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**ASSESSING THE IMPACT OF AB971
'THREE STRIKES, YOU'RE OUT'
ON THE JUSTICE SYSTEM IN
SANTA CLARA COUNTY
CALIFORNIA**

NCJRS

NOV 28 1994

ACQUISITIONS

**Prepared for
Santa Clara County Board of Supervisors
Bench/Board Committee**

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PREFACE AND ACKNOWLEDGEMENTS

This report contains an assessment of the expected impacts of the recently enacted "3 strikes, you're out" law, AB971, on the Santa Clara County justice system. It is the product of unusual effort by many people and required the cooperation of many organizations:

Katherine Sada, OBA Program Analyst, was the "spark plug" who first urged some form of justice system-wide planning to better understand and manage the large new workload which was universally expected to be created by the new law. She also provided helpful comments following review of a draft of this report.

George Newell, Acting County Executive, championed the idea of a study which would develop estimates to help "size" the challenge these cases were sure to present. His initiative converted the discussion into action. He took the idea to the Bench/Board Committee, chaired by County Supervisor Ron Gonzales and co-chaired by Supervisor Zoe Lofgren who, along with the Presiding Judge of the Superior Court, Robert P. Ahern, and the Presiding Judge of the Municipal Court, Paul C. Cole, agreed to sponsor the study. Sharon Morentin, Program Manager, helps staff the Bench/Board Committee for the Office of the County Executive. She encouraged and supported the study and provided helpful facilitation.

Fortunately, in 1986, Judge John A. Flaherty, currently Supervising Judge in the Criminal Division of the Superior Court, approved Santa Clara County's participation in a nation-wide felony sentencing study being conducted by Mark Cuniff, Executive Director of the National Association of Criminal Justice Planners (NACJP). The County was to be one of nine

California counties, eventually joined by over 300 other counties in the nation, to provide the U.S. Department of Justice with basic information about felony sentences.

Because of our participation in this study, the NACJP was able to provide us with a scientifically selected sample of persons sentenced on felony matters in Santa Clara County in 1992. This provided a good deal of information about the defendants and their cases. The NACJP's Mark Cuniff also produced special data runs of the Santa Clara County data and served as a consultant to the effort.

Judge John A. Flaherty was the engine who led the project. Judge Flaherty called the key participants together - prosecution, defense, probation, Sheriff's office, and others - for a series of planning meetings, then planned and led a workshop to discuss specific strike cases.

District Attorney George Kennedy, offered the services of Deputy District Attorney Kathy Storton, who is an expert at researching criminal histories and was especially familiar with the 3 strikes law. She spent over 60 hours researching the criminal histories of a sub-sample of 310 felony cases from the NACJP felony sentencing study. And, she was able to expertly classify the 1992 cases into one, two or three strike categories.

Nancy Fowler, CJIC/CJIS Director, provided funds for the study. Bob Cushman, Justice Systems Specialist from the Center for Urban Analysis (CUA), a unit within the Office of the County Executive provided the staff work, helped organize the study, analyzed the data and wrote the report. He was assisted in report production by Michelle Cianciarulo of the CUA.



Judge Flaherty organized an intensive workshop during which he and Superior Court Judge John Garibaldi "presided" over a review of 73 cases representing the most serious strike cases in the sample. The workshop involved senior staff from key justice agencies who came prepared to discuss each case:

- Staff from the Office of the District Attorney included: Dave Davies, Assistant District Attorney; Al Wegner, Assistant District Attorney, General Felonies; and Karyn Sinunu, Supervising Deputy District Attorney. Kathy Storton, Deputy District Attorney, participated in the case review and also served as a resource person. District Attorney George Kennedy attended meetings to plan the workshop. Dave Davies also helped review and comment on the a draft of this report.

- Staff from the Office of the Public Defender included: Stuart Rappaport, Public Defender and Woody Nedom, Chief Assistant Public Defender who served as observers. Woody Nedom also helped by reviewing a draft copy of this report. Ron Norman, Assistant Public Defender and Dave Mann, Felony Supervising Attorney, participated in the review of cases.

- Carleen Arlidge, Executive Director, Conflicts Administration represented that Office and participated whenever a Conflicts case was being discussed. Ben Koller, a Conflicts Administration attorney participated in an early planning session.

- Staff from the Department of Corrections/Probation included: John Hall from the Investigation Division, who participated by offering important content from the presentence investigation reports. Department

Director Dennis Handis, and Probation Manager Glenn Arima, attended various planning sessions held prior to the workshop.

- Presiding Municipal Court Judge Paul C. Cole participated in a number of the planning meetings. He is, of course, also a member of the Bench/Board Committee. This contributed to a cordial and useful degree of coordination between the two courts. Unfortunately, a scheduling conflict prevented him from attending the workshop itself.

- Lt. Mike Bernal, Sheriff's Office, Court Security participated as an observer.

- Law student and law clerk Loren Barr attended much of the workshop, along with O.D. "Buzz" Ereno, Division Manager, Criminal Superior Court. They provided valuable support services to the workshop participants. Jean Pennypacker, Administrative Assistant attended planning sessions, provided helpful advice over the phone and helped review a draft of the final report.

Many other people, within the departmental support structure of justice agencies also contributed to the study. For example, Bob Conroy, Assistant Director and Bill James, Manager, Data Management at the Department of Correction/Probation did not attend the workshop but they were helpful in providing needed advice and information. Bill James was provided with a diskette containing the data set which was analyzed for the study. Ron Obert, District Attorney Administrator, provided helpful advice and arranged for staff assistance from the District Attorney's Office at a time when it was critical to the completion of the study.



EXECUTIVE SUMMARY

This report presents an assessment of the expected impact of AB971(Jones), the law popularly known as "3 strikes, you're out". It contains statistical information augmented by the results of a workshop in which Judge John A. Flaherty and representatives from the prosecution, defense, probation and Sheriff's Office reviewed a scientifically drawn sample of "typical" one, two and three strike cases.

These strike cases present a large potential workload. The study and the workshop were designed to develop estimates to help "size" the challenge these cases are beginning to present.

THE RESULTS

If 1994 is similar to 1992, approximately 8,400 persons will be sentenced on felony matters in Santa Clara County. When sentenced, approximately 2,315, or 28% will be "strike" cases - felons convicted of serious or violent crimes. These cases will impact the justice system in many ways:

There Will Be A Smaller Number of Strike Cases Than Originally Expected

- The workshop confirmed that estimates based simply on knowing the prior felony conviction history of the defendant and the nature of the current offense will lead to over-estimates of the number of strike cases, particularly three strike cases.

Many More Trials Will Be Required

- The 3 strikes law will increase the estimated annual number of bench and jury trials of one+, two and three strike cases from 225 to 590 trials, a 160% increase.

- The number of jury trials of one+, two and three strike cases is estimated to increase from 200 to 585, a 193% increase.

Many More Court Hearings Will Be Required to Dispose of Cases in Municipal and Superior Courts

- An estimated 385 additional one+, two and three strike cases will request jury trials and require 8,740 additional court hearings, an 85% increase in the number of hearings required by these cases in 1992.

The Arrest to Sentencing Case Processing Time Will Increase

- The 385 additional one+, two and three strike cases that are now expected to be tried by jury will take an estimated 50,050 additional days of processing time, an additional 19% of the time it took to process these cases in 1992.
- Half of this increase will be devoted to the additional 135 three strike cases requiring trials.

The Pretrial Jail Population Will Increase

- The extra 50,050 days it will take to process the new one+, two and three strike jury trial cases will prolong the period of time they spend in jail as pretrial prisoners.
- The extra 50,050 processing days translates into 137 extra jail beds, suitable for strike cases.

1. In the text which follows "one+" is used to describe one strike cases with multiple strike counts and distinguish them from one strike cases.

Note: These estimates do not include additional work associated with one strike cases.



There Will Be Sentenced Jail Day Savings

- An estimated 395 people sentenced to a total of 239 person-years in jail in 1992, would now be sent to State prison, freeing up the County sentenced jail space they would have otherwise occupied.
- This is about 9% of the total jail time ordered for all sentenced felons in 1992.
- Additional savings would accrue if one strike cases which were sentenced to jail in 1992 were sentenced to State prison instead of jail.
- Translating these savings into actual jail bed savings would require adjusting for credits for pretrial time served and for good time and work time, data which was not made available for study.

There Will Be Probation Supervision Day Savings

- An estimated 395 people sentenced to a total of 570 person-years of probation supervision in 1992, would now be sent to State prison, freeing up approximately 396 annual probation supervision slots.
- This is about 4% of the total probation supervision time ordered for all sentenced felons in 1992.
- Additional savings would accrue if one strike cases which were sentenced to Probation supervision in 1992 were sentenced to State prison instead of Probation.

The Demand for Presentence Investigation Reports Will Not Increase Significantly

- No significant increase in the demand for presentence investigation reports prepared

by the Probation Department is expected as a result of the 3 strikes law.

