EVALUATING THE IMPACT OF “THREE STRIKES” LAWS ON CRIME RATES AND PRISON POPULATIONS IN CALIFORNIA AND WASHINGTON

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Abstract
The efficacy of three strikes laws has been a topic of contention among researchers since the first such piece of legislation was implemented in the United States nearly two decades ago. With the benefit of hindsight, it is possible to trend their impact through longitudinal analysis. This paper assesses the impact of three strikes legislation in California and Washington; two states which have implemented uniquely divergent forms of mandatory sentencing. It addresses the effect of three strikes law on crime trends and prison populations therein. Results indicated that mandatory sentencing was associated with declines in some areas of crime. However, the decline observed nationally was not proportional to the scope of variations in three strikes laws and the impact on correction institutions has been minimal. This popular legislative response to crime may be in need of revision, specifically regarding the scope of punishable offenses.
Three strikes laws have gained national popularity since the landmark passage of California’s “Three Strikes and You’re Out” sentencing guidelines in 1994. Subsequently, the federal government and most U.S. states have enacted or augmented similar mandatory sentencing laws and habitual offender statutes (Dickey and Hollenhorst 1999). Ostensibly, early reductions in overall crime rates served as justification for three strikes advocates. However, many researchers attribute much of the phenomenon to preexisting trends independent of legislation, asserting that a comprehensive decline was observed in the 1990s throughout North America (Eskridge 2004, 15-23). Regardless, early research studies were only able to analyze month-to-month trends and were largely confined to samples in one state (Stolzenberg and D’Alessio 1997). Now that sufficient time has passed since the first three strikes law was implemented, more detailed longitudinal analyses have been published. Recent studies have indicated that these laws have not yielded results consistent with the initial hype. However, three strikes legislation appears to have modestly influenced crime reductions in some states (Kelly and Datta 2009).

The rationale behind the passage of three strikes legislation by the U.S. Congress and over half of the individual states was that mandatory sentencing punishments would effectively deter criminals and protect the general public from those repeat offenders who remain unimpeded by amassing the convicted into the penal system under weighty prison terms (Peak 2010, 312). However, Austin, Clark, Hardyman, and Henry (1999, 138-142) contended that the legislation was actually drafted to be primarily symbolic in nature with little practicality, citing that previously existing crime prevention methods had already been employed by all of the three strikes states. As shown in Table 1, most three strikes states intentionally adopted a minimalist approach to the application of these laws (Dickey and Hollenhorst 1999, 4-7). Accordingly, much of the initial governmental and academic scrutiny of mandatory sentencing focused on California’s zealous enforcement and not necessarily on the “striking out” concept itself (Chen 2008). Critics argued that
formidable mandatory sentences would bombard the courts with defendants who refused to plea bargain in favor of a trial by jury; thus burdening the legal system with excessive case loads, hindering its ability to facilitate speedy trials, and raising court costs to the state. Moreover, they contended that imposing lengthy sentences would prompt an increase in prison populations within already overpopulated facilities (Willis 2007). Ergo, a series of decisions made by legislators had the potential to reverberate across the entire criminal justice system and into local communities.

Table 1. Use of Three Strikes Laws by State

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Year Law Enacted</th>
<th>Number of Convictions</th>
<th>Data Current as of</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>1996</td>
<td>1</td>
<td>8/98</td>
</tr>
<tr>
<td>Arkansas</td>
<td>1995</td>
<td>12</td>
<td>8/98</td>
</tr>
<tr>
<td>California</td>
<td>1994</td>
<td>40,511</td>
<td>7/98</td>
</tr>
<tr>
<td>Colorado</td>
<td>1994</td>
<td>2</td>
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</tr>
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<td>Connecticut</td>
<td>1994</td>
<td>1</td>
<td>8/98</td>
</tr>
<tr>
<td>Florida</td>
<td>1995</td>
<td>116</td>
<td>6/98</td>
</tr>
<tr>
<td>Georgia</td>
<td>1994</td>
<td>942</td>
<td>3/98</td>
</tr>
<tr>
<td>Indiana</td>
<td>1994</td>
<td>38</td>
<td>7/98</td>
</tr>
<tr>
<td>Maryland</td>
<td>1994</td>
<td>5</td>
<td>12/97</td>
</tr>
<tr>
<td>Montana</td>
<td>1995</td>
<td>0</td>
<td>8/98</td>
</tr>
<tr>
<td>Nevada</td>
<td>1995</td>
<td>304</td>
<td>8/98</td>
</tr>
<tr>
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<td>1995</td>
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<td>8/98</td>
</tr>
<tr>
<td>New Mexico</td>
<td>1994</td>
<td>1</td>
<td>8/98</td>
</tr>
<tr>
<td>N. Carolina</td>
<td>1994</td>
<td>5</td>
<td>12/97</td>
</tr>
<tr>
<td>Pennsylvania</td>
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<td>3</td>
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<tr>
<td>S. Carolina</td>
<td>1995</td>
<td>825</td>
<td>10/97</td>
</tr>
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<td>Tennessee</td>
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<td>5</td>
<td>7/98</td>
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<td>1995</td>
<td>0</td>
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<td>Vermont</td>
<td>1995</td>
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<td>Virginia</td>
<td>1994</td>
<td>0</td>
<td>8/98</td>
</tr>
<tr>
<td>Washington</td>
<td>1993</td>
<td>121</td>
<td>8/98</td>
</tr>
</tbody>
</table>

