase in the first 12 months that the law was in effect, but the number of admissions has leveled off and even declined slightly.

TABLE 25
CALIFORNIA PRISON POPULATION PROJECTIONS - 1994-1998

Year	Fall 1993 Projection ¹	Spring 1994 Projections ¹	Spring 1994 Projections w/ Impact of AB 971 ²	Spring 1995 Projection ³	Spring 1996 Projection ⁴	Spring 1997 Projection ⁵	Spring 1998 Projection	Difference: Spring 1998 - Earliest Projection w/ AB 971
1/31/94	121,432	120,379*	120,379*					
12/31/94	126,323	123,996	123,996	126,140*				
12/31/95	134,981	131,552	137,737	128,553	137,588*			
1996	142,865	138,821	157,680	142,551	143,170	145,565*		
1997	151,721	147,097	184,706	159,992	158,684	149,682	155,276	-29,430
1998	161,144	156,159	215,732	176,013	172,694	158,002	161,366	-54,366
1999	170,834	165,685	245,554	192,814	188,038	166,733	170,101	-75,453
2000				210,422	203,593	177,614	179,065	
2001					219,795	188,236	188,033	
2002					236,514	198,435	196,901	
Net Increase	49,402	45,306	125,175	84,282	93,344	42,671	41,625	

Sources: ¹California Department of Corrections, *Spring 1994 Population Projections, 1994-1999 (Including Update for Three Strikes Law)*.

²California Department of Corrections, *Spring 1994 Population Projections, 1994-1999 (Including Update for Three Strikes Law)*.

³California Department of Corrections, *Spring 1995 Population Projections, 1995-2000*.

⁴California Department of Corrections, *Spring 1996 Population Projections 1996-2001*.

⁵California Department of Corrections, *Spring 1997 Population Projections, 1997-2002*.

California Department of Corrections, *Spring 1998 Population Projections, 1998-2003*.

* Actual institutional population at the time of the projection.

TABLE 26
NUMBER OF SECOND AND THIRD STRIKE CASES
ADMITTED TO CDC BY MONTH

Month	1994			1995			1996			1997			1998		
	2 Strikes	3 Strikes	Total	2 Strikes	3 Strikes	Total	2 Strikes	3 Strikes	Total	2 Strikes	3 Strikes	Total	2 Strikes	3 Strikes	Total
January				562	36	598	822	102	924	729	120	849	694	83	777
February				602	55	657	785	123	908	776	98	874	703	82	785
March				848	73	921	836	95	931	850	110	960	877	130	1,007
April	25	0	25	775	78	853	854	96	950	874	131	1,005	835	129	964
May	99	0	99	859	79	938	930	129	1,059	736	122	858	786	107	893
June	168	0	168	823	90	913	732	112	844	741	121	862	789	92	881
July	259	5	264	710	61	771	799	131	930	788	113	901	897	109	1,006
August	334	12	346	906	93	999	903	139	1,042	749	117	866	768	75	843
September	408	16	424	840	79	919	771	126	897	696	88	784	636	80	716
October	488	31	519	760	80	840	843	128	971	808	91	899	849	101	950
November	546	21	567	805	98	903	681	100	781	650	95	745	702	88	790
December	567	49	616	761	84	845	728	145	873	785	109	894	715	88	803
Totals	2,894	134	3,028	9,251	906	10,157	9,684	1,426	11,110	9,182	1,315	10,497	9,251	1,164	10,415
Total Two Strike Cases All Years														40,262	
Total Three Strike Cases All Years														4,945	
Total Striker Cases														45,207	

Source: California Department of Corrections. "Monthly Three Strikes Statistical Reports."

This parallels the pattern of a leveling off at prison admissions for all offenders that the CDC had experienced prior to the implementation of the strike law.⁷⁴

The primary cause of the missed projections appears to be that planners miscalculated how judges would sentence second strikers. Under California law, when sentencing an offender, the court may choose a sentence that falls within three ranges: low, mid, and high. If the sentencing range for an offense was five to ten years, the low end of the range would be five to six years, the mid range seven to eight years, and the high end nine to ten years. In making its projections, the CDC originally assumed that judges would sentence second strikers at the midpoint of the sentencing range provided for each crime within the California Penal Code. However, CDC analysis of the sentences imposed on second strikers has shown that approximately 60 percent are being sentenced at the low end. The result has been shorter than expected sentence lengths and consequently, shorter lengths of stay.⁷⁵

In the interviews with strikers, third strikers who were sentenced during the first year the law was in effect reported that they were offered no plea bargains, and that they were told by their attorneys that they “had” to go the trial. However, many of those more recently sentenced indicated that they pled guilty in exchange for not counting a prior conviction as a strike, allowing for a shorter sentence. The CDC expects further reductions in the rate of discounting prior convictions. This is due to the increased flexibility afforded judges and district attorneys as the strike law is further interpreted in test cases, and as district attorney offices further refine policies on prosecuting strike cases.

⁷⁴California Department of Corrections. *Spring 1994 Population Projections, 1994-1999*.

⁷⁵This may be an explanation for why second strikers have a much lower trial rate than third strikers. Second strikers may be agreeing to plead guilty in exchange for an agreement that the prosecutor will seek a sentence at the low end of the sentencing range.

III. Who Are The Strikers?

Contrasting the attributes of inmates sentenced under the strike laws in California with those sentenced under a more “traditional” three strikes law like Washington state and Georgia illustrates more clearly how each state’s strike zone as defined by their laws produces very different types of offenders sent to prison (Table 27) . As expected in Washington, all but three of the 97 strike inmates had been sentenced for crimes against persons. In Georgia, all of the 88 cases that have been sentenced under the two strikes provision, and the 3,046 cases that have been sentenced under the one strike statute have all been for crimes against persons.

