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DID “THREE STRIKES” CAUSE THE RECENT DROP IN CALIFORNIA CRIME?

AN ANALYSIS OF THE CALIFORNIA ATTORNEY GENERAL’S REPORT

*Linda S. Beres** and *Thomas D. Griffith***

In March 1994 the California legislature enacted “Three Strikes” legislation that provided for 25-years-to-life sentences for offenders with two prior serious or violent felony convictions who are convicted of a third felony, whether or not the third felony is serious or violent.¹ The Three Strikes legislation also provided for substantially longer sentences for offenders with one prior serious or violent felony conviction who are convicted of a second felony of any type.² In November 1994 the California voters passed a nearly identical Three Strikes initiative.³

In March 1998 the California Attorney General’s office issued *Three Strikes and You’re Out—Its Impact on the California Criminal Justice System After Four Years*.⁴ The Attorney General’s report

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1. See CAL. PENAL CODE § 667 (West Supp. 1998).

2. See *id.*

3. See *id.* § 1170.12 (West Supp. 1998) (codifying voter initiative). All citations to the Three Strikes legislation are to the statute passed by the legislature. For a discussion of the history of both statutes, see Michael Vitiello, “Three Strikes” and the Romero Case: The Supreme Court Restores Democracy, 30 LOY. L.A. L. REV. 1643 (1997).

4. OFFICE OF THE ATTORNEY GENERAL, “THREE STRIKES AND YOU’RE OUT”—ITS IMPACT ON THE CALIFORNIA CRIMINAL JUSTICE SYSTEM AFTER FOUR YEARS (visited April 10, 1998) <<http://caag.state.ca.us/piu/3strikes/threestrikes.html>>. A copy of this report obtained from the Office of the Attorney General is on file with the authors. Page numbers on copies obtained from the Internet may differ from those used in this article.

(AGR) argues that Three Strikes is largely responsible for the “largest overall drop in crime over any four-year period in [California] history.”⁵ In this article we examine this argument and, more generally, discuss the relationship between Three Strikes and the recent decline in California’s crime rate. We conclude that there is no evidence that Three Strikes played an important role in the drop in the crime rate. Moreover, to the extent that Three Strikes might have contributed to crime reduction, it did so by deterring potential offenders rather than by incapacitating those convicted of an offense.

I. OVERVIEW OF THE CALIFORNIA THREE STRIKES STATUTE

The California Three Strikes law targets felony offenders who previously have been convicted of one or more qualifying “serious” or “violent” felonies.⁶ These previous convictions are commonly referred to as “prior strikes.” The law sharply enhances sentences for such offenders upon subsequent conviction for any felony.⁷ It also limits the ability of such offenders to reduce their time served through the accumulation of credits for work or good behavior in prison.⁸

5. *Id.* at 2.

6. CAL. PENAL CODE § 667(c)-(d) (West Supp. 1998); *see also id.* § 667.5(c) (West Supp. 1998) (listing violent felonies); *id.* § 1192.7(c) (West Supp. 1998) (listing serious felonies).

7. *See id.* § 667. In California, a felony is any crime punishable by imprisonment in the state prison or by death. *See id.* § 17(a) (West Supp. 1998). A misdemeanor is any other crime except those public offenses classified as infractions. *See id.* Many criminal offenses, however, fall into the category known as “wobblers.” These are crimes that are not statutorily defined as either felonies or misdemeanors. Whether a wobbler will be considered a felony or misdemeanor in a particular case depends upon the prosecutor’s charging decision and the actual punishment imposed by the trial court. *See id.* § 17(b) (West Supp. 1998) (describing circumstances under which such crimes are considered misdemeanors); *see also* Loren L. Barr, Comment, *The “Three Strikes” Dilemma: Crime Reduction at Any Price?*, 36 SANTA CLARA L. REV. 107, 117-19 (1995) (describing prosecutorial discretion in charging a wobbler as a felony and the authority of the trial court to then reduce it to a misdemeanor). A large number of crimes qualify as wobblers including petty theft with a prior petty theft or felony conviction. *See id.* at 117 n.91.

8. *See* CAL. PENAL CODE § 667(c)(5) (West Supp. 1998); *see also id.* § 2933.1(a) (limiting the worktime credits).

The most highly publicized section is the "third strike" provision. Under this provision an offender who has two prior strikes must, upon conviction for *any* felony, be sentenced to a minimum term of 25-years-to-life.⁹ Thus, while the two prior strikes must be violent or serious felonies, the third strike that triggers the provision can be a non-serious or non-violent felony such as possession of a small amount of drugs¹⁰ or petty theft with a prior felony.¹¹

Less well publicized is the "two strikes" provision, which requires that an offender with one prior strike must receive a doubled sentence upon subsequent conviction for *any* felony.¹² Thus, while the first strike must be a serious or violent felony, the second strike that triggers this provision can be a non-serious or non-violent felony. Second strike cases are eight times more common than third strike cases.¹³

Both second and third strike offenders must serve their sentences in prison¹⁴ and must serve at least 80% of their sentences.¹⁵

9. See *id.* § 667(e)(2)(A) (West Supp. 1998). There are presently over 500 offenses classified as felonies in California. See Michael D. Harris, *Garcetti Calls for New 3-Strikes Law*, L.A. DAILY J., June 9, 1994, at 2 (noting that more than 500 felonies qualify as third strikes); see generally CALIFORNIA CTR. FOR JUDICIAL EDUC. AND RESEARCH, 1997 CJER FELONY SENTENCING HANDBOOK (Bancroft Whitney 1997) (listing crimes defined as felonies and the corresponding sentences).

10. As of July 31, 1998, simple drug possession accounted for 20.1% of second strikes and 9.6% of third strikes. See DATA ANALYSIS UNIT, CALIFORNIA DEP'T OF CORRECTIONS, SECOND STRIKE CASES BY DELIVERY DATE, (July 31, 1998) [hereinafter SECOND STRIKE CASES BY DELIVERY DATE] (giving data for second strike cases) (on file with the authors); DATA ANALYSIS UNIT, CALIFORNIA DEP'T OF CORRECTIONS, THIRD STRIKE CASES BY DELIVERY DATE, (July 31, 1998) [hereinafter THIRD STRIKE CASES BY DELIVERY DATE] (giving data for third strike cases) (on file with the authors).

11. As of July 31, 1998, petty theft with a prior accounted for 10.7% of second strikes and 5.4% of third strikes. See SECOND STRIKE CASES BY DELIVERY DATE, *supra* note 10 (giving data for second strike cases); THIRD STRIKE CASES BY DELIVERY DATE, *supra* note 10 (giving data for third strike cases).

12. See CAL. PENAL CODE § 667(e)(1) (West Supp. 1998).

13. As of July 31, 1998, a total of 4,468 offenders had been imprisoned under the third strike provisions. See THIRD STRIKE CASES BY DELIVERY DATE, *supra* note 10. A total of 36,043 offenders had been imprisoned under the second strike provisions. See SECOND STRIKE CASES BY DELIVERY DATE, *supra* note 10.

14. See CAL. PENAL CODE § 667(c)(4) (West Supp. 1998).

Consequently, such offenders will have to serve a greater percentage of their sentences than will offenders convicted of similar crimes who have no such record of prior strikes.¹⁶

II. THE ARGUMENT OF THE ATTORNEY GENERAL'S REPORT

The AGR's claim that Three Strikes caused the recent sharp drop in the California crime rate is largely based on timing. The AGR argues that crime dropped much more sharply following Three Strikes than before its enactment, and that alternative explanations, such as improvements in the economy and demographic changes, cannot explain this decline. Therefore, the AGR contends, Three Strikes must be the cause.¹⁷

We begin our examination of the AGR's argument by looking at the claim that the drop in the California crime rate began with the enactment of Three Strikes.

A. *Did the Drop in the California Crime Rate Begin with Three Strikes?*

1. Measuring the crime rate

The most commonly used measure of the level of criminal activity is the FBI Crime Index.¹⁸ This index is comprised of four

15. *See id.* § 667(c)(5) (West Supp. 1998).

16. *See id.* Prior to the 1994 enactment of this legislation, felons given determinate sentences could earn enough "worktime" credits to reduce their prison terms up to 50%. *See id.* § 2933. Felons given indeterminate, or life sentences, could earn "goodtime" credits to reduce their minimum prison terms up to 33%. *See id.* § 2931. These provisions still apply to convicted felons with no record of prior strikes. Those with prior strikes, however, can reduce their sentences only by a maximum of 20%. *See id.* § 667(c)(5); *see also id.* § 2933.1(a) (limiting the worktime credits that can be earned by those convicted of violent felonies to 15%).

17. The AGR also briefly suggests that other new law enforcement practices such as community policing might have contributed to the decline in crime. *See AGR, supra* note 4, at 12. However, the report does not give any details or further analysis of these practices.

