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Making the Crime Fit the Penalty: The Role of Prosecutorial Discretion Under Mandatory Minimum Sentencing*

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Abstract

This paper empirically documents one way in which prosecutorial discretion can be used to dampen the effects of mandatory minimum sentencing laws. Specifically, I show prosecutors use their discretion over prosecution charges to circumvent a mandatory minimum sentencing law for some defendants, by prosecuting these defendants who were initially arrested for the crime targeted by the sentencing law for lesser crimes not covered by the law. I document the use of such discretion with respect to several state "three-strikes" type repeat offender laws imposed throughout the 1990s, where I find that prosecutors become significantly more likely to lower a defendant's prosecution charge to a misdemeanor when conviction for the initial felony arrest charge would likely lead to sentencing under a three-strikes law. Moreover, accounting for such behavior is important, as I show that failure to do

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so can lead to overstating the effects of these laws on average sentencing by almost thirty percent.

1   Introduction

The use of mandatory minimum sentencing laws has become quite widespread throughout the United States. By 1994, at least one version of a mandatory minimum sentencing law was on the books in all 50 states, the District of Columbia, and the Federal Government (Tonry, 1996). The motivation for these laws has primarily been to provide a simple and politically viable means of increasing the expected sentence for individuals who commit certain crimes, through limiting the sentencing discretion available to actors within the judicial system (U.S.S.C., 1991; Nelson, 1992).

While mandatory minimum sentencing laws appear to significantly curtail the discretionary influence judges have over the minimum sentence they impose on convicted criminals,[1] the point has been raised that these laws may simply shift the discretion to other actors in the judicial process, namely prosecutors. As stated by the Bureau of Justice Assistance (1996), "The concern is that (sentencing) guidelines have merely shifted discretion from parole boards, prison officials, and judges to prosecutors." However, this report goes on to say that, "Little evidence exists to document how much this (shifting of discretion) has occurred."

Understanding the role of prosecutorial discretion with respect to mandatory minimum sentencing laws is important for two primary reasons. First, any future legislative policy regarding sentencing guidelines must take into account the degree to which the effects of these guidelines will be affected by the mitigating actions available to agents within the court, specifically prosecutors (Eisenstein et al, 1988). Second, understanding the role of prosecutorial discretion is important with regards to the theoretical crime literature. Most theoretical crime models assume lawmakers can determine both

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[1]As noted in Tonry (1996), departure from mandatory sentences and sentencing guidelines are low, and in general, judges much more often than not impose sentences that comply with applicable guidelines. Similarly, Anderson et al (1999) find a significant decrease in sentence length variation between judges after the imposition of mandatory sentencing laws.

the probability of conviction and the sentence given conviction, and that finding and convicting another criminal is relatively more expensive than increasing the sentence imposed on a convicted criminal. As discussed by Becker (1968) and others, efficient deterrence in such a world is to impose the maximal possible sentence on all individuals convicted for each crime, but to find and convict only a minimal number of offenders. But, if lawmakers do not have absolute authority in determining how arrested offenders are sentenced, then the above result will not hold. As shown by Andreoni (1991) and Frazoni (1999), when agents in the judicial system have some discretion over sentencing beyond that of legislators, it may be more socially efficient to attempt to make sentences reflect the social cost of the crime.

This paper adds to the literature on mandatory minimum sentencing laws in two primary ways. First, it provides formal empirical evidence documenting that one way in which prosecutors react to these laws is by systematically becoming more likely to prosecute those arrested for crimes targeted by these laws for lesser crimes not covered by these laws. Specifically, with respect to one type of mandatory minimum sentencing law, namely "three-strikes" type repeat serious offender laws, I show that, following the imposition of these laws, prosecutors become almost twice as likely to prosecute "three-strikes arrestees" for lesser misdemeanor crimes not covered by the laws.[2] Moreover, further results suggest that such behavior is the result of prosecutors using their discretion to partially circumvent three-strikes laws due to their own constraints and preferences, not in response to changes in behavior by other actors within the judicial system.

The second contribution of this paper is to show the importance of accounting for this type of prosecutorial discretion over prosecution charges when estimating the effects of mandatory minimum sentencing laws on average sentencing. With respect to the three-strikes laws examined here, I show that failing to account for the type of prosecutorial discretion discussed above will lead to substantially overstating the effect of these laws on average sentencing. In particular, a naive estimate of the effect of these laws, where

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[2] "Three-strikes arrestees" being those defendants whose current arrest charge and criminal history fit the criteria for being prosecuted under his state's three-strike law.

the ability of prosecutors to selectively lessen prosecution charges is not accounted for, will tend to overstate the effect of these laws on average sentencing by almost thirty percent.

The remainder of this paper is organized as follows. First, Section 2 reviews the recent empirical literature on the role of prosecutorial discretion with respect to mandatory minimum sentencing laws. Next, Section 3 attempts to empirically estimate the extent to which prosecutors appear to alter their use of discretion over prosecution charges in response three-strikes type repeat offender sentencing laws. Section 4 discusses in more detail what might be the underlying motivation behind the change in prosecutor behavior documented in the previous section. Section 5 then shows the importance of accounting for prosecutor discretion when estimating the effect of three-strikes laws on sentencing. Finally, Section 6 summarizes and concludes.

2 Previous Literature Regarding the Effects of Mandatory Minimum Sentencing Laws

As discussed in the introduction, many mandatory minimum sentencing laws have been implemented throughout the United States over the last couple of decades. This section reviews the findings and conclusions of some of the more recent literature related to prosecutor behavior with respect to these laws.

At the Federal level, the United States Sentencing Commission (U.S.S.C., 1991) found that of a sample of defendants whose arrest offenses appeared to be covered by one of the Federal mandatory minimum sentencing laws imposed in the late 1980s, over 25 percent were tried or sentenced under alternate charges that either had lower or no mandatory minimum sentence. The U.S.S.C. also found that for 45 percent of drug defendants for whom weapons enhancements were found appropriate, no weapons charges were filed. Moreover, for 63 percent of defendants for whom increased punishments were possible due to prior felony convictions, increased minimums were not sought or obtained.

At the state level, Tonry (1996) summarizes the findings concerning three of the state

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mandatory sentencing laws that have been most thoroughly examined—the Rockefeller Drug Laws in New York, Massachusetts' Bartley-Fox Amendment, and the Michigan Felony Firearms Statute.

The Rockefeller Laws, implemented in 1973, prescribed severe mandatory minimum prison sentences for most narcotics offenses. In examining the effect of these laws, a 1978 Joint Committee on New York Drug Laws found that (a) drug felony arrests, indictment rates, and conviction rates all declined after the law took effect, (b) for those who were convicted for a drug felony, both the likelihood of being imprisoned and the average length of prison term increased, and (c) the actual likelihood of prison given arrest for a drug felony was unchanged after the Rockefeller Laws were enacted.

Massachusetts' Bartley-Fox Amendment required a one-year mandatory minimum prison sentence for anyone convicted of carrying an unlawful firearm, regardless of whether any other crime was committed. Studies that have examined the effects of this law in detail (Beha, 1977; Rossman et al, 1979) find that after the law took effect (a) dismissals and acquittals increased, (b) the percentage of defendants initially charged with illegal firearm possession who avoided conviction of this crime rose from 53.5 percent in 1974 (before the passage of the amendment) to 80 percent in 1976 (after the passage of the amendment), and (c) the probability of incarceration for those offenders actually convicted of illegal firearm possession rose from 23 percent to 100 percent.

Finally, the Michigan Felony Firearms Statute mandated a minimum two-year prison sentence for possession of a firearm while engaging in any felony. Studies of this statute found that firearm charges were only filed in 65 percent of a sample of eligible cases (Bynum, 1982) and that the statute did not generally increase the probability of being incarcerated given arrest, but did increase the expected sentences for those sentenced to incarceration (Loftin et al, 1983).

Although the findings from these studies are consistent with several theories of behavior, in interpreting these findings Tonry (1996) states, "(t)he people who operate the criminal justice system generally find mandatory minimum sentencing laws too inflexible for their taste and take steps to avoid what they consider unduly harsh, and therefore, unjust, sentences," and that "(p)rosecutors often avoid application of mandatory sen-

tencing laws simply by filing charges for different, but roughly comparable, offenses that are not subject to mandatory sentences."[3] The idea that mandatory minimum sentencing laws cause actors in the judicial system, particularly prosecutors, to change their behavior in order to mitigate the effects of these laws, is not a new one. In fact, one of the main reasons Congress repealed almost all of the existing mandatory federal sentences for drug offenses in 1970 was because there was a feeling that "the severity of existing penalties, involving in many instances minimum mandatory sentences, has led in many instances to reluctance on the part of the prosecutors to prosecute some violations, where penalties seem to be out of line with the seriousness of the offenses."[4]

While these studies provide a good deal of anecdotal and descriptive evidence regarding prosecutor behavior and defendant outcomes following the imposition of mandatory minimum sentencing laws, most do not provide rigorous statistical analyses documenting how prosecutor behavior *adjusts* to mandatory minimum sentencing laws. More specifically, the studies discussed above do not explicitly test the statistical significance of any *changes* in prosecutor behavior following the imposition of the minimum sentencing laws, or test whether these behavioral changes were directed primarily toward only those defendants targeted by the sentencing laws.[5]

Kessler and Piehl (1998) use more rigorous statistical methods in their evaluation of

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[3]Other evidence and similar conclusions can be found in Knapp (1991), Eisenstein, Flemming and Narduli (1988).

[4]House of Representatives 1970, quoted from U.S. Sentencing Commission 1991, pp. 6-7.

