

## Transforming California's Prisons into Expensive Old Age Homes for Felons: Enormous Hidden Costs and Consequences for California's Taxpayers

by  
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Fear of violent crime is reasonable and justified given that we live in the most violent nation in the industrialized world, so much so that the Centers for Disease Control and Prevention have declared the extent of violence in the United States to be a "national epidemic." In response to this sorry state of our Union, politicians at national and local levels have pushed through legislation aimed at combatting this evil in our midst. California's Governor Wilson has been in the vanguard of those who propose that we can reduce crime and violence by putting as many as possible of these lawbreakers behind bars for long prison terms. Tough new sentencing laws, popularly known as "3 Strikes, You're Out," are designed to clear our streets of this dangerous element by essentially "locking them up and throwing the keys away." These new sentences of 25 years to life are supposed to terminate the careers of many 'career criminals.' Governor Wilson has said that he knows concerned Californians are willing to bear the costs for this new war on violence because it will provide the sense of security they desperately desire.

But what exactly are those costs to taxpayers? And will that outlay of money and this legislation really reduce violent crime so that citizens can get the peace of mind they seek? The direct answers to these two basic questions are: "enormous," and "no." If we focus on just one small part of this complex package of legislation -- the consequences of lengthy incarcerations for elderly felons -- the estimated costs are nothing short of staggering -- as much as hundreds of billions of dollars. Once California's taxpayers become aware of the hidden real costs and the unrecognized losses to them, few will be willing to pay for the double jeopardy of increased taxes and losses of valuable community services necessary to pay for these crime bills.

The core of this article offers recently gathered research evidence of four kinds in support of these claims: a) the greater costs of imprisoning a single inmate who is 50 years old or older compared to the average younger inmate; b) the estimated increase in the coming decades of inmates in that over-50 category; c) the specific losses of

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community services in the domains of health, education and welfare, as well as other hidden costs and negative consequences of this legislation to correctional officers, police officers, the court system, and to families in specially afflicted communities; and d) data that older inmates are least likely to ever be repeat offenders. Finally, evidence will also be advanced that long-term incarceration may have little effect on reducing crime or violence in our society, and paradoxically may even increase it.

Two other themes will surface from time to time as subsidiary to our main focus on what it will mean to imprison so many elderly men and women for such long terms. The first aims to make apparent that the 'strike zone' has been made so wide that petty thieves and drug addicts who have not committed any crime of personal violence could also strike out (with a huge amount of tax dollars drained off to pay for their room and board over the next 25 years). The second theme notes that violence is one of the most complex of all human phenomena, requiring an understanding of the many levels of input factors that contribute to violence before we can begin a serious attempt to reduce and prevent it. The thinking behind the new legislation ignores the input factors causing violent crimes while focusing only on the output, making the consequences of getting caught extremely aversive.

The sources for the conclusions presented below are: California Department of Corrections (CDC); National Council on Crime and Delinquency (NCCD); Rand Corporation of Santa Monica; California Higher Education Policy Center of San Jose; Center on Juvenile and Criminal Justice (CJCJ), and Children Now, among others cited in the references.

### **California's Version of the "3 Strikes" Law**

The nation's strictest and broadest version of the new legislation passed in response to public fears of crime is California's law (AB971) enacted March 7, 1994. It allows

many violent as well as non-violent "serious" crimes to count as "strikes," 46 in all. But it goes much further in also including juvenile court adjudications that occurred when the juvenile was as young as 16 years old. After the first strike, those convicted of a felony offense who have a prior conviction for one "strikeable" offense must be sentenced to twice the prison term they would ordinarily receive. Moreover, those "two strikers" are required to serve at least 80 percent of their sentence regardless of their good conduct in prison.

With the third offense, the convicted felon would be sentenced to an indeterminate life term, from a minimum of 25 years to life. Although the first two "strikes" are designated for "serious" or violent offenses, the "3rd Strike" need not be. It need only be for any crime that qualifies as a felony, even relatively minor ones as cashing bad checks, being part of a gambling pool at work, or petty theft with a prior conviction for theft, among others that have no violent features. "Prior conviction" is a broad category, without time or geographical limits. It can be for any conviction in the serious or violent category, including juvenile ones past age 15, at any time in the past, for convictions in any state of the U.S. One provision especially likely to fill the prisons fast is that which qualifies burglary as a felony "third strike" since burglary is a high frequency crime. Also some priors for drug convictions will count toward the total, and since such felonies have been increasing faster than any other, they too will add significantly to the long-term prison population in California.

Proposition 184 on the California ballot in the upcoming November election is identical in substance to the current law described above. According to its proponents, it is on the ballot primarily so that if it is voted into law, it will be more difficult for it to be modified by the state legislature in the future. This article contends that passage of Proposition 184 forces California's voters to accept -- and pay exorbitantly for -- the objectionable aspects of this overly broad law, that they may not even be aware of, along

objectionable aspects of this overly broad law, that they may not even be aware of, along with provisions of which they approve. Specifically, a better written law is needed that takes account of the special conditions associated with geriatric "3 Strike" inmates. The remainder of this article presents those conditions, costs, and consequences.

