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Aging Behind Bars:
“Three Strikes” Seven Years Later

By
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It sends a clear message to repeat criminals. Find a new line of work, because we’re going to start turning career criminals into career inmates.

-Governor Pete Wilson, March 7, 1994, referring to the “Three Strikes” legislation he was signing into law.

Court Upholds 3-Strikes Term for Cookie Thief

-Headline in Los Angeles Times; June 19, 2001.

Amidst a perceived escalating crime rate and in the wake of the highly publicized murders of two young girls, in March of 1994 Governor Pete Wilson signed into law California’s “Three Strikes and You’re Out” legislation. The law, as asserted by its staunchest supporters, was designed to isolate and punish the most serious, habitual offenders. By doing so, proponents suggested that resources targeted at the apprehension and conviction of only the most consistent repeat offenders would reap exponential benefits in crime control.

As of May 31, 2001, more than 50,000 offenders had been admitted to prison under the law-- 6,721 for “three strikes” offenses and an additional 43,800 under the law’s “second strike” provision.¹

This analysis focuses on the impact of the “three strikes” law in California because that state stands alone in the breadth of its policy. Nationally half the states have passed some form of “three strikes” legislation, but only a handful have convicted more than a hundred individuals using the statute. As of mid-1998, only California (40,511), Georgia (942), South Carolina (825), Nevada (304), Washington (121) and Florida (116) had been using the “three strikes” legislation to any significant extent.²

In this analysis, we find that the “three strikes” legislation is already having a significant impact upon the demographics of the California prison population. Recent reports of a stabilization in the California prison population have led “three strikes” proponents to assert that the forecasts of prison overcrowding attributable to the severe nature of the sentences have been greatly overestimated. However, our analysis of California prison data shows

¹ California Department of Corrections; Data Analysis Unit, Estimates and Statistical Analysis Section, Offender Information Services Branch; & California Legislative Analysts Office. “The ‘Three Strikes and You’re Out’ Law’s Impact on State Prisons: An Update.” (October, 1999). Data on second strikes only available through September, 1999. As of September, 1999, more than 10,000 second strikers had been released from prison.

² Campaign for an Effective Crime Policy, “*Three Strikes*” Laws: *Five Years Later*. Available online: <http://www.sentencingproject.org/pubs/3Strikes.pdf>

that the impact of “three strikes” may be far more subtle than can be seen simply looking at aggregate population numbers. In fact, “three strikes” has contributed to a rapid aging of the California prison system in just the seven-year period since it was instituted. This has exposed the inherent flaws in a law that funnels a growing share of resources to an aging population whose crime production was already on the decline. Our twenty-five year projections show that by 2026, an estimated 30,000 “three-strikes” prisoners will be serving sentences of twenty-five years to life. This aging population will place an extraordinary burden upon the resources of the California penal system, particularly given the increased expense of housing older inmates.

The Aging of the California Prison Population

The California law is tailored with a bifurcated approach; to this end, the title of “three strikes” is actually a misnomer, since two felony convictions can also trigger an increased sentence. For a second felony conviction, an offender’s sentence is doubled; for a third felony conviction, the penalty is 25 years to life.

A key aspect of the evaluation of the effectiveness of the “three strikes” law regards the composition of the offenders imprisoned under its provisions. From 1994 through June 1998, the average second striker sentenced to prison was 32.9 years of age and the average third striker 36.1 years.³ The figure for third strikers is above the average age of all prison admissions for both California (34) and nationally (31.5).⁴ This is not surprising, since older felons are more likely to have a criminal record and therefore be subject to the second and third strike laws.

Our analysis of the California inmate population suggests that “three strikes” sentencing will contribute substantially to the aging of the prison system. In just the first five years of the law’s implementation the proportion of new felony admissions above the age of 40 increased from 15.3% in 1994 to 23.1% by 1999.⁵ This is in contrast with the consistent decline in admissions for all age groups between 20 and 35 years of age. The median age of male inmates, the overwhelming majority of third strikers, has also increased substantially during this period, rising from 29 to 31. In contrast, it had previously taken 23 years for the median age to increase from 26 to 29.

