

**DO “TOUGH ON CRIME” POLITICIANS
WIN MORE ELECTIONS?
AN EMPIRICAL ANALYSIS OF
CALIFORNIA STATE
LEGISLATORS FROM 1992 TO 2000**

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ABSTRACT

Do “tough on crime” politicians win more elections? Conventional wisdom suggests that they do. After all, who was the last public official to win an election based on a “soft on crime” platform? Correspondingly, this unjustified and widespread belief among legislators (and their strategists) makes it extremely difficult for progressive criminal justice bills to become law. There is no empirical literature, however, to support or deny this conventional political wisdom.

A regression analysis was used to answer (1) whether legislators’ election results were impacted by their voting records (based on an assigned crime score) or constituent support for a ballot initiative; and (2) whether legislators adjusted future votes (and corresponding crime scores) based on election results or constituent support for crime-related propositions. Although conventional wisdom suggests that “tough on crime” politicians win more elections, I found no evidence to support this assumption in four California state elections from 1992 to 2000, a period of time when crime was an important issue in California and nationally. In addition, I found no evidence that election results influenced legislators’ future positions on criminal justice issues. Therefore, legislators (especially in California) who currently support criminal justice bills should feel comfortable continuing to do so, as it did not hamper legislators in California from 1992 to 2000. Additionally, legislators (especially in California) who would like to support more criminal justice bills but fear negative consequences on election night, should feel comfortable increasing their support for these bills.

I. INTRODUCTION

Democracy is founded on the principle that the public elects a handful of legislators to represent its personal views about the way a country should operate. Although a handful of voters may have extreme or irrational views, the majority is quite moderate. As V.O. Key, Jr. explained, "[M]any individual voters act in odd ways indeed; yet in the large the electorate behaves about as rationally and responsibly as we should expect, given the clarity of the alternatives presented to it and the character of the information available to it."¹

To maintain constituent support, legislators research, write, introduce, debate, and ultimately vote on bills based on the electorate they represent. If legislators continuously support bills that conflict with the views of their electorate, those legislators are less likely to get reelected. Legislators, therefore, regularly consider their constituents' views prior to making a decision to support or oppose a particular bill.²

Few individual constituents regularly follow their legislators' every vote.³ However, national interest groups supporting a variety of

1. V.O. KEY, JR., *THE RESPONSIBLE ELECTORATE* 7 (1966).

2. See GARY C. JACOBSON, *THE POLITICS OF CONGRESSIONAL ELECTIONS* 219-22 (6th ed. 2004).

3. Much has been written on the relationship between roll-call votes and electability. See Edward J. Lopez & Noel D. Campbell, *Do Legislators Pay to Deviate from Constituents?*, 30 E. ECON. J. 349, 349 (2004) (citing Bruce Bender & John R. Lott Jr., *Legislator Voting and Shirking: A Critical Review of the Literature*, 87 PUB. CHOICE 67 (1996)) (concluding that the "literature on legislator voting has consistently shown that deviating from constituents' preferred policies" increases the difficulty of getting reelected). See generally Gregory L. Bovitz & Jamie L. Carson, *Position-Taking and Electoral Accountability in the U.S. House of Representatives*, 59 POL. RES. Q. 297 (2006) (considering the electoral implications of hundreds of roll-call votes by the U.S. House of Representatives beginning in the early 1970s and finding that controversial, salient, or intraparty disagreement on a particular vote impacts elections); Brandice Canes-Wrone et al., *Out of Step, Out of Office: Electoral Accountability and House Members' Voting*, 96 AM. POL. SCI. REV. 127 (2002) (considering the impact of all roll-call votes on legislators' abilities to be reelected in the U.S. House of Representatives between 1956-96); Gerald C. Wright, Jr. & Michael B. Berkman, *Candidates and Policy in United States Senate Elections*, 80 AM. POL. SCI. REV. 567, 575-82 (1986) (finding that policy issues played an important role in the 1982 U.S. Senate elections). Additionally, some literature has focused on the relationship between issue-specific roll-call votes and electability. See generally Patrick Fournier et al., *Issue Importance and Performance Voting*, 25 POL. BEHAV. 51 (2003) (concluding that individuals who view an issue as important are "more likely to rely on their attitudes toward that issue when evaluating a candidate and deciding for whom to vote" by analyzing five different issue areas); Benjamin Highton, *Policy Voting in Senate Elections: The Case of Abortion*, 26 POL. BEHAV. 181 (2004) (finding voters' decisions on abortion policy are not impacted by "national party position divergence" but are impacted by "candidate position divergence and voter information and salience" based on Senate elections); Jeffrey W. Stempel & William D. Morris, *Electoral Folklore: An Empirical Examination of the Abortion Issue*, 1 YALE L. & POL'Y REV. 1 (1982) (finding that a candidate's position on abortion "does not alter established voting patterns" in the elections studied); Harvey J. Tucker & Ron-

issues like abortion,⁴ agriculture,⁵ budget,⁶ business,⁷ civil rights,⁸ drugs and alcohol,⁹ education,¹⁰ environment and conservation,¹¹ foreign aid, policy and national security,¹² guns,¹³ health,¹⁴ labor,¹⁵ mili-

ald E. Weber, *State Legislative Election Outcomes: Contextual Effects and Legislative Performance Effects*, 12 LEGIS. STUD. Q. 537 (1987) (finding that "legislative performance variables are weak and inconsistent correlates of election outcome" when considering roll-call votes on tax and revenue legislation by the Washington state House legislators between 1976 to 1984); Seth E. Masket & Steven Greene, *When One Vote Matters: The Electoral Impact of Roll Call Votes in the 2010 Congressional Election* (Apr. 2, 2011) (unpublished manuscript), available at <http://conference.mpsanet.org/papers/archive.aspx/2011/104076> (finding that Democrats in the 111th House of Representatives who supported the health care reform bill "ran six to eight points behind those who opposed it" and Democrats who voted for the Troubled Assets Relief Program ("TARP") and the 2009 economic stimulus bills were also harmed more in the 2010 midterm elections).

4. See, e.g., *Elections*, NARAL PRO-CHOICE AM., <http://www.prochoiceamerica.org/elections/> (last visited Jan. 13, 2011); *Elections & Politics*, PLANNED PARENTHOOD ACTION CENTER, <http://www.plannedparenthoodaction.org/elections-politics/index.htm> (last visited Jan. 13, 2011); *Federal Legislation*, NAT'L RIGHT LIFE, <http://www.capwiz.com/nrlc/home/> (last visited Jan. 13, 2011).

5. The National Association of Wheat Growers produced a scorecard in 2008, which has been archived at PROJECT VOTE SMART, http://www.votesmart.org/issue_rating_detail.php?r_id=4425 (last visited Jan. 13, 2011), and the National Farmers Union produced a scorecard in 2007-08, which is also archived at PROJECT VOTE SMART, http://www.votesmart.org/issue_rating_detail.php?r_id=4333 (last visited Jan. 13, 2011).

6. See, e.g., *2009 Congressional Ratings*, COUNCIL FOR CITIZENS AGAINST GOV'T WASTE, <http://www.cagw.org/ccagw/government-affairs/ratings/2008/> (last visited Jan. 13 2011); *NTU Rates Congress*, NAT'L TAXPAYERS UNION, <http://www.ntu.org/on-capitol-hill/ntu-rates-congress/> (last visited Jan. 13, 2011).

7. See *How They Voted 2010 - 111th Congress, Second Session*, U.S. CHAMBER COM., <https://secure.uschamber.com/how-they-voted-2010-111th-congress-second-session> (last visited Oct. 16, 2011).

8. See, e.g., *Civil Rights Report Cards*, NAACP, <http://www.naACP.org/pages/report-cards> (last visited Jan. 13, 2011); *Congressional Scorecard*, HUM. RTS. CAMPAIGN, <http://www.hrc.org/scorecard/> (last visited Jan. 13, 2011).

9. The National Association of Alcohol and Drug Abuse Counsels produced a scorecard in 2007-08, which has been archived at PROJECT VOTE SMART, http://www.votesmart.org/issue_rating_detail.php?r_id=4708 (last visited Jan. 13, 2011).

10. See, e.g., *Congressional Report Card*, NAT'L EDUC. ASS'N, <http://www.nea.org/home/19413.htm> (last visited Jan. 13, 2011).

11. See, e.g., *2009 National Environmental Scorecard*, LEAGUE CONSERVATION VOTERS, <http://www.lcv.org/scorecard/> (last visited Jan. 13, 2011); *Environment America 2009 Congressional Scorecard*, ENV'T AM., <http://www.environmentamerica.org/reports/other-issues/more-issues/environment-america-2009-congressional-scorecard> (last visited Jan. 13, 2011); *Wildlife Conservation Fund*, DEFENDERS WILDLIFE ACTION FUND, <http://www.defendersactionfund.org/report.html> (last visited Jan. 13, 2011).

12. See, e.g., *Voter Index Archive*, AM. SEC. COUNCIL FOUND., http://www.ascfusa.org/content_pages/view/voter-index-archive (last visited Jan. 13, 2011). The Friends Committee on National Legislation produced its latest scorecard in 2009, which has been archived at PROJECT VOTE SMART, http://www.votesmart.org/issue_rating_detail.php?r_id=5066 (last visited Jan. 13, 2011).

13. See, e.g., *Grades & Endorsements*, NRA, <http://www.nrapvf.org/grades-endorsements.aspx> (last visited Jan. 13, 2011); *2010 Candidate Ratings Guide*, GUN OWNERS AM., <http://gunowners.org/2010candidateratingsguide.htm> (last visited Jan. 13, 2011).

tary,¹⁶ seniors,¹⁷ and welfare and poverty¹⁸—just to name a few¹⁹—are closely monitoring legislators' votes on such group's particular issue. By monitoring legislators' votes, these interest groups often assign legislators individualized scores to help constituents hold legislators accountable. Additionally, there are a variety of state interest groups tracking and scoring state legislators' votes on similar issues, especially in heavily populated states like California,²⁰ to ensure legislative accountability. During election periods, interest groups often endorse the legislators with the highest scores and vehemently oppose reelection efforts of candidates with the lowest scores by sharing the legislators' scores with their constituents. For example, when environmental interest groups target constituents during election periods, they typically make some form of the following two arguments: (1) "Your legislator voted to support conservation efforts and clean energy on nine out of ten bills, so if you support conservation and clean energy you should vote to reelect your legislator"; or (2) "Your legislator voted against conservation efforts and clean energy on

14. See, e.g., *Vote Scorecard 112th Congress*, AM. NURSES ASS'N, <http://capwiz.com/nursingworld/keyvotes.xc?lv1=C> (last visited Oct. 16, 2011). The American Public Health Association produced its last scorecard in 2009, which has been archived at PROJECT SMART VOTE, http://www.votesmart.org/issue_rating_detail.php?r_id=4871 (last visited Jan. 13, 2011).

15. See, e.g., *Voting Record*, AFL-CIO, <http://www.aflcio.org/issues/legislativealert/votes/index.cfm?termyear=2010&location=both&act=1> (last visited Jan. 13, 2011); *Key Votes*, SERV. EMP'S. INT'L UNION, <http://capwiz.com/seiuorg/keyvotes.xc?lv1=C> (last visited Jan. 13, 2011).

16. See, e.g., *2009 Scorecard, 2010 Wish List*, MILITARY OFFICERS ASS'N AM., http://www.moaa.org/lac_issues_update_100108.htm (last visited Jan. 13, 2011).

17. See, e.g., *Congressional Voting Record*, ALLIANCE FOR RETIRED AMERICANS, <http://www.retiredamericans.org/issues/congressional-voting-record> (last visited Jan. 13, 2011).

18. See, e.g., *Poverty Scorecard 2009*, SARGENT SHRIVER NAT'L CENTER ON POVERTY L., <http://www.povertyscorecard.org/> (last visited Jan. 13, 2011).

19. For a comprehensive list of scorecards created by a variety of interest groups on a variety of issues, see *Interest Group Ratings*, PROJECT SMART VOTE, http://www.votesmart.org/official_five_categories.php?distisue_rating_category.php (last visited Jan. 13, 2011).

20. See, e.g., *CalChamber Vote Record: Major Bills 2010*, CALCHAMBER, Oct. 22, 2010, at 7, available at http://www.calchamber.com/GovernmentRelations/Documents/VoteRecord_10-22-10.pdf; *2009 California Environmental Scorecard*, CAL. LEAGUE CONSERVATION VOTERS, <http://www.ecovote.org/scorecard/2009-scorecard> (last visited Jan. 13, 2011); *Are Your Legislators Pro-Choice*, NARAL PRO-CHOICE CAL., <http://www.prochoicecalifornia.org/instate/legislators.shtml> (last visited Jan. 13, 2011); *Force for Progress Legislative Scorecards*, CAL. LABOR FED'N (AFL-CIO), <http://www.calaborfed.org/index.php/site/page/126/> (last visited Jan. 13, 2011); *Legislative Issues*, CAL. TAXPAYERS' ASS'N, <http://www.caltax.org/issues/legislative.html> (last visited Jan. 13, 2011); *Legislative Scorecard*, CAL. PUB. INT. RES. GROUP, <http://www.calpirg.org/issues/in-the-state-house/legislative-scorecard/2009> (last visited Jan. 13, 2011); *Statewide Legislative Scorecards*, PLANNED PARENTHOOD CAL., <http://www.ppactionca.org/voter-information/scorecards/> (last visited Jan. 13, 2011).

nine out of ten bills, so if you support conservation and clean energy you should vote for CandidateX to defeat your legislator."²¹

While interest groups need only track legislators' votes relating to such group's specific issue,²² constituents often consider a variety of issues before deciding to support a particular candidate.²³ Ultimately, legislators are responsible for representing the potentially conflicting views between individual constituents.²⁴ For example, a legislator's constituents could be evenly split on the merits of a particular bill. Further, a bill could cut across two issues that conflict with the constituents' views (perhaps a newly proposed bill limits hunting in a state park, which appeals to the conservation-minded constituents but is unappealing to the hunting-minded constituents). Finally, a legislator may inaccurately believe an issue is important to his constituents when it is not, or a legislator may inaccurately believe an issue is not important to his constituents when it is.²⁵ Understandably, this process of representation is not always clear to legislators and can be exacerbated when individual constituents possess internally conflicting views themselves.²⁶

21. For example, the League of Conservation Voters "Dirty Dozen" campaign exposed federal legislators with the lowest scores, regardless of party affiliation, "who consistently vote[d] against clean energy and conservation" in an effort to defeat the legislators' reelection efforts. *2010 Dirty Dozen*, LEAGUE OF CONSERVATION VOTERS, <http://www.lcv.org/elections/dirty-dozen/> (last visited Jan. 13, 2011).

22. While the vast majority of interest groups track a specific issue, some interest groups track and score based purely on political ideology, which requires tracking a multitude of relevant issues. See *Capital Weekly's Legislative Scorecard*, CAP. WEEKLY, http://www.capitolweekly.net/article.php?_c=zf5wduty9z9nro&xid=yhnf7ylhytpvq&done=zf5wifw1hx6omg (last visited Jan. 25, 2011) (for California state legislators); *Ratings of Congress*, AM. CONSERVATIVE UNION, <http://www.conservative.org/congress-ratings/> (last visited Jan. 14, 2011).

23. The notion of issue-voting has gained such wide acceptance that the scholarly literature primarily focuses on modeling the issue-voters. See Larry M. Bartels, *Issue Voting Under Uncertainty: An Empirical Test*, 30 AM. J. POL. SCI. 709, 712 (1986) (building off the typical issue-voting analysis that addresses the distance between the candidate's position and the voter's preferred position by adding the "voters' perceptions of the candidates positions"). See generally George Rabinowitz & Stuart Elaine Macdonald, *A Directional Theory of Issue Voting*, 83 AM. POL. SCI. REV. 93 (1989) (discussing two competing multi-issue voter theories, directional and traditional special, to help explain individual voting patterns).