**Costs of Incarceration of one Convicted Felon Age 50 and Over.**

According to the California Department of Corrections, it currently costs approximately \$21,000 to keep one inmate in a California state prison for just one year. However, that high figure is for younger inmates, average age of 30 years old. For those in the over 50 category, the costs are the considerably higher figure of \$60,000 per person per year! (Austin, NCCD, 1994). For those 60 and over, the annual cost is projected to be \$69,000 per inmate (Camp & Camp, 1994).

**Estimates of Likely Increase in Prison Population of Elderly Inmates.**

In 1994, about 4 percent of California's prison inmates are age 50 and over (3,800 ages 50-59, and 1,200 over 60). In just the next five years that number is projected to increase by over 300 percent, from 5,000 to 20,300 elderly inmates, according to CDC (1994) official projections.

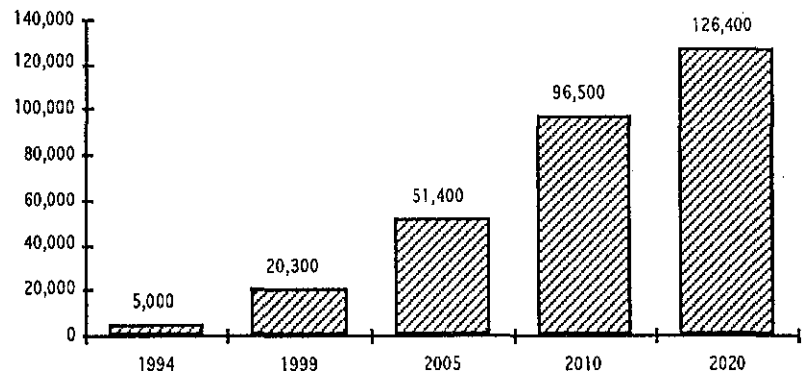
Because of the "stacking effect" of the "3 Strikes" law, with longer prison terms for offenders, and passage of younger offender age groups into the elderly age groups, there will be a gradual greying of the prison population. So after 1999, a third of the prison population will move along to become 10 years older than the average for the general prison population, which is currently 30 years old on admission. In 2005, ten years after the passage of "3 Strikes" legislation, more than 51,000 inmates will be in the over 50 category, nearly 12,000 of whom will be over 60 years of age. (See Figure 1)

State officials estimate that the full impact of these new tough sentencing laws will be seen in 25 years. California taxpayers will thus have to be prepared to pay the costs to care for more than 126,000 elderly inmates over 50, who will comprise a full 20 per cent of the state's total prison population by the year 2020 (See Figure 1). Of that number, nearly 30,000 will be in the 60 and over age group. The projected increase in elderly prison inmates being housed in California prisons by the year 2020 from the current level is an astounding statistic of more than 2,000 percent! These figures are based on official CDC -1994 projections of future bed space needs to accommodate the surge in prison population growth caused by "3 Strikes" legislation, as well as the assessments of NCCD-1994 based on these CDC estimates (See Table I).

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One perspective on this greying of California's state prison population comes from noting that there will be even more elderly inmates filling our prisons twenty-five years from now than the current 1994 total of inmates of every age -- about 126,000.

Figure 1  
CALIFORNIA'S THREE STRIKES LAW  
CDC PRISON POPULATION  
50 YEARS OLD OR GREATER



Source: National Council on Crime and Delinquency

TABLE I -  
THE AGING OF CALIFORNIA'S PRISONS:  
THE IMPACT OF THREE-STRIKES LEGISLATION

YEAR	OFFENDER AGE GROUPS					TOTAL
	UNDER 30	30-39	40-49	50-59	60+	
1994 (Actual)	51,100 42.60%	47,200 39.30%	16,700 13.90%	3,800 3.20%	1,200 1.00%	120,000 100%
1995	58,400 41.70%	53,500 38.20%	21,000 15.00%	5,600 4.00%	1,500 1.10%	140,000 100%
1999	90,000 36.70%	89,300 36.40%	45,900 18.70%	15,800 6.40%	4,500 1.80%	245,500 100%
2005	133,900 32.00%	139,800 33.40%	93,000 22.20%	39,800 9.50%	11,600 2.80%	418,100 100%
2010	175,900 31.30%	154,300 27.50%	135,200 24.10%	73,300 13.00%	23,200 4.10%	561,900 100%
2020	167,900 26.30%	163,600 25.70%	179,900 28.20%	98,400 15.40%	28,000 4.40%	637,800 100%
Change						
Number	(+) 116,800	116,400	163,200	94,600	26,800	517,800
Percent	(+) 229	247	977	2,489	2,333	432

Source: National Council on Crime and Delinquency, October 1994

\*Note: See below.

