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Reforming Sentencing and Parole in Canada

BY JULIAN V. ROBERTS

Three years have elapsed since Canada's parliament passed the first sentencing reform bill in this country's history. We are now in position to draw some conclusions about the success of the statutory reforms of 1996. This brief article reviews developments in penal policy with respect to adult offenders. A recent *Overcrowded Times* article describes proposed changes to the sentencing structure for juvenile offenders (Doob and Sprott 1999).

A number of commissions of inquiry have examined sentencing and parole in recent years. Two in particular made a number of suggestions to reform sentencing, including the creation of a permanent sentencing commission and adoption of sentencing guidelines. The federal government took considerable time in responding to the reports of these commissions before introducing its own reform proposals which became law in September 1996

(see Roberts and Cole 1999 for a review). The government rejected the notion of sentencing guidelines—even voluntary guidelines—and opted instead for a far more modest reform package.

Bill C-41 wrought two principal changes: a statement of the purposes and principles of sentencing was placed in the criminal code; a new sanction, the conditional prison sentence, was created with the explicit intention of

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U.S. Sentencing Systems Fragmenting

BY MICHAEL TONRY

There is no longer anything that can be called "the American system" of sentencing. As recently as 1975, there was. It was usually called indeterminate sentencing, and it had changed little in the preceding fifty years. Its core features were broad authorized sentencing ranges, parole release, and case-by-case decision making. Its governing premises were that public safety and rehabilitation of offenders are primary goals, that decisions affecting individuals should be individualized, and that judges and corrections officials have special expertise for making those decisions.

Those features and premises have been under attack in most jurisdictions. Some states and the federal government abolished their parole boards, and some jurisdictions established comprehensive,

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California's Three- Strikes Law Ineffective

BY MIKE MALES, DAN MACALLAIR, AND KHALED TAQI-EDDIN

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-year to life prison terms for defendants convicted of any felony who were already convicted of two "serious" or "violent" felonies. The law was affirmed by three-fourths of California voters through a statewide initiative in November 1994.

The law promised to reduce violent crime by

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U.S. Incarceration Rate at Year-end 1998

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putting repeat violent offenders behind bars for life. The aim was to maximize the criminal justice system's deterrent and selective incapacitation effects.

In the 1998 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, irrespective of substantial differences in incarceration practices. A 1997 Justice Policy Institute ("JPI") analysis found that California's declining crime rates were no different than in states without a three-strikes law (Schiraldi and Ambrosio 1997). Such evidence undermines the crime control arguments of the law's proponents.

Under the three strikes law's deterrence and selective incapacitation rationales, populations and geographical areas most affected should show the greatest crime rate declines. To the contrary, however, experience has shown that the California counties in which the three-strikes law is applied most vigorously have not had the greatest reductions in crime rates. In addition, anomalously, the over-age-30 offenders most affected by the three-strikes laws are the only age group in which both violent and overall felony arrest rates have increased.

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 groups most targeted by three strikes (those over 30) would show greater decreases in crime rates relative to age groups less affected.

To test these theories, the Justice Policy Institute examined official statistics on reported crime and arrests. Arrest rates were disaggregated by age. Official 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 sentencing statistics were obtained from the Department of Corrections Data Analysis Unit. For this study, JPI compared data from California's 12 largest counties. These were Alameda, Contra Costa, Fresno, Los Angeles, Orange, Riverside, San Bernardino, San Francisco, Sacramento, Santa Clara, San Diego, and Ventura counties. Three fourths of the state's population live in these counties and four fifths of major crimes are reported there.

WHO IS BEING SENTENCED

National studies show that older adults account for a grow-

ing 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 those 23 and under. California arrest data reveal a similar aging of the state's serious offender population; the average age of a convicted felon has risen from 21 two decades ago to 28 today. While the state's average age increased by about 4 years, the average age of a convicted felon increased by seven years.

The average age of the 35,363 offenders sentenced for a second strike between 1995 and 1997 was 32.9 at the time of admission to prison, while the average age for the 4,368 third-strike offenders was 36.1 (California Department of Corrections, Data Analysis Unit 1998). Two-thirds of those sentenced under the three-strikes law were aged 30 to 45 at the time of sentencing. Table 1 shows the numbers of third-strike offenders sentenced by age as a proportion of all violent offenders, all felony offenders, and the rate per 1,000 inmates for that age group from 1995-97.

Because older offenders are more likely to have convictions for prior offenses, the odds of being sentenced for a third strike increase rapidly up to age 45. Felony offenders in their 30s and 40s are 8 and 10 times more likely to be sentenced under the three-strikes law than are felons in their early 20s.

DETERRENT EFFECTS

Both deterrence and selective incapacitation theories predict that the most dramatic declines

Table 1: Offenders Sentenced Under "Three Strikes"

Age	Number Sentenced for:		Number of 3rd Strike Sentences per 1,000	
	2nd Strike	3rd Strike	Violent Crimes	Felonies
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
Total	35,363	4,368		

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

In crime rates would occur in the over age 30 group, since it is disproportionately targeted by the three-strikes law. Declines among 20- to 24-year-olds would be expected to be negligible because small proportions of felons of these ages receive enhanced sentences. However, age group crime patterns reveal the opposite pattern, as table 2 shows, for the three years after the law took effect (1995-97), compared with the three years prior to the law's enactment (1991-93).