Costs Associated With Defense Representation Will Increase

- In 1992, 28% of the one+, two, and three strike Conflict Administration cases qualified for more experienced attorneys paid an hourly fee instead of a flat fee, which is the norm for regular cases.
- As a result of the 3 strikes law, 61% of the one+, two and three strike Conflict Administration cases would have qualified for this more expensive defense representation.

Other Additional Impacts

- The number of jurors that will be required will increase.
- Civil litigation may be forced out by criminal matters, which take priority.
- Because the court may become unavailable to civil litigants, situations may develop where criminal matters emanate from frustration over an inability to reach civil remedies, especially in consumer fraud, other illegal business practices, and domestic relations matters.
- Three strike cases, facing 25 years to life in prison and with "nothing to lose", make more dangerous prisoners to transport to what is expected to be an additional number of court hearings.
- Increased penalties being faced by strike cases and the increase in prisoner movement which is expected due to an increase in the number of court hearings they will require, increase risks associated with court security.



- System breakdowns are most likely to occur when the system is trying to operate at or near capacity. This could add to court processing times and make additional hearings necessary. Coordination may become more difficult to manage and achieve.

- During the next year there will be many motions, appeals, court tests and other litigation which will increase the number of hearings and delay the case processing time of strike cases. This may eventually subside, but it will be an initial short-term problem.

The report does not contain recommendations or prescribe actions which might be taken to address the impacts which are expected.



PART 1: ANALYSIS SUMMARY

INTRODUCTION

Assembly Bill 971 (Jones), popularly known as "3 strikes, you're out" presents a complex, potentially overwhelming challenge to the justice system operating within Santa Clara County, and elsewhere in the State of California.

This report summarizes the initial steps of a coordinated, three-pronged, inter-agency attempt to anticipate the potential impacts of the new law.

The National Association of Criminal Justice Planners Sample

The first thrust was to collect, summarize and present statistical information about the expected impacts of the 3 strikes law. This effort was rooted in the belief that action should be based on knowledge. The results are summarized in Part 1 of the report and detailed in tables which are contained in Part 2 of the report.

Santa Clara County is fortunate to have been one of the nine California counties participating in a multi-year national study of felony sentencing conducted by the National Association of Criminal Justice Planners (NACJP). This project, under the leadership of Mark Cuniff, Executive Director of the NACJP, provided Santa Clara County with a scientifically selected sample of persons sentenced on felony matters in Santa Clara County in 1992.

The NACJP sample provided a great deal of information which described these cases and how they were actually adjudicated in 1992. Once criminal history information was obtained, it was possible for Kathy Storton of the District Attorney's office to identify the cases which

would have been three strike, two strike or one strike cases had the 3 strikes law been in effect at the time these cases were adjudicated. Some additional data was added from records provided by the Public Defender and staff from the Superior Court. This provided the data base for the next stage of the study.

The Workshop

The next step was to compare how these cases were adjudicated in 1992 with how they might have been adjudicated had the 3 strikes law been in effect. This was done in a workshop organized and led by the Honorable Judge John A. Flaherty, Supervising Judge of the Criminal Division for the Superior Court. Several inter-agency planning sessions were held prior to the workshop. Justice agency heads and key personnel were invited to each meeting.

During the workshop, seventy-three sample cases representing 1,395 one+, two and three strike cases were discussed in a group setting by senior attorneys from the District Attorney's Office, the Public Defender's Office, Conflicts Administration, the Probation Department and a representative from the Sheriff's Office concerned with court security. Judge Flaherty chaired the meeting. Judge Flaherty and Judge John Garibaldi guided the discussion and "presided" as these cases were discussed. Each case was discussed in terms of how it might be adjudicated differently under the 3 strikes law and what processes would most likely lead to disposition of the case. Particular attention was devoted to determining the strike status of the cases and whether they would go to trial. Quali-

1. Through out this report "one+" is used to indicate one strike cases with multiple strike counts.



tative and quantitative data were collected as the discussion moved from case to case. This information is summarized in this report.

Managing the Expected Crisis

The report does not contain action recommendations. The final step in the three pronged approach will be to fashion system-wide, coordinated inter-agency approaches to manage the challenges which are described in this report. While they are not set forth in this report, many potential actions were "discovered" during the process of collecting information about these cases and during the workshop when the cases were reviewed. Implementing these notions has become part of an ongoing process. Fashioning additional responses and monitoring the development of the challenges which are expected will create the agenda for the next stage of the Santa Clara County response.

THE CONDITION TO BE MANAGED: THE MOST LIKELY SCENARIO

The justice system has a surprising ability to avoid becoming overwhelmed - to adjust, adapt and absorb challenges and changes. But this time may be different. The "3 strikes, you're out" law is expected to create a crisis in the administration of justice in Santa Clara County and elsewhere in the State.

Where will the system begin to break down first? The strain will appear at many places at once - at the jail, in the Municipal and Superior Courts where felony matters are heard, and by the Prosecution and Defense, by court security and prisoner transportation and other support services. But the workload impact will most likely be experienced earliest and most directly by the individual attorneys assigned to the cases from

the offices of the District Attorney, the Public Defender and Conflicts Administration.

Strain on the capacity of the Office of the District Attorney, Public Defender and Conflicts Administration will most likely exacerbate a growing court process backlog. As the criminal workload increases, periodic "purges" of criminal cases may give way to an ongoing reduction in civil proceedings.

The proportion of the jail system that is devoted to pretrial prisoners will increase dramatically, perhaps to 70%. Because the strike cases are expected to take a long time to adjudicate, large numbers of serious pretrial prisoners will collect in the jail system and the jail population will ramp up until these inmates begin to be sentenced to the State prison system. This will then produce some temporary relief of jail crowding because, in the past, some of these prisoner bound inmates would have been sentenced to County jail terms. This change will further diminish the proportion of the jail population that is made up of sentenced prisoners.

By June, 1995, the State Department of Corrections is expected to be full. Imposition of a court ordered inmate population "cap" on an already crowded State prison system could occur earlier. In either event, felony commitments from the counties will have begun to "back up" in county jails. This will again escalate jail crowding in Santa Clara County.

The characteristics and volume of the felony probation supervision case load will change. The most serious probation cases will be sent to prison and no longer require supervision at the County level. The number of felony level intakes to probation supervision will diminish. This will



keep the probation supervision workload from growing; in fact, a small reduction in the case load is forecast. This could create an opportunity to revitalize the adult probation service.

What are often considered justice support services will also experience considerable strain, and, it may be that breakdowns in these less obvious areas will produce important unanticipated and unintended consequences. For example, any crisis in office support staff, investigation, laboratory analysis, court security, and/or inmate transportation could temporarily bring the justice system to a standstill.

The juvenile justice system will also experience impacts which mirror those of the adult justice system since strikes garnered as a juvenile can be used in adult proceedings. This project did not include an attempt to quantify these effects; however, juvenile strike cases are certain to involve more litigation, require more hearings and more processing time from arrest to final disposition. The additional time to process the juvenile cases and the new seriousness with which they may be regarded will, most likely, lead to a demand for additional juvenile hall bed space for these juvenile cases.

However, unlike the adult system where strike cases are associated with mandatory prison terms, there is no requirement that juvenile strike cases be sent to the California Department of the Youth Authority. Thus, no "savings" in county institution or probation supervision resources can be expected to automatically accrue because the new 3 strikes law will send some juveniles to the State level that were previously managed locally.

SUMMARY OF EXPECTED IMPACTS

If 1994 is similar to 1992, approximately 8,400 persons will be sentenced on felony matters in Santa Clara County.

When finally adjudicated, Santa Clara County can expect approximately 2,315 or 28% of these 8,400 to be "strike" cases - felons convicted of serious or violent crimes (Table 4).

About 235 of these can be expected to be three strike cases which will be sentenced to 25 years to life. Another 1,005 felony sentences are expected to be two strike cases who will be sentenced to mandatory, and often, long prison terms. Of the remaining one strike cases (1,075), about 155 will have multiple counts that will lead to lengthy prison terms.

These figures represent the eventual expected count of convicted and sentenced "strike cases" (Table 4). It is a view of the output of the adjudication process, not the input. Of course, a larger volume of cases will enter the justice system charged with strikes.

These strike cases present a large potential workload. The study and the workshop were designed to develop estimates to help "size" the challenge these cases are beginning to present.

There Will Be a Smaller Number of Strike Cases Than Originally Expected

Many of the participants in the workshop originally speculated that nearly all of what were originally defined as potential three strike cases (based on a review of their criminal histories and the offense involved in the 1992 felony conviction) would be adjudicated as three strike cases and all would require jury trials. Additional trials



were also expected for two strike and one strike cases. The workshop refined and revised these expectations.

For example, the review of specific cases which took place during the workshop exercise resulted in a resorting of cases in the sample which were originally regarded as three strike, two strike and one strike cases. The workshop exercise reduced the number of expected three strike cases and greatly expanded the number of expected two strike cases.