However, the vast majority of California second and third strike inmates have been sentenced for nonviolent crimes. Approximately 80 percent of the California two strikers were committed for a nonviolent offenses, as well as 60 percent of the three strikers. The fact that so many of these offenders have committed non-violent crimes is a reflection of California’s law that allows for a second or third strike to be imposed for “any felon” if the first or second prior conviction was a strikeable offense.

Table 28 presents a more detailed analysis of the types of offenses for which California inmates have been convicted as either a two or three striker.⁷⁶ The most frequent crime for these inmates is drug possession with over 10,000 prison admissions. Over 600 inmates have been sentenced to 25 years to life as three strikers for drug possession and another 1,500 for property crimes.

⁷⁶The California law requires two strikers to receive sentences twice as long as normally expected and to serve 80 percent of their sentences less pretrial custody credits. Three strikers must serve their entire sentences. Prior to the Law’s enactment, inmates served slightly less than 50 percent of their sentences.

TABLE 27

COMPARISON OF WASHINGTON, CALIFORNIA, AND GEORGIA PRISON ADMISSIONS

Characteristic	Washington Three Strikes		California Two Strikes		California Three Strikes		Georgia Two Strikes		Georgia One Strikes	
	N	%	N	%	N	%	N	%	N	%
Intake	115	100.0%	37,271	100.0%	4,613	100.0%	88	100.0%	3,046	100.0%
Average Age	38 years		33 years		36 years		40 years		29 years	
Gender										
Male	113	98.3%	35,474	95.2%	4,561	98.9%	88	100.0%	2,951	96.9%
Female	2	1.7%	1,797	4.8%	52	1.1%	0	0.0%	95	3.1%
Race/Ethnicity										
Black	41	35.7%	13,704	36.8%	2,025	43.9%	67	76.1%	2,168	71.2%
Hispanic	3	2.6%	12,200	32.7%	1,202	26.1%	0	0.0%	0	0.0%
White	67	58.3%	9,908	26.6%	1,202	26.1%	21	23.9%	878	28.8%
Other	4	3.5%	1,459	3.9%	179	3.9%	0	0.0%	0	0.0%
Current Offense										
Person	108	93.9%	7,265	19.5%	1,785	38.7%	88	100.0%	3,046	100.0%
Property	7	6.1%	13,662	36.7%	1,483	32.1%	0	0.0%	0	0.0%
Drugs	0	0.0%	11,728	31.5%	888	19.3%	0	0.0%	0	0.0%
Other	0	0.0%	3,895	10.5%	400	8.7%	0	0.0%	0	0.0%

Note: Due to missing data on current offense for California cases, the numbers do not total to 37,271 and 4,613 two and three strike inmates.

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

TABLE 28

**TYPE OF CRIME FOR CALIFORNIA 2 AND 3 STRIKERS ADMITTED TO PRISON
As of September 1998**

Offense	2 Strikers		3 Strikers		Total	
	N	%	N	%	N	%
Totals	37,271	100.0%	4,613	100.0%	41,884	100.0%
Person Crimes	7,265	19.5%	1,785	38.7%	9,050	21.6%
Homicide	325	0.9%	174	3.8%	499	1.2%
Robbery	2,816	7.6%	827	17.9%	3,643	8.7%
Assault	2,949	7.9%	432	9.4%	3,381	8.1%
Rape	98	0.3%	71	1.5%	169	0.4%
Kidnaping	84	0.2%	44	1.0%	128	0.3%
Other Sex Crimes	697	1.9%	237	5.1%	934	2.2%
Property Crimes	13,662	36.7%	1,483	32.1%	15,145	36.2%
Burglary	4,981	13.4%	860	18.6%	5,841	13.9%
Grand Theft	1,017	2.7%	53	1.1%	1,070	2.6%
Petty Theft with Prior	3,932	10.6%	246	5.3%	4,178	10.0%
Receiving Stolen Property	1,221	3.3%	115	2.5%	1,336	3.2%
Vehicle Theft	1,640	4.4%	151	3.3%	1,791	4.3%
Forgery/Fraud	616	1.7%	39	0.8%	655	1.6%
Other Property	255	0.7%	19	0.4%	274	0.7%
Drug Crimes	11,728	31.5%	888	19.3%	12,616	30.1%
Possession	9,494	25.5%	635	13.8%	10,129	24.2%
Sales/Manufacturing	2,234	6.0%	253	5.5%	2,487	5.9%
Other Crimes	3,895	10.5%	400	8.7%	4,295	10.3%
Possession of Weapon	2,484	6.7%	263	5.7%	2,747	6.6%
DUI	344	0.9%	19	0.4%	363	0.9%
Other	1,067	2.9%	118	2.6%	1,185	2.8%
Missing	721	1.9%	57	1.2%	778	1.9%

Source: California Department of Corrections

To understand how well the strike law was capturing its target population of violent repeat offenders, we compared the demographic and legal characteristics of the strikers to those of the total CDC population as of June 1996, and to the pre-law CDC population (Table 29). Given the broad range of strikeable offenses and the two strike provision of the law, it was anticipated that the non-strikers would be comparable with the two strikers, except for the average sentence. This, however, was not what we found. The strikers differed from both the pre-law CDC population and the current CDC population with respect to gender, age, race and current offense. As shown in Table 29, strikers represented a higher proportion of males, minorities, and property offenders. It also appeared that the strikers were younger than the non-strikers (mean age 29 versus 31 for the total CDC population).

Another perspective on the types of inmates incarcerated for these crimes comes from the CDC classification system. Early on in the study we requested a data file that contained the classification data recorded for each inmate at admission. These data are summarized in Table 30. Here, one can see that the majority of second strikers are either minimum or low medium-custody inmates with little history of prior institutional problems (see Table 30). The same basic trend exists for third strikers, although a greater proportion are classified in the higher custody levels, largely due to their lengthy prison terms. The sentence length is a major determinant of an inmate's custody level within CDC. It's also noteworthy that most of these inmates have no history of institutional violence, escape, or major disciplinary problems. Most have less than a high school education and most are not married.

