



ROSE INSTITUTE
OF STATE AND LOCAL GOVERNMENT

CLAREMONT MCKENNA COLLEGE

THREE STRIKES ANALYSIS:

COMPARISON OF OFFENSE TYPES IN URBAN COUNTIES

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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 low-level felonies prompted voters to enact Proposition 36 in 2012. This initiative eliminated a major feature of the law that triggered strike sentences for non-serious and non-violent felonies.

The purpose of this report is to analyze the data we have compiled to determine which county among the top ten most populous is responsible for the most two and three strikers (as a percentage of the population) for each offense category. This allows us to examine whether there are observable differences in how the Three Strikes sentencing law is distributed across urban jurisdictions. In addition, we examine the short-term effects of Proposition 36 on the distribution of offense types within the two- and three-strikes population.

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.

After using Census data to determine the top ten most populous counties (as of 2010), we narrowed our research to analyzing the second and third striker populations in each of these counties. These counties include: Los Angeles (10.2 million), Orange (3.2 million), San Diego (3.3 million), Riverside (2.3 million), San Bernardino (2.1 million), Santa Clara (1.9 million), Alameda (1.6 million), Sacramento County (1.5 million), Contra Costa (1.1), and Fresno (970,000). From there, we divided the number of second and third strike convictions by the county populations from each year to determine the number of inmates per capita

ANALYSIS

In looking at which counties produced the most three strikers per capita, we found it interesting that the most populous county, Los Angeles, was ranked second, following Sacramento, which has 6.5 times fewer people. Similarly, Orange County and Riverside County, ranked second and fourth with regard to population, were ranked eighth and seventh with regard to the number of three strike offenders per capita.¹

The trendlines are mixed in Figure 1: Six of the urban counties saw their second-strike offender numbers gradually decrease, whereas the rest of the urban counties experienced an increase. Except for San Diego and Los Angeles, counties with a striker population greater than 90 strikers per 100,000 had a large increase in second striker population per capita in 2012. Most notably, Fresno County jumped from 93.3 strikers per 100,000 in March of 2013 to 140.5 strikers per 100,000 in December of 2014. This could be attributed to Proposition 36, which would limit eligibility for the three strikes 25-year-to-life sentence to those who are convicted of serious or violent third felonies. Presumably, offenders who would no longer qualify for the third strike sentence under the revised law would be eligible for a doubled sentence as a “second strike” offender.

¹ In 2013 and 2014, the CDCR published their reports biannually instead of quarterly. Therefore, there are fewer data points for these two years.

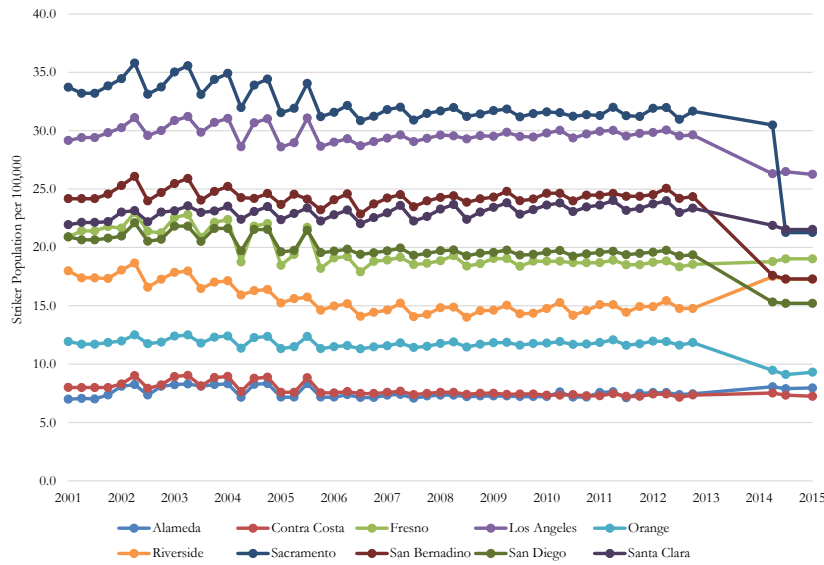
CRIMES AGAINST PERSONS

Shifts in the population of second striker populations per capita move together across all counties. There is a wide range for most counties with no general upward or downward trend in overall crimes against persons for any county. Los Angeles, the most populous county in the state, produced the most second strike offenders.