18. The Uniform Crime Reporting (UCR) program is administered by the FBI to measure and generate statistical information on crime rates and trends in the nation. The FBI compiles the statistics in the UCR from arrest data voluntarily submitted by more than 16,000 law enforcement agencies. Eight offenses, or "Index Crimes," are used to measure annual changes in the volume

“violent crimes”—murder and non-negligent manslaughter, forcible rape, robbery and aggravated assault—and four “property crimes”—burglary, motor vehicle theft, larceny-theft and arson.¹⁹ The AGR, however, generally uses the California Crime Index (CCI) as its benchmark of the level of crime in the state.²⁰ This index is identical to the FBI index except that it excludes the property crimes of arson and larceny-theft.²¹

Both the CCI and FBI indexes understate the actual level of criminal activity because they include only reported crimes.²²

and rate of crime. The term “Crime Index” refers to the aggregation of these offenses. See U.S. DEP’T OF JUSTICE, FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, at 1 (1996) [hereinafter CRIME IN THE U.S. 1996].

19. *Id.* at 10, 35. Arson was not included as an index crime until 1979. See *id.* at 1, 61. The reporting of arson offenses since then has been incomplete. See *id.* at 1, 54.

20. See DIVISION OF CRIMINAL JUSTICE INFORMATION SERVICES, CALIFORNIA DEP’T OF JUSTICE, CRIME AND DELINQUENCY IN CALIFORNIA (1996) [hereinafter CRIME & DELINQUENCY]. CRIME & DELINQUENCY is published annually and contains detailed statistical information about crime in California. The California Department of Justice obtains its figures for the CCI from the FBI’s UCR Program. Except where otherwise indicated, data on California crime in this report are taken directly from CRIME & DELINQUENCY for the relevant years or are calculated by the authors using data contained in CRIME & DELINQUENCY.

21. The omission of arson has little impact on the CCI because relatively few arsons have been reported under the UCR program. See CRIME IN THE U.S. 1996, *supra* note 18, at 114-19 tbl.8 (showing inclusion of arson data would not change significantly the 1996 FBI Crime Index totals for areas in California with populations exceeding 10,000); see also *id.* at 187-88 tbl.12 (showing inclusion of arson data would not change the 1995-1996 Crime Index total for offenses known to police and categorized by population group). The omission of larceny-theft, on the other hand, is more significant since it accounts for such a large proportion of the FBI Crime Index total. See *id.* at 62 tbl.1 (reporting data showing that for each year from 1977-1996 larceny-theft has comprised more than half of the FBI Crime Index total). Nonetheless, the analysis in this article would not be greatly affected by including larceny-theft data. The trend for larceny-theft has been similar to that of the FBI Crime Index total for the years 1986-1996, although the magnitude of the change for each year was less sharp. See *id.* (showing that both increased each year from 1986-1991, decreased each year from 1991-1994, and decreased from 1995-1996). The only year in which the trends differed was 1994-1995, when the FBI Crime Index total decreased while larceny-theft increased slightly. See *id.*

22. See DARYL A. HELLMAN & NEIL O. ALPER, ECONOMICS OF CRIME 5 (4th ed. 1997); see also DAVID J. ROBERTS, U.S. DEP’T OF JUSTICE, BUREAU

Changes in the index crime rate may be due to changes in reporting practices rather than to changes in the number of crimes committed.²³ Nevertheless, the CCI and FBI indexes provide a useful measure of changes in the level of criminal activity. In our analysis we will follow the AGR and focus on changes in the CCI. Our conclusions would not be significantly altered, however, if we adopted the broader FBI index.²⁴

2. Did the drop in the California crime rate begin with Three Strikes?

The AGR claims that the "dramatic drop in the crime rate" occurred after the passage of Three Strikes.²⁵ To demonstrate this, the AGR compares changes in the crime rate from 1990-1993, the years immediately preceding the adoption of Three Strikes, with changes from 1994-1997, the three years after the adoption of the statute.²⁶

The report states that during the pre-Three Strikes years 1990-1993, the overall CCI dropped by only 2.4% as compared to a post-Three Strikes drop of 30.8% from 1994-1997.²⁷ The difference was even sharper, the AGR notes, for crimes of violence. Violent offenses increased by 7.3% during the 1990-1993 period, but dropped by 26.9% from 1994-1997.²⁸ The AGR concludes:

The drop in the crime rate that California has experienced since 1993 is drastically different from the first four years of this decade (1990-1993) where the overall crime rate dropped only 2.4% and the violent crime rate increased 7.3%. While some may argue that the initial drop in crime

OF JUSTICE STATISTICS, IMPLEMENTING THE NATIONAL INCIDENT-BASED REPORTING SYSTEM 3 (1997) (noting that reporting provisions of the UCR program hide a potentially substantial volume of crime).

23. See HELLMAN & ALPER, *supra* note 22 (noting that differences in crime rates may be due to changes in the number of agencies reporting such crimes or the willingness of victims to report offenses to the police). If, for example, improvements in the police force make citizens more likely to report crimes, then the improvements may increase the crime rate as measured by the CCI and the FBI index even if the improvements reduce the actual level of criminal activity.

24. See *supra* notes 18-21.

25. See AGR, *supra* note 4, at 2.

26. See *id.*

27. See *id.*

28. See *id.*

occurred before “Three Strikes,” clearly the dramatic change in California’s crime rate started in 1994.²⁹

But did the “the dramatic change” in the crime rate begin after the 1994 adoption of Three Strikes? An examination of the annual changes in the California crime rate suggests not. Rather, the decline in crime began in 1993, one year before the adoption of Three Strikes. Table 1 shows the annual changes in the California crime rate from 1988-1996.³⁰

Year	Total	Violent	Property
1988	1.0%	0.6%	1.2%
1989	3.5%	5.7%	2.6%
1990	-0.2%	6.9%	-3.0%
1991	1.8%	2.3%	1.5%
1992	-0.3%	2.2%	-1.5%
1993	-3.5%	-4.1%	-3.3%
1994	-6.5%	-6.3%	-6.7%
1995	-6.9%	-4.2%	-8.2%
1996	-12.6%	-10.8%	-13.5%

The violent crime rate rose sharply in 1989 and 1990 and rose by lesser amounts in 1991 and 1992. The pattern reversed in 1993, one year before Three Strikes, when the violent crime rate declined by 4.1%. The pattern is similar, although less dramatic, with respect to property crime. After remaining fairly stable from 1989 to 1992, the property crime rate dropped by 3.3% in 1993. The AGR conceals the fact that the violent crime rate began to fall the year before Three Strikes was adopted by lumping the year 1993 with the years 1990-1992 when the violent crime rate rose.³¹

29. *Id.*

30. *See* CRIME & DELINQUENCY, *supra* note 20.

31. There is no mention in the text of the AGR that the crime rate dropped in 1993. The AGR does present a graph showing the California crime rate from 1970-1997, but the graph is cross-hatched only at 5-year intervals, making it difficult to determine the precise year in which a change took place. *See* AGR, *supra* note 4, at 6.

The fact that the drop in the California crime rate began a year before Three Strikes does not prove, of course, that Three Strikes did not lower the crime rate. Similarly, the fact that the crime rate continued to drop after the adoption of Three Strikes does not prove that Three Strikes caused the continuing reduction in crime.³² Nevertheless, contrary to the assertions of the AGR, crime in California—including violent crime—began to drop one year before Three Strikes.

III. UNEMPLOYMENT AND THE CRIME RATE

An alternative explanation for the recent drop in crime is the booming California economy. Perhaps improved legitimate job opportunities reduced the attractiveness of criminal activity. Under this theory, a drop in the unemployment rate should produce a drop in crime. Figure 1 shows California's unemployment and violent crime rates for the years 1989-1996.³³

For six of the seven years, the unemployment and violent crime rates each moved in the same direction.³⁴ Each rate rose from 1989 to 1992 and fell from 1994 to 1996. The only exception is 1993 when unemployment rose from 9.3% to 9.4% while violent crime dropped by 3.7%.

The AGR treats the fact that crime dropped in the years following the enactment of Three Strikes as strong evidence that Three Strikes caused the drop. But the fact that the violent crime rate rose and dropped with the unemployment rate did not lead the AGR to conclude that an improved California economy played an important role in crime reduction. Instead, the AGR argues that the impact of an improved economy is "minimal compared to changes in criminal law and law enforcement."³⁵ The AGR points out that changes in the

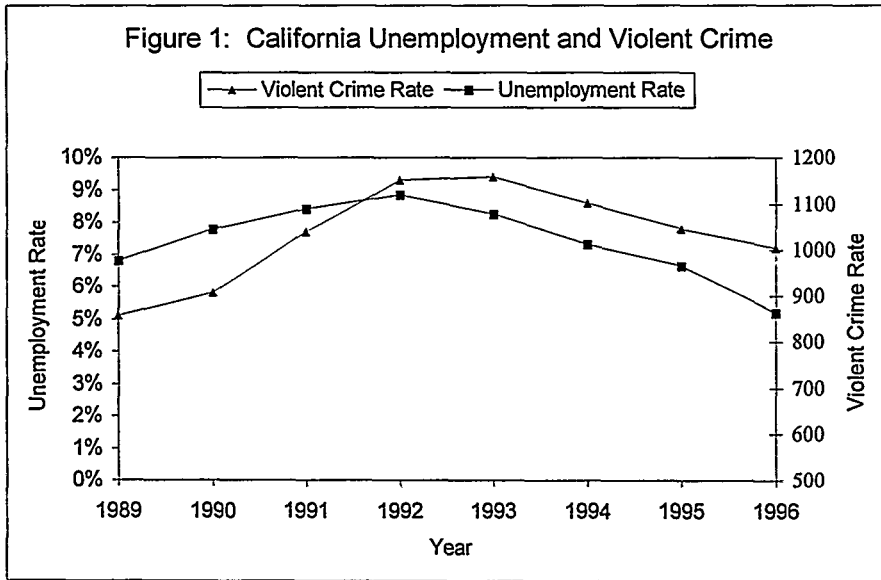
32. Violent crime dropped by 6.3% in 1994, 4.2% in 1995, and 10.8% in 1996, and property crime showed similar reductions. See CRIME & DELINQUENCY, *supra* note 20.

