

Arguments for and against three strike laws



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Abstract

The purpose of this thesis is to determine whether or not the “ Three-Strike” Laws should be abolished? It is likely that the laws increase homicides because a few criminals, fearing the enhanced penalties, murder victims and witnesses to limit resistance and identification. The impact takes place in all of the states that have the three-strike laws. In addition, there is barely any evidence that the laws have any crime reduction impact through prevention. Even though the law was set to incarcerate violent criminals, it was found that some of the criminals sentenced are imprisoned for nonviolent offenses. The law has also had a negative financial influence on the state and its citizens, as it continues to switch funds that are needed for education and other important programs and goes to the department of corrections.

Introduction

The growth of the criminal justice system brings awareness of issues and challenges that questions the effectiveness of the criminal justice system. The three strike law was created to improve the criminal justice system and stray away from violent offenses through punishment of offenders, who continue to commit violent crimes. The three strikes law has suggested stricter measures in connection to violent offenders, in fact, the three strikes law has led to the increase of the prison population. The question whether the three strikes law is worth carrying out because its effects can simply outweigh bad ones for the prison population growth. The criminal systems become stricter, when the opportunities for criminals have become less that leads to the launch of strict disciplinary approach to offenders.

Majority of these criminal offenders are carrying out sentences that are generally from 30 years to life, for what might be considered fairly minor crimes. The goal of this study is to examine to what extent the three strikes law has actually worked in stopping crime and whether or not the three strikes law should be abolished or not. In order to accurately measure the success of the three strikes law, I have developed the following hypothesis: The three strikes law is not an effective restraint of crime, and should be abolished. Alternative Hypothesis: The three strikes law is an effect crime deterrent, and should not be abolished.

Literature Review

History

On March 7, 1994, Governor Wilson signed into law AB 971 (Ch 12/94, Jones) referred to as the Three Strikes and You're Out criminal sentencing measure (Legislative Analyst's Office, 1995). In November, the voters reaffirmed the measure by overwhelmingly approving Proposition 184, an initiative that is essentially identical to Chapter 12 (Legislative Analyst's Office, 1995). This is the most significant change to the criminal justice system in more than a generation. In January, they published The Three Strikes and you're out law an initial assessment. This analysis summarizes the findings of that piece, provides more up-to-date data, and recommends that the state closely monitor the implementation and impact of the Three Strikes law (Legislative Analyst's Office, 1995).

Three Strikes was intended to go beyond simply making sentences tougher. It was intended to be a focused effort to create a sentencing policy that would use the judicial system to reduce serious and violent crime (Ardaiz, <https://assignbuster.com/arguments-for-and-against-three-strike-laws/>

2000). Several people sat down and organized the ideas behind what is now known as the Three Strikes Law. The final concept constituting the theoretical structure of the Three Strikes Law was taken to then-Assemblyman Bill Jones, who agreed to carry a written version as one of his bills (Ardaiz, 2000). Eventually, the bill was drafted by legislative writers and others that were submitted as the Three Strikes Law. Further, it was clear that rehabilitation and retribution had not proven effective in deterring new criminal behavior, as evidenced by the recidivism statistics mentioned above (Ardaiz, 2000).

Legal Background

The United States Constitution limits punishments on an offender through the Eighth Amendment's prohibition on cruel and unusual punishments (Reed, 2004). The Eighth Amendment of the United States Constitution states, " Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted"(Stevenson& Stinneford, 2003). This amendment applies to the states through the Due Process Clause of the Fourteenth Amendment. Three strikes laws serve the retributive purpose because a repeat offender is more blameworthy due to repeated commission of crime and should serve harsher punishments (Reed, 2004). The principle of proportionality in sentencing was founded in English law. The idea dates back to the Magna Carta of 1215, which stated, " a free man shall not be fined for a trivial offence, except in accordance with the degree of the offence; and for a serious offence he shall be [fined] according to its gravity" (Reed, 2004). The majority of precedent has applied a proportionality principle to the Eighth Amendment's prohibition on cruel and unusual

punishments for over a century. The Court has ruled that the only sentences that will violate this provision will be those sentences that are “ grossly disproportionate” to the crime committed (Reed, 2004).