[5]A variety of other papers have done more formal statistical analyses of the effects of mandatory minimum sentencing laws such as Lacasse and Payne (1999), Anderson, Kling, and Stith (1999), Marvell and Moody (2001), and Shepard (2002). However, these studies are not directly related to this study in that their primary focus was not related to how prosecutors altered their behavior in reaction to mandatory minimum sentencing laws. Lacasse and Payne (1999) do find indirect evidence suggesting that the role of prosecutors could be large with respect to mandatory minimum sentencing laws, in that the plea bargain rate increased following the imposition of Federal sentencing guidelines in the judicial districts they examine, and plea bargained sentences were significantly related to both the mean and variance of the sentences handed down by the judge assigned to the case—evidence they interpret as showing that judges retain enough discretion following the imposition of the sentencing guidelines such that prosecutors can still exploit the variation in this discretion across judges in their plea bargaining negotiations.

the effects of California's Proposition 8, a repeat offender mandatory minimum sentencing law passed in 1982. The data set they used for their analysis contained individual level information for convicted criminals committed to incarceration between 1981 and 1985.[6] From this data, they first determined the sentence length imposed on each convict, what crime each convict was charged with, whether or not the convict had been convicted before, and whether each convict was arrested before or after the imposition of Proposition 8. Then for three different types of crime, they tested the degree to which the law changed the mean sentence for those defendants with criminal histories relative to any contemporaneous changes in the sentencing for those without criminal histories charged with the same crime. Kessler and Piehl found that for those charged with Robbery, a crime eligible for sentencing under Proposition 8, the expected sentence for repeat offenders increased by over 50 percent relative to non-repeat offenders subsequent to the passage of Proposition 8. They also found that the expected sentence for repeat offenders charged with Grand Larceny, a similar but lesser crime than Robbery that was not covered by Proposition 8, also showed a small but significant increase relative to non-repeat offenders following passage of the sentencing law. By contrast, the expected sentence for repeat offenders charged with drug possession, a crime not eligible for sentencing under Proposition 8, actually decreased slightly relative to non-repeat offenders following the imposition of Proposition 8.

Like Tonry (1996), Kessler and Piehl interpret their results as showing that prosecutor discretion can play an important role following the imposition of a mandatory minimum sentencing law. However, Kessler and Piehl's conclusions differ from Tonry concerning the specific way in which prosecutorial discretion matters. While Tonry emphasizes prosecutors using their discretion to mitigate the overall effect of mandatory minimum sentencing laws on actual sentencing, Kessler and Piehl generally view their evidence as showing that prosecutors use their discretion to increase the sentences of defendants who committed lesser, but similar crimes not covered by the new laws. In concluding, they say their findings suggest "increases in statutory sentences result in more punishment, not less punishment, than the simple statement of the laws would

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[6]Their data came from California Board of Prison Terms.

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suggest," and that their findings reject "the null hypothesis that actors in the criminal justice system seek to undo changes in laws."

3 The Reaction of Prosecutors to Mandatory Minimum Sentencing Laws

While Kessler and Piehl's (1998) interpretation of their evidence is somewhat at odds with Tonry's (1996) conclusions, their actual findings do not necessarily provide evidence against the mitigating behavior on the part of prosecutors as suggested by Tonry. Specifically, Kessler and Piehl's analysis does not directly examine whether prosecutors alter their use of discretion *over prosecution charges* following implementation of the sentencing law. Hence, their results do not directly contradict (or support for that matter) the type of prosecutorial discretion emphasized by Tonry. Moreover, their data contains only individuals who were convicted and sentenced to jail time, meaning their sample is a very select sample of all individuals arrested for the crimes they examine, and furthermore, it is unclear at what point in the judicial process their charge data refers to. As will be discussed below, it is extremely important to distinguish between the initial arrest charge and the eventual charge for which a defendant is prosecuted. In the empirical analysis that follows, I attempt to more directly examine whether prosecutors use their discretion over prosecution charges to circumvent one type of mandatory minimum sentencing law—namely the state "three-strikes" type repeat serious offender laws passed throughout the 1990s.

3.1 Data and Definitions

The data used for this analysis comes from *State Court Processing Statistics 1990-1996 (Felony Defendants in Large Urban Counties)*. This Bureau of Justice Statistics data set tracks a sample of defendants arrested for state felony offenses, weighted to be representative the nation's 75 most populous counties. The data set contains detailed information for each individual's case, including the date of arrest, the initial arrest charge, whether the individual was prosecuted for a felony or a misdemeanor, demographic and criminal

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history characteristics of the defendant, the final disposition of the case, any conviction charges, and any sentence imposed. The general sample used in this paper consists of all cases that were not pending, and contained valid data regarding the arrest charge, the prosecution charge, the adjudication outcome, and any eventual conviction charges.[7]

As stated above, the laws I will examine in this analysis are several state "three-strikes" sentencing laws that were passed throughout the 1990s. Although there are substantial differences in the particular laws passed in each of the states, the general purpose of these laws was similar: they were meant to impose prison sentences on serious repeat offenders for longer periods of time than the existing laws dictated. As shown in Table 1(a), between 1990 and 1996, some version of a three-strikes law passed in 12 of the 24 states contained in the data set used here.

As can be seen in Table 1(b), these three-strikes laws cover many different crimes and have very different eligibility criteria. Therefore, unlike laws targeting gun possession or drug sales, determining which individuals in the data set were arrested for and/or convicted for the "crimes" targeted by the three-strikes laws is not straightforward. To make this determination, for each state in the data set that passed a three-strikes type sentencing law between 1990 and 1996, the crimes covered by the law and the criminal history required by the law were used to define the criteria that an individual must meet to be eligible for the law in that state. If an individual's *initial arrest charge and criminal history* appear to satisfy the criteria for his or her home state's three-strike law, then this individual is said to be in the group *arrested for a three-strikes crime.* Similarly, if an individual's *conviction charge and criminal history* appear to satisfy the criteria for his or her home state's three-strike law, this individual is said to be in the group *convicted for a three-strikes crime.*

One constraint of this data set is that the information regarding arrest (conviction) charges and prior criminal history is not as specific as the criteria specified by the

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[7]Here and throughout the paper, "Arrest charge" refers to the most serious charge first filed with the lower court. "Prosecution charge" comes from the variable termed "adjudicated level" in the data set. This refers to the level (misdemeanor or felony) of the most serious charge that had not been dropped or dismissed by the time the case was adjudicated.

three-strike laws. In particular, while the *State Court Processing Statistics* data set categorizes arrest and conviction charges according to only 14 different crime categories, there are many more arrest and conviction charge possibilities in the actual judicial system. Moreover, while the judicial system knows extensive details concerning each arrested individual's criminal history, the criminal history data captured by the data set only includes the number of previous felony convictions, the number of previous violent felony convictions, the number of previous misdemeanor convictions, and the number of previous jail or prison stays. Table 1(b) shows how I dealt with these constraints when defining who was arrested (convicted) for a three-strikes crime. For example, the Florida three-strikes law states that a defendant is eligible for three-strikes sentencing if he is convicted three times for any of the following crimes: any forcible felony, aggravated stalking, aggravated child abuse, lewd or indecent conduct, and escape. However, for this analysis, a defendant from Florida is coded to have been arrested (convicted) for a three-strike crime if his arrest (conviction) charge is for murder, rape, robbery, assault, or another violent crime, and he had two or more prior violent felony convictions.

Note that the above definitions imply that a defendant with an arrest (conviction) charge and a criminal history that fit his or her state's three-strike law is said to be arrested (convicted) for a three-strike crime regardless of whether he or she was arrested before or after the three-strike law was passed. In this way these laws are treated like mandatory minimum sentencing laws targeting other crimes, such as drug sales or firearms possession, where the targeted crime was defined both before and after the law. Also, note that since these laws differ across states, the above definitions imply that defendants arrested (convicted) for the same crime and with the same criminal history need not both be said to be arrested (convicted) for a three-strikes crime if they come from different home states and their home states' three-strikes laws differ. Furthermore, since a defendant needs to both be arrested (convicted) for a crime covered by his or her state's three-strikes law <u>and</u> have the criminal history that fits his or her state's three-strikes law, defendants who are from the same state and both arrested (convicted) for a crime covered by their state's three-strikes law, may not both be said to be arrested (convicted) for a three-strikes crime if they have different criminal histories.

It is important to note that there is likely to be considerable measurement error concerning who is defined to be "arrested (convicted) for a three-strike crime" versus those who are defined to be "arrested (convicted) for other crimes." As mentioned previously, the actual criteria required to be eligible for three-strikes sentencing is generally more specific than what is contained in the *State Court Processing Data* used here. This means that some individuals are likely classified as being arrested for a three-strike crime when they should not be, and some individuals are classified as being arrested for an "other" crime, when they should be in the three-strike group. Such measurement error will mean that any differences in outcomes between those classified as being arrested for three-strike crimes and those arrested for "other" crimes will likely understate the true differences in outcomes between these two groups.