Secondly, it became clear that some of the three strike cases might be settled without a jury trial, and many second strike cases might also be settled by plea. For example, there were instances where the prosecution and defense agreed that, in actual practice, an agreement might be reached whereby a potential two strike case would eventually be settled as a one strike case, but at the price of acceptance of a longer prison term.

Many More Trials Will Be Required

The review of cases performed at the workshop suggests that the expected number of trials will increase from 225 to 590, a 160% increase. The number of jury trials is expected to increase from 200 in 1992 to 585, a 193% increase (Tables 14 and 15). This represents a staggering amount of additional work.

According to representatives of the Superior Court, there has been an average of about 200 criminal trials in Superior Court for each of the last few years. This appears to be the present capacity of the system to deliver jury trials, as the system is currently administered, and this capacity is about to be vastly exceeded.

The increase that has been estimated is wholly

based upon expected trial activity for the one+, two and three strike cases.

Projections of additional trials for the no strike and one strike cases was not attempted. These cases were not reviewed at the work shop. It seems reasonable to assume there will be no increase in demand for jury trials from the no strike cases. However, defense attorneys report defendants now have new incentives to avoid picking up even a first strike, so more of these cases may go to trial.

Since no estimate of additional demand for trials was developed for the one strike group, the estimated increase in the number of jury trials may be too low.

Many More Court Hearings Will Be Required To Dispose of Cases in Municipal and Superior Courts

Another measure of the impact of the legislation is to estimate changes in the expected number of court hearings.

One+, two and three strike cases which would have been settled by plea in 1992 but would require jury trials if the 3 strikes law had been in effect, would have produced a demand for 8,740 additional court hearings (Table 19) for 385 additional trial cases (Tables 14 and 15). This represents an 85% increase in the number of court hearings required by these cases (Tables 16 through 19).

This estimate does not include any increase in the number of hearings for the no strike and one strike cases which might go to trial. The number of hearings which will be required could easily double if, for example, the one strike cases should also produce a demand for additional trials.



This estimate does not include any additional court hearings which may be associated with cases that settle by plea, but settle later in the process than they would have in 1992. The workshop produced evidence that leads to an expectation that there will be a tendency for cases to settle later, but no quantitative estimate of this impact was developed.

The Arrest to Sentencing Case Processing Time Will Increase

Jury cases take much longer to process than cases that are settled by plea. In 1992, the average for what would have been strike cases was 304 days for jury cases versus 167 days for cases settled by plea. Thus, if cases which once were settled by plea elect a jury trial it can add substantial processing time to case disposition.

The additional 385 one+, two and three strike cases that are now expected to be tried by jury adds 50,050 days of processing time (Table 22). This is 19% of the total number of days it took to process these cases in 1992 (Table 20). Half of this increase will be devoted to the additional 135 cases that were identified as 3 strike cases requiring jury trials (Table 22).

The workshop participants appeared to reach a consensus that even strike cases which settle by plea will settle later in the adjudication process than they did in 1992. This will most certainly produce additional hearings which have not been estimated and are not included in the estimate which has been just presented.

The Pretrial Jail Population Will Increase

The extra 50,050 days it will take to process the new one+, two and three strike jury trial cases can be expected to prolong the amount of time these cases will spend in pre-trial detention. The

extra 50,050 processing days translates into an estimated 137 additional beds, assuming these cases spend all their pretrial time in custody. These beds must be in a facility suitable for housing strike cases (Table 22).

This estimate does not include additional jail days for the one strike cases that may elect a jury trial, nor does it account for any fewer pretrial releases of what would have been one strike cases because of the much higher bails which will now be required. Thus, the added time in pretrial detention could be much larger than 50,050 days.

It may help to put this 50,050 extra days to process cases in perspective: If all of the strike cases had remained in jail from the date of their arrest until their date of sentencing - that is, none were released during the pretrial period - the strike cases would have served a total of 414,100 days in pretrial detention (Table 20). The 50,050 extra jail days which may be required because of the additional processing time of one+, two and three strike cases is about 12% of the total 414,100 pretrial jail person-days (Table 20). Added processing time associated with one strike cases would push this percentage higher.

Comparison of data concerning credit for time served in jail, adjusted to reflect actual time in the institution, suggests that most 3 strike and many other strike defendants spend a majority of their time between arrest and sentencing in jail (Table 23). Thus, at least for the most serious cases, higher bails or their 3 strike status, by itself, is not likely to contribute to jail crowding. Longer justice processing times will be a more important factor.



There Will Be Sentenced Jail Day Savings

A minimum of 385 two and three strike felons who were sentenced to jail in 1992 would, under the 3 strikes sentencing scheme, be sent to prison (Table 10). The 10 one+ strike cases that received jail terms in 1992 can probably also be added to this number (Table 10).

This would translate into sentenced jail day "savings" if, due to the 3 strikes law, these persons were sent to prison instead of jail. This potential pool of 395 people were sentenced to a total of 239 jail person-years in jail, about 9% of the 2,689 jail person-years received by sentenced felons in 1992 (Table 11). An upper end estimate would result if all of the 905 strike cases that were sentenced to jail in 1992 were sent to prison. If this were to happen, the jail person-year savings would swell to 532 jail person-years, about 20% of the 2,689 jail person-years ordered for felony sentences in 1992 (Table 11). Further adjustments to these estimates would need to be made to account for credit for time served.

A large pool (510) of first strike cases served 293 person-years of jail time (Table 11). If substantial numbers of these cases are sent to prison, it will result in additional sentenced jail day savings.

Any sentenced jail day savings are expected to be offset by the expected increases in the pretrial strike population. Calculating estimates of the net change is possible but will require more data from pretrial services and the Department of Corrections concerning the actual pretrial and sentenced time served by cases in the sample.

There Will Be County Probation Supervision Savings

A minimum of 385 two and three strike felons who were sentenced to jail in 1992 were also required to serve probation terms (Table 10). If the 3 strikes legislation were in effect, these cases would have gone to prison, creating 540 person-years of "savings" in supervision resources for the County Probation Department (Table 11).

The 10 one+ strike cases (Table 10) can probably be added to this number, adding another 30 person-years (Table 11) and bringing the total potential person-year savings of probation supervision to 570 person-years. This amounts to about 4% of the total person-years of probation supervision ordered by the 8,395 felony sentences in 1992 (Table 11).

This total can be further augmented by an unknown number of person-day savings from the large (555 person) one strike pool representing an additional 1,525 probation person-years (Tables 10 and 11).

If all the strike cases went to prison, the probation savings would total 2,095 person-years, 14% of the total probation ordered in 1992 (Table 11).

These savings would not accrue immediately because probation sentences are normally longer than one year. Thus, for example, the 570 person-years of County probation supervision savings associated with one+, two and three strike cases going to prison would be served over several years. The average probation term of these 570 cases was 17 months, so this translates into an annual probation supervision case load reduction of 396 cases.



Removal of these cases could substantially change the character of the probation workload. The more serious felony cases would be in prison, not on felony probation at the County level. Forces will be at work which will gradually reduce the felony workload, though only by a small amount.

Still, it should slow the growth in the felony case load.

The Demand for Presentence Investigation Reports Will Not Increase Significantly

No significant increase in the number of Presentence Investigation Reports is expected as a result of the 3 strikes legislation (Table 29).

Costs Associated With Defense Representation Will Increase

In addition to added work for the Public Defender, especially for jury trials, a distinct shift in the cost and type of representation by Conflicts is expected. In 1992, 28% of the one-, two and three strike Conflict Administration cases were in the hourly fee category; after review at the workshop an estimated 61% would have required more experienced trial attorneys, paid on an hourly basis. This is likely to increase defense costs. The current panel of attorneys will have to be expanded in number and experience.

Additional Expected Impacts

The Workshop produced other, more qualitative estimates of important impacts of the 3 strikes law. Many of these were "discovered" during discussions at planning meetings which preceded the workshop, or in discussion of specific cases. Some impacts were dramatic, others were more subtle. Examples follow:

- The number of jurors that will be needed will increase, not only because there will be more jury trials, but because the cases facing life imprisonment are eligible for 20 preemptory challenges, instead of 10.
- Because criminal work is accorded priority, the very large increase in criminal trials may force out civil litigation. This could create long delays for civil matters and make the court virtually unavailable to civil litigants. This could produce an environment in which consumer fraud and other illegal business practices cannot be restrained, and where criminal matters emanate from frustration over an inability to reach civil remedies, especially in domestic relations matters.
- The three strike cases have "nothing to lose". They face 25 years to life in prison. This will make them more dangerous to transport to what is expected to be an additional number of hearings.
- The increased penalties being faced by the strike cases, the increase in prisoner movement created by the additional hearings that are expected, and expectations of court delay and jail crowding all indicate a need to increase court security. Secure court rooms will be needed for court proceedings for strike cases, especially for the prison bound two strike cases and the three strike cases facing 25 years to life.
- Earlier sections of this report have focused on the number of additional hearings and additional work load which will be connected with the strike cases that would have settled by plea in 1992, and are now expected to demand jury trials. Two other sources of delay are anticipated:



- Additional increases in processing times are also expected simply because Santa Clara County will not have the proper resources available at the proper location at the proper time to adjudicate ready cases. (For example, a judge, prosecutor or defender may not be available; a suitable court room may not be available; and/or inmate transportation may be unable to deliver a prisoner on time.) This will become an increasing problem as the capacity of the justice system is strained to keep up with the increased workload.

