

The Deterrent Effect of Three Strikes Law

By John R. Schafer, M.A.

Since their inception, societies have attempted to control their members in one form or another. The particular behaviors that become the focus of that control can vary from one culture to another; however, the mechanisms that regulate the behavior remain constant. Essentially, punishment or the threat of punishment for social noncompliance represents the mechanism that deters individuals from engaging in deviant activity.¹ The penalty for unwanted behavior can take the form of legal prosecution, social sanctions, or a combination of both. Researchers have labeled this phenomenon perceptual deterrence.²

The concept of deterrence can be divided into two categories: general deterrence and specific deterrence.³ General deterrence occurs when potential offenders see the consequences of other people's actions and decide not to engage in the same behavior. Specific deterrence is triggered when offenders realize the consequences of their own past behavior and decide not to commit the same acts.⁴

Building on the deterrence principle, three strikes laws often are seen as the answer to crime problems in America. Such laws attempt to reduce crime either by incarcerating habitual offenders or deterring potential offenders from committing future crimes. By 1997, 24 states, as well as the federal government, had enacted some form of mandatory sentencing.⁵ Although all of these laws are referred to as three strikes laws, the provisions and enforcement of each vary greatly from state to state.

In California, for example, offenders accrue strikes when they get convicted of serious or violent felonies, and offenders with two strikes receive a third strike when they get convicted of any subsequent felony, violent or nonviolent.⁶ As of December 1996, the state had prosecuted over 26,000 offenders for their second or third strikes.⁷

But questions remain: Will the advent of three strikes laws deter crime, and, more important, will offenders become more likely to kill victims, witnesses, and police officers to avoid a life sentence? These questions represent important concerns as the cost of implementing mandatory sentencing laws may well include human lives in addition to monetary resources.

California's Experience

The deterrent effect of three strikes laws can be measured best by examining the law's impact on crime in California, which aggressively prosecutes offenders under the provisions of the state's three strikes law. Moreover, because young adults remain responsible for the majority of the crimes, any deterrent effect of this group should significantly reduce the crime rate.

Since California enacted its three strikes law in 1994, crime has dropped 26.9 percent, which translates to 815,000 fewer crimes.⁸ While the three strikes law cannot be given sole credit for the drop in crime, in many cases it proved an essential missing piece of the crime control puzzle. Furthermore, in the year prior to the law's passage, California's population of paroled felons increased by 226 as felons from other

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states moved to California. In the year after the law's enactment, the number of paroled felons plunged as 1,335 moved out of California.⁹ Though not conclusive, this decrease may portend the deterrent effect of the state's three strikes law.

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Critics of the three strikes law cite the fact that the overall crime rate in 1996 declined nationwide and, more germane, that crime fell in states with no mandatory sentencing laws. These critics attribute the drop to demographics and cite the unusually low number of males in their mid-teens, the crime-prone years. Researchers predict that the crime rate will increase dramatically in the near future because the number of juveniles currently in their preteens far exceeds the normal demographic expectation.¹⁰

The Juvenile Factor

In truth, crime remains an activity for the young, particularly young men. In 1996, males under age 25 made up 45 percent of the individuals arrested in the United States for index offenses¹¹ This group also committed 46 percent of the violent crimes and 59 percent of property crimes.¹² Another well-replicated study found that approximately 6 percent of all juveniles commit more than half of the crimes in the United States.¹³

Not surprisingly, although the overall crime rate in the United States has declined, the juvenile arrest rate for the 5-year period from 1992 to 1996 increased by 21 percent, while adult arrests rose only 7 percent during the same time period.¹⁴ A more frightening statistic reveals that each generation of juvenile offenders has been more violent than the generation that preceded it.¹⁵ The data suggest that a small number of young offenders commit numerous unpunished crimes because the courts, especially the juvenile justice system, provide the offenders with countless "second chances." These offenders are not held accountable for their actions and thus are not motivated to change their criminal behavior.

In 1899, Illinois passed the first Juvenile Court Act in the United States. This act removed adolescents from the formal criminal justice system and created special programs for delinquent, dependent, and neglected children.¹⁶ Over the ensuing century, juvenile justice has remained cyclical.¹⁷ The cycle typically begins when juvenile or group of juveniles commits an unusually heinous crime that evokes a public outcry. In turn, lawmakers pass stronger legislation for reform. After the tempest subsides, society once again retreats to a position of indifference, only to be aroused by yet another reprehensible act. This cycle is punctuated by attempts to rehabilitate juvenile offenders; however, these attempts largely have failed. No evidence exists to indicate that traditional one-on-one or group psychotherapy reduces the recidivism rate.¹⁸ Other variables—such as education, vocational training, social worker intervention—or any other method tried to date have not proven effective in deterring crime.¹⁹

In short, the current juvenile justice system does little to rehabilitate or deter young offenders from a life of crime. This lack of success has frustrated the public to the point where long-term incarceration appears to be the only solution. For this reason, under the provisions of some three strike laws, an offender could enter prison as a juvenile and, after a long sentence, be paroled as a middle-aged adult. Long prison sentences incapacitate chronic offenders during their crime-prone years and allow them to reintegrate into society when they have grown less likely to commit additional crimes.