Finally, note that because of how I defined the group of defendants arrested for three-strikes crimes, the group of defendants arrested for other felonies besides three-strikes crimes are not always arrested for lesser crimes. However, as can be seen in Table 2, defendants arrested for three-strikes crimes are more likely to have been arrested for violent crimes, had more lengthy criminal histories, were given longer jail sentences, and were less likely to be prosecuted for misdemeanors, than defendants arrested for other felonies.[8]

3.2   Empirical Evaluation of Prosecutor Response to Three-Strike Laws

As discussed above, if prosecutors have discretion over prosecution charges, they may respond to a law increasing the mandatory minimum sentence for certain crimes by prosecuting a greater fraction of those arrested for the targeted crimes for lesser crimes not covered by the law. In order to examine whether such behavior occurs with respect to these three-strikes laws, we need to estimate how the proportion of individuals arrested for three-strikes crimes that are prosecuted for lesser non-three-strikes crimes changes following the imposition of the three-strikes laws. The difficulty in performing this analysis is that the data set used here does not provide specific information on

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[8]In this table and in all subsequent tables, statistics are weighted using the weights provided by the State Court Processing Statistics to be representative of the nation's 75 most populous counties.

the prosecution charge. Rather, it only provides information concerning whether the defendant was prosecuted for a felony or a misdemeanor. However, since all defendants in the data set were arrested for felonies, and none of the three-strike laws apply to misdemeanors, any defendant in this data set who was prosecuted for a misdemeanor can be said to have been prosecuted for a lesser crime than his or her initial arrest charge, and prosecuted for a crime that was not eligible for three-strikes sentencing. Therefore, in analyzing whether three-strike laws appear to cause prosecutors to raise the severity level standard required to prosecute an individual for three-strike crimes, I examine whether there is an increase in the proportion of three-strikes arrestees who were prosecuted for misdemeanors following the imposition of the three-strikes laws.

Once again, this definition of "lesser" crimes as being misdemeanors will tend to cause measurement error in the true group of interest, as in many states prosecutors can choose to prosecute individuals arrested for three-strikes crimes for other lesser felonies not covered by their states' three-strikes laws. Since such individuals will be erroneously evaluated as being both arrested and prosecuted for a three-strike crime in this analysis, such measurement error will generally cause the results in this paper to understate the true degree to which prosecutors alter their use of discretion over prosecution charges in response to three-strike laws. In other words, the results discussed below likely provide a lower bound estimate on the degree to which prosecutors respond to three-strikes laws by prosecuting eligible individuals for lesser crimes not covered by the laws.

Table 3 shows the proportions of felony defendants prosecuted for misdemeanors before and after the imposition of the three-strikes laws for different groups. The first row reports that the proportion of defendants arrested for three-strikes crimes who were prosecuted for misdemeanors rose from 5.5 percent before the passage of the three-strike laws, to 9.3 percent after the passage of the three-strike laws. This change represents an increase of over 70 percent.[9] By comparison, of the defendants residing in states that passed three-strikes laws but who were arrested for other felonies besides three-strike crimes, the proportion prosecuted for misdemeanors stayed roughly constant, moving from 12.9 percent before the passage of the three-strike laws, to 12.2 percent after the

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[9]This increase is statistically significant at the one percent level.

passage of the three-strike laws. As shown in the last row in Table 3, this means that, relative other felony defendants, defendants arrested for three-strikes crimes became 4.5 percentage points more likely to be prosecuted for a lesser misdemeanor charge following the imposition of the three-strikes laws. This increase is statistically significant at the one percent level.[10]

To ensure that the result in Table 3 is robust to state specific effects, time trends, and changes in the demographic, criminal history, and/or judicial status composition of the group arrested for three-strikes crimes, I estimated several probit specifications controlling for these factors. These specifications use data from all states in the data set, not just those that passed three-strikes laws. The dependant variable in each specification is a binary variable equaling one if the defendant was prosecuted for a misdemeanor and zero if prosecuted for a felony. Control variables consist of a dummy variable equaling one if the defendant was arrested for a three-strike crime after the passage of the three-strikes law in his or her state, a dummy variable equaling one if the defendant was arrested for a three-strike crime, a dummy variable equaling one if the defendant was arrested after a three-strike law was passed in his or her state, as well as a variety of controls for the defendant's demographic characteristics, criminal history, arrest charge, judicial status at time of arrest, and year and state of arrest.[11] Furthermore, in the final specification, standard errors are clustered by year within each state in order to take into account that observations within a state in a specific year may not be statistically

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[10]It is worth noting that if the sample is limited to only those counties that appear in the data set every year, the results here and throughout the paper stay essentially unchanged with only small increases in standard errors. For example, if the sample is limited to only those counties that appear in each year, the proportion of defendants arrested for three-strikes crimes who were prosecuted for misdemeanors rose from 4.2 percent (standard error of 0.007) before the passage of the three-strike laws, to 10.1 percent (standard error of 0.017) after the passage of the three-strike laws. Similarly, the proportion of individuals arrested for "other" felonies in three-strikes states moves from 10.6 percent (standard error 0.003) before the imposition of the laws, to 10.5 percent (standard error 0.005) after the imposition of the laws. In general, it is the relatively small counties that do not show up in the data set every year.

[11]Dummy variables for missing observations for each control variable were also included.

independent even after controlling for the variables discussed above.[12]

The numbers in the top row of Table 4 corresponding to "Arrested for 3-strikes (post-law)" show the estimated increase in the probability of being prosecuted for a misdemeanor for those defendants arrested for a three-strikes crime after a passage of a three-strike law. These coefficients show that, after controlling for any compositional changes in the group of defendants arrested for three-strikes crimes, as well as state and year effects, defendants arrested for three-strikes crimes were roughly 8 percentage points more likely to have been prosecuted for a misdemeanor if arrested after the passage of the three-strikes laws.[13]

Of all the three-strikes laws passed throughout the time period examined here, California's was not only one of the most broadly targeted, but also one of the most severe in terms of penalties it prescribed. Because of this, any behavioral changes by California prosecutors or other actors in the California judicial system in response to this law may have been significantly larger than analogous changes in other states. Since California also contributes the most three-strikes defendants to the data set, it is important to assess whether the estimates in Tables 3 and 4 are simply picking up radical changes in California. However, this does not appear to be the case, as Table 5 shows that the changes in prosecution charges following the implementation of a three-strikes law are similar in California to the other three-strikes states.[14] Hence, results shown in Tables

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[12]Thanks to Rosalie Pacula and Abigail Payne for suggesting this adjustment.

[13]In order to show the change in the marginal probability of being prosecuted for a misdemeanor, the coefficient corresponding to each control variable j equals $\hat{\beta}_j \phi(\overline{X}\hat{\beta})$, where the $\hat{\beta}_j$ is the estimated probit coefficient on control variable j and $\phi(\overline{X}\hat{\beta})$ the pdf of the standard normal distribution evaluated at the mean of the dependant variables. The standard errors shown below these coefficients in parentheses are all normalized in the same manner.

[14]Probit specifications identical to those shown in Table 3 (dependant variable being a dummy for whether or not the defendant was prosecuted for a misdemeanor) were also done for just California and all states besides California. In both cases, I find that those defendants arrested for a three-strike crime after the passage of the three-strikes law in their state are more likely (significant at the 5 and 10 percent level respectively) to be prosecuted for a misdemeanor than those defendants arrested for a three-strike crime prior to the passage of the three-strikes law in their state. Complete results available upon request.

3 and 4 do not appear to be driven soley by changes in the California judicial process following the imposition of the California three-strikes laws.

4 Why do Prosecutors Lessen Prosecution Charges for Three-Strike Arrestees?

The findings presented above show that three-strikes arrestees become more likely to be prosecuted for lesser charges than their arrest charges, when conviction for the arrest charge would lead to sentencing under a three-strikes mandatory minimum sentencing law. This finding is certainly consistent with much of the studies discussed previously that emphasize prosecutors (or prosecutor offices) attempting to circumvent mandatory minimum sentencing laws for some defendants due to their own preferences and constraints. However, it may also be true that these these apparent changes in prosecutor behavior are simply an outcome or response to changes in criminal, police, judge, jury, and/or defense attorney behavior. This section attempts to examine this issue in more detail.

4.1 Direct Evidence Concerning Prosecutorial Discretion

The California three-strikes law not only covers a broader range of defendants and proscribes harsher sentences than most other states, but it also provides prosecutors with another method for circumventing the three-strikes law not generally available (at least officially) in other states. Specifically, California prosecutors can circumvent the California three-strikes law unofficially by lessening the prosecution charge in the manner described above, or officially, by dropping a previous strike.[15]

Walsh (1999) examines the criteria California prosecutors use when deciding for whom to apply this added discretion over previous strikes. In a direct survey of District

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[15]In the context of the California three-strikes law, the California legislature authorized prosecutors "to dismiss or strike a prior felony allegation in the furtherance of justice" (California Penal Code §667(f)(2)). Moreover, by dropping a strike, the strike is only not counted against the defendant for the current charge, not dropped from his record altogether.

Attorney offices in 25 of the 58 California counties (accounting for over 75 percent of the state's total share of three-strike convictions), Walsh finds that 92 percent of these District Attorney offices had used their discretion to drop a strike in a three-strike case. The most common reason given by the DA offices for why they would choose to strike a previous three-strikes conviction in a three-strike case was that the arrest offense "was trivial in nature" (74%), followed by the prior strikes being "remote in time" (65%), "defendant has no recent criminal history" (65%), and "prior strikes all from singular incident" (65%).[16] "Case likely to end in Acquittal" placed 8th out of the 10 choices with 43.5%. Hence, California prosecutors choose to circumvent the three-strikes law by striking previous strike convictions for defendants who are arrested for lesser crimes and have more remote and less serious criminal histories.

If it is believed that prosecutors use similar criteria as above when choosing to lessen prosecution charges, then Walsh's findings support the notion that the changes in prosecution charge outcomes shown in the previous section are the result of prosecutors attempting to circumvent three-strikes laws due to their own constraints and preferences. Moreover, this ability of California prosecutors to elect to strike a previous strike may also help resolve a further question that arises from Table 5 with respect to this theory. Namely, given the relative strength of the California law, and if prosecutors use their charging discretion to circumvent three-strikes laws, then why don't California prosecutors appear change their prosecution behavior more drastically than prosecutors in other three-strikes states?