- During the next year there will be many motions, court tests, appeals, and other litigation. Eventually, this level of activity will decline but it is likely it will add to the number of hearings and produce delays in case processing.

CHARACTERISTICS OF THE SENTENCED FELONS

This section of the report presents descriptive information about the characteristics of the felons sentenced in 1992.

Offense, Sex, Race and Age

Tables 1 through 3 and tables 4, 5, and 6, respectively, provide information about the most serious offense, sex, race, and age of persons sentenced in 1992.

Prior Record

The 8,395 persons sentenced on felony matters in 1992 had a total of 11,715 prior felony convictions (Table 7). Fifty-eight percent had no prior felony convictions. At the other end of the continuum were 1,090 people (13% of the peo-

ple) who accounted for 61% of the 11,715 prior felony convictions. Seventy-five percent of these 1,090 people would have been sentenced as strike defendants if the 3 strike legislation had been in effect in 1992.

Sentences

Almost all of the 1992 felony sentences involved incarceration in prison or in jail. Most strike cases were sent to prison even before the passage of the 3 strikes legislation: 59% of what would have been strike cases went to prison in 1992, 64% of those with 2 strikes, and 92% with 3 strikes (Table 9). The average prison term for what would have been strike cases was 6 years and 2 months in prison. And, what would have been three strike cases were sentenced to an average of 11.31 years in 1992 (Table 8).

Nearly all persons sentenced to jail were sentenced as a condition of probation, therefore, they also had probation terms. Seventy-seven percent of the felony sentences involved a probation term (Tables 10 and 11). The average probation term of persons sentenced in 1992 was 2 years and 5 months (Table 13).

Total Annual Person-Years of Punishment Provided in 1992

The 8,395 persons sentenced on felony matters in 1992 were sentenced to a total of 28,901 person-years of punishment (Table 11). The total was composed of 13,511 person-years of incarceration in prison or jail, and 15,390 person-years of probation supervision.

- Sixty-two percent of the total punishment years were allocated to no strike cases (Table 12).



- Nine percent were allocated to the three strike cases (Table 12).

But, when it came to incarceration, what would have been three strike cases were allocated 66% of the resource. That is, the 2,315 cases which would have been strike cases if they had been adjudicated under the new law (28% of sentences) were sentenced to a total of 8,966 person-years of incarceration (66% of the incarceration person-years) (Table 11).



PART 2: DESCRIPTIVE STATISTICS

This section of the report presents tables and accompanying narrative which describe the characteristics of the felons sentenced in 1992. It also contains information which will explain estimates of how these cases would have been adjudicated differently if the 3 strike law had been in effect at that time.

OFFENSE: The NACJP Sample

The previous National Association of Criminal Justice Planners (NACJP) study reported 8,403 felony defendants were sentenced in Santa Clara County in 1992.

Table 1 displays the most serious conviction offense for the 1992 felony defendants in the NACJP sample. It shows:

- An estimated 1,467 (18%) were sentenced for person offenses, including homicide, rape, robbery, aggravated assault, and weapons offenses.
- Another 800 (10%) had burglary as their most serious offense.
- The other property crimes added another 1,653 (20%) persons who were sentenced for the property crimes of forgery, fraud, embezzlement, and larceny.
- There were 1,450 sentences (17%) for Drug possession.
- Another 1,606 sentences (19%) were for drug trafficking.
- The remaining 1,296 (15%) consisted of an assortment of other felonies.

Table 1:
Most Serious Offense and Sampling Ratios,
NACJP Sample

Most Serious Conviction Offense	Number of 1992 Felony Sentences	NACJP Sample Ratio	Number in NACJP Sample
Homicide	56	Every Case	56
Rape	320	1 of 2	160
Robbery	262	1 of 2	131
Aggravated Assault	780	1 of 4	195
Burglary	800	1 of 5	160
Drug Trafficking	1,606	1 of 11	146
Weapons	180	1 of 2	90
Forgery/ Fraud/ Embezzlement	624	1 of 4	156
Larceny	1,029	1 of 7	147
Drug Possession	1,450	1 of 10	145
Other Felony	1,296	1 of 8	162
Total	8,403	1 of 5	1,548

Table 1 also shows the NACJP sampling ratios, and the resulting number in the NACJP sample. The NACJP sample consisted of 1,548 of these felony sentences. Note the NACJP sample included every homicide, every other robbery and rape, every fourth aggravated assault, and larger sampling ratios for the more numerous offenses.



OFFENSE: The 3 Strike Sub-sample

Since the 3 Strike study required collecting additional information about cases in the NACJP sample, and the resources were simply not available to collect data for all 1,548 cases, a decision was made to collect additional data on every fifth case in the NACJP sample. The result is shown in Table 2.

Table 2:
3 Strikes Sub-sample Size, by Offense

Most Serious Conviction Offense	Number in NACJP Sample	New Sample Ratio	1/5th NACJP Sample
Homicide	56	1 of 5	12
Rape	160	1 of 10	32
Robbery	131	1 of 10	26
Aggravated Assault	195	1 of 20	39
Burglary	160	1 of 25	32
Drug Trafficking	146	1 of 55	29
Weapons	180	1 of 10	18
Forgery/Fraud/Embezzlement	156	1 of 20	31
Larceny	147	1 of 35	30
Drug Possession	145	1 of 50	29
Other Felony	162	1 of 40	32
Total	1,548	1 of 27	310

Comparing the NACJP and 3 Strike Sub-Samples

Though small, this sub-sample of 310 felony sentences produced estimates which were similar to the larger NACJP sample. See, for example, Table 3, which compares the number of felony sentences projected from the samples, by most serious offense.

Table 3:
Comparison of Estimates from NACJP and 3 Strike Sub-Samples by Most Serious Conviction Offense

Most Serious Conviction Offense	NACJP Study	3 Strike Sub-Sample
Homicide	56	60
Rape	320	320
Robbery	262	260
Aggravated Assault	780	780
Burglary	800	800
Drug Trafficking	1,606	1,595
Weapons	180	180
Forgery/Fraud/Embezzlement	624	620
Larceny	1,029	1,050
Drug Possession	1,450	1,450
Other Felony	1,296	1,280
Total	8,403	8,395



SEX

Table 4 presents information about the proportions of males and females who were convicted of felonies in 1992, by status as strike defendants.

Of the 8,395 felony cases, 7,140 (85%) were males; 1,255 (15%) were females.

Males are decidedly over-represented in the cases that would have been strike cases. For example, 2,215 (96%) of the 2,315 strike cases were males. All of the one strike and all of the 3 strike cases in the sample were males.

Table 4:
Sex of Persons Sentenced on Felony Matters, 1992

Number of Strikes	Total	Males	Females
No Strikes	6,080	4,925	1,115
One Strike	920	920	0
One +	155	145	10
Two	1,005	915	90
Three	235	235	0
One+,2&3	1,395	1,295	100
All Strike	2,315	2,215	100
Total	8,395	7,140	1,255

RACE and ETHNICITY

Persons who were sentenced on what would have been strike cases were more likely to be minority defendants (Table 5).

Of the total 8,395 felony sentences, 6,455 (77%) were white, 1,500 were black (18%), 370 were asian (4%) and in 70, or less than 1% of the cases, the person's race was unknown.

Of the 2,315 strike cases, 1,575 (68%) were white, 600 (26%) were black, and 140 (6%) were asian.

Table 5:
Race of Persons Sentenced on Felony Matters, 1992

Number of Strikes	Total	White	Black	Asian	Un-known
No Strikes	6,080	4,880	900	230	70
One Strike	920	635	165	120	0
One +	155	120	25	10	0
Two	1,005	660	335	10	0
Three	235	160	75	0	0
One+,2&3	1,395	940	435	20	0
All Strike	2,315	1,575	600	140	0
Total	8,395	6,455	1,500	370	70



Looked at another way, of the 6,455 felony sentences of whites, 1,575 (24%) would have been strike cases. Of the 1,500 felony sentences of blacks, 600 (40%) would have been strike cases. And of the 370 felony sentences of asians, 140 (38%) would have been strike cases.

The NACJP study used Census Bureau definitions of race and ethnicity, therefore this convention was followed when additional data was collected concerning the sub-sample. This made it difficult to separate out Spanish surname or Latino populations. Unfortunately, data concerning ethnicity of the felony sentences contained a great many cases where the ethnicity of the person was unknown. This made it impossible to develop estimates based on ethnicity.

