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### Title

1, 2, 3 - You're Out: How Three Strikes Laws Affect Recidivism Nationwide

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### 1, 2, 3 — You're Out: How Three Strikes Laws Affect Recidivism Nationwide

The United States currently has the highest incarceration rate in the world, at 541 people per 100,000.<sup>1</sup> After reaching its peak in 1992, crime sharply dropped nationwide in the mid-to-late 1990s. This drop is thought to have been caused by increased incarceration and police presence; however, two murders would usher in a new age of nationwide punitive sentencing reforms. The highly publicized murders of two California women by habitual offenders catalyzed California voters in 1994 to approve Proposition 184, known as the Three Strikes Law (or, TSL), by 72% of the vote.<sup>2</sup> The TSL assigned a “strike” for each felony someone was convicted of, with a third strike carrying a possible life sentence. It was originally introduced to reduce recidivism of habitual offenders, which is the act of being released from prison and reoffending by committing another crime.<sup>3</sup>

This research investigates whether longer prison sentences deter crime, specifically focusing on whether states with more severe Three Strikes Laws experienced lower three-year recidivism rates from 2010 to 2019 compared to states with less severe Three Strikes Laws. To answer this question, I collected recidivism data from forty states between 2010 and 2019 and found the mean recidivism rate for each state. I then categorized the severity of each state’s TSL based on its penal code. My findings revealed there was no relationship between TSL severity and recidivism rates, and I conclude by discussing the current standing of California’s Three Strikes Law in light of recent criminal justice reforms.

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<sup>1</sup> “States of Incarceration: The Global Context 2024.” Prison Policy Initiative, [www.prisonpolicy.org/global/2024.html](http://www.prisonpolicy.org/global/2024.html).

<sup>2</sup> “California Proposition 184, Three Strikes Sentencing Initiative (1994).” *Ballotpedia*, [ballotpedia.org/California\\_Proposition\\_184,\\_Three\\_Strikes\\_Sentencing\\_Initiative\\_\(1994\)](http://ballotpedia.org/California_Proposition_184,_Three_Strikes_Sentencing_Initiative_(1994)).

<sup>3</sup> Legislative Analyst’s Office. “A Primer: Three Strikes - the Impact after More than a Decade.” A Primer: Three Strikes: The Impact After More Than a Decade, Oct. 2005, [www.lao.ca.gov/2005/3\\_strikes/3\\_strikes\\_102005.htm#:~:text=of%20Three%20Strikes-,Introduction,the%20electorate%20in%20Proposition%20184.](http://www.lao.ca.gov/2005/3_strikes/3_strikes_102005.htm#:~:text=of%20Three%20Strikes-,Introduction,the%20electorate%20in%20Proposition%20184.)

**Context and Significance:**

Commonly referred to as “Three Strikes and You’re Out,” California’s first-of-its-kind Three Strikes Law aimed to limit the types of penalties habitual felons may receive to only prison sentences, while simultaneously increasing the length of prison sentences for these offenders.<sup>4</sup>

Under California’s 1994 TSL, each subsequent offense counts as a “strike” that carries an increased penalty. First strikes follow statutory sentencing guidelines, while second strikes are double those guidelines. Third strikes carry the harshest penalty: a minimum sentence of 25 years and a maximum sentence of life in prison. For example, if someone committed a violent felony, they would receive their first strike, and sentencing would follow normal statutory guidelines. If they committed a second violent felony, their sentence would be doubled. Committing any third felony, such as stealing more than \$950 in retail merchandise, would lead to a mandatory sentence of at least 25 years. Simply put, Proposition 184 required that people with three strikes, regardless of whether their third strike was a violent/serious felony, be possibly sentenced to life in prison.

The significance of California’s Three Strikes Law cannot be understated: it fundamentally changed how the carceral system dealt with habitual offenders and made life sentences the norm for them. Since 1994, forty-four states have followed California in passing their own Three Strikes Laws. Consequently, by the end of the 1990s, Three Strikes Laws transformed the criminal justice system in America to prioritize punitive measures over rehabilitation, resulting in a dramatic increase in incarceration rates, state budgets, and disproportionately severe sentences for minority communities. Prison populations across the

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<sup>4</sup> “The Three Strikes and You’re Out Law.” *California Legislative Analyst’s Office*, 22 Feb. 1995, [lao.ca.gov/analysis\\_1995/3strikes.html#:~:text=California’s%20Three%20Strikes%20Law,other%20than%20a%20prison%20sentence.](http://lao.ca.gov/analysis_1995/3strikes.html#:~:text=California’s%20Three%20Strikes%20Law,other%20than%20a%20prison%20sentence.)

nation skyrocketed, with 87,500 second and third strikers held in California prisons alone.<sup>5</sup> Due to prisons surpassing capacity and terrible living conditions, federal class action lawsuits forced California to lower its prison population, which led to Proposition 36 being passed in 2012 by 69% of voters.<sup>6</sup> Prop 36 mandated that only serious/violent felonies could count for a third strike, and since then California prison populations have decreased to their lowest point in thirty years.<sup>7</sup> Two years later in 2014, California voters continued their momentum by passing Proposition 47 with 59% of the vote, which reclassified some non-violent felonies, such as marijuana possession, to misdemeanors.<sup>8</sup> Despite these reforms, California's TSL still remains one of the strictest in the nation and continues to spark debate concerning the effectiveness of such harsh penalties in reducing crime.<sup>9</sup>

California's history with criminal justice reform is marked by a pattern of progress and reversal. While the early 2010s introduced criminal justice reform to California following the rigid 1994 Three Strikes Law, the pendulum has swung back once again. In 2024, California voters passed Proposition 36 with 68% approval, reclassifying some theft/property crimes as felonies for repeat offenders and repealing many of Proposition 47's reduced sentencing measures for drug-related offenses.<sup>10</sup> Therefore, California's future with criminal justice stands at a crossroads, where voters may support progressive reforms, or continue their current trend of

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<sup>5</sup> Legislative Analyst's Office. "A Primer: Three Strikes - the Impact after More than a Decade." A Primer: Three Strikes: The Impact After More Than a Decade, Oct. 2005, [www.lao.ca.gov/2005/3\\_strikes/3\\_strikes\\_102005.htm#:~:text=of%20Three%20Strikes-,Introduction,the%20electorate%20in%20Proposition%20184.](http://www.lao.ca.gov/2005/3_strikes/3_strikes_102005.htm#:~:text=of%20Three%20Strikes-,Introduction,the%20electorate%20in%20Proposition%20184.)