24. See Lopez & Campbell, *supra* note 3, at 349 (finding that legislators who deviate from the views of their constituents can compensate for this deviation by increasing their expenditures during their reelection campaigns).

25. Wright & Berkman, *supra* note 3, at 567 ("[C]andidates behave as though they believe issues are important to voters.").

26. D. SUNSHINE HILLYGUS & TODD G. SHIELDS, *THE PERSUADABLE VOTER: WEDGE ISSUES IN PRESIDENTIAL ELECTIONS 19* (2008) ("Voting requires making a choice between . . . sometimes competing considerations, and we argue that campaign context helps determine how voters resolve any internal conflict between them.").

II. HYPOTHESIS

The majority of this Article will focus on the common political belief²⁷ and the frequent, and unproven, campaign strategy²⁸ that legislators who are viewed as "soft on crime" are less fit to serve in public office and less desirable to the public. By extension, the "softer" a leg-

27. See Jonathan Simon, *Megan's Law: Crime and Democracy in Late Modern America*, 25 LAW & SOC. INQUIRY 1111, 1111-12 (2000) ("The centrality of crime to electoral politics and the formal actions of state and federal politicians has long since become conventional wisdom."); see also Rachel E. Barkow, *Administering Crime*, 52 UCLA L. REV. 715, 733 (2005) (explaining that sentencing agencies enjoy some freedom from legislative oversight because legislators "may be reluctant to block legislation for fear of looking soft on crime"); Melinda Deslatte, *Soft on Crime? Louisiana Officials Look for Cuts in Prison Budget*, LEESVILLE DAILY LEADER, Jan. 17, 2011, <http://www.leesvilledailyleader.com/news/x104378023/Analysis-Budget-crisis-prompts-look-at-jail-time> ("In Louisiana, it's always paid off for politicians to appear 'tough on crime.'"); Eli Lehrer, Op-Ed., *It's Hard to Be Soft on Crime*, NAT'L REV., Dec. 14, 2009, <http://www.nationalreview.com/corner/191574/its-hard-be-soft-crime/eli-lehrer> ("[P]oliticians across the political spectrum just want to be seen as 'tough on crime' and are unwilling to bend at all even when they know that other policies might be better for the public."); Gregory Stanford, Op-Ed., *Fear of Being Soft on Crime Driving Presidential Politics*, MILWAUKEE J. SENTINEL, July 23, 2000, <http://www.commondreams.org/views/072300-104.htm> (arguing that the fear of being soft on crime entered presidential politics beginning with Alabama Governor George Corley Wallace and peaked when the Republicans vowed to make Willie Horton, the media-driven running mate of Democratic presidential nominee Dukakis, "a black convict who raped a white woman after escaping while on furlough"); Danielle Starkey & Vic Pollard, *The Prison Dilemma*, CAL. J., April 1994, at 11 (quoting California Assemblyman Isenberg in addressing the problem of increasing prison populations to his Assembly colleagues, "Are we willing to say if we move non-violent people out of state prison that we ought to create alternative punishments for them? Hell no, we're not willing to say that. Why? Well, because someone may put out an attack piece of mail that says you're soft on crime."). See generally JONATHAN SIMON, GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR (2007).

28. See Peter Applebome, *Arkansas Execution Raises Questions on Governor's Politics*, N.Y. TIMES, Jan. 25, 1992, <http://query.nytimes.com/gst/fullpage.html?res=9E0CEED91F3EF936A15752C0A964958260> (suggesting that then-Governor Clinton supported the death penalty and refused to "issue an order of executive clemency" to "pre-empt Republican attacks on the crime issue"); Editorial, *Soft on Crime*, N.Y. TIMES, July 3, 2007, <http://www.nytimes.com/2007/07/03/opinion/03tues1.web.html> (arguing that President Bush was not acting consistent with his campaign message of "tough on crime" when he commuted the 30-month sentence of I. Lewis Libby, Jr.); *Michigan Republican Party - Leyton - Soft on Crime TV Ad*, MICH. TRUTH SQUAD, Aug. 4, 2010, <http://michigantruthsquad.com/michigan-republican-party-leyton-soft-on-crime-tv-ad/> (concluding that a television advertisement suggesting David Leyton was soft on crime and therefore unfit to serve as Michigan's Attorney General was false and misleading); *Obama Soft on Crime?*, FACTCHECK.ORG (Oct. 31, 2008), <http://www.factcheck.org/2008/10/obama-soft-on-crime/> (arguing that then-Senator Obama was not soft on crime in response to a mailing produced by the Republican Federal Committee of Pennsylvania a few days before the election claiming that Obama's voting record demonstrated that he had "a record of being soft on crime" and, therefore, was unfit to be president); *Romney Ad Attacks Huckabee as Soft on Crime*, CNN POL., http://articles.cnn.com/2007-12-18/politics/romney.huckabee.crime_1_mike-huckabee-romney-ad-new-tv-ad?_s=PM:POLITICS (last visited Jan. 17, 2011) (describing a television advertisement from 2008 presidential candidate Mitt Romney's campaign that accuses presidential candidate Mike Huckabee of being soft on crime and unfit to serve as president).

islator is on crime, the worse the candidate should fair on election night, and the “tougher” a legislator is on crime, the better the candidate should fair on election night (assuming voters’ priorities remain constant).

In essence, this Article will empirically analyze the conventional political wisdom suggesting that it is more difficult for a “soft on crime” legislator to get reelected than a “tough on crime” legislator.²⁹ While a wide variety of scorecards from specific issues and corresponding interest groups was mentioned above, the issue of public safety or criminal justice³⁰ has not produced a single federal legislative scorecard. The lack of a national criminal justice scorecard could be justified if interest groups believe they will get more “bang for their buck” working on a state scorecard. State-based criminal justice scorecards, however, are not prevalent either. Only a few state criminal justice scorecards exist, and they are significantly less comprehensive than the state (or national) scorecards for other issues.³¹ This is particularly odd because of an existing belief that the fear of crime has changed American society,³² so at a minimum one might expect a public safety scorecard to trumpet legislators who are toughest on crime.³³

Supporters of criminal justice may argue that the lack of scorecard accountability results from the fact that very few, if any, legislators would be seen as champions of criminal justice issues, so all

29. Very little has been written empirically on the relationship between criminal justice and electability. *But see* Fournier et al., *supra* note 3 (considering the importance of crime and four other issues on voting and finding that “crime is cited as the second most important issue when all issues are specifically offered, yet it comes in last when people are asked to spontaneously mention the most important issue”).

30. For purposes of this Article, the term criminal justice will be defined quite broadly to include laws unfriendly to defendants (e.g., three strikes, sexual predator registry, criminal procedure), prisoners’ rights, prison conditions, death penalties, sentencing and probation, police brutality, etc. Additionally, although criminal justice and public safety are not opposite classifications, like “soft on crime” and “tough on crime,” and as a strong criminal justice bill is not necessarily a weak public safety bill, this Article will use these classifications, especially when discussing legislative action or messaging. When discussing methodology, however, it is analytically more important to maintain the opposite terminology, so “soft on crime” and “hard on crime” will be used.

31. *See infra* notes 44 & 45 and accompanying text (referencing Illinois and California racial equity scorecards, which both mention criminal justice).

32. *See generally* NANCY E. MARION, A HISTORY OF FEDERAL CRIME CONTROL INITIATIVES, 1960-1993 (1995) (discussing how the federal government has influenced state and local governments to be concerned about crime); Jonathan Simon, *Crime, Community, and Criminal Justice*, 90 CAL. L. REV. 1415 (2002) (“American communities have been transformed since the 1970s by . . . the growing influence of the fear of crime over basic life decisions.”).

33. *See also* Rachel E. Barkow, *The Political Market for Criminal Justice*, 104 MICH. L. REV. 1713, 1718 (2006) (arguing that laws like three-strikes, sex-offender registration, and collateral punishments on convicted felons are the “by-product of . . . political pressure in a jurisdiction” from interest groups and voters).

legislators would either score poorly or supporters would have to promote a less than ideal legislator as the benchmark for criminal justice issues.³⁴ Further, the criminal justice community also lacks constituent funding. What group of individuals, excluding wealthy individual donors, is going to support the creation of a scorecard that could be interpreted as a list of "soft on crime" legislators to target in the next election?³⁵ The result is that voters lack a reliable basis for determining which candidates are "soft" or "tough" on crime.³⁶

III. METHODOLOGY

A. OVERVIEW

To determine the electability impact associated with legislators' roll-call votes, this Article cumulatively analyzes individual legislators' voting records, legislators' vote share by election, and election results of ballot initiatives by legislative district. A regression analysis was used to determine whether a change in vote share could be attributed to a legislator's criminal justice voting record or constituent support for a criminal justice ballot initiative when controlling for the legislator's party affiliation. Specifically, the regression analysis considered (1) the change in a legislator's share of the vote between consecutive elections; (2) a legislator's criminal justice score based on roll-call votes between the consecutive elections; (3) the election results of a criminal justice ballot initiative by legislator district during the second election considered for the legislator; and (4) a legislator's party affiliation.

If there is a correlation between criminal justice scores and election results, this may be caused by other factors, but if there is no correlation, then discrete conclusions may be drawn.³⁷ The ballot initiative results provide an external criminal justice event to gauge the expected level of constituent support for criminal justice issues in general. The results from each legislative district allow for a comparison between a legislator's constituents' views on criminal justice (as evidenced by the support for the ballot initiative) and how these criminal

34. Admittedly, a criminal justice interest group may not want to promote a high score of 50%, but groups could give legislators letter grades, which they could use to compare the legislators on a curved basis.

35. Certainly, large national groups with strong associate state chapters like the Association of Criminal Defense Attorneys or the American Civil Liberties Union could support a criminal justice scorecard, but these organizations may be making a strategic decision to keep their list of legislative champions as quiet as possible for fear of hurting their future reelection chances.

36. See *supra* notes 3-21 and accompanying text.

37. See *infra* Part IV.

justice views affect the constituents' willingness to vote for a legislator.

For example, assume the following: (1) 80% of the legislator's constituents supported a "tough on crime" ballot initiative in the 1996 election; (2) the legislator supported more "soft on crime" bills during the 1995-96 legislative session than in the 1993-94 legislative session (the legislator's crime score increased); and (3) the legislator received a smaller percentage of the vote share in the 1996 election when compared to the 1994 election. These assumptions suggest that the constituents were more supportive of "tough on crime" positions, so the legislator was "punished" by voter reactions for increasing support for "soft on crimes" bills. In other words, voters' reactions at the ballot had a retrospective effect on the legislator.³⁸ Specifically, there was a negative correlation between the legislator's increased crime score and ability to get reelected because the "soft on crime" positions were inconsistent with the constituents' views on criminal justice and the constituents acted on this inconsistency at the ballot box.³⁹ Thus, the regression analysis estimates whether a legislator's criminal justice score or constituent views on criminal justice (based on their votes on a criminal justice ballot initiative) impact a legislator's ability to get reelected.

The regression analysis also considered party affiliation. The U.S. political landscape influences national elections, and national elections influence state elections. Elections for state legislatures are "systematically affected by all of the dominant forces in U.S. elections (coattails, turnout, and economic conditions)."⁴⁰

This analysis is represented by the following formula:

38. See generally MORRIS P. FIORINA, *RETROSPECTIVE VOTING IN AMERICAN NATIONAL ELECTIONS* (1981) (showing an analysis of voting patterns that concludes voters do not prospectively evaluate electoral candidates for expected behavior after an election, so voters base their election decisions on a retrospective determination of legislators).

39. This analytical structure allows for the quality of candidate and constituents to be held constant for each two-year legislative and election cycle due to the 1992 California legislative redistricting. Thus, the only changing variables between the cycles are the criminal justice score and the challenger the legislator faces in each election. A stronger or weaker challenger could impact the election results for a particular legislator and weaken any correlations between a legislator's positions on criminal justice issues and their ability to get reelected. This Article's sample size, however, averaging over 48 observations of relevant legislators per legislative cycle spanning four legislative cycles, is large enough to conclude that the correlations are based on the criminal justice variable and not the strength of the challenger. See *infra* note 61 and accompanying text.

40. John E. Chubb, *Institutions, the Economy, and the Dynamics of State Elections*, 82 AM. POL. SCI. REV. 133, 151 (1988) (analyzing legislatures from 1940 to 1982); see also *infra* Part III.C.

$$\text{VoteShare}_{\text{Election2}} - \text{VoteShare}_{\text{Election1}} = \\ \text{CrimeScore}_1 + \text{Ballot Initiative}_{\text{Election2}} + \text{Party}$$

Additionally, a second regression analysis was done to determine whether there is a feedback mechanism; that is, did a legislator adjust his voting pattern (and corresponding crime score) based on past election results or prior constituent support for crime-related propositions with the hope of getting different election results? Specifically, the analysis is testing whether there is a relationship between a change in a legislator's criminal justice score and a change in the legislator's future election results over a consecutive period when controlling for the legislator's party affiliation.

For example, assume the following about LegislatorX: (1) During the 1993-94 legislative cycle, the legislator earned a low criminal justice score because he supported many "tough on crime" bills; (2) during the 1995-96 legislative cycle, the legislator earned a high criminal justice score because he supported many "soft on crime" bills; and (3) the legislator won a significantly higher percentage of votes in the 1996 election than in the 1994 election. Thus, if the criminal justice score increased and the election results increased there could be two correlations based on legislative reactions related to roll-call votes. First, a correlation between LegislatorX's crime score and LegislatorX's ability to get reelected could exist. Second, a correlation between LegislatorX's election results from election two and LegislatorX's criminal justice score during the next legislative cycle could exist. If there is a correlation, however, this may be caused by other factors; but if there is no correlation then discrete conclusions may be drawn.⁴¹

This analysis is represented by the following formula:

$$\text{CrimeScore}_2 - \text{CrimeScore}_1 = \\ \text{VoteShare}_{\text{Election2}} - \text{VoteShare}_{\text{Election1}}$$

Finally, the analysis considers the prevalence of crime on the political agenda during the analyzed period, 1992 to 2000, to demonstrate that crime was an important issue in California and nationally, so if a correlation between election results and crime score existed, it would be expected to appear during this time period. Regardless of changes in momentum between the political parties, crime remained an important issue during this period. One could reasonably expect voters to be attuned to their legislator's positions, which could impact the legislator's election results. For example, a legislator who was

41. For a discussion of the results, see *infra* Parts III.C, IV.

“soft on crime” during a “tough on crime” legislative cycle may have expected worse election results—regardless of party affiliation.⁴²

B. TESTING GROUND: WHY USE CALIFORNIA?

First, California has more prisoners than any other state,⁴³ yet no comprehensive criminal justice scorecard exists. The closest alternative is a California racial equity scorecard⁴⁴ produced by Applied Research Center that dedicates one section to criminal justice,⁴⁵ but the scorecard grades the Senate, Assembly, and Governor, not individuals (excluding the Governor).⁴⁶ Second, California has a robust state legislature⁴⁷ with term limits,⁴⁸ size and geographical diversity,⁴⁹ and political diversity.⁵⁰

42. See *infra* Part III.D.

43. In 2009, California had 171,275 prisoners in state or federal prisons. HEATHER C. WEST ET AL., BUREAU OF JUSTICE STATISTICS BULLETIN PRISONERS IN 2009, at 16 (2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/p09.pdf>.

44. Applied Research Center also produced a racial equity scorecard for Illinois in 2007-08, which contained a criminal justice section. See APPLIED RES. CTR., FACING RACE 2007-2008 LEGISLATIVE REPORT CARD ON RACIAL EQUITY 10 (2008).

45. APPLIED RES. CTR., 2009 LEGISLATIVE REPORT CARD ON RACIAL EQUITY 10 (2010), available at http://arc.org/downloads/CA_2010_reportcard.pdf.

46. *Id.* at 6.

47. The California State Legislature has 120 members (80 assembly members and 40 senators), who convened for approximately 25,000 votes per legislative session during the time period analyzed.