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### **Direct Costs of Creating Old Age Prisoner Homes in California.**

If one convicted 'three striker,' aged 50, starts his 25-year term at the cost to the State of \$60,000 a year, and if he lives out this term until 2019, it will cost a total of \$1,500,000, that is, one million, five hundred thousand dollars, just to throw his single key away. Moreover, we can expect costs of living increases to continue spiralling upward over the next 25 years rather than maintaining a steady state or showing a reduction. If so, then even these exorbitant costs to house so many elderly inmates may be an underestimation.

In 1994, there are 5,000 such elderly inmates in California state prisons, but by year 2020, projections based on estimates of the impact of "3 Strikes" boost that figure to a high value of 126,000 prisoners. When we multiply what it will cost to keep one elderly prisoner behind bars for 25 years (around \$1.5 million dollars) by the estimated

number of all elderly inmates, the bill that must eventually be paid will be on the order of hundreds of billions of dollars! We can deduct the relatively small amount of money some of these prisoners would have cost taxpayers through Medi-Cal payments were they not imprisoned. Even by generous estimates, that might lower the eventual total costs to many tens of billions of dollars.

It is difficult to generate an exact estimated total cost statistic because some elderly inmates will be going through the entire sentencing period, others entering at different years in the 25-year period, some dying, and younger ones entering into the elderly age category. One recent report has projected the annual state prison budget to rise to \$3.5 billion dollars for the year 2004-5, up \$1.5 billion from current prison costs (California Education Policy Center, 1994). The Rand Corporation's analysis came out much higher, with an estimated annual prison cost in California rising to \$5.5 billion. Their projected cost to each

\*Note: Figures through 1999 represent official CDoC projection. Projected figures for the years 2005-2020 include official CDoC assessments of additional beds required by three-strikes legislation and assume increased of 10,000 inmates per year under pre-three strikes policies.

California taxpayer is \$300 additional taxes each and every year (Rand Corporation, 1994). But my estimate would be considerably higher over the next decades as more and more costly aged offenders fill prison beds and hospitals.

Of course, that is the bill to be paid when the prisons are filled with these elderly inmates, which will not occur immediately but gradually over time. If we make the conservative estimate that the predicted increase in the elderly prison population (from the current 5,000) will be equally distributed over the next five years and accept the CDC's estimate of 20,300 elderly inmates being housed in state prisons by 1999, then about 3060 elderly felons will be added to the prison rolls every year. So for each year, that will mean an added cost of \$18,360,000, at a minimum -- just for the costs of housing elderly inmates in our prisons.

That considerable outlay of state funds may not seem too high to some taxpayers who want their sense of security at any price. But then, they must also weigh into their cost/benefit equation the additional costs of all the other younger men who will be imprisoned for long terms. Even though their lesser tuition is a relatively more modest \$21,000 a year (which will increase annually with cost of living increases), these younger felons will form the bulk of the new influx of long-term inmates. The CDC estimates are that in 25 years, there will be more than 500,000 felons in California prisons who are under age 50.

Young men commit more crimes than the elderly, and even first offenders for some crimes, such as selling drugs, must serve determinate sentences on the order of 10 years (as was the recent sentence of the son of Surgeon General, Jocelyn Elders). Thus, we can expect great increases in the numbers of youthful felons on the order of many thousands more each year. To go from the current total of 115,000 inmates younger than age 50 to the projected number of 511,400 such inmates in year 2020 (a gain of 396,400 inmates), would require an average

annual increase over each of the next 25 years of nearly 16,000 felon offenders. Aside from what this will mean in tremendous increases in court costs to process so many new criminal cases, the prison costs for these new 16,000 inmates, at even the fixed current annual costs of \$21,000 per inmate, figures out to be an about \$336 million dollars per year.

Of course, we must also consider the possibility that the Department of Corrections' estimates are biased in the direction of being too high, in part to justify the requested expenditures on an ambitious program of new prison construction. However, the "self-fulfilling prophecy" nature of such projections can transform them into reality, because if many more new prisons are built, it is likely that they will become filled to and beyond capacity in time. It seems to me that prison systems, working in conjunction with court systems, abhor vacuums, just as nature does. In this instance the vacuums are empty prison cells.

### **Special Costly Health Services for Elderly Prisoners**

Why are the costs for imprisoning elderly inmates so much higher than younger ones? One answer comes from their different health status on admission, the second has to do with the more adverse effects of institutionalization on the elderly, and the third is that their medical and psychiatric care in prison is mandated by laws to be of a quality higher, and thus more expensive, than these individuals get in the community.

In the society at large, it is estimated that 80% of elders have at least one or more chronic health conditions. Nearly half suffer from arthritis, 38% from hypertension, 28% from heart disease, 16% from cataracts, and large numbers have orthopedic impairments, diabetes, as well as hearing and visual deficits (Rundall, 1992). But the situation is worse for the typical elderly offender. "There is a 10-year differential between the overall health of Bureau of Prisons inmates and that of the general population. Because

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*"It costs up to four times more to house an old prisoner than a young one because of health problems."*

of the previous life styles of inmates (a large number of them having used drugs and alcohol to excess, poor eating habits, stress in life) they have aged faster than the normal population, and a 50-year-old will typically have the health problems of a 60-year-old on the outside" (Kratcoski & Pownall, 1989, p. 30).