<sup>6</sup> "California Proposition 36, Changes to Three Strikes Sentencing Initiative (2012)." *Ballotpedia*, [ballotpedia.org/California\\_Proposition\\_36\\_Changes\\_to\\_Three\\_Strikes\\_Sentencing\\_Initiative\\_\(2012\)](http://ballotpedia.org/California_Proposition_36_Changes_to_Three_Strikes_Sentencing_Initiative_(2012)).

<sup>7</sup> Person, et al. "California's Prison Population." *Public Policy Institute of California*, Public Policy Institute of California, 12 Sept. 2024, [www.ppic.org/publication/californias-prison-population/](http://www.ppic.org/publication/californias-prison-population/).

<sup>8</sup> "California Proposition 47, Reduced Penalties for Some Crimes Initiative (2014)." *Ballotpedia*, [ballotpedia.org/California\\_Proposition\\_47\\_Reduced\\_Penalties\\_for\\_Some\\_Crimes\\_Initiative\\_\(2014\)](http://ballotpedia.org/California_Proposition_47_Reduced_Penalties_for_Some_Crimes_Initiative_(2014)).

<sup>9</sup> Nalchadjian, Chris. "California Three Strikes Law: Understanding the Impact." KN Law Firm, 15 Sept. 2024, [kntrialattorneys.com/california-criminal-defense/three-strikes-law/#:~:text=California's%20Three%20Strikes%20Law%20is%20one%20of,the%20state%2C%20designed%20to%20target%20repeat%20offenders.](http://kntrialattorneys.com/california-criminal-defense/three-strikes-law/#:~:text=California's%20Three%20Strikes%20Law%20is%20one%20of,the%20state%2C%20designed%20to%20target%20repeat%20offenders.)

<sup>10</sup> "California Proposition 36, Changes to Three Strikes Sentencing Initiative (2012)." *Ballotpedia*, [ballotpedia.org/California\\_Proposition\\_36\\_Changes\\_to\\_Three\\_Strikes\\_Sentencing\\_Initiative\\_\(2012\)](http://ballotpedia.org/California_Proposition_36_Changes_to_Three_Strikes_Sentencing_Initiative_(2012)).

supporting more punitive measures. Three Strikes Laws remain a focal point of this debate, representing the broader tension between upholding public safety and addressing the challenges of maintaining prison safety.

### **Literature Review:**

In the same way that California has gone back and forth on criminal justice reform, scholarly perspectives surrounding the effectiveness of Three Strikes Laws have varied over the years. This review will examine past and recent research on the Three Strikes Law, with a focus on the roles that deterrent theory and the incapacitation effect play in shaping the Law's actual impact.

Despite policy analysts initially regarding California's TSL as a success in the mid-1990s, research reveals it has ballooned into a budget failure. California's then-Secretary of State Bill Jones, writing in *Stanford Law & Policy Review*, explained how opponents of TSLs favor "government dollars being directed at experimental programs" rather than going towards incarceration of repeat offenders, which he viewed as "the only sure method to keep our citizens safe."<sup>11</sup> In 2005, the California Legislative Analyst's Office estimated that the state's TSL would cost \$6 billion annually by 2026 in addition to \$20 billion in one-time prison construction costs.<sup>12</sup> The California State Auditor now estimates the TSL costs \$19 billion annually.<sup>13</sup>

This budget problem is merely one of the many ways that California's Three Strikes Law has become disillusioned amongst scholars. Scholars' more recent progressive attitudes toward criminal justice reform conflict with the "tough on crime" sentiment from Jones. Despite

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<sup>11</sup> Jones, Bill. "Why the Three Strikes Law Is Working in California." *Stanford Law & Policy Review*, vol. 11, no. 1, Winter 1999, pp. 23-28. *HeinOnline*, <https://heinonline.org/HOL/P?h=hein.journals/stanlp11&i=27>.

<sup>12</sup> Legislative Analyst's Office. "A Primer: Three Strikes - the Impact after More than a Decade." A Primer: Three Strikes: The Impact After More Than a Decade, Oct. 2005, [www.lao.ca.gov/2005/3\\_strikes/3\\_strikes\\_102005.htm#:~:text=of%20Three%20Strikes-,Introduction,the%20electorate%20in%20Proposition%20184](http://www.lao.ca.gov/2005/3_strikes/3_strikes_102005.htm#:~:text=of%20Three%20Strikes-,Introduction,the%20electorate%20in%20Proposition%20184).

<sup>13</sup> "Three Strikes Project." *Stanford Law School*, [law.stanford.edu/three-strikes-project/](http://law.stanford.edu/three-strikes-project/).

claiming he would be “unwilling to amend the TSL” to account for only serious/violent felonies, California voters approved Proposition 36 thirteen years later in 2012. Research at this time was still skeptical to label the TSL as problematic policy, with John Sutton choosing the middle ground in his 2013 research.<sup>14</sup> Sutton conducted a longitudinal study of the micro- and macro-effects of the TSL from both before and after it was introduced. Sutton claims the TSL neither supported the “dystopian predictions” from critics nor the “rosy predictions” from proponents. These sentiments are based on his findings that the TSL caused Black defendants to receive significantly longer sentences than their White counterparts, along with prison sentences only becoming 6% longer. However, Sutton theorized that there was otherwise no evidence of “a deep institutional transformation” from the TSL’s introduction.

Ten years later, research from the California Policy Lab (CPL) in 2022 supported Sutton’s finding of Black defendants receiving longer sentences, specifically for third strike sentencing enhancements.<sup>15</sup> The CPL goes a step further than Sutton, though, in claiming that the TSL “does not account for the declines” in California crime rates in the 1990s—namely, the decrease in crime that Secretary Jones celebrated as a result of the original 1994 TSL. Similarly, the Committee on Revision of the Penal Code took a significantly more progressive stance in 2021: the unanimous recommendation to repeal the Three Strikes Law.<sup>16</sup> Again echoing Sutton’s and the CPL’s findings, the Committee found that 80% of people sentenced under the TSL are people of color, highlighting how prosecutorial discretion in pursuing harsher sentences disproportionately targets minority communities. Therefore, research regarding the TSL’s effect

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<sup>14</sup> Sutton, John R. “Symbol and Substance: Effects of California’s Three Strikes Law on Felony Sentencing.” *Law & Society Review* 47.1 (2013): 37–71. Web.