48. Term limits essentially mitigate the quality of the candidate factor because a challenger is less likely to expend the resources necessary to run against an incumbent when the legislative seat will be vacated due to term limits. John M. Carey et al., *The Effects of Term Limits on State Legislatures*, 23 LEGIS. STUD. Q. 271, 276 (1998) (“[O]pen-seat races tend to be especially competitive in comparison to those with an incumbent running for reelection.”); Kermit Daniel & John R. Lott Jr., *Term Limits and Electoral Competitiveness: Evidence from California’s State Legislative Races*, 90 PUB. CHOICE 165, 169 (1997) (“Term limits also obviously change the timing of a candidate’s decision to run for office . . . [as] challeng[ing] an incumbent . . . is obviously a relatively risky strategy.”).

49. Due to California’s geographical diversity (e.g., the state-wide coastline, mountain ranges containing nine peaks of at least 5,000 feet, deserts like Death Valley and Joshua Tree National Park, and forests like the Sequoia, Sierra, and Redwoods), there is a wide range of urban and suburban populations with potentially differing views. Further, California is the home to four of the top 30 media markets, to-wit: Los Angeles (#2), San Francisco-Oakland-San Jose (#6), Sacramento-Stockton-Modesto (#20), and San Diego (#28), so access to information is generally a non-issue for most voters. *Nielsen Media 2010-2011 Local Market Estimates*, NIELSEN MEDIA RES., <http://www.tvjobs.com/cgi-bin/markets/market2.cgi> (last visited Feb. 2, 2011).

50. In addition to the Democratic Party and Republican Party, California maintained four other political parties. In 1967, the American Independent Party was established in California. *History*, AM. INDEP. PARTY, <http://www.aipca.org/history.html> (last visited Mar. 19, 2011). In 1990, the Green Party of California was founded. *History*, GREEN PARTY CAL., <http://www.cagreens.org/history/founding.shtml> (last visited Mar. 19, 2011). In 1971, the Libertarian Party was founded, and by 1980 it had a presidential candidate in California. *Our History*, LIBERTARIAN PARTY, <http://www.lp.org/our-history> (last visited Mar. 19, 2011). In 1968, the Peace and Freedom Party was placed

Since criminal justice remains a state-based issue, this Article will focus exclusively on California to determine whether being "soft" or "hard" on crime based on roll-call votes impacts a state legislator's vote share, which correlates to the legislator's ability to get reelected.

C. DATA: LEGISLATORS' CRIMINAL JUSTICE SCORES, LEGISLATORS' VOTE SHARES, AND CRIMINAL JUSTICE BALLOT INITIATIVES

1. *Legislators' Criminal Justice Scores*

Initially, a criminal justice score was assigned to each California senator and assembly member during his or her two-year legislative cycle between 1993 and 2000.⁵¹ The scores only included the moderate bills⁵² based primarily on the recommendations of the Little Hoover Commission.⁵³ Additionally, other criminal justice bills that attracted media coverage were included, even if the Little Hoover Commission did not support them, as they were still relevant for developing a criminal justice score because public awareness of the bill would be increased and a legislator would likely pay more attention to a bill prominently placed in the public eye by the media. In total, ninety-six bills were included in the scoring during the 1993-2000 legislative period, and the Little Hoover Commission recommended eighty-one of the ninety-six bills.⁵⁴ Next, each qualifying bill was clas-

on the California ballot. *About Us*, PEACE & FREEDOM PARTY, <http://www.peaceand-freedom.org/home/about-us/about-peace-and-freedom> (last visited Mar. 19, 2011). For the November 2, 2010, election, all six registered political parties were active. *Qualified Political Parties*, CAL. SEC'Y STATE, http://www.sos.ca.gov/elections/elections_f.htm (last visited Feb. 2, 2011).

51. Although the initial crime score is for the 1993-94 legislative cycle, the data actually begins with the 1992 election results because this is when term limits began for California state legislators. The data ends in 2000. This provides five election cycles for analysis. Although the analysis could certainly be expanded to before 1992 (and through the most recent election cycle), the implementation of term limits essentially creates a second independent data set because the number of repeat legislators drastically decreases, if they existed at all. *See supra* note 48 and accompanying text.

52. While bills that would be considered at the political "extremes" can impact other bills on the same subject, the value of including the legislative voting record on the extreme bills is marginal when compared to the fundamentally sound bills.

53. The Little Hoover Commission was created by California statute in 1962 and is "a balanced bipartisan board composed of five citizen members appointed by the Governor, four citizen members appointed by the Legislature, two Senators and two Assembly members" dedicated to "independent state oversight" and making legislative recommendations based on "how programs could and should function in today's world." *About Us*, LITTLE HOOVER COMMISSION, <http://www.lhc.ca.gov/about/about.html> (last visited Jan. 25, 2011).

54. *Legislation Supported*, LITTLE HOOVER COMMISSION, <http://www.lhc.ca.gov/legislation/legis.html> (last visited Jan. 25, 2011). The Little Hoover Commission classified the relevant bills under "corrections," "crime," and/or "prisons" during each legislative period and included the following issues: alternative sentencing, career criminals, community-based punishments, conditions of correctional facilities, construction of correctional facilities, disabled inmates, inmate programs, inmate rights, juvenile justice,

sified as “soft on crime” or “tough on crime.”⁵⁵ In total, sixty-three bills were classified as “soft on crime” and thirty-three bills were classified as “tough on crime.” (See *infra* Appendix 1.) Based on the “soft” or “tough” classification, a corresponding score of 1 or -1 was assigned to each legislator’s “yay” or “nay” vote (a 0 was assigned for legislators who did not vote or who were not present).⁵⁶ A legislator is assigned a 1 for a “pro-criminal justice” vote (often favorable to a defendant, inmate, or previously convicted individual) or -1 for a “pro-public safety” vote (often favorable to the prosecution, police, or prison officials).⁵⁷ In other words, legislators with a score closer to 1 would be considered champions by criminal justice interest groups but considered “soft on

mandatory minimums, parole, prevention programs, prison administration, purpose of incarceration, rehabilitation programs, reintegration programs, and victim’s rights. The California legislature passed only 21 of the 81 recommended bills, and the Governor vetoed 10 of the passed bills.

55. Approximately five qualifying bills could not clearly be classified as “tough” or “soft” because it was too difficult to predict the impact of the bills; therefore, these bills were excluded from the crime score. See S. 32X, 1993-94 Leg., Reg. Sess. (Cal. 1994) (transferring authority between California Department of Corrections and the Board of Prison Terms); S. 617, 1995-96 Leg., Reg. Sess. (Cal. 1996) (requiring California to make only “best value purchases” instead of buying everything made under the supervision of the Prison Industry Authority); S. 1913, 1997-98 Leg., Reg. Sess. (Cal. 1998) (making the Office of the Inspector General independent from other state agencies instead of being supported by the Youth and Adult Correctional Agency); S. 491, 1997-98 Leg., Reg. Sess. (Cal. 1998) (allowing the Department of Corrections to lease additional land to a city to build a park); S. 297, 1999-2000 Leg., Reg. Sess. (Cal. 1999) (developing a master plan for prison operations). Additionally, some bills could have had mixed support even within the “soft” or “hard” communities, which would have made classification difficult. Although no bills were excluded for this reason, the “fast-track” departure of four base points in the federal sentencing guidelines for an early guilty plea (often related to 18 U.S.C. § 1326 (2006) where an alien was found illegally in the United States after being deported) is a more recent example. Criminal defense attorneys appreciated the departure for individual clients who plead guilty and otherwise might have received longer sentences but were institutionally opposed to the departure, as a policy matter, because they knew it would facilitate an increased number of total prosecutions. See Letter from Maria E. Stratton, Fed. Pub. Defender Cent. Dist. of Cal., to Michael Courlander, U.S. Sentencing Comm’n (Sept. 18, 2003), available at http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20030923/stratton.pdf (discussing the policy implications of fast-tracking and its relation to the increased prosecution of 18 U.S.C. § 1326 deportation cases in the Central District of California).

56. Professor Jeffrey Lewis compiled the voting data. Professor Lewis is a Political Science professor at UCLA and partially responsible for the often cited NOMINATE scores for federal and California legislators. In each two-year legislative cycle, Professor Lewis tracked every committee and floor vote on every bill by every legislator. During the 1993-94 cycle, over 26,000 votes were cast by California legislators in total; during the 1995-96 cycle, over 25,000 votes were cast; during the 1997-98 cycle, over 24,000 votes were cast; during the 1999-2000 cycle, over 23,000 votes were cast (an individual bill is often voted on multiple times as it must pass through a subcommittee, a full committee, and the legislative floor).

57. Most qualifying bills had multiple votes. The last substantive vote or votes cast were counted. For example, the Assembly and Senate floor votes were used for the bills that passed the legislature, but the prior committee votes were excluded. Similarly, for bills that did not reach the floor, the last committee votes were used.

crime" by public safety interest groups. Legislators with a score closer to -1 would be considered "tough on crime" by public safety interest groups. After classifying each vote, legislators' crime score were calculated by adding legislators' individual scores and dividing by the number of votes cast to obtain a total crime score for the specific legislative cycle. This allowed for legislators' crime scores to be compared between legislative cycles.⁵⁸ During each two-year legislative cycle, the scores were created from scratch, so scores from the previous two years had no direct impact on the scores for the next two years. The accumulated roll-call results are summarized in Table 1.

TABLE 1. CRIME SCORE DATA

| <i>Legislative Cycle</i> | <i>Total Crime Votes</i> ⁵⁹ | <i>Average Votes per Score</i> | <i>Median Votes per Score</i> | <i>Min./Max. Votes per Score</i> | <i>Average Score</i> | <i>Median Score</i> |
|--------------------------|--|--------------------------------|-------------------------------|----------------------------------|----------------------|---------------------|
| 1993-1994 | 57 | 19.17 | 19 | 2/40 | -0.218 | -0.143 |
| 1995-1996 | 76 | 29.15 | 31 | 1/49 | 0.221 | 0.226 |
| 1997-1998 | 48 | 19.51 | 19 | 3/27 | 0.352 | 0.421 |
| 1999-2000 | 12 | 4.48 | 4 | 2/7 | 0.522 | 0.750 |

2. Legislators' Vote Shares (Election Results)

Beginning in 1992, legislators' election results were collected and measured against the legislators' election results from the subsequent general election. Election results are simply the percentage of votes won in the November general election at the end of each legislator's legislative cycle (two years for assembly members and four years for senators). All state legislators for each legislative cycle from 1992 to 2000 were included in the original data set.⁶⁰

However, because the analysis requires two consecutive criminal justice scores and two consecutive election results to measure the

58. Each bill and corresponding score was weighted equally. While assigning varying weights to the qualifying bills in a systematic manner is possible (especially with the benefit of hindsight), this Article is primarily concerned with the legislators' views at the time their votes were cast to determine if their views had changed or will change in the future.

59. Although 96 bills were included, the total number of votes was higher to include committee votes when the bill did not reach the Senate or Assembly floor.

60. The California State Legislature has 120 members, but only 100 are up for election during each two-year legislative cycle (80 assembly members and 20 senators).

change, not all state legislators could be included in the analysis for each legislative cycle.⁶¹

The change in vote share from one election to the next was measured to determine if a legislator's criminal justice score (or public safety score) had any impact on election results. Did voters modify their support for legislators based on legislators' roll-call votes on criminal justice issues? Since incumbent legislators are significantly more likely to win elections than challengers,⁶² the election percentages from election to election do not necessarily reveal a change in the legislator's views on criminal justice. Instead, an external criminal justice event, like a criminal justice ballot initiative, could better correspond to a change in legislators' election results if the voters' views conflicted with legislators' criminal justice scores. For example, if a "soft on crime" ballot initiative received wide support, indicating constituents were "soft on crime," but the legislator's crime score indicated he was "hard on crime," the legislator could see a change in election results. Thus, this study measured the change in vote share from one election to the next because change in vote share allows for the impact of constituent support for criminal justice ballot initiatives to be analyzed.

3. *Criminal Justice Ballot Initiatives*

"The underlying premise of . . . the [ballot] initiative is that it can help prevent state legislatures from becoming unrepresentative."⁶³ Often, ballot initiatives are the result of a substantial external event,⁶⁴ or at least a view held by a significant number of constitu-

61. For example, some legislators decided not to seek reelection or lost in the primary. For the change between the 1992 and 1994 elections, 50 legislators were observed. For the change between the 1994 and 1996 elections, 43 legislators were observed. For the change between the 1996 and 1998 elections, 43 legislators were observed. For the change between the 1998 and 2000 elections, 48 legislators were observed.

62. See generally JACOBSON, *supra* note 2, at 23-38; Stephen Ansolabehere & James M. Snyder, *The Incumbency Advantage in U.S. Elections: An Analysis of State and Federal Offices, 1942-2000*, 1 ELECTION L. J.: RULES, POL., & POL'Y 315 (2002); Andrew Gelman & Gary King, *Estimating Incumbency Advantage Without Bias*, 34 AM. J. POL. SCI. 1142 (1990); Robert S. Erikson, Research Note, *The Advantage of Incumbency in Congressional Elections*, 3 POLITY 395 (1971).

63. Caroline J. Tolbert & Daniel A. Smith, *The Educative Effects of Ballot Initiatives on Voter Turnout*, 33 AM. POL. RES. 283, 286 (2005).

64. On April 29, 1992, hours after a jury acquitted four police officers who were caught on video tape beating Rodney King into submission with over 50 blows to the head with metal batons, a riot erupted in South Central Los Angeles that killed 54 people, injured 2,328, destroyed 860 structures, and damaged or looted over 5,000 businesses. During the riots, the perpetual lack of LAPD funding was realized when patrol cars broke down, helicopters malfunctioned, and radio equipment failed. In response, Los Angeles voters passed a bond initiative to give LAPD new communication devices in November 1992. Lou Cannon, *The New Blue Line*, CAL. J., July 1997, at 24-25.

ents, so they are particularly good indicators of salient issues.⁶⁵ As voters learn about a ballot initiative during the campaigning season, voters may pay additional attention to the broader issue related to the specific ballot initiative.⁶⁶ This results in voters having the ballot initiative and the broader issue on their minds when they cast their votes, which may influence them to vote for or against a legislator based on the legislator's positions on the broader issue—in this case crime. Thus, this Article uses ballot initiatives from 1994 to 2000 to determine electability impacts over the same time period.⁶⁷ During this period, ten criminal justice ballot initiatives were introduced in California for all elections. Since this Article focuses on the electability of legislators from election cycle to election cycle, primary

65. See Tolbert & Smith, *supra* note 63, at 283-84 (citing the October 2003 California recall election of Governor Gray Davis, where 61% of registered voters turned out, and a ballot initiative banning gay marriage in Missouri's 2004 primaries, which had 39,000 more people vote on the ballot initiative than for the governor's race); Daniel A. Smith & Caroline J. Tolbert, *The Initiative to Party: Partisanship and Ballot Initiatives in California*, 7 PARTY POL. 739 (2001) ("During the 1990s . . . Californians considered a variety of contentious measures, from the well-publicized battles over social services for illegal immigrants, affirmative action, paycheck protection and gay marriages, to the somewhat less controversial skirmishes over tobacco taxes, animal rights, bilingual education, criminal sentencing, casino gambling and electric utility regulation.").

66. Tolbert & Smith, *supra* note 63, at 287 (explaining that one purpose of ballot initiatives is to educate voters about a particular issue).