Crime Rates in California and Washington

The State of California enacted the nation’s most infamous and farthest-reaching three strikes law in 1994. Therein, a mandatory sentence of 25 years to life in prison was established for any repeat offender convicted of three qualifying felonies. The most notable component of California’s habitual offender statute, contrary to most other states’ laws, is that qualifying felonies are not relegated to violent crimes alone. Moreover, California’s version of the law is markedly more punitive than others. Under the second-strike provision, if an offender has a prior serious or violent felony conviction, the sentence for a subsequent felony is automatically doubled. Similarly, a third felony conviction thereafter results in a third-strike sentence of 25 years to life (Willis 2007). Ultimately, more than 60 separate felony offenses are regarded as strikes. By 2005, the broad nature of the California three strikes statute was responsible for over 87,500 second- and third-strike convictions (Chen 2008, 345). Figure 1 illustrates the three strikes rate in California juxtaposed against the average rate for 21 other three strikes states (Schiraldi, Colburn, and Lotke 2004, 6). These results convey that California’s habitual offender statute is demonstrably unique and rampantly employed.

<table>
<thead>
<tr>
<th></th>
<th>Wisconsin</th>
<th>Federal</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>3</td>
<td>35</td>
<td></td>
<td>8/98</td>
</tr>
<tr>
<td>10/97</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Kansas, Louisiana, and North Dakota excluded due to lack of data.*
Figure 1. Three Strikes Rates

The sheer scope of the law’s applicability has come at substantial monetary cost to the State’s taxpayers. Studies conducted prior to the enactment of the California mandatory sentencing guidelines projected a 25 percent crime reduction at an annual cost of $5.5 billion if the law were fully implemented, which it was not (Meehan 2000, 25-26). Subsequently, between 1994 and 1997, the total crime rate in California dropped by 20.2 percent with a 13.8 percent reduction in violent crime. However, a 1999 Justice Policy Institute study concluded that the reduction was in no way attributed to three strikes law because crime rates had already started to decline in other regions of the United States prior to the law’s implementation and declared that California’s mandatory sentencing legislation was a failure (Chen 2008, 346).

Compared to California’s mandatory sentencing legislation, The State of Washington’s simple and comprehensible Initiative 593 is narrower in scope and far less punitive (Caulkins 2001). Therein, anyone tried as an adult and convicted of three serious felonies on separate occasions receives a mandatory sentence of life in prison without the possibility of parole. Notably, spree offenses are counted as a single strike since the aim of the law is to incapacitate dangerous


Figure 1. Three Strikes Rates per 100,000 Citizens

- **California (119.3)**
- **Other 3-Strikes States (6.7)**
repeat offenders and distinguish their transgressions from crimes of passion. Also, unlike the California three strikes law which permits ample discretion by judges and allows them to dismiss prior strikes, only the Governor may grant a pardon or clemency under Initiative 593. One axiomatic distinction of Washington’s mandatory sentencing law is that only serious felony crimes such as murder, rape, assault, child molestation, and robbery are regarded as strikes. Thereby, only the most egregious 12 percent of the State’s felonies qualify under its three strikes law (LaCourse 1994). Initiative 593 targets violent repeat offenders since research has affirmed that a meager 6 to 7 percent of the criminal population is responsible for over half of all violent crimes; to include three-quarters of rapes and robberies as well as almost all murders (Jennings 2006, 38). Notably, the likelihood of recidivism into violent crime for a released third-striker is 76 percent. Hence, Initiative 593 is specifically applicable to this minute, albeit actively contributing, portion of the criminal population so as to impose the strictest penalty possible, sans execution, upon the most dangerous repeat offenders (LaCourse 1994, 421).