<sup>15</sup> “Three Strikes in California.” California Policy Lab, Aug. 2022, [www.capolicylab.org/wp-content/uploads/2022/08/Three-Strikes-in-California.pdf](http://www.capolicylab.org/wp-content/uploads/2022/08/Three-Strikes-in-California.pdf).

<sup>16</sup> “2021 Annual Report and Recommendations.” *Committee on Revision of the Penal Code*, Dec. 2021, [www.clrc.ca.gov/CRPC/Pub/Reports/CRPC\\_AR2021.pdf](http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf).

on general crime trends has become increasingly skeptical, with initial support giving way to cautious hesitancy, and eventually to uncovering the systemic and institutional problems of the Law.

While research regarding the relationship between Three Strikes Laws and crime have changed, theories about its interaction with the deterrent effect have remained mixed. The deterrent effect refers to the idea that harsher penalties will disincentivize people from committing a crime due to the threat of punishment, including incarceration. Since 1994, scholars have released findings that either do or do not support the deterrent effect, with some research finding that harsher sentences not only fail to deter crime, but encourage it. One such study is from Cassia Spohn's 2007 research into the deterrent effect, where she compared recidivism rates for drug offenders who were either placed on probation or sentenced to prison. She found that the incarcerated people were 30% more likely to reoffend, perhaps because the withholding of potential connections with society turned them "into low-stakes offenders with little to lose as a result of a new arrest."<sup>17</sup> In contrast to Spohn's research, Helland and Tabarrok found that second strikers (people who have been convicted of two strikes) are 20% less likely to be rearrested than first strikers. They relied on trial outcomes of inmates released in 1994 to estimate the probability they would not be arrested again. While Spohn's and Helland et al.'s research was released in the same year, their findings are contradictory, claiming that there is both no support for the deterrent effect of imprisonment and simultaneously a quantifiable measure of the deterrent effect. To add to these mixed findings, the CPL found that the TSL's

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<sup>17</sup> Spohn, Cassia. (2007). The Deterrent Effect of Imprisonment and Offenders' Stakes in Conformity. *Criminal Justice Policy Review*, 18(1), 31-50. <https://doi.org/10.1177/0887403406294945>

deterrent effect “is likely to be minimal,” though there may be a “modest deterrent effect on less serious crime.”<sup>18</sup>

Given the full spectrum of empirical research on the deterrent effect, Alex Raskolnikov relies on a theoretical framework to assess its impact.<sup>19</sup> Instead of only focusing on the deterrent effect, Raskolnikov recognizes that it “is often challenging [...] to separate the deterrent effect of prison from its incapacitation effect.” The incapacitation effect refers to the reduction in crime caused by the removal of offenders from society, physically barring them from committing another crime. Therefore, there are two possible causal mechanisms that could explain lower crime rates from the TSL: longer sentences deterring offenders from recidivating, or longer sentences incapacitating offenders from even the possibility of recidivating. Raskolnikov labels this entanglement of causality “the first-order issue.” Furthermore, Heller and Tabarrok also highlight this issue’s importance by stating “the same reduction in crime is cheaper if produced by deterrence than if produced by incapacitation,” especially since it is cheaper to deter someone than incarcerate them for decades. There is still much debate surrounding which effect is more responsible for changes in crime rates or the extent to which both are responsible.

While side-stepping this debate, the CPL provides more nuance to the incapacitation effect, explaining that strike enhancements “also incarcerate people into their advanced ages when they would be less likely to commit crime.”<sup>20</sup> Based on the CPL’s research, then, while the deterrence and incapacitation effects can be viewed as the two primary causal mechanisms for affecting crime rates, there are still underlying factors influencing these effects that require more

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<sup>18</sup> “Three Strikes in California.” California Policy Lab, Aug. 2022, [www.capolicylab.org/wp-content/uploads/2022/08/Three-Strikes-in-California.pdf](http://www.capolicylab.org/wp-content/uploads/2022/08/Three-Strikes-in-California.pdf).

<sup>19</sup> Raskolnikov, Alex. “Criminal Deterrence: A Review of the Missing Literature.” *Supreme Court Economic Review*, vol. 28, 1 Oct. 2020, pp. 1–59, <https://doi.org/10.1086/710158>.

<sup>20</sup> “Three Strikes in California.” California Policy Lab, Aug. 2022, [www.capolicylab.org/wp-content/uploads/2022/08/Three-Strikes-in-California.pdf](http://www.capolicylab.org/wp-content/uploads/2022/08/Three-Strikes-in-California.pdf).



research. Perhaps once these factors are further explored, the causation debate between deterrence and incapacitation can be better understood.

Scholars continue to debate the effects of the Three Strikes Laws and its causal mechanisms. While they have generally supported more progressive perspectives relating to how, if at all, the TSL has influenced crime rates, more recent and farther-reaching research is needed to fully understand its effects on the carceral system. Much of the literature focuses specifically on California's TSL and uses data sets from the 1990s and early 2000s. Therefore, my research provides a new geographical scope, namely comparing the majority of US states' TSLs, and a more recent temporal scope ranging from 2010 to 2019. These improvements will hopefully lead readers to question the purpose of longer prison sentences nationwide, and can further support ongoing criminal justice reforms that prioritize rehabilitation over punishment.

### **Theory, Hypotheses, and Causal Mechanism:**

This research focuses on the punitive relationship between the state and its citizens.<sup>21</sup> The United States' era of mass incarceration reflects its difficulty with maintaining peace, relying on stopgaps to deal with a broken and outdated criminal justice system. Despite the surge in prison populations, the United States employs powerful punitive measures to keep offenders incarcerated, without confronting the underlying problems that lead to this mass incarceration. Three Strikes Laws embody the state's hyperfixation with incarceration over rehabilitation and the criminal justice system's difficulty with equipping offenders with the necessary skills for success when they are reintroduced into society. This research challenges the criminal justice system by asking: Do longer prison sentences actually lead to less crime? Specifically, between

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<sup>21</sup> Johnson, Theodore R., et al. "The Era of Punitive Excess." *Brennan Center for Justice*, 13 Apr. 2021, [www.brennancenter.org/our-work/analysis-opinion/era-punitive-excess](http://www.brennancenter.org/our-work/analysis-opinion/era-punitive-excess).