AGE

The average person sentenced on felony matters in 1992 was 31 years of age (Table 6). As expected, the average age increases with the number of strikes. Three strike cases facing 25 to life sentences average 38 years old. This means the average 3 strike defendant would be 63 years old after serving a minimum of 25 years in prison.

Table 6:
Age of Person Sentenced on Felony Matters, 1992

Number of Strikes	Average Age
No Strikes	30.27 years
One Strike	28.37 years
One +	31.39 years
Two	36.33 years
Three	38.13 years
One+, 2 & 3	36.1 years
All Strike	33.0 years
Total	31.03 years



PRIOR FELONY CONVICTIONS

The 8,395 persons sentenced on felony matters in 1992 had a total of 11,715 prior felony convictions (Table 7).

There was great variation in the number and severity of prior felony convictions of these cases:

- A majority of the cases had no prior felony conviction history.
- As expected, cases that would have been strike cases if the 3 strikes law had been in effect, had larger numbers of prior felony convictions; and,
- A small number of offenders accounted for a large number of prior felony convictions.

Of the 8,395 people receiving felony sentences, 4,880 (58%) had no prior felony convictions. (This does not mean they had no prior criminal history for some had prior misdemeanor convictions and/or felony arrests without convictions.)

At the other end of the continuum were 1,090 people (13% of the people) who accounted for 7,180 (61%) of the 11,715 prior felony convictions. Seventy-five percent (n=820) of these 1,090 people would have been sentenced as strike defendants.

In between these two groups are 2,425 people (29%) with one, two or three prior felony convictions. They accounted for 4,535 (39%) of the 11,715 prior felony convictions. Thirty percent (n=1,710) of these 2,425 people would have been sentenced as strike defendants.

Table 7:
Prior Felony Conviction Record of Persons Sentenced on Felony Matters in 1992

Number of Strikes	Total Number Sentenced	Total Number of Priors	No Priors	One	Two	Three	Four or more
No Strikes	6,080	4,220	4,100	920	500	290	270
One Strike	920	610	660	140	50	50	20
One +	155	70	120	10	15	100	
Two	1,005	5,420	0	115	75	165	650
Three	235	1,395	0	0	10	75	150
One+,2&3	1,395	6,885	120	125	100	250	800
All Strike	2,315	7,495	780	265	150	300	820
Total	8,395	11,715	4,880	1,185	650	590	1,090



The average number of priors, by strike class, is presented in Table 8. It shows that the two and three strike cases average 5.39 and 5.94 prior felony convictions, respectively. All other groups show less than one prior felony conviction.

Though small in number, the group with one strike involving multiple counts (identified as "one+" in the tables within this report) seems to gather a number of felony convictions at one time. The workshop made it clear that others gathered their prior felony convictions over many years.

Much variation characterizes the prior felony conviction records of these cases. Thus, it is difficult, and improper, to generalize.

Table 8:
Average Number of Prior Felony Convictions:
Persons Sentenced on Felony Matters in 1992

Number of Strikes	Total Number Sentenced	Total Number of Priors	Average Number of Priors
No Strikes	6,080	4,220	.69
One Strike	920	610	.66
One +	155	70	.45
Two	1,005	5,420	5.39
Three	235	1,395	5.94
One+, 2 & 3	1,395	6,885	4.94
All Strike	2,315	7,495	3.24
Total	8,395	11,715	1.40



SENTENCES

Almost all felony sentences involved incarceration in prison or jail. Most strike cases were sent to prison even before the passage of the 3 strikes law. Nearly all persons sentenced to jail were sentenced as a condition of probation, therefore, they also had probation terms (Tables 9 and 10).

Incarceration

Of the 8,395 felony sentences, 7,835 (93%) received a sentence involving incarceration; 27% to prison, 66% to jail or jail and probation (Table 9).

Most of the strike cases would have gone to prison, even prior to the 3 strike law. Fifty-nine percent of what would have been strike cases went to prison in 1992; 64% of the two strikers and 92% of the 3 strikers (Table 9).

Potential Person-Days in Jail Savings

The 3 strikes law will send people to prison that might otherwise have been sentenced to County jail and to County probation. This could result in from 9% to 20% fewer sentenced jail prisoner person-days than these prisoners required in 1992. In addition, this could produce from 4% to 14% fewer person-days of probation supervision. The basis for these estimates follows:

Table 9 shows there were an estimated 905 people that would have had one or more strikes and were sentenced to serve County jail time in 1992. At minimum, the two strike (n=365) and three strike (n=20) cases would have gone to prison if the 3 strikes law had been in effect. This means at least 385 persons who were sentenced to County jail in 1992 would now go to prison.

Table 9:
Incarceration of Persons Sentenced on Felony Matters, 1992

Number of Strikes	Total Sentenced	Incarceration		Prison		Jail	
No Strikes	6,080	5,565	92%	900	15%	4,665	77%
One Strike	920	875	95%	365	40%	510	55%
One +	155	155	100%	145	94%	10	6%
Two	1,005	1,005	100%	640	64%	365	36%
Three	235	235	100%	215	92%	20	9%
One+, 2&3	1,395	1,395	100%	1,000	72%	395	28%
All Strike	2,315	2,270	98%	1,365	59%	905	39%
Total	8,395	7,835	93%	2,265	27%	5,570	66%



Additional cases might also be sent to prison instead of jail. For example, the 10 cases which were identified as one strike cases with multiple counts can probably be added to this number, along with an unknown number of what would have been first strike cases ($n=510$), as these were also cases convicted and sentenced for serious or violent offenses.

The potential pool of person-day sentenced jail savings for the 395 one+, two and three strike cases that were sentenced to jail in 1992 would total 239 person-years, 9% of the total 2,689 person-years of jail sentences ordered in 1992 (Table 11).

Given the size of the potential pool of first strike cases ($n=510$), the prison/jail sentencing decision presents a large additional potential impact: if large numbers of one strike cases are sentenced to prison, it will make it unnecessary to provide sentenced jail space for them. This will alleviate anticipated crowding at the County jail. On the other hand, if large numbers are sentenced to County jail time, it will alleviate the prison crowding that is expected, but add to County jail crowding.

If all the strike cases that were sentenced to jail in 1992 were to be sent to prison, the jail person-day savings would total 532 person-years, 20% of the jail person-years imposed for felony sentences during 1992.

These total person-years would need to be adjusted by deducting jail day credits for time served, and good time and work time for these cases. A later section of this report deals with estimating the effect of credits for time served.

Of course, any sentenced jail bed day "savings" may be partially or totally offset by increases in

the length of the time these same cases spend in pretrial detention, because of higher bail requirements or an increase in requests for jury trials, which take longer to adjudicate.



Table 10:
Probation Grants of Persons Sentenced on Felony Matters, 1992

Number of Strikes	Total Sentenced	Straight Probation + Probation & Jail		Probation and Jail		Straight Probation	
No Strikes	6,080	5,430	89%	5,145	85%	285	5%
One Strike	920	600	65%	555	60%	45	5%
One +	155	10	6%	10	6%	0	0%
Two	1,005	365	36%	365	36%	0	0%
Three	235	20	9%	20	9%	0	0%
One+, 2&3	1,395	395	28%	395	28%	0	0%
All Strike	2,315	950	41%	950	41%	0	0%
Total	8,395	6,425	77%	6,095	73%	330	4%

Probation

Except for persons sentenced to prison, most felony sentences included probation terms in addition to a County jail sentence (Table 10). Thus, 6,425 (77%) of the felony sentences received a probation term.

Table 10 shows a total of 385 people with two (n=365) or three strikes (n=20) received County probation terms. Under the 3 strikes law these cases would all have been prison bound, therefore relieving the County of the expense of supervising them. Another 10 cases with one strike and multiple counts can likely be added to this number.

Table 13, which is presented later, provides additional data which can be used to approximate the number of County person-years of probation supervision "saved" when what would have been strike cases are sent to prison.

The total person-years of probation supervision required of what would have been 395 one+, two and three strike cases that received jail and probation terms in 1992 amounted to 570 person-years of probation supervision (Table 11). This amounts to about 4% of the total person-years of probation supervision involved in sentences received by the 8,395 felony sentences in 1992.

The one strike pool, because of its size (n=555), (Table 10) presents a potentially large additional impact (1,525 person-years of probation supervision resources) (Table 11). If all the strike cases that received probation sentences in 1992 were sent to prison, the person-years of probation supervision saved would total 2,095 person-years. This amounts to 14% of the total 15,390 probation years that was required of the 8,395 felony sentences in 1992.



If many of these cases are sentenced to prison, it will greatly relieve the County probation workload and radically alter the character of the probation supervision workload. On the other hand, if large numbers are sentenced to County jail, they will probably also continue to receive County probation terms. This would diminish the potential savings to County government.