In addition to the elderly's alcohol problems that exacerbate mental illness and suicidal behavior, over 70 percent suffer from one or more chronic ailments, and older persons account for 25 percent of annual admissions to mental hospitals. "Among the chronic ailments afflicting participants [elderly Florida offenders] were heart disease, diabetes, hypertension, emphysema, and cancer, which are potentially life threatening especially in combination" (McCarthy, 1983, p. 64). The incidence of these diseases, and strokes, are higher among the elderly offenders than the general population, according to Fay Honeycutt, the Director of Nursing at McCain Correctional Hospital in North Carolina. "It costs up to four times more to house an old prisoner than a young one because of health problems" (*Correctional Health*, 1989, p.6). Honeycutt attributed this greater health cost factor to the combination of the disadvantaged backgrounds of most inmates that render them in bad condition on admission, and the special stresses of prison life on the elderly that accentuate earlier problems and create additional new ones (see Aday, 1994; Gallagher, 1990; Goetting, 1983).

*There is every reason to expect that the stresses of prison life for the elderly will impact on the already greater vulnerability to illness of the aged.*

In 1989 alone, 100 inmates required costly coronary bypass surgery, a number which will swell as the "3 Strike" elderly fill the prisons. And for each such operation, correctional officers must maintain the inmate's security during the entire hospital stay -- another hidden cost of care of the elderly.

Long-term offenders also develop special difficulties as they grow old in prison, such as losing touch with the outside world, and outliving relatives and friends. They do not engage in vocational training programs or

most other incentive programs because they know that they will never be employed again. Thus the elderly offender is likely to age even faster because of enforced idleness and social isolation. Research has shown that higher aged inmates had low activity levels, and low expectations, that together promote a sense of learned helplessness. Other research has found that elderly inmates have a high degree of insecurity and are filled with fears--of pain, illness, correctional officers, the future, and young inmates (reported in Rubenstein, 1984).

There is every reason to expect that the stresses of prison life for the elderly will impact on the already greater vulnerability to illness of the aged. We can expect them to suffer from more vascular, neurological, respiratory, and endocrine disorders than non-institutionalized age peers, as well as more depression and anxiety disorders. Treatment of these illnesses will be expensive.

Elderly inmates will cost more than younger ones because they will have more extensive vision and hearing problems, more problems with walking, require special diets, and ultimately are more prone to Alzheimer's Disease. The intensive care required for such sufferers is considerable and continuous until they die. And then finally the state will have the mounting burial costs to add to its corrections budget. Moreover, with increasing rates of incarceration, we can also expect increasing numbers of offenders with AIDS and tuberculosis to enter the prison system. The health care burden they represent is similarly enormous for the system to absorb. Other increased costs come from implementing corrections policies, such as the one that requires two guards to escort each inmate requiring medical treatments outside the prison. With many prisoners needing such treatments, there will have to be many more correctional officers or more overtime pay to accommodate this one added problem created by geriatric prisons.

However, in addition to the fiscal infeasibility of keeping so many elderly, and









even more young men, incarcerated for such long terms are the issues of other non-monetary costs to our society and the indirect losses every California community will have to pay for their share of sustaining what we will describe as a false illusion of security. Let's consider next some of these less tangible costs.

**Indirect Costs to the Community Created by Long-term Imprisonment for Elderly and Other Felons**

**Reframing Costs.** Let's reframe the issue, not in terms of the promised illusory security we may gain by investing all this money in new prisons needed to care for the increase in the number of elderly felons put away for life. Instead, we should use the frame of what we are definitely losing by allocating our limited state resources to this prison-based solution to violent crime, and away from essential community services, some of which could have a bigger impact in the long run on reducing crime.

To build one new prison costs more than \$333 million dollars (including the interest on the construction bond debt). What could we gain instead for that much money, or what services and programs will Californian's lose or have to forego to pay the budget bloated by enforcement of "3 Strikes?" Table II summarizes the opportunity costs to society of building one new prison.

Table II

one prison		=		8,833 new teachers lost from school classrooms
one prison		=		89,660 children who can be supported to enter Head Start Programs
one prison		=		466,600 children who can not get health insurance
one prison		=		57,833 families that could not be lifted out of poverty

In times of budgetary squeezes, the limited State financial pie must be cut so as to meet mandated budget items, such as prison construction and new law enforcement programs. What do we lose for these new strains on our state budget? We lose the opportunity to build new science and technology laboratories in high schools that have none or only dilapidated ones, such as San Francisco's Galileo H.S. -- once the pride of the city and a feeder school for the University of California, but no longer. We will surely lose the budget to pay for untold number of nurses in our emergency rooms, paramedics to treat traumatic injuries and illnesses, funds to support California's vital higher education programs of Community Colleges, Junior Colleges, State Colleges and the University system. If we know anything about crime prevention, it is that more education reduces the potential for committing violent crimes. Draining money from the State's educational system, from K-12 and beyond, to pay the high crime costs projected by the CDC, might be expected to contribute to increasing crime in the coming decades (see Wildavsky, *S.F. Chronicle*, 9/22/94).