2010 and 2019, did states with more severe Three Strikes Laws experience lower three-year recidivism rates compared to states with less severe Three Strikes Laws?

Conceptually, I hypothesize that states with more severe TSLs will have lower recidivism rates compared to states with less severe TSLs. States that classify both violent and non-violent/serious felonies as third strikes will see reduced three-year recidivism rates from 2010 to 2019 compared to states that limit third strikes to violent/serious felonies, since the possibility of a life sentence will increasingly disincentivize people from reoffending due to fear of never being released from prison upon conviction. In these states, *any* felony can count as a third strike and carry a life sentence. Consequently, the increased perceived risk of committing a third strike felony—namely, spending the rest of their lives in prison—would act as a deterrent by making people less likely to reoffend, therefore leading to lower recidivism rates for these states.

#### **Research Design and Methodology:**

The independent variable is the severity of the Three Strikes Law in each state. To determine severity, I looked at general trends in the second and third strikes sentencing guidelines between all states in the data set. I then coded for each state's second and third strikes with a 0 or 1, representing "not severe" or "severe," respectively. There was much variation in sentencing guidelines for second strikes; for example, there were fourteen states that had no specified increase in sentencing for second strike enhancements. However, states typically followed one of two trends: (1) doubling the maximum possible sentence, or (2) elevating the second felony to a higher class felony. Both of these constitute being "severe," while states with no specified guidelines are classified as "not severe."

Coding for second strike guidelines mirrors the coding for third strike guidelines. Again, states were assigned a 0 or 1 for "not severe" or "severe," respectively, for third strike

enhancements. A state received a 0 if it did not count non-violent/non-serious felonies as a third strike, and a state received a 1 if it counted all types of felonies as a third strike. Based on these codes, a severity score was assigned ranging from 1 to 4, where 1 represents the lowest level of severity; 2 represents a severe second strike; 3 represents a severe third strike; and a 4 represents both severe second and third strikes.

This coding system creates four possible categories, evidenced in Figure 1. This operationalization was chosen for two reasons: state accuracy and data simplicity. While this research primarily looks at the effects of third strike severity, second strike guidelines are necessary to include since their severity (or lack thereof) can also affect an offender's perceived risk of committing a felony. Most states followed the basic formula of a minimum 25-year sentence and maximum sentence of life in prison for a third strike. However, some states did not specify which kind of felonies counted as third strikes, while others varied in the possibility or impossibility of parole. Any state's second and/or third strike guidelines that did not follow general trends were coded on a case-by-case basis.

Second Strike:	Third Strike:	Code:	Severity:
Not severe	Not severe	0, 0	1
Severe	Not severe	1, 0	2
Not severe	Severe	0, 1	3
Severe	Severe	1, 1	4

**Figure 1. Three Strikes Law Severity Coding**  
(Data Source: State Penal Codes, 2010-2019)

Data was collected in two ways: (1) looking at a state's TSL legislation, which is available on a state's legislative office website and locating the guidelines for second and third strikes, or (2) looking at a summary of a state's TSL, which can be found on websites of criminal

justice organizations, such as the Three Strikes Project from Stanford Law School.<sup>22</sup> Although a broader coding system could be employed to account for more variation in TSL severity, the goals of this project could still be accomplished with four categories.

The dependent variable is the recidivism rate, defined by the rate at which people return to criminal activity over a three-year period after being released for previously committing a crime.<sup>23</sup> While all states have slightly different definitions of recidivism, they each measure recidivism in a three year-period except for Kentucky, which measures in 2-year cycles. I gathered recidivism data from 2010 to 2019 using a database of links to states' recidivism reports. This database came from The Council of State Governments Justice Center, which is a national and non-partisan nonprofit that provides policy advice based on trends in recidivism.<sup>24</sup>

Generally, I looked at data from the respective state's department of corrections/rehabilitation annual recidivism report (or equivalent thereof) on their websites. Recidivism rates are measured as percentages, representing the percentage of people in a yearly cohort of released inmates who then reoffend. This operationalization was chosen since it is the most widespread measurement of recidivism and aligns with how data was collected in every state's annual recidivism report (except Kentucky). Recidivism data from 2010 to 2019 was then averaged to produce a mean recidivism rate for each state. While I planned to include recidivism rates from all states, some states do not have TSLs, such as Hawaii, and other states did not have publicly available recidivism data, such as Missouri.

There are two control variables I have identified: the average poverty rate and the presence of ban-the-box laws in a state. Poverty rate was chosen as one control since it is closely

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<sup>22</sup> "Three Strikes Project." *Stanford Law School*, [law.stanford.edu/three-strikes-project/](http://law.stanford.edu/three-strikes-project/).

<sup>23</sup> "Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates." *The State of Texas Legislative Budget Board*, Feb. 2023,

[www.lbb.texas.gov/Documents/Publications/Policy\\_Report/7689\\_Recidivism-Revocation\\_Feb2023.pdf](http://www.lbb.texas.gov/Documents/Publications/Policy_Report/7689_Recidivism-Revocation_Feb2023.pdf).

<sup>24</sup> Clement, Marshall, et al. "50 States, 1 Goal: Examining State-Level Recidivism Trends in the Second Chance Act Era." Edited by Alice Oh et al., *CSG Justice Center*, 6 June 2024, [csgjusticecenter.org/publications/50-states-1-goal/](http://csgjusticecenter.org/publications/50-states-1-goal/).

tioned to recidivism. When an offender is released from prison, the community and environment they enter strongly determines the likelihood they will re-offend.<sup>25</sup> Their ability to access safe housing, available healthcare, and stable employment all directly depend on the socio-economic prosperity of their surroundings, and states with higher poverty rates will likely have less of these resources. Mean poverty rate was collected for each state in the dataset in 2010, 2013, 2015, 2017, and 2019 from the US Census Bureau American Community Survey Briefs' poverty reports, which are available online. Poverty rates in percentages were chosen since they are already normalized across states' varying populations.

