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WEST COAST:  
1622 Folsom Street  
San Francisco, CA 94103  
415-621-5661 • Fax: 415-621-5466

EAST COAST:  
2208 Martin Luther King, Jr. Ave., S.E.  
Washington, DC 20020  
202-678-9282 • Fax: 202-678-9321



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# Striking Out: The Failure of California's "Three Strikes and You're Out" Law

MIKE MALES,  
DAN MACALLAIR AND  
KHALED TAQI-EDDIN

*The full version of this study will be available in the Fall 1999 issue of the Stanford Law and Policy Review.*

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# Striking Out: The Failure of California's "Three Strikes and You're Out" Law

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By Mike Males, Dan Macallair and Khaled Taqi-Eddin

*"There is just no way to ignore the positive impact of the "Three Strikes" law. California's drop in crime is outperforming similar downward trends in other parts of the nation."*

Former California Attorney General Dan Lungren

*"This legislation, in my view, is the latest product of the political environment in which politicians get elected by saying they'll be tough on crime and also claiming they will not raise taxes. Well, in my view, this legislation is very much stupid on crime and it's certainly very costly."*

Los Angeles County Public Defender Mike Judge

## Introduction

In the wake of the widely publicized Polly Klaas murder, California Governor Pete Wilson signed into law on March 7, 1994 one of the most punitive sentencing statutes in recent history. The law was dubbed "three-strikes and you're out" because of its provision requiring 25 to life prison terms for defendants convicted of any felony who were already convicted of two "serious" or "violent" felonies. The law was overwhelmingly affirmed by three-fourths of California voters through a statewide initiative in November of that year.

The three-strike's law promised to reduce violent crime by putting repeat violent offenders behind bars for life. The severe nature of

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the law was intended to maximize the criminal justice system's deterrent and selective incapacitation effect. Under deterrence theory, individuals are dissuaded from criminal activity through the threat of state-imposed penalties. Selective incapacitation suggests that crime can be reduced by incapacitating the small group of repeat offenders who are responsible for a large portion of serious crime.

In the recent California gubernatorial election, both major party candidates credited the "Three-Strikes" law for reducing crime in the state. However, national crime trends show that crime was dropping in every region regardless of incarceration practices. A 1997 Justice Policy Institute study found that California's declining crime rates were no different than states without a three-strikes law. Such evidence undermines the crime control argument of the law's proponents.

The crime control impact of the "Three Strikes and You're Out" law is an important analytical subject for a variety of reasons. Under the deterrence and selected incapacitation theory, populations and geographical areas most impacted by three strike laws should show the greatest crime rate declines. Because of its broad applications and disparate enforcement, California's "Three Strikes" law provides a rare opportunity to analyze these theories.

### ***Methodology***

Since California counties enforce the "Three Strikes" law in different ways, it was hypothesized that counties that employed a strict enforcement policy would experience higher levels of crime reduction. It was also hypothesized that age group populations (in this case the over 30 age group) most targeted by three strikes would show greater decreases in crime patterns relative to age groups less affected by three strikes.

To test these theories JPI examined official county-by-county reported crime and arrest statistics. Arrest rates were disaggregated by age group subpopulations. Official county-by-county statistics for homicide, all violent crime, property crime, and all index offenses were obtained from the California Department of Justice's Criminal Justice Statistics Center. County-by-county three strikes sentencing statistics was obtained from the California Department of Corrections Data Analysis Unit. For this study, JPI compared

data from California’s 12 largest counties including, Alameda, Contra Costa, Fresno, Los Angeles, Orange, Riverside, San Bernardino, San Francisco, Sacramento, Santa Clara, San Diego, and Ventura.