Given the narrow scope of Initiative 593, significant reductions in crime rates were not expected since the law, by design, applies to relatively few offenders (Dickey and Hollenhorst 1999). However, within four months following its implementation, a dozen violent criminals; rapists, assaulters, child molesters, and robbers, each with several prior convictions who generally preyed on women and the elderly, were sentenced to life in prison. Notably, one of these offenders, Michael Johnson, was actually a fourth-striker, since he had committed three prior felonies before 1993. His final conviction was the result of his decision to kidnap and repeatedly rape a 16 year-old girl at knifepoint. Larry Fisher was also sentenced under Initiative 593 following his commission of an armed robbery which became his 17th conviction; six of which were felonies (LaCourse 1994, 422-423). Unfortunately, multiple violent felony offenses are not uncommon for repeat criminals like Johnson and Fisher. In hindsight, perhaps the only regret attached to Initiative 593
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is that earlier passage may have prevented several rapes, robberies, and assaults in the State of Washington.

**Impact of Three Strikes on National Crime Trends**

Chen (2008) analyzed state-level crime data for the entire United States, with particular attention paid to three strikes states, from 1986 to 2005 in order to quantify the efficacy of the legislation pursuant to deterrence and incapacitation. Therein, seven separate offenses were trended; murder and non-negligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny/theft, and motor vehicle theft. The primary purpose of the study was to determine the impact of other three strikes states' laws as compared to California's. This was done in order to discern which variations of the legislation had produced the most significant results. Theoretically, the California law would have had a greater impact on crime rates than did comparable laws in other states given its scope and frequency of application. Moreover, rates for instrumental crimes (e.g. burglary, larceny) should have fallen more dramatically, considering that these crimes generally involve more forethought and could be more easily deterred.

An evaluation of the data revealed that three strikes states experienced a slower decline in most areas of crime prior to the implementation of their laws when compared to other states, which may have been responsible for the laws' initial gravitas among citizens and policy-makers. Interestingly, murder rates in three strikes states declined 12.9 percent less rapidly than the national trend, indicating that the fear of mandatory sentencing may have motivated certain criminals to eliminate witnesses and visit violence upon arresting officers (Chen 2008, 360). Nonetheless, this trend was not especially pronounced in California as would have been expected (Johnson and Saint-Germain 2005). Additionally, crime rates for instrumental offenses fell annually at rates ranging from about 1 to 3 percent more rapidly in three strikes states when adjusted for the preexisting nationwide crime rate reduction trend. However, this cannot be attributed comprehensively to the legislation since these crimes are not covered under most states’ three strikes provisions.
Accordingly, few statistically significant declines and no additional incapacitation effects were observed for instrumental crimes in three strikes states (Chen 2008, 357). Moreover, in their analysis of 188 metropolitan statistical areas, Kovandzic, Sloan, and Vieraitis (2004) affirmed that cities in three strikes states did not experience any significant reductions in crime rates independent of the national trend as illustrated in Figure 2.

In the past three decades, the American custodial system has expanded by over 400 percent following a period of stability which had survived for more than half a century as shown in Figure 3 (Pfaff 2008, 550). The United States currently houses more than one-quarter of the global prison population with over two million inmates and nearly seven million parolees and probationers (Gottschalk 2006, 1694). Collectively, states currently spend approximately $43 billion on corrections annually (Pfaff 2008, 547). Nevertheless, it is 17 times more expensive for a society to have high-rate repeat offenders on the street rather than incarcerated (LaCourse 1994, 422). This is representative not only of how American society regards its marginalized citizens, but of how its governing bodies allocate financial resources and respond to paradigm shifts in crime and social disorder (Pfaff 2008). It was in response to such a shift, in the middle of the prison population explosion, that three strikes laws were first adopted.
Between 1984 and 1994, the California prison system received a more than 200 percent increase in funding. During that time, the State erected 21 new prisons (Irwin, Schiraldi, and Ziedenberg 2000, 139). Notably, this asset reallocation occurred prior to the enactment of the State’s three strikes law and was necessitated by the nationwide prison population explosion. Mandatory sentencing was projected to cost California taxpayers about $16,300 annually at the correctional level per serious crime prevented (Meehan 2000, 25-26). By 2008, California had imprisoned more than 250 times the number of offenders under mandatory sentencing law than any other three strikes state (Chen 2008, 350. Due to constraints on population growth in already grossly overpopulated facilities,
entry into the correctional system by inmates with mandatory sentences occasionally required the release of current prisoners. Thereby, incapacitation effects would materialize only if the paroled offenders were less likely to commit crimes than those who remained incarcerated under three strikes law. Consequently, some researchers have contended that the disproportional representation of nonviolent offenders in the California prison population is attributable to mandatory sentencing (Meehan 2000). Indeed, the nonviolent prisoner population therein has grown substantially since 1980. However, Table 2 shows that drug offenders account for a significant portion of the expansion. Therefore, the increasing prevalence of nonviolent offenders in the California custodial system may be influenced primarily by federal War on Drugs policies and not solely correlated with three strikes law, though the two may be inextricably linked (Auerhahn 2004).