The second control is whether a state has a ban-the-box law. This control was chosen since it, unlike poverty rate, is legislation that directly affects offenders and reoffenders, similar to TSLs. Both ban-the-box laws and TSLs affect a reoffender outside of the carceral system, although they aim to reduce recidivism in very different ways. These ban-the-box laws protect against employment discrimination by restricting an employer's ability to ask about an applicant's criminal history. Offenders with stable employment were shown to have a 58% lower chance of recidivating compared to their unemployed counterparts.<sup>26</sup> Therefore, an offender's ability to secure employment can directly lead to either higher or lower recidivism, depending on whether they are barred from being hired based on their recent criminal history. States with ban-the-box laws would likely have lower recidivism rates since the offenders in those states are more likely to be hired, and by extension less likely to recidivate. Data was collected from the

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<sup>25</sup> Hayes, Tara O'Neill, et al. "Incarceration and Poverty in the United States." *AAF*, 2 July 2020, [www.americanactionforum.org/research/incarceration-and-poverty-in-the-united-states/](http://www.americanactionforum.org/research/incarceration-and-poverty-in-the-united-states/).

<sup>26</sup> Kolbeck, S., Lopez, S., & Bellair, P. (2023). Does stable employment after prison reduce recidivism irrespective of prior employment and offending? *Justice Quarterly*. <https://doi.org/10.1080/07418825.2023.2201330>

National Employment Law Project, which is a nonprofit advocating for workers' rights. A list of states that have ban-the-box laws was available on their website.<sup>27</sup>

The unit of analysis for this project is states, specifically 40 states except the following: Hawaii, Kentucky, Maine, Mississippi, Missouri, Nebraska, New Hampshire, Oklahoma, Rhode Island, and Wyoming. This is due to lack of data availability and departures in measuring recidivism. Since my temporal scope is 2010-2019, I looked at multiple cases of recidivism (based on each state) over time (based on each year). Some recidivism data was not available in certain states for certain years, so n=371.

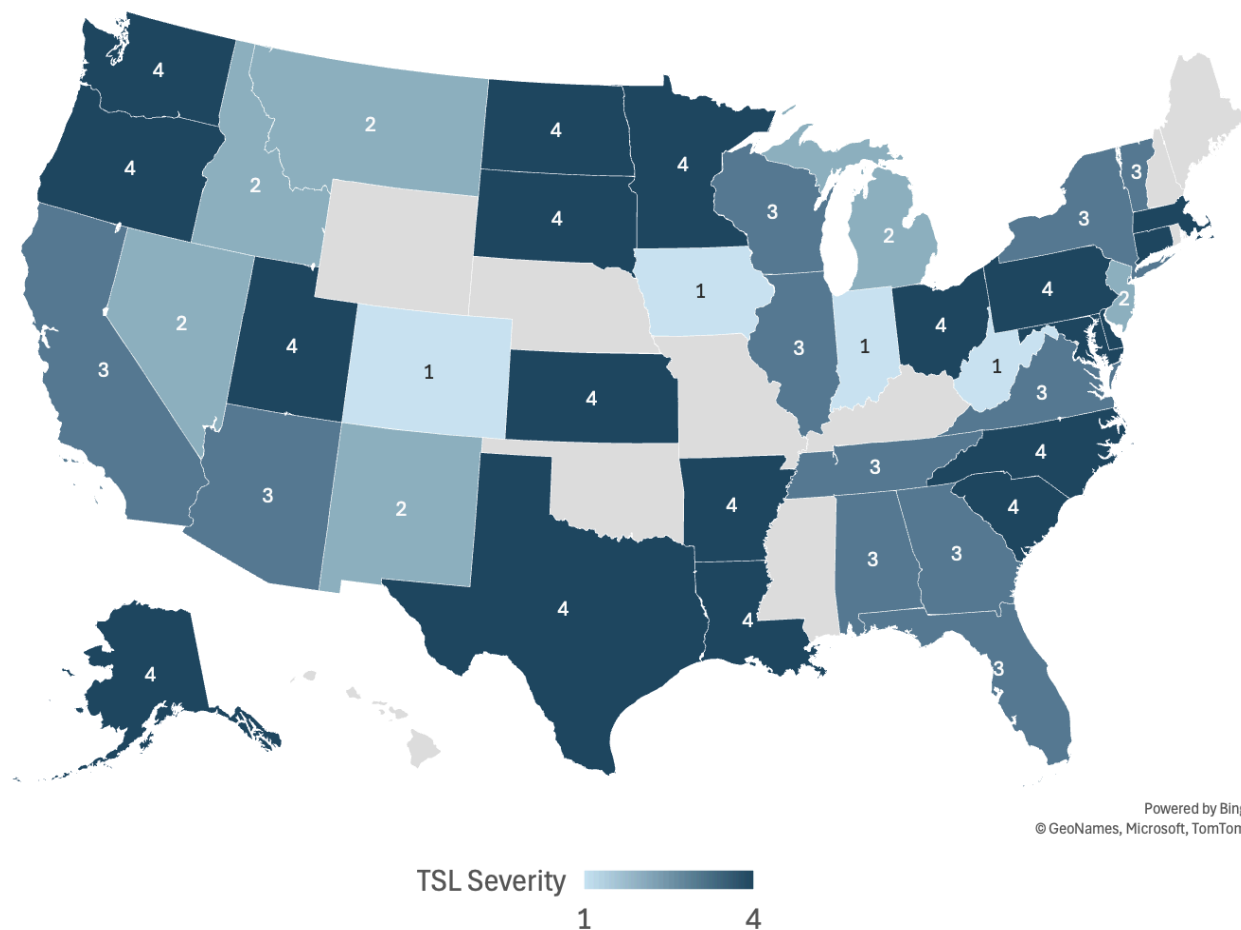
A logit regression was run to determine any statistical relationships between second/third strike severity and recidivism rates, while also controlling for poverty rates and the presence of ban-the-box laws. Second and third strike severity were tested separately; the combined relationship of "severe" or "not severe" second and third strikes can be found by adding together the two separate regression coefficients.

