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CLAREMONT MCKENNA COLLEGE

# THREE STRIKES ANALYSIS: SECOND AND THIRD STRIKER (OFFENSE CATEGORY)

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## INTRODUCTION

In 1994, California voters enacted the “Three Strikes and You’re Out” initiative in response to the murder of Kimber Reynolds. Spearheaded by Reynolds’ father, the initiative focused on imposing life sentences for crimes if the defendant had two prior convictions that fell under California Penal Code definitions of “serious” or “violent.” Although this initiative passed with an overwhelming majority, growing controversy over the disproportionate impact on defendants who had committed minor crimes led to several reforms over the years. Prior to Three Strikes, the California prison system had more than doubled its population in just fourteen years and was the target of a prisoner class-action suit that alleged that the overcrowded conditions constituted cruel and unusual punishment. Concern over prison overcrowding, along with concern that some sentences seemed to be overly punitive, led voters to pass Proposition 36 in 2012. This initiative eliminated significantly narrowed the qualifying felonies that could trigger a three-strikes sentence to those that are non-serious or non-violent.

This research project builds a database, using reports published by the California Department of Corrections and Rehabilitation, to examine the type of sender typically sentenced under the Three Strikes law. In our analysis, we look at the distribution of the second and third striker population across different crime categories from 2001 to 2015. Examining the crime categories (Crimes Against Persons, Property Crimes, Drug Crimes, and Other Crimes) allows us to analyze how Three Strikes treatment differs for serious crimes and less serious crimes. We expect to find that there are more second strikers than three strikers incarcerated for less serious offenses, since punishment for a second strike is shorter and less severe.

## METHODOLOGY

First, we organized the data for each offense, as categorized by the California Department of Corrections and Rehabilitation (CDCR) in four offense categories: crimes against persons, property crimes, drug crimes, and other crimes. According to the CDCR classifications, the offense categories are comprised of the following crimes:

- crimes against persons: murder first, murder second, manslaughter, vehicular manslaughter, robbery, assault deadly weapon, other assault/battery, rape, lewd act with child, oral copulation, sodomy, penetration with object, other sex offenses, kidnapping
- property crimes: burglary first, burglary second, grand theft, petty theft with prior, receiving stolen property, vehicle theft, forgery/fraud, other property offenses
- drug crimes: hashish possession, marijuana possession for sale, marijuana sales, other marijuana offenses
- other crimes: escape, driving under the influence, arson, possession of weapon, other offenses

Within each of these categories, we compiled data from the CDCR quarterly reports on the number of second-strike inmates and third strike inmates from 2001 to 2015.

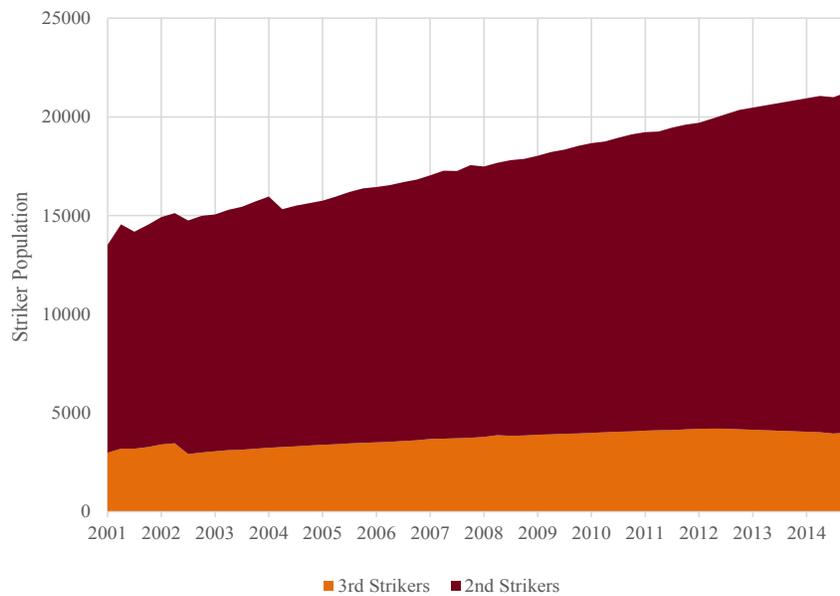
**ANALYSIS**

Following four graphs show the ratios of second and third striker population within each crime category from 2001 to 2015. These data points are from September of each year.