A special task force was created by CDC to determine whether the CDC classification system should be adjusted to ensure that strikers are not being over classified. The concern was that

TABLE 29

COMPARISON OF STRIKER AND NON-STRIKER INMATES ADMITTED TO THE CALIFORNIA PRISON SYSTEM

Characteristic	CDC 1993 Population ^a		CDC 1996 Population ^b		California Two Strikes As of 6/1/97 ^c		California Three Strikes As of 6/1/97 ^d	
	N	%	N	%	N	%	N	%
Intake	119,951		141,017		27,051	89.2	3,281	10.8
Gender								
Male	112,370	93.6	131,273	93.0	25,710	95.0	3,240	98.8
Female	7,581	6.4	9,744	7.0	1,341	5.0	41	1.2
Age								
Under 20	1,867	1.6	2,075	1.5	2,036	7.5	275	8.4
20 -29	49,197	41.0	50,953	36.1	12,264	45.3	1,391	42.4
30 - 39	47,223	39.3	57,055	40.5	9,180	33.9	1,086	33.1
40 - 49	16,678	13.9	24,199	17.2	2,993	11.1	426	13.0
50+	4,986	4.2	6,735	4.8	578	2.1	103	3.1
Median		31.0		32.0		29.0		29.0
Race/Ethnicity								
Black	39,097	32.6	44,498	31.6	10,022	37.0	1,441	43.9
Hispanic	40,466	33.7	47,990	34.0	8,848	32.7	862	26.3
White	34,541	28.8	41,626	29.5	6,832	25.3	858	26.2
Other	5,847	4.9	6,903	4.9	933	3.4	120	3.7
Current Offense^e								
Person	50,419	42.7	58,079	41.3	4,704	17.7	1,211	37.6
Property	30,938	26.2	35,463	25.3	10,672	40.2	1,114	34.5
Drugs	29,059	24.6	37,024	26.4	8,269	31.2	634	19.7
Other	7,533	6.4	9,427	7.0	2,871	10.8	266	8.2

- a. California Department of Corrections.(1996)California Prisoners & Parolees 1993&1994
- b. California Department of Corrections.(1996)Characteristics of Population in California State Prisons by Institution 6/30/96.
- c. California Department of Corrections and Washington Department of Corrections.
- d. California Department of Corrections and Washington Department of Corrections.
- e. These data are missing for some cases.

TABLE 30

**CLASSIFICATION ATTRIBUTES OF SECOND AND THIRD STRIKERS
AS OF MARCH 1, 1996**

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

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

because of the longer sentences, which is a major determinant of the initial classification decision, many of the strikers would be over-classified. The Special Task Force concluded that neither the current classification instruments nor the process should be modified at this time.⁷⁷ However, they plan to continue closely monitoring the classification system as the two and three strikers progress through the system.⁷⁸

Finally, we offer the following case studies to further illustrate the types of crimes these strikers are committing (Table 31). These five cases were drawn from interviews (sampling procedures are discussed in chapter 4) with inmates and in our estimation, here again, the pattern is the same. Inmates sentenced under this law for property crimes have committed relatively minor crimes where little if any harm was inflicted upon the victim. Furthermore, these cases are drawn from the three striker's population whom are expected to reflect the more serious offender. Both the qualitative and quantitative data show that most inmates receiving the second and third strike sentences do not fit the profile of a violent and habitual offender for whom lengthy imprisonment is required.

⁷⁷UCLA Statistical Consulting Center. (1997) "An Evaluation of CDC's Prisoner Classification System, Parts I - III." Los Angeles, CA: University of California at Los Angeles.

⁷⁸California Department of Corrections (May 1997). A Report on the Inmate Classification System. Sacramento, CA: Evaluation, Compliance and Information Systems Division.

TABLE 31

SELECTED DESCRIPTIONS OF THE CURRENT OFFENSES BY 3 STRIKERS

CASE DESCRIPTIONS
<p>Case 1. Person Offense: Car jacking While attempting to steal a parked truck, the offender reportedly held the owner at bay with a buck knife. He fled on a freeway and was apprehended. No physical injuries or vehicle damage was reported. The offender was sentenced to 27 years to life with a minimum term of 22.95 years. The offender was employed at the time of arrest earning between \$300 and \$500 per week net.</p>
<p>Case 2. Property Offense I: Possession of cellular telephone to defraud telephone company The offender was in possession of a cellular phone that when used would be associated with a different number and individual. Telephone calls billed to the victim represent the harm imposed in this case. The offender will serve at least 25.6 months. The offender was employed earning \$873 each week.</p>
<p>Case 3. Property Offense II: Petty Theft The offender received a sentence of 27 years to life for attempting to sell stolen batteries to a retail merchant. The loss to the victim (cost of batteries) is \$90. The offender was collecting disability pay at the time of arrest.</p>
<p>Case 4. Drug Offense: Sale of Marijuana The offender sold a \$5 bag of marijuana to an undercover police officer. The offense did not involve harm to person or to property. The offender will be incarcerated for at least five years.</p>
<p>Case 5. Other Offense: Reckless driving, Evading the police The offender reportedly rolled his vehicle through a stop sign, panicked when police responded, and led police on a one hour chase. He "decided to ride it out . . . (to) smoke (his) cigarettes and run out of gas." Police apprehended the offender after blowing out the tires on his vehicle. No victim was involved in this case. The offender received a sentence of 25 years to life of which he must serve twenty. He was employed earning \$1,000 per week net.</p>

IV. Impact on the California Department of Corrections Operations

This sections addresses how the California law impacted the CDC's operations.