67. Much has been written on the impact ballot initiatives have on legislators' efforts to get reelected. See generally Elisabeth R. Gerber, *Pressuring Legislatures Through the Use of Initiatives: Two Forms of Indirect Influence*, in CITIZENS AS LEGISLATORS: DIRECT DEMOCRACY IN THE UNITED STATES 201 (Shaun Bowler et al. eds., 1998) (stating that the simple threat of a ballot initiative may prompt legislator activity that could impact reelectability if the interest group supporting the initiative has sufficient resources, the legislator wants something from the interest group, and the legislator is in a competitive election); Valentina A. Bali & Belinda C. Davis, *One More Piece to Make Us Puzzle: The Initiative Process and Legislators' Reelection Chances*, 60 POL. RES. Q. 215 (2007) (finding that ballot initiatives do not harm legislators' reelection efforts and, in some limited circumstances, can benefit legislators seeking reelection); Edward L. Lascher et al., *Gun Behind the Door? Ballot Initiatives, State Policies and Public Opinion*, 58 J. POL. 760 (1996) (finding no support for the theory that ballot initiatives make government more responsive to public demands based on "public opinion data, measures of policy outcomes, and information about the use of initiatives in the American states"). Ballot initiatives, especially controversial or highly publicized proposals, tend to increase voter turnout, which can impact elections if the additional ideological turnout is uneven. See generally Stephen P. Nicholson, *The Political Environment and Ballot Proposition Awareness*, 47 AM. J. POL. SCI. 403-410 (2003) (finding that electoral cycle, media coverage, campaign spending, voter fatigue, days prior to election, and issues related to morality, civil liberties, and civil rights impact voter awareness of ballot initiatives based on California ballot initiatives from 1956-2000); Mark A. Smith, *The Contingent Effects of Ballot Initiatives and Candidate Races on Turnout*, 45 AM. J. POL. SCI. 700 (2001) (showing an increase in ballot initiatives corresponded to an increase in media coverage about the initiative, which resulted in higher voter turnout by as much as four points during mid-term elections but had little impact on turnout during presidential elections from 1972-1996); Tolbert & Smith, *supra* note 63 (stating that an increase in ballot initiatives corresponds to an increase in voter education and engagement about the initiative, which results in higher voter turnout).

or special elections and the corresponding initiatives were excluded.⁶⁸ Further, the November elections result in higher and more diverse voter turnout.⁶⁹ Ultimately, this Article considers four ballot initiatives during the 1994, 1996, and 2000 elections and the results of the 1998 election that did not contain a criminal justice ballot initiative. A brief summary of the relevant portions of four criminal justice ballot initiatives (see directly below and Table 2) is followed by a more extensive discussion of each ballot initiative to justify its relevance to criminal justice and its corresponding inclusion in the data:

(1) Proposition 184 (“Three Strikes Initiative”): Increased sentences to twenty-five years to life for defendant’s third felony conviction if the prior two strikes were violent or serious felonies (“tough on crime”);

(2) Proposition 189: Added felony sexual assault offenses to crimes currently excluded from the right to bail (“tough on crime”);

(3) Proposition 213: Limited the ability of drunk drivers and uninsured motorists from suing to recover non-economic losses suffered in accidents like pain and suffering (“tough on crime”);

(4) Proposition 36: Allowed certain adult offenders to receive drug treatment and supervision in the community instead of being sent to prison or jail (“soft on crime”).

68. The following list details the excluded criminal justice measures. June 1994: Proposition 174—penalties for killing people while shooting from vehicles; March 1996: Proposition 194—prohibition on inmates collecting unemployment insurance benefits upon release after participating in the Joint Venture Program, Proposition 195—addition of carjacking or carjacking-kidnap and murder of jurors to the list of special circumstances punishable by the death penalty or life imprisonment without the possibility of parole, Proposition 196—addition of drive-by-shooting to the list of special circumstances punishable by the death penalty or life imprisonment without the possibility of parole; June 1998: Proposition 222—mandatory minimum sentence of 25 years to life for murdering a peace officer performing official duty; and March 2000: Proposition 18—permission for murder to be considered a special circumstance when the murderer intentionally killed the victim “by means of lying in wait” or arson or kidnapping was committed to further the murder scheme, Proposition 21—permission for more juvenile cases to be tried in adult court and increased penalties for gang-related crimes.

69. *Fairvote.org*, VOTER TURNOUT, <http://www.fairvote.org/voter-turnout> (last visited Jan. 25, 2011) (turnout in presidential elections range from slightly more than 50% to exceeding 60%, while midterm elections range from 39% to below 50%). The Pew Center on the States reports that during midterm elections from 1982-1996, “voter turnout has stayed between 38 percent and 42 percent nationwide,” while presidential elections between 1980-2004 had a larger variation but also a larger turnout—between 52% and 60%. *Midterm Election Voter Turnout, 2006*, THE PEW CENTER ON THE STATE, http://www.pewcenteronthestates.org/ttw/trends_map_data_table.aspx?trendID=19&assessmentID=5 (last visited Oct. 16, 2011) (hyperlink under “Learn more about this assessment”); see also Michael McDonald, *United States Election Project*, VOTER TURNOUT, http://elections.gmu.edu/voter_turnout.htm (last visited Jan. 25, 2011).

TABLE 2. BALLOT INITIATIVE DATA

| <i>Proposition</i> | <i>Support</i> | <i>Total Votes</i> | <i>Total Spent to Support and Oppose Proposition</i> | <i>Year</i> |
|--------------------|----------------|--------------------|--|-------------|
| 184 | 71.8% | 8,220,816 | \$1.56 million | 1994 |
| 189 | 79.4% | 8,031,840 | N/A | 1994 |
| 213 | 76.8% | 9,472,547 | \$4.72 million | 1996 |
| 36 | 60.8% | 10,242,930 | \$4.61 million | 2000 |

a. Proposition 184

In 1994, with over 71% of the vote, California voters passed Proposition 184, commonly known as the "Three Strikes Initiative."⁷⁰ Proposition 184 mandates that California offenders spend twenty-five years to life in prison after committing a third qualifying offense. Specifically, the proposition

require[d] longer prison sentences for certain repeat offenders. Individuals who have *one previous* serious or violent felony conviction and are convicted of *any new* felony (it need not be serious or violent) generally receive a prison sentence that is twice the term otherwise required for the new conviction. These individuals are referred to as "second strikers." Individuals who have *two previous* serious or violent felony convictions and are convicted of *any new* felony are generally sentenced to life imprisonment with a minimum term of 25 years ("third strikers"). In addition, the law also restricted the opportunity to earn credits that reduce time in prison and eliminated alternatives to prison incarceration for those who have committed serious or violent felonies.⁷¹

The Three Strikes legislation was galvanized after two highly publicized murders by repeat offenders. First, in 1992 a repeat offender shot Kimber Reynolds in her head with a .357 magnum after trying to grab her handbag.⁷² Kimber's father, Mike, made a "death-bed promise" to his daughter that he would "do anything to prevent this from happening to other kids."⁷³ Keeping his promise, he started a "three-strikes and your out" campaign to lock-up repeat offenders, but the bill, which Assemblymen Bill Jones and Jim Costa drafted,

70. CAL. SEC'Y OF STATE, HISTORY OF CALIFORNIA INITIATIVES 8 (2003), available at http://www.sos.ca.gov/elections/init_history.pdf.

71. ELIZABETH G. HILL, CALIFORNIA'S CRIMINAL JUSTICE SYSTEM: A PRIMER 13 (2007), available at http://www.lao.ca.gov/2007/cj_primer/cj_primer_013107.aspx.

72. Ina Jaffe, *Two Torn Families Show Flip Side of 3 Strikes Law*, NPR, Oct. 28, 2009, <http://www.npr.org/templates/story/story.php?storyId=114219922>.

73. *Id.*

died in committee.⁷⁴ Eighteen months later, in October 1993, Richard Allen Davis kidnapped Polly Klaas from a slumber party at her home and then brutally raped and murdered her.⁷⁵ Polly's family used TV and the Internet to keep her story in the media and at the forefront of public concern.⁷⁶ Eventually, after the police caught Davis, it was discovered that he had two prior kidnapping convictions, served only half of his prior sixteen-year conviction and would have been in prison at the time he kidnapped Polly if he had served his full sentence.⁷⁷ Polly's funeral became a political happening. California's U.S. Senators Diane Feinstein and Barbara Boxer attended the funeral, and Republican Governor Pete Wilson mentioned it in a "tough-on-crime" speech.⁷⁸ Polly Klaas's murder revitalized the bill that Mike Reynolds had initially motivated. Governor Wilson ultimately signed the three-strikes bill (AB 971) into law.

Interestingly, Assemblyman Richard Rainey (Republican) introduced a similar three-strikes bill that required the third strike to be a violent or serious felony (excluding burglary). This bill could have saved the state billions because non-violent or serious felonies (like small quantity drug possession offenses) would not require the state to incarcerate an individual for at least twenty-five years. After Polly Klaas's murder, however, politicians wanted the toughest bill possible even though Polly's father supported Assemblyman Rainey's version.⁷⁹ Legislators did not want to educate voters that the three-strikes bill would (1) incarcerate many more petty and non-violent criminals than murderers and rapists⁸⁰ and (2) divert resources from

74. John Borland, *A California Journal Analysis November 1994 Ballot Propositions: Proposition 184*, CAL. J., Sept. 1994, at 6.

75. Jaffe, *supra* note 72.

76. *Id.*

77. *Ewing v. California*, 538 U.S. 11, 14-15 (2002).

78. Borland, *supra* note 74, at 5.

79. *Id.* at 6.

80. *See Ewing*, 538 U.S. at 19-20 (upholding defendant's sentence of 25 years to life for stealing golf clubs in excess of \$400 under California's "Three Strikes and You're Out" law because defendant's prior criminal history allowed the Court to conclude this sentence to protect society from repeat offenders). Although, voters in Washington passed Initiative 593 in November 1993 and created the first "three-strikes" sentence (followed by California in 1994), existing recidivist statutes allowed for similar unjust and disproportionate sentences. *See Rummel v. Estelle*, 445 U.S. 263, 284-85 (1980) (refusing to question the legislature's wisdom about the defendant being sentenced to life with the possibility of parole for his third felony conviction of fraudulently obtaining funds that totaled approximately \$230 because Texas's recidivist statute permitted such a sentence); *see also Solem v. Helm*, 463 U.S. 277, 303-04 (1983) (overruling the defendant's life sentence under South Dakota's recidivist statute for issuing a bad check of \$100, even though this was the defendant's seventh non-violent felony, because the sentence did not offer the chance for parole, not because a potential life sentence for issuing a fraudulent \$100 check was excessive).

other community and economic needs to finance the additional correctional facilities and litigation when defendants who may have previously plead-out decide to exercise their right to a jury trial because they do not want a strike⁸¹ (first, second, and certainly not third) on their record.⁸² Then-Assembly Speaker Willie Brown Jr. (Democrat) explained the legislators' feelings of doubt regarding the toughest three-strikes bill: "I see a locomotive coming down the track and I'm not about to get in the way."⁸³ The passage of Proposition 184, with over 71% of the vote,⁸⁴ was effectively a symbolic measure of public support because the Assembly previously passed a three-strikes bill (AB 971) on January 31, 1994, the Senate passed the companion bill on March 3, 1994, and Governor Wilson signed the bill on March 7, 1994.⁸⁵

While Proposition 184 may have been symbolic of public support, the public's financial support was very real. The Three Strikes and You're Out Committee was the only committee registered in support of Proposition 184 and received contributions totaling over \$1.5 million in 1993 and 1994 combined.⁸⁶ The committee received twenty-two individual donations over \$2,000, highlighted by donations of \$101,000 from the California Peace Officers Association PAC and \$90,105 from the National Rifle Association ("NRA") Institute for Legislative Action.⁸⁷ The total also included individual contributions of over \$2,000

81. John Borland, *Three Strikes After One Year*, CAL. J., Oct. 1995, at 32. Prior to three-strikes, only 5% of felonies went to trial because most defendants were willing to plead-out to a lesser charge, but after three-strikes, approximately "seventy-five percent of third strike defendants, and fifty percent of first- and second-strike defendants are demanding full jury trials." *Id.*

82. Joseph D. McNamara, *Runaway Crime and the End of Dreams*, CAL. J., Oct. 1995, at 17; see also DAVID ESPARZA, THE "THREE STRIKES AND YOU'RE OUT" LAW—A PRELIMINARY ASSESSMENT (1995), available at http://www.lao.ca.gov/1995/010695_three_strikes/sc010695.html (finding that the three-strikes law caused thousands of additional cases to be litigated in court, fewer guilty pleas resulting in an increase in jury trials, and an increase of individuals in county jail because they are waiting for trial); California Ballot Pamphlet 36-37 (Nov. 8, 1994) available at http://traynor.uchastings.edu/ballot_pdf/1994g.pdf (explaining arguments for and against Proposition 184).

83. McNamara, *supra* note 82, at 17.

84. CAL. SEC'Y OF STATE, *supra* note 70, at 8.

85. *Ewing*, 538 U.S. at 15.

86. Ballot Measure Committee Campaign Disclosure Statement for Three Strikes and You're Out (Mar. 11, 1994) (on file with author). According to public filings submitted to the California Secretary of State in 1993, the committee received \$199,377 in monetary contributions and \$23,342 in non-monetary contributions, totaling \$222,719. In 1994, the committee received \$640,433 in monetary contributions and \$649,925 in non-monetary contributions, totaling \$1,290,358. *Id.*

87. *Id.* According to public filings submitted to the California Secretary of State, these contributors included American Medical Services (\$2,700), Apartment Association of Orange County (\$2,500), Atlantic Richfield Company (\$5,000), California Peace Officers Association PAC (\$101,000), Container Supply Company (\$5,000), Del Masso Trust (\$5,000), Fig Garden Rotary Club (\$3,000), Ice Capades (\$3,000), ICF Kaiser In-

given by eight legislators or legislative candidates, highlighted by Congressman Michael Huffington's \$150,000 monetary and \$200,000 non-monetary (media advertising) donation.⁸⁸ Further, six legislators or legislative candidates each made donations of \$1,000,⁸⁹ and the California Republican Party made a \$432,206 non-monetary contribution to mail absentee ballots and make phone calls to potential voters.⁹⁰ In comparison, four committees formed to oppose Proposition 184 and raised a combined total of only \$52,740.⁹¹

b. Proposition 189

Proposition 189 was placed on the 1994 ballot by the legislature, as required by statute, because it was an effort to amend the California Constitution. Proposition 189 was designed to add felony sexual assault offenses to crimes currently exempted⁹² from a right to bail if a judicial finding is made based upon clear and convincing evidence that releasing the suspect would likely result in great bodily harm to

ternational (\$2,500), NRA—Institute for Legislative Action (\$90,105), Patton Sheet Metal (\$5,000), Peace Officers Research Association of California PAC (\$5,000), Shirley Brinker (\$5,000), and Watson Land Company (\$2,000). *Id.*

88. *Id.* According to public filings submitted to the California Secretary of State, these contributors included Bill Leonard Campaign Committee (\$2,500), Bill Jones for Assembly (\$2,000), Bill Jones for Secretary of State (\$5,000), Congressman Michael Huffington (\$150,000), Friends of Curt Pringle (\$2,000), Governor Pete Wilson Committee (\$10,000), Lungren for Attorney General (\$5,000), Poochigian for Assembly (\$2,500), and Wally Herger for Congress (\$3,000). *Id.*

89. *Id.* According to public filings submitted to the California Secretary of State, these contributors included Costa for Senate '94, Friends of David Knowles, Lehman for Congress Committee, Lewis for State Senate, Mickey Conroy for Assembly, and Royce Campaign Committee. *Id.*

90. *Id.*

91. Ballot Measure Committee Campaign Disclosure Statement for American Friends Service Committee (Nov. 8, 1994) (on file with author), Ballot Measure Committee Campaign Disclosure Statement for Californians Socialists of America (Nov. 8, 1994) (on file with author), Ballot Measure Committee Campaign Disclosure Statement for League of Women Voters of Orange County Ballot Action Committee (Nov. 8, 1994) (on file with author). According to public filings submitted to the California Secretary of State, these contributors included American Friends Service Committee (\$10,291), California Democratic Socialists of America 2000 (\$7,265), League of Women Voters of Orange County Ballot Action Committee (\$3,980, but contributions were used to oppose Propositions 184 and 187 and to support Proposition 186), and Taxpayers for Effective Crime Prevention (\$31,204, including \$10,000 from the California Teachers Association Issues PAC, \$1,000 from the American Civil Liberties Union Foundation of Northern California, \$2,000 from the California Public Defenders Association, and \$500 from State Senator Tom Hayden). Payments and Contributions Made Form for Taxpayers for Effective Crime Prevention (Oct. 23, 1994) (on file with author).