TOTAL PERSON-YEARS of PUNISHMENT IMPOSED in 1992

The 8,395 persons sentenced on felony matters in 1992 were sentenced to a total of 28,901 person-years of punishment sanctions (Table 11).

The total of 28,901 persons years was composed of 13,511 person-years of incarceration, either in prison (10,822 person-years) or jail (2,689 person-years); and, 15,390 person-years of probation supervision.

The number of person-years of incarceration increases as the number of strikes increases. For example:

- The 6,080 no strike cases (72% of felony sentences) were sentenced to a total of 4,515 person-years of incarceration (33% of the incarceration person-years).

- The 2,315 cases which would have been strike cases if they had been adjudicated under the new law (28% of sentences) were sentenced to a total of 8,966 person-years of incarceration (66% of the incarceration person-years).

- The 235 (3%) of sentenced felons that could have been 3 strike cases were sentenced to 2,452 person-years of incarceration (18% of the total incarceration person-years). (Note: Life sentences were assumed to serve 50 years).

Table 11:

Total Person-Years of Punishment Imposed: Persons Sentenced on Felony Matters, 1992

Number of Strikes	Total Sentence	Total Years of Sanctions	Total Years Incarceration	Prison Years	Jail Years	Probation Years
No Strikes	6,080	17,811	4,515	2,358	2,157	13,296
One Strike	920	3,961	2,436	2,143	293	1,525
One +	155	1,660	1,630	1,622	8	30
Two	1,005	2,958	2,478	2,267	211	480
Three	235	2,512	2,452	2,432	20	60
One+.2&3	1,395	7,130	6,560	6,321	239	570
All Strike	2,315	11,091	8,996	8,464	532	2,095
Total	8,395	28,901	13,511	10,822	2,689	15,390



Table 12 shows the percentages, or relative use of each sanction. Average terms are presented in Table 13.

As noted in earlier sections of this report, the information in Table 11 can also be used to estimate the sentenced jail and probation supervision time that would be shifted to the State and result in County "savings" if the 3 strikes law had been in effect in 1992.

Certainly all of what have been designated as 3 strike cases would have been prison bound. So, too, would virtually all of the two strike and 1+ strike cases. Adding up the sentenced jail and probation time of these cases in 1992 produces an estimated "savings" total of 239 person-years of jail time, and 570 person-years of probation supervision.

This does not mean a savings of 239 jail beds. The estimated 239 person-years in jail must be adjusted for credits for pre-trial time served and for work time and good time, so the actual "savings" will be much less than 239 beds. (A close approximation could be calculated if the actual pretrial days and the pre-trial and sentenced time credits for each prisoner in the sample were obtained. Unfortunately these data were not available for review.)

Similarly, the 570 person-years of County probation supervision will not accrue immediately. Grants of more than one year of probation are the norm. Thus, these 570 person-years of probation supervision are to be served over several years. The average probation term of these 570 cases was 17 months. This translates into an annual Probation supervision case load reduction of 396 cases.

Table 12:
Percent of Total Punishment Person-Years, by Type of Sanction and Strike Classification

Number of Strikes	Number of Sentences	% of Total Sanction Years				
		All	Jail & Prison	Prison	Jail	Probation
No Strikes	6,080	62%	16%	8%	7%	43%
One Strike	920	14%	8%	7%	1%	5%
One +	155	6%	6%	6%	0%	0%
Two	1,005	10%	9%	8%	1%	2%
Three	235	9%	8%	8%	0%	0%
One+,2&3	1,395	25%	23%	22%	1%	2%
All Strike	2,315	38%	31%	29%	2%	7%
Total	8,395	100%	47%	37%	9%	53%



Relative Use of Sanctions

Table 12 converts the numbers which appear in Table 11 into percentages. Table 12 shows, for example, that 47% of the total person-years of punishment were for incarceration, either in prison or in jail; the remainder, 53% were to provide probation supervision. Note that 62% of the resource was allocated to no strike cases. What would have been 3 strike cases received 9% of the punishment resource, 8% incarceration in prison and jail, and less than 1% probation.

Average Length of Prison, Jail and Probation Terms

The average length of supervision for the felons sentenced in 1992 was 3.44 years (3 years and 5 months - Table 13).

Prison cases averaged 4.78 years (four years and nine months). What would have been strike cases were sentenced to longer terms. For example, the average for all cases which would have been strike cases was 6.20 years in prison (six years and two months). What would have been three strike cases were sentenced to 11.31 years in prison (eleven years and four months - Table 13).

Jail terms averaged 0.48 years (6 months). The jail terms of what would have been one+, two and three strike cases averaged strike cases was 0.59 years (7 months).

Probation terms averaged 2.40 years (2 years, 5 months). Strike cases, which were much less likely to receive probation, received shorter average terms. One+, two and three strike cases that received probation were sentenced to an average term of supervision of 1.44 years (1 year, 5 months). The average for all strike cases was 2.21 years (2 years, 3 months).

Table 13:
Average Length of Prison, Jail and Probation Terms (Years)

Number of Strikes	Number of Sentences	All	Jail & Prison	Prison	Jail	Probation
No Strikes	6,080	2.93	.81	2.62	.46	2.45
One Strike	920	4.31	2.78	5.87	.57	2.54
One +	155	10.71	10.52	11.19	.80	3.00
Two	1,005	2.94	2.47	3.54	.58	1.32
Three	235	10.69	10.43	11.31	1.00	3.00
One+, 2&3	1,395	5.11	4.70	6.32	.61	1.44
All Strike	2,315	4.79	3.96	6.20	.59	2.21
Total	8,395	3.44	1.72	4.78	.48	2.40



CONVICTION BY PLEA OR TRIAL

Of the 8,395 felony sentences, 8,120 (97%) were settled by plea; the remaining 225 (3%), were settled at trial before the bench (n=25) or by jury (n=200) (Table 14). These are actual results for cases adjudicated in 1992.

The ratio of cases going to trial increased dramatically by type of strike case.

- There is a large number of no strike cases where the trial type is unknown, but the worst ratio would be 95 out of 6,080 cases, or 1.6%.
- The average for all of the cases that would have been strike cases is 75 out of 2,315, or 8% going to trial.
- The average for all of the cases that would have been three strike cases, is 75 out of 235, or 32% being settled by trials.

But this is prior to the implementation of the 3 strikes law. The conventional wisdom is that, with the 3 strikes law in effect, many more cases will go to trial. This possibility is explored in Table 15.

Table 14:
Number of Convictions by Plea or Trial
(Actual): Persons Sentenced on Felony
Matters, 1992

Number of Strikes	Number of Sentenced	Plea	Bench Trial	Jury Trial	Type Un-known
No Strikes	6,080	5,985	0	45	50
One Strike	920	875	0	45	0
One +	155	125	5	25	0
Two	1,005	975	20	10	0
Three	235	160	0	75	0
One+, 2 & 3	1,395	1,260	25	110	0
All Strike	2,315	2,135	25	155	0
Total	8,395	8,120	25	200	50



Results of the Workshop: Number of Trials

The participants at the workshop examined a sample of seventy-three strike cases representing the 1,395 felony sentences from 1992 that the participants agreed would be adjudicated as one strike (with multiple counts), two or three strike cases. Discussion of each case in the sample produced estimates for the number of trials which appear in Table 15.

A total of 585 jury trials and 5 bench trials, or 590 trials resulted from this exercise. This is only about 7% of the felony sentences, but it is a huge increase in the number of trials.

Thus, while only about 7% of felony sentences are expected to go to trial by bench or jury, this represents an 160% increase in the number of trials. The number of jury trials is expected to increase from 200 trials to 585 trials, or by 193% (Table 15). This means the justice system must prepare to accommodate 385 additional jury trials.

The number of expected trials for no strike and one strike cases was not changed during the workshop exercise. The actual numbers for 1992 were used for these cases. No estimate was developed because there wasn't the time or resources available to review each of these cases. Discussion developed a sense of consensus that more of what would have been one strike cases would have gone to trial to avoid picking up a strike, but no estimate of the additional number of trials was developed. This omission of any additional trials from the considerable number of what would have been one strike cases creates a conservative estimate of the number of trials that would have been expected to occur had the 3 strikes law been in effect in 1992.

The estimate also assumes some of the 3 strike cases will settle without a trial - something that was not anticipated by many at the beginning of the exercise.

The largest increase in the number of trials is expected to occur among the two strike group. Once reconsidered, the 30 actual trials held in 1992 became 250 trials as a result of discussion during the workshop (Table 15).

