

# A Three Strikes Policy?

Top point:

Three strikes sentencing, depending on how it is framed, could add very substantially to the size of the prison population and the associated cost. Even more limited schemes will increase the number of offenders in prison by around 40%.

Wikipedia describes the development of "Three Strikes" laws in the United States, essentially mandating long prison sentences for persistent offenders, committing a third serious offence. The details vary from state to state, but are usually restricted to "felony" offences (broadly equivalent to indictable offences in England & Wales) and the third offence may also be restricted to one of violence. Plainly such policies may be expected to increase the size of the prison population and the high rate of incarceration in the United States may, in part at least, be attributed to such sentencing. A policy based on related thinking, the indeterminate public protection sentence, for high harm offenders, was introduced in 2003 in England & Wales, but has since been abolished. Such policies are likely to be motivated by two main objectives: to deter offenders from adopting a criminal lifestyle, at least in respect of serious offences; and, to protect society from those who have demonstrated such persistent offending by committing a third serious offence.

We have developed a population based simulation that can be used to quantify the effect of such Three Strikes laws on the size of the prison population in England & Wales. The question whether such policies could meet their objectives or are in some way likely to be effective on broader grounds, is significantly more complex and will be considered later.

## Scenarios

Two illustrative scenarios are analysed here:

A

- 1. To be eligible for a Three Strike sentence an offender will have committed three indictable offences, the third of which will be sufficiently serious to have led to a prison sentence, however short
- 2. The Three Strike sentence will comprise a fixed term of 10 years or the higher sentence that would otherwise apply to the third offence whichever is the greater.
- 3. The Third Strike sentence would be served as a normal determinate sentence, i.e. half would normally be served in custody and the other half under licence with community supervision.

B

- 1. To be eligible for a Three Strike sentence an offender will have committed three indictable offences, the third of which will be sufficiently serious to have led to a prison sentence, of 4 years or more

- 2. The Three Strike sentence will comprise a fixed term of 20 years or the higher sentence that would otherwise apply to the third offence whichever is the greater.
- 3. The Third Strike sentence would be served as a normal determinate sentence, i.e. half would normally be served in custody and the other half under licence with community supervision.

The two scenarios explore the two ends of a broad spectrum of possibilities, though of course there will be many ways that such a sentencing scheme could be conceived.

## Conclusions

Three Strikes laws can be expected to have a very significant impact on the size of the prison population and therefore the cost to the public purse. Of the two scenarios considered here, scenario A, a widely framed approach, would be likely to almost triple the size of the England & Wales prison system to 225,000. The more limited scenario B restricted to more serious third offences attracting custodial sentences of 4 years or more, would also impact very significantly growing the prison population to 115,000 by 2040.