A recent survey informs us that the California 1994 state corrections budget now equals the entire budget for higher education in the state - \$3.8 billion. Ten years ago higher education received two and half times as much money as did corrections, but since then corrections has added more than 25,000 employees while higher education has lost a third of that number. California has been engaged in an ambitious prison construction program, while no campuses of the University of California have been added. With "3 Strikes" in effect, by the year 2000 there will be as many individuals in California's prisons as there are in all the California State universities and two and half times as many prisoners as students at the University of California's seven campuses (Baum & Bedrick, 1994). In the year 2002, corrections is expected to consume 18% of the state budget, while higher education will consume

Source: Children Now, 1994

less than 1% (Rand, 1994).

Hospital and medical care in California's prisons are currently considered to be at an "appalling level," according to the union representing state prison doctors and dentists ("Prison Docs Criticize Governor," *S.F. Chronicle*, 10/13/94). Many prisoners are left untreated despite clear indications of psychosis, suicidal intentions and other major medical or mental problems. It is becoming increasingly difficult to staff prison medical facilities because physicians and dentists refuse to work under such adverse conditions. Decrying what he called the "needless human suffering and loss of life" caused by CDC's substandard mental health system, Federal Judge Lawrence Karlton recently fined the Department of Corrections \$10,000 a day, continuing until these poor medical conditions are improved ("State Prison Chief Fined for Mental Health Care" *S. F. Chronicle*, 10/29/94). If the situation is bad now, consider what it will be and what the new costs will be just for housing more than 100,000 additional elderly inmates in the coming years. As noted above, these inmates will need considerably more medical, dental, and mental health care than younger inmates. It will simply not be possible to recruit enough medical staff nor to provide adequate medical facilities to treat this mass of aged prisoners, let alone to service the even greater number of younger inmates.

Current prisons will have to be revamped to satisfy laws about access for the many more handicapped elderly they will house, such as new ramps, toilet facilities, bunk arrangements, and more, for inmates in wheelchairs or with walking problems. These and other adjustments will have to be made, and designed into new prison construction, for elderly with vision and hearing problems.

**Non-Monetary Losses.** Not all the losses created by "3 Strikes" will be of the monetary variety. It is difficult to imagine just how aversive the conditions will be under which correctional officers will have

to function in the coming decades when their prisons are filled with tens of thousands of men serving life sentences. Those inmates will have "nothing to lose" by attacking correctional officers -- to get a reputation on the yard, or to focus their rage at what might be considered excessive sentencing for inmates who have not engaged in any violent crimes.

In a similar vein, we can expect that prisons will become places of even more extreme violence between inmates than has ever existed before. Young men doing ten-year terms for drug convictions or other non-violent crimes will take out their revenge on weaker inmates or those without a support network in the prison. Those victims are likely to be the elderly inmates, especially those who have survived on parole on the outside for many years and in the process have lost their prison toughness and their former prison buddies.

"The ruthless reality of prison life is that prisoners do not respect their elders," says Gary Hilton, assistant commissioner of New Jersey's Department of Corrections. He and others fear that older inmates make easy prey for aggressive younger convicts, so may have to be housed in separate prisons ("U.S. Prison Population Aging, Adding to Burdens," *New York Times*, 12/07/93).

One study shows that nearly 20 percent of paroled ex-convicts who are rearrested within 3 years of release for a first offense that was non-violent in nature, commit a violent crime the second time around (FBI Uniform Crime Statistics, 1992). One perspective on such data is that prisons are crucibles of socialization into criminality and violence for many inmates who learn the "tricks of the trade" in order to cope with the intense demands of their role and the realities of the unbearable situation they cannot escape. Not only will prison riots and murders increase in the coming years, but whenever those long-termers are released they can be expected to engage in even more violent crimes than they did earlier in their lives. And those violent crimes will be against the citizens of

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California.

Even corrections officials are at a loss to know how to deal with the anticipated influx of geriatric inmates. New Jersey's Department of Corrections assistant commissioner, Gary Hilton, admits that, "I know how to run prisons, not old-age homes....We've not been in the geriatric business" ("U.S. Prison Population Aging, Adding to Burdens," *New York Times*, 12/07/93). There is little available research they can rely on to help them since not much psychological or medical research on aging has been devoted to aging prison inmates. But it is clear that, "older prisoners will be the focus of concern in our prison systems for the next generation," according to Tony Travisano, executive director of the American Correctional Association ("U.S. Prison Population Aging, Adding to Burdens," *New York Times*, 12/07/93). This means a lot of on-the-job learning, and mistakes, and frustrations, and probably a host of law suits against departments of corrections by inmates and their families.