**Who Is Being Sentenced Under “Three Strikes”?**

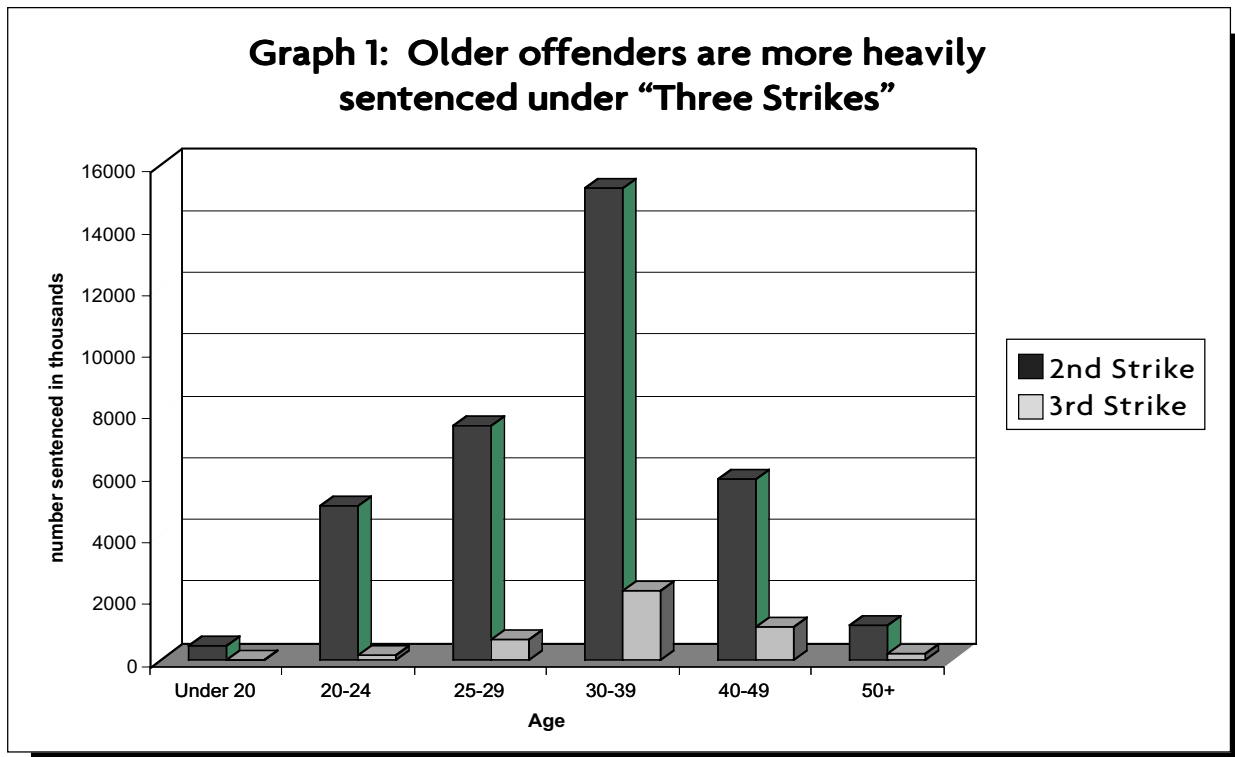
National studies show that older adults are accounting for a growing percentage of violent crime arrests and convictions. Between 1980 and 1990 the age specific arrest rate for robbery increased for all age groups between 24 and 44, while it decreased for the age group 23 and under. An analysis of California arrest data reveals a similar aging of the State’s serious offender population. Data from California’s Criminal Justice Statistics Center shows that the average age of a felon in California has risen from 21 two decades ago to 28 today. In other words, while the state’s average age increased about 4 years, the average age of a convicted felon increased seven years.

The average age of the 35,363 offenders sentenced for a second strike was 32.9 while the average age for the 4,368 third-strike offenders was 36.1 at the time of admission to prison (Data Analysis Unit 1998). Two-Thirds of those sentenced under “Three Strikes” were ages 30 to 45 at the time of sentencing. The following table and graph illustrate the number of third strike offenders sentenced by age as a proportion of (1) all violent offenders, (2) all felony offenders, and (3) the rate per 1,000 inmates for that age group from 1995-1997.

**Table 1: Older offenders are more heavily sentenced under “Three Strikes”**

	<i>Number sentenced for:</i>		<i>Number of 3rd Strike sentences per 1,000</i>	
	<b>2nd Strike</b>	<b>3rd Strike</b>	<b>Violent Crimes</b>	<b>Felonies</b>
Under 20	470	14	0.1	0
20-24	5,009	176	1.7	0.5
25-29	7,603	653	7.1	1.9
30-39	15,297	2,224	13.9	3.8
40-49	5,873	1,071	16.7	4.6
50+	1,111	220	10.7	3.5
<b>Total</b>	<b>35,363</b>	<b>4,368</b>		

*Source: California Department of Corrections, Data Analysis Unit. Second-Strike Cases, Third-Strike Cases, June 30, 1998.*



Because older offenders are more likely to have prior offenses, the odds of being sentenced for a third strike increase rapidly up to age 45. Statistics reveal that felony offenders in their 30’s and 40’s are 8 and 10 times more likely to be sentenced under “Three Strikes” than felons in their early 20’s.