33. For unemployment data, see BUREAU OF LABOR STATISTICS, LOCAL AREA UNEMPLOYMENT STATISTICS (last modified July 30, 1998) <<http://stats.bls.gov/launews1.htm>>. For violent crime rate data, see CRIME & DELINQUENCY, *supra* note 20.

34. The correlation between California's unemployment rate and violent crime rate for the period from 1989-1996 was 0.428.

35. AGR, *supra* note 4, at 6.

unemployment rate have not correlated with changes in the crime rate in other years. The report notes, for example, that crime dropped during a recession in the early 1980s and that crime remained unchanged during a recession in the early 1990s.³⁶



The same argument, however, might be applied to crime bills like Three Strikes. During the 1980s California enacted various “get tough” laws that led to an unprecedented explosion of the inmate population.³⁷ In the ten years from 1982 to 1992, the institutional population grew from 32,152 to 104,352.³⁸ Despite more than tripling the prison population, the overall crime rate remained virtually unchanged, the violent crime rate increased by over 35%, and the homicide rate increased by almost 12%.³⁹ Following the reasoning

36. See *id.*

37. See, e.g., Marcus Dirk Dubber, Note, *The Unprincipled Punishment of Offenders: A Critique of California's Habitual Criminal Statute*, 43 STAN. L. REV. 193, 197-98 (1990) (discussing the 1982 passage of Proposition 8 that amended the California Penal Code and the California Constitution).

38. See DATA ANALYSIS UNIT, CALIFORNIA DEP'T OF CORRECTIONS, CALIFORNIA PRISONERS & PAROLEES 1993 & 1994, at 11 tbl.3 [hereinafter PRISONERS & PAROLEES 1993 & 1994].

39. The CCI total crime rate decreased from 3,500.4 in 1982 to 3,491.5 in 1992, a change of less than three-tenths of one percent. The CCI violent crime

of the AGR, it could be concluded that tougher sentences have only a "minimal" impact on the crime rate.⁴⁰

Such a conclusion, however, may be unjustified. Although violent crime increased during the late 1980s and early 1990s despite tougher penalties, it is possible that the rise in violent crime would have been even greater if penalties had not increased. Similarly, the fact that the unemployment rate and the crime rate do not always move together does not mean that unemployment has little impact on the crime rate. Many factors influence the crime rate, making it difficult to isolate the impact of any one.

The scholarly evidence on the impact of economic prosperity on the crime rate is mixed. Some scholars have argued that little connection exists.⁴¹ But there is also scholarly evidence that economic opportunities may have a significant impact on crime.⁴² Criminal offenders are disproportionately comprised of individuals who have a limited earning potential in the legitimate labor market.⁴³ Increases in the unemployment rate are associated with increases in crime.⁴⁴ Individuals engaged in serious violent behavior are more likely to

rate increased from 814.7 in 1982 to 1,103.9 in 1992. The California homicide rate increased from 11.2 in 1982 to 12.5 in 1992. See CRIME & DELINQUENCY, *supra* note 20.

40. Not surprisingly, some opponents of increased incarceration have made this argument. See, e.g., Mimi Silbert, *Wrong Way to Get Tough*, N.Y. TIMES, Jan. 29, 1994, at 19.

41. The AGR quotes from a 1995 speech by Professor James Q. Wilson to support its position that economic prosperity has little impact on crime. See AGR, *supra* note 4, at 6. For a transcript of the speech see James Q. Wilson, *What To Do About Crime* (Jan. 19, 1995), in 61 VITAL SPEECHES 373 (1995).

42. An excellent summary and analysis of this literature is contained in Richard B. Freeman, *Why Do So Many Young American Men Commit Crimes and What Might We Do About It?*, 10 J. ECON. PERSP. 25 (1996); see also Theodore G. Chiricos, *Rates of Crime and Unemployment: An Analysis of Aggregate Research Evidence*, 34 SOCIAL PROBS. 187, 192 (1987) (noting that in 63 studies surveyed a positive relationship between unemployment and crime was found three times more often than a negative relationship).

43. See Freeman, *supra* note 42, at 33.

44. See Chiricos, *supra* note 42, at 187-212; Richard B. Freeman, *Crime and Unemployment*, in CRIME AND PUBLIC POLICY 89-106 (James Q. Wilson ed., 1983) [hereinafter Freeman, *Crime and Unemployment*]; Richard B. Freeman, *The Labor Market*, in CRIME 171-91 (James Q. Wilson & Joan Petersilia eds., 1995) [hereinafter Freeman, *Labor Market*]; Freeman, *supra* note 42, at 33.

stop this behavior if they are employed.⁴⁵ Higher crime rates have been found to be associated with greater levels of economic inequality.⁴⁶

Evidence of a connection between economic opportunity and the crime rate is particularly important in light of the deterioration of the market for unskilled labor during the past two decades. For low skill workers, real wages have declined by an estimated 20%-30% since the mid-1970s.⁴⁷ During the same period, unemployment in many segregated inner city neighborhoods rose dramatically.⁴⁸ While the precise impact of these changes in the labor market on the crime level is far from certain, it seems reasonable to believe it is more than "minimal."⁴⁹

Our discussion of the impact of the labor market on the crime rate was not designed, however, to show that an improved economy was the main reason for the recent sharp drop in the California crime rate. Rather, we hope to make two points. First, that the same reasoning the AGR used to show that Three Strikes caused the drop in crime could also be used to prove that a reduction in the unemployment rate was the reason for the drop. Second, that the AGR ignored scholarly evidence that improved job opportunities may have a significant impact on crime.

45. See Freeman, *supra* note 42, at 33 (citing Delbert Elliot, *Longitudinal Research in Criminology: Promise and Practice*, in CROSS NATIONAL LONGITUDINAL RESEARCH ON HUMAN DEVELOPMENT AND CRIMINAL BEHAVIOR 189-201 (G. W. Westcamp & H. J. Kerner eds., 1994)).

46. See Freeman, *supra* note 42, at 33.

47. See *id.* at 30.

48. See WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS* 18-20 (1996).

49. One researcher estimated that for young men, a one-percent reduction in wages produces about a one-percent increase in crimes committed. This estimate predicted that the decline in wages that occurred from the mid-1970s to the late 1980s would lead to a 23% increase in crime by this population. This estimated increase is close to the actual 18% increase in FBI index crimes committed by young men during these years. See Freeman, *supra* note 42, at 34 (citing J. Groger, *Criminal Opportunities, Youth Crime, and Young Men's Labor Supply*, mimeo, Department of Economics, University of California, Santa Barbara, Feb. 1994).

IV. DISAGGREGATING CALIFORNIA HOMICIDE RATES: A TALE OF TWO TRENDS

The violent crime rate rose in California from 921 per 100,000 population in 1986 to a peak of 1,104 in 1992 before falling to 848 in 1996.⁵⁰ The homicide rate followed a similar trend, rising from 11.3 in 1986 to a peak of 12.9 in 1993 and then falling to 9.0 in 1996.⁵¹ Each crime, then, rose by 10% to 20% and then dropped by 20% to 25% from its peak level.⁵² These aggregate crime trends conceal, however, as much as they reveal.

Disaggregated homicide data reveals two trends, rather than one.⁵³ Homicides committed by mature offenders and homicides committed by means other than firearms declined steadily from 1986 through 1996.⁵⁴ On the other hand, homicides committed by youthful offenders and homicides committed with firearms rose sharply and then fell just as sharply.⁵⁵ Figure 2 shows homicide arrests in California by age group for the ten-year period ending in 1996.⁵⁶

Homicide arrests of offenders 30 and older dropped fairly steadily throughout the period, falling by over 30% from 1,032 in 1986 to 716 in 1996. Arrests of offenders under the age of 20, however, more than doubled from 618 in 1986 to 1,307 in 1991 and then