Clearly, there was no need to make a similar detailed assessment for Georgia and Washington state. Nonetheless, for the record, our conversations with Georgia and Washington state officials confirm our conclusion that the effects of the law on prison operations have been non consequential.

A. Impact on Institutional Programming

Both the CDC administrators and institutional staff reported that the strike populations have had little to no effect on the institutional programming or management. For example, no additional programs have been developed or are planned for the third strike populations and the strikers are governed by the same set of institutional policies as non-strikers. Thus, third strikers have access to all of the same programs, services, and privileges as comparable non-strikers. Interviewed staff reported that they did not know the strikers from the non-strikers. Most do not ask inmates for their commitment offense or their sentence; thus they have no way of knowing who is a striker.

Staff also reported that no additional programming slots or work opportunities have been generated to accommodate the increasing institutional population. In fact, some programs have been curtailed because of budget cuts. Both staff and inmates said that there were not enough work or programming slots for all inmates who were willing to participate. Strikers indicated that they are often the last to get jobs or programming slots because of their long sentences. This trend is

not expected to change given the cuts to the CDC budget by legislature.⁷⁹

The strikers had little concept of how they would spend the duration of their sentences. Few for example, had plans of participating in programs or pursuing institutional jobs. Only one was attending substance abuse treatment. Some indicated an interest in moving to another facility, but their motivations for transferring were to be closer to home, better institutional conditions, or a lower custody level. Few sought a transfer to another facility in order to participate in a particular vocational training program or institutional job; instead, the focus was on their appeals and/or a favorable court ruling.

B. Impact on Institutional Infractions

The general consensus among the CDC administrative and institutional staff interviewed was that the strikers are no more difficult to manage than non-strikers and that there is no difference in compliance between second and third strikers, a finding that is not unusual since institutional staff are generally not aware of who are the strikers versus the non-strikers. When asked specifically about such problems as gang activity, drug use/trafficking, disruptive behavior, inmate-on-inmate violence, inmate-on-staff violence, refusal to obey orders, and extortion, the institutional staff consistently reported that these problems had neither increased nor decreased with the influx of strikers. Any increases in these institutional problems were attributed to overcrowding, changes in the inmate code (ie., younger inmates were less respectful of older felons and staff), and the integration of inmates with mental health disabilities into the general

⁷⁹ An exception to this trend was reported at the California State Prison at Lancaster. Within this facility, a pilot program to expand work and education/vocational training opportunities had been undertaken. The goal was 100 percent employment for all inmates.

population.⁸⁰ Staff stressed that any change in the rate of institutional infractions could not be linked directly to the strike law.

Preliminary statistical data on institutional adjustment indicate that the third strikers have had more disciplinary reports than non-strikers, but the second strikers, at least initially, are better behaved. The institutional staff suggested that the second strikers are especially well-behaved because the Department and local prosecutors have pursued institutional incidents such as assaults or drug possession as additional strikes. For example, if a second striker is involved in an assault on staff or another inmate, the assault could count as third strike and lead to a life sentence. The CDC staff reported that the prosecutors previously pursued only criminal convictions for serious, violent institutional incidents.

Some of the second strikers expressed fear of getting a third strike while incarcerated, but when asked if their current sentence affected their attitude or willingness to comply with institutional rules, most reported that it had little or no effect. When asked if they had been written up for an institutional infraction during this current incarceration, most strikers indicated they had not. Similarly, most denied receiving “writeups” during prior incarcerations.

We asked both second and third strikers what motivated them to comply with institutional rules given that they must serve at least 80 percent of their sentence, regardless of their behavior. The most common motivators were family visits, preferred housing, and work/job slots.

C. Impact on Institutional Security

Neither CDC institutional nor administrative staff indicated that institutional security

⁸⁰Numerous staff and inmates commented on the integration of inmates on medication for mental health disabilities into the general population. The staff indicated that these inmates did not always adjust well to the pressures of living in general population, adhering to the inmate code, and/or are vulnerable to drug use and extortion rings.

procedures had been changed to handle the strike populations. All agreed that existing institutional security measures had been intensified and housing/programming policies had been enhanced within the last six months, but these changes were linked to recent escapes and not the introduction of the three strikes law. Indeed, the escape rate per 100 inmates has actually decreased since 1995 (see Table 32).

TABLE 32
ESCAPE AND SERIOUS INCIDENT REPORTS
1990-1998

Year	Escapes		Total Serious Incidents	
	Number	Rate /100	Number	Rate /100
1990	81	0.09	4,184	4.7
1991	74	0.08	4,114	4.3
1992	83	0.08	4,982	5.0
1993	72	0.07	6,243	5.7
1994	56	0.05	6,974	5.9
1995	75	0.06	6,610	5.3
1996	57	0.04	6,668	5.1
1997	51	0.04	9,574	6.6
1998	26	0.02	9,769	6.6

Source: California Department of Corrections

When asked if the staff felt threatened by the strikers – inmates with long criminal histories of violent crimes – most staff readily asserted that their greatest concerns were with overcrowding, decreased staff-inmate ratio, and the “loss of tools to work with.” Interviewed staff perceived that traditional tools – the removal of privileges, good time credits, work/programming opportunities – had been curtailed or diminished under current fiscal and operational policies.

D. Impact on Correctional Costs in California

It is difficult to directly assess the impact of the law on correctional costs. We have already noted that the impact on prison population growth has not been as great as expected thus suggesting that there has been minimal costs to the CDC. However, the question of what would have been the sentences of the of the second and third strikers had the law not been adopted remains to be answered.