In contrast, Orange County, the second most populous county, sentenced the second-fewest strikers to prison for committing a violent crime (see Figure 2).

In Figure 2, we observe that all counties have some variability in the data between 2004 and 2006 with regard to third strikers sentenced for a crime against a person. At this time, we are unsure as to what prompted this variation, but notice that the same pattern is replicated to

FIGURE 1: THIRD STRIKE INMATE POPULATION (PER CAPITA)



From 2001 to 2007, all counties recorded some year-to-year variation in the third strike sentencing ratios. These strike sentences, however, carry a minimum sentence of 25 years. Therefore, we suppose that the variation found in Figure 1 is attributed less to changes in the number of three strike offenders originating from those counties, but instead attributed more to fluctuations in population.

FIGURE 2: SECOND STRIKE INMATE POPULATION (PER CAPITA)

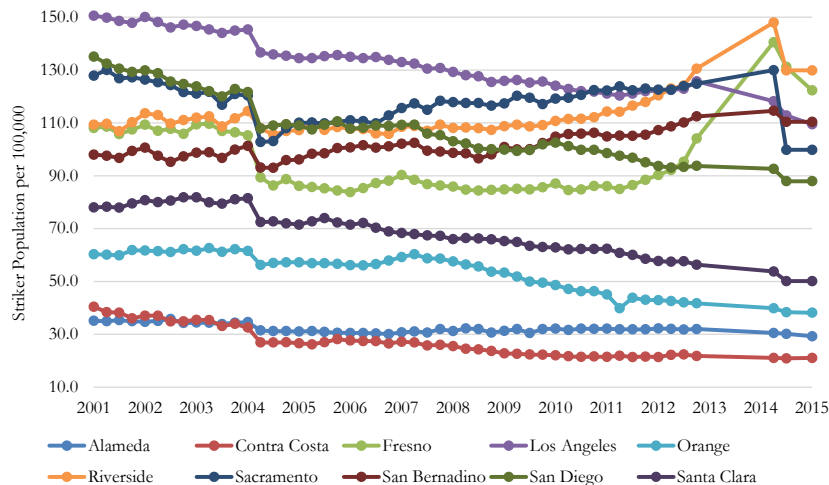
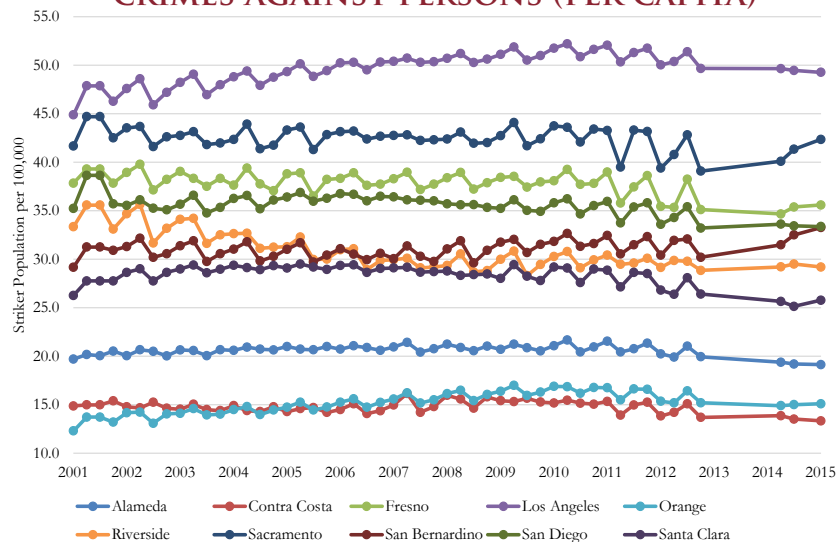