92. *Senate Committee on Judiciary on ACA 37, 1993-94 Leg. Reg. Sess. (Cal. 1994)* Crimes that are currently exempted include (1) capital crimes; (2) felonious acts of violence such that a court could conclude that there is a substantial likelihood of harm to the community if bail is granted; and (3) any felonious threat of great bodily harm such that a court could find a substantial likelihood that release would result in such harm. *Id.*

others.⁹³ President Bill Clinton signed a federal crime package that contained the Violence Against Women Act, which included grant and funding authorization accessible to states if state law conformed to federal law in certain areas, including bail for sexual offenders. The ballot history obtained from the California Secretary of State indicated no formal support for Proposition 189. The only opposition letter came from California Attorneys for Criminal Justice ("CACJ").⁹⁴ CACJ opposed Proposition 189 because it "is too broad and encompasses misdemeanor as well as felony sexual assault."⁹⁵ The proposition was amended to limit its scope to felony cases and the opposition was withdrawn.

c. Proposition 213

In 1996, Proposition 213 passed with over 76% of the vote.⁹⁶ Proposition 213 limited the ability of an individual "convicted of a felony from suing for damages or injuries sustained while committing or fleeing their crime"⁹⁷ and imposed recovery limits on drunk drivers and uninsured drivers who get into accidents. Drunk or uninsured drivers could continue to seek damages for "medical benefits, lost wages, or vehicle damages but could not go for the potential big-money 'non-economic' damages such as pain and suffering."⁹⁸ Proponents of the proposition, including then-Insurance Commissioner Chuck Quackenbush, argued that these drivers increase the cost of insurance to law-abiding policyholders. By eliminating these costs, the insurance companies could pass along the savings to consumers.⁹⁹ According to the California Secretary of State, three committees formed to financially support this initiative: Californians for Personal Responsibility ("CPR"), American Insurance Association California Issues Committee, and San Diego County Taxpayer's Coalition.¹⁰⁰

93. *California Proposition 189*, BALLOTPEDIA.ORG, [http://ballotpedia.org/wiki/index.php/California_Proposition_189_\(1994\)](http://ballotpedia.org/wiki/index.php/California_Proposition_189_(1994)) (last modified Sept. 4, 2011).

94. Because Proposition 189 was an amendment to the California Constitution, no committees were formed to support or oppose this proposition.

95. Letter from Cathy R. Dreyfuss, Cal. Attorneys for Criminal Justice, to Cruz Bustamante, Cal. Assembly Member (May 5, 1994) (on file with author).

96. CAL. SEC'Y OF STATE, *supra* note 70, at 8.

97. Borland, *supra* note 74, at 6; see also California Ballot Pamphlet 50-51 (Nov. 5, 1996), available at http://traynor.uchastings.edu/ballot_pdf/1996g.pdf (explaining arguments for and against Proposition 213).

98. Borland, *supra* note 74, at 5.

99. *Id.* at 6.

100. Ballot Measure Committee Campaign Disclosure Statement for San Diego Taxpayer's Coalition (Nov. 5, 1996) (on file with author). Proposition 213 was also supported by Linda Oxenreider, California President, Mothers Against Drunk Driving; D.O. "Spike" Helmick, California Highway Patrol Commissioner; Ronald Lowenberg, President, California Police Chiefs' Association; Jan Miller, Chairman, Doris Tate Crime Victims Bureau; and Steven Craig, President, Peace Officers Research Associa-

In 1995, CPR raised \$78,565 and \$73,118 in non-monetary contributions to support Proposition 213.¹⁰¹ In 1996, CPR raised \$3,301,157 plus over \$1,160,000 from in-kind donations for a total exceeding \$4,612,840.¹⁰² The vast majority of these donations were from the insurance industry, with thirty-five different donors contributing between \$10,000 and \$49,999,¹⁰³ four donors contributing between \$50,000 and \$99,999,¹⁰⁴ and seven donors contributing over \$100,000.¹⁰⁵ The American Insurance Association California Issues Committee received \$75,000 from approximately forty corporations—mostly affiliated with the insurance industry, but none exceeded a donation of \$5,000 in support of Proposition 213.¹⁰⁶ Finally, San Diego County Taxpayers' Coalition received \$14,699 in donations from nineteen different contributors—seventeen of whom were political candidates endorsed by the coalition in the upcoming election.¹⁰⁷

tion of California. California Ballot Pamphlet 50-51 (Nov. 5, 1996), available at http://traynor.uchastings.edu/ballot_pdf/1996g.pdf.

101. Ballot Measure Committee Campaign Disclosure Statement for Californians for Personal Responsibility (Feb. 1, 1996) (on file with author).

102. *Id.*

103. *Id.* Alice Borden Company (\$31,722 non-monetary contribution for professional management and consulting services), American International Group (\$15,000), AMEX Life Insurance Co (\$10,000), Amwest Insurance Group, Inc. (\$12,500), C.G. America Corporation (\$10,000), California Casualty Indemnity (\$15,000), California Correctional Peace Officers Association (\$10,000), California Republican Party (\$11,500 non-monetary contribution for printing and postage), Carl H. Linder (CEO American Financial Group) (\$25,000), Centre Reinsurance Company of New York (\$10,000), CHASE (\$15,000), Claredon National Insurance (\$10,000), Coast National Insurance Company (\$10,000), CNA Financial Corporation (\$25,000), Fidelity National Financial (\$10,000), Financial Indemnity Company (\$20,000), Firemans Fund Insurance Company (\$40,000), Fremont Pacific (\$25,000), General RE Corporation (\$15,000), Great Pacific Insurance Company (\$10,000), Liberty Mutual Insurance Company (\$20,000), Metropolitan Life Insurance (\$40,000), NAII California State PAC (\$10,000), Nationwide Mutual Insurance Company (\$15,000), New York Life Insurance Company (\$10,000), Pioneer Financial Services, Inc. (\$10,000), Progressive Casualty Insurance Company (\$15,000), Prudential Property & Casualty Company (\$35,000), Quackenbush Committee for Insurance Reform (\$45,000), Robert Insurance Services of California (\$10,000), TIG Insurance (\$25,000), Travelers Group (\$16,288 non-monetary contribution for printing and postage), USAA (\$25,000), Ziegaus Stoorza (\$47,050 non-monetary contribution for professional management and consulting services), and Zurich Insurance Company (\$30,000). *Id.*

104. *Id.* American Insurance Association Inc. (\$75,000), CIGNA (\$50,000), Republic Indemnity Company (\$50,000), and Safeco Corporation (\$50,000). *Id.*

105. *Id.* 20th Century Insurance Co (\$100,000), Allstate Insurance Company (\$170,000), Association of California Insurance Company Issues PAC (\$150,000), Farmers Insurance Group (\$300,000), Mercury General Corporation (\$225,000), State Farm Mutual Automobile (\$800,000), and Target Enterprises (\$1,060,000 non-monetary contribution for broadcast advertising). *Id.*

106. Recipient Committee Campaign Statement for American Insurance Association California Issues Committee (July 30, 1996) (on file with author).

107. Recipient Committee Campaign Statement for Duncan Hunter, Steve Baldwin, Nadia Davies, Bruce Johnson, Timothy Caruthers, Jim Stieringer, Ken Moser, John Witt, and Les Pierres Streater (Oct. 28, 1996) (on file with author); Recipient Commit-

Opponents argued that the uninsured motorist provision of the proposal unfairly targeted minorities, students, and the poor who are less likely able to afford automobile insurance and would effectively prohibit uninsured individuals from even recovering medical or lost-wages damages because "contingent-fee lawyers will refuse to take their cases without the [potential] promise of the higher non-economic damage awards."¹⁰⁸ According to the California Secretary of State only one committee formed to financially oppose this initiative: No on 213—Consumers Against No Fault.¹⁰⁹ No on 213 raised only \$18,882, \$10,000 of which came from Consumer Attorneys of California, so it is not surprising that only 24% of the voters opposed Proposition 213.¹¹⁰

d. Proposition 36

In 2000, over 60% of California voters passed Proposition 36.¹¹¹ This proposition allowed some individuals to receive probation instead of jail time for a drug possession conviction. Specifically,

Proposition 36 provided for the sentencing of individuals convicted of a nonviolent drug possession offense to probation rather than prison or jail. As a condition of probation, the offender is required to complete a drug treatment program. The measure excluded certain offenders from these provisions, including those who refuse drug treatment or are also convicted at the same time for a felony or misdemeanor crime unrelated to drug use.¹¹²

Proposition 36 was designed as solution between two problems facing California: (1) an increase in positive drug testing among suspects arrested for drug and non-drug related offenses and (2) the lack of drug treatment capacity in California's prisons.¹¹³ In 1997, the drug treatment capacity was approximately 500 beds, and the projected need in 2002 (two years after Proposition 36 was introduced and

tee Campaign Statement for Duncan Hunter, Steve Baldwin, Nadia Davies, Bruce Johnson, Timothy Caruthers, Jim Stieringer, Ken Moser, John Witt, and Les Pierres Streater (Feb. 3, 1997) (on file with author).

108. Borland, *supra* note 74, at 6.

109. Ballot Measure Committee Campaign Disclosure Statement for Consumers Against No Fault (Nov. 5, 1996) (on file with author). Proposition 213 was also opposed by Ken McEldowney, Executive Director, Consumer Action; Ina DeLong, Executive Director, United Policyholders; and Roy Ulrich, Campaign Finance Reform Advocate. California Ballot Pamphlet 50-51 (Nov. 5, 1996), available at http://traynor.uchastings.edu/ballot_pdf/1996g.pdf.

110. See Borland, *supra* note 81, at 17.

111. CAL. SEC'Y OF STATE, *supra* note 70, at 8; Ballot Measure Committee Campaign Disclosure Statement for No on Proposition 213 (Oct. 1, 1996) (on file with author).

112. HILL, *supra* note 71, at 14.

113. K. JACK RILEY ET AL., DRUG OFFENDERS AND THE CRIMINAL JUSTICE SYSTEM: WILL PROPOSITION 36 TREAT OR CREATE PROBLEMS? 3-4 (2000) available at http://www.rand.org/content/dam/rand/pubs/issue_papers/2005/IP204.pdf.

passed) was over 9,000 beds.¹¹⁴ Even if capacity could have been created, the in-prison treatment required an additional expense by California beyond the “annual average yearly cost of \$21,243 to incarcerate an inmate in a California state prison.”¹¹⁵ Thus, voters decided to save the state’s tax dollars by allowing defendants to participate in a community-based treatment program instead of receiving treatment while being incarcerated, which would also hopefully result in a decrease in recidivism.¹¹⁶

Two committees formed to support the proposition, and one formed to oppose the proposition. California Campaign for New Drug Policies, Yes on Prop. 36 received \$3.87 million in monetary contributions, which included \$1.026 million donations from three individuals: Peter Lewis, John Sperling, and George Soros.¹¹⁷ Additionally, the committee received \$202,975 in non-monetary contributions from the Campaign for New Drug Policies and Californians for a total exceeding \$4.07 million.¹¹⁸ United Against Drug Abuse Sponsored By: Law Enforcement, Drug Treatment Professionals, Healthcare, Crime Victims and Taxpayers—No on 36 received \$444,481 in monetary contributions and no single contributor exceeded \$100,000.¹¹⁹ Additionally, this committee received \$67,056 in non-monetary contributions from the Drug Fee American Foundation, Inc. and \$35,000 in non-monetary contributions from PORAC—Political Issues Committee for a total contribution exceeding \$545,000.¹²⁰ While Proposition 36 passed fairly easily with approximately 61% of the vote, the success was not limited to the liberal areas along the coast (like San Francisco and Los Angeles counties); traditionally conservative counties also supported

114. *Id.* at 4.

115. *Id.*; see also California Office Voter Guide 26-27 (Nov. 7, 2000), available at http://traynor.uchastings.edu/ballot_pdf/2000g.pdf (explaining arguments for and against Proposition 36).

116. RILEY ET AL., *supra* note 113, at 6. Implicitly, voters rejected the argument that Proposition 36 was a “back door to drug legalization . . . [that] undermines the impact of other drug control methods” and does not provide for sufficient treatment oversight. *Id.*

117. *California Campaign for New Drug Policies, Yes on Prop. 36*, CAL. SEC’Y STATE, <http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1077619&session=1999> (last visited Jan. 26, 2011). Californians for Crime Prevention and for Proposition 36 also registered in support of Proposition 36, but the financial filings were not available through the California Secretary of State website.

118. *Id.* The committee also received a non-monetary contribution of \$1,866.56 from the California State Council of Service Employees Political Account Issues Defense & Advocacy Fund. *Id.*

119. *Californians United Against Drug Abuse Sponsored By: Law Enforcement, Drug Treatment Professionals, Healthcare, Crime Victims and Taxpayers—No on 36*, CAL. SEC’Y STATE, <http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1223780&session=1999&view=received> (last visited Jan. 26, 2011).

120. *Id.*

it.¹²¹ This supports the notion that voter attitude was changing from the traditional "lock 'em up" or public safety mentality to a more preventative-based approach to criminal justice.¹²²

D. CALIFORNIA AND NATIONAL TRENDS IN CRIME, POLITICS, AND PARTY FROM 1992 TO 2000

During the 1990s, all categories of crime fell sharply¹²³ in all parts of the United States.¹²⁴ In California's largest cities (and the twenty-five most populous cities nation-wide), homicide rates dropped substantially from the peak year in 1991 to 2001.¹²⁵ To explain this unexpected drop in crime, many factors have been suggested and discussed.¹²⁶ However, four factors seem to have stronger correlations to the decrease in crime: (1) an increased number of police officers, (2) increased prison populations, (3) the decline of the crack epidemic, and (4) legalized abortion.¹²⁷ Of the four factors that led to a reduction in crime, only the increase in police officers and the increased prison populations directly relate to criminal justice and both should be seen as "tough on crime" initiatives. By the end of the 1990s, however, the "tough on crime" mood had begun to soften and move towards the political center.

Although the mood on crime softened during the 1990s, the political winds were blowing fiercely and reversing direction often. The 1990s saw the election of President Bill Clinton, the 1994 Republican

121. See Noel Brinkerhoff, *Proposition Windup*, CAL. J., Dec. 2000, at 15. (stating that the conservative counties that passed Proposition 36 included Alpine, Amador, Calaveras, El Dorado, Iny, Lassen, Mono, Nevada, Orange, Riverside, San Diego, and San Joaquin).

122. *Id.*

123. Steven D. Levitt, *Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not*, 18 J. ECON. PERSPECTIVES 163, 166 (2004); see also THE CRIME DROP IN AMERICA (Alfred Blumstein & Joel Wallman eds., 2000); Spreadsheet, FBI, Crime in the United States, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl01.xls#overview> (last visited Oct. 16, 2011).

124. Levitt, *supra* note 123, at 167; see also *Crime in California, 1983-2009*, STATE CAL. DEPT JUSTICE, <http://ag.ca.gov/cjsc/glance/cht1.php> (last visited Apr. 12, 2011) (showing that California's violent crime rate peaked during 1992).

125. Levitt, *supra* note 123, at 168. San Diego's rate dropped 72.8%; San Jose's rate dropped 69.2%; San Francisco's rate dropped 56%; and Los Angeles's rate dropped 48.9%. *Id.*

126. See *id.* at 169-76 (arguing that the strong economy in the late 1990s, changing demographics, improved policing strategies, gun control laws, permission to carry concealed weapons, and the increased use of capital punishment do not sufficiently explain the drop in crime); see also *Mining the Crime Drop of the 1990s for Social Clues*, NPR. ORG (Feb. 16, 2007), <http://www.npr.org/templates/story/story.php?storyId=7453416> (discussing the causes for the crime drop in the 1990s with Franklin Zimring, William G. Simon, Richard Rosenfeld, Janet Lauritsen, and Alfred Blumstein).

