

2014

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Recommended Citation

Chen, Elsa Y. "Three Strikes Legislation." *African Americans and the Criminal Justice System: An Encyclopedia*. Editors Delores D. Jones-Brown, Beverly D. Frazier, and Marvie Brooks. Westport, CT: Greenwood Press (2014).

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Three Strikes Legislation

Three Strikes and You're Out ("Three Strikes") laws mandate long sentences for certain habitual offenders, usually 25 years to life in prison for third-time violent offenders. Since 1993, Three Strikes has been implemented for federal offenses and in at least 25 states.¹

Although they share a common name, Three Strikes laws are quite diverse. The number of offenses that trigger the Three Strikes mechanism, the types of crimes counted as strikes, and the sentences mandated upon conviction vary widely. Most states have relatively narrow laws and have not sentenced many prisoners under Three Strikes. The laws of most states limit strikes-eligible offenses to a small number of violent felonies, and require three violations to trigger a mandatory sentence such as life without parole, or 25 years to life. In some states, the law can be triggered by more or fewer than three strikes (Clark et al., 1997).

The broadest and most widely used Three Strikes law was implemented in California in 1994 and not modified until 2013. Offenses eligible to count as strikes in California include 21 "violent" felonies and 25 "serious" felonies, with some overlap between the two categories. If an offender already has one strike and then commits *any* of the state's approximately 500 felonies, the sentence is automatically doubled. With two strikes, any additional felony conviction sends the offender to prison for 25 years to life. The law requires a state prison sentence in all Three Strikes cases, restricts "good time" credits to 20 percent, and prohibits plea bargaining. As of October 2005, over 87,500 individuals had been sentenced under the second- and third-strike provisions of California's Three Strikes law, including over 7,500 offenders who received a sentence of 25 years to life in prison for a third strike (Legislative Analyst's Office, 2005). In comparison, no other state has sentenced more than 400 offenders under a Three Strikes law (Chen, 2008a). However, in order to reform the harsh nature of the Three Strikes legislation, California

Despite Racial Disparities and Excessive Punishments, U.S. Supreme Court Supports Three Strikes

***Lockyear v. Andrade*, 538 U.S. 63 (2003)**

For stealing about \$150 worth of videotapes, Leandro Andrade was found guilty of two felony counts of petty theft. With previous felony convictions on his record, he was sentenced to two consecutive terms of 25 years to life under California's Three Strikes law. Andrade appealed his case all the way to the U.S. Supreme Court, based on an argument that the sentence was in violation of the Constitution's protection against cruel and unusual punishment under the Eighth Amendment. In a 5 to 4 decision decided on March 5, 2003, the court upheld his sentence, stating that the previously imposed sentence was not grossly disproportionate to the offenses he committed.

***Ewing v. California*, 538 U.S. 11 (2003)**

On March 5, 2003, the Supreme Court also upheld the 25-years-to-life sentence of Gary Ewing, who while on parole stole three golf clubs valued at \$399 each. Ewing had been given the harsh sentence for the relatively minor crime due to the fact that he had previously been convicted of four felonies. In another 5 to 4 decision, the Court decided that Ewing's claim that his sentence was highly disproportionate to the offense with which he was charged was unfounded. His sentence was affirmed.

In both the *Lockyear* and *Ewing* cases, under California law, the thefts could have been treated as misdemeanors, which would have allowed Andrade and Ewing to avoid Three Strikes sentencing. Legal scholars have questioned whether the prosecutorial and judicial discretion exercised in these cases may have been influenced by the race and class status of the defendants. Andrade was an admitted heroin addict since 1977. Ewing was a long-time drug addict who was dying of AIDS at the time of his sentencing.

According to a report by the Policy Institute in Washington, D.C., during the first three years after the law took effect, African Americans were imprisoned under California's Three Strikes law at a rate 13 times that of Whites.

voters passed Proposition 36 in November 2012 (effective in 2013). According to this law, with two strikes, an offender would be sentenced to 25 years to life if and only if the offender commits an additional felony of a serious or violent nature (previously, the law had stated that any felony would induce a long-term sentence). With this reformatory law, the state of California is estimated to save up to \$90 million a year, and approximately 3,000 inmates serving life sentences would be eligible to petition for a reduced sentence (Sankin, 2012).