The answer to this question may be that this ability to strike a previous strike means that even if California prosecutors attempt to circumvent their three-strikes law more often than prosecutors in other states, California prosecutors are not necessarily more likely to lessen prosecution charges in order to do so, as they have this other official method at their disposal. However, it is certainly possible that prosecutors in other states besides California find less official ways to drop prior strikes in order to mitigate

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[16]DA offices were allowed to select more than one reason for why they would strike a previous conviction.

the impact of three-strikes laws.[17] Therefore, the above discussion simply reveals that lessening prosecution charges may be one of several ways in which prosecutors can use their discretion in an effort to circumvent three-strikes laws. Therefore, the similarity between changes in prosecution practices in California and other three-strikes states is not necessarily surprising.[18]

4.2 Changes in Criminal and Police Behavior

One stated motivation for three-strikes laws has often been to increase the expected sentence for repeat offenders committing serious crimes, in order to deter repeat offenders from committing another serious crime. Given this deterrence goal, the question can be asked whether the increase in the proportion of three-strikes defendants prosecuted for misdemeanors following the imposition of the three-strikes laws reflects changes in the behavior of some repeat criminals and/or changes in police arresting behavior, not prosecutors attempting to circumvent the laws. For example, if the laws deter repeat offenders from committing the more serious three-strikes crimes,[19] then the group arrested for three-strikes crimes should be comprised of a "less severe" group of offenders

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[17]Thank you to an anonymous referee for highlighting this point.

[18]The reasons why California prosecutors would choose to circumvent the three-strikes laws through lessening the prosecution charge rather than dropping a strike are unclear, however such behavior may be related to the fact that the California law affects both three-strike and two-strike defendants. In particular, Table 1(a) shows how the law affects sentencing after two convictions for the covered crimes, and how the law affects sentencing after three convictions for the covered crimes. One reason a California prosecutor may choose to lessen the prosecution charge is to not only avoid a sentencing under the law for the current crime, but also to not provide a further strike that will ensure sentencing under the law if the defendant is convicted for another covered crime in the future. For example, if a California defendant already has one strike against him and is arrested for another crime covered by the law, then to avoid the sentencing law, the prosecutor can either prosecute him for a lesser crime, or drop a strike. If a strike is dropped, then the defendant will not be sentenced under the law for this crime, but will be sentenced under the law if he is convicted of another felony at any time in the future (since he now has two strikes and only one at most can be dropped). However, if the prosecution charge is lowered for the second arrest, then he will still only have one strike against him on any subsequent felony arrests.

[19]Alternatively, say police become less likely to arrest repeat offenders committing the more serious three-strikes crimes.

after the law than before. Then, even if prosecutors did not change their behavior concerning how "serious" a repeat offender defendant must be in order to be prosecuted for a felony, a greater proportion of defendants arrested for three-strikes crimes would be prosecuted for misdemeanors following the imposition of the three-strikes laws. Hence, rather than a changing severity standard necessary to be prosecuted for a three-strikes crime, deterrence effects that result in compositional changes in the group arrested for three-strikes crimes could possibly explain the findings shown in Tables 3 and 4.

However, the deterrence effects of three-strikes laws are more likely work in the opposite direction than posited in the previous paragraph. Three-strikes laws should have a greater deterrence effect on repeat offenders thinking of committing less serious three-strike crimes than more serious ones, since the lesser crimes are presumably only marginally worthwhile without the law.[20] Therefore, if anything, the group of three-strikes defendants is likely to be composed of a more severe group of offenders after the law than before the law. Without changes prosecutor behavior, such a compositional change would lead to fewer three-strikes arrestees being prosecuted for misdemeanors after the law than before the law. A result inconsistent with the results shown in Tables 3 and 4.

More generally, regressing the proportion of defendants in the data set who were arrested for three-strikes crimes in each year in each state on a dummy for whether a three-strike law had yet been passed in that state, a dummy for whether a three-strike law was ever passed in that state, and year dummies, shows little evidence for substantial deterrence. The coefficient on the dummy variable for whether a three-strike law had yet been passed is insignificantly different from zero, indicating the proportion of defendants arrested for three-strikes crimes within a state did not change significantly after the passage of a three-strikes law.

Moreover, Table 6 shows that there are very few significant changes in the character-

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[20]For example, a repeat offender street dealer may become less likely to continue dealing if he knows that if caught he may receive a life sentence, but a drug lord is not likely to reconsider his dealing plans due to a three-strikes law. Similarly, if a repeat offender robber decides to commit a robbery after the passage of the law it should provide a greater reward given the higher sentencing risk.

istics of the group of defendants arrested for three-strikes crimes following the imposition of the three-strikes laws. In fact, relative to contemporaneous changes in the composition of defendants arrested for other felonies in three-strikes states, the passage of three-strikes laws did not significantly alter the composition of the group arrested for three-strikes crimes on any relevant dimension except a slightly greater proportion arrested for drug crimes. However, this increase in the proportion of three-strikes arrestees arrested for drug crimes is not large enough to account for the change in prosecutor behavior. This can be seen in Table 7, which shows the results of an analysis identical to that presented in Table 3, but without those individuals arrested for drug crimes. The results shown in Table 7 are almost identical to those in Table 3. This means the increase in the proportion of three-strikes arrestees arrested for drug crimes following the imposition of the three-strike laws does not drive the earlier findings concerning changes in misdemeanor prosecutions.

While this evidence is clearly not conclusive of no deterrence effects associated with three-strikes laws, a lack of deterrence with respect to these laws is plausible for several reasons. First, the particulars of each of the laws may make it difficult for repeat serious offenders to be able to properly calculate the change in the expected cost to further criminal behavior. Moreover, it may take several years for criminals to adjust their behavior to changes in sentencing policy, and these deterrence effects have not had time to manifest themselves post-law time frame available with this data. Finally, repeat offenders may discount their future so heavily and/or be such poor decision makers, that even substantial changes in sentencing does not effect their behavior.

4.3   Changes in Judge and Jury Behavior

Another argument concerning the results shown in Tables 3 and 4 is that these results may not be due to prosecutors using their discretion to circumvent the laws for some defendants, but rather due to prosecutors adjusting their behavior in response to changes in judge and/or jury behavior. Specifically, juries may react to three-strikes laws by becoming less likely to convict all defendants prosecuted for three-strikes crimes after the passage of the law. Similarly, judges may react to the law by using their control over

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the judicial proceedings to make it more difficult to convict any defendant prosecuted for three-strikes crimes after the passage of the law.

If it is true that changes in judge or jury behavior cause the conviction rates for three-strikes prosecutions to fall following the imposition of three-strikes laws, then prosecutors may decide to prosecute a greater proportion of three-strikes arrestees for misdemeanors not in order to avoid the law, but rather to avoid the now uniformly higher acquittal probability associated with three-strikes prosecution charges. To attempt evaluate whether this explanation is true, I examine whether individuals prosecuted for a three-strikes crimes are more likely to be acquitted in a trial following the imposition of the three-strikes laws.

Table 8 presents the results of several probit analyses estimating the effect of several defendant characteristics on the probability of acquittal, where the sample includes data from all states (not just the three-strike states) but is restricted to only those defendants whose case was resolved through a jury or bench trial. In each specification, the dependant variable equals one if the defendant was acquitted and zero otherwise, with control variables consisting of a dummy variable equalling one if the defendant was from a state that passed a three-strikes law, a dummy variable equalling one if the defendant was arrested for a three-strikes crime, a dummy variable equalling one if the defendant was arrested after the passage of a three-strikes crime in the defendant's home state, and a dummy variable equalling one if the defendant was arrested for a three-strike crime after the passage of a three-strike law in his or her home state. The additional specifications also control for various other defendant characteristics that could influence conviction rates.

The negative and statistically insignificant coefficients corresponding to "Arrested for 3-strike crime (post-law)" in the top row of Table 8 show that defendants prosecuted for three-strikes crimes are no more likely to be acquitted after the imposition of the three-strikes laws than before. Moreover, the latter specifications show that this result is true even after controlling for a variety of other defendant characteristics that may affect conviction rates and may be changing over time due to changes in which defendants prosecutors decide to bring to trial.

While these results are consistent with the hypothesis that judges and juries do not change their behavior with respect to convicting three-strikes defendants after the passage of three-strikes laws, they are by no means conclusive. Specifically, if prosecutors alter their decision of who to bring before a jury in response to juries becoming less likely to convict less severe defendants being prosecuted for three-strikes crimes, then it should be expected that conviction rates for three-strikes defendants would not change drastically following the implementation of the laws.

While this argument undoubtedly makes the lack of an significant coefficients on the "Arrested for 3-strike crime (post-law)" variable insufficient for fully analyzing changes in jury behavior following the implementation of three-strikes laws, these empirical findings are not without value. Specifically, a finding of a significant positive coefficient on this variable would have made it hard to believe that the results shown in Table 3 were not due to prosecutors reacting to juries changing their behavior following the passage of three-strikes laws. Moreover, specifications 3 and 4 in Table 8 show that even after controlling for a variety of defendant characteristics, individuals arrested for three-strikes crimes are no more likely to be acquitted by a jury after the passage of a three-strikes law. Hence, for the changes in charging outcomes to be soley due to prosecutors responding to changes in judge and jury behavior, any changes in the composition of the group of three-strikes defendants that prosecutors decide to bring to trial must be orthogonal to all of the various defendant characteristics accounted for in specifications 4 and 5. This presents an additional assumption that must be made in order to believe that the results documented in Tables 3 and 4 are primarily the result of prosecutors reacting to changes in judge or jury behavior following the imposition of the three-strikes laws.