FIGURE 3: SECOND STRIKER SENTENCES FOR CRIMES AGAINST PERSONS (PER CAPITA)



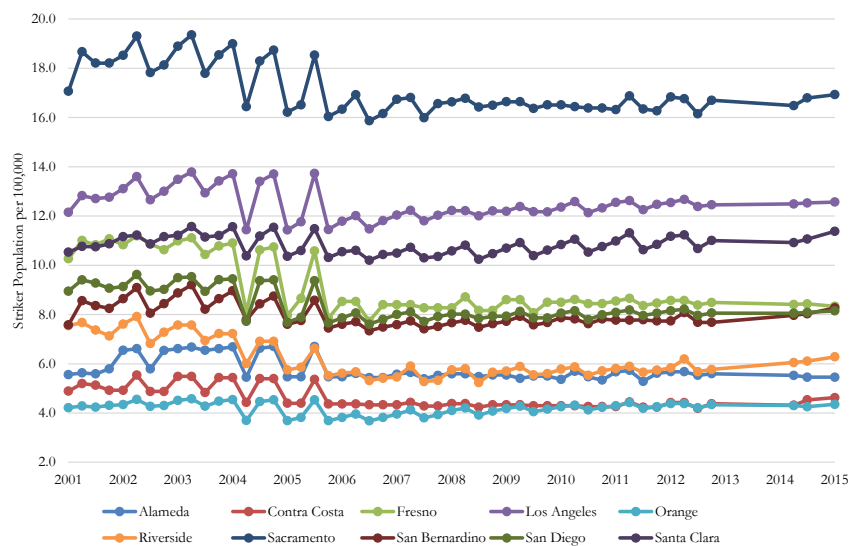
differing degrees across all top ten urban counties.

Interestingly, Sacramento County, which ranks eighth in population, produced measurably more three strike offenders sentenced for crimes against persons than any other county. In fact, Sacramento is responsible for more than four times as many three -strike offenders than Orange County, despite Orange County being roughly three times larger than Sacramento. This suggests that

either the violent crime rate has been substantially higher in Sacramento County than Orange County, or there is some other variable, such as differences in the way that prosecutors use their discretion to apply the law, that is responsible for this disproportionately high rate.²

As expected, the average third striker population per capita is much lower than the second striker population per capita because there are fewer offenders who qualify

FIGURE 4: THIRD STRIKER SENTENCES FOR CRIMES AGAINST PERSONS (PER CAPITA)



² There does seem to be evidence to suggest that Sacramento has a more pressing violent crime problem than Orange County. For example, in 2014, the total number of violent crimes (or crimes against persons) in Sacramento County was 2,968. In contrast, in Orange County, the total number of violent crimes was only 142.

for a three strikes sentence. Los Angeles County leads with the highest average of second striker crimes against persons per capita and Sacramento County leads with the highest average third striker crimes against persons per capita. Interestingly, there is less balance between two- and three-strike sentences within Los Angeles County: there are four times as many second strikers sentenced in Los Angeles County than there are third strikers.

PROPERTY CRIMES

Overall, the second striker property crime per capita population trends downward over time. This reflects the general decline in crime seen across all crime categories. Because it is the most populous, Los Angeles noted the

highest second striker property crime rate per capita. From 2011 onward, Alameda and Contra Costa have had the lowest number of property crime second strikers per capita. Fresno County, which had fewer than one million residents according to the 2010 Census, posted the third-highest sentencing rate for second strike property offenders.

Despite some variation in the rate for nearly all counties in 2002 and 2003, the level of third striker property crime per capita held fairly consistent from 2003 onward. Los Angeles noted the highest third striker property crime rate per capita, hovering near 10 strikers per 100,000 county residents. On the other hand, Alameda had the lowest number of property crime third strikers per capita – roughly 1 per 100,000 residents.