Many of these developments reflect national trends, with the proportion of prisoners between the ages of 35-44 rising from 23% in 1991 to 30% by

³ Males, M. & Macallair, D. (1999). “Striking Out: The Failure of California’s ‘Three Strikes and You’re Out’ Law.” *Stanford Law & Policy Review*, 11, (1), 65-74.

⁴ Camp, C.G. & Camp, G.M. (1999). *The Corrections Yearbook: 1999*. Middletown, CT: Criminal Justice Institute. (p. 50-1).

⁵ California Department of Corrections, *California Prisoners and Parolees; 2000*. Table 36 & Table 37.

1997. But due to the increased length of sentences for California inmates under both two strikes and three strikes sentences, we can expect to see an even more dramatic impact in the state in the coming years. A three-city sample of two-strikes cases both before and after the implementation of the law found an increase of fully 88% in the average term of imprisonment, rising from 2 ½ years to nearly 5 years.⁶

For the “three strikes” cases, the impact will be dramatic over time. With a current annual intake of 1,200 such cases, by the year 2026 there will be approximately 30,000 inmates serving sentences of 25 to life, at a conservative cost of \$750 million annually.⁷

Further, our analysis shows that 83%, or 24,900, of those prisoners will be forty years of age or above.⁸ This aging of the prison population will have significant consequences for the effectiveness of “three strikes” as a crime control mechanism, as seen in the following section.

The Aging Prison Population and Crime Control

The implications of this aging of the prison population are very significant both for crime control and cost issues. Criminologists have known for a long time that crime rates peak at relatively young ages – in the late teens or early twenties for most offenses – and decline rapidly after these years. Thus, if one goal of incarceration is to reduce crime by incapacitating known offenders, on average there will be less of an impact derived from the imprisonment of a 50-year-old than a 20-year-old.

This can be clearly seen in an analysis of California arrest data. In 1999, only 22% of all felony adult arrests were of persons above the age of 39, and just 5% above the age of 50.⁹ This is true for violent crimes as well, with arrest rates for homicide, assault, rape, and robbery all dropping by about 50% after age 39.

Given that the average third strike inmate enters prison at the age of 36, he or she will have a minimum of 21 years left to serve in prison after the age

⁶ Zimring, F.E., Hawkins, G., & Kamin, S. (2001). Punishment and Democracy: Three Strikes and You're Out in California. Oxford: Oxford University Press. (p. 71)

⁷ Several assumptions go into this estimate. “Three strikes” inmates are eligible for parole release after serving 20 years, although there is no means of estimating what proportion of the group will actually be released prior to serving 25 years. Any releases among this group are likely to be offset at least in part by some of the 6,700 current third strikers in prison who are not released after serving 25 years. Finally, mortality rates of prisoners are relatively modest, at 1.79 per 1,000. (Camp & Camp, p. 34). The figure of \$750 million is based on current costs of \$25,000 per inmate annually, but as will be seen later, incarceration costs for elderly inmates are far more substantial.

⁸ This figure was calculated by using current admission rates for individual age groups and factoring that out at a constant rate for the next 25 years.

⁹ California crime/age data available online: http://justice.hdcdojnet.state.ca.us/cjsc_stats/prof99/00/18.htm

of 39. While no one can ever predict the likelihood of a given individual committing a crime at any age, as an overall policy these figures document that long-term incarceration incurs diminishing returns in crime control.

The Rationale for “Three-Strikes”

When the California “three strikes” law was enacted in 1994, Governor Wilson sang the praises of the new initiative as a stern message to potential offenders. Attorney General Dan Lungren referred to the legislation as the “crown jewel” of a statewide assemblage of more uncompromising criminal justice laws.¹⁰

At the time of the law’s adoption, the Governor’s Office contended that the “three strikes” policy would save the state anywhere from \$140,000 to over \$500,000 per repeat offender per year,¹¹ far outpacing any potential rise in future criminal justice expenditures. Chief economist Phillip Romero concluded that by 2000-2001, there would be over 84,000 inmates in the California correctional system directly attributable to the “three strikes” legislation. Their incapacitation would provide a *social benefit* of \$16.8 billion at a correctional cost of only \$2.7 billion; an estimated cumulative savings for California taxpayers of \$14.1 billion.¹²