The largest decreases by age group occurred among those under age 20. The 10-17 age group experienced a 19.1 percent decrease in felony offenses and a 9.7 percent de-

Table 2: Change in Arrest Rates for Major Offenses, by Age, Three Years after "Three Strikes" took Effect (1995-97) versus Three Years Before (1991-93)

Age	All Felony Offenses		Violent Crime	
	Absolute	Net	Absolute	Net
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
All ages	-8.8		-6.5	

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.

crease in violent crime. The 18-19 age group had an 11.2 percent decrease in felony offenses and a 6.2 percent decrease in violent

crime.

Conversely, the over age 30 groups displayed net increases in both violent crime and total felony arrests during the post three-strikes period. In other words, the age group most likely to be sentenced under the three-strikes law experienced increases in felony and violent crime arrests.

CRIME REDUCTION BY COUNTY

California counties have radically different rates of sentencing under the three-strikes law, ranging from 0.3 per 1,000

violent crime arrests in San Francisco to 3.6 in both Sacramento and Los Angeles. Thus the highest counties invoke the law 3 to 12 times more often than the lowest counties. Deterrence and incapacitation theories suggest that the counties that most heavily enforced the three-strikes law should have experienced greater crime declines than more lenient counties.

However, as table 3 shows, those counties invoking three strikes at higher rates did not experience the greatest crime rate decreases. Santa Clara, one of the six heaviest sentencing counties, experienced a rise in violent crime.

Counties that most vigorously and strictly enforce the three-strikes law did not experience a decline in any crime category compared with more lenient counties, even though the six largest counties applied the law 2.2 times more often than did the other six counties. The seven-times more frequent application of the three-strikes law in Sacramento and Los Angeles was not associated with bigger declines than in

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Table 3: Second and Third-Strike Sentences per 1,000 Felons, by County, and Percentage Changes in Reported Crime Rates 1991-93 to 1995-97

County	Sentencing Rates:		Postlaw Change* in Rate of:		
	3rd Strike	2nd and 3rd Strikes*	Homicide	Violent	All Index
Sacramento	3.6	26.0	-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	-18.0	-24.0
Fresno	2.6	21.5	-20.0	-1.4	-9.2
Santa Clara	<u>2.6</u>	<u>23.4</u>	<u>-24.6</u>	<u>9.0</u>	<u>-18.9</u>
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	17.0	-23.9	-20.9	-16.1
Contra Costa	1.4	15.7	-32.9	-21.7	-15.0
Ventura	1.3	18.8	-26.6	-24.3	-22.0
Alameda	0.7	5.9	-24.2	-17.2	-13.7
San Francisco	<u>0.3</u>	<u>4.9</u>	<u>-31.8</u>	<u>-28.0</u>	<u>-24.5</u>
Avg. Six Lightest	1.4	13.9	-28.4	-21.3	-20.0

*Sentencing rates per 1,000 felonies by county. Postlaw change compares reported crime rate for 1995-97 (postlaw) to 1991-93 (prelaw). Source: California Criminal Justice Statistics Center, California Department of Corrections, Data Analysis Unit.

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Alameda and San Francisco counties, where the law is rarely applied. San Francisco, the county which uses the three-strikes law least often, had a greater decline in violent crime, homicides, and all index crime than did most of the six heaviest enforcing counties.

The data reported in the analysis reported here do not support claims that the three-strikes law reduced crime rates through deterrence and selective incapacitation. San Francisco, for example, the county where three-strikes provisions are least often applied, experienced a 32 percent decline in homicides, a 28 percent decline in all violent crimes, and a 24 percent decline in total index crimes. By contrast, Sacramento, with the highest rate of third-strike commitments, had a 22

percent decline in homicides, but only a 6 percent decline in violent crimes, and a 3 percent decline in total index crimes.

Reported crime rates, which climbed rapidly during the late 1980s, particularly for violent crime, have been in steady decline throughout the country since 1991. A number of explanations have been offered, including the stabilizing of the crack trade, a stronger economy, and more incarceration. Virtually no evidence could be found in California, however, to suggest that the three-strikes law was a major factor there.

This analysis supports three legislative recommendations: repeal the current version of three strikes; amend the three-strikes law to require the third strike to be a violent crime; and require and fund further research on

crime-control effects of three strikes and its financial impact on California's budget.

References:

California Department of Corrections, Data Analysis Unit. 1998. *Second-Strike Cases, Third-Strike Cases*. Schiraldi, Vincent, and Tara-Jen Ambrosio. 1997. *Striking Out: The Crime Control Impact of "Three-Strikes" Laws*. Washington, D.C.: Justice Policy Institute

A fuller version of the study on which this article is based will appear in the Fall 1999 issue of the *Stanford Law and Policy Review*. Raw data and additional information are available from the Justice Policy Institute at www.cjcj.org/jpi. ♦



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40 Main Street • P.O. Box 110
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1622 Folsom St.
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