50. See CRIME & DELINQUENCY, *supra* note 20.

51. See *id.*

52. Violent crime rose 19.9% before dropping 23.2%. Homicide rose by 13.9% before dropping 20.7%. See *id.*

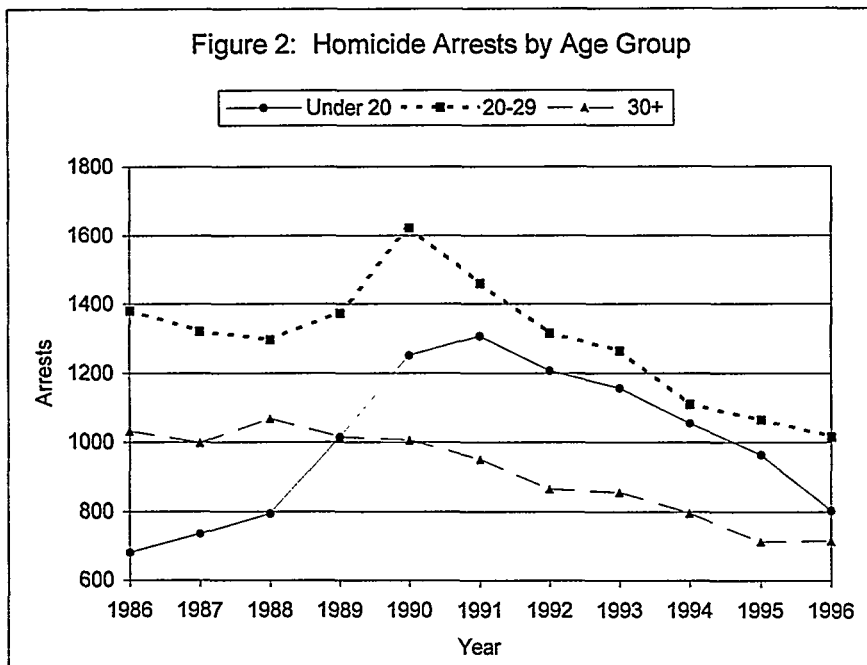
53. We focus on homicide statistics in our analysis for two reasons. First, homicide data is more accurate than other crime statistics. See NATIONAL CRIMINAL JUSTICE COMMISSION, THE REAL WAR ON CRIME 4 (Steven R. Donziger ed., 1996) (noting that citizens quickly report homicides to the police who then accurately record them). Second, more extensive data is available regarding homicides than regarding other offenses. See, e.g., CRIME & DELINQUENCY, *supra* note 20. Disaggregating other offenses does not lead to as sharply different trends for different ages as does disaggregating homicide. The larger difference with respect to homicide is consistent with the focus on guns as a central reason for the rise of youth homicide rates.

54. See CRIME & DELINQUENCY, *supra* note 20.

55. See *id.*

56. See *id.* The number of homicide arrests will be different from the number of homicides committed. For example, some homicides will not lead to an arrest, and some of those arrested will not be guilty. Moreover, some homicides may involve multiple perpetrators so that more than one offender may be convicted of a single homicide.

dropped by almost 40% to 802 in 1996. The pattern of arrests for offenders ages 20-29 was between these two extremes.⁵⁷



The sharp rise in youth homicide is closely associated with a growth in the use of firearms. Figure 3 shows firearm and non-firearm homicides in California for the ten-year period ending in 1996.⁵⁸

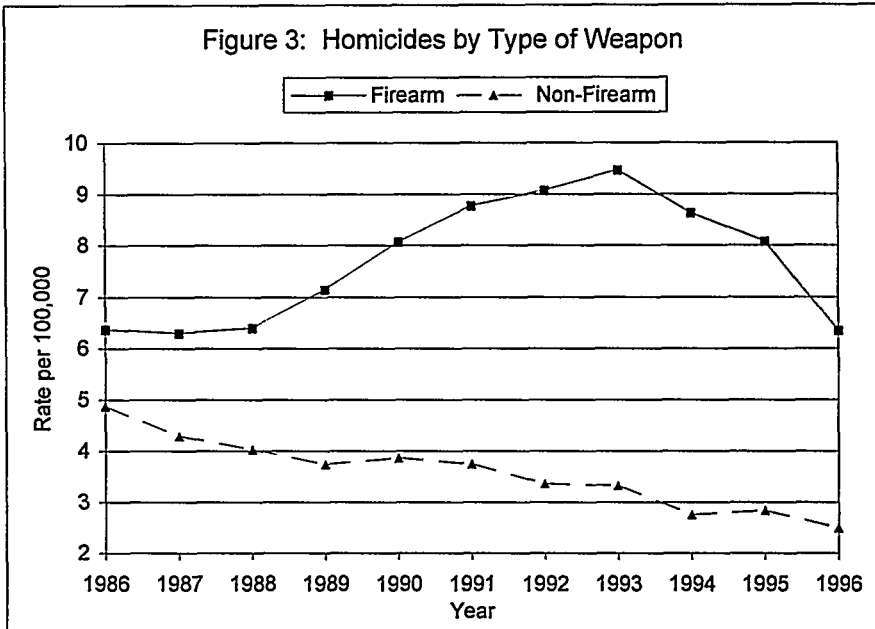
Non-firearm homicides were cut almost in half, falling steadily from 4.9 per 100,000 population in 1986 to 2.5 in 1996. Firearm homicides, on the other hand, grew rapidly during the late 1980s and early 1990s and plummeted after 1993. National FBI data on the weapons used in homicides indicates that the rise in firearm use was a result of an increase in handguns; there was no significant increase in long-gun homicides.⁵⁹

57. Arrests of offenders ages 20-29 increased from 1,382 in 1986 to a peak of 1,624 in 1990 and then dropped to 1,017 in 1996. *See id.*

58. *See id.*

59. *See* Alfred Blumstein & Richard Rosenfeld, *Explaining Recent Trends in U.S. Homicide Rates*, 88 J. CRIM. L. & CRIMINOLOGY (forthcoming 1998).

Firearm use in robberies also increased, although the growth was not as sharp as in homicides. Firearm robberies increased 72% from 30,256 in 1986 to a peak of 51,901 in 1993 and then dropped to 37,168 in 1996.⁶⁰ Non-firearm robberies increased by 30% from 62,257 in 1986 to a peak of 80,746 in 1992 before dropping to 56,969 in 1996.⁶¹



Both the increase and the subsequent fall in homicide arrests were much larger among African-American and Hispanic youth than among young Whites.⁶² Figure 4 shows homicide arrests by racial classification for offenders under the age of 20.⁶³

Homicide arrests of African-American youth almost doubled from 242 in 1986 to a peak of 424 in 1990, and arrests of Hispanic youth more than tripled from 227 in 1986 to a peak of 705 in 1991.

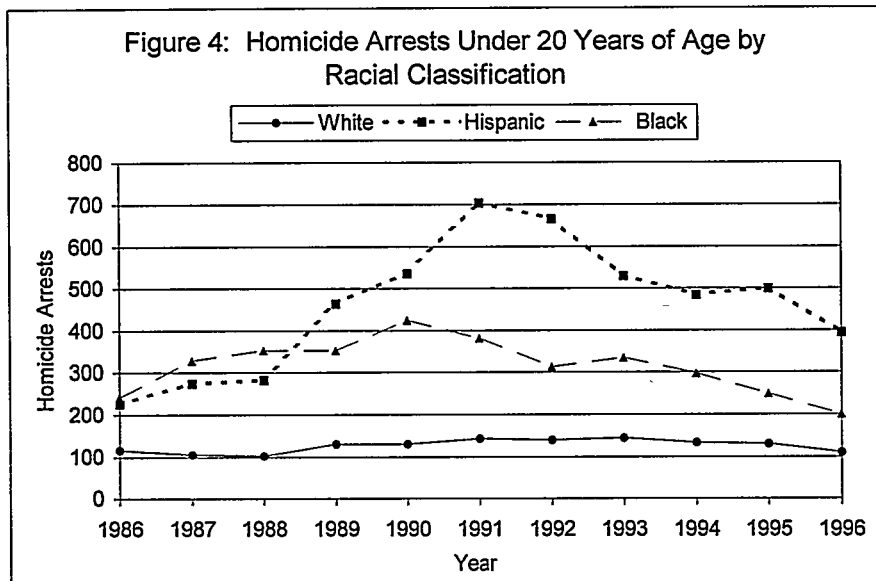
60. See CRIME & DELINQUENCY, *supra* note 20.

61. See *id.*

62. See *id.*

63. See *id.* These figures are the total number of felony arrests for each group rather than the felony rate. This overstates the growth in the homicide arrest rate for each group because it does not consider population growth.

Homicide arrests of White youth increased by just over 40% from a low of 102 in 1988 to a high of 144 in 1993.