FIGURE 5: AVERAGE CRIMES AGAINST PERSONS (PER CAPITA)

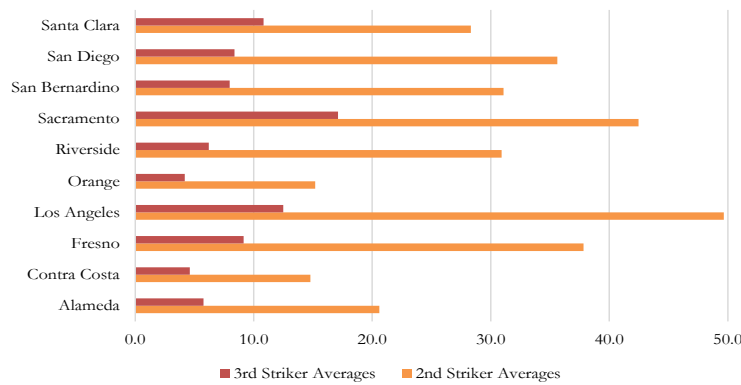


FIGURE 6: SECOND STRIKER SENTENCES FOR PROPERTY CRIMES (PER CAPITA)

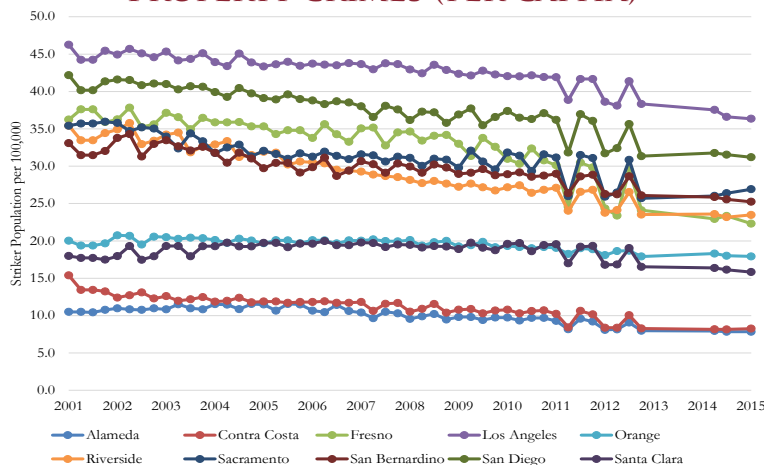


FIGURE 7: THIRD STRIKER SENTENCES FOR PROPERTY CRIMES (PER CAPITA)

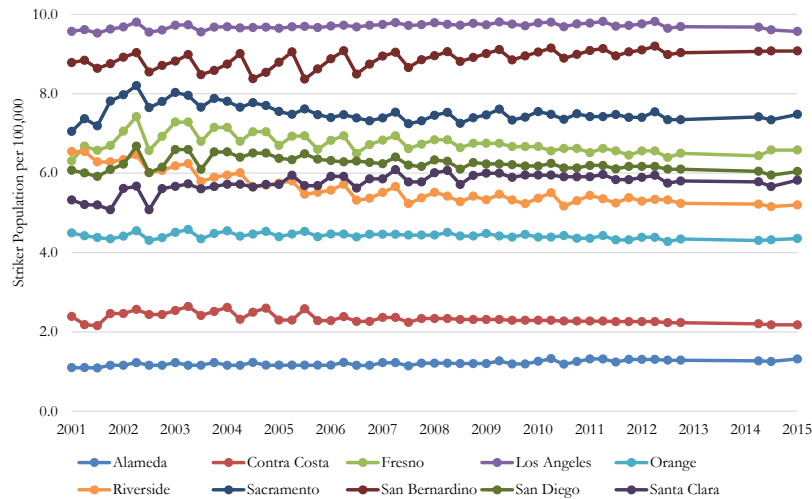
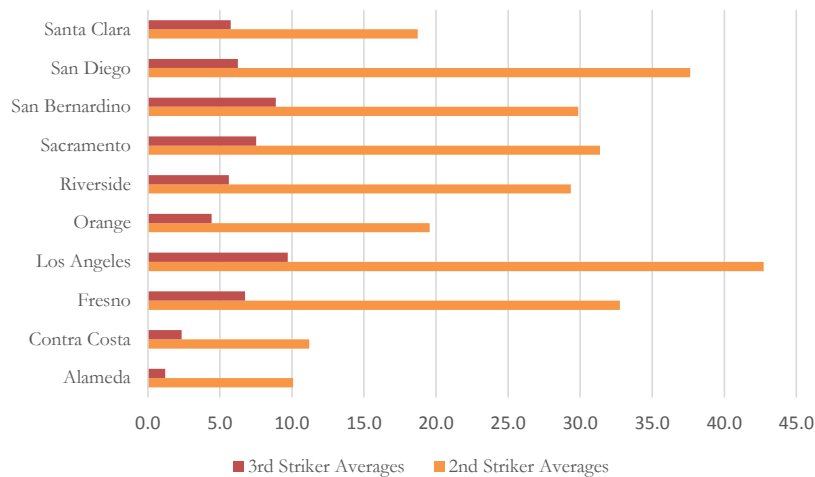