It is possible to make some gross estimates as follows. First, we can project the incarceration costs for those now being sentenced to the CDC. These costs are shown in Table 33. Here, one can see that a three striker convicted of a crime against a person is receiving an average sentence of 48 years (or life). Should they live so long, the cost to the CDC in 1996 dollars will be over \$1 million. We estimated the cost of incarcerating offenders sentenced under the California three strikes law by comparing the operational costs for confining the typical violent and nonviolent third striker to non-strikers who have committed similar or more serious offenses. The average minimum time to serve was computed per offense category (person, property, drug, and other) for the second and third strikers. For the CDC non-strikers, the average time served per offense category reflects the mean time served by felons released from the CDC during calendar

year 1996.⁸¹

These data show that the costs of imprisonment of the second and third strikers are, as expected, significantly higher than for the non-striker cases. The comparisons for the violent crimes are probably unfair as they do not account for some of the very serious crimes that are imbedded in that category (e.g., simple assault, simple robbery, etc.). However, the other comparisons for property, drugs and "other" crimes are more telling and realistic. These are the types of crimes that one would expect to receive a shorter or "normal" sentence had the law not been implemented. By just calculating the incarceration costs for these crimes and comparing the three and two strike costs with the pre-law incarceration costs, the total difference is approximately \$3.2 billion. Again, these costs are in 1996 dollars and do not include capital costs associated with any new facilities that may need to be constructed to accommodate these inmates.

⁸¹ Among the strikers, personal offenders must serve at least 85 percent of the imposed sentence, while all others must serve at least 80 percent of the imposed sentence. Therefore for the personal crime offender, for example, we multiplied the average sentence imposed on 3 Strikers convicted of a personal offense (56.7 years) times 85 percent to obtain the Minimum Time to Serve. For the non-strikers, the figures represent actual average time served in CDC for those first released to parole during 1996. While these figures ought to represent only non-strikers, it is possible that a minimal number of strikers may have been paroled during this time and included in this population. Time served data for the non-strikers was obtained from CDC Report, "Time Served on Prison Sentence: Felons First Released to Parole by Offense, Calendar Year 1996." (May 1997).

TABLE 33

**CALIFORNIA CORRECTIONAL COSTS -
FOR STRIKERS AND NON-STRIKERS, 1996**

Offense Type	CDC Cost Per Year	Mean Minimum Time to Serve in Years		Total Costs Per Offender	Inmates Admitted to Date	Estimated New Law Costs	
		New Law	Old Law			New Law	Old Law
THREE STRIKERS							
Personal	\$21,509	48.2	2.5	\$1,036,519	1,785	\$1,850,185,880	\$38,393,565
Property	\$21,509	31.1	1.3	\$669,360	1,483	\$992,660,999	\$31,897,847
Drugs	\$21,509	22.0	1.2	\$471,477	888	\$418,671,825	\$19,099,992
Other	\$21,509	24.9	1.0	\$535,144	400	\$214,057,568	\$8,603,600
3 Strikers - All Offenses					4,556	\$3,475,576,271	\$97,995,004
3 Strikers - Property, Drugs and Other Only					2,771	\$1,625,390,391	\$59,601,439
TWO STRIKERS							
Personal	\$21,509	9.0	2.5	\$193,151	7,265	\$1,403,240,707	\$156,262,885
Property	\$21,509	3.7	1.3	\$80,013	13,662	\$1,093,144,164	\$293,855,958
Drugs	\$21,509	3.5	1.2	\$75,712	11,728	\$887,946,583	\$252,257,552
Other	\$21,509	3.1	1.0	\$65,602	3,895	\$255,521,543	\$83,777,555
2 Strikers - All Offenses					36,550	\$3,639,852,997	\$786,153,950
2 Strikers - Property, Drugs and Other Only					29,285	\$2,236,612,290	\$629,891,065
DIFFERENCE BETWEEN 3 AND 2 STRIKE COSTS AND OLD -LAW COSTS FOR PROPERTY, DRUGS AND OTHER CRIMES							\$3,172,510,177

CHAPTER 8

IMPACT ON CRIME RATES

I. Introduction

As noted in the first chapter of this report, three strike laws are expected to help reduce crime rates by incapacitating habitual offenders who cannot be deterred or rehabilitated, and/or, by deterring would be offenders from committing new crimes. In this final chapter of the report, we examine these competing claims from three perspectives. In the first section, we examine the inmate perceptions of the law. Secondly, we consider the immediate impact of strike laws on the rate of reported index crimes for California as compared to other states. Likewise, within California we look back again to the five counties that have applied the law in a very different manner.

II. Inmate Perceptions

Of the 33 strikers interviewed, about one third thought the law was effective in removing violent, repeat offenders from the streets. As evidence of its effectiveness, the strikers pointed to the number of persons incarcerated under the law. However, the strikers also saw the wide net of the law as capturing the violent, repeat offenders as well as the “petty” offenders. One striker responded to this question:

“Yes, that is what I like about it.”

One third striker who agreed that the law was removing violent offenders from the streets commented:

“They don’t really know what is going on behind prison bars. The site of crimes has changed from the streets to prisons. No deterrence, they come in here and do them.”

For the majority of the strikers who saw the law as ineffective in incapacitating violent repeat offenders from the streets, their reasons varied. Some inmates felt that it would actually increase the level of violence on the streets since one had nothing to lose after getting a second strike. As several inmates explained:

“It is not changing anything. Things are [getting] worse. A guy knows he is going to strike out, so [now] he is going to get struck out. [Before] he would have not resisted arrest.”

“Quite often, the third strikers are picking up guns and shooting. They want to go out with the Gusto.”

“People with strikes [want to] go for it all... [we’re] holding court in the streets .”

“[The law] has a lot of people scared. [They] don’t want to get pulled over. Do everything they can do to get away. It is a threat to law enforcement.”

While some strikers perceived the law as creating violent crime, others simply saw the law as ineffective or incarcerating the “wrong” offenders. Similar to the data shown earlier, it was clear to the inmates that the net being used to incapacitate offenders was too broad, and that too many minor offenders were being prosecuted and sentenced under the law’s provisions. This point was illustrated by several inmates.