127. Levitt, *supra* note 123, at 176-83.

Revolution, the backlash against House Republicans for politicizing the impeachment of President Clinton related to his statements about Monica Lewinsky, and the closely contested 2000 election between then-Governor George W. Bush and Vice President Al Gore.

The U.S. political landscape and corresponding national elections have influenced state elections. In fact, “[t]here is a pulse to state legislative elections, a regular pattern of gains and losses very much like that observed in congressional elections.”¹²⁸ Not only is there a pattern, but the pattern is influenced by national elections. This is especially true in presidential election years when “a presidential candidate running a strong race in a state helps his party to gain additional state legislative seats” and “[t]he opposite pattern is found in midterm elections.”¹²⁹ In general, elections for state legislatures are “systematically affected by all of the dominant forces in U.S. elections (coattails, turnout, and economic conditions).”¹³⁰ Although the state election results in California did not exactly mirror the national results and political landscape, California certainly trended with the national results.

Despite the national changes in political power, which were also reflected in the California elections, crime remained an important issue. Thus, if a legislator’s position on crime issues was going to impact the legislator’s ability to get reelected, such a correlation could be expected during this period because crime was a popular issue and voters would be more likely to be paying attention.

1. 1992 and 1994 Legislative Cycles in Review

In California, Republicans led the trend to crack down on crime as evidenced by the political and financial support for Propositions 184 and 189, which was weakly opposed (if at all) politically and financially by Democratic supporters. For every dollar available to oppose Proposition 184, supporters had access to twenty-eight dollars. Specifically, during the 1994 election, Congressman Michael Huffington, a Republican, attempted to unseat Senator Dianne Feinstein, a Democrat, by making crime a more prominent issue in the election. Congressman Huffington believed that if he could make the election about

128. James E. Campbell, *Presidential Coattails and Midterm Losses in State Legislative Elections*, 80 AM. POL. SCI. REV. 45, 58 (1986).

129. *Id.*; see also Thomas M. Holbrook-Provow, *National Factors in Gubernatorial Elections*, 15 AM. POL. RES. 471, 480 (1987) (“Presidential popularity . . . ha[s] a strong impact on success of the president’s party in gubernatorial elections.”). See generally SETH E. MASKET, *NO MIDDLE GROUND: HOW INFORMAL PARTY ORGANIZATIONS CONTROL NOMINATIONS AND POLARIZE LEGISLATURES* 54-107, 188-203 (2009) (providing a general discussion and history of how political parties impact California elections).

130. Chubb, *supra* note 40.

crime, an issue believed to be strong for Republicans, he would have a stronger chance of winning.¹³¹ To this end, Huffington donated \$100,000 in cash to Proposition 184 and \$200,000 in media advertising to help the proposition and to make crime generally become more salient during the election cycle.¹³² Senator Feinstein, recognizing the saliency of crime during this election cycle, appeared at Polly Klaas's funeral to show her condolences but also to send the subtle message to voters that she was tough on crime. Further, the passage of ACA 37, which was introduced by Democrat Assemblyman Cruz Bustamante and led to Proposition 189, received only one vote against it in the Assembly (in committee) and passed unanimously on the Assembly floor by consent.¹³³

Nationally, in a very "tough on crime" landscape, President Bill Clinton signed the Brady Handgun Violence Prevention Act, which went into effect on February 28, 1994.¹³⁴ The Act required background checks on individuals purchasing firearms in the United States and a five-day waiting period.¹³⁵ Although the National Rifle Association's lobbying efforts did not defeat the bill, they secured a provision that phased out the five-day waiting period in favor of instant computerized background checks after five years.¹³⁶

In 1992, then-Governor Clinton defeated President George H. W. Bush, which gave Democrats control of the Executive Branch, the U.S. Senate, and the U.S. House of Representatives. This dominance, however, was short-lived. In 1994, the Republicans won control of the House and Senate for the first time in forty years by campaigning as a united party in support of the "Contract for America." Similarly, in California, the Republicans were successful, but more modestly, only

131. See John R. Petrocik, *Issue Ownership in Presidential Elections, with a 1980 Case Study*, 40 AM. J. POL. SCI. 825 (1996) for a more robust analysis and discussion of how presidential candidates attempt to make elections about specific issues that appeal to voters, or "issue ownership." See also Stephen Ansolabehere & Shanto Iyengar, *Riding the Wave and Claiming Ownership over Issues: The Joint Effects of Advertising and News Coverage in Campaigns*, 58 PUB. OPINION Q. 335 (1994) (arguing that advertising allows candidates to gain the most from issue ownership).

132. Ballot Measure Committee Campaign Disclosure Statement for Three Strikes and You're Out (Mar. 11, 1994) (on file with author).

133. *Assembly Floor Vote on ACA 37, 1993-94 Leg., Reg. Sess. (Cal. 1994)*, available at http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_0001-0050/aca_37_vote_940622_0243PM_asm_floor; *Assembly Committee Vote on ACA 37, 1993-94 Leg., Reg. Sess. (Cal. 1994)*, available at http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_0001-0050/aca_37_vote_940517_000001_asm_comm.

134. Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

135. *Id.*

136. ROBERT J. SPITZER, *THE POLITICS OF GUN CONTROL* 160-61 (2d ed. 1998).

winning three additional Senate seats and seven additional Assembly seats.¹³⁷

2. 1996 Legislative Cycle in Review

In California, Republicans continued to support the “tough on crime” trend. Insurance corporations, which are typically aligned with the Republican mentality of supporting big business, supported Proposition 213. Even the California Republican Party gave monetary donations to support Proposition 213. Further, the candidates recommended by San Diego County Taxpayers’ Coalition, which supported 213, were primarily Republicans. In total, support for Proposition 213 received approximately \$250 for every dollar received to oppose Proposition 213. In the Assembly and Senate, Democrats picked up two seats bringing their totals to forty-three out of eighty and twenty-three out of forty, respectively, to begin rebalancing the effects of the 1994 Republican Revolution.

Nationally, as the mood on crime remained “tough,” President Clinton defeated Republican Nominee Bob Dole and Ross Perot with 49.2% of the vote,¹³⁸ and House Democrats gained back nine seats (though, the Senate lost two).¹³⁹ Despite the victories by President Bill Clinton and the House Democrats, appearing tough on crime was still considered important to the President and Congress. While running for reelection, President Clinton promoted his omnibus crime bill and proclaimed that he “expanded the death penalty for drug kingpins, murderers of federal law enforcement officers, and nearly 60 additional categories of violent felons.”¹⁴⁰ Additionally, President Clinton ran a TV advertisement suggesting that putting more cops on the street and “expand[ing] the death penalty” is “how we’ll protect America.”¹⁴¹ Finally, in the aftermath of the 1996 Oklahoma City bombing, Congress considered (though, ultimately rejected) curtailing the writ of habeas corpus to allow inmates on death row only one fed-

137. *California State Elections, 1998*, WIKIPEDIA.ORG, http://en.wikipedia.org/wiki/California_state_elections,_1998 (last modified Sept. 23, 2011).

138. *1996 Popular Vote Summary for All Candidates Listed on at Least One State Ballot*, FED. ELECTION COMMISSION, <http://www.fec.gov/pubrec/fe1996/summ.htm> (last updated October 1997).

139. *United States House of Representatives Elections, 1996*, WIKIPEDIA.ORG, http://en.wikipedia.org/wiki/United_States_House_of_Representatives_elections,_1996 (last modified Nov. 3, 2011); *United States Senate Elections, 1996*, WIKIPEDIA.ORG, http://en.wikipedia.org/wiki/United_States_Senate_elections,_1996 (last modified Sept. 27, 2011).

140. Albert Alschuler, *Bill Clinton’s Parting Pardon Party*, 100 J. CRIM. L. & CRIMINOLOGY 1131, 1133 (2010).

141. Alexander Nguyen, *Bill Clinton’s Death Penalty Waffle*, AM. PROSPECT, Dec. 19, 2001, <http://www.prospect.org/article/bill-clintons-death-penalty-waffle>.

eral appeal, which they would have to file within one year of exhausting all possible state appeals.¹⁴²

3. 1998 Legislative Cycle in Review

By 1998, the "tough on crime" trend started to lose steam in California and nationally. For the first time since November 1992, there were no crime propositions on the November ballot. In the November 2000 election, Proposition 36 was a "soft on crime" proposition.¹⁴³ Nationally, after two legislative cycles with major crime bills, this cycle lacked a similar crime agenda.

Politically, when California elected Lieutenant Governor Gray Davis as the Governor of California, the Democrats controlled all three branches of California government for the first time since 1982¹⁴⁴ and won five of the seven constitutional offices,¹⁴⁵ while maintaining their seat numbers in the Assembly (forty-three out of eighty) and Senate (twenty-three out of forty).¹⁴⁶

National elections were also reversing course from the prior legislative cycle. The House of Representatives was preoccupied with impeaching President Bill Clinton for lying about his relationship with Monica Lewinsky. The Republican-led House, not too far removed from the 1994 Republican Revolution, began impeachment hearings before the 1998 election to potentially capitalize on the downfall of Democratic President Clinton (the Senate waited until after the election to consider impeachment). Although the party holding the White House typically loses Congressional seats in the sixth year of a presidential term,¹⁴⁷ the Democrats actually gained five seats in the 1998 election despite the impeachment proceedings and Republican Speaker of the House Newt Gingrich's prediction that his party would again add thirty to forty seats (control of the Senate remained un-

142. *Id.*

143. *See supra* Part III.C.3.d.

144. Todd S. Purdum, *The 1998 Elections: The Nation - California; Slowly but Steadily, Democrat Overcomes Rivals for Governor*, N.Y. TIMES, Nov. 4, 1998, <http://www.nytimes.com/1998/11/04/us/1998-elections-nation-california-slowly-but-steadily-democrat-overcomes-rivals.html?scp=267&sq=jane+harman&st=nyt>.

145. Democrats won the Governor, Lieutenant Governor, Controller (incumbent), Treasurer, and Attorney General elections but lost the Secretary of State and Insurance Commissioner (incumbent) elections.

146. *California State Elections, 1998*, WIKIPEDIA.ORG, http://en.wikipedia.org/wiki/California_state_elections_1998 (last modified Sept. 23, 2011).

147. Edward R. Tufte, *Determinants of the Outcomes of Midterm Congressional Elections*, 69 AM. POL. SCI. REV. 812, 812 (1975) ("In every off-year congressional election but one since the Civil War, the political party of the incumbent President has lost seats in the House of Representatives.").

changed).¹⁴⁸ Like the crime mood, voters were moving more towards the center.

4. 2000 Legislative Cycle in Review

In six years, the mood on crime in California (and nationally) went from arguably one of the toughest crime propositions in history with Proposition 184, Three Strikes, to a softer and more progressive perspective that promoted treating the causes of crime instead of simply locking-up offenders as demonstrated by the passage of Proposition 36. Further, support for Proposition 36 received approximately \$7.47 for every dollar received to oppose Proposition 36. This was a significant shift from Propositions 184 and 213, where the majority of the financial support came from Republicans to pass “tough on crime” propositions (or oppose “soft on crime” propositions).¹⁴⁹

While Proposition 36 alone may not be sufficient to categorize the mood in California as a full shift from “tough on crime” to “soft on crime,” it is certainly evidence of softening. Especially when viewed in conjunction with the number of crime bills and corresponding votes considered by the California legislature in the 1999-2000 legislative session (based on the criteria used to determine the crime score), the evidence shows significantly fewer crime bills overall and a higher percentage of bills that would be considered “soft on crime” than any other session analyzed (Table 3).

TABLE 3. BILL VOTES AND CLASSIFICATIONS

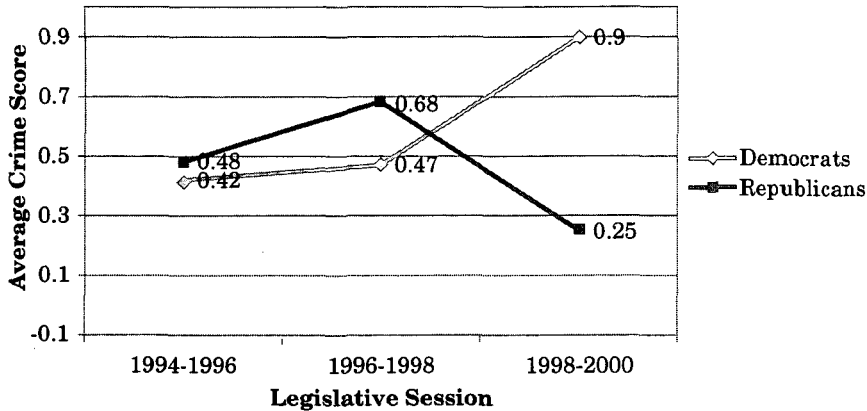
| <i>Year</i> | <i>Number of Bills</i> | <i>Soft</i> | <i>Tough</i> |
|-------------|------------------------|-------------|--------------|
| 1994 | 56 | 23 | 33 |
| 1996 | 74 | 49 | 25 |
| 1998 | 48 | 38 | 10 |
| 2000 | 12 | 12 | 0 |

Finally, this softening on crime can be seen in the change in the cumulative crime score of Democrats and Republicans from 1994 to 2000. During the six-year period, average crime scores for both parties increased—though at different rates (Figure 1). Thus, this cumulative data demonstrates that legislators from both parties became softer on crime over this period.

148. JOHN F. HARRIS, *THE SURVIVOR: BILL CLINTON IN THE WHITE HOUSE* 353 (2005).

149. See *supra* Parts III.C.3.a, III.C.3.c.

FIGURE 1. CUMULATIVE CHANGE IN CRIME SCORE BY LEGISLATIVE SESSION



While crime issues were softening and moving towards the political center, national politics were again preoccupied with the upcoming presidential election and did not feature a major crime initiative on the same scale as in 1992 to 1996. During this legislative cycle, Vice President Al Gore and Governor George W. Bush were fiercely battling in the presidential election. While Vice President Gore won the national popular vote by 543,895 votes, he lost the popular vote in Florida by 537 votes and Florida's twenty-five electoral votes, which effectively made Governor Bush the winner.¹⁵⁰ It was the closest election since 1876, so crime took a backseat.¹⁵¹

E. METHODOLOGY SUMMARIZED

The regression analysis presented below estimates the relationship between a legislator's ability to get reelected by comparing a legislator's vote share from two consecutive elections and a legislator's

150. *Controversial Elections*, FAIRVOTE, http://archive.fairvote.org/e_college/controversial.htm#2000 (last updated Dec. 11, 2009). It was so heavily contested that the U.S. Supreme Court ultimately decided the election by determining whether to allow a recount in Florida. *Bush v. Gore*, 531 U.S. 98 (2000) (per curiam). Gore exercised his right to hand-recounts as permitted under Florida law, and the Florida Supreme Court ordered that over 9,000 ballots previously rejected by machine counters be counted. *Bush*, 531 U.S. at 100. The Supreme Court reversed this decision, holding that a state-wide recount was unconstitutional because the recounts could not be completed by a safe-harbor deadline and requiring the recount cease and the prior total be certified. *Id.* at 110.

151. Republican nominee Rutherford Hayes defeated Democratic nominee Samuel Tilden by one electoral vote (185 to 184) even though Tilden won the popular vote 4,284,020 to 4,036,572. *Jim Crow Stories*, PBS, http://www.pbs.org/wnet/jimcrow/stories_events_election.html (last visited Oct. 11, 2011).

criminal justice score or constituent support for a criminal justice ballot initiative by legislative district.¹⁵² The data was analyzed from 1992 to 2000 because crime was an important issue in California and nationally, so if a correlation between election results and crime score existed, it would be expected to appear during this time period. Analyzed through the lens of California and national trends in crime and politics during this same period, the actions of California legislators and the voting public can be evaluated.