Police officers will be vulnerable to new dangers from elderly parolees who, in realizing that a petty theft or drug conviction will send them back to prison for 25 years, will chose "to take some cops with them" rather than go to that slow death behind bars without a final protest. My interviews with some ex-convicts attest to the distinct possibility of non-violent men engaging in violence against arresting officers when faced with arrest for their "3rd Strike." Official support for this concern for the negative consequences of these new tough prison terms on police officers comes from police reports in the State of Washington, the first state operating under the "3 Strikes" legislation. Police officers there have already begun reporting violent reactions among offenders without prior violent records who are being incarcerated for their "3rd Strike" ("A 3-strike Law Shows it's Not as Simple as it Seems," *New York Times*, 2/15/94).

Finally, there are the intangible and real costs to the families of the imprisoned, and

especially to the increasing numbers of fatherless kids in inner cities whose dads will be in prison. For example, two children, ages 10 and 11, who recently murdered a 5 year-old who did not want to steal for them, each had a father who was in a California prison. Since African-Americans are imprisoned at 9 times the rate of whites in California and they currently make up 32.4% of the prison population, they will become more vulnerable as a group to the effects of "3 Strikes" because so many already have one or two strikes against them. The same logic applies to the Latino community that accounts for another 34% of the California prison population at this time (Koetting & Schiraldi, 1994). These racial disparities will worsen in coming years if projections for new drug commitments by race are validated with ever more nonwhites than whites serving time on drug crimes (Tonry, 1994). Again, this high rate of incarceration of African-Americans and Latinos will have an adverse effect on their communities as more and more males are isolated from their families for long prison terms.

#### **Recidivism Among Ederly Offenders: Elderly Inmates are Likely to be neither Violent nor Repeat Offenders.**

The age composition of California's prison population clearly reveals the truth that crime is a young man's 'game.' Nearly 96 percent of the inmates are under age 50 and only one percent are currently over 60. There is also a "maturation" effect on criminal offenders that is well documented in the field of criminology. According to one expert: "Advancing age, beyond a threshold at least, produces decreasing rates of involvement in crimes such as robbery, burglary, and theft" (Shover, 1983, p.2).

This conclusion is supported by a report from the Bureau of Justice Statistics (Feb., 1985):

*While an estimated 21.8% of those 18 to 24 years old at release return to prison within the first year, 12.1% of those 25 to 34 at*

release, 7.1% of those aged 35 to 44, and 2.1% of those aged 45 and over do so within the first year. Similarly, through 7 years after release, nearly half (49.9%) of those aged 18 through 24 at release will have returned to prison, compared to 12.4% of those 45 and over at release (pp. 3-4).

A similar conclusion is advanced from the results of a current analysis presented in the journal, *Federal Probation* (1993) by researchers Steffensmeier and Harer. They inform us that 50 year-olds recidivate at approximately one-fifth the rate of 20 year-olds, and that the rate of recidivism for those 60 and over is minimal.

Another way to look at recidivism rates by age and the impact on prison costs is to note that in Los Angeles county, the current average age of newly admitted offenders is 35 years. In ten years time, when these individuals are aged 45, the recidivism rate drops to 12 percent. That means that 88 percent of these inmates who are kept in prison for additional years would not be committing any crimes if released. And as they age further, and their recidivism potential declines even more substantially, the state is wasting its limited resources by keeping these individuals locked up when they pose little or no further threat to society.

These and related analyses of the likelihood of repeat offenses by elderly inmates who have been paroled clearly underscore the claim that such individuals are not a threat to society sufficient to justify the enormous costs necessary to keep them incarcerated in their old age.

This does not mean that elderly parolees do not commit crimes, the assertion is that they do not re-commit crimes with anywhere near the same frequency as do younger felons. In addition, the crimes they do commit that will get them sentences to 25 years in prison for their "3rd Strike" might now be as minor and non-violent as petty theft. A case study in point is that of Clarence Marlborough. This 48 year-old man has been charged with petty theft, with a prior conviction of theft, for his recent theft of batteries valued at

\$80.67 from a Payless store in El Cerrito, CA. He admitted the crime, which he said was done to help pay for his drug addiction habit. In the past, similar crimes had resulted in jail sentences of about 30 days, but under the new "3 Strikes" law that went into effect two days before Clarence Marlborough's petty theft, he could be sentenced to prison for decades. Although he has been a long-term addict who has engaged in petty theft mostly to support that habit, Marlborough is a non-violent, religious family man who had recently begun to turn his life around and desperately wants to shed his drug addiction. If convicted for this \$80 crime and sentenced under "3 Strikes," Clarence Marlborough will cost California taxpayers more than one million dollars for the satisfaction of reducing his danger to their sense of security against violent crime. His is hardly an isolated case as can be attested by the similar scenarios being collected by staff at the Center on Juvenile and Criminal Justice in San Francisco, and increasingly being reported in the media. Jose Jesus Ramirez of Salinas was recently charged under "3 Strikes" for stealing a car battery, and can spend the next 25 years in prison for that property offense.