***Does “Three Strikes” deter or reduce crime?***

Under deterrence and selective incapacitation theory, one would expect that the most dramatic declines would occur in the over 30 age group, since this is the population disproportionately targeted by “Three Strikes”. In contrast, declines among 20-24 year old age groups would be negligible because smaller proportions of felons from this population are receiving enhanced sentences. However, age group crime patterns reveal a directly opposite effect than what would be predicted by the selective incapacitation and deterrence arguments for “Three Strikes”. The table and graph below compare age group crime patterns for the three years after the law took effect (1995-1997) and the three years prior to the law’s enactment (1991-1993). An analysis of crime data for these years does not support the “Three Strike” crime reduction through selective incapacitation and deterrence effect.

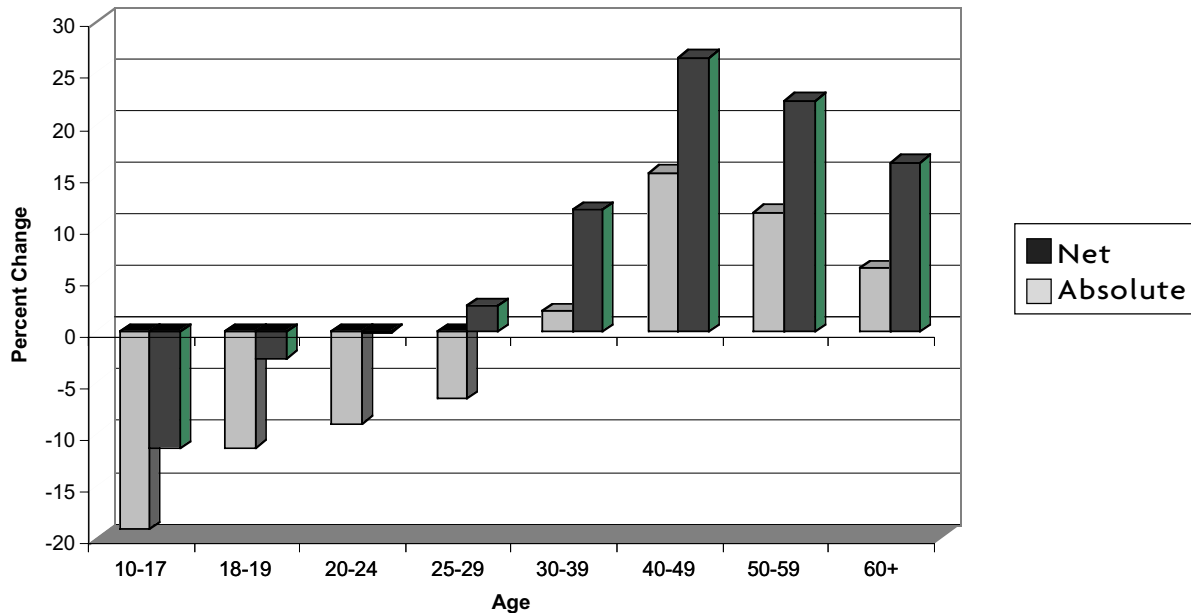
**Table 2: Change in major offense rates by age in three years after “Three Strikes” took effects (1995-1997) compared to three years before (1991-1993).**