In an effort to measure the perceived deterrent effect of California's three strike law, the author administered an 18-question survey to all of the 604 offenders housed at Challenger Memorial Youth Center (CMYC), an all-male, residential lock-down facility under the authority of the Los Angeles County Probation Department, in Lancaster, California. Five

hundred and twenty-three juvenile offenders chose to complete the survey over a 3-day period in March 1997.

The Survey

The author designed the survey to measure the offenders' experiences with the consequences of their own crimes (specific deterrence), the offenders' vicarious experiences with the consequences of other people's crimes (general deterrence), and the likelihood that the offenders would kill to avoid a life sentence. Three questions measured specific deterrence, three measured general deterrence, and one measured the offenders' intent. The data was sorted according to the following variables: race, age,²⁰ education, family upbringing, offspring, and gang membership.

Results

The survey found that 78 percent of the offenders surveyed understood the provisions of California's three strikes law. The questions that addressed the

Survey Questions and Responses	Maybe	Yes	No
Do you agree with this statement: "Since I am going to prison for life if I get caught, I may as well kill any witness(es) because I have nothing to lose and I may go free if there is no one to testify."	13%	54%	33%
If you knew your prison sentence would be doubled, would you commit a serious or violent crime?	21%	18%	61%
Do you think someone else would commit a serious or violent crime if they knew their prison sentence would be doubled?	37%	31%	32%
If you knew you would receive life in prison with the possibility of parole after serving 25 years, would you commit a serious or violent crime?	13%	17%	70%
Do you think someone else would commit a serious or violent crime if they knew they would receive life in prison with the possibility of parole after serving 25 years?	31%	27%	42%
Do you think the three strikes law will stop you from committing a serious or violent crime?	19%	35%	46%
Do you think the three strikes law will stop someone else from committing a serious or violent crime?	19%	33%	48%

significantly impact the specific or general effect of the law. Rather, family upbringing, affiliation, and offspring proved the most

individual components of the law demonstrated both a specific and general deterrent effect. Specifically, 61 percent of the offenders said they would not or probably would not commit a serious or violent crime if they knew their prison sentence would be doubled; 70 percent said they would not or probably would not commit the crime if they knew they would receive life in prison, thus demonstrating a specific deterrent effect. By comparison, when offenders were asked if they thought someone else would commit a crime for similar prison terms, illustrating a general deterrent effect.

However, when offenders viewed the law in general terms, no deterrent effect existed. That is, when the question asked if offenders thought the "three strikes law" would stop them or someone else from committing a serious or violent crime, most offenders said no. These findings suggest that when offenders are confronted with the severity of their punishment in specific, personal terms, the law has a deterrent effect, but if the law is defined in general terms, the deterrent effect wanes.

In addition, the survey found that 54 percent of the offenders indicated that they would kill or probably would kill witnesses or law enforcement officers to avoid a life sentence. This figure rose to 62 percent among offenders who claimed gang membership. These findings should serve as a warning to all law enforcement officers that when offenders, especially gang members, have two or more strikes, the likelihood of violence increases substantially.

The survey also determined that race, age, and education did not

Offender Demographic and Socioeconomic Data

Category Number Percent

important variables related to deterrence. The family had a positive influence on offenders, while gang affiliation produced a negative effect. Offenders raised in a home with both parents said they would be less likely to kill witnesses to avoid life in prison and more likely to be deterred by the three strikes laws.

Interestingly, offenders with children were less likely to be deterred by the three strikes law than offenders without children. Conventional thinking would suggest that offenders with children of their own would lead more responsible lives in an effort to care for their children; however, this was not the case. One explanation for this finding is that individuals who do not foresee the consequences of their actions routinely engage in risky behavior and so become more likely to have children as juveniles.

An overwhelming majority of the offenders who responded to the survey believed that the three strikes law was not fair and that offenders should receive more than three chances. During the postsurvey discussions with the offenders, most believed that the number of chances afforded offenders should equal one more than the number of crimes for which they themselves had been convicted.

Recommendations

In view of the findings of this study, additional data should be gathered from offenders in California, as well as other states, to determine if the results of this study are part of a greater phenomenon or specific to the offenders surveyed. If these findings hold true, the consequences of three strikes law should be explained to offenders in specific terms, in order to maximize their deterrent effect.