The drop in homicide arrests of young African-Americans and Hispanics during the 1990s was also much sharper than that of young Whites. By 1996, arrests of African-American youths had dropped by 53% from their peak,⁶⁴ arrests of Hispanic youths had dropped by 44%,⁶⁵ and arrests of White youths had dropped by 24%.⁶⁶

Homicide arrests of African-Americans, Hispanics, and Whites age 30 and older, on the other hand, generally remained flat or declined throughout the period. This is shown in Figure 5.⁶⁷ From 1986 to 1996, homicide arrests of older African-Americans dropped 41%,⁶⁸ arrests of older Hispanics dropped 10%,⁶⁹ and arrests of older Whites dropped 39%.⁷⁰

64. Homicide arrests of African-Americans under the age of 20 dropped from 424 in 1990 to 200 in 1996.

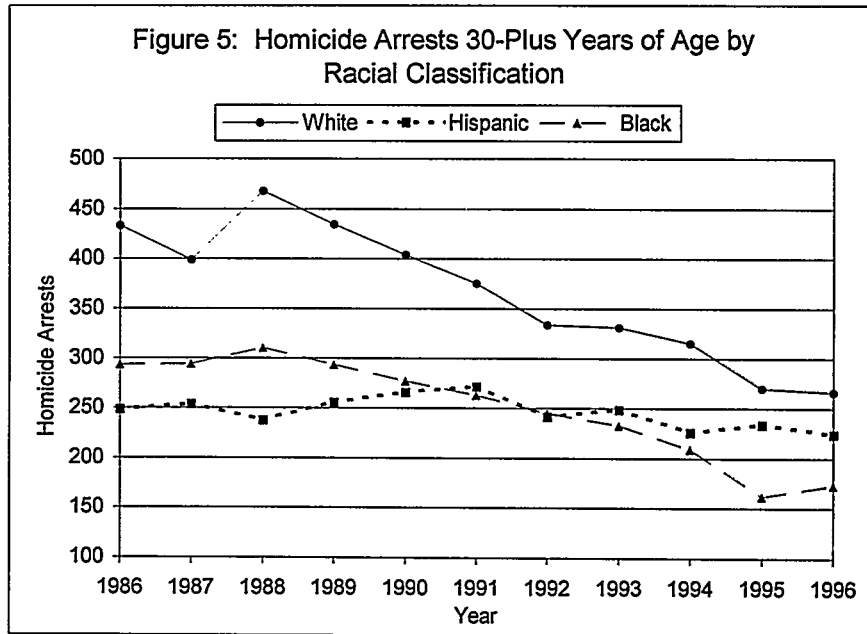
65. Homicide arrests of Hispanics under the age of 20 dropped from 705 in 1991 to 396 in 1996.

66. Homicide arrests of Whites under the age of 20 dropped from 144 in 1993 to 110 in 1996.

67. *See id.*

68. Homicide arrests of African-Americans age 30 and older dropped from 293 in 1986 to 173 in 1996.

69. Homicide arrests of Hispanics age 30 and older dropped from 249 in



These trends are not unique to California, but are mirrored nationally, particularly in other states with large urban populations.⁷¹ The nationwide homicide rate for older offenders and for offenders without guns has been steadily dropping for over a decade while the homicide rate for young offenders with guns soared and then declined.⁷² Nationally, as in California, the rise and subsequent fall in

1986 to 224 in 1996. Homicide arrests of older Hispanics rose slightly before dropping 10% below their 1986 level. *See id.* The population of Hispanics at least 30 years old grew by 80% from 1986-1996. *See* DEMOGRAPHIC RESEARCH UNIT, CALIFORNIA DEP'T OF FINANCE, POPULATION TABLES (last modified Aug. 12, 1998) <<http://www.dof.ca.gov/>> (authors' calculations from this data base). Aggregate homicide arrest statistics, therefore, significantly understate the drop in the homicide rate for old Hispanics.

70. Homicide arrests of White age 30 and older dropped from 433 in 1986 to 266 in 1996.

71. *See* Blumstein & Rosenfeld, *supra* note 59 (noting the difference in trends between large and small cities).

72. *See id.* (showing that gun and youth homicide rose sharply in the late 1980s, peaked in the early 1990s, and then dropped sharply by 1996); *see also* John J. Donohue, *Understanding the Time Path of Crime*, 88 J. CRIM. L. & CRIMINOLOGY (forthcoming 1998) (showing same statistics as Blumstein & Rosenfeld); Jeffrey Fagan et al., *Declining Homicide in New York City: A Tale of Two Trends*, 88 J. CRIM. L. & CRIMINOLOGY (forthcoming 1998) (showing same statistics as Blumstein & Rosenfeld and finding similar trend for robber-

the homicide rate has been greatest among minority youth.⁷³ Similarly, young minority males also showed the largest increase as victims of homicide in the late 1980s and early 1990s, and showed the largest decline in victimization in the mid-1990s.⁷⁴

The fact that the rise and later fall in homicides was concentrated among minority youth with handguns may help explain the changes. One plausible explanation, discussed in Part VI, focuses on the nexus between an emerging crack cocaine market and deteriorating legitimate economic opportunities in the late 1980s.

V. DID THREE STRIKES CAUSE THE DROP IN CRIME?

A. Incapacitation

Supporters of Three Strikes and other statutes mandating long sentences for repeat offenders argue that such statutes can reduce crime by incapacitating "career criminals" and by deterring other potential offenders. Any influence of Three Strikes on the drop in crime from 1994-1996, however, must have resulted from deterrence alone. The reason is simple: most offenders imprisoned under Three Strikes would have been incarcerated during this period even if Three Strikes had never been enacted.⁷⁵

Three Strikes was enacted in March 1994, and had been in operation for less than 34 months by the end of 1996. The sentence enhancements of Three Strikes, therefore, would have no incapacitation effect during those years for an offender who would have received a prison term extending into 1997 in the absence of Three Strikes. But

ies committed with firearms).

73. See Blumstein & Rosenfeld, *supra* note 59.

74. See U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 1996, at 339 tbl.3.130 (Kathleen Maguire & Ann L. Pastore eds., 1996); see also Alfred Blumstein & Daniel Cork, *Linking Gun Availability to Youth Gun Violence*, 59 LAW & CONTEMP. PROBS. 5, 15, 23 (1996) (studying homicide victimization rates from 1968-1991 for African-Americans and Whites of various ages).

75. Cf. DANIEL KESSLER & STEVEN D. LEVITT, USING SENTENCE ENHANCEMENTS TO DISTINGUISH BETWEEN DETERRENCE AND INCAPACITATION 2 (National Bureau of Econ. Research Working Paper No. 6484, 1998) (stating initial impact of sentence enhancements is entirely deterrence because the criminal is already required to serve the basic sentence).

the overwhelming majority of offenders incarcerated by Three Strikes would have received a prison term extending into 1997 in any case.

The enhanced penalties mandated by Three Strikes only apply to offenders convicted of a current felony who have one or more prior convictions for a felony qualifying as a strike. Approximately 60% of third strike⁷⁶ and 35% of second strike offenses⁷⁷ are violent or serious felonies such as murder, robbery, rape or burglary. Almost all of these offenders would have received substantial prison terms extending into 1997 and beyond even without Three Strikes. The mean time served for offenders released in 1994 was 32.3 months for robbery, 27.4 months for assault and battery, and 21.8 months for burglary.⁷⁸ The non-serious, non-violent felonies that qualified as second and third strike cases were comprised mostly of theft (approximately 20%), drug offenses (30%), and weapons possession (7%).⁷⁹ The mean time served for drug crimes generally exceeded 20 months while mean sentences for theft offenses and weapons charges were about 15 months.⁸⁰ Since these averages include time served by offenders with no prior felony convictions, it is likely that the time served by offenders with one or more prior serious or violent felonies would be longer. But even if only the average sentences were imposed, most felons convicted under Three Strikes in 1994 and early

76. As of July 31, 1998, 38.7% of third strike cases were for violent felonies such as murder, manslaughter, robbery, assault with a deadly weapon, sexual assaults and kidnapping, while 18.9% were for the serious felony of burglary. See THIRD STRIKE CASES BY DELIVERY DATE, *supra* note 10.

77. As of the end of July 1998, 19.2% of second strike cases were for violent felonies such as murder, manslaughter, robbery, assault with a deadly weapon, sexual assaults and kidnapping, while 13.4% were for the serious felony of burglary. See SECOND STRIKE CASES BY DELIVERY DATE, *supra* note 10.

78. See PRISONERS & PAROLEES 1993 & 1994, *supra* note 38, at 124-25 tbl.54A. Median sentences were slightly shorter: 25.6 months for robbery, 21.1 months for assault and battery, and 15.2 months for burglary.

79. Percentage calculations based on the combined total of 36,043 second strike cases and 4,468 third strike cases as of the end of July 1998. See SECOND STRIKE CASES BY DELIVERY DATE, *supra* note 10 (providing data on second strikes); THIRD STRIKE CASES BY DELIVERY DATE, *supra* note 10 (providing data on third strikes).

80. See PRISONERS & PAROLEES 1993 & 1994, *supra* note 38, at 124-125 tbl.54A.

1995, and all felons convicted in 1996 and late 1995, would have been imprisoned until 1997 or longer even without Three Strikes.

Although Three Strikes had little incapacitation effect in the period from 1994-1996, it will have a larger impact in the future. Repeat offenders who would have been released under prior law will remain in prison under the longer sentences mandated by Three Strikes. Thus, Three Strikes will prevent the crimes that those offenders would have committed if released.⁸¹ Unfortunately, however, Three Strikes may mandate 25-years-to-life sentences for aging, non-violent offenders near the end of their criminal careers. While imprisoning such offenders will prevent some crimes, a greater reduction could be achieved by using the prison space to incapacitate younger, more violent offenders.⁸²

Prevention programs may be an even less costly way to reduce crime. A RAND study, for example, examined programs sponsored by the Ford Foundation that offered modest cash and scholarship incentives to encourage disadvantaged youth to graduate from high school.⁸³ The study found that the graduate incentives were several

81. A RAND simulation conducted shortly after the legislature passed the Three Strikes law found that, if fully implemented, the Three Strikes law would lead to a large expansion of the prison population. See PETER W. GREENWOOD ET AL., RAND CORP., *THREE STRIKES AND YOU'RE OUT: ESTIMATED BENEFITS AND COSTS OF CALIFORNIA'S NEW MANDATORY SENTENCING LAW 25-30* (1994) [hereinafter RAND CORP., *ESTIMATED BENEFITS AND COSTS*]. RAND found that this expansion would reduce serious felonies by adults "between 22 and 34 percent below what would have occurred had the previous law remained in effect." *Id.* at xii.