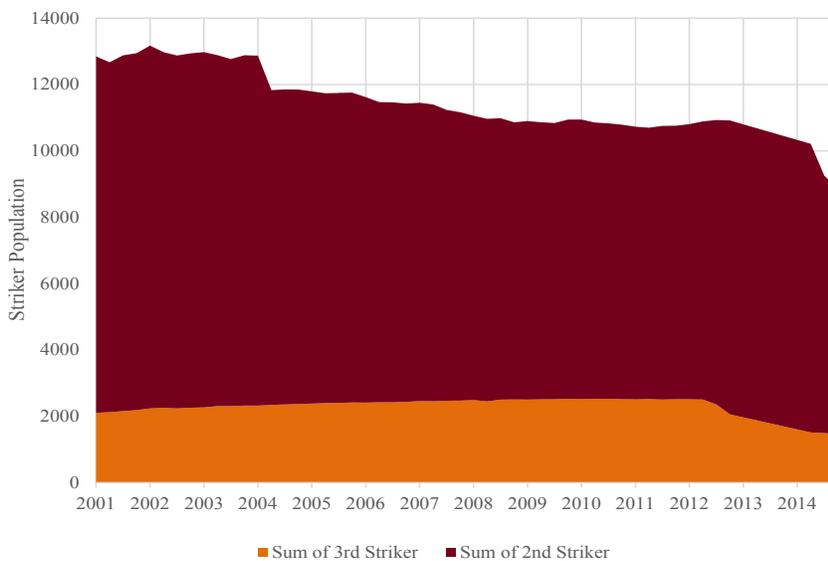
As seen through the graph, the number of strike offenders in the California state prison population

trend steadily upward. Sentences for second strikers are doubled, so while they are shorter than the sentences for third strikers, they still represent, in most cases, a significant increase in the time spent in prison. That means while there may be more variation in the number of two-strike offenders incarcerated over a period of time when compared to three-strike offenders, the general trend will be for the cumulative total to increase over time.

**FIGURE 1: CRIMES AGAINST PERSONS**



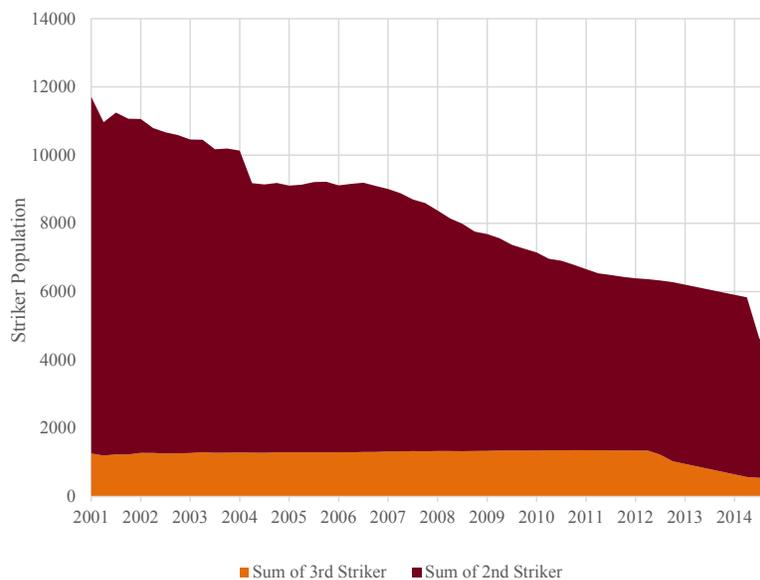
**FIGURE 2: PROPERTY CRIMES**



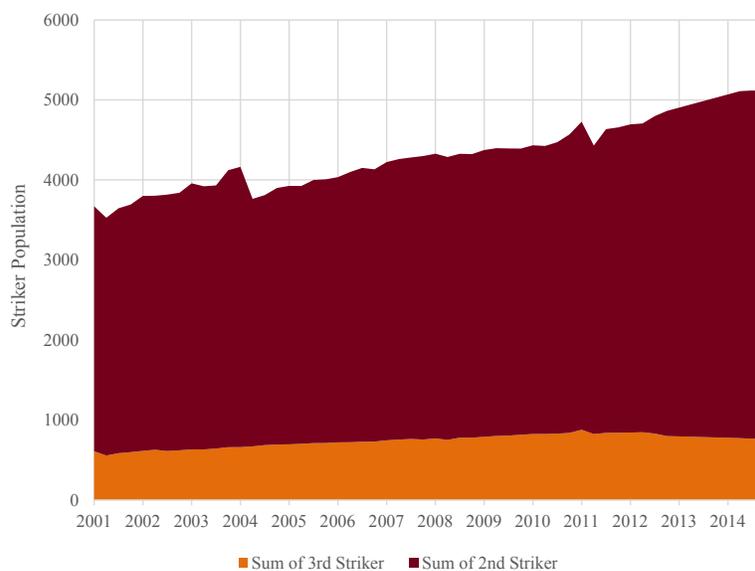
Far more two-strike offenders received enhanced sentences for property offenses than did three-strike offenders. Although the Three Strikes law required all eligible offenders to receive the mandatory minimum sentence prescribed by law, prosecutors and judges did retain some discretion to shield offenders from the full effect of the law if it was “in the furtherance of justice.” The comparatively low number of three-strike offenders who received the enhanced sentence for property crimes could be explained by the use of this discretion.