4.4 Changes in Defense Attorney Behavior

Another possibility is that the finding that three-strikes arrestees become more likely to be prosecuted for misdemeanors after the imposition of the three-strikes laws is not because of any changes in prosecutor behavior, but rather is due to changes in defense attorney behavior. More specifically, prosecutors may have offered misdemeanor plea bargain opportunities at the similar rates before and after the imposition of the three-

strikes laws, but because of the longer sentences associated with conviction for three-strikes crimes following the imposition of the three-strike laws, defense lawyers (and their clients) may simply become more likely to *accept* these misdemeanor plea bargain offers after the imposition of the three-strikes laws. It is then this higher acceptance rate that accounts for the increased likelihood that three-strikes arrestees are prosecuted for misdemeanors following the imposition of the three-strikes laws.

However, the probit results summarized in Table 9 suggest that this story also is not necessarily the case. In each specification, the dependant variable equals one if the case is resolved through a plea bargain and zero otherwise, and the control variables are similar to before, with a dummy variable equalling one if the defendant was from a state that passed a three-strikes law, a dummy variable equalling one if the defendant was arrested for a three-strikes crime, a dummy variable equalling one if the defendant was arrested after the passage of a three-strikes crime in the defendant's home state, and a dummy variable equalling one if the defendant was arrested for a three-strike crime after the passage of a three-strike law in his or her home state, as well as controls for other defendant characteristics in the additional specifications. As can be seen from the first row of coefficients, those defendants arrested for three-strikes crimes did not become any more likely to resolve their cases through plea bargaining after the passage of a three-strikes law.[21]

As before, these results are by no means conclusive evidence that defense lawyers did not become more likely to accept plea bargains after the passage of the three-strikes laws. In particular, defense lawyers may have become more willing to accept plea bargains following the passage of the three-strike laws, but prosecutors may have become less likely to offer them. If this was the case, then no change in the fraction of cases resolved through plea bargaining as observed above would result. However, such a process would not account for increase in the fraction of three-strikes arrestees

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[21]Note that it is also certainly plausible that defense attorney's do not change, or even become less likely to accept plea bargains following the imposition of the sentencing laws, as they may prefer to take their chances at a trial rather than accept the now longer sentence associated with taking a plea for a three-strikes crime.

being prosecuted for misdemeanors following the imposition of the three-strikes laws. Therefore, it seems unlikely that the changes in prosecution charge outcomes observed in Table 3 are primarily due to changes in defense attorney behavior.

5   Evaluating the Effects Three-Strikes Laws

The evidence from the previous sections indicate that the fraction of individuals arrested for three-strike crimes who are prosecuted for lesser misdemeanor crimes increases following the imposition of three-strikes laws, and that this effect is likely the result of prosecutors attempting to circumvent the law for some defendants. This section estimates the degree to which accounting for this change in prosecutor behavior alters the estimated effect of these three-strikes laws on average sentencing.

Arguably, the primary measure of interest concerning the effect of a mandatory minimum sentencing law on sentencing is the increase in the expected sentence following the imposition of the law for all of the individuals arrested for the crimes targeted by the law, or $\Delta E[s|$arrested for 3-strike crime]. The comprehensive case data contained in the *State Court Processing Statistics* allows us to directly calculate measure. Specifically, the pre-law mean sentence for all of those arrested for a three-strike crime is 27.1 months (with standard error of 2.09), the post-law mean sentence for this group is 41.2 (with a standard error of 6.0), giving an estimate for $\Delta E[s|$arrested for 3-strike crime] of 14.1 months (standard error of 5.36).[22] Changes in mean sentences for individuals arrested for other non-three-strikes crimes in three-strikes states stayed roughly constant before and after the passage of the three-strikes laws, going from 12.1 months (standard error

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[22]In measuring sentence length, I took the minimum sentence when available, and used the maximum sentence if the minimum was missing. The estimated size of $\Delta E[s|$arrested for 3-strike crime] becomes even smaller if those observations where minimum sentence was missing are dropped, becoming 29.0-20.0 = 9 months. Hence, the estimate in the text is an upper bound on the effect of these laws. Furthermore, sentences (including life and death sentences) were topcoded to be 80 years in length. Changes in this topcode do not substantially affect the results. For example, if sentences are topcoded at 60 years, the estimate for $\Delta E[s|$arrested for 3-strike crime] becomes 37.5 - 26.1 = 11.4 months. This means, as before, the estimate in the text is an upper bound on the effect of these laws.

of 0.37 months) before the passage of the law to 11.6 months (standard error of 0.62 months) following the passage of the law (a decrease that is not statistically significant at the ten percent level). Hence, the above measure for $\Delta E[s|\text{arrested for 3-strike crime}]$ is essentially unaffected if we subtract out contemporaneous changes in sentencing for other non-three-strike felony arrestees.

Now, instead of having the relatively complete data for each case as contained in the *State Court Processing Statistics* dataset, say that a researcher only had the more commonly available data that could be obtained via court records. Namely, assume a researcher only had data documenting each defendant's criminal history, prosecution charge, whether or not the defendant was convicted, and any sentence imposed upon conviction (i.e. assume the researcher did not have data on each defendant's initial arrest charge). In this case, a "naive" way to estimate the effect of the three-strikes laws on the expected sentence for being arrested for a three-strikes crime would be

$$\Delta E[s|\text{arrested for 3-strike crime}] =$$
$$E[p_c|\text{prosecuted for 3-strike crime, post-law}] * E[s|\text{convicted for 3-strike crime, post-law}]$$
$$-E[p_c|\text{prosecuted for 3-strike crime, pre-law}] * E[s|\text{convicted for 3-strike crime, pre-law}],$$
$$\tag{1}$$

where $E[p_c|\text{prosecuted for 3-strike crime, post-law}]$ is the expected probability of conviction for those *prosecuted* for three-strikes crimes after the passage of the three-strikes laws, $E[s|\text{convicted for 3-strike crime, post-law}]$ is the mean sentence for those convicted for three-strikes crimes after the passage of the law, and $E[p_c|\text{prosecuted for 3-strike crime, pre-law}]$ and $E[s|\text{convicted for 3-strike crime, pre-law}]$ are the analogous statistics before the passage of the three-strikes laws.

The above estimate is "naive" in the sense that it fails to take into account the type of prosecutorial discretion discussed throughout this paper. Specifically, equation (1) would be correct only if prosecutors did not have the discretion to prosecute defendants for lesser charges than their initial arrest charges. As shown previously, not only is it clear that prosecutors do have this discretion, but they appear to become significantly more likely to employ such discretion for three-strikes arrestees following the imposition

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of the three-strikes laws.

Given that those individuals who are prosecuted for lesser charges than their initial arrest charge generally receive a shorter sentence upon conviction than those convicted for their initial arrest charge, the naive estimate discussed above will likely lead to substantially overstating the effect of three-strikes laws on average sentencing. Indeed this appears to be the case. Estimating equation (1) using the *State Court Processing Statistics Data* we get 0.726*65.0 - 0.722*40.2 = 18.2 months.[23] Therefore, failing to take into account the role of prosecutorial discretion with respect to the three-strikes sentencing laws passed during the first half of the 1990s will lead to overstating the effect of these laws on the expected sentence for being arrested for a three-strike crime by over four months or almost thirty percent.[24]

6   Summary and Conclusion

This paper emphasizes the importance of accounting prosecutorial discretion when analyzing the effects of mandatory minimum sentencing laws. In particular, prosecutors generally have the discretion to prosecute a defendant for a lesser charge than the initial arrest charge, and this use of such discretion can have dramatic effects on sentencing with respect to mandatory minimum sentencing laws, as conviction for a crime targeted

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[23]Standard errors for these estimates are 0.023 for the post-law conviction probability, 9.24 months for the post-law mean sentence, 0.013 for the pre-law conviction probability, and 3.05 for the pre-law mean sentence. Again, if sentences are topcoded at 60 years instead of 80 years, this estimate is essentially unchanged, with the pre-law mean sentence being 38.7 (instead of 40.2) and the post-law mean sentence being 59.0 (instead of 65.0).

[24]Once again, accounting for contemporaneous changes in the sentences given to defendants who were prosecuted and convicted for non-three-strike felonies in three-strike states will not meaningfully affect the results. Specifically, the mean sentence for this group went from 19.8 months (with a standard error of 0.61) before the three-strikes laws were passed, to 18.4 months (with a standard error of 0.99) after the laws were passed. Furthermore, throwing out those observations for which the minimum prison sentence was missing, further increases the difference in mean sentence for those convicted for three-strikes crimes before and after the law, going from 37.8 months before the law, to 76.5 months after the law. Hence, excluding these observations will cause the "naive" estimate to even further overstate the effect of the three-strike laws on sentencing than the estimate discussed in the text.

by the sentencing law can differ substantially from a conviction for a lesser but related crime not covered by the law.

In analyzing the use of this type of prosecutorial discretion with respect to several three-strikes type sentencing laws implemented throughout the 1990s, I find that prosecutors become almost twice as likely to lower a felony arrest charge to a misdemeanor for the purposes of prosecution, when conviction on the initial arrest charge would have lead to sentencing under a three-strikes law. Moreover, the available evidence suggests that prosecutors generally initiate such discretion due to their own preferences and resource constraints, not as a reaction to changes in behavior by criminals, judges, juries, or defense lawyers. However, such behavioral changes by these other actors in the judicial system cannot be ruled out and a more explicit examination of these actors provides an important avenue for further research.