Incapacitation will reduce crime only if the imprisoned offender is not replaced by a new offender. For most offenses, this is a reasonable assumption. New offenders, however, may quickly replace offenders imprisoned for market-driven crimes such as drug dealing. See JAMES Q. WILSON, *THINKING ABOUT CRIME* 146 (rev. ed. 1983).

82. A RAND study, for example, concluded that sentencing all offenders convicted of serious or violent felonies, including those without prior strikes, to prison terms without good-time credits would reduce serious crime as much as Three Strikes at a substantially smaller cost. See RAND CORP., *ESTIMATED BENEFITS AND COSTS*, *supra* note 81, at 25-30. For an analysis of the incapacitation effects of habitual offender statutes generally, see Linda S. Beres & Thomas D. Griffith, *Do Three Strikes Laws Make Sense? Habitual Offender Statutes and Criminal Incapacitation*, 87 GEO. L.J. 103 (1998).

83. See PETER W. GREENWOOD ET AL., RAND CORP., *DIVERTING CHILDREN FROM A LIFE OF CRIME: MEASURING COSTS AND BENEFITS* 25-26

times more effective than Three Strikes, per dollar spent, in preventing serious crime.⁸⁴

B. Deterrence

If Three Strikes did not reduce crime through incapacitation, perhaps it did so through deterrence. The enhanced prison terms of Three Strikes were well publicized, and there is some scholarly evidence that tougher penalties can deter crime.⁸⁵ However, while Three Strikes may have had some deterrent effect, the pattern of crime reduction suggests it was not a major cause of the recent drop in crime.

1. Demographics

The average age of offenders in second strike cases was 33,⁸⁶ and the average age in third strike cases was 36.⁸⁷ This makes sense, because older offenders would be more likely than younger offenders to have been convicted of prior felonies qualifying as strikes. Thus

(1998).

84. The cost per serious crime prevented was \$3,881 for graduation incentives and \$16,000 for Three Strikes. *See id.*

85. The deterrent impact of a harsher sanction will be effective only if potential offenders are aware of it. The widespread publicity surrounding Three Strikes makes plausible that a significant portion of potential offenders were aware of the measure.

The scholarly evidence of the deterrent effect of harsher sentences is mixed. In its base estimates of the effects of Three Strikes, RAND argued that assuming no deterrent effect was "consistent with recent research." RAND CORP., ESTIMATED BENEFITS AND COSTS, *supra* note 81, at 16. A significant number of studies, however, have found some deterrent effect from punishment. For a survey of the research and a discussion of the methodological problems in measuring deterrence, see Isaac Ehrlich, *Crime, Punishment, and the Market for Offenses*, 10 J. ECON. PERSP. 43 (1996). For a recent study finding longer sentences to have a non-trivial deterrent impact, see Kessler & Levitt, *supra* note 75.

86. *See* DATA ANALYSIS UNIT, CALIFORNIA DEP'T OF CORRECTIONS, SECOND STRIKE CASES: PROC UNIVARIATE ON AVERAGE AGE AT ADMISSION OF STRIKE CASE (July 31, 1998).

87. *See* DATA ANALYSIS UNIT, CALIFORNIA DEP'T OF CORRECTIONS, THIRD STRIKE CASES: PROC UNIVARIATE ON AVERAGE AGE AT ADMISSION OF STRIKE CASE (July 31, 1998).

Three Strikes should have the largest deterrent effect on offenders over the age of 30.⁸⁸

For homicide crimes, however, the actual results were the reverse. The drop in homicide crimes was concentrated in persons under the age of 20.⁸⁹ Indeed, the largest percentage drop occurred in the 10-17 age classification, persons seldom subject to the enhanced prison terms of Three Strikes.⁹⁰

For non-homicide felonies, the decline is less concentrated among younger persons. Nevertheless, there is little evidence that older offenders who are more likely to face the enhanced penalties of Three Strikes are being deterred more than younger offenders. From 1993 to 1996, the total felony rate fell by 11% in the 10-20 age group, 8% in the 20-29 age group, 1% in the 30-39 age group, and rose 15% in the 40-69 age group.⁹¹ During the same period, the violent felony rate fell by 3% in the 10-20 age group, 1% in the 20-29 age group, 2% in the 30-39 age group, and rose 17% in the 40-69 age group.⁹²

It is particularly interesting to examine the impact of Three Strikes on felony theft. Theft does not qualify as a prior strike, but the penalty for theft can be sharply enhanced if the offender has one or more prior strikes.⁹³ For this reason, Three Strikes should have

88. Three Strikes could have some deterrent effect on young offenders afraid of obtaining a first strike, but the impact should be greater on older offenders with prior strikes who face sharply enhanced sentences if convicted again.

89. See CRIME & DELINQUENCY, *supra* note 20.

90. Only about 1% of second strike cases and 0.3% of third strike cases involve offenders under the age of 20. See DATA ANALYSIS UNIT, CALIFORNIA DEP'T OF CORRECTIONS, SECOND STRIKE CASES BY SEX AND AGE GROUP AT ADMISSION OF STRIKE CASE (July 31, 1998) (author's calculations); DATA ANALYSIS UNIT, CALIFORNIA DEP'T OF CORRECTIONS, THIRD STRIKE CASES BY SEX AND AGE GROUP AT ADMISSION OF STRIKE CASE (July 31, 1998).

91. Authors' calculation of offense rates using crime data from CRIME & DELINQUENCY, *supra* note 20, and using population data from DEMOGRAPHIC RESEARCH UNIT, *supra* note 69.

92. *Id.*

93. Upon conviction for any felony, an offender with one prior strike will have his sentence doubled, while an offender with two prior strikes will receive a sentence of 25-years-to-life. See *supra* text accompanying notes 7-12. Since petty theft can be filed as a felony if the offender has a prior felony conviction, an individual with two prior strikes could receive a 25-years-to-life sentence

the greatest deterrent effect on theft by older offenders who have prior strikes, but have no impact on theft by younger offenders without prior strikes. In fact, however, the drop in the felony theft rate was slightly greater among the young, falling by 10% in the 10-20 age group, 8% in the 20-29 age group, 8% in the 30-39 age group, and 1% in the 40-69 age group.⁹⁴

2. Offense Patterns

The harshest sentence enhancements in third strike cases fall on offenders convicted of less serious felonies. For an offender convicted of a third violent felony, such as homicide, the Three Strikes enhancements mean little because the offender would have been sentenced to a lengthy prison term in any case. On the other hand, for an offender convicted of a relatively minor felony like petty theft or possession of a controlled substance, the minimum 25-years-to-life sentence required by Three Strikes would be much longer than the sentence the offender otherwise would have received. The additional deterrent value of Three Strikes, therefore, should be smaller for homicide than for less serious felonies such as burglary, motor vehicle theft, or assault.

The actual decline in crime, however, was greater for homicides than for lesser offenses. The AGR notes that the homicide rate dropped 40.2% during the "Three Strikes era," while the burglary rate dropped 32.1%, motor vehicle theft rate dropped 33.2%, and assault rate dropped only 19.2%.⁹⁵

VI. EXPLAINING RECENT HOMICIDE TRENDS

In order to understand the drop in crime after 1993, it is necessary to explain the crime explosion that preceded it. The trend in homicide is particularly important to analyze, both because of the seriousness of the offense and because homicide has been more volatile than other offenses. As noted in Part IV, the sharp rise in homicide in the late 1980s was mostly due to young urban offenders with

for stealing a pair of pants. However, Three Strikes does not increase the penalty for petty theft for an offender with no prior strikes.

94. See *supra* note 91.

95. See AGR, *supra* note 4, at 2.

handguns. At the same time, homicides committed by older offenders and by offenders without guns declined.⁹⁶

A. Crack Cocaine and the Rise in Youth Homicide

A plausible explanation for the sharp rise in youth handgun homicides in the late 1980s centers on emergent crack cocaine markets in the mid-1980s.⁹⁷ Crack cocaine has greater bulk than powder cocaine, and thus can be sold in single "hits" for a price of five to ten dollars rather than the hundreds of dollars needed to purchase powder cocaine.⁹⁸ This lower price led to an expansion of the cocaine market to poorer individuals unable to afford powder cocaine.⁹⁹

The larger market and the needs of poorer customers to make numerous small purchases resulted in a large expansion of the need for sellers.¹⁰⁰ Many of these new sellers were juveniles who were more willing to take risks, and who faced less severe penalties if convicted than would adults.¹⁰¹ The ability to recruit young African-Americans and Hispanics was helped by the lack of legitimate jobs in the urban areas where they resided.¹⁰²

Drug sellers face a high risk of theft and often rely on handguns for protection.¹⁰³ A significant portion of the youth involved in drug sales, therefore, may have become armed with handguns.¹⁰⁴ No more than a fraction of the rise in youth handgun homicide, however, can be explained by the recruitment of adolescent drug sellers. But the increased use of handguns by some adolescents may have led others

96. See *supra* Part IV.

97. The following discussion of the connection between crack cocaine and youth homicide relies extensively on Blumstein & Cork, *supra* note 74, at 9-10; see also Alfred Blumstein, *Youth Violence, Guns, and the Illicit-Drug Industry*, 86 J. CRIM. L. & CRIMINOLOGY 10 (1995); Blumstein & Rosenfeld, *supra* note 59; Franklin E. Zimring, *Kids, Guns, and Homicide: Policy Notes on an Age-Specific Epidemic*, 59 LAW & CONTEMP. PROBS. 25 (1996); Donohue, *supra* note 72.