IV. ANALYSIS OF RESULTS

A. OVERVIEW

The regression analysis was used to estimate the change in a legislator's vote share (or electability) based on the impact of legislators' criminal justice scores and constituent support for a criminal justice ballot initiative by legislative district. Neither variable was a significant predictor for a legislator's electability. Thus, the belief that legislators who are "soft on crime" (or support criminal justice bills) are more susceptible to defeat on election night is unfounded. When controlling for party affiliation,¹⁵³ there is simply no correlation between a legislator's criminal justice score or constituent support for a criminal justice ballot initiative and vote share (or electability) in the 1994, 1996, 1998, or 2000 California state elections based on data from 1992 to 2000.¹⁵⁴

Similarly, there was no correlation between election results or support for ballot initiatives and criminal justice score in the 1994, 1996, 1998, or 2000 elections. In other words, a legislator's votes on criminal justice issues and the legislator's ability to get reelected were not correlated with future criminal justice scores and future vote share (or electability). One might expect that a legislator whose criminal justice score steadily increased over several legislative cycles would receive a significantly different share of the vote (either more or less), but this expectation was unproven.¹⁵⁵

152. See James M. Snyder, Jr., *Constituency Preferences: California Ballot Propositions, 1974-90*, 21 LEGIS. STUD. Q. 463, 466 (1996) (finding a relationship between California state legislators' roll-call votes and the view of their constituents gleaned from California ballot initiatives votes from 1974-1990 based on a three-dimension special model that includes public goods and regulation, income redistribution, and regional conflicts).

153. Even without controlling for party affiliation, there was no correlation between a legislator's criminal justice score or constituent support for a criminal justice ballot initiative except in the 1994 election (an increased criminal justice score negatively impacted a legislator's ability to get reelected).

154. See *infra* Part IV.B.

155. See *infra* Part IV.C.

The only variable tested that correlated to change in vote share was party affiliation.¹⁵⁶ Although a legislator who was "soft on crime" during a "tough on crime" legislative cycle may have expected worse election results, the only factor correlated to election results during the period analyzed is party affiliation. The subsequent analysis will state and discuss the results from each test to explain the conclusion that legislators need not be concerned with appearing "soft on crime."¹⁵⁷

B. REGRESSION ANALYSIS 1: DIRECT EFFECT FROM VOTER REACTION

The first regression model tested whether a legislator's crime score or constituent support for a criminal justice ballot initiative by legislative district is correlated with the change in vote share from the prior election, controlling for the legislator's party affiliation. In other words, was a legislator's election results impacted by his crime score or constituent support for a crime-related ballot initiative?

For the 1994 election, the results found that the crime score and the district level support for Propositions 184 and 189 were not significant predictors of the change in vote share (Table 4, Column (1)). Only the legislator's party affiliation was significant.¹⁵⁸ For the 1996 election, the results again found that the crime score and support for Proposition 213 by legislative district were not significant predictors of the change in vote share (Table 4, Column (2)). Only the legislator's party affiliation was significant.

For the 1998 election, the legislator's party affiliation was a significant predictor of the change in vote share. Additionally, in 1998, the crime score was also statistically significant; however, it was not a useful predictor of the change in vote share because the impact of

156. See *infra* Part IV.D. The importance of party affiliation is consistent with Seth Masket's conclusion that "[b]y the mid-1980s, party actually became a better predictor of legislative behavior than district" as legislators "are now sticking with their parties, even at the risk of offending the median voter in their districts . . . [m]embers are actually putting their careers at risk to please their parties." MASKET, *supra* note 129, at 106.

157. With any regression analysis, individual actions are used to determine cumulative effect. Thus, an isolated legislator who completely reversed positions on crime overnight could be harmed in subsequent elections and not necessarily impact the correlation results through the regression analysis. However, if this type of reversal occurred with any significance within the test population, it would influence the results and perhaps demonstrate a modest correlation, but the results demonstrated no correlation. Additionally, in an isolated district, an alternate explanation could justify the lack of correlation. Since the results found no correlations, however, an alternate explanation to justify the non-correlations must be present in all jurisdictions. Based on the sample size of the analysis, this seems highly unlikely and these concerns appear unwarranted.

158. Generally accepted statistical practice indicates that p-values less than or equal to 0.05 demonstrate a significant correlation to the tested variable.

party affiliation was so great (Table 4, Column (3)). In 1998, the median democratic crime score was 0.47, which correlates to a 6.8% increase in votes. The median republican crime score was 0.19, which correlates to a 1.2% increase in votes. However, party affiliation, which accounted for 11.74% of the vote, overtakes the impact of crime scores for the average legislators. Only legislators with a change in crime score of 0.54 or greater, a very substantial change, would be able to overcome the impact of party affiliation. (The 1998 election did not contain a ballot initiative related to crime.)

For the 2000 election, the results again found that the crime score and the district level support for Proposition 36 were not significant predictors of the change in vote share (Table 4, Column (4)). However, unlike prior years, a legislator's party affiliation was also not a significant predictor.

TABLE 4. DIRECT IMPACT FROM VOTER REACTION

| VARIABLES | (1) Vote Share Difference 1992-94 | (2) Vote Share Difference 1994-96 | (3) Vote Share Difference 1996-98 | (4) Vote Share Difference 1998-2000 |
|------------------------|--|--|--|--|
| Party Affiliation | -12.34*** (4.16) | 7.17** (3.37) | 11.74*** (3.99) | 2.33 (6.12) |
| Crime Score 1993-1994 | 1.39 (6.94) | | | |
| Propositions 184 & 189 | -0.23 (0.15) | | | |
| Crime Score 1995-1996 | | 1.01 (8.39) | | |
| Proposition 213 | | -0.13 (0.22) | | |
| Crime Score 1997-1998 | | | -21.90** (9.99) | |
| Crime Score 1999-2000 | | | | 1.44 (5.51) |
| Proposition 36 | | | | -16.75 (22.23) |
| Constant | 28.55** (10.64) | 8.44 (17.95) | 5.38** (2.63) | 9.13 (13.30) |
| Observations | 50 | 43 | 53 | 48 |
| R-squared | 0.46 | 0.35 | 0.15 | 0.02 |

Standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

C. REGRESSION ANALYSIS 2: FEEDBACK LOOP OF LEGISLATOR REACTION

The second regression model tested whether a change in a legislator's vote share between two elections or constituent support for a crime-related ballot initiative correlated with a change in the legislator's subsequent crime score, controlling for the legislator's party affiliation. In other words, did a legislator adjust his voting pattern (and corresponding crime score) based on past election results or prior constituent support for crime-related propositions with the hope of getting different election results?

In 1994, the results found that the change in vote share, the propositions, and party affiliation were not significant predictors of the change in crime score (Table 5, Column (1)). In 1996, the results found that the change in vote share was not a significant predictor of the change in crime score, but Proposition 213 and party affiliation were significant predictors of the change in crime score (Table 5, Column (2)). In 1998, the results found that the change in vote share was not a significant predictor of the change in crime score, but party affiliation was a significant predictor of the change in crime score (Table 5, Column (3)).

TABLE 5. FEEDBACK LOOP OF LEGISLATOR REACTION

| VARIABLES | (1) Crime Score Change 1994-1996 | (2) Crime Score Change 1996-1998 | (3) Crime Score Change 1998-2000 |
|---------------------------------|---|---|---|
| Party Affiliation | -0.06 (0.11) | -0.15** (0.07) | 0.86*** (0.08) |
| Vote Share Difference 1992-1994 | 0.01 (0.01) | | |
| Propositions 184 and 189 | 0.01 (0.01) | | |
| Vote Share Difference 1994-1996 | | 0.00 (0.00) | |
| Proposition 213 | | -0.01** (0.01) | |
| Vote Share Difference 1996-1998 | | | -0.00 (0.01) |
| Constant | 0.02 (0.50) | 1.24** (0.47) | -0.42*** (0.06) |
| Observations | 35 | 36 | 40 |
| R-squared | 0.25 | 0.17 | 0.78 |

Standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

D. THE IMPORTANCE OF PARTY AFFILIATION FROM 1994 TO 2000

In the 1994 environment, California legislators with soft (higher) crime scores may have expected to fare worse than legislators with tough (low) crime scores due to the overall “tough on crime” mentality and the Republican Revolution, but the data does not support this belief. Based on the data analyzed, there is no marginal benefit to being tough on crime. Similarly, districts where voters strongly supported “tough on crime” Propositions 184 and 189 may have also supported legislators who were tough on crime, but the data does not support this contention either. Overall, the only tested variable that impacted electability was party affiliation, which is consistent with the national Republican Revolution.

In the 1996 environment, legislators with soft (higher) crime scores may have expected to fare worse than legislators with tough (low) crime scores because the “tough on crime” mentality was still prevalent, but the data does not support this belief. Similarly, districts where voters strongly supported “tough on crime” Proposition 213 may have also supported legislators who were tough on crime, but the data does not support this contention either. Overall, the only tested variable that impacted electability was party affiliation, which is consistent with the support for President Bill Clinton and a re-balancing of Congress after the 1994 Republican Revolution as California Democrats picked up two seats in the Assembly and Senate.

In the 1998 environment, where the mentality on crime was starting to soften and politics were becoming increasingly partisan due to the impeachment proceedings, the crime score was statistically significant; however, it was not a useful predictor of electability when compared to party affiliation. The importance of party affiliation over crime score is consistent with the 1994 and 1996 elections—even though the Republicans fared less well than the minority party in similar elections (sixth year of a two-term presidency) from a comparative historical perspective.

In the 2000 environment, where California was trending soft on crime, legislators with soft (higher) crime scores may have expected to fare better than legislators with tough (low) crime scores, but the data does not support this belief even though Democrats gained three seats in the Assembly and seven seats in the Senate. This could be the by-product of more “open” seats resulting from term limits. Similarly, legislators in districts where voters strongly supported Proposition 36 may have also supported legislators who were soft on crime, but the data does not support this contention either. Finally, although party affiliation was previously a useful predictor of electability, the competitiveness of the 2000 election (even though the vast majority of voters

surely did not recognize how close the election would be when they cast their votes) may justify the lack of significance that party affiliation had on electability in 2000.

V. CONCLUSION

Winning an election for a legislative office is extremely challenging. Political consultants advise their clients not to make the election more difficult than necessary by avoiding positions seen as weak or controversial. Arguably, the most famous example of making an election more difficult than necessary was Democratic nominee George McGovern who ran on a platform that included contentious issues like cutting defense spending by 37% over three years¹⁵⁹ and giving amnesty to those who left the United States to avoid the Vietnam draft.¹⁶⁰ McGovern only received 37% of the vote and lost the election, which remains the third largest popular vote discrepancy (by percentage) today, to President Richard Nixon.¹⁶¹

Historically, legislators avoided appearing soft on crime at all costs.¹⁶² While there are isolated examples of legislators who were defeated or elected because they were "soft on crime,"¹⁶³ the empirical evidence based on California state legislators from 1992 to 2000 suggests that neither a legislator's crime score nor constituent support for a crime-related ballot initiative by legislative district is a significant predictor of a legislator's vote share in the next general election (which correlates to a legislator's ability to get reelected) when controlled for party affiliation.

While crime scores were not a significant predictor of electability, it would naturally be unwise for legislators to completely disregard a change in constituent views on criminal justice or a major external event related to crime that impacts their community (e.g., the 9/11 attacks and federal legislators votes to combat terrorism) because the nature of regression analysis is retrospective. Thus, a parallel dis-

159. THEODORE H. WHITE, *THE MAKING OF THE PRESIDENT* 123 (1973).

160. *Id.* at 337.

161. *List of Landslide Victories*, WIKIPEDIA.ORG, http://en.wikipedia.org/wiki/List_of_landslide_victories#Presidential (last modified Oct. 1, 2011).

162. See *supra* notes 27-29 and accompanying text.

163. John Berthelsen, *Room at the Inn: Prison Population Growth Slows*, CAL. J., June 1992, at 292. John Doolittle, a 29-year-old unknown Republican challenger, defeated 22-year veteran Senator Albert Rodda on a campaign featuring a \$90,000 radio-television advertisement accusing Rodda of being soft on crime for refusing "to vote on legislation to increase penalties for repeat sex offenders like the East Area Rapist." *Id.*; see also Michael Markarian, *Soft on Crime, Soft on Cruelty*, HUFFINGTON POST, Oct. 3, 2009, http://www.huffingtonpost.com/michael-markarian/soft-on-crime-soft-on-cru_b_302186.html (suggesting that Virginia state Senator Ken Cuccinelli may be the only elected official running for reelection with a "soft on crime" record because of his support for "staged animal fighting").

claimer to the investment disclaimer that “past performance does not guarantee future results” is appropriate. Just because there were no correlations from 1992 to 2000 does not guarantee that the lack of correlation will continue (especially if the variables change significantly).

That said, the 1992-2000 sample size was significant and crime was a very salient issue during these years, so legislators should feel comfortable modestly increasing their support for criminal justice bills relative to their current level of support or opposition. A nervous legislator may say, “Yeah, but even a slight crime score increase could result in dramatic change at the polls.” True, but that is highly unlikely based on prior voting records and election results unless the variables (constituents or external events) differ significantly. Plus, this assumes someone starts tracking the legislator’s crime score to notify the legislator’s constituents, which is not currently being done.

The findings related to legislators’ crime scores depend on the bills and corresponding votes that were selected. While this Article only considers the most relevant bills and the corresponding votes,¹⁶⁴ perhaps the findings would be different if all crime-related bills and corresponding votes were considered. While additional votes could be included in future research, it would not be possible to include all crime-related bills because some bills simply do not receive a vote in committee (or on the floor). A committee chair may decide to “kill” a bill by refusing to schedule the bill for a hearing or a vote. This might be done if the chair feels moving the bill forward will be detrimental to himself or his party.¹⁶⁵ Additionally, all bills and votes (committee and floor) were weighed equally although voters likely view some bills as more important than others. Finally, the findings related to vote share could be influenced by the strength of the opposing candidate.¹⁶⁶ Thus, future research could expand on this data by (1) expanding the data to include the crime bills and corresponding votes from the 2001-2002 legislative session through the most recent legislative session; (2) specifically controlling for the quality of the opposing candidate, unless the legislature has term limits; and (3) including all crime bills and corresponding votes for the tested period (1992-2000) if it is determined that these votes are relevant.

Conventional wisdom suggests that “tough on crime” politicians win more elections, but I found no evidence to support this assumption in four California state elections from 1992 to 2000. In addition, I found no evidence that election results influence legislators’ future po-

164. See *supra* Part III.C.1.

165. JACOBSON, *supra* note 2, at 219 (“Republicans advanced their agenda far more effectively controlling Congress but not the White House than they ever did by controlling the White House but not Congress.”).

166. See Chubb, *supra* note 40.

sitions on criminal justice issues. Therefore, legislators (especially in California) who currently support criminal justice bills should feel comfortable continuing to do so as it did not hamper legislators in California from 1992 to 2000. Additionally, legislators (especially in California) who would like to support more criminal justice bills but fear negative consequences on election night should feel comfortable in making modest increases to their crime score. A modest change will allow a legislator to conduct a low-risk test to ensure that his district is not overly sensitive, which could result in a correlation between crime score and election results even though no correlation was found in California legislators from 1992 to 2000 before making more significant changes.

Despite the common political belief that being "soft on crime" made reelection efforts more difficult, this correlation did not exist for California legislators between 1992 and 2000. Legislators across the country, but especially in California, should strongly consider supporting criminal justice bills to improve prisoners' rights and prison conditions, abolish the death penalty, grant progressive sentences and probation conditions, and represent defendants' rights (e.g., three strikes, sexual predator registry, changes to criminal procedure) as the negative consequences for supporting these measures seem to have been greatly exaggerated.