Indeed, the largest number of older inmates are typically committed for non-violent types of offenses, most for drug-related offenses, or larceny-theft (Kratcoski & Pownall, 1989). Such crimes "could be the result of the economic pressures faced by a person on a fixed income as well as the fact that crimes such as shoplifting are opportunistic and require no specific skill" (Vito & Wilson, 1985, p. 23).

I strongly believe that this is not what Californians think they are paying for, to imprison elderly drug addicts and petty thieves, at annual and total sentence costs that are nothing short of being astronomical.

*[Reachers] inform us that 50 year-olds recidivate at approximately one-fifth the rate of 20 year-olds, and that the rate of recidivism for those 60 and over is minimal.*

**Why the '3 Strikes Laws' will not have any Significant Effect on Reducing Violent Crime in the United States, and may Paradoxically Increase Violence.**

Crime and incarceration rates have gone up in tandem in last decade, both in California and the nation at large: the more we imprison offenders the more the crime rate increases (FBI Uniform Crime Reports, 1992; Zimring & Hawkins, 1994). There is no evidence from any credible study that imprisonment rates have a general deterrent effect on crime. Given that California's current incarceration rate is greater than any nation in the world and has been growing steadily in the last decade, that is not evidence to support claims of being "soft on crime" in California.

The high recidivism rates of parole violators clearly show that prisons do not change criminal behavior and may even promote more violent crimes following the experience of being imprisoned. In one study of criminal histories taken in 1991 of a sample of 14,000 inmates there was a recidivism rate of over 80 percent within three years of release from prison. Even more startling about this failure of prisons to have any effect on constraining later criminal behavior was a finding that, among men who had committed a non-violent first offense, 19 percent were re-admitted to prison for a second offense on a violent felony (U.S. Bureau of Prisons, 1991).

Prisons are already the most violent place imaginable and will become more so. Anyone who gets out will be socialized into violence since that is part of survival tactics in prison, especially when the new "3 Strikers" rule the prisons, who have nothing to lose by their actions against other inmates or staff. We can't throw the key away for every prisoner, some will get out, and they will be more a menace to society because of the worsened prison conditions created by sending so many men, young and aged, to the failed social experiment know as "Correctional Institutions."

The United States is a "culture of violence," with many factors contributing to violence of citizens against other citizens (see Foote, 1993). Incarceration represents the failure to prevent or curtail violent crime by understanding and attempting to modify some of the causal factors involved. We need more and better research to begin to unravel the complexity of this human problem, not more prisons and bigger corrections and police budgets to cope with the failures of our understanding.

### Conclusions

The data revealed in this report should generate concern for the serious implications they pose regarding crime control strategies and prison costs in the state of California. The issue of long-term imprisonment of elderly offenders has to date been largely ignored in both cost and crime reduction estimates for the "3 Strikes" law. This report makes apparent the reality of the impact of elderly offenders on the state prison population -- which is much more substantial than previous researchers have speculated, or state officials have reported. Because it costs so much more to house and care for the additional health and medical needs of the elderly, we can anticipate that the millions of dollars required for each aged inmate's care will soar to astronomical budgets of hundreds of billions of dollars within the coming decades as the elderly prison population increases by more than 2,000 percent. These figures do not include the considerable additional court costs nor the negative consequences expected for many Californians directly connected to anticipated problems within the prison system. With a relatively fixed state budget, dramatic increases in prison costs will mean corresponding losses to taxpayers in much needed health, education and human services expenditures. Given that elderly offenders are so much less likely to commit new offenses coupled with the high costs of keeping them imprisoned, this report calls into question previous cost estimates and "crime savings" predictions of California's "3 Strikes" law.

*Given that elderly offenders are so much less likely to commit new offenses coupled with the high costs of keeping them imprisoned, this report calls into question previous cost estimates and "crime savings" predictions of California's "3 Strikes" law.*

*The State Legislature should immediately modify the "3 Strikes and you're out" law.*

### Public Policy Implications

A number of action implications flow from this report, some of a more immediate, short-term nature, others with a long range focus.

### Short-Range Actions

- The State Legislature should immediately modify the "3 Strikes and you're out" law in the following four ways: a) to make it applicable only to violent offenders, as citizens falsely believe it is now ; b) to place a reasonable time limit on the inclusion of prior convictions as applicable "strikes;" c) to eliminate non-violent burglaries as "strikeable" prior convictions; and d) to eliminate juvenile convictions as countable prior "strikes." These changes in the law would ameliorate some of the negative impact on the prison population created by the "3 Strikes" law and minimize the inclusion of non-violent aging offenders in our prisons.