Table 15:
Number of Expected Convictions by Plea or Trial for Cases Reviewed at the Workshop

Number of Strikes	Number of Sentences	Plea	Bench Trial	Jury Trial	Type Un-known
No Strikes	6,080	5,985	0	45	50
One Strike	920	875	0	45	0
One +	155	115	5	35	0
Two	1,005	755	0	250	0
Three	235	25	0	210	0
One+,2&3	1,395	895	5	495	0
All Strike	2,315	1,770	5	540	0
Total	8,395	7,755	5	585	50



NUMBER OF COURT HEARINGS

Table 16 shows the number of Municipal and Superior court hearings for the cases which would have been one strike (with multiple counts), two strike and three strike cases if the 3 strike law had been in effect. This was obtained from JCQD screens produced by the CJIS system. JCQD screens were not run for the remaining cases in the sample.

Table 16 shows there was a total of 10,280 hearings scheduled for the estimated subset of 1,325 felony sentence cases, an average of 7.76 hearings per case. The 215 cases that would have been three strike cases had 3,720 (36%) of these hearings, an average of 17.3 hearings per case.

Cases which settle by plea required fewer hearings. It took 6,690 hearings to dispose of 1,260 cases that were settled by plea, an average of 5.3 hearings per case. On the other hand, jury cases required 3,100 hearings to try 110 cases. This is an average of 28.2 hearings per case. (The number of cases for these calculations appear in Table 14).

There were 75 cases in which what would have been three strike cases were settled by jury trial (Table 14). These three strike jury trial cases required 2,450 hearings to dispose of, an average of 32.7 hearings per case.

Table 16:
Number of Hearings by Type of Conviction
(Actual) for Cases Reviewed at the Workshop

Number of Strikes	Number of Sentences	Number of Hearings			
		Total	Plea	Bench Trial	Jury Trial
No Strikes	6,080	NA	NA	NA	NA
One Strike	920	NA	NA	NA	NA
One +	130	1,410	850	30	530
Two	980	5,150	4,870	160	120
Three	215	3,720	1,270	0	2,450
One+, 2&3	1,325	10,280	6,990	190	3,100
All Strike	2,245	NA	NA	NA	NA
Total	8,325	NA	NA	NA	NA

Note: The number of hearings was not available for a small number of cases in the sample. This converted to 25 one+ cases, 25 two strike cases, and 20 three strike cases. These cases have been deducted from the "number of sentences" column in this table.



ESTIMATING WORK ADDED WHEN CASES WHICH WERE FORMERLY SET- TLED BY PLEA REQUIRE JURY TRIALS

These figures provide some basis for estimating the additional load which will be created by cases which were settled by plea in 1992, but would have been expected to go to jury trial if the 3 strikes law had been in effect.

Table 17:
**Actual Average Number of Court Hearings,
by Plea or Jury Trial, by Strike Category for
Felony Sentences, 1992**

Number of Strikes	Number of Sentences	Actual Average Number of Hearings, 1992			
		Total	Plea	Bench Trial	Jury Trial
No Strikes	6,080	NA	NA	NA	NA
One Strike	920	NA	NA	NA	NA
One +	130	10.8	6.8	6.0	21.2
Two	980	5.3	5.0	8.0	12.0
Three	215	17.3	8.0	-	32.7
One+,2&3	1,325	7.8	5.5	7.6	28.2
All Strike	2,245	NA	NA	NA	NA
Total	8,325	NA	NA	NA	NA

This method merely calculates the number of additional hearings, in 1992, that would have been required to dispose of cases that would be expected to be settled by a jury trial rather than

plea. It represents a crude method because all hearings are not equal; that is, some types of hearings require much more time than others, and this method does not take this into account.

Tables 17 and 18 detail this method of estimating this impact. Note: These averages were calculated from the data presented in Tables 14 and 16.

The anticipated increase in workload for the strike cases that would be expected to be settled by jury trials instead of pleas is presented in Table 18

Table 18:
**Additional Hearings Expected When Cases
are Settled by Jury Trial Rather Than Plea**

Strikes	Average Number of Hearings		
	Plea	Jury	Additional Hearings
One+	6.8	21.2	14.4
Two	5.0	12.0	7.0
Three	8.0	32.7	24.7
One+,2&3	5.5	28.2	22.7



Table 19 takes the analysis a final step. Multiplying the additional trials which are expected (from Tables 14 and 15) by the number of additional hearings per case (Table 18) produces estimates of the total additional hearings required by 3 strikes:

This exercise produces an estimate of 8,740 additional hearings to accommodate changes in settlement from plea to jury trials for 385 additional cases. In 1992, this subset of one+, two and three strike cases (n= 110) cases required 10,280 hearings to reach disposition. Thus, the 8,740 additional hearings represent an 85% increase in hearings. This estimate does not include any increase in the number of trials for the no strike and one strike cases; thus, the number of hearings which will be required could easily double; that is, reach 100% or more.

The data presented in Table 19 assumes no increase in the number of trials by the no strike and one strike cases. Discussion at the workshop produced a near consensus that more one strike cases would probably go to trial. No estimate was developed, however.

Because the average number of hearings by strike were calculated independently, the total added hearings column will not add to 8,740. More confidence can be placed in the averages given for the "One+,2&3" row of Table 19 because it is based on larger numbers.

Table 19:
Number of Additional Hearings Expected

Strikes	1992 Actual Number of Trials	Projected Number of Trials	Additional Trials	X	Added Hearings Per Case	=	Total Added Hearings
One+	25	35	10		14.4		144
Two	10	250	240		7.0		1,680
Three	75	210	135		24.7		3,345
One+,2&3	110	495	385		22.7		8,740



CASE PROCESSING TIMES

Another estimate of the impact of the 3 strikes law can be constructed by examining the differences in the processing times of cases that were settled by plea and by trial in 1992, then applying these processing times to the way these cases would have been expected to be processed if the 3 strikes law had been in effect at that time.

Tables 20, 21 and 22, which follow, provide the information which is needed to make these estimates.

Table 20 shows the 8,395 cases took a total of 1,402,085 days to process from the date of arrest to sentencing, an average of 167 days. (This is a simple, perhaps gross, measure of processing time. For example, it does not adjust or deduct for time when the defendant may not have been available for processing; e.g., in absconder status.)

Note that the total time to process cases that were disposed of by jury (115,800 days, or 8%) is dwarfed by the number of days that it took to process cases that were settled by plea (1,274,125 days, or 92%). However, the 8% of total processing time was required to process only 220 (2.4%) of the 8,395 cases - the cases that had jury trials. Thus, any expected increase in jury trials can be expected to significantly impact total processing times. Estimates of these effects are presented in the tables that follow.

Table 20:
Number of Days From Arrest to Sentencing: Persons Sentenced on Felony Matters, 1992

Number of Strikes	Total	Plea	Bench Trial	Jury Trial	Unknown
None	987,985	917,460	0	68,675	1,850
One	143,850	130,725	0	13,125	0
One+	41,335	33,095	1,050	7,190	0
Two	180,020	169,210	9,260	1,550	0
Three	48,895	23,635	0	25,260	0
One+, 2&3	270,250	225,940	10,310	34,000	0
All Strike	414,100	356,665	10,310	47,125	0
Total	1,402,085	1,274,125	10,310	115,800	1,850



AVERAGE CASE PROCESSING TIMES BY STRIKE STATUS

Table 21 shows the average time from arrest to sentencing was 167 days. But, the length of time for jury trial cases was considerably longer than the time it took to process cases that settled with a plea. Comparing these two measures - the time to plea and the time to jury trial should produce a rough estimate of the extra processing time which will be required by strike cases that go to trial rather than settle by plea. This information is further developed in the next table (Table 21).

Note: While the detail is shown in the table, the interior numbers of the table represent averages based on small numbers in some cases. The averages for the larger numbers of cases (the totals) will be more reliable. Two particular problems are discussed below:

The 1,526 average days from arrest to sentence for the no strike cases is caused by at least two reasons. First, it represents a few very long periods for a small number of cases. Secondly, this is the group that is most likely to achieve a pretrial release, and the long period from arrest to sentencing includes time of absconders. This average length of stay will probably not be typical for this group.

Similarly, there were a small number of what would have been two strike cases that went to jury trial. This two strike data is not likely to be representative of a larger number of cases. The average number of days from arrest to sentencing is typically less for plea cases than for jury trials.

Table 22 takes the analysis a final step. Multiplying the additional trials which are expected (from tables 14 and 15) by the number of addi-

tional processing days (Table 21) produced estimates of the total additional number of processing days required by the strike cases, for example the average number of 179 processing days for one+, two & three strike case by plea (Table 21) compared to 30 days for Jury trials, means an extra 130 days for processing.

Considering only what would have been the one+, two and three strike cases, this method of estimation indicates an additional 50,050 processing days can be expected if 385 cases that would have been settled by plea go to a jury trial, as the participants in the workshop expect they will. This will add to court case backlog.