### **Results:**

There are three primary findings of this research: TSL severity, average recidivism rates, and the relationship between these two variables. After coding 40 states, four states received a 1 (lowest severity), six states received a 2, ten states received a 3, and twenty states received a 4. The severity assignments are evidenced in Figure 2. Based on this map, it generally appears that states with higher populations have more strict Three Strikes Law, and I discuss this more in the "Research Implications" section of this project.

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<sup>27</sup> Avery, Beth, et. al. "Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies." *National Employment Law Project*, 27 Apr. 2024, [www.nelp.org/insights-research/ban-the-box-fair-chance-hiring-state-and-local-guide/](http://www.nelp.org/insights-research/ban-the-box-fair-chance-hiring-state-and-local-guide/).



**Figure 2. TSL Severity by State**  
(Data Source: State Penal Codes, 1994-2012)

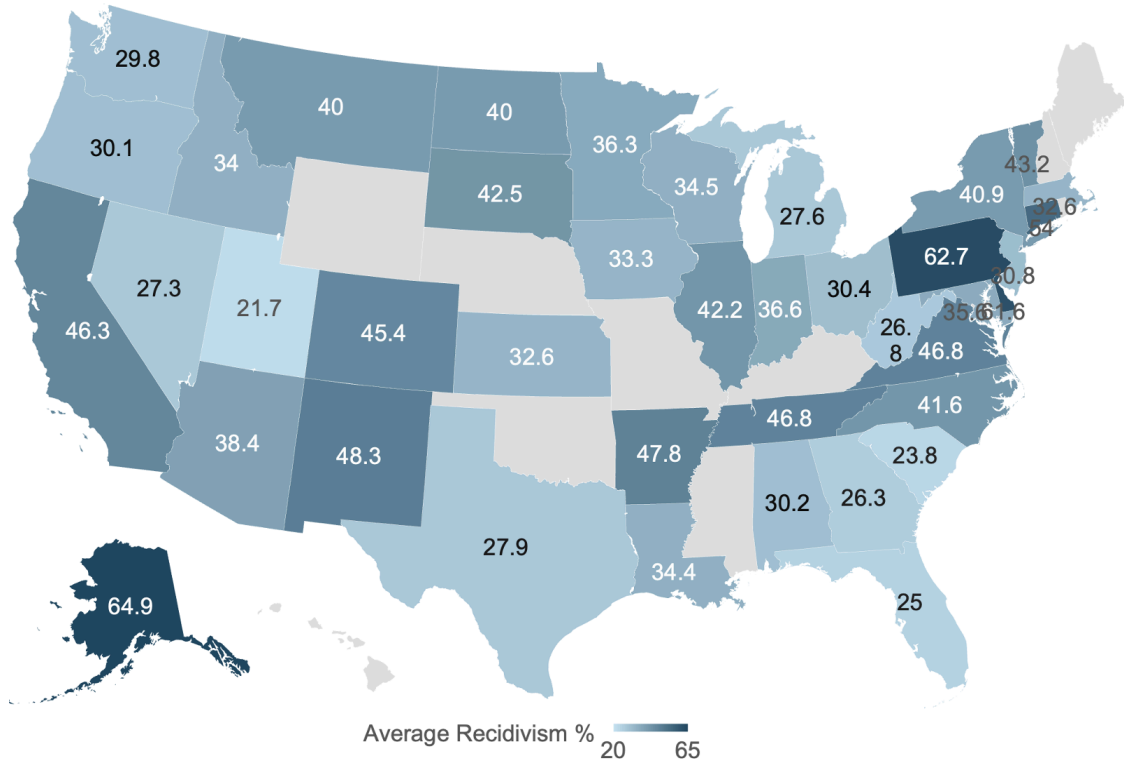
Notable states with the most severe TSLs included Alaska and Connecticut. Alaska's TSL includes the same second strike enhancements as California's TSL, but third strikers convicted of a violent felony receive a mandatory 99-year sentence. Connecticut's TSL has a 25-year maximum sentence for second strikers, which is the minimum sentence for third strikers in California, and also a mandatory life sentence for violent third strikers. The difference between Connecticut and California, though, lies in how they define a felony. California generally defines felonies as crimes that commit gross physical harm against an individual or property, but Connecticut also includes bigotry and larceny within this context. Therefore, should

bigotry motivate someone to commit a felony in Connecticut, both the motivating belief and the act itself would be subject to the state's Three Strikes Law.

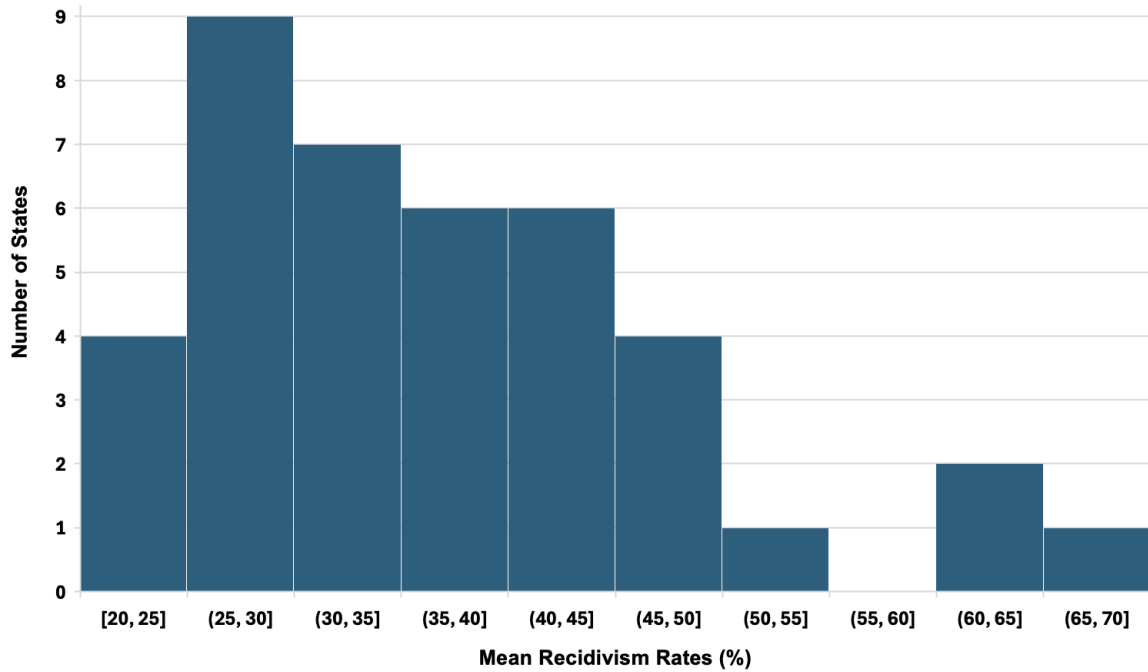
States that received a 3 include New York, which had no explicit enhancements for second strikers and a minimum 25-year-to-life in prison without the possibility of parole for third strikers. Michigan operates its TSL differently from most states, receiving a 3 since it increases second strike sentences by 25% and third strikes by 50%. Without a possible life sentence, it therefore received a "0" for third strike severity. Iowa had the least severe TSL out of all 40 states, with no enhancements for second strikers, and a minimum 3-year sentence without the possibility of parole for third strikers. A life sentence was not included in the TSL itself and instead defaults to other sentencing guidelines in the state's criminal code.