- The state should expand the availability of half-way houses and drug programs into which prisoners can be transferred during the final 6 to 12 months of their prison sentences. Such programs enable inmates to better make the difficult transition from life in prison to a non-criminal life back in local communities. Currently only 3 percent of all inmates have this valuable option available to them (4,000 of the total population of over 120,000). From a policy standpoint, it is indefensible to maintain this low percentage, especially when our prisons will be filling up with older, less violent offenders. That allocation of resources will have a more salutary effect than merely paying to keep inmates locked up or locked down all the time.

- Legislation is needed to formalize and broaden the availability of the state's "compassionate release" program that allows inmates to be released who are extremely ill and dying. In its current form, the program is not viable because it is so cumbersome and bureaucratized that sick inmates are

dying in prison while awaiting completion of the necessary paperwork to process them out. As should be obvious from the concern for the elderly highlighted in this report, legislation should broaden the criteria for allowing older, non-violent inmates to become eligible for compassionate release, and mandating fair and reasonable response dates by the CDC.

- Citizens should vote against ballot proposition 184 in order to send a message to state politicians that the law as now written needs to be amended to focus only on violent offenders, change the basis of assigning prior "3rd Strikes," and deal differently with the special problems of elderly offenders (such as mandating alternative community services for their third non-violent "strike").

### Long-Range Actions

- Violent crime is a complex human phenomena, with many factors entering into the equation of why a given person commits such an offense against other people. We need to understand more fully the nature of the various causal contributions to violence in our society so that new, innovative programs of crime prevention can be instituted rather than continuing to cope with the chaos of crime by relying on the failed strategy of ever-stricter and longer prison sentencing. The state government should create a commission to oversee a coordinated research program that investigates the causes of crime in California. For a fraction of the costs of housing a few inmates in our prisons, new research efforts can be mounted toward the goal of designing more effective crime prevention programs. Leading behavioral researchers in our state universities and research centers would welcome the opportunity to lend their expertise and skills to such a program.

- Crime and crime-control legislation are highly politicized in California as they are at other local and even national levels, with politicians scoring voter points by public

*Citizens should vote against ballot proposition 184 in order to send a message to state politicians that the law as now written needs to be amended.*

displays of their tougher-than-thou stances. In California, more than 1,100 bills have been passed since 1977 (an average of 65 each session), when the Determinate Sentencing Law replaced the indeterminate sentencing process that gave judges more authority in deciding on appropriate terms for each convicted felon. These bills have largely been directed at creating new crimes to be prosecuted, lengthening prison sentences, and changing misdemeanor crimes to felonies requiring state imprisonment. The consequence has been to increase the capacity of California's prisons so that they are currently operating at 180 percent of design capacity. California's overall incarceration rate of 626 inmates per 100,000 population places California as the leader in incarceration of any nation in the world (Koetting and Schiraldi, 1994).

This piecemeal, political approach to criminal justice reform has left the penal code confusing and unfair to many. The rush to pass more politically expedient "fix-all, crime of the week" legislation, as epitomized by the "3 Strikes" law, will leave Californians no safer, no more secure from violent crime, surely much poorer, and even more frustrated by the system's inequities and ineffectiveness.

- California government officials should empanel a high-level commission with broad representation from around the state to reexamine and rewrite California's Penal Code to simplify, clarify, and make it more cohesive in specifying crimes and punishments. That commission should include representation from law enforcement, prosecution, defense, the judiciary, universities, the advocacy community, and citizens at large (much as was done with former Governor George Deukmejian's Blue Ribbon Commission on Inmate Population Management).

- The commission's task would also be to assure that prisons are required to live within their reasonable resource allocations, like any other state agency. Scarce prison space should be reserved for those who represent a real threat to society and not

aged offenders who are progressively less likely to re-offend as they age and to cost taxpayers more than available resources will allow. Within the bounds of sentencing parity, the commission would need to take such factors into consideration in setting sentencing parameters that ensure any offender is housed in expensive prison facilities no longer than is necessary to achieve the goals of sentencing.

In ending this report it is well to consider a different orientation than the dollars and cents materialistic concerns about what it will mean to taxpayers' pocketbooks if the current strict, broad version of "3 Strikes" is implemented in California. There is also a question of the expression of society's compassion for its elderly as shown in its concern for their humanitarian care -- regardless of whether they are institutionalized in homes for the aged, mental hospitals, or state prisons.

When society removes people from its midst, it assumes a responsibility for their care and well-being. The older person's care and well-being depends on society's degree of caring and capacity for understanding. (Rubenstein, 1984, p. 154).

It is imperative that we do not rely on failed simplistic solutions to our society's complex problem of crime and violence, such as long-term imprisonment for young and old citizens. Doing so shifts the focus from concentrated efforts to understand and modify the causes of crime and violence to mindlessly punishing offenders after they have already harmed victims. It also shifts the nature of Human Nature from a central core of concern, caring and compassion for our fellow beings to an internal landscape rife with spite, vengeance, and dehumanization. In needlessly imprisoning the elderly for life-long terms, this "3 Strikes" law breaks basic social bonds essential for the human condition to thrive, and thereby, further fosters a Culture of Violence in the United States.

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