By 1996, California Youth and Adult Correctional Agency secretary Joseph Sandoval reported that in excess of “1,600 three-time felons with *serious or violent* (emphasis added) criminal histories, and nearly 16,700 two-time felons with similar backgrounds, have been taken off the streets because of this law.”¹³ Attorney General Lungren noted that the drop in crime during 1994 (post-law) was nearly twice as steep as in 1993 (pre-law). Furthermore, three-quarters of the way through 1995, preliminary figures were showing a slightly larger drop in crime than had been seen in 1994.¹⁴ These numbers were convincing enough for Lungren, and most other supporters of “three strikes,” to conclude that the legislation was operating to further suppress criminal activity independent of the overall general downward crime trend both in California and nationwide.

¹⁰ Criminal Justice Newsletter, February 1, 1996; 27 (3).

¹¹ This is calculated from a formula considering reduced property loss, pain and suffering, lost wages, police and security costs, and insurance premiums. State of California, Governor’s Office of Planning and Research, Romero, P.J. March 31, 1994.

¹² Romero arrives at the figure of \$16.8 billion in savings by multiplying the 84,042 inmates estimated to be incarcerated under “three strikes” through the year 2001 by a figure of approximately \$200,000, a number designed to represent the savings to society in prevented criminal activity per habitual offender.

¹³ Sandoval, J. (1996, July). “Three Strikes is Good Criminal Justice Policy.” *Corrections Today*, 58, (4), 22.

¹⁴ Criminal Justice Newsletter, *supra*.

In a 1996 piece in *Policy Review*, Lungren made numerous claims that were designed to bolster opinion concerning the efficacy of “three strikes.”¹⁵ Nearly five years have elapsed since publication of that article, and over seven years since California adopted the law. This report will evaluate how the promises (and myths) of “three strikes” have withstood the passage of time.

Myth #1: California is setting records for its crime drop — Lungren, in 1996, made the claim that within 18 months of the passage of “three strikes” legislation, California set records for the largest drop in state history in a number of categories of violent and property crime. He attributed this drop to the newly instituted habitual offender laws.

Fact #1: Crime has been on a consistent downturn both in California and nationally since the beginning of the 1990s. Leading criminologists view increased incarceration as but one factor among many that has contributed to the national declines. These include an improved economy, changes in drug markets, demographic changes, and strategic policing.¹⁶ During the “three strikes” era, 1993 to present, there was a national drop in crime of 22.2%,¹⁷ which was outpaced by a reduction of 41% in California.¹⁸ Although the crime drop in California was steeper than the national average, to make the sweeping generalization that “three strikes” provided the impetus for this requires further investigation. Recent analysis of both California and national data demonstrates that the decline in crime in California cannot be significantly attributed to the “three strikes” law.

Contrary to the conclusions of Lungren and others, criminologists Lisa Stoltzenberg and Stewart D’Alessio found that the decline in crime in California after 1994 merely continued existing trends that were unrelated to the law, and was not statistically significant.¹⁹ Their analysis of crime trends in the ten largest cities in California found that “three strikes” legislation did not diminish serious or minor crime beyond what would have been expected based on the existent downward trend. A state commissioned report produced similar findings, with the California Department of Justice’s Criminal Justice Statistics Center stating that they could find no “valid evaluations” of “get tough” laws that were able to empirically verify that they exercise a direct negative effect on crime rates.²⁰

¹⁵ Lungren, D. (1996, November-December). “Three Cheers for Three Strikes: California enjoys a record drop in crime.” *Policy Review*, 80.

¹⁶ Alfred Blumstein and Joel Wallman, *The Crime Drop in America*, Cambridge University Press, 2000.

¹⁷ The time period runs from 1993 to 1999, the most current data available.

¹⁸ In a recent report released by Secretary of State Bill Jones, California claims a 46.8% drop in crime over the period 1993-1999. However, that rate is skewed because California does not include larceny-theft in the calculation of the CCI (California Crime Index).