In addition, as more states enact and enforce three strikes laws, the number of offenders willing to use violence to escape arrest likely will increase, as well. Accordingly, law enforcement officers should approach suspects with extra caution and, whenever possible, should run. National Crime Information Center and criminal history checks on suspects.

Sex		
Male	523	100
Female	0	0
Age		
Under 10	2	4
11 to 14	36	7
15 to 17	375	72
18 to 20	105	20
Over 20	5	1
Race		
White	49	9
African/American	118	23
Hispanic	323	62
Asian	23	4
Other	10	2
Education		
Elementary school	9	2
Middle school	97	19
Some high school	348	67
High school diploma/ general equivalency	62	12
Some college/ technical school	7	1
College degree	0	0
Children		
Yes	131	25
No	392	75
Gang membership		
Yes	273	52
No	250	48
Family upbringing		
Both parents	245	47
Single parent	227	43
Other	51	0

In many respects, the findings in this survey are not surprising. The family unit in America has deteriorated slowly over the past few decades. Many children grow up in broken homes with few, if any, role models to teach them right from wrong, much less instill them with the courage to make morally correct decisions. Indeed, gang rituals have replaced family traditions; gang violence has replaced family values. Thus, crime prevention strategies that target entire families and intervene early, combined with swift and sure punishment for lawbreakers, including aggressively enforced three strikes laws, may produce the greatest deterrent effect.

"Since California enacted its three strikes law in 1994, crime has dropped 26.9 percent..."

Conclusion

Many offenders who have been through the criminal justice system repeatedly have learned through experience that the punishment for their actions is not severe enough to deter them from reaping the rewards of future criminal acts. Juvenile offenders learn the same lesson at an age that may make them destined for a life of crime. Yet, the results of a survey of a group of juvenile offenders in California suggest that when young criminals face specific, long-term sanctions for repeated offenses, they may be deterred from committing future acts. Thus, strictly enforced three strikes laws may break the cycle of crime that often begins early in a youth's life.

Scholars and practitioners alike continue to debate whether criminals are products of their genes or their environments. Those who believe criminals are born advocate incarceration as a means of incapacitation, while those who think criminals are made favor rehabilitation. The continuing controversy of whether the purpose of incarceration is for rehabilitation or incapacitation will continue for some time to come. Until this debate is resolved, offenders, at least in states with three strikes legislation, will have fewer opportunities to prey on innocent victims.

Endnotes

¹Robert F. Meier and Weldon T. Johnson, "Deterrence as Social Control: The Legal and Extra-legal Production of Conformity," *American Sociological Review* 42 (1977) 292-304.

²Daniel S. Nagin and Raymond Paternoster, "The Preventive Effects of the Perceived Risk of Arrest: Testing an Expanded Conception of Deterrence," *Criminology* 29, no. 4 (1991): 561-571.

³Raymond Paternoster and Alex Piquero, "Reconceptualizing Deterrence: An Empirical Test of Personal and Vicarious Experiences," *Journal of Research in Crime and Delinquency* 32 (August 1995): 252-286.

⁴The concept of deterrence also includes certainty and swiftness of punishment. For a more in-depth review of the literature, see Raymond Paternoster, "Decisions to Participate in and Desist from Four Types of Common Delinquent Perspective," *Law and Society Review* 23, no. 1 (1989): 7.

⁵U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, "Three Strikes and You're Out: A Review of State Legislation," *Research in Brief* (Washington, DC, September 1997), 1.

⁶California Penal Code, Section 1170.12.

⁷Supra note 5.

⁸Attorney General Dan Lungrin, press release no. 98-034, March 1998.

⁹Ibid.

¹⁰John J. Dilulio, Jr., "Arresting Ideas: Urban Crime," *Policy Review* 74 (Fall 1995):5.

¹¹The FBI classifies the following crimes as index offenses: murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. Supra note 8, 214.

¹²Supra note 8,214.

¹³M.E. Wolfgang, R.M. Figlio and T. Sellin, *Delinquency in a Birth Cohort* (Chicago: University of Chicago Press, 1972), 67.

¹⁴Supra note 5, 213.

¹⁵James Wootton and Robert O. Heck. "How State and Local Officials Can Combat Violent Juvenile Crime," *The Heritage Foundation, State Backgrounder*, no. 1097/S, October 28, 1996.

¹⁶Anthony M. Platt, *The Child Savers* (Chicago: University of Chicago Press, 1978), 9.

¹⁷William E. Thornton, Jr. and Lydia Voigt, *Delinquency and Justice* (New York: McGraw Hill Inc., 1992), xxv.

¹⁸Charles E. Silberman, *Criminal Violence, Criminal Justice* (New York: Vintage Press, 1980), 247.

¹⁹ Ibid.

²⁰This survey did not examine differences by age, which may have a deterrent effect when offenders consider the likelihood they will be transferred to adult court for prosecution.