“[A] lot of guys who should be here [in prison] were not sentenced. [They are] catching the little guys, not serious, violent offenders.”

“It has not been effective in either one of its goals [incapacitation or deterrence]. Crimes are going down all over, not just here. It is getting individuals who are committing nonviolent crimes.”

“Violent repeat offenders.... they were already in prison [doing time] with the five year enhancements.”

With respect to deterrence, there were some inmates who agreed that the law had made offenders more cautious, increased violence, and/or changed its locale, as illustrated in the

following comments:

“[It] probably slowed some down.”

“ [It] is a little effective, 25 to life makes them think twice, if they are aware their crimes could count.”

“[It] deters in a sort of way. Know if they have been in prison once, [they] are going to strike it out.”

“[It] could be [effective], I know of a few home boys who are kind of cautious. Both stopped committing crimes, they are more cautious. My brother stopped selling drugs. Others branched out, moved onto other states or different locations. Some have no regard for the law, they just don’t think about the law.”

However, most of the strikers were much less optimistic about the ability of the law to deter offenders. The strikers reported that few individuals in the streets recognized the reality of the law, perceiving it as always applying to someone else. As explained by the strikers:

“No deterrence, not by and large. [Offenders] assume that they are not going to get caught or not do time.”

“They don’t know what was going to happen. They don’t stop. They can’t understand anything but violence, a lot of serious cases . . . It can’t stop nothing, just makes prisons more overcrowded.”

“Everyone thinks it is not going to happen to me.”

“Laws won’t stop violence and crimes, we need jobs!”

“Basically it [crime] is always going to continue. It is deeper in the government how crime is committed. Need to restructure the Public Defender’s office. The Public Defender, the District Attorney, and the judges are working together. . . .”

A corollary to their perceptions of the law’s effectiveness in deterring crime is whether it affected each striker’s involvement in criminal behavior prior to his or her arrest for the current offense. Only seven of the strikers interviewed reported that the law affected their behavior in the streets. Five of the seven offenders deterred reported that the law prompted them to switch from

serious, violent offenses to property crimes in the hope that they would not be prosecuted for a third strike. In particular, they sought to avoid committing robberies. As one striker explained, she switched from “pulling street robberies” to theft and forgery.⁸² The other common impact on the offenders’ behavior was to slow down their rate of involvement or to make them more cautious.

Unfortunately for those that did change their crime pattern from violent to property crime, they were unaware of what crimes counted as a strike. The majority said that they were not deterred by the law because they did not think that it would apply to them. They thought that the law only applied to “killers, child molesters, and rapists.” They explained:

“I did not think petty theft was a strike. I was not deterred.”

“I thought it was only violent and serious offenses. . . . [It had] no application to me.” (This striker was convicted of possession/sale of rock cocaine.)

“My understanding was it was for child molesters, murderers, and rapists. I did not think it applied. I was not thinking about the law at the time of the current crime.”

“I had heard about the law (from the news), but never thought that it was me. [I] thought that it only applied to violent offenses – molestation, murder, robbery with a gun. No, it did not deter me because I was not doing that. . . . I never had done robberies.” (Current offense was sale of \$5.00 bag of marijuana.)

We asked the strikers how they learned about the law. Most said that they heard about it from the television news, newspapers, radio, and/or acquaintances. A surprising number first learned about the law during the court processing of their current offense, when it was explained to them by their attorney or another jail inmate. Regardless of where they had heard about the law, most strikers were misinformed as to its full scope prior to their current offense. They were confused about what offenses were considered strikes, how prior strikes were counted, and the

⁸²This striker was incarcerated for stealing social security checks from mail boxes. She/he went on to explain that had she/he known that the current theft offense would result in a life sentence, she would have continued “pulling robberies.”

second strike provision. Some thought of the law as only prospective, only strikeable offenses that occurred after the law was implemented would be considered strikes.

In sum, the effectiveness of the California strikes law in deterring crime has been, at best, limited. Few strikers recognized the law as applicable to them or understood its provisions. Even fewer of the strikers considered the law at the time of the current offense. Thus, even if the offenders understood some of the ramifications of the law, had switched offenses, or were 'cautious,' it did not dramatically alter their criminal activity. The common explanation was, "I was not thinking about the law at the time of the current offense" or "It was a spur of the moment thing." This failure to be deterred by so drastic a penalty raises serious questions regarding the viability of deterrence as a crime control strategy.

III. Impact on Crime Rates Within California

Already we have observed a strong variation in how the law has been applied within California since its enactment in 1994. Although the number of post-implementation years is relatively short (3-4 years) to perform time series analysis, a preliminary analysis of a natural experiment allows one to make some preliminary but tentative analysis of the relative effects of three strikes legislation on public safety. Two counties (San Francisco and Alameda) are clearly the more lenient jurisdictions that have chosen not to apply the law as designed. The other three counties (Los Angeles, Sacramento, and San Diego) are more conforming to the law and have applied it far more frequently than the other two. If the law has crime control effects, one would hypothesize that crime rates would fall more quickly or sharply in the latter three counties as compared to the other two.

Figure 6 shows the rate of reported crimes per 100,000 persons for the five California

counties and statewide, based upon the California Crime Index (CCI) from 1990-1996.⁸³

Consistent with national as well as state level trends, each of the five counties experienced decreasing crime rates over the six-year period. The largest reductions in overall crime rates have occurred in San Diego, Los Angeles, and San Francisco with crime rates dropping by over 30 percent during the six-year period. In Alameda County, total crime rates also dropped (from 3,327 per 100,000 in 1990 to 2,935 per 100,000 in 1996) but at a far slower rate. Sacramento County, on the other hand, experienced increases in crime rates between 1991 and 1993, but by 1996 had returned to levels comparable to 1990. These data suggest no clear pattern of crime reduction occurring in relation to the application of California's three strikes laws. Crime rates are being driven by factors other than the aggressive strike prosecution policies pursued in Los Angeles, San Diego, and Sacramento Counties.