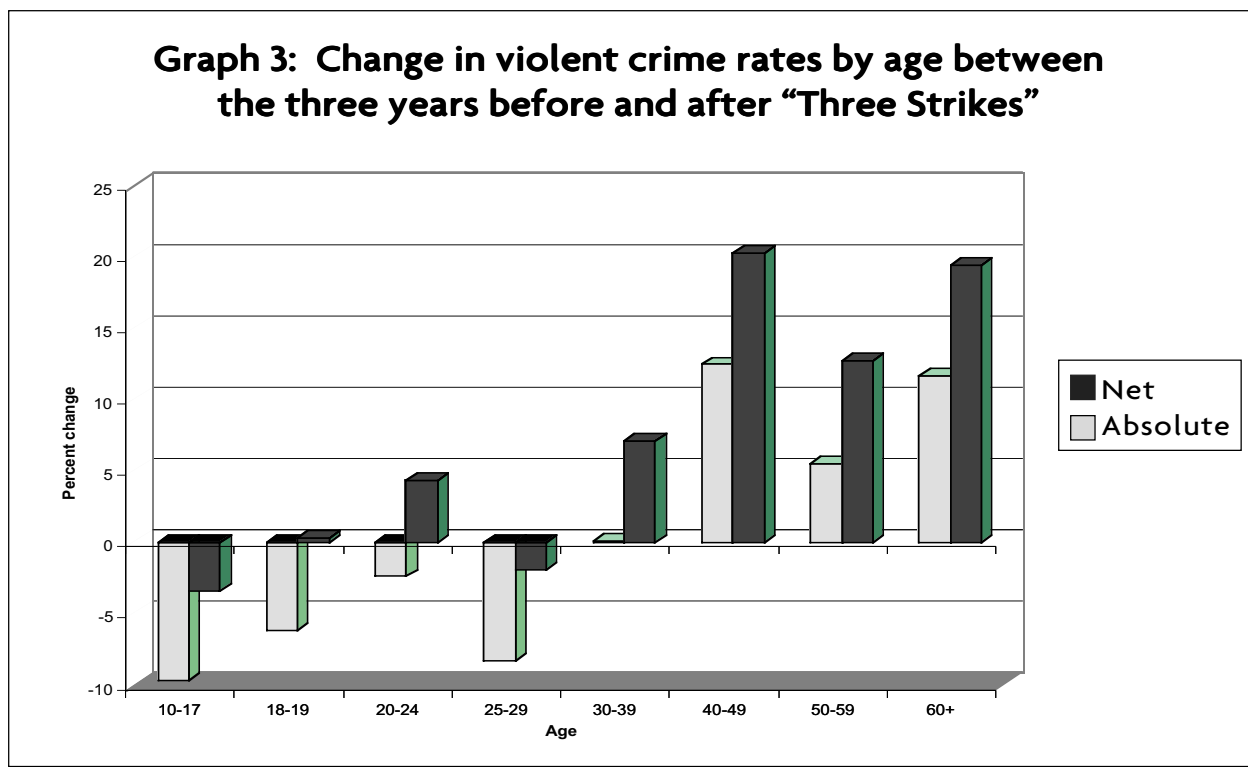
	<i>All Felony Offenses</i>		<i>Violent Crime</i>	
	<u>Absolute</u>	<u>Net</u>	<u>Absolute</u>	<u>Net</u>
10-17	-19.1%	-11.3%	-9.7%	-3.4%
18-19	-11.2%	-2.6%	-6.2%	0.3%
20-24	-8.9%	-0.1%	-2.4%	4.4%
25-29	-6.5%	2.5%	-8.3%	-1.9%
30-39	2.0%	11.8%	0.1%	7.1%
40-49	15.4%	26.5%	12.5%	20.3%
50-59	11.6%	22.4%	5.5%	12.8%
60+	6.2%	16.4%	11.7%	19.5%
<b>All ages</b>	<b>-8.8%</b>		<b>-6.5%</b>	

**Note:** “Absolute” is the change in crime rates by age for 1995-97 versus 1991-93. “Net” is the crime change for each age group divided by the average crime change for all ages.

**Source:** California Department of Corrections, Data Analysis Unit.

**Graph 2: Change in felony offense rates by age between the three years before and after implementation of “Three Strikes”**





According to the official data, the largest age group crime decreases in the past six years occurred among those under age 20. The age group from 10 to 17 years of age saw a 19.1% decrease in felony offenses and a 9.7% decrease in violent crime. The 18-19 age group had an 11.2% decrease in felony offenses and a 6.2% decrease in violent crime.

Conversely, the over 30 age groups were the only groups to display net increases in both violent crime and total felony arrests during the post “Three Strikes” period. In other words, the age group that is most likely to be sentenced under “Three Strikes” witnessed increases in felony arrests and violent crime. Therefore, the age group that should have been the most affected by “Three Strikes” showed no deterrent or selective incapacitation effect.

***Did counties enforcing “Three Strikes” have greater reductions in crime?***

According to selective incapacitation and deterrence theory, counties that most heavily enforced the “Three Strikes” law will experience greater crime declines than more lenient counties. For purposes of this evaluation, California’s 12 largest counties which account

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for three-fourths of the state’s population and four-fifths of its major crime were examined. Analysis shows that California counties have radically different rates of sentencing under “Three Strikes”. The sentencing rate ranged from 0.3 per 1000 violent crime arrests in San Francisco, to 3.6 in both Sacramento and Los Angeles. Data revealed that the highest sentencing counties invoke the law at rates 3 to 12 times higher than the lowest counties.

However the table and graph below illustrate that those counties invoking “Three Strikes” at higher rates did not experience the greatest decrease in crime. In fact, Santa Clara, one of the six heaviest sentencing counties witnessed a rise in violent crime after implementing the law.