98. See Blumstein & Cork *supra*, note 74, at 9.

99. See *id.*

100. See *id.* at 10.

101. See *id.*

102. See *id.* For an analysis of the lack of work opportunities in the inner city and its consequences, see WILSON, *supra* note 48.

103. See Blumstein & Cork, *supra* note 74, at 10.

104. See *id.* at 10-11.

to acquire guns either for protection or as a status symbol.¹⁰⁵ Fighting and other reckless behavior has always been common among male adolescents.¹⁰⁶ It would not be surprising, then, for widespread ownership of handguns by juveniles to produce a sharp increase in youth homicide.

B. *The Recent Decline in Youth Homicides*

It is likely that several factors underlie the recent sharp drop in crime in general, and in youth homicide in particular.¹⁰⁷ One element, as noted earlier, may be a growing economy that improved legitimate job opportunities for at-risk youth.¹⁰⁸ Another reason may be the decline in the crack cocaine epidemic in the 1990s.¹⁰⁹

More effective police programs may also have been important—especially those that remove guns from juveniles. These programs included more energetic enforcement of loitering and anti-graffiti laws, and more aggressive stop-and-frisk policies, especially in high violence neighborhoods.¹¹⁰ A growth in community programs

105. See *id.* at 11; see also Beth Bjerregaard & Alan J. Lizotte, *Gun Ownership and Gang Membership*, 86 J. CRIM. L. & CRIMINOLOGY 37, 50 (1995) (noting juveniles who have peers who own guns are more likely to own a gun than are those without such peers).

106. See Blumstein & Cork, *supra* note 74, at 11 (citing DELBERT S. ELLIOTT ET AL., *MULTIPLE PROBLEM YOUTH: DELINQUENCY, SUBSTANCE ABUSE, AND MENTAL HEALTH PROBLEMS* (1989)).

107. For an excellent collection of articles analyzing the recent drop in crime, see SYMPOSIUM, *Why Is Crime Decreasing?*, 88 J. CRIM. L. & CRIMINOLOGY (forthcoming 1998).

108. See RAND CORP., *ESTIMATED BENEFITS AND COSTS*, *supra* note 81; see also Blumstein & Rosenfeld, *supra* note 59.

109. See Blumstein & Rosenfeld, *supra* note 59; Donohue, *supra* note 72.

110. More effective enforcement of nuisance offenses has been credited with helping to reduce crime in some California communities. See, e.g., Joe Vargo, *Community Policing Gets Praise*, PRESS-ENTERPRISE (RIVERSIDE, CA.), May 14, 1998 at B1, available in 1998 WL 12001627.

Aggressive enforcement of nuisance offenses was also a key part of the approach taken by the New York City Police Department. See George L. Kelling & William J. Bratton, *Declining Crime Rates: Insiders' Views of the New York City Story*, 88 J. CRIM. L. & CRIMINOLOGY (forthcoming 1998). The NYPD also greatly expanded the size of its force. See AGR, *supra* note 4, at 5. The highly aggressive enforcement by the NYPD has been criticized as leading to the violation of civil liberties and to an increase in police brutality complaints. See Dan Morrison, *Report: Police Misconduct Up, Complaints*

designed to prevent violence and to give juveniles a constructive alternative to delinquent behavior also may have played a significant role in the drop in crime.¹¹¹ Many of these programs have developed through the joint efforts of police departments, neighborhood churches, and civic leaders.¹¹²

It also seems fair to give some credit to the adolescents themselves. When violent crimes increase among youth, commentators are quick to attribute the rise to a culture of violence and poor moral values, and to warn of an emerging wave of youthful "stone-cold predators."¹¹³ But when violent crime drops, commentators seldom credit youth with strong moral values and a commitment to reduce violence.¹¹⁴

Doubled Since 1992, NEWSDAY, Sept. 11, 1997, at A29 (noting the more than doubling of complaints of police misconduct in nine precincts from 1992-1996); *R-E-S-P-E-C-T Cops Must Fight Crime And Be Civil*, NEWSDAY, Apr. 12, 1995, at A28 (noting rise in citizen complaints and lack of supervision of police conduct).

111. Such programs may have played a role in reducing crime in some California cities. See, e.g., Ronald J. Ostrow & Steve Carney, *Crime Dips 15% in 7 Largest O.C. Cities*, L.A. TIMES, Nov. 24, 1997, at B1 (crediting after-school programs designed to keep kids out of trouble); see also discussion of Boston approach to crime control *infra* pp. 127-30.

112. For examples of such partnership in California see Ostrow & Carney, *supra* note 111 (discussing Santa Ana, Los Angeles and Fullerton); Vivianne Wightman, *Crime Rate Hits New Low*, ORANGE COUNTY REGISTER, Nov. 6, 1997, at 1 (discussing Placentia); Vargo, *supra* note 110 (discussing Riverside); see also *infra* notes 143-151 and accompanying text (discussing Boston's approach to crime control). For a discussion of the contribution of neighborhood association to crime prevention, see Warren Friedman, *Volunteerism and the Decline of Violent Crime*, 88 J. CRIM. L. & CRIMINOLOGY (forthcoming 1998).

113. See John J. DiIulio, Jr., *Help Wanted: Economists, Crime and Public Policy*, 10 J. ECON. PERSP. 3, 7-8 (1996).

114. An exception is Boston Police Commissioner Paul F. Evans who has stated, "[I]n a sense, it's the kids who deserve the most credit. They are the ones who saw their older siblings become victims of violence and have hopefully chosen a different way." Daniel Vasquez, *Credit Abounds for Drop in Killings*, BOSTON GLOBE, May 14, 1998, at B1. In a recent survey, almost 90% of teenagers surveyed indicated that they would be willing to participate in community programs to prevent crime and violence. See Michael Doyle & Cyndee Fontant, *Students Say They Want To Help*, FRESNO BEE, Jan. 12, 1996 at B3.

C. Decline in Adult Homicides

Nationwide homicide arrests of adults generally have been declining since the early 1980s.¹¹⁵ In California, homicide arrests of individuals age 30 and older declined slightly between 1986 and 1990, and then averaged a 5% annual decline from 1990 to 1996.¹¹⁶

The reasons for the decline in adult homicides are uncertain. One likely factor, however, is the incapacitation of a large number of older potential offenders.¹¹⁷ The California inmate population skyrocketed from 24,569 in 1980 to 125,605 in 1994—more than a 400% increase.¹¹⁸ These inmates are generally older offenders. The median age is 32, and only 1.4% of the inmates are under the age of 20.¹¹⁹ Moreover, the California inmate population is aging. In 1984 the median age of inmates was only 29, and inmates under age 20 made up 4.9% of the population, more than three times the percentage in 1994.¹²⁰

Another reason for the decline in adult homicides may be a drop in the homicide of intimate partners.¹²¹ One reason for the decline in intimate partner homicide may be lower marriage rates, increased age at marriage, and higher divorce rates.¹²² Another reason may be the growth of domestic violence services.¹²³

115. See Blumstein & Cork, *supra* note 74, at 22 fig.7; see also Blumstein & Rosenfeld, *supra* note 59.

116. See CRIME & DELINQUENCY, *supra* note 20.

117. See Blumstein & Rosenfeld, *supra* note 59.

118. See PRISONERS AND PAROLEES 1993 & 1994, *supra* note 38, at 35 tbl.6.

119. See *id.* at 45 tbl.12. The nationwide median age of prisoners is similar to that of California. See Blumstein & Rosenfeld, *supra* note 59.

120. See DATA ANALYSIS UNIT, CALIFORNIA DEP'T OF CORRECTIONS, CALIFORNIA PRISONERS & PAROLEES 1989, at 124 tbl.22 (giving 1984 age data).

121. See Blumstein & Rosenfeld *supra* note 59 (citing LAWRENCE A. GREENFELD, U.S. DEP'T OF JUSTICE, VIOLENCE BY INTIMATES (1998)).

122. See *id.* (citing Richard Rosenfeld, *Changing Relationships Between Men and Women: A Note on the Decline in Intimate Partner Homicide*, 1 HOMICIDE STUD. 72-83 (1997)).

123. See *id.* (citing Laura Dugan et al., *Explaining the Decline in Intimate Partner Homicide: The Effects of Changing Domesticity, Women's Status, and Domestic Violence Resources* (1997) (Working Paper, National Consortium on Violence Research)).