The same conclusion can be stated by looking only at violent crime rates. Overall, there was an 18.5 percent reduction in violent offenses reported to police between 1990 and 1996 statewide. As shown in Figure 2, Los Angeles and San Francisco posted substantial declines in their rates of violent crime. Alameda County was the only county within our sample that recorded a net increase (from 907 to 1,016) in violent acts reported to police between 1990-1996. However, violent offenses have been declining in Alameda since 1994.

⁸³California Crime Index includes the number of reported homicides, forcible rapes, robberies, aggravated assaults, burglaries, and motor vehicle thefts. The FBI UCR includes homicide, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. (California Department of Justice. (1995). California Criminal Justice Profile 1995. Sacramento, CA: Division of Criminal Justice Information Services, Criminal Justice Statistics Center.)

IV. Impact on Crime Rates Among the States

UCR index crime data from six strike states – California, Washington, Georgia, Texas, Massachusetts, and Michigan — were also collected and analyzed. The first three states are states that adopted three strikes laws and have had them in place since 1993 or 1994. The other three states reflect states that did not adopt three strikes legislation but had similar crime rates at the time that California, Georgia and Washington adopted their bills. As shown in Figure 7, all six states showed trends in their crime rate patterns which are not consistent with those who argued that adoption of these laws would produce independent effects on crime reduction. In addition, when we look closer at the crime rates and compare the differences among the three strike states and the non-strike states by violent and property crime rates, we see the same basic trends. Table 37 shows that from 1990 to 1996, both violent and property crime rates have decreased for all the states under examination, which also brings into question the effects of the three strikes laws.

Admittedly, this analysis is simplistic from a methodological perspective as it does not control for all of the factors that have been shown to be related to crime rates. It could also be that the so-called non-three strikes states had adopted other legislative reforms that served the same purpose of targeting habitual offenders. Moreover, there is no reason for Washington and Georgia to even assume that their laws would have an impact as they were largely symbolic to begin with. Only California could possibly argue that three strikes might have an impact on its crime problem.

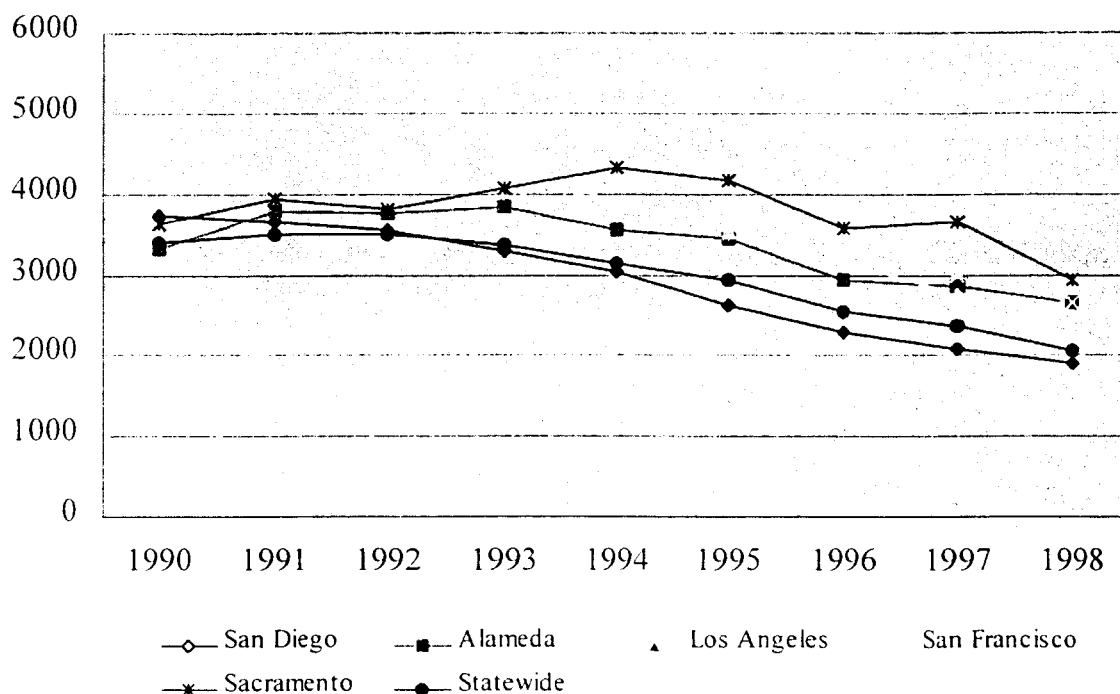
It has now been well established that the overall rates of crime as well as the violent crime rate in the United States have declined during the 1990s. This downturn in crime was evident as early as 1993 in many states, crime rates were dropping well before then. Many other social,

economic, and public policy factors have been cited as contributing to changes in crime rates.⁸⁴

The bottom line is that California, which is the only state to aggressively implement a three strikes law, has shown no superior reductions in crime rates. Furthermore, within California, counties that have vigorously implemented the law also show no superior decreases in crime rates as compared to other counties.