As noted above, the 2012 ballot initiative, Proposition 36, changed the eligibility requirements for the third strike so that only serious or violent felonies qualify for the enhanced sentence. It also allowed offenders previously sentenced to apply for early release. This may explain some of the observable decline in the three-strikes population after 2012. Residential burglary remains a serious felony under California’s Penal Code, so offenders convicted on this offense would be ineligible for resentencing.

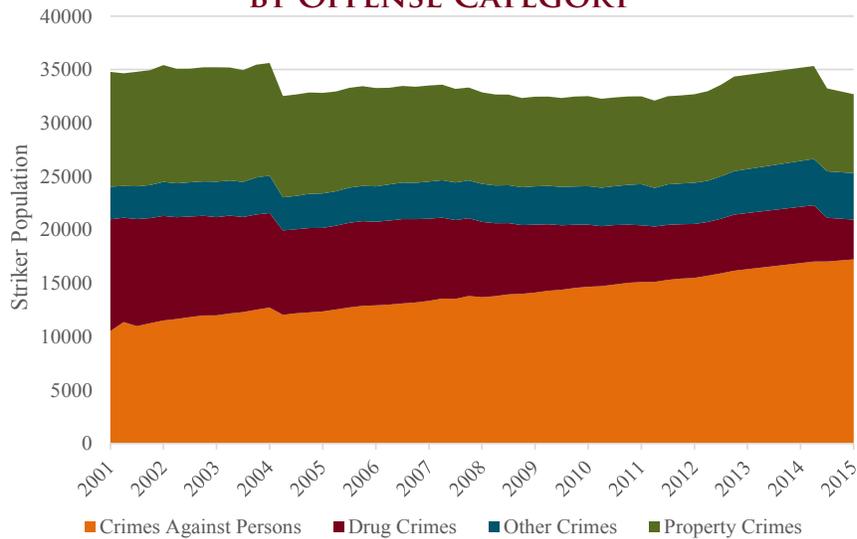
**FIGURE 3: DRUG CRIMES**



**FIGURE 4: OTHER CRIMES**



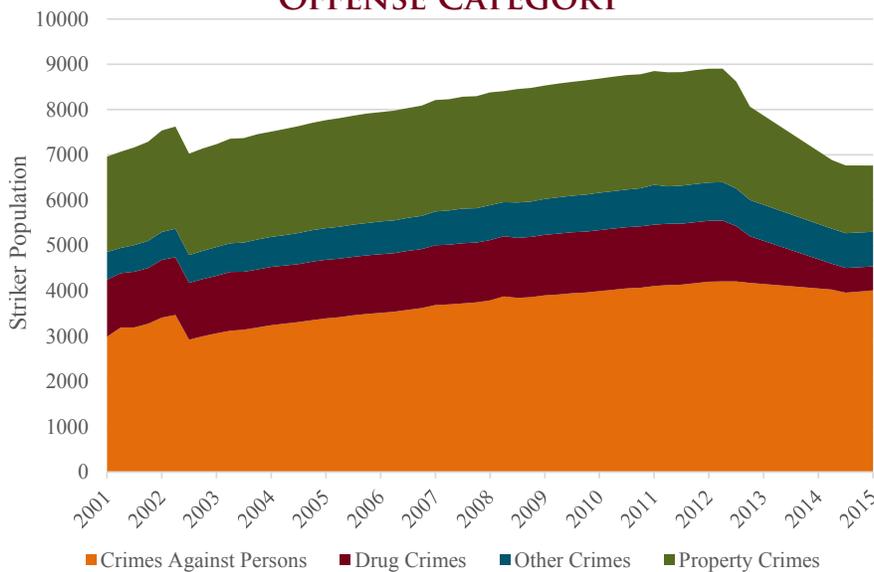
**FIGURE 5: SECOND STRIKER POPULATION BY OFFENSE CATEGORY**



The second striker per capita trend line shows a steady decline from 2001 to 2015 with moderate peaks from 2001 to 2004. This drop in the number of second-strike convictions could reflect the general decrease in crime seen throughout the state during this same time period. Although relatively few three-strike sentences were handed down for drug-related offenses, the law did allow for non-serious, non-violent drug crimes to be considered

for the enhanced sentencing measure. As noted earlier, Proposition 36, approved by voters in 2012, restricted the third strike to mostly serious or violent felony offenses. It also allowed judges to resentence offenders previously incarcerated for a non-serious, non-violent felony. This resentencing provision could explain why the number of three-strike offenders incarcerated for drug crimes falls precipitously after 2012.