After calculating the average recidivism rates, as seen in Figure 3, there were also a few noteworthy findings from particular states. Alaska had the highest recidivism rate in the nation, at 64.9%. Pennsylvania followed closely behind at 62.7%, and California had 46.3%. The lowest recidivism was in Utah, at 21.7%. Figure 4 shows the distribution of recidivism rates, with the majority of states' recidivism ranging from 25-50%. Only 4 states had recidivism rates of about 50%, ranging from 50-65%, and 4 states had recidivism between 20-25%. There were no states with rates between 55-60%, although Delaware falls just outside this range at 61.6%.





**Figure 3. Recidivism Rates by State, 2010-2019**  
 (Data Source: CSG Justice Center)



**Figure 4. Recidivism Rates Distribution, 2010-2019**  
 (Data Source: CSG Justice Center)

The regression analysis combined both sets of variables to look for a relationship, as seen in Figure 5. Looking at second-strike severity, the coefficient of 1.74 suggests that, on average, states with severe second-strike enhancements have a 1.74 percentage point higher recidivism rate compared to states without severe second-strike enhancements, holding other variables

	Recidivism Rates
<b>Second Strike Severity</b>	<b>1.74</b> <b>(3.27)</b>
<b>Third Strike Severity</b>	<b>1.85</b> <b>(3.71)</b>
<b>Mean Poverty</b>	<b>-0.81</b> <b>(0.74)</b>
<b>Ban-the-Box Law</b>	<b>0.49</b> <b>(4.79)</b>
<b>Constant</b>	<b>45.8</b> <b>(11.4)</b>
<b>Adjusted R<sup>2</sup></b>	<b>0.06</b>
<b>N</b>	<b>40</b>

constant. Similarly, the coefficient for third-strike severity indicates that states with severe third-strike enhancements tend to have a 1.85 percentage point higher recidivism rate compared to states without severe third-strike enhancements. Standard error measures the variability between the coefficients, with a larger standard error indicating less precise estimates. The large standard errors for these measures, at 3.27 and

**Figure 5. Regression Analysis**

3.71, indicate considerable uncertainty in these estimates, meaning the effects could widely vary. The p-values for second and third strike severity, which explains the likelihood of collecting the observed data, are 0.599 and 0.621, respectively. This suggests that there is roughly a 60% chance that the observed results could have occurred under random variation alone. Looking at the two controls, there is a weak negative correlation, albeit statistically nonsignificant, between poverty rates and recidivism rates, and a slight 0.49 percentage point increase in recidivism rates based on the presence of ban-the-box laws. Therefore, there is no statistically significant relationship between the severity of Three Strikes Laws and recidivism rates, including accounting for poverty rates and ban-the-box laws.

**Discussion and Research Implications:**

This research examined whether longer prison sentences deter crime, specifically focusing on how, if at all, Three Strikes Laws affect recidivism rates across the nation. I originally hypothesized that an increase in TSL severity would lead to a decrease in recidivism rates since the harsher prison sentences would deter potential reoffenders. Based on the results from the regression, my hypothesis was not supported. The large p-values, high standard error, and low coefficients all point to a high amount of variance, uncertainty, and ultimately no statistically significant relationship between TSL severity and recidivism rates.

Despite the coefficients being nonsignificant, it was surprising to see that recidivism slightly increased in states with more severe TSLs, especially since I hypothesized the opposite would be true. In terms of running a regression, the sample size (n=40) is on the smaller scale, and comparing the severity of states within the sample size, explains the high standard error. The severity categories ranged from 4, 6, 9, and 20, respectively, and therefore drawing results without high variation would have been unlikely.

The negative correlation between poverty rate and recidivism rate particularly stood out, especially since I predicted an increase in poverty would be associated with an increase in recidivism. Yet, the opposite was true. Since this was a weak negative correlation and not statistically significant, I believe this result came from the small sample size (n=40), and the high variation between different states (range=9.9). Ultimately, there are many factors that affect recidivism, and while the poverty rate did not capture any relationship, other controls such as access to housing and healthcare may have more predictive power.

These results bring two pillars of California's criminal justice system into question: whether it should primarily serve to incapacitate or rehabilitate criminals, and where Three Strikes Laws are headed in the future.

Within the debate of rehabilitation versus incapacitation, it is important to remember that some criminals cannot be rehabilitated. For these individuals, whether it be mental health problems or extensive criminal histories, the Three Strikes Law aligns with their intended purpose: to keep these types of offenders out of society. TSLs without question incapacitate offenders; it's in the plain text of the legislation. However, California's TSL was introduced under the assumption it would deter crime as well, yet its complicated history has mired its effectiveness. Further reform is in order, especially for a law that compounds the extant problems of the criminal justice system.

