

LEGISLATIVE ANALYST'S OFFICE  
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## THE THREE STRIKES AND YOU'RE OUT LAW

*On March 7, 1994, Governor Wilson signed into law AB 971 (Ch 12/94, Jones) referred to as the Three Strikes and You're Out criminal sentencing measure. In November, the voters reaffirmed the measure by overwhelmingly approving Proposition 184, an initiative that is essentially identical to Chapter 12. The measure is the most significant change to the state criminal justice system in more than a generation.*

*In January, we published The Three Strikes and You're Out Law A Preliminary Assessment. This analysis summarizes the findings of that piece, provides more up-to-date data, and recommends that the state closely monitor the implementation and impact of the Three Strikes law.*

### California's Three Strikes Law

The Three Strikes law significantly increases the prison sentences of persons convicted of felonies who have been previously convicted of a violent or serious felony, and limits the ability of these offenders to receive a punishment other than a prison sentence. Violent and serious felonies are specifically listed in state law. Violent offenses include murder, robbery of a residence in which a deadly or dangerous weapon is used, rape and other sex offenses; serious offenses include the same offenses defined as violent offenses, but also include other crimes such as burglary of a residence and assault with intent to commit a robbery or rape.

Chapter 12 and Proposition 184 are virtually identical in their prison sentencing provisions and both measures can be amended by the Legislature with a two-thirds vote.

### What Are the Preliminary Impacts of Three Strikes?

*Although the measure has been in effect for less than one year, it is already having significant impacts on the local and state criminal justice systems.*

In assessing the effects of the measure, we reviewed a wide variety of information at the state and local level. We found that most of the data collected during the months since implementation of the law may be reflective of the difficulties of implementation rather than suggestive of the ongoing impact of the measure. The major initial impacts are as follows:

***Thousands of Cases Being Prosecuted.*** There are thousands of offenders being charged under the provisions of Three Strikes. As of the end of August 1994 (six months after enactment of the law), there were more than 7,400 second- and third-strike cases filed statewide. More recent data from Los Angeles County which generally accounts for up to half of the state's overall criminal justice workload indicates that, as of the end of November 1994, more than 5,000 second- and third-strike cases have been filed with the courts.

***Fewer Guilty Pleas by Defendants.*** Historically, more than 90 percent of all felony cases statewide are disposed of through plea bargaining. This seems to be changing as defendants are refusing to plea bargain and are taking their cases to jury trial, given the much longer prison sentences they face if convicted of a second- or third-strike offense. Available data indicate that only about 14 percent of all

second-strike cases and only about 6 percent of all third-strike cases have been disposed of through plea bargaining.

***Significant Increase in Jury Trials.*** As a result of the drop in plea bargaining in many jurisdictions, prosecutors and public defenders expect a significant increase in the number of jury trials.

***Increase in Persons Held in County Jail Awaiting Trial.*** The impacts discussed above are having spin-off effects on county jail systems. Because offenders charged under the Three Strikes law face significant prison sentences, most counties set bail for second-strike offenders at twice the usual bail amount and refuse bail for third-strike offenders. These bail changes, coupled with more offenders taking their cases to trial, result in more offenders being incarcerated in county jail.

In addition, because third-strike offenders face possible life in prison if convicted, they are considered high-security inmates requiring closer supervision and restricted housing arrangements at a greater cost than the general jail population.

***Less Immediate Impact on State Prison Population Than Expected.*** The California Department of Corrections (CDC) estimates that, at least in the short run, the number of inmates sent to prison under the Three Strikes law will be less than it originally projected, for three reasons. First, the large backlog of cases awaiting adjudication at the local level has resulted in a slower than anticipated increase in the prison caseload. Second, the department has lowered slightly its projection of felons that, because of Three Strikes, would be sent to state prison instead of being sentenced to probation or county jail. Third, the CDC is using more sophisticated techniques to estimate the impact of the Three Strikes law than when it assessed the impact of the proposed legislation.

#### WHAT HAS BEEN THE RESPONSE TO THE PRELIMINARY IMPACTS?

We identified the following responses to the impacts outlined above:

***Backlogs Push Less Serious Cases Out of Courts.*** Because more cases are going to trial, there have been increases in the backlog of cases in the courts. As a result, some district attorneys are prosecuting fewer misdemeanor cases.

A more significant impact of this backlog, however, may be on civil cases where more courts are diverting their resources from hearing civil cases to hearing criminal cases.