¹⁹ Stoltzenberg, L. & D’Alessio, S.J. (1997). “‘Three Strikes and You’re Out’: The Impact of California’s New Mandatory Sentencing Law on Serious Crime Rates.” *Crime & Delinquency*, 43, (4), 457-469.

²⁰ Marowitz, L.A. (2000). Why Did the Crime Rate Decrease Through 1999? (And Why Might It Decrease or Increase in 2000 and Beyond?) California Department of Justice.

In addition, an earlier analysis by The Sentencing Project had demonstrated that substantial increases in incarceration did not necessarily translate into significant declines in crime.²¹ Although crime rates declined by 36% in California in the period 1991-98 as incarceration rose by 52%, in the previous seven-year period of 1984-91, crime rates rose by 5% despite a 96% increase in the use of imprisonment.

A comparison between 1993 and 1999 crime rates shows that New York (-40.9%), Massachusetts (-33.3%) and Washington D.C. (-31.4%) also experienced significant reductions in crime rates, but, unlike California, did so without the use of “three strikes” laws. Analysts at RAND found similar results in their comparison of crime rates between “three strikes” and non-“three strikes” states.²² They concluded that all states had significant drops in both violent and property crime, but that “three strikes” legislation exhibited no independent effect in the states in which it had been employed.²³

Myth #2: This is what the voters wanted — Lungren maintains that the design of “three strikes” “is doing precisely what the voters demanded when they overwhelmingly passed the initiative, by 72 percent to 28.”²⁴ In his words, the law is targeted to get people to “stop committing felonies and live the remainder of your life in freedom, or spend 25 years to life in prison the next time you are caught and convicted of a felony.”²⁵

Fact #2: Five years after this Lungren article, the reality of the situation does not support his assertion. A law ostensibly designed to target the most serious offenders has performed abysmally at its task. As of March 31, 2001, 57.9% of “third strike” cases were for non-violent offenses.²⁶ Although 93% of those surveyed in California do support these mandatory sentences for those convicted of three violent, serious felonies, only 65% support such a sentencing structure for three serious drug violations and only 47% support this policy for serious property crimes.²⁷ As the crimes become less serious, support continues to wane. Only 13% of those surveyed supported “three strikes” for “less serious” property offenses.²⁸

²¹ Jenni Gainsborough and Marc Mauer, *Diminishing Returns: Crime and Incarceration in the 1990s*, The Sentencing Project, September 2000.

²² Turner, S., Greenwood, P.W., Chen, E. & Fain, T. (1999). “The Impact of Truth-in-Sentencing and Three Strikes Legislation: Prison Populations, State Budgets, and Crime Rates.” *Stanford Law & Policy Review*, 11, (1), 75-91.

²³ *Id.*, 77.

²⁴ Lungren, *supra*.

²⁵ *Id.*

²⁶ Data Analysis Unit of the California Department of Corrections, 4/1/01; as cited by Families to Amend California’s Three-Strikes. Available online: <http://www.facts1.com/general/stats.htm#4,076>

²⁷ Press Release, “UCR Study Sheds Light on ‘Three Strikes’ Law” Available online: <http://www.ucr.edu/SubPages/2CurNewsFold/UnivRelat/strikes.html>

²⁸ *Id.*

Public opinion research in other states has demonstrated that while people support the concept of “three strikes” laws broadly defined, “when they were confronted with a specific situation, only a small minority indicated that a life sentence was appropriate for the offender described.”²⁹ Overall, it was concluded, “three strikes” support was more specifically limited to serious offenders.

Myth #3: “Three Strikes” is not Disproportionate Punishment — Lungren asserts that the way the law is designed does not levy unduly harsh punishment for minor offenses. Although there are occasions in which the third strike may be a minor felony, “there is nothing disproportionate about giving a harsh sentence to a felon who has not learned from having committed two serious felonies before.”³⁰

Fact #3: If “three strikes” did function in the manner which Lungren describes, there would be less controversy about the policy. However, the California Department of Corrections reports that the majority of those sentenced under the repeat offender laws are sentenced for non-violent crimes. As previously noted, 57.9% of third strike cases are for property, drug, or other non-violent offenses, as are fully 69% of second strike cases.³¹ This is a major flaw in the operation of the habitual offender laws, and demonstrates that the law is not addressing the serious felons which Lungren promised.