APPENDIX 1. BILL DESCRIPTIONS AND CLASSIFICATIONS

| <i>Session</i> | <i>Bill</i> | <i>Author</i> | <i>Category</i> | <i>Summary</i> ¹⁶⁷ |
|----------------|-------------|---------------|-----------------|--|
| 1993-94 | AB113 | Katz | Tough | Originally, limited work-credits for persons sentenced to state prison who have previously served a prison term for specified violent felonies |
| 1993-94 | AB1211 | Rainey | Tough | Makes it a felony for certain sex offenders to fail to register, mandates incarceration of repeat violators, and expands sex offender registration reporting requirements |
| 1993-94 | AB20X | Andal | Tough | Modifies the Inmate Bill of Rights—right to initiate civil actions now cost three dollars and only have access publications distributed by USPS and no obscene publications |
| 1993-94 | AB2716 | Katz | Tough | Limits work-time credits for repeat violent offenders |
| 1993-94 | AB2745 | Lee | Soft | Originally, re-established rehabilitation as a purpose of imprisonment (amendment removed rehabilitation concept) |
| 1993-94 | AB2944 | Vasconcellos | Soft | Creates Sentencing Commission—(1) deletes existing law stating that disparity and uniformity in sentencing is best achieved through determinate sentences in favor of an integrated system and (2) establishes a judicial advisory committee |
| 1993-94 | AB2945b | Vasconcellos | Tough | Originally, limited work-credits for violent offenders (amendment removed Commission's work-credit recommendation) |

167. As summarized by the Little Hoover Commission, available at <http://www.lhc.ca.gov/legislation/legis.html>, or the individual bill in the "digest" section of the California Legislative Information website, available at <http://www.leginfo.ca.gov/bilinfo.html>.

| | | | | |
|---------|--------|---------|-------|--|
| 1993-94 | AB3005 | Umberg | Tough | Suspends work-time credits and re-imposes if parole is violated |
| 1993-94 | AB39X | Polanco | Soft | Establishes an Inspector General Office outside of the Department of Corrections to conduct investigations |
| 1993-94 | AB41X | Polanco | Soft | Expands Boot Camp (alternative sentencing) |
| 1993-94 | AB42X | Polanco | Tough | Eliminates work-credits for violent offenders |
| 1993-94 | AB43X | Polanco | Soft | Creates Sentencing Commission—creates guidelines and reports on sentencing system every two years to Legislature with recommendations |
| 1993-94 | AB44X | Polanco | Tough | Suspends work-time credits and re-imposes if parole is violated |
| 1993-94 | AB65X | Polanco | Soft | Creates a deputy director of education in the Department of Corrections |
| 1993-94 | AB69X | Rainey | Tough | Originally, lengthened the maximum parole violation sentence (amendment removed Commission's parole violation recommendation) |
| 1993-94 | AB87 | Conroy | Tough | Conducts a study to find ways to reduce costs associated with incarcerating illegal aliens convicted of a felony including building prisons in other countries |
| 1993-94 | AB99X | Rainey | Soft | Allows alternative sentencing for non-violent offenders |
| 1993-94 | SB1258 | Torres | Tough | Conducts a study to find ways to reduce costs associated with incarcerating illegal aliens convicted of a felony including building prisons in other countries |

| | | | | |
|---------|--------|-----------|-------|---|
| 1993-94 | SB1260 | Presley | Tough | Modifies the Inmate Bill of Rights—restricts rights to minimums |
| 1993-94 | SB1462 | Maddy | Soft | Establishes an Inspector General Office outside the Department of Corrections to conduct investigations |
| 1993-94 | SB20X | Leonard | Tough | Reduces work-credit for violent offenders |
| 1993-94 | SB26X | Bergeson | Tough | “One-Strike” law, which requires sentences of at least twenty-five years to life for specified felony sex offenders with a prior sex offense |
| 1993-94 | SB33X | Kopp | Tough | Suspends work-time credit and re-imposes if parole violated (amendments removed work credit recommendation and parole authority) |
| 1993-94 | SB3X | Lockyer | Soft | Comprehensive Criminal Justice Act of 1994: Restructures sentencing system—changes felonies from determinative sentences to a schedule and gives judges the ability to apply or ignore enhancements |
| 1993-94 | SB4X | Kopp | Soft | Moves all violent criminals into indeterminate sentencing system |
| 1993-94 | SB530 | Presley | Tough | Limits work-time credits |
| 1993-94 | SB58 | Lockyer | Soft | Restructures sentencing system—repeals determinate sentencing for felonies to a schedule of sentencing |
| 1995-96 | AB1185 | Morrissey | Soft | Decreases barriers to interagency sharing of information regarding at-risk juveniles |
| 1995-96 | AB12 | Katz | Tough | Reduces work-time credit for serious offenders |

| | | | | |
|---------|--------|--------------|-------|---|
| 1995-96 | AB1211 | Kuehl | Soft | Allows writ of habeas corpus for battered woman syndrome if not introduced at trial |
| 1995-96 | AB1300 | K. Murray | Soft | Creates pilot project for treatment of at-risk juvenile offenders |
| 1995-96 | AB1408 | Villaraigosa | Soft | Originally set up a parole system for inmates who are medically incapacitated |
| 1995-96 | AB1592 | Boland | Tough | Prohibits the sealing and destruction of juvenile records in specific circumstances |
| 1995-96 | AB1678 | Granlund | Tough | Reforms sealed records laws—instead of destroying, bill would make juvenile records available to criminal court for sentencing purposes |
| 1995-96 | AB1804 | Goldsmith | Tough | The Board of Prison Terms and the California Department of Corrections are subjecting some parolees and released individuals to electronic monitoring in a pilot project that requires a report to the Legislature by January |
| 1995-96 | AB1809 | Knox | Tough | Lengthens the maximum parole violation sentence |
| 1995-96 | AB2008 | K. Murray | Soft | Provides that the primary responsibilities for the State Public Defender ("SPD") would be for automatic appeals of death penalty cases (the intent of this legislation was to expand the SPD's responsibilities to eventually handle all direct capital appeals so that hiring of private counsel would no longer be necessary) |

| | | | | |
|---------|--------|------------|-------|--|
| 1995-96 | AB2128 | W. Murray | Soft | Requires the Department of Corrections and the Department of Youth Authority to complete a study on the effectiveness of education programs offered in correctional facilities |
| 1995-96 | AB2139 | Cortese | Soft | Creates a task force on the role of parks and recreation programs in providing at-risk youth recreational programs |
| 1995-96 | AB2447 | K. Murray | Soft | Expands the Repeat Offender Prevention Project to more counties |
| 1995-96 | AB300 | Rainy | Tough | Eliminates work-time credit for violent offenders |
| 1995-96 | AB3112 | Goldsmith | Soft | Originally, established a licensing and inspection system for private-sector structured programs for juveniles—children ages fourteen to seventeen who failed at home or could not be kept at home would go to this facility with a highly structured environment to prepare them to reenter society instead of going to juvenile jail |
| 1995-96 | AB3224 | Poochigian | Tough | Originally, revised the confidentiality and sealed record laws regarding juvenile offenders—the law requires notification of the child's school, but this bill would require notification of the county sheriff as well (who must keep information confidential) |
| 1995-96 | AB3288 | Miller | Soft | Requires mandatory HIV, Hepatitis B and C, and Tuberculosis testing and Hepatitis B vaccination of all inmates in state correctional institutions |

| | | | | |
|---------|--------|-----------|-------|--|
| 1995-96 | AB3339 | Hoge | Tough | Orders sex offenders who have assaulted children to undergo medication treatments (so-called "chemical castration") intended to curb their sexual impulses after a second conviction (as of November 1998, only one sex offender had been ordered to submit to this procedure) |
| 1995-96 | AB3349 | Knox | Soft | Moves some violent criminals into indeterminate sentencing system |
| 1995-96 | AB344 | Ducheny | Soft | Requires work programs be established and administered by Department of Corrections |
| 1995-96 | AB488 | Baca | Soft | Requires collection of data pertaining to the juvenile justice system, not just the overall population |
| 1995-96 | AB589 | Rainey | Tough | Lengthens maximum parole violation sentence |
| 1995-96 | AB69 | W. Murray | Soft | Prison Education: Creates Superintendent of Correctional Education and bars prisoners from working until they are literate |
| 1995-96 | AB716 | Lee | Soft | Places priority on the rehabilitation of nonviolent, first-time offenders, even though law says the purpose of imprisonment is punishment and wants uniform sentencing |
| 1995-96 | AB889 | Rogan | Soft | Allows victim testimony in the juvenile court process |
| 1995-96 | SB1231 | Lewis | Tough | Makes prisoners convicted of a murder ineligible to earn work-time credits |
| 1995-96 | SB138 | Polanco | Soft | Establishes minimum standards for the development of boot camp/ work-intensive programs |

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| 1995-96 | SB1533 | Calderon | Soft | Creates a new state agency, the Office of Post Conviction Counsel for death penalty appeals with the primary responsibility of handling both state and federal habeas petitions, as is done by the Capital Collateral Representative's Office in Florida |
| 1995-96 | SB165 | Polanco | Soft | Establishes various pilot projects to test boot camps as an alternative sentencing option |
| 1995-96 | SB166 | Polanco | Soft | Creates the California Sentencing Commission, which creates guidelines and reports on sentencing system every two years to the Legislature with recommendations |
| 1995-96 | SB1760 | Lockyer | Soft | Juvenile Crime Enforcement and Accountability Challenge Grant Program that would give two million dollars for three-year grants |
| 1995-96 | SB2126 | Marks | Soft | Revises the goals of juvenile justice law and increases options available to juvenile courts for sentencing |
| 1995-96 | SB239 | Hurt | Tough | Removes limitations on consecutive sentences |
| 1995-96 | SB254 | Polanco | Tough | Lengthens the maximum parole violation sentence |
| 1995-96 | SB346 | Campbell | Soft | Allows electronic monitoring as an alternative sentencing option for specified non-violent offenders |
| 1995-96 | SB575 | Polanco | Soft | Creates boot camp private-sector regulations for status offenders (curfew, truancy, not obeying parents), but it is not clear that these children would be put in jail for these status offenses |

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| 1995-96 | SB604 | Rosenthal | Soft | Allows additional alternatives for treatment of non-violent, first-time juvenile offenders |
| 1995-96 | SB760 | Lockyer | Soft | Places lower level offenders at less secure facility, which would be cheaper and more efficient |
| 1995-96 | SB775 | Costa | Soft | Computer-assisted inmate literacy project to improve literacy |
| 1995-96 | SB90 | Haynes | Tough | Removes limitations on consecutive sentences |
| 1997-98 | AB1646 | Battin | Tough | Prohibits authorities from placing a child molester who is released on parole within one-quarter mile of an elementary school |
| 1997-98 | AB1913 | Ashburn | Soft | Declares a legislative intent to require the Department of Corrections to provide inmates with assessments, treatment, aftercare, expanded drug treatment, and parolee assistance programs, to create reintegration centers, and to establish a zero-tolerance policy of drugs in prisons |
| 1997-98 | AB2321 | Knox | Soft | Requires the Department of Corrections to expand the Preventing Parole Failure Program and authorizes conditionally released or paroled prisoners to be placed in the program in lieu of the suspension or revocation of parole |
| 1997-98 | AB320 | Goldsmith | Soft | Establishes a pilot program for certain non-violent juvenile offenders to attend a victim-offender reconciliation program, perform community service, and pay victim restitution |

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| 1997-98 | AB486 | Margett | Soft | Establishes an education and transitional support program for graduates of juvenile boot camps |
| 1997-98 | AB640 | Aguiar | Soft | Authorizes a pilot program in San Bernardino County designed to demonstrate the effects of a collaborative and integrated approach to the apprehension, treatment, rehabilitation, education, and punishment of juvenile offenders in a community-based program |
| 1997-98 | AB70 | Woods | Soft | Prohibits a juvenile court from committing a person to the Youth Authority for the commission of specified criminal offenses in a county that has adopted a plan involving community-based punishment |
| 1997-98 | AB963 | Keeley | Soft | Establishes a crime prevention program in specified counties for the purposes of reducing gang and criminal activity and youth violence |
| 1997-98 | AB986 | Migden | Soft | Originally, would have revised the goals of the juvenile justice laws, allocating \$6.55 million to fund program for disabled inmates |
| 1997-98 | SB1089 | Lockyer | Soft | Originally, would have required the Department of Corrections to expand the number of beds in state institutions and community correctional facilities by 4,000 to provide intensive substance abuse treatment |

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| 1997-98 | SB1136 | Kopp | Soft | Originally, would have established a deferred entry of judgment procedure in juvenile court for a minor who has committed a felony offense if specified circumstances apply |
| 1997-98 | SB1195 | Schiff | Tough | Enhances the ability of victims or families of victims of juvenile offenders to participate in the justice process |
| 1997-98 | SB1259 | Vasconcellos | Soft | Establishes a crime prevention program in specified counties for the purposes of reducing gang, criminal activity, and youth violence |
| 1997-98 | SB1485 | Rosenthal | Soft | Requires the Department of Corrections to award mentally ill offender grants to provide a continuum of sanctions for mentally ill offenders |
| 1997-98 | SB1497 | Polanco | Soft | Requires the Department of Corrections to establish inmate reintegration centers that provide programs to prepare inmates for successful reintegration into society upon release |
| 1997-98 | SB2108 | Vasconcellos | Soft | Requires the Department of Corrections to evaluate potential parolees for amenability for treatment and to develop an individualized treatment plan for inmates |
| 1997-98 | SB2116 | Schiff | Tough | Requires sex offenders to also provide the name of his or her employer to the sex offender registry and authorizes a three-year pilot treatment program in one California county to implement a similar program for sex offenders released on state parole |

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| 1997-98 | SB295 | Rainey | Soft | Authorizes nonviolent felons to be placed in local correctional facilities for treatment, incarceration, and supervision under specified circumstances and authorizes the Department of Corrections to establish a Medical Detention Program for treatment of severely ill and disabled inmates |
| 1997-98 | SB483 | Schiff | Soft | Declares the intent of the Legislature to create a Department of Juvenile Justice in state government for the purpose of coordinating juvenile justice services |
| 1997-98 | SB513 | Lockyer | Tough | Changes the process for appointing counsel to death penalty appeals cases and provides for the creation of the California Habeas Resource Center but would limit death penalty investigation to \$25,000 unless a party could show cause |
| 1997-98 | SB668 | Vasconcellos | Tough | Revises the goals of the juvenile justice laws from care, treatment, and guidance to the public's right to having safe and secure communities |

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| 1997-98 | SB670 | Vasconcellos | Soft | Establishes the California Sentencing Commission, creates a Judicial Advisory Committee to assist the commission in developing sentencing guidelines, authorizes counties to create local sentencing commissions for the purpose of establishing sentencing guidelines for misdemeanors, and repeals a provision in the law that states uniformity and disparity in sentencing are best achieved through determinate sentences |
| 1997-98 | SB817 | Polanco | Soft | Creates regulations for private sector boot camps |
| 1997-98 | SB822 | Lockyer | Soft | Creates the California Youth Violence Prevention Authority |
| 1999-00 | AB1255 | Wright | Soft | Provides grants to encourage counties to establish intensive supervision programs for convicted domestic violence offenders as an alternative to imprisonment in state prison (amendments deleted this provision and instead make changes to the CalWORKS program) |
| 1999-00 | AB34 | Steinberg | Soft | Provides grants to encourage counties to expand services to the mentally ill, including those who would otherwise be placed in jail or prison |

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| 1999-00 | SB126 | Polanco | Soft | Adds additional language pertaining to vocational and drug treatment and reducing the rate of recidivism to the existing purpose of incarceration provisions of law and makes specified changes to the Prison Industry Authority guidelines relative to their annual budget (subsequent amendments changed the purpose of the bill) |
| 1999-00 | SB175 | Rainey | Soft | Makes changes to encourage the use of community-based punishments and declares the intent of the Legislature to appropriate money in the annual Budget Act for associated contract costs (subsequent amendments changed the purpose of the bill) |
| 1999-00 | SB1845 | Polanco | Soft | Establishes the Correctional Education Board within the California Department of Corrections ("CDC") and requires every inmate be provided educational benefits |