Appeals

A defendant serving a sentence under the Three Strikes law imposed by a court that misunderstood the scope of its discretion to strike prior felony conviction allegations in furtherance of justice pursuant to section 1385, subdivision (a), may raise the issue on appeal, or, if relief on appeal is no longer available, may file a petition for habeas corpus to secure reconsideration of the sentence (Mandinach, 2016). The Court of Appeal outlines that when the components of the crime have been fulfilled, any crime committed will not occur from the same set of current facts. This indicates that all three strike defendants have bad records, but alone should not preclude the court from striking a strike based on the mitigating factors presented, to establish that the trial court must consider whether appellant’s background, current felony(Mandinach, 2016). The court does agree with the defendant that the length of the defendant’s sentence plays a part in whether the defendant falls within the spirit of the Three Strikes law as well as the facts of the current crime, whether the new act was committed while on parole or shortly after getting off parole, and the violence in the defendant’s background (Mandinach, 2016).

ThreeStrikes Law on Felony Sentencing

California’s law required that defendants convicted for the second time of any of a certain class of felonies receive twice the normal sentence, and that

those convicted for a third time receive a sentence of life imprisonment with no parole after less than 25 years (Sutton, 2013). The California law defined offenses on a large scale, including with a list of violent felonies known as serious crimes and then there are nonviolent felonies such as selling drugs, robbery, and possession of firearms. Moreover, California is unique in that any felony can be called a third strike at the discretion of the prosecutor, not just those on the serious or violent list (Sutton, 2013). If a defendant has been convicted of a offense that counts , any felony including those that fall below the serious or violent offenses can be counted as a second strike; if a defendant has been convicted of two serious or violent felonies, any felony can be Sutton 41 counted as a third strike (Sutton, 2013). If a defendant with two strikes can be sentenced to prison for more than 20 years to life for a third offense that might have been charged as a misdemeanor.

Counter-Criticisms

The prison population has grown nearly 140, 000. Californians are spending a lot of money and prison space to continue to keep people in prison for life for crimes that are minor. Despite all the activity on several fronts to examine costs, sentencing, overcrowding, and procedure, several observers say California's prison reformers have an uphill battle against the California Correctional Peace Officers Association - the prison guard union - and local communities and politicians who have a stake in the prisons they have spent the past two decades building (Wood, 2004). This will require that a defendant be convicted of an offense whether it is a violent or serious felony to qualify them for their third- strike. The idea redefines serious and violent felonies and removes three-strike penalties for minor infractions that have

sent hundreds of third-time offenders to prison over such crimes as petty theft (Wood, 2004). The new measure would require that a defendant be convicted of a violent or serious felony to qualify for a third- strike sentence of 25 years to life.

Discussion

Argumentsfor Three Strike Laws

The supporters of this law argue that the three strike law will reduce the number of serious felonies. When criminals are removed off the street on a daily basis, the crime rates in particular areas are reduced. This is due to the imprisonment of habitual offenders and also can be attributed to the fear that the three strikes law puts into the heart of those who are considering a life of crime (Occupytheory, 2015). Supporters also argue that it will protect society from criminals, who are dangerous for public and who don't want to change. If a criminal knows that they face life in prison if they continue to live a certain lifestyle, the three strikes law can serve as a motivating factor to clean up their act (Occupytheory, 2015). As the judge eventually removes the person from society then there is no opportunity to commit the same crimes over and over again.