“Three strikes” was described by its proponents as targeting the most violent career criminals and gained public favor in the wake of such heinous crimes as the Polly Klaas murder. However, an ever increasing number of “three strikes” prosecutions are for crimes as menial as petty theft of a can of beer or a few packs of batteries.³² This misdirected use of the law has led original crusader Mark Klaas to conclude that in its current manifestation, the “three strikes” laws are not working. “In the depth of despair which all Californians shared with my family immediately following Polly’s murder, we blindly supported the [Reynolds] initiative in the mistaken belief that it dealt only with violent crimes. Instead, three of the four crimes it addresses are not violent.”³³

Some of the more egregious applications of “three strikes” for property crime include the case of Scott Benscoter, a three striker serving 25 to life, who had two prior felony convictions for residential burglary when he was

²⁹ Applegate, B.K., Cullen, F.T., Turner, M.G., & Sundt, J.L. (1996). “Assessing Public Support for Three-Strikes-and-You’re-Out Laws: Global versus Specific Attitudes.” *Crime & Delinquency*, 42, (4), 517-534.

³⁰ Lungren, *supra*.

³¹ California Department of Corrections; & California Legislative Analyst’s Office, *supra*. Third-strike figures are current as of March 31, 2001, second-strike figures updated September, 1999.

³² See Schiraldi, V., Sussman, P.Y. & Hyland, L. (1994). Three Strikes: The Unintended Victims. San Francisco, CA: Center on Juvenile and Criminal Justice.

³³ Mark Klaas in “A Dark Side to 3-Strike Laws” by Lou Cannon; *The Washington Post*, June 20, 1994.

sentenced for the theft of a pair of sneakers.³⁴ Or the case of Arthur Gibson, sentenced to 25 to life for crack possession, having last been convicted of a violent offense in the 1960s.³⁵

In July 1997, Gregory Taylor, a homeless Los Angeleno, was sentenced to 25 to life for trying to jimmy a church kitchen door.³⁶ Taylor had received food from a priest there in the past and had apparently returned hoping to encounter that same priest. The case was appealed to the California Supreme Court, which declined to hear the case.³⁷ And, in June 2000 a man's appeal of a "three strikes" conviction for the theft of \$20 worth of instant coffee was denied.³⁸

The disparities produced by the exercise of prosecutorial discretion in charging "three strikes" cases can be seen by examining cases that are not charged under the law. In June 2000, San Francisco prosecutors decided not to seek 25 to life on Joey Trimm for the fatal beating of a four-month old puppy.³⁹ Trimm, a two-time felon convicted for child molestation in 1990, beat the dog after he had found him eating cat food. The dog reacted by biting Trimm, and so Trimm retaliated by punching the animal and inflicting fatal wounds.

In the world of "three strike" sentencing, a homeless man simply looking for food is considered more of a consistent danger to society than a two-time child molester who has such poor impulse control that the sight of a puppy eating cat food is a catalyst to fatal violence.

Myth #4: "Three Strikes has a Deterrent Effect — Lungren asserts, despite a growing chorus of dissenters, that "three strikes" does indeed function as a deterrent to future criminal activity. Despite a lack of consensus concerning the deterrent effect of imprisonment, Lungren maintains that the certainty of incarceration exercises an effect upon crime rates. Although criminologists struggle to isolate the individual effect of imprisonment on illegal behavior, Lungren attempts to settle the debate by citing the thoughts of one police officer from Sacramento and one recently released inmate who had been incarcerated for a second strike. He goes on further to substantiate this claim by documenting that the number of paroled California felons leaving the state after the passage of "three strikes" increased, presumably to avoid incurring a

³⁴ Landsberg, M. (2000). "Local Elections/ District Attorney: Records, Ideology at Stake in Cooley-Garcetti Contest; Once Amicable, Now Enemies, Both Have Had Fast-Track Careers but Differ in Many Ways. Three-Strikes Cases are a Key Area of Disagreement." *Los Angeles Times*, November 5, 2000; Page B1.