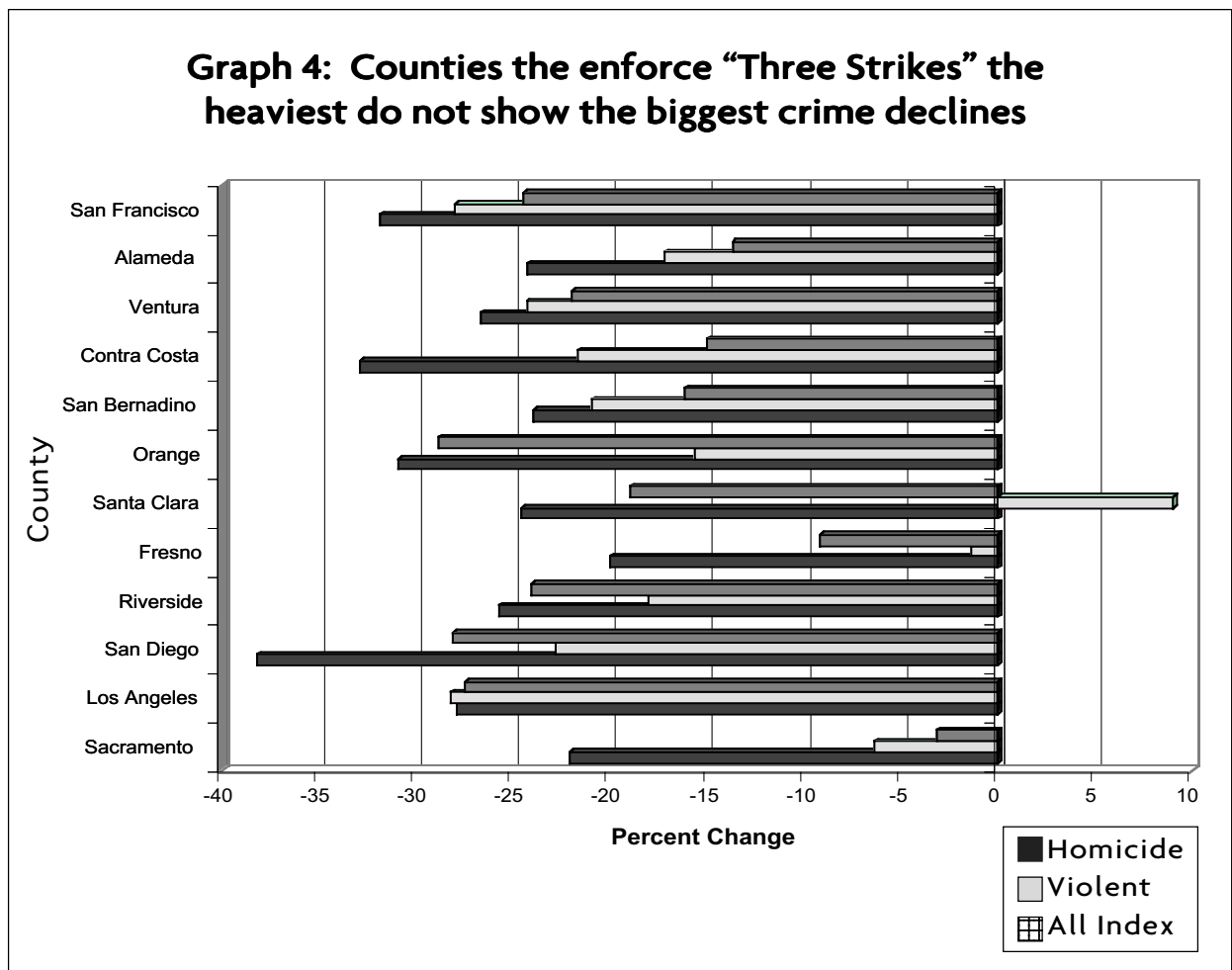
**Table 3: The counties sentencing the most heavily under “Three Strikes” do not show the biggest crime declines.**