Argumentsagainst Three Strike Laws

The opponents for the three strike law argue that life sentences for three time offenders will require spending more money in order to support their imprisonment. The more felony cases that are prosecuted, the higher the costs are to the state's court system (Occupytheory, 2015). The more felony cases that result in a conviction, the higher the costs of maintaining state

prisons become (Occupytheory, 2015). Prison overpopulation also becomes an issue, there needs to be an extra thought on building of extra prisons. Opponents for the three strike law also argue that the third-strike punishment is an extremely harsh for criminals convicted of nonviolent felonies. There are a number of people who are currently serving life sentences for crimes that they did not commit or were trumped up by the prosecution. While murderers and drug dealers certainly deserve the life sentence that they receive, there are far too many California citizens who are spending their lives behind bars for shoplifting and other petty offenses (Occupytheory, 2015).

Ethical Dilemmas

Despite the fact that prosecutors decide whether to charge offenders under three strike law, there are ethical and unethical criteria for such decisions. Ethical criteria would be the danger posed to the public based on the felonies the offender has committed, whereas unethical criteria would include political pressure or the race of the offender (Pollock, 2012). More problematic are other criteria, such as using three strikes when an offender insists on a trial and won't plead guilty or when an offender will cooperate and testify against a crime partner (Pollock, 2012).

Conclusion

In my opinion, they should go back to simply sentencing crimes at face value with a fair and reasonable punishment that is proportional to the offense. If people aren't going to prison long enough for serious violent crimes, then up the penalties on those, but don't let a minor offense mean the difference between freedom and life in prison. It is apparent that the 3 strikes law is not

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working. It is not being utilized in the way it was intended, for habitual violent and serious offenders. To incarcerate a human being for 25 years for a misdemeanor offence is 'criminal'. Mandatory sentencing removes discretionary powers from judges; this is disproportionate, cruel and unusual punishment a breach of both human and constitutional rights. The incarcerated population still deserves to be treated with dignity.

References

LegislativeAnalyst's Office. (1995, February 22). The Three Strikes and You're Out Law. Retrieved April 22, 2017, from http://www.lao.ca.gov/analysis_1995/3strikes.html

Ardaiz, J. (2000). California's Three Strikes Law: History, Expectations, Consequences. *McGeorge Law Review* 32(1), 1-36.

Stevenson, B. A., & Stinneford, J. F. (2003). The 8th Amendment of the U. S. Constitution. Retrieved April 23, 2017, from <https://constitutioncenter.org/interactive-constitution/amendments/amendment-viii>

Reed, S. M. (2004). Sentencing and punishment—cruel and unusual punishment: The United States Supreme Court upholds California's three strike law, ruling the law does not violate the eighth amendment's prohibition on cruel and unusual punishment. *North Dakota Law Review*, 80 (3), 497-533.

Mandinach, G. M. (2016, April 5). REPORTED THREE STRIKES OPINIONS AS OF APRIL 5, 2016 By... Retrieved April 22, 2017, from <http://www.bing.com/cr?IG=5EBFC697AF0D452FA585ADDFE9CDF17BE&CID=>

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%2f3x_opinions_as_of04052016. pdf&p= DevEx, 5060. 1

Sutton, J. R. (2013). Symbol and Substance: Effects of California's Three Strikes Law on Felony Sentencing. *Law & Society Review* , 47 (1), 37-72. doi: 10. 1111/lasr. 12001

Wood, D. B. (2004, Jul 20). California tackles its prison problem ; facing overcrowding and rising costs, a panel calls for better management, and state voters will reconsider nation's toughest three- strikes law. *The Christian Science Monitor* Retrieved from <http://nclive. org/cgi-bin/nclsm? url= http://search. proquest. com/docview/405681291? accountid= 12713>

Occupytheory .(2015, June 10). Three Strikes Law Pros and Cons List. Retrieved April 24, 2017, from <https://occupytheory. org/three-strikes-law-pros-and-cons-list/>

Pollock, J. M. (2012). *Ethical dilemmas and decisions in criminal justice* . Belmont, CA: Wadsworth Cengage Learning.