³⁵ Id.

³⁶ Egelko, B. (2000). "State Court Sidesteps '3 Strikes' Test Case; 25-year Sentence Upheld in Foiled Church Burglary." *San Francisco Chronicle*, December 22, 2000; Page A3.

³⁷ Id.

³⁸ Staff. (2000). "'3 Strikes' Upheld in Coffee Theft." *San Diego Union-Tribune*, June 22, 2000; Page A3.

³⁹ Van Derbeken, J. (2000). "S.F. Dog Killer Avoids Three-Strikes Sentence." *San Francisco Chronicle*, June 2, 2000; Page A19.

“three strikes” conviction. “In the last year before ‘three strikes’ became law in 1994, 226 more paroled felons chose to move to California than moved out. After ‘three strikes’ took effect, the flow reversed: 1,335 more paroled felons chose to leave California in 1995 than to enter. We’ve gone from being a net importer of paroled felons to a net exporter! Coincidence? Hardly.”⁴⁰

Fact #4: There are two ways in which “three strikes” can function to reduce future criminal activity: by incapacitating an offender in prison, or by deterring future commissions of crime by the general public. Incarceration rates have not risen in California since the advent of “three strikes,” and research on the subject has concluded that “three strikes” has not had a profound impact on incapacitation rates, nor has incapacitation exercised any effect upon state crime rates.⁴¹

However, this underscores the fact that for an accurate evaluative study of “three strikes” to be undertaken, the time horizon must be extended for another 15+ years to account for the burden of an aging population sentenced to 25 years to life. We would not expect to see an immediate rise in incarceration rates directly attributable to “three strikes” because most of those offenders would have gone to prison with or without the habitual offender laws. However, the addition of “three strikes” legislation to the books has changed an offender who might have been sentenced to 5 or 10 years into one who is serving 25 years. Thus, there will be less effect on the prison system in the first years after “three strikes” implementation, but we should expect to see the consequences of “three strikes” in the period subsequent to when an offender would have been released under the previous sentencing system.

On the issue of deterrence, Zimring, Kamin, and Hawkins, in perhaps the most exhaustive analysis of “three strikes” legislation, conducted an examination of Los Angeles, San Diego, and San Francisco crime rates for 1993, 1994, and 1995. They found that of all committed felonies, only 10.6% were by two or three strike eligible felons, with two-thirds of those perpetrated by two-strike eligible offenders. Thus, the maximum amount of crime that can be expected to be prevented by this policy is one in ten crimes, far below the figures forecast by Romero or Lungren.⁴² Therefore, even if this policy was working at an optimal level, the prediction of a massive deterrent effect is not possible.

On the issue of “parole migration,” Lungren’s conclusions suffer from too narrow a scope. Not just parolees, but all residents of California are leaving the state at faster rates than other states. According to the U.S. Census,

⁴⁰ Lungren, *supra*.

⁴¹ Zimring, F.E., Kamin, S. & Hawkins, G. (1999). Crime and Punishment in California: The Impact of Three Strikes and You’re Out. Berkeley, CA: Institute of Governmental Studies Press. (p. 73)

⁴² *Id.*, 76.

California ranked 51st out of 51 states and the District of Columbia in net domestic migration over the 1990s.⁴³

Unless “three strikes” legislation is driving *everyone* out of California, Lungren has erroneously credited a small portion of a bigger trend to the effect of “three strikes.” It is clear from Census data that California has been experiencing a major wave of negative domestic migration. Furthermore, since state policy can influence parolee behavior, in order to evaluate parolee migration changes accurately, one would need to know both the number of parolees applying to leave the state as well as the approval rate by state. If the number of parolees applying for leave remains the same, but the approval rate increases, this would not demonstrate a deterrent effect of “three strikes” but rather a greater willingness of the state to permit parolees to relocate.

Myth #5: “Three Strikes” is cost-effective — Lungren, using a similar cost scheme as Romero, asserts that locking up individuals in the interest of preventing future crime, no matter how large the population grows, is far more cost effective than a “lenient approach” in which society pays their costs. Using a formula that calculates that a murder costs \$2.94 million, for example, Lungren estimates that the state had saved in excess of \$3.78 billion through 1995 alone.