FIGURE 8: AVERAGE PROPERTY CRIME (PER CAPITA)



Prosecutors and judges are more likely to use their discretion to forgo a three strikes sentence for property-related third strikes. This could explain some of the variation seen in the trendlines for San Bernardino and Sacramento counties. Because of its size, Los Angeles County created internal policies that governed when and how three strikes discretion ought to be used; this could explain the consistency seen in the per capita rate over time.

As expected, the most populous counties are responsible for the most strike sentences for property offenses. Los Angeles County posted the highest average of second and third striker property crimes per capita. San Diego County, second in population, recorded the second highest average of second striker property crimes. Alameda and Contra Costa Counties, seventh and ninth in population, sentenced the fewest offenders for property offenses: they were tenth and ninth respectively.

DRUG CRIMES

Overall, there is a significant downward trend in the number of second striker drug crimes per capita with a marked decrease in 2012. Most of the drug crimes that qualify for strike sentencing involve aspects of drug trafficking, such as transporting large quantities of narcotics and selling drugs to minors. Very few drug possession cases result in strike sentences.

Los Angeles has the most second strikers serving times for drug-related offenses, but San Diego is a

close second. Orange County, third in population, ranks sixth for much of the time period covered in Figure 9.

Unlike the second striker drug crimes per capita, the third striker population does not have as much of a marked decline and has remained relatively stable over time. San Bernardino County has the highest number of third striker drug crimes per capita, whereas Alameda and Contra Costa have nearly next to none. The overall low per capita number of three strikes sentences handed down for drug-related offenses is explained by the limited number of drug crimes that qualify for three strike sentencing and the general willingness of prosecutors

FIGURE 9: SECOND STRIKER SENTENCES FOR DRUG CRIMES (PER CAPITA)