<b>County</b>	<b>Sentencing Rates:</b>		<b>Postlaw change* in rate of:</b>		
	<b>3rd Strike</b>	<b>2nd&amp;3rd Strikes*</b>	<b>Homicide</b>	<b>Violent</b>	<b>All Index</b>
Sacramento	3.6	26	-22.1	-6.4	-3.2
Los Angeles	3.6	33.5	-27.9	-28.2	-27.5
San Diego	3.4	35.3	-38.2	-22.8	-28.1
Riverside	2.7	27.1	-25.7	-18	-24
Fresno	2.6	21.5	-20	-1.4	-9.2
Santa Clara	2.6	23.4	-24.6	9	-18.9
Avg. Six Heaviest	3.1	27.8	-26.4	-12.7	-18.5
Orange	2.4	21.1	-30.9	-15.6	-28.8
San Bernadino	2.1	17	-23.9	-20.9	-16.1
Contra Costa	1.4	15.7	-32.9	-21.7	-15
Ventura	1.3	18.8	-26.6	-24.3	-22
Alameda	0.7	5.9	-24.2	-17.2	-13.7
San Francisco	0.3	4.9	-31.8	-28	-24.5
Avg. Six Lightest	1.4	13.9	-28.4	-21.3	-20

**\*Sentencing rate is per 1,000 felonies by county. Postlaw change compares reported crime rate for 1995-1997 (postlaw) to that of 1991-1993 (prelaw).**

**Source:** California Criminal Justice Statistics Center; California Department of Corrections, Data Analysis Unit.





Data clearly shows that counties that vigorously and strictly enforce the “Three Strikes” law did not experience a decline in any crime category relative to more lenient counties. The absence of any difference in relative crime rates occurred despite the fact that the six largest counties applied the law at a rate 2.2 times greater than the six counties that invoked the law least. Even more remarkable, the sevenfold proportionally greater use of three strikes in Sacramento and Los Angeles was not associated with a bigger crime decline than in Alameda and San Francisco counties that rarely use the law. In fact, San Francisco, the county which uses “Three Strikes” most sparingly, witnessed a greater decline in violent crime, homicides, and all index crime than most of the six heaviest enforcing counties.

## ***Conclusion***

The results of this analysis present a startling departure from popular assumptions about crime and crime control. Contemporary criminal theory assumes that most serious criminal activity declines as offenders approach the age of 28. After age 28 a dramatic and steady decline in criminal activity ensues due to maturation and more favorable life circumstances (Conklin 1997; Barkan 1995). Advocates of “Three Strikes” assumed that the over 30 age groups would be the least likely to be represented in the “Three Strikes” population because of their declining criminal behavior. In this instance, this was the only population to show an increase in crime rates during the time “Three Strikes” was implemented. The population that showed the greatest decline was the under 24 age groups who were least affected by “Three Strikes”.

Additionally, the draconian nature of the “Three Strikes” law offers a unique opportunity to test the selective incapacitation effect of massive incarceration. A selective incapacitation effect would be greatest in counties where the “Three Strikes” law was most invoked. However, this was not the case. In fact, San Francisco experienced a 32% decline in homicides, a 28% decline in all violent crimes, and a 24% decline in all index crimes. This compares to Sacramento, which had the highest rate of third strike commitments, yet it experienced a 22% decline in homicides, but only a 6% decline in violent crimes, and a 3% decline in index crimes.

Reported declines in crime rates around the country in recent years have elicited a number of theories and explanations. Crime rates, which climbed rapidly during the late 1980’s, particularly violent crime, have been in steady decline since 1991. Criminologists attribute a number of explanations to this decline, such as the stabilizing of the crack trade, a stronger economy, and more incarceration. Virtually no evidence could be found supporting the law’s deterrent or selective incapacitation effect on targeted populations, or jurisdictions most affected. This study suggests that researchers examining recent declines in crime rates across the country must broaden their analysis to include non-criminal justice related causes.

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Based on these findings, the Justice Policy Institute feels that one of the following recommendations should be considered:

- **Repealing the current version of “Three Strikes.”**
- **Amend the “Three Strikes” law requiring the third strike to be a violent crime.**
- **Further research by the legislature into the crime control impact of “Three Strikes” and its financial impact on California’s budget.**

**The full version of this study will be available in the Fall 1999 issue of the Stanford Law and Policy Review. The study also discusses the racial effects of the “Three Strikes” law. All raw data and any additional information is available by contacting the Justice Policy Institute.**

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- **Mike A. Males**, mmales@soceco.uci.edu, is a doctoral candidate in the School of Social Ecology, University of California, Irvine.
- **Dan Macallair**, dmacallair@cjcj.org, is the Associate Director of the Center on Juvenile and Criminal Justice and is an adjunct professor in the Criminal Justice Program at San Francisco State University.
- **Khaled Taqi-Eddin**, kte@cjcj.org, is the Policy Analyst for the Justice Policy Institute in California.