Fact #5: The cost of incarcerating an offender in California, as of 2001, is \$25,607 per year. Current estimates are that it will cost \$1.5 million to incarcerate an elderly prisoner for the minimum 25 years, in part due to the fact that elderly inmates will require more expenditures for health care and other needs than a younger prisoner.⁴⁴ By extrapolating this number to an aging prison population due to “three strikes,” it becomes apparent that we may be incarcerating ourselves into an epidemic. Using Lungren’s algebra, if all those convicted under “three strikes” legislation were murderers, then the state’s savings would be monumental. However, the preponderance of those sentenced under this legislation are property and drug offenders, rendering the budgetary effect of “three strikes” upon the state far less conclusive.

⁴³ US Bureau of the Census, Current Population Reports, Series P23-189, *Population Profile of the United States: 1995*. US Government Printing Office, Washington, DC, 1995; & US Bureau of the Census, Current Population Reports, P23-194, *Population Profile of the United States: 1997*, US Government Printing Office, Washington, DC 1997. Net domestic migration is defined as the difference between domestic in-migration to an area and domestic out-migration from it during the period. Domestic in-migration and out-migration consist of moves where both the origins and destinations are within the United States (excluding Puerto Rico). The net domestic migration rate expresses net domestic migration during a time period as a percentage of an area’s initial population.

⁴⁴ Zimbardo, P.G. (1994). “Transforming California’s Prisons into Expensive Old Age Homes for Felons: Enormous Hidden Costs and Consequences for California’s Taxpayers.” San Francisco, CA: Center on Juvenile and Criminal Justice.

Conclusion

There is little evidence to suggest that the implementation of the “three strikes” law in California has had any significant impact on crime, but a good deal of evidence that demonstrates that it often results in disproportionate sentencing and will contribute substantially to the prison population over time.

In addition, the policy is already exacerbating the racial disparities that exist in the prison system. As is true nationally, African-Americans and Hispanics are disproportionately represented in the California penal system, comprising 31.3% and 34% of the inmate population respectively,⁴⁵ compared to their respective shares of 7.5% and 31.6% in the general population.⁴⁶ The impact of “three strikes” laws in California and other states has enhanced these disparities within the prison system for reasons that could have been readily foreseen at the time of the law’s passage. In California, blacks make up 37% of those sentenced under second strike laws and 44% of those sentenced under third strike laws.⁴⁷

Similar effects have been produced in other states. In Washington State, although the law is used more sparingly, blacks are less than 4% of the population, but account for 37% of those sentenced under the “three strikes” law.⁴⁸ The racial disparities produced by “three strikes” largely result from the fact that African-Americans have higher rates of arrest, and therefore prior convictions, than do whites. Whether due to greater involvement in crime or racial bias in the criminal justice system, the result is that minorities become more likely candidates for prosecution under habitual offender laws.

With crime declining nationally in the 1990s for a host of reasons, this is now an opportune moment to examine current sentencing policies and their consequences. As the state with the nation’s largest prison population, California policymakers would be well served by considering whether “three strikes” is the most effective means of achieving public safety and fairness.

Policymakers in other states can learn from the California experience as well. Much of the critique of the “three strikes” policy also applies to rigid sentencing formulas such as mandatory sentencing and “truth in sentencing,” both of which often result in lengthy and inappropriate incarceration. The public would be well served by a full examination of such policies and alternatives that would more effectively promote public safety.

⁴⁵ California Department of Corrections, *supra*. Table 14.

⁴⁶ 1999 Census Data Available online: <http://www.census.gov/population/estimates/state/srh/srh99.txt>

⁴⁷ Criminal Justice Consortium, 1998.

⁴⁸ Sunde, S. (2001). “Blacks bear brunt of ‘3 Strikes’ Law: Lesser crimes count toward life sentence, and a higher imprisonment rate compounds problem.” *The Seattle Post Intelligencer*, February 20, 2001; online at: <http://seattle-p-i.nwsourc.com/local/strk20.shtml>