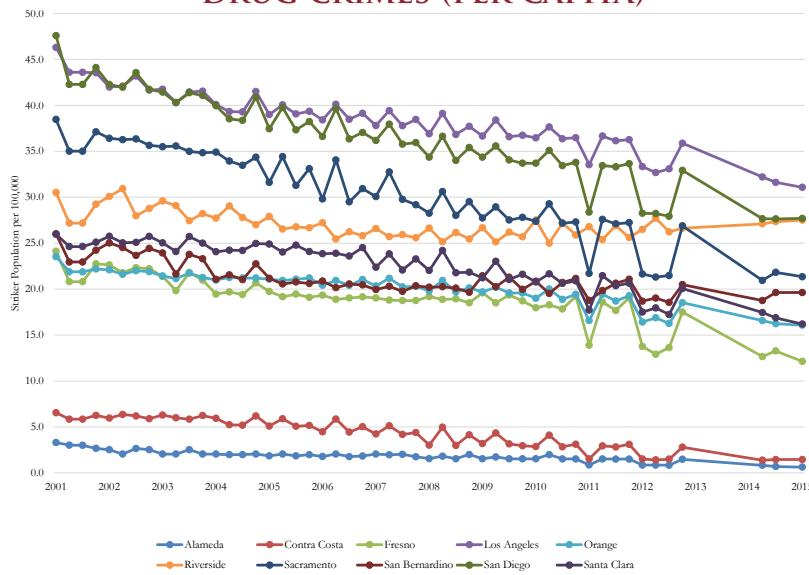
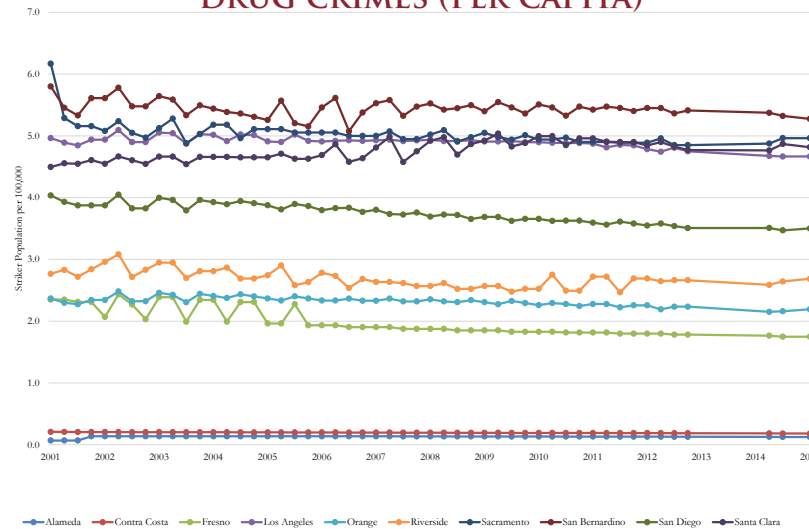


FIGURE 10: THIRD STRIKER SENTENCES FOR DRUG CRIMES (PER CAPITA)



and judges to use their sentencing discretion to forgo the long mandatory minimum sentence for offenders who commit a less serious felony for their third strike.

Mirroring the trends seen in Figure 9 and 10, Los Angeles and San Diego have the highest average of second striker drug crimes per capita and the largest observable difference between the number of sentences handed down for two-strikers and the sentences handed down for three-strikers. San Bernardino and Sacramento have the highest third striker averages for drug crimes per capita, 5.4 and 5.0 respectively, followed closely by Santa Clara County at 4.8.

OTHER CRIMES

There are fairly large and regular changes in range for most counties, with no overall downward or upward

trend consistent for all counties. Los Angeles has the highest second striker per capita other crimes population and Sacramento noted a marked jump in its per capita other crimes population from 2014 to 2015.

Over time, despite small fluctuations, the number of other crimes per capita has not significantly increased or decreased in each county other than a slight upward trend in 2012 for most counties. Sacramento County traditionally held the highest per capita other crimes third striker population but Los Angeles County has surpassed it in recent years.

On average, Los Angeles County has the highest second striker other crime per capita population by far and Sacramento County and Los Angeles had the highest average third striker per capita other crime population.

FIGURE 11: AVERAGE DRUG CRIME (PER CAPITA)