Taking into account this use of prosecutorial discretion was also shown to have very important implications with respect to estimating the average effect these three-strikes laws have on sentencing. In particular, while I find that the three-strikes laws examined here appear to significantly increase the average sentence for being arrested for a three-strike crime, failing to take into account prosecutorial discretion over prosecution charges will lead to overstating this increase by almost thirty percent. Therefore, this paper reveals not only that prosecutors do alter their discretionary behavior in response to three-strikes laws, but that this increased use of discretion has substantive and meaningful implications with respect to analyzing the overall effects of these laws on sentencing.

In generalizing these findings to other mandatory minimum sentencing laws, it is worth noting that three-strikes laws target individuals arrested for serious crimes with extensive criminal histories. This means that the group of defendants arrested for three-strikes crimes consists of a very serious group of offenders. Since prosecutors may be less inclined to let these serious offenders back out on the street, the use of prosecutor discretion to circumvent three-strikes laws may be much more rare than the use of prosecutor discretion to circumvent mandatory minimum sentences targeting less serious crimes, such as drug or firearm possession. Hence, the effects of prosecutorial discretion

with respect to three-strikes sentencing laws may provide a lower bound on the degree to which prosecutor discretion is used to mitigate the effects of a mandatory minimum sentencing law.

The findings of this paper suggest that, besides some of the ethical concerns that have been raised concerning certain mandatory minimum sentencing laws, these laws may also be associated with pushing judicial discretion to less visible parts of the judicial system. Moreover, where advocates of mandatory minimum sentencing laws argue that such laws can decrease sentencing variation across criminals who commit similar crimes (and have similar criminal histories) and eradicate overly lenient sentencing, such arguments do not appear to be completely true, as prosecutorial discretion over the prosecution charge can possibly lead to even more variation in sentencing, and certainly will lead to even shorter sentences for some individuals than would have occurred without such laws. Therefore, if society desires to systematically increase the sentences for criminals who commit certain crimes, policies that allow for judges to retain some flexibility, such as guideline ranges and allowing deviations from these guidelines if the reasons are specified, may be more effective and transparent means of reaching this objective than mandatory minimums.

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Table 1(a): Three Strikes Laws Passed Between 1990 and 1996

State	Features of New Strikes Legislation	Year of Implementation	Law	Features of Preexisting Sentencing Laws.
CA	Mandatory doubling of sentence for any felony if one prior serious or violent felony conviction; mandatory life without parole for 25 years for any thrid felony conviction, if two prior serious or violent felony convictions.	1994	CA Penal Code § 667	Life with no parole eligibility before 20 years for third violent felony conviction where separate prison terms were served for the first two; life with no parole for fourth violent felony conviction.
FL	Added new category of "violent career criminal" to existing habitual offender statute; for third conviction for specified violent offense, life if first-degree felony, 30-40 years if second-degree felony, 10-15 years if third-degree felony.	1995	FL Stat. Ann. § 775.084	Categories of habitual felony offender and habitual violent offender ; range of enhanced sentences.
GA	Mandatory life without parole for second specified violent felony conviction.	1995	GA Code Ann. § 17-10-7	On fourth felony conviction offender must serve maximum time imposed and not be eligible for parole until maximum sentence served.
IN	Mandatory life without parole for second specified violent felony conviction.	1994	IN Code § 35-50-2-8.5	Habitual offender law requiring enhanced sentencing on third felony conviction.
MD	Life without parole for fourth violent felony conviction for which separate prison terms were served for the first three.	1994	MD Code Ann. art. 27, § 643B	Same law, except that carjacking and armed carjacking were not on the list of offenses receiving this sentence.
NJ	Mandatory life without parole for third conviction for certain violent felonies.	1995	NJ Stat. Ann. § 2C:43-7.1	Rarely invoked "persistent offender" provision allowing sentence of one degree higher than the conviction offense on third conviction for 1st, 2nd or 3rd degree felonies.
PA	Mandatory minimum enhanced sentence of 10 years for second conviction for crime of violence and 25 years for third such conviction.	1995	PA Cons. Stat. Ann. § 42-9714	Mandatory minimum enhanced sentence of 5 years for second or subsequent conviction for certain specified crimes of violence.
TN	Mandatory life without parole for second conviction for designated violent felonies; same for third conviction for other violent felonies	1994	TN Code Ann. § 43-35-120	Mandatory life without parole for third violent felony conviction.

Table 1(a): (Continued)

State	Features of New Strikes Legislation	Year of Implementation	Law	Features of Preexisting Sentencing Laws.
UT	2nd and 3rd degree felony offenders sentenced as 1st degree felons, and 1st degree felons not eligible for probation, if they have two prior convictions for any felonies and a present conviction for a violent felony.	1995	UT Code Ann. § 76-3-203.5	2nd and 3rd degree felonies receive enhanced sentence of 5 years to life if offender has two prior convictions at least as severe as second degree felonies.
VA	Mandatory life without parole on third conviction for specified violent felonies or drug distribution charges.	1994	VA Code Ann. § 19.2-297.1	No parole eligibility if convicted of three separate violent felonies.
WA	Mandatory life without parole on third conviction for specified violent felonies.	1993	WA Rev. Code Ann. § 9.94A.392	Number of prior convictions factored into offender score on State's sentencing guidelines.
WI	Mandatory life without parole on third conviction for specified serious offenses.	1994	WI Stat Ann. § 939.62	For repeat felony offenders, up to 10 years can be added to sentences of 10 years or more; 6 years can be added to sentences of 1-10 years.

*Information in Table taken from Exhibit 10 in Clark, Austin, and Henry (1997) and footnote 27 from
 Marvell and Moody (2001)

Table 1(b): Descriptions of State Three-strikes Laws and the Laws as Captured by Data

State	"Three-Strikes Crimes" ("Strike Zone")	Strikes Needed to be "Out"	"Three-Strikes Crimes" as Defined in Analysis
AL	no 'three-strikes' law passed in 90's	-	-
AZ	no 'three-strikes' law passed in 90's	-	-
CA	Any Felony if one prior conviction was for Murder, Rape, Lewd Act on Child, Continual Sex Abuse of Child, Penetration by Foreign Object, Sexual Penetration by Force, Sodomy by Force, Oral Copulation by Force, Robbery, Attempted Murder Assualt with Deadly Weapon on Peace Officer, Assault w/ Deadly Weaopon by an Inmate, Assault w/ Intent to Rape or Rob, Felony Resulting in Bodily Harm, Arson Causing Bodily Injury, Carjacking, Exploding Device w/ Intent to Injure or Murder, Kidnapping, Mayhem, Arson, Burglary of Occupied Dwelling, Grand Theft w/ Firearm, Drug Sales to Minors, Any Felony w/ Deadly Weapon.	Two	Arrest (Conviction) for any felony if one or more previous violent felony convictions.
DC	no 'three-strikes' law passed in 90's	-	-
FL	Any forcible felony, aggravated stalking, aggravated child abuse, lewd or indecent conduct, escape.	Three	Arrest (Conviction) for Murder, rape, robbery, assault, or other violent crime, if 2 or more prior violent felony convictions.
HI	no 'three-strikes' law passed in 90's	-	-
GA	Murder, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, aggravated sexual battery.	Two	Arrest (Conviction) for Murder, rape, robbery, or other violent (not including assault) , if one or more prior violent convictions.
	Any Felony	Four	Any felony arrest (conviction) if 3 or more previous felony convictions.
IN	Murder, rape, sexual battery with weapon, child molestation, arson, robbery, burglary with weapon or resulting in serious injury, drug dealing.	Three	Arrest (Conviction) for Murder, rape, robbery, other violent crime, (not including assault), burglary with possession of weapons, or drug trafficking, if two or more more prior violent convictions, or 2 or more prior drug convictions, or one or more violent and one or more prior drug convictions.
IL	no 'three-strikes' law passed in 90's	-	-
KY	no 'three-strikes' law passed in 90's	-	-
MD	Murder, rape, robbery, 1st or 2nd degree sexual offense, arson, burglary, kidnaping, carjacking, manslaughter, use of firearm in felony, assault with intent (to murder, rape, rob, or commit sexual offense).	Four, with prison terms served for first three strikes.	Arrest (Conviction) for Murder, rape, robbery, other violent crime (not including assault), burglary, or use of weapon in commission of a felony, if 3 or more prior violent felony convictions and 3 or more prior prison terms.