**FIGURE 6: THIRD STRIKER POPULATION BY OFFENSE CATEGORY**



As seen in this graph, the number of second-strike and third-strike offenders sentenced to miscellaneous “other” crimes climbed steadily between 2001 and 2015. The crimes found in this category, such as possession of a firearm, remained eligible for enhanced sentencing under the Proposition 36, approved by voters in 2012. As a result, there is no noticeable decrease in the three-strikes population sentenced for “other” crimes after the 2012 measure went into effect.

Property Crimes and Other Crime experience a steady trend from 2001 until 2003 until a significant downward spike in the 2003 data. At this point in time, we cannot explain the decrease. It does not seem to correspond with any crime phenomena or other implementation practice observed in the counties. From 2004 onwards, however, there is a constant trend line with decline after 2012. This could correspond to the implementation of Proposition 36, implemented in 2012, or a revision in implementation practices instigated by concern about prison overcrowding.

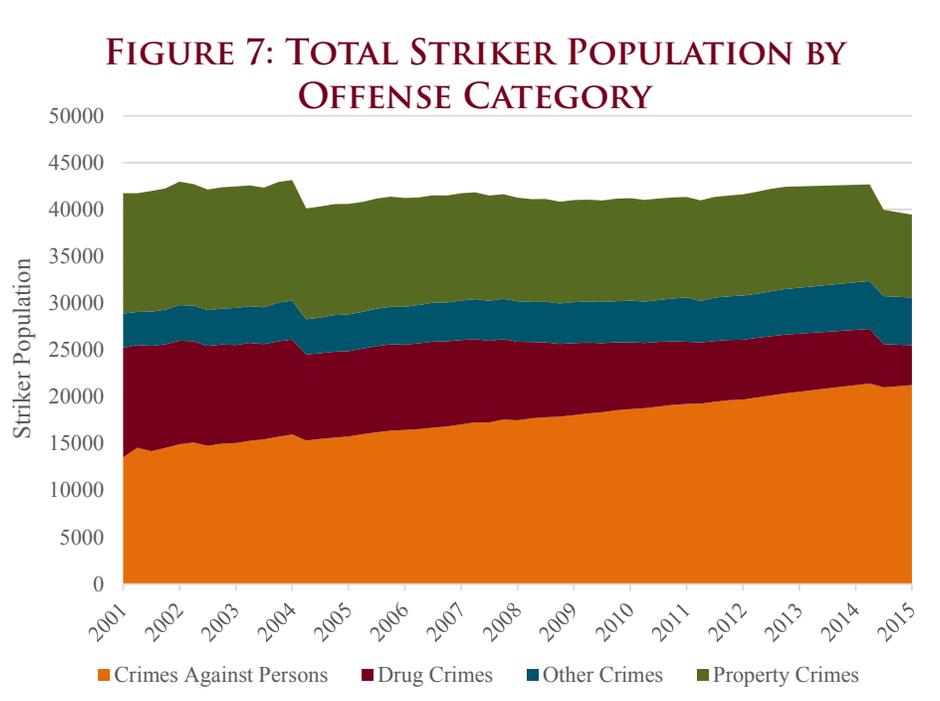
Drug Crimes and Crimes Against Person experience similar constant trend lines until 2004, where there is a slight dip. Crimes Against Persons shows a smoother upward trend line from 2004 to 2015.

In this graph, Property Crimes and Other Crimes experience similar upward trend lines in the data. There is a gradual increase from 2001 until mid-2002, where there is suddenly a spike and fall in the data. At this time, we are not aware of any phenomena in crime rates or in implementation practices that can explain this crease. From 2003 onwards, totals gradually increases for both crime categories. In 2012, the Property Crimes data shows a moderate decline. This likely corresponds with changes in the law that accompanied Proposition 36, approved by voters in 2012.

Similarly, Crimes Against Persons and Drug Crimes offense categories experience similar trend lines. From 2001 until mid-2002, there is a gradual increase in the data and then a sharp but limited decrease. From mid-2002 until 2012, there is a gradual increase in the data until a graduate decline in 2012.

### CONCLUSION

After analyzing the different crime categories for the “Three Strikes” inmates, we found that there was an increase in prosecution for crimes against persons but a decrease in drug crimes. This could be due to Proposition 36 (2000), which allowed



nonviolent drug offenders to be sentenced to probation instead of prison. Although this does not mean that drug crimes as a whole increased or crimes against persons as a whole decreased, the result does show how legal responses changed over time. For example, crimes against persons could be prosecuted with Three Strikes implications or without, but because we see an increase in inmates for crimes against persons, we can state that the courts used Three Strikes more often as time progressed.

From this preliminary analysis, we can see that crimes against persons and other crimes increased, but at moderate incremental rates. Property crimes as a whole decreased for both second and third strikers. Further analysis is needed to explore the specific changes in the categories. We found that the increases overall were less than expected.