Table 21:
Average Number of Days From Arrest to
Sentencing (Actual): Persons Sentenced on
Felony Matters, 1992

Number of Strikes	Total	Plea	Bench Trial	Jury Trial	Un- known
None	163	153	0	1526	37
One	156	149	0	292	
One+	266	265	210	288	
Two	179	174	463	155	
Three	208	148	0	337	
One+,2& 3	179	179	412	309	
All Strikes	194	167	412	304	
Total	167	157	412	579	37



Table 22:
Projected Number of Extra Processing Days As a Result of the 3 Strikes Legislation

Strikes	1992 Actual Number of Trials	Projected Number of Trials	Additional Trials	X	Added Days to Process	= Total Added Days
None	45	45	0		?	0
One	45	45	0		143	0
One+	25	35	10		23	230
Two	10	250	240		N/A	N/A
Three	75	210	135		189	25,515
One+,2&3	110	495	385		130	50,050
All Strikes	155	540	385		137	52,745

PROJECTING IMPACTS ON THE PRETRIAL JAIL

The actual length of pretrial detention for these cases was not made available for study, nor was information provided about how many achieved a pretrial release, or type of pretrial release. This made it difficult to estimate the effects on the jail population. The following analyses represent an attempt to compensate for this.

If all of the "extra processing days" represented in Table 22 are spent in pretrial detention, there will be a requirement for 137 extra beds suitable for one+, two & three strike defendants (50,050 extra days/365 days = 137 beds).

How big an impact is this? Some strike cases may have bailed or achieved some other form of pretrial release. However, if we assume that all the strike cases spent the entire time from arrest to sentencing in pretrial detention, their total

number of pretrial detention days would add to 414,100 days (Table 20). The 50,050 extra days projected for the added jury trial cases is about 12% of that total.

Again, the interior of Table 22 presents numbers which may not be reliable and, since the averages were calculated independently, the last column will not add to 50,050 days. Note, too, that no provision has been made to estimate additional jail days by one strike or no strike cases.

Additional extra days will be spent in pretrial detention by strike cases simply because their bail amounts will be much higher and fewer of them will achieve a pretrial release. Some of these cases, particularly one strike cases, were probably released on bail during 1992. There is no way to estimate the impact of these cases because the length of stay and type of release achieved by cases in the sample were not made available for study.



CREDITS FOR TIME SERVED

Pretrial inmates receive credit for time served during their pretrial status. In most cases the CJIS system JCQD screen provides a record of the credit for time served which was awarded to each case. These amounts have been converted to the actual time served in the tables which follow. It provides only a rough measurement because periods of pretrial detention may have been served long ago, especially by probation violators. Thus, these figures provide only a rough approximation of the amount of time these cases spent in pretrial detention.

Table 23 shows the one+, two and three strike cases earned an estimated 178,730 person-days, or 490 person-years of credit for time served while in pretrial detention (Table 23). This is about 7% of the total 6,560 person-years of sentence to incarceration (Table 11)

Table 23:
Credit for Time Served in Jail (days):
Persons Sentenced on Felony Matters, 1992

Number of Strikes	Total	Plea	Bench Trial	Jury Trial
One+	21,795	14,353	2,203	5,239
Two	112,996	109,499	2,155	1,342
Three	43,939	23,262	0	20,677
One+,2&3	178,730	147,115	4,357	27,257

Average Number of Days Credit for Time Served

The 1,395 most serious cases served an average of 128 days in pretrial detention, according to this measure. As expected, the cases that were settled by trial and the three strike cases served the longest periods (Table 24).

Table 24:
Average Credit for Time Served in Jail (days)
by Strike Status Type

Number of Strikes	Total	Plea	Bench Trial	Jury Trial
One+	141	115	441	210
Two	112	112	108	134
Three	187	145	0	276
One+,2 & 3	128	117	174	248



Comparison of Credits for Time Served and Processing Times

Table 25 compares the processing time from arrest to sentencing (Table 20) and the calculation of actual pretrial time served as adjusted from data contained on the JCQD CJIC print out for each case.

This provides a rough, but untested, method for estimating the proportion of the total pretrial stay spent in detention. The data supports the notion that three strike cases spent a larger portion of their pretrial time in detention (90%) than did what would have been two strike cases (62%), or one+ strike cases (53%).

Table 25:
Comparison of Credited and Processing Times: Persons Sentenced on Felony Matters, 1992

Number of Strikes	Total Days from Arrest to Sentencing	JCQD Adjusted Time Served	Percent
One+	41,335	21,795	53%
Two	180,020	112,996	62%
Three	48,895	43,939	90%
One+, 2&3	270,250	178,730	66%

Even if the percentages shown here turn out to be inaccurate, it follows that most of what would have been three strike cases would have spent most all of their pretrial time in pretrial detention. Therefore, little impact on the pretrial jail will be produced by higher bails for this group. If their processing time stretches out however, which is expected when additional cases require jury trials, this will have an impact.

Higher bails are likely to change whatever pretrial release percentages were in existence for strike cases in 1992. And, in addition, these cases may increase the length of their processing times to plea or request more trials. Thus, there are three primary forces at work to increase the length of their pretrial jail stay: higher bails which keep more of them in for longer periods, longer processing time to plea; and, additional trials.



DEFENSE REPRESENTATION

Initial data concerning the representation of the sample of 310 cases representing all 8,395 felony sentences was obtained from the office of the Public Defender. No record of representation was available for an estimated 1,515 (18%) of the cases, and it is assumed they had private attorneys. The Public Defender fully represented an estimated 6,655 (79%) of the cases. The Public Defender provided partial representation to other cases which went on to be represented by Conflicts or by private attorneys (Table 26).

Conflicts represented 180 (13%) of the 1,395 one+, two and three strike cases, plus an unknown number of no strike and one strike cases.

Table 26:
Type of Defense Representation: Persons
Sentenced on Felony Matters, 1992

Number of Strikes	Total	None	Private	Public Defender	Conflicts
None	6,080	1,320	?	4,760	?
One	920	110	?	790	?
One+	155	0	15	100	40
Two	1,005	85	0	830	90
Three	235	0	10	175	50
One+, 2&3	1,395	85	25	1,105	180
All Strike	2,315	195	25	1,895	180
Total	8,395	1,515	25	6,655	180
Percent	100.0%	18.0%	.3%	79.3%	2.1%



TYPE OF FEE FOR REPRESENTATION

The workshop produced estimates of changes in the type of representation by defense attorneys employed by the Office of Conflicts Administration (Table 27).

Cases facing 30 years or more are assigned more experienced attorneys, paid on an hourly basis. For regular Conflict Administration cases, attorneys are paid a flat fee.

Data supplied independently by Conflicts Administration indicates 3% of the approximately 2,604 felony cases assigned to Conflicts in 1993 were hourly fee cases. As expected, the 3 strike analysis shows that cases requiring more experienced attorneys, paid on an hourly basis, are heavily concentrated in the one+, two and 3 strike group of cases. Thus, any increase in the number of these cases will create a bigger demand for these more experienced attorneys.

In 1992, 130 (72%) of what would have been one+, two and three strike conflicts cases were handled with a flat fee, as regular cases. After considering these cases during the workshop and in light of the 3 strike law, this figure drops to 70 (39%). The remainder would be assigned to more experienced attorneys and paid an hourly rate. Thus, the implementation of the 3 strikes law can be expected to increase the costs of defense representation.

Table 27:
Type of Conflicts Representation by Flat or Hourly Fee: Persons Sentenced on Felony Matters, 1992

Number of Strikes	Total	Actual 1992		Workshop	
		Regular	Hourly	Regular	Hourly
One +	40	30	10	30	10
Two	90	90	0	0	90
Three	50	10	40	0	50
One+,2&3	180	130	50	70	110
Percent	100%	72%	28%	39%	61%



REPRESENTATION AND JURY TRIALS

The public defender represented 110 (55%) of the 200 cases that were settled by jury trial. He represented an additional 60 (30%) of the cases part way through until they were assigned either to conflicts or private attorneys. What would have been three strike cases are more likely to be assigned outside of the Public Defender's Office (Table 28).

Table 28:
Jury Trials and Type of Representation:
Persons Sentenced on Felony Matters, 1992

Number of Strikes	Total Number of Jury Trials	Full Representation Public Defender	Other
None	45	10	35
One	45	45	0
One +	25	25	0
Two	10	0	10
Three	75	30	45
One+, 2 & 3	200	110	90

PRESENTENCE INVESTIGATION REPORTS

Changes in the need for a presentence investigation report were considered for each case discussed during the workshop. A modest increase of 30 presentence reports may have been required as a result of the implementation of the 3 strikes law. Table 29, which follows, shows that 1,100 PSI's were completed for the 1,395 most serious cases in the sample in 1992; after case review at the workshop 1,130 cases would require PSI's.

Table 29:
Presentence Investigations, 1992 and at the Workshop: Persons Sentenced on Felony Matters, 1992

		PSI Completed 1992 Actual		After Workshop Review	
Number of Strikes	Total	Yes	No	Yes	No
One+	155	125	30	155	0
Two	1,005	790	215	790	215
Three	235	185	50	185	50
One+, 2 & 3	1,395	1,100	295	1,130	265