Table 1(b): (Continued)

State	Eligible Crimes ("Strike Zone")	Strikes Needed to be "Out"	"Eligible" Group as Defined in Analysis
MA	no 'three-strikes' law passed in 90's	-	-
MI	no 'three-strikes' law passed in 90's	-	-
MO	no 'three-strikes' law passed in 90's	-	-
NJ	Murder, robbery, carjacking	Three	Arrest (Conviction) for Murder, robbery, if two or more prior violent convictions.
NY	no 'three-strikes' law passed in 90's	-	-
OH	no 'three-strikes' law passed in 90's	-	-
PA	Murder, voluntary manslaughter, rape, involuntary deviate sexual intercourse, arson, kidnapping, robbery, aggravated assault	Two	Arrest (Conviction) for Murder, rape, robbery, assault, or other violent, if one or more prior violent convictions.
TN	Murder, especially aggravated kidnapping, especially aggravated robbery, aggravated rape, rape of a child, aggravated arson.	Two, if prison term served for first strike.	Arrest (Conviction) for Murder, rape, robbery, if one or more prior violent convictions and has spent time in prison before.
	Same as above, plus rape, aggravated sexual battery, aggravated robbery, especially aggravated burglary, especially aggravated child abuse, aggravated sexual exploitation of child.	Three, if separate terms served for first two strikes.	Arrest (Conviction) for Murder, rape, robbery, or other violent, if two or more prior violent convictions and has had 2 or more stays in prison.
TX	no 'three-strikes' law passed in 90's	-	-
UT	Any 1st or 2nd degree felony.	Three	Arrest (Conviction) for Murder, rape, robbery, assault, other violent, burglary, drug trafficking, if two or more prior felony convictions.
VA	Murder, kidnapping, robbery, carjacking, sexual assault, conspiracy to commit any of above.	Three	Arrest (Conviction) for Murder, rape, robbery, or other violent (not including assault), if two or more prior violent convictions.
WA	Murder 1, Murder 2, Rape 1 or Rape 2 Controlled Subststance Homicide, Homicide by Abuse, Manslaughter 1 or 2, Child Molestation or Exploitation, Robbery 1 or 2, Attempted Murder, Assault 1 or 2, Explosion w/ threat to Humans, Extortion, Kidnapping 1 or 2, Vehicular Assault, Arson 1, Attempted Arson 1, Burglary, Felony w/ Deadly Weapon, Possession of Incendiary or Prohibited Explosive Device, Treason, Promoting Prostitution, Leading Organized Crime.	Three	Arrest (Conviction) for Murder, rape, robbery, assault, other violent crime, or burglary, if 2 or more prior violent convictions.
WI	Murder, manslaughter, vehicular homicide, aggravated battery, abuse of child, robbery, sexual assault, taking hostages, kidnapping, arson, burglary.	Three	Arrest (Conviction) for Murder, rape, robbery, other violent, or burglary, if two or more prior violent convictions.

*Targeted crimes in each state taken from Exhibit 9 in Clark, Austin, and Henry (1997).

Table 2: Defendant Characteristics

Characteristic	Arrested for Three-Strike Crime	Arrested for "Other" Felony
arrested for violent crime	0.48	0.24
(std. error)	(0.012)	(0.003)
number of obs.	1,726	21,729
arrested for prop. crime	0.28	0.34
(std. error)	(0.010)	(0.003)
number of obs.	1,726	21,729
arrested for drug crime	0.21	0.34
(std. error)	(0.010)	(0.003)
number of obs.	1,726	21,729
arrested for oth. felony	0.09	0.08
(std. error)	(0.007)	(0.002)
number of obs.	1,726	21,729
age	31.4	29.1
(std. error)	(0.190)	(0.065)
number of obs.	1,726	21,672
percentage black	0.54	0.41
(std. error)	(0.014)	(0.003)
number of obs.	1,280	15,644
percentage Hispanic	0.30	0.28
(std. error)	(0.013)	(0.004)
number of obs.	1,280	15,644
percentage female	0.07	0.16
(std. error)	(0.006)	(0.003)
number of obs.	1,721	21,694
# of prior convictions	7.22	2.80
(std. error)	(0.150)	(0.033)
number of obs.	1,709	21,591
prior felony convictions	3.54	0.97
(std. error)	(0.730)	(0.015)
number of obs.	1,753	21,670
mean sentence (mths)	30.3	12.0
(std. error)	(2.11)	(0.32)
number of obs.	1,658	20,336
percentage convicted	0.73	0.73
(std. error)	(0.011)	(0.003)
number of obs.	1,726	21,729
percentage prosecuted for misdemeanor	0.06	0.13
(std. error)	(0.006)	(0.002)
number of obs.	1,726)	21,729

Sample includes all defendants with non-missing or pending adjudication outcomes, and valid data regarding the level of the adjudicated charge, any conviction offense, and criminal history (if from a three-strike state). All statistics are weighted.

Table 3: Proportions of Felony Defendants Prosecuted for Misdemeanors

Group	Probability of being Prosecuted for a Misdemeanor		
	pre-law	post-law	difference
Arrested for 3-strike crime	0.055	0.093	0.038**
(Std. Error)	*(0.007)*	*(0.014)*	*(0.015)*
Number of Obs.	1,289	437	
Arrested for "other" felony	0.129	0.122	-0.007
(Std. Error)	*(0.003)*	*(0.004)*	*(0.005)*
Number of Obs.	15,281	6,448	
	Difference-in-Difference		0.045**
			(0.016)

Sample includes all defendants in three-strike states with non-missing or pending adjudication outcomes, and valid data regarding the level of the adjudicated charge, any conviction offense, and criminal history (if from a three-strike state). Two asterisks mean coefficient is significant at the one percent level. All statistics are weighted.

Table 4: Probit Estimates of Probability of Being Prosecuted for a Misdemeanor

Control Variable	(1)	(2)	(3)	(4)	(5)
Arrested for 3-strike crime (post-law)	0.09**	0.09**	0.08**	0.08**	0.08**
	(0.033)	(0.033)	(0.031)	(0.030)	(0.022)
Arrested for 3-strike crime	-0.09**	-0.09**	-0.06**	-0.05**	-0.05**
	(0.009)	(0.009)	(0.009)	(0.011)	(0.007)
Arrested after 3-strike law passed	0.00	0.00	0.01	0.01	0.01
	(0.008)	(0.008)	(0.008)	(0.008)	(0.015)
From 3-strike state	-0.09**	-0.09**	0.07**	0.07**	0.07*
	(0.004)	(0.004)	(0.025)	(0.025)	(0.027)
female	-	0.01**	0.02**	0.01**	0.01**
		(0.005)	(0.005)	(0.005)	(0.003)
black	-	0.01**	-0.02**	-0.02**	-0.01
		(0.005)	(0.005)	(0.005)	(0.006)
Hispanic	-	0.01*	-0.03**	-0.03**	-0.02*
		(0.005)	(0.005)	(0.005)	(0.009)
age (in years)	-	0.00*	0.00**	0.00**	0.00**
		(0.000)	(0.000)	(0.000)	(0.000)
on probation at time of arrest	-	-	-	-0.03**	-0.03**
				(0.005)	(0.006)
on parole at time of arrest	-	-	-	-0.03**	-0.03**
				(0.007)	(0.010)
in custody at time of arrest	-	-	-	-0.04**	-0.05**
				(0.014)	(0.012)
fugitive at time of arrest	-	-	-	0.01	0.02
				(0.10)	(0.18)
No. of previous felony convictions	-	-	-	0.00*	-0.01*
				(0.000)	(0.003)
No. of previous misdemeanor conv.	-	-	-	0.00	0.00
				(0.000)	(0.000)
No. of previous violent convictions	-	-	-	0.00	0.00
				(0.003)	(0.003)
No. of previous drug convictions	-	-	-	-0.01**	-0.00
				(0.003)	(0.004)
pre-trial arrest	-	-	-	-0.01	0.00
				(0.006)	(0.008)
year dummies	yes	yes	yes	yes	yes
state dummies	no	no	yes	yes	yes
arrest charge dummies	no	no	no	yes	yes
s.e. adjusted for clustering by state in year	no	no	no	no	yes
log likelihood	-20,521.30	-20,478.10	-17,703.80	-17,579.30	-17,372.90
observed probability	0.17				
(number of obs.)	45,997				

Sample includes all defendants with non-missing or pending adjudication outcomes, and valid data regarding the level of the adjudicated charge, any conviction offense, and criminal history (if from a three-strike state). One (two) asterisks mean coefficient is significant at the ten (one) percent level. Dummies for missing observations for each variable also included in each specification. All coefficients and standard errors have been normalized to represent the marginal change in probability (see paper for details). All statistics are weighted.

Table 5: Proportions of Felony Defendants Being Prosecuted for Misdemeanors (For California only and Not-including California)

Group	Probability of being Prosecuted for a Misdemeanor		
	pre-law	post-law	difference
California Only			
Arrested for 3-strike crime	0.050	0.094	0.044**
(Std. Error)	*(0.008)*	*(0.017)*	*(0.019)*
Number of Obs.	948	286	
Arrested for "other" felony	0.095	0.106	0.011
(Std. Error)	*(0.004)*	*(0.006)*	*(0.007)*
Number of Obs.	6,468	2,519	
	Difference-in-Difference (CA only)		0.033*
			(0.020)
Not-including California			
Arrested for 3-strike crime	0.069	0.092	0.023
(Std. Error)	*(0.014)*	*(0.024)*	*(0.028)*
Number of Obs.	341	151	
Arrested for "other" felony	0.154	0.132	-0.022**
(Std. Error)	*(0.004)*	*(0.006)*	*(0.007)*
Number of Obs.	8,813	3,929	
	Difference-in-Difference (excluding CA)		0.045*
			(0.027)

Sample includes all defendants in three-strike states with non-missing or pending adjudication outcomes, and valid data regarding the level of the adjudicated charge, any conviction offense, and criminal history (if from a three-strike state). One (two) asterisks mean coefficient is significant at the ten (one) percent level. All statistics are weighted.