African American men, who constitute only about 3 percent of California's population, represent approximately 44 percent of third-strikers among California prison inmates (U.S. Census Bureau, 2006; California Department of Corrections and Rehabilitation, 2008). Some of the racial disparities in Three Strikes sentencing are explained by differences between Blacks and Whites in factors such as offenses committed, prior record, and parole status; however, after these "legally relevant" factors are taken into account, Blacks remain significantly more likely than Whites to receive third-strike sentences (Chen, 2008b).

Uneven application of prosecutorial or judicial discretion may be responsible for some of the Black/White disparity in Three Strikes sentences. A prosecuting attorney may file a motion to dismiss one or more prior convictions that would otherwise count as strikes, thus sparing a defendant the mandatory third-strike sentence of 25 years to life in prison if convicted (Legislative Analyst's Office, 2005). Discretion may also be exercised by prosecutors or judges to charge multiple counts, including strikes, from a single incident, or to charge certain offenses known as "wobblers" as either felonies (which trigger Three Strikes) or misdemeanors (which carry a maximum sentence of one year in jail) (Legislative Analyst's Office, 2005; Ricciardulli, 2002). The gap between Blacks and Whites in Third Strikes sentences is greater for "wobblers" than for offenses that are unequivocally charged as felonies, suggesting that discretion in "wobbler" charging may be exercised to the detriment of African American defendants (Chen, 2008b).

Studies of the crime-reduction effects of Three Strikes laws have produced mixed results. Ramirez and Crano (2003) detect few immediate impacts of Three Strikes on crime in California, some deterrence and incapacitation effects over time for violent and premeditated offenses and for "minor" crimes not targeted by Three Strikes, and no impacts on drug offenses. Worrall (2004) finds "virtually no deterrent or incapacitative effects on serious crime." Kovandzic, Sloan, and Vieratis (2002; 2004) find significant declines in crime trends for some offenses in some states in the aftermath of Three Strikes' adoption, but they also find significant increases in roughly the same number of states, suggesting either that the findings were either random statistical artifacts or that the law has both positive and negative impacts that cancel each other out on the whole. The only exception to this finding is for rates of homicide, for which more significant *increases* than declines are found (Kovandzic et al., 2004). The finding supports the hypothesis that criminals who face a Three Strikes sentence may have an increased incentive to kill potential witnesses.

The law's limited proven crime-reduction effects combined with high costs led some critics to call for reform of the law. In 2005, California's Three Strikes policy cost approximately \$500 million per year to implement, with expenses expected to

Three Strikes Laws in Other Places

In 1994, the state of Georgia enacted a tough "two strikes" law that imposed a life sentence for a second drug offense. By 1995, the state had invoked the law against only 1 percent of White defendants facing a second drug conviction, but against more than 16 percent of eligible Black defendants. The result: by 2000, 98.4 percent of those serving life sentences in Georgia under its two strikes provision were Black.

escalate dramatically in the long run (Legislative Analyst's Office, 2005). The increased rate of incarceration associated with the law also imposed human and social costs for sentenced individuals, their families, and their communities (for discussion see, e.g., Maurer and Chesney-Lind, 2002; Travis, 2002; Travis and Waul, 2003). Those social costs were borne disproportionately by African American men. The full impact of the Proposition 36 changes remain to be seen but, another cost of Three Strikes laws may be that they seriously damage the perception of fairness and legitimacy in the criminal sentencing process, particularly among African Americans.

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Note

1. States with Three Strikes laws are Alaska, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Indiana, Kansas, Louisiana, Maryland, Montana, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wisconsin. Source for all states except Alaska: National Conference of State Legislatures, "Three Strikes" Legislation Update, December 1997. Alaska law information obtained via personal communication with Ms. Teri Carnes, Senior Staff Associate, Alaska Judicial Council, September 22, 2006.

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