VII. COMPARING CALIFORNIA'S CRIME DROP TO OTHER STATES

The AGR points out that between 1994 and 1997 the crime rate in California dropped more rapidly than in the rest of the nation.¹²⁴ The AGR notes that overall crime dropped 30.8% compared to a drop of 17.4% in the rest of the nation.¹²⁵ Violent crime dropped 26.9% compared to 18.2% in other states.¹²⁶ Homicide dropped by over 40% in California compared to a drop of less than 30% elsewhere.¹²⁷ The difference is misleading, however, because the drop in violent crime, particularly homicide, was greatest among urban minority youth. Thus, states with large urban minority populations were likely to show a disproportionate drop in crime.

The drop in homicide rates in California's large cities, while impressive, is not dissimilar to that of large cities nationwide. Four of the nation's fifteen largest cities in 1996 are located in California.¹²⁸ For these California cities, the homicide rate dropped 34% from 1993-1996 and 15% from 1994-1996.¹²⁹ In the eleven non-California cities among the top fifteen, the homicide rate dropped 30% from 1993-1996 and 24% from 1994-1996.

The AGR notes that California was one of only three states to record a "double digit" drop in the major crime categories from 1993 to 1996.¹³⁰ The two states to experience a larger drop than California

124. See AGR, *supra* note 4, at 4.

125. See *id.*

126. See *id.*

127. See *id.*

128. The cities are Los Angeles, San Diego, San Jose, San Francisco. Population rankings and crime rates were calculated by the authors from data obtained from U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, CRIME & JUSTICE ELECTRONIC DATA ABSTRACTS (last visited Oct. 27, 1998) <<http://www.ojp.usdoj.gov/bjs/dtdata.htm>> [hereinafter CRIME AND ARREST DATA]. The data in the electronic data abstract is compiled from a variety of published governmental sources and presented in spreadsheets in order to facilitate use with statistical programs and analytical software.

129. See *id.* The Bureau of Justice Statistics city homicide data for 1997 was not available.

130. See AGR, *supra* note 4, at 4. Again the city-to-city comparison is less impressive. Several large cities, including New York, San Antonio, and Seattle have had greater than 40% drops in homicide from 1993-1996. The change in homicide rates were calculated from CRIMES AND ARREST DATA, *supra* note 128.

were New York and Massachusetts.¹³¹ It is worthwhile, then, to examine these states more closely.

The AGR states that New York has a persistent offender statute similar to California's Three Strikes.¹³² The New York statute, first enacted in 1978, was amended in October 1995 to double the minimum sentence previously mandated for "persistent violent offenders" convicted of a further violent felony.¹³³ For persistent violent offenders convicted of a class B violent felony, such as first-degree robbery or aggravated sexual assault, the new minimum sentence was 20 years.

The drop in crime in New York, however, began in 1991, five years before the passage of tougher penalties.¹³⁴ In addition, the New York statute is more narrowly drawn than Three Strikes. Unlike the California statute, which applies to convictions for nonviolent offenses if the offender has prior strikes, the New York statute only applies if the current offense is violent.¹³⁵ Moreover, the mandatory minimum 20-year sentence only applies to the most serious violent felonies.¹³⁶ In our examination of dozens of articles and newspaper reports on the decline in crime in New York, we have been unable to find anyone who attributes the drop in crime to its persistent violent offender statute.¹³⁷ Substantial attention, on the other hand, has been given to the change in policing practices by the NYPD.

131. See AGR, *supra* note 4, at 4.

132. See *id.*

133. See N.Y. PENAL LAW § 70.08 (Consol. Supp. 1997).

134. See CRIME IN THE U.S. 1996, *supra* note 18. In 1994, the year before the enactment of increased penalties, overall crime dropped 8.7% and violent crime dropped 10.1%. In 1995, when the stiffer penalties were in effect for the three months, overall crime dropped 10.1% and violent crime dropped 12.8%. In 1996, when the stiffer penalties were in effect for the entire year, overall crime dropped 9.4% and violent crime dropped 13.6%. See *id.*

135. See N.Y. PENAL LAW § 70.08 (Consol. Supp. 1997).

136. Persistent violent offenders convicted of class C violent felonies, such as second-degree robbery or burglary, face a mandatory minimum of 16 years and offenders convicted of class D violent felonies, such as criminal sale of a firearm with the aid of a minor, face a mandatory minimum of 12 years. See *id.* §§ 70.02, 70.08.

137. Like other felony sentence enhancements, the amendment to the New York statute would have little or no incapacitation effect in its first few years. Thus any impact on the crime rate would be through deterrence. See *supra* Part V-A.

This change, as noted by the AGR, involved a major expansion of the police force with an aggressive approach to the prosecution of nuisance crimes such as "loitering, solicitation, and panhandling."¹³⁸ It is unclear what portion of the remarkable drop in New York City crime was due to the policing changes and what portion was due to changes in the drug market and other social factors. Nevertheless, the size and timing of the drop makes it likely that the change in police practice was a significant factor in the decline.¹³⁹

As in California, the drop in New York City homicides was largely due to a decline in gun-related killings.¹⁴⁰ Police stops, justified on the grounds of preventing nuisances, increased the opportunity to make gun-related searches.¹⁴¹ Increased gun searches may have reduced gun-related offenses by allowing police to confiscate illegal guns, arrest those who carried them, and deter people from carrying such weapons in the first place.¹⁴²

The drop in the Massachusetts crime rate was led by the city of Boston. Homicides in Boston dropped from a peak of 143 homicides in 1990 to 59 homicides in 1996. Robberies dropped to a 26-year low, and armed assaults dropped to a 10-year low.¹⁴³ The Boston approach combines more effective policing with a variety of community development and prevention programs. One of the most praised programs was Operation Night Light, where probation officers, accompanied by police, would visit youths on probation in their homes. In addition to dramatically reducing probation violations, Operation Night Light also enabled probation officers to work with the young offenders' families. The emphasis of the program was "on seeing people in their home environment, not challenging them on the street or arresting them."¹⁴⁴

138. See AGR, *supra* note 4, at 4.

139. See Fagan et al., *supra* note 72.

140. See *id.*

141. See *id.*

142. The decline in New York City homicide was "much more consistent with gun-oriented policing than with indiscriminate quality-of-life interventions." *Id.*

143. See Charles A. Radin, *Reaching Up Against Crime*, BOSTON GLOBE, Feb. 19, 1997, at A1.

144. *Id.* (quoting commander of Operation Night Light strike force Gary French); see also Alan Lupo, *Keeping the Night Light On: Probation Officers*

Boston also aggressively targeted violent gang leaders for prosecution, destroyed gang graffiti, razed derelict buildings used as hangouts, and cleaned and fenced vacant lots.¹⁴⁵ Working together, federal and state law enforcement officials arrested gang leaders on both state and federal drug charges.¹⁴⁶

The Boston program also included successful efforts to improve relations between police and the community. Police actively worked with community leaders and churches to better police-community relations and to provide youth programs and job assistance to get at-risk youth off the streets.¹⁴⁷

The Boston approach has been hailed nationally and copied by other cities.¹⁴⁸ Despite this praise, Boston Police Commissioner Paul F. Evans warned that no program offers a simple solution to crime: "Anyone who comes into a city like this and looks for one central cause just doesn't get it."¹⁴⁹ He noted that it was important to understand problems from the point of view of neighborhood residents and to develop comprehensive solutions to problems of youth violence.¹⁵⁰ "The thing that's working is not just lock 'em up, lock 'em up."¹⁵¹

VIII. CONCLUSION

When crime goes up, government officials usually blame the rise on factors beyond their control such as a disintegration of the family, violent television or video games, or increased drug use. But, when crime goes down, those same officials are quick to claim the credit.

Work Late Shifts Making Sure Their Clients Don't Stray, BOSTON GLOBE, Jan. 26, 1997, at 1 (describing Operation Night Light); Interview by Barbara Bogaer with Night Light Probation Officer William Stewart and Judge Sydney Hanlon (FRESH AIR, NPR, Apr. 22, 1998), available in 1998 WL 2923655.

145. See Radin, *supra* note 143, at A1.

146. See *id.*

147. See *id.*

148. See, e.g., Michael Grunwald, *Looking to Boston for Homicide Solutions Beset by Violent Street Crime, Minneapolis Copies an Intervention Plan*, BOSTON GLOBE, Aug. 3, 1997, at A1 (describing Minneapolis's adoption of Boston's approach and noting that dozens of cities are also planning to imitate it); *Clinton Lauds Boston for Juvenile Crime Reduction*, NATION'S CITIES WEEKLY, Mar. 3, 1997, at 3.

149. Radin, *supra* note 143.

150. See *id.*

151. *Id.*

And sometimes, officials try to have it both ways. When most crime statistics dropped in 1993, but the murder rate increased, California's Attorney General claimed that the state's tougher approach to criminals was responsible for the general decline, but that "the glamorizing of violent behavior in movies, music, video games and professional sports" was to blame for the increase in homicides.¹⁵² It was not surprising, therefore, that the same Attorney General now claims the Three Strikes policy he has championed is largely responsible for the recent sharp drop in crime.

Government reports on important and complex legislation should be balanced and fair. Unfortunately, the Attorney General's report is a brief in favor of Three Strikes rather than a serious analysis of the measure.

152. Paul Jacobs, *State's Crime Rate Fell in 1993 as Public's Fear Rose*, L.A. TIMES, Mar. 16, 1994, at A3.