Table 6: Changes in Defendant Characteristics in Three-Strike States

Characteristic	Arrested for 3-strike Crime			Arrested for "other" felony			diff-in-diff
	pre-law	post-law	difference	pre-law	post-law	difference	
arrested for violent crime	0.48	0.48	0.00	0.24	0.25	0.01**	**0.01**
(std. error)	*(0.014)*	*(0.024)*	*0.028*	*(0.003)*	*(0.005)*	*0.070*	***(0.029)***
number of obs.	1,289	437		15,281	6,448		
arrested for prop. crime	0.24	0.18	-0.06**	0.35	0.33	-0.02**	**-0.03**
(std. error)	*(0.012)*	*(0.019)*	*0.022*	*(0.004)*	*(0.006)*	*0.007*	***(0.023)***
number of obs.	1,289	437		15,281	6,448		
arrested for drug crime	0.19	0.27	0.08**	0.33	0.36	0.03**	**0.05***
(std. error)	*(0.011)*	*(0.022)*	*0.024*	*(0.004)*	*(0.006)*	*0.007*	***(0.025)***
number of obs.	1,289	437		15,281	6,448		
arrested for oth. felony	0.09	0.07	-0.02	0.08	0.07	-0.01**	**-0.00**
(std. error)	*(0.008)*	*(0.012)*	*0.014*	*(0.002)*	*(0.003)*	*0.004*	***0.015***
number of obs.	1,289	437		15,281	6,448		
age	31.0	32.7	1.7**	28.8	30	1.1**	**0.6**
(std. error)	*(0.215)*	*(0.392)*	*0.447*	*(0.075)*	*(0.122)*	*0.143*	***0.469***
number of obs.	1,289	437		15,240	6,432		
black	0.52	0.59	0.7**	0.39	0.47	0.08**	**-0.01**
(std. error)	*(0.017)*	*(0.026)*	*0.031*	*(0.005)*	*(0.007)*	*0.009*	***0.032***
number of obs.	916	364		10,687	4,957		
Hispanic	0.33	0.21	-0.12**	0.30	0.23	-0.06**	**-0.06**
(std. error)	*(0.016)*	*(0.026)*	*0.031*	*(0.005)*	*(0.006)*	*0.008*	***0.032***
number of obs.	916	364		10,687	4,957		
female	0.07	0.07	0.00	0.16	0.17	0.01**	**-0.01**
(std. error)	*(0.007)*	*(0.012)*	*0.014*	*(0.003)*	*(0.005)*	*0.006*	***0.015***
number of obs.	1,284	437		15,253	6,441		
prior convictions	7.05	7.82	0.77*	2.70	3.08	0.4**	**0.39**
(std. error)	*(0.172)*	*(0.299)*	*0.345*	*(0.039)*	*(0.06)*	*0.072*	***0.352***
number of obs.	1,276	433		15,226	6,365		
prior felony convictions	3.52	3.61	0.10	0.92	1.09	0.17**	**-0.08**
(std. error)	*(0.085)*	*(0.14)*	*0.164*	*0.018*	*0.029*	*0.034*	***0.167***
number of obs.	1,287	436		15,259	6,411		

Sample includes all defendants in three-strike states with non-missing or pending adjudication outcomes, and valid data regarding the level of the adjudicated charge, any conviction offense, and criminal history (if from a three-strike state). One (two) asterisk(s) mean coefficient is significant at the ten (one) percent level. All statistics are weighted.

Table 7: Proportions of Felony Defendants Prosecuted for Misdemeanors (Drug Crime Arrestees Not Included)

Group	Probability of being Prosecuted for a Misdemeanor		
	pre-law	post-law	difference
Arrested for 3-strike crime	0.056	0.111	0.055**
(Std. Error)	(0.008)	(0.018)	(0.019)
Number of Obs.	1,030	323	
Arrested for "other" felony	0.150	0.137	-0.013*
(Std. Error)	(0.004)	(0.005)	(0.006)
Number of Obs.	10,141	4,099	
	Difference-in-Difference		0.068**
			(0.020)

Sample includes all defendants in three-strike states with non-missing or pending adjudication outcomes, and valid data regarding the level of the adjudicated charge, any conviction offense, and criminal history (if from a three-strike state). One (two) asterisk(s) mean coefficient is significant at the ten (one) percent level. All statistics are weighted.

Table 8: Probit Estimates of Probability of Being Acquitted Given Prosecution for Felony (Trials only)

Control Variable	(1)	(2)	(3)	(4)
Arrested for 3-strike crime (post-law)	-0.04	-0.02	-0.03	-0.03
	(0.036)	(0.036)	(0.035)	(0.054)
Arrested for 3-strike crime	-0.05**	-0.04**	-0.00	-0.00
	(0.020)	(0.018)	(0.016)	(0.022)
Arrested after 3-strike law passed	-0.12**	-0.05**	-0.06**	-0.06
	(0.019)	(0.018)	(0.018)	(0.051)
From 3-strike state	-0.01	0.01	0.02	0.02
	(0.007)	(0.073)	(0.071)	(0.047)
female	-	0.06**	0.04**	0.04**
		(0.006)	(0.007)	(0.006)
black	-	-0.00	0.02*	0.02*
		(0.008)	(0.007)	(0.013)
Hispanic	-	-0.00	0.01	0.01
		(0.009)	(0.009)	(0.013)
age (in years)	-	-0.00	0.00	0.00
		(0.000)	(0.000)	(0.000)
in custody at adjudication	-	-	-0.14**	-0.14**
			(0.007)	(0.021)
on probation at time of arrest	-	-	-0.00	-0.00
			(0.008)	(0.014)
on parole at time of arrest	-	-	-0.02	-0.02
			(0.013)	(0.019)
in custody at time of arrest	-	-	0.03	0.03
			(0.017)	(0.021)
fugitive at time of arrest	-	-	0.06**	0.06**
			(0.013)	(0.016)
No. of previous felony convictions	-	-	-0.00	-0.00
			(0.002)	(0.002)
No. of previous misdemeanor conv.	-	-	-0.00	-0.00
			(0.001)	(0.001)
No. of previous violent convictions	-	-	-0.00	-0.00
			(0.003)	(0.004)
No. of previous drug convictions	-	-	-0.00	-0.00
			(0.003)	(0.003)
pre-trial arrest	-	-	-0.01	-0.01
			(0.011)	(0.011)
year dummies	yes	yes	yes	yes
state dummies	no	yes	yes	yes
arrest crime dummies	no	no	yes	yes
s.e. adjusted for clustering by state in year	no	no	no	yes
log likelihood	-6295.8	-5712.1	-5415.1	-5415.1
observed probability	0.85			
(number of obs.)	15,218			

Sample includes all defendants with non-missing or pending adjudication outcomes, and valid data regarding the level of the adjudicated charge, any conviction offense, and criminal history (if from a three-strike state). One (two) asterisk(s) mean coefficient is significant at the ten (one) percent level. Dummies for missing observations for each variable also included in each specification. All coefficients and standard errors have been normalized to represent the marginal change in probability (see paper). All statistics weighted.

Table 9: Probit Estimates of Probability of Case Resolution through Plea Bargain

Control Variable	(1)	(2)	(3)	(4)	(5)
Arrested for 3-strike crime (post-law)	-0.02	-0.02	0.01	0.01	0.01
	(0.029)	(0.029)	(0.030)	(0.030)	(0.043)
Arrested for 3-strike crime	-0.02	-0.01	-0.09**	-0.04	-0.04
	(0.015)	(0.015)	(0.016)	(0.017)	(0.031)
Arrested after 3-strike law passed	-0.07**	-0.07**	0.00	0.01	0.01
	(0.010)	(0.010)	(0.011)	(0.011)	(0.040)
From 3-strike state	0.11**	0.10**	-0.18**	0.20**	-0.20**
	(0.005)	(0.005)	(0.035)	(0.038)	(0.037)
female	-	-0.00	0.01	0.00	0.00
		(0.006)	(0.007)	(0.007)	(0.008)
black	-	0.06**	-0.05**	-0.05**	-0.05**
		(0.006)	(0.006)	(0.007)	(0.012)
Hispanic	-	0.03**	-0.01*	-0.02*	-0.02
		(0.007)	(0.007)	(0.008)	(0.020)
age (in years)	-	0.00	-0.00*	-0.00**	-0.00*
		(0.000)	(0.000)	(0.000)	(0.000)
in custody at adjudication	-	-	0.14**	0.13**	0.13**
			(0.005)	(0.005)	(0.014)
on probation at time of arrest	-	-	-	0.05**	0.05**
				(0.007)	(0.014)
on parole at time of arrest	-	-	-	0.03**	0.03
				(0.011)	(0.031)
in custody at time of arrest	-	-	-	-0.05*	-0.05
				(0.025)	(0.035)
fugitive at time of arrest	-	-	-	0.03*	0.03
				(0.015)	(0.026)
No. of previous felony convictions	-	-	-	0.00**	0.00*
				(0.002)	(0.002)
No. of previous misdemeanor conv.	-	-	-	0.00**	0.00**
				(0.001)	(0.001)
No. of previous violent convictions	-	-	-	-0.02**	-0.02**
				(0.003)	(0.006)
No. of previous drug convictions	-	-	-	-0.01*	-0.01*
				(0.003)	(0.003)
pre-trial arrest	-	-	-	0.07**	0.07**
				(0.009)	(0.013)
year dummies	yes	yes	yes	yes	yes
state dummes	no	no	yes	yes	yes
arrest crime dummies	no	no	no	yes	yes
s.e. adjusted for clustering by state in year	no	no	no	no	yes
Log Likelihood	-29,871.70	-29,662.90	-27,681.20	-27,121.00	-27,121.00
observed probaility	0.63				
(number of obs.)	45,997				

Sample includes all defendants with non-missing or pending adjudication outcomes, and valid data regarding the level of the adjudicated charge, any conviction offense, and criminal history (if from a three-strike state). One (two) asterisk(s) mean coefficient is significant at the ten (one) percent level. Dummies for missing observations for each variable also included in each specification. All coefficients and standard errors have been normalized to represent the marginal change in probability (see paper). Statistics weighted.