Figure 6

Reported Crime per 100,000 across selected California Counties



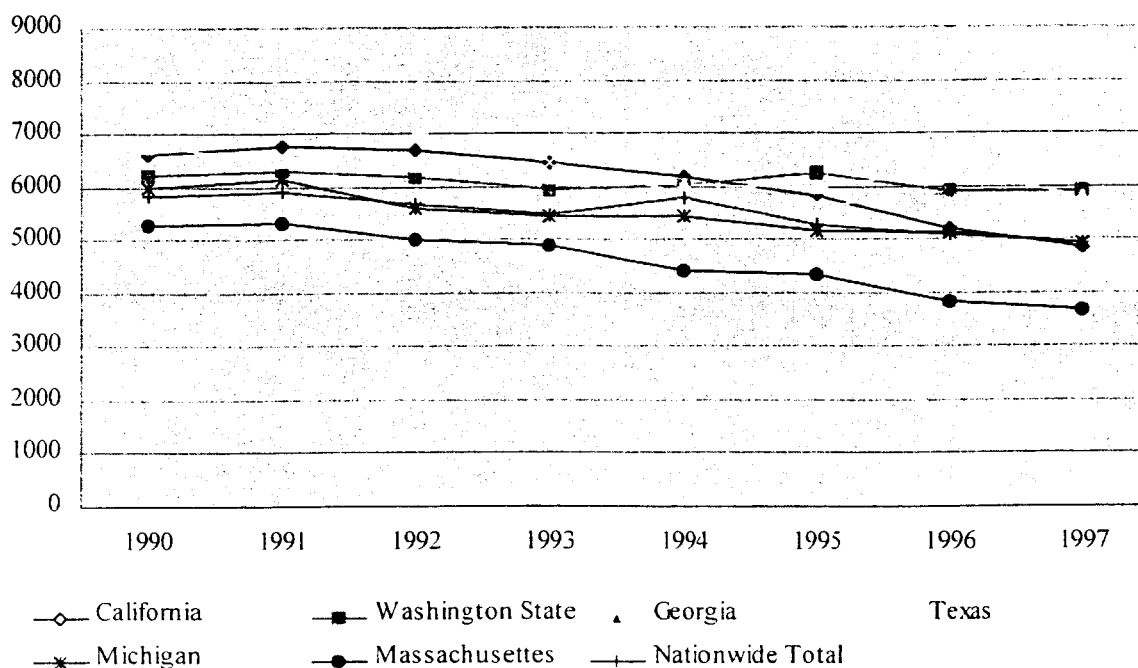
Source:

California Uniform Crime Reports 1990 - 1998

⁸⁴See "Are Crime Rates Declining?" by J. Austin and R. Cohen (November 1996) National Council on Crime and Delinquency Focus, San Francisco, CA.

Figure 7

Offenses Reported per 100,000 across Selected States



Source: Uniform Crime Reports for the United States, 1990 - 1997

Table 37

Violent and Property Crime Rates by State

States	1990 Violent crime rates	1990 Property crime rates	1996 Violent crime rates	1996 Property crime rates
California	1,045.2	5,558.4	862.7	4,345.1
Georgia	765.3	6,007.3	638.7	5,671.0
Washington	501.6	5,721.3	431.2	5,478.2
Massachusetts	736.2	4,561.5	642.1	3,194.9
Michigan	790.4	5,204.4	635.3	4,482.2
Texas	761.4	7,065.3	644.4	5,064.5

Source: Uniform Crime Reports for the United States, 1990 - 1996

V. Summary

The national movement toward three strikes and you're out legislation has been a symbolic campaign that has had little if any effect on the criminal justice system or public safety. With the noted exception of California, all of the states followed the initial lead of the state of Washington by carefully wording their legislative reforms to ensure that few offenders would be impacted by the law. Contrary to the perceptions of the public and policy makers, there are very few offenders who have a prior conviction for very serious crimes who then repeat the crime. In those rare instances that fit this profile, states already had the capacity to and were sentencing such offenders to very lengthy prison terms. Only California has tried to expand the "strike zone" so that thousands of offenders could be sentenced under the new law.

But even under California's ambitious law, the impact was not nearly severe as projected. The California experience has also served to demonstrate how the enormous amount of discretion held by prosecutors can be used to apply any law to offenders as they see fit to choose. Indeed, California has provided a clear example of "justice by geography" where similarly situated offenders are receiving very dissimilar sentences. Ironically, while the California law may have been designed to limit discretion by system officials in handling repeat offenders – through the ban on plea bargaining and the provisions for mandatory sentencing – it had an opposite effect as district attorneys vary in their interpretation and application of the law. As Feeley and Kamin note:

Thus, ironically, this (California) law like so many other laws designed to restrict discretion, has the effect of enlarging the discretionary powers-- and hence sentencing powers-- of the prosecutor at the expense of the judge.⁸⁵

⁸⁵ Feeley and Kamin (1996). p.150.

With regard to crime reductions, the law has had minimal impact. In those states that passed largely symbolic laws, one cannot link the "three strikes" reform to crime reduction since they are not affecting a significant portion of the criminal population. In California, crime rates were decreasing before the strike law took effect, and has continued its decline at the same rate as states that did not pass three strikes legislation. More significantly, when we examined California counties that reflected differential application of the law, we found similar changes in pre- and post-reform crime rates, regardless of the county's policies on prosecuting strike cases. The failure of this reform to either deter or incapacitate the so called "high rate" offender is linked to an inability to target high risk offenders (selective incapacitation), or to create the perception of imposition of the law in a swift and equitable manner. It should also be noted that in California, and perhaps elsewhere, there are many unfortunate offenders who have been severely punished using a very unfair strike zone. Thus many non-violent individuals are being incarcerated for very long periods of time which will ultimately overcrowd the prison system and cost the tax-payers an enormous amount of money as the three strikes laws continue to be used. Overall, these findings suggest that the future implementation of the three strikes law will continue to be used in much the same manner as it currently is being used, with Los Angeles county leading the country in its application of the full extent of the law. Although this examination showed that the effects of the three strikes legislation were highly over estimated, continued watch of the laws effects will be necessary to determine the long term effects on the courts, the local and state jails, and the crime rates.

END OF REPORT