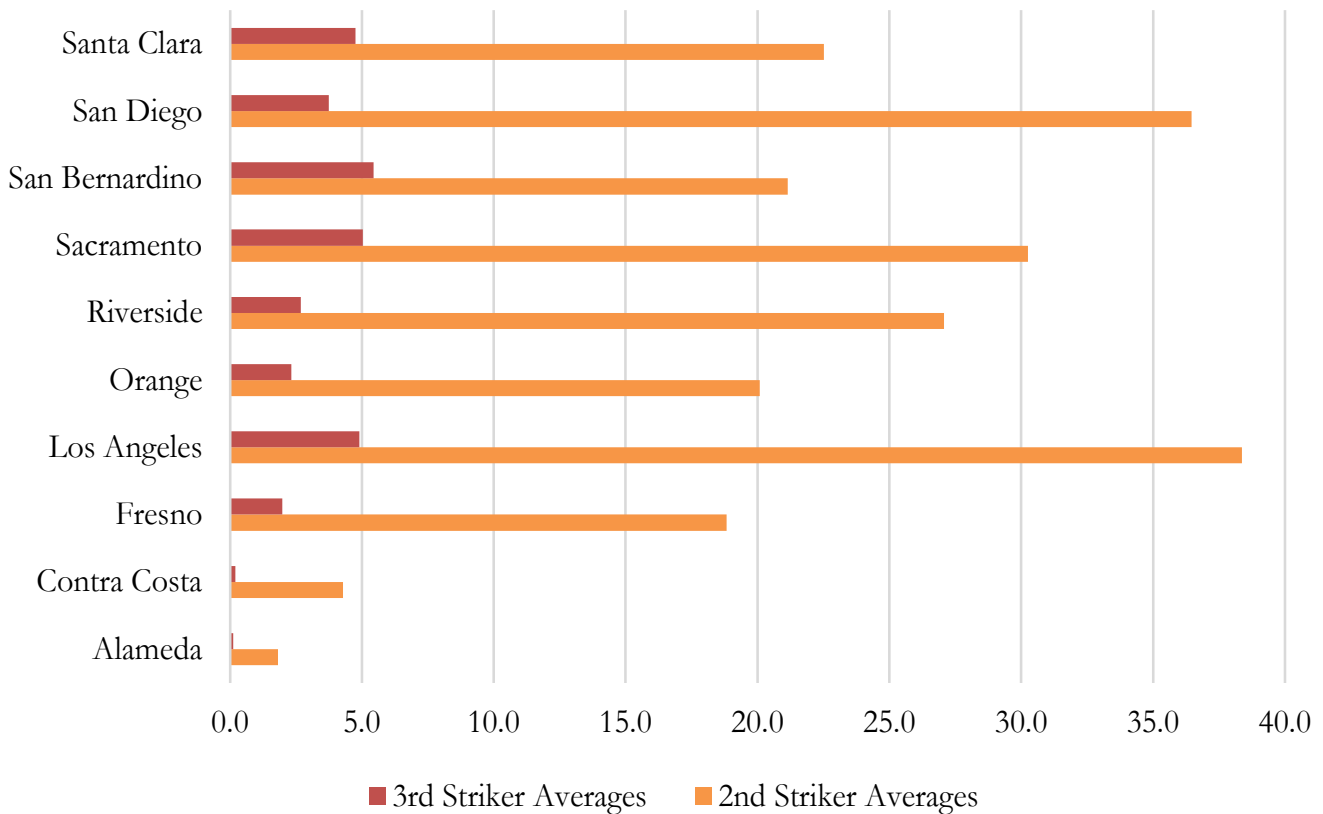
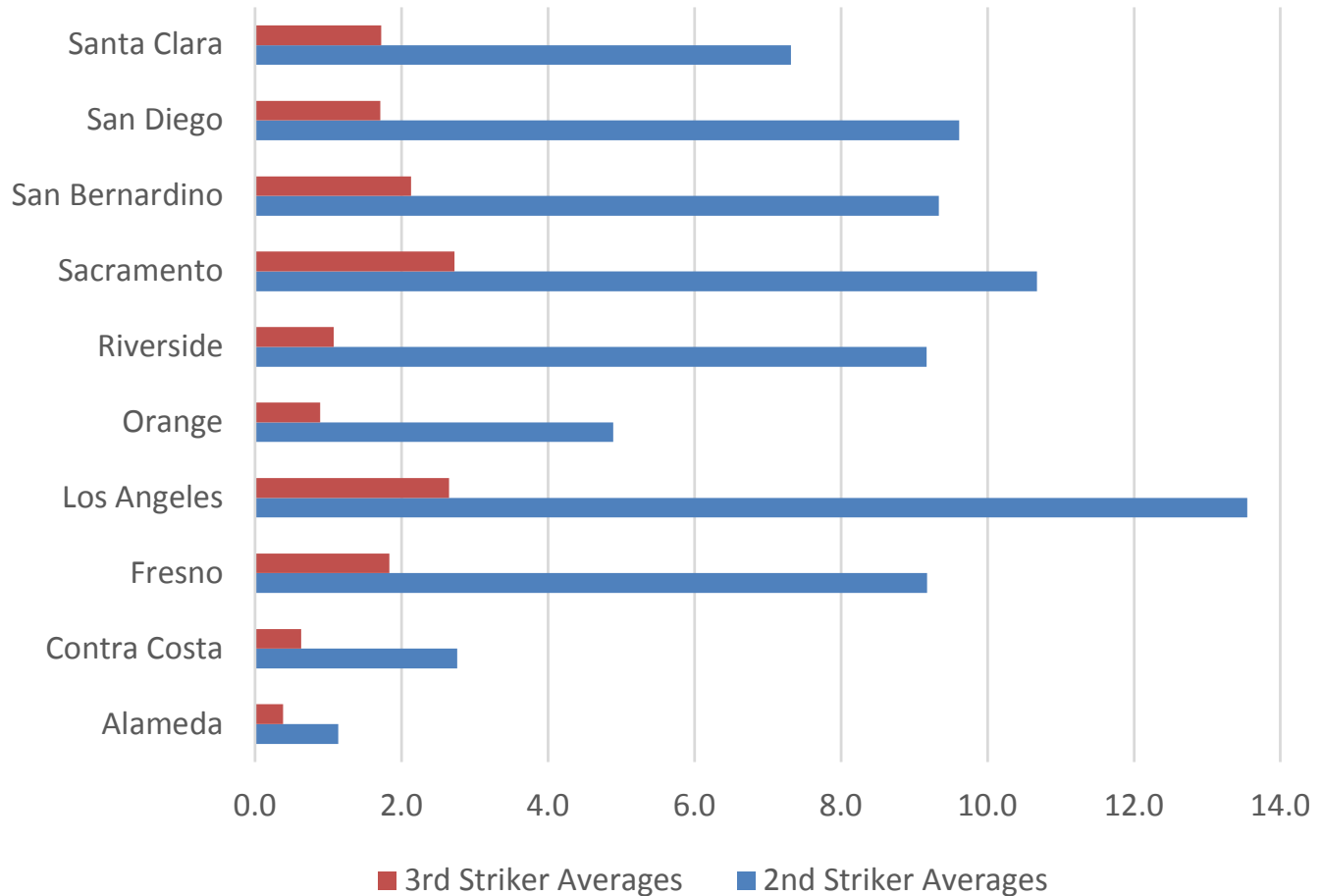


FIGURE 14: AVERAGE OTHER CRIMES (PER CAPITA)



CONCLUSION

This analysis reveals that there are variances in how two- and three-strike offenders are represented among the different counties. Los Angeles has three times as many people as San Diego, but not three times as many strike offenders when measured on a per capita basis. In fact, some counties routinely have higher per capita strike sentences than their most populous neighbors. Similarly, some counties, like Orange and Riverside, hand down fewer strike sentences on a per capita basis than do counties who are much smaller in size. This suggests that other variables are influencing the number of two- and three-strike sentences. Crime phenomena is not uniformly distributed across counties, so offending rates vary as the criminal population shifts. Variation in other aspects of the criminal justice system, such as policing strategies and resources, prosecutorial practices, and judicial discretion, could also account for the observable differences. A future study could examine some of these practices to see if they have any direct impact on the rate of conviction and the likelihood that an eligible offender will receive a mandatory minimum sentence under the Three Strikes law.