<table>
<thead>
<tr>
<th>Year</th>
<th>Prison Population</th>
<th>Drug Prisoner Population</th>
<th>Percent Drug</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>20,248</td>
<td>1,967</td>
<td>10 %</td>
</tr>
<tr>
<td>1985</td>
<td>52,841</td>
<td>11,232</td>
<td>21 %</td>
</tr>
<tr>
<td>1990</td>
<td>94,161</td>
<td>26,652</td>
<td>28 %</td>
</tr>
<tr>
<td>1995</td>
<td>136,179</td>
<td>41,578</td>
<td>31 %</td>
</tr>
<tr>
<td>1998</td>
<td>155,888</td>
<td>50,099</td>
<td>32 %</td>
</tr>
</tbody>
</table>

to the passage of California’s three strikes law in 1994. Parolee population increases ranging from 6 to 12 percent were observed in subsequent years before entering into a three-year period of stability beginning in 1999 which was followed by two consecutive years of decline; -7 percent in 2002 and -2 percent in 2003 (California Department of Corrections and Rehabilitation 2008, 8a). These data convey that three strikes law has not directly influenced parolee population growth in California even though a significant number of strikers have been incarcerated.

![Figure 4. Total Felon Releases to Parole in California (1987-2000)](image)


correctional facilities as a result of mandatory sentencing, perhaps partially due to infrequent employment of Initiative 593. Nonetheless, within five years of the law’s enactment, nearly half of all offenders serving life without parole in Washington were third-
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The State’s prison population was expected to grow by 9 percent over a 20-year period. However, even this manageable figure was not met in the first year and future estimates were lowered accordingly (LaCourse 1994, 423). Using data provided by the Washington State Department of Corrections (2012), Figure 5 illustrates the relatively stable growth of the State’s prison population. Notably, no significant increase independent of the existing trend was observed following the State’s enactment of three strikes law in December of 1993 or after the passage a separate two-strike provision in 1996.

Figure 5. Washington State Prison Population (1990-2000)


strikes law, given its narrow scope, was its significant deterrence effect. Instances of rape, robbery, and aggravated assault have declined noticeably (Dickey and Hollenhorst 1999, 8). Law enforcement, legal, and corrections professionals have stated that many current and former inmates have expressed concern and
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requested information such as which crimes are covered by three strikes law. Moreover, a subsequent micro-exodus of criminals has resulted. Numerous second-strikers, particularly sex offenders, have relocated outside of the State since 1993. Many of those second-strike offenders who remained voluntarily sought treatment and enrolled in rehabilitation programs, some at their own expense, immediately after Initiative 593 went into effect (LaCourse 1994, 423-242). It is apparent that Washington’s mandatory sentencing guidelines have produced a strong deterrence effect and have the potential to convince some repeat offenders to reconsider their lives of crime. Many of those who have not been deterred have decided to relocate, which substantiates the efficacy of Initiative 593 within the State’s borders.

When the first three strikes statutes were enacted, opponents argued that prison systems would be overwhelmed with resultant population increases. However, the number of offenders sentenced during the first three years of Washington’s legislation was actually 63 percent lower than the maximum expectation. Moreover, mandatory sentencing data compelled corrections officials in California to lower their five year incarceration projections by 40,000 inmates. The dismal figures proposed by early critics have not been realized because most three strikes laws target the type of violent repeat offenders who were already receiving lengthy prison terms under existing legislation (Gatland 1998, 29). During the early-1990s, California and Washington experienced significant increases in their prison populations which contributed to policy makers’ decision to implement three strikes legislation. In both states, it appears that mandatory sentencing may have actually mediated the growth in subsequent years.