As for the future of TSLs, based on current trends in criminal justice legislation, progressive reforms for TSLs remain unlikely. Earlier this year, Kentucky introduced legislation for a Three Strikes Law, emphasizing how the introduction of TSLs is still thriving even 30 years after their original introduction in California.<sup>28</sup> Kentucky's TSL would be similar to California's current TSL, where only violent felonies would count as a third strike. During debates on the bill, one Democratic legislator stated, "Why we're doing a rinse and repeat of this failed attempt from the '90s is unclear to me."<sup>29</sup> This legislator's sentiments mirror the findings of this project; recidivism was unaffected by TSL severity, so therefore why incapacitate offenders who can instead be rehabilitated. Even if just a small portion can be rehabilitated, going back to Alex

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<sup>28</sup> Schreiner, Bruce. "Kentucky House Passes Crime Bill with Tougher Sentences, Including Three-Strikes Penalty." *AP News*, AP News, 26 Jan. 2024, [apnews.com/article/kentucky-legislature-crime-b62e547d38523e07cbbd8db65c1bd5b1](https://apnews.com/article/kentucky-legislature-crime-b62e547d38523e07cbbd8db65c1bd5b1).

<sup>29</sup> *Ibid.*

Raskolnikov's sentiments, it is still cheaper to deter someone, especially through rehabilitation, than to incapacitate them via prison sentences.<sup>30</sup>

### **Research Limitations and Extensions:**

The primary limitations of this research are from measuring the recidivism rates and TSL severity. While each state measured recidivism slightly differently, some states also provided a wide range of statistics in their annual recidivism report. In these particular reports, states gave a breakdown of recidivism based on conviction, re-arrest, returning to jail, and returning to prison. These different categories all had different rates, and whenever these types of reports appeared, I attempted to use the same measurement. However, sometimes not all of these categories were available, or different categories were included as well. Should I conduct this research project again, I would spend more time exploring how each state defines these other categories, and therefore better understand which measurement would be most statistically relevant for this project.

The second limitation is the methods I used to measure TSL severity. Since I was the only person conducting this research, I was solely responsible for coding the severity. This leads to low inter-rater reliability, whereby my own interpretation of severity may differ from someone else's. As explained in the "Research Design" section, while I generally followed two guidelines, states that departed from expected sentencing enhancements were categorized more holistically. In an ideal world, at least one other person would also have scored the states' TSL severity, and therefore increase the inter-rater reliability.

Further research into recidivism and the Three Strikes Law could focus on alternative causal mechanisms that affect recidivism, as well as exploring how population can influence

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<sup>30</sup> Raskolnikov, Alex. "Criminal Deterrence: A Review of the Missing Literature." *Supreme Court Economic Review*, vol. 28, 1 Oct. 2020, pp. 1–59, <https://doi.org/10.1086/710158>.

TSL severity. Returning to Figure 2, there seems to be a general correlation between states with higher populations and states with more severe TSLs. A possible hypothesis based on further research could claim that states with higher populations have fewer available resources to limit crime compared to states with lower populations, and therefore introduce stricter TSLs as a means to deter crime through legislation, rather than through outreach (or similar) programs.

Other research could provide a comprehensive report on recidivism from both before and after each state's TSL was introduced. I had originally considered making this my research project, but data availability from the 1990s proved difficult. The data does exist, however, based on other research published at this time, and in the future, if I had more time to conduct this project again, I would have reached out to the respective state agencies to request this data. A wider temporal scope could provide a before-and-after analysis of TSL introduction, as well as provide more data on whether there was a decrease in recidivism that could be causally linked to the introduction of TSLs. As described in the literature review of this project, there is debate about whether this occurred in California, although this new study could look at all states with TSLs for a possible relationship.

Research can also explore alternative causal mechanisms, such as access to rehabilitation programs both within prisons and in society, and the availability of vocational training. With new, innovative programs taking shape, such as UC Irvine's LIFTED program, which allows incarcerated people to obtain a bachelor's degree while serving sentences, research can examine how these educational and rehabilitative initiatives impact recidivism rates.<sup>31</sup> By investigating the long-term effects of such programs, scholars can also assess whether they contribute to reducing the cycle of incarceration and improving reintegration into society, ultimately providing

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<sup>31</sup> UCI Lifted, [lifted.uci.edu/](http://lifted.uci.edu/).

a more comprehensive understanding of the factors that lead to successful rehabilitation and societal reintegration.

**Conclusion:**

This research examines the relationship between the severity of sentencing guidelines in Three Strikes Laws and recidivism rates nationwide. Ultimately, there was no relationship between these variables, including controlling for poverty rates and employment discrimination laws. The criminal justice system is complicated, and understanding more about what affects recidivism, and perhaps more importantly what does *not* affect recidivism, can divert the few resources there are toward programs aimed at reducing recidivism and backed by empirical research. This research highlights how Three Strikes Laws by themselves are not as effective as at deterring crime, and hopefully inspires a more critical perspective on how sentencing enhancements alone cannot revolutionize a criminal justice system. Rather, adopting an interdisciplinary approach that combines mental health programs, vocational training, and educational/outreach programs may lead to reduced recidivism rates that both politicians and citizens can champion.

While it is difficult to predict what the next decade of criminal justice reform may look like, any repealing or further reforming of TSLs is likely to come from California, especially considering how it initially introduced TSLs to the rest of the nation, including reforms for third strikes. Therefore, it is now up to California legislators and voters how to proceed with sentencing reforms, especially since these choices could affect not only Californians but the criminal justice system nationwide.

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**Appendix:**

```
Linear regression                Number of obs   =       40
                                F(4, 35)       =       0.54
                                Prob > F            =       0.7101
                                R-squared           =       0.0613
                                Root MSE        =       10.969
```

```
-----+-----
              |           Robust
              |           Coef.   Std. Err.      t    P>|t|     [95% Conf. Interval]
-----+-----
secondstrike |    1.735449    3.273787     0.53  0.599    -4.910693     8.38159
thirdstrike  |    1.854999    3.714688     0.50  0.621    -5.686218    9.396215
p_mean       |   -.8068875    .7448704    -1.08  0.286    -2.319055    .7052797
banbox       |    .4932544    4.797397     0.10  0.919    -9.24598    10.23249
_cons        |    45.83455    11.4374     4.01  0.000    22.61539    69.0537
-----+-----
```

```
pwcorr p_mean r_mean, sig

-----+-----
              |    p_mean    r_mean
-----+-----
p_mean       |    1.0000
              |
r_mean       |   -0.2198    1.0000
              |    0.1730
```

**Figure 6. Results of Regression Analysis**