Public Perception of Three Strikes

Regardless of arrest and crime reduction statistics, citizens often cite crime as their primary concern when randomly polled. Most often, repeat violent and sex offenders garner the most fear among the populace even at times when crime rates for these offenses are down. This public fear was largely responsible for the
romanticized promises which ultimately materialized into mandatory sentencing laws in the 1990s (Dickey and Hollenhorst 1999). Fear of crime can also be attributed to the victims’ movement, which brought violent and sex crimes into the public eye and rekindled the case for restorative justice. Unlike in the past, contemporary victims of violent crime have come forward to express their personal suffering and bring attention to a formerly abstract social problem. In order to appease the masses, law makers across the United States were compelled to implement three strikes laws; most aimed specifically at violent and sex offenders (Berliner 1994).

Neither California nor Washington experienced dramatic reductions in crime rates; though for different reasons respectively. The recognizable difference observed following the passage of mandatory sentencing legislation has been public perception, even though both initiatives were originally passed by large voter margins. The Justice Policy Institute has recommended that California abandon or significantly modify its three strikes policy due to budget concerns and lack of positive outcomes (Schiraldi, Colburn, and Lotke 2004). Subsequently, a ballot initiative and state Senate bill were introduced which aimed to bring California’s mandatory sentencing guidelines more in line with those of other states by reducing the number of crimes regarded as qualifying felonies; both failed at the polls partially due to a multi-million dollar gubernatorial-sponsored media campaign (Chen 2008, 351). Contrarily, Initiative 593 has been largely embraced by the public. The Washington media has covered stories wherein inmates proclaimed their fear of “Three Strike and You’re Out” (LaCourse 1994). Thereby, citizens felt that their communities were being protected by mandatory sentencing legislation, even though it had not produced an overwhelming reduction in violent crime rates. Perhaps, the honesty of Washington politicians regarding the limited applicability and realistic expectations of three strikes in their state is responsible for the resultant public support. Moreover, Washington law makers proved to their constituents that Initiative 593 has been cost-effective; which their counterparts in California were unable to accomplish (Dickey and
Hollenhorst 1999). Three strikes law in Washington appears to have improved public perception of the criminal justice system even in the absence of impressive crime reduction statistics.

**Conclusion and Reflection**

The efficacy of three strikes laws has been a topic of contention among criminal justice practitioners and researchers since the first such piece of legislation was implemented in the United States nearly two decades ago. Chen (2008) concluded that crime rates in three strikes states had declined slower than the national average prior to their laws' enactment. The resultant public fear of crime prompted a legislative response via mandatory sentencing guidelines (Berliner 1994). Nonetheless, states which have implemented three strikes laws have not experienced reductions in violent crime rates to any greater extent than those with no such legislation (Kovandzic, Sloan, and Vieraitis 2004).

The opposition's expectation of a prison population explosion has not materialized. Three strikes states have not suffered a noticeable increase in incarceration rates subsequent to the implementation of mandatory sentencing laws as predicted by critics (Gatland 1998). Even in states where three strikes was expected to have a major impact, projections were unfounded and very little impact has been felt directly by the courts and corrections systems in most jurisdictions (Austin, Clark, Hardyman, and Henry 1999). Some researchers contend that the disproportionate representation of nonviolent offenders within the California prison population may compromise the long-term cogency of mandatory sentencing (Irwin, Schiraldi, and Ziedenberg 2000). However, the expansion of this prisoner demographic does not appear to have been directly caused by three strikes law and may be better explained through evaluations of existing War on Drugs initiatives (Auerhahn 2004).

Although the limited applicability of most states’ mandatory sentencing guidelines is unlikely to produce significant incapacitation and deterrence effects, Washington has demonstrated that such legislation can effectively target violent repeat offenders and reduce
fear of crime (LaCourse 1994). Additionally, properly tailored three strikes laws have had a demonstrable impact on instrumental crimes over time. It seems plausible that this effect could be the result of residual deterrence as offenders become less certain as to the likelihood of apprehension and increasingly fearful of mandatory sentencing (Chen 2008). This popular legislative response to crime is in need of revision concerning the scope of crimes regarded as qualifying felonies in some jurisdictions, particularly California. The broad-brush approach to violent crime has proven wholly ineffective. An efficacious legislative response must be necessarily targeted upon violent repeat offenders in order to legitimately improve public safety and reduce fear of crime.
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References


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