***Early Release of Sentenced Offenders From County Jails.*** Currently, the jail population in 28 counties, representing more than 70 percent of the state's total jail beds, are capped by court order. As a consequence of the large numbers of Three Strikes offenders awaiting trial, some counties have released more sentenced inmates in order to stay within their court-ordered population caps.

***Increase in Jail Security.*** Persons in county jail awaiting trial under the Three Strikes law are considered high security inmates requiring closer supervision and restricted housing arrangements. As a result, some counties have modified their inmate security systems to better handle and track second- and third- strike inmates.

***Augmentations to Budgets of Criminal Justice Agencies in Some Counties.*** Because of the increase in workload brought about by the Three Strikes law, some jurisdictions have augmented the budgets of their criminal justice agencies. For example, in October 1994, the Los Angeles County Board of Supervisors provided emergency budget augmentations of \$10.2 million to its agencies for prosecution,

public defense, and detention of persons charged under Three Strikes.

***Behavioral Responses From Some Judges, Juries, and Victims.*** Although not widespread, there is anecdotal evidence that some judges, juries, and victims are responding to the Three Strikes law in ways that reduce its effects. For example, there is evidence that some judges are reducing minor felony criminal charges to misdemeanors when a felony conviction under the Three Strikes law would require a lengthy prison sentence. In addition, some superior court judges have refused to consider the qualifying prior convictions when sentencing offenders for new offenses, which is inconsistent with the intent of the measure. On January 17, however, the Fourth District Court of Appeals in San Diego ruled that judges may not dismiss prior felony convictions.

Additionally, some juries have refused to convict persons for relatively minor felony offenses which would have resulted in longer prison sentences under the Three Strikes law, and some victims of crime have refused to cooperate and testify in such cases.

#### WHO ARE THE SECOND- AND THIRD-STRIKE OFFENDERS?

In reviewing the characteristics of offenders charged and convicted under Three Strikes thus far, we found the following:

***Most Offenders Charged With Nonviolent, Nonserious Offenses.*** Data we reviewed show that during the first eight months of implementation about 70 percent of all second- and third-strikes are for *nonviolent and nonserious offenses*. The types of offenses cover a very wide range. The largest single category of third-strike charges is burglary (defined as a serious offense), although it accounted for only 12 percent of the total.

***Most Convictions Were for Nonviolent, Nonserious Offenses.*** As of the end of January 1995, there were 4,161 persons in state prison for conviction of a second-strike, and 120 offenders convicted of a third-strike. (This small number of third-strike offenders is due to the large number of offenders going to trial and the backlog of cases.) Of the offenders convicted of a second-strike, about 775 or approximately 19 percent, were for a violent or serious offense. The remaining approximately 3,300 persons were convicted of a wide variety of lesser offenses, the largest being possession of controlled substances (815 inmates) and petty theft with a prior theft (557 inmates). Data in 106 cases was not available.

Of the third-strike offenders, about 50 of the 120 were convicted of a serious or violent offense. The largest category of offense with 17 cases was possession of controlled substances.

#### WHAT ABOUT THE IMPACT ON CRIME?

The Three Strikes measure could result in a reduction in crimes committed by repeat offenders incarcerated for longer periods under its provisions, thus resulting in savings to local and state governments. A RAND Corporation study estimated that the reduction in violent crime as a result of the measure would be substantial.

Although recent data indicate a reduction in the state's crime rate, the reduction probably should not be attributed to the Three Strikes legislation, because the state's crime rate had been falling *prior* to the enactment of the law. At this time, it is too early to assess the impact of the measure on overall crime in California.

### **What Are Some of the Implementation Issues?**

The early implementation of the Three Strikes legislation indicates that there are a number of issues that the Legislature, Governor, and local officials will need to address in the coming months and years.

***Legal and Technical Issues.*** There are a number of legal issues that will need to be resolved, either through legislation or court action. In general, most of these issues are relatively technical in nature. In some cases, resolution of the issue will not have a major impact on the implementation of the measure, while in other cases it will. Many of these issues involve specific cases that are already before the state's Court of Appeals.

Examples of specific issues include:

- The authority of a court to consider a *prior* conviction to be a misdemeanor, instead of a felony thus eliminating application of the Three Strikes law for a new offense. This would occur in the case of a wobbler offense a crime that can be considered either a felony or a misdemeanor.
- The authority of the judge to ignore a prior strike conviction without a specific request of the district attorney.
- Whether a crime committed by a minor can be considered a strike.

***Severe Backlog of Criminal Histories Could Hinder Implementation.*** The California Department of Justice (DOJ) Criminal History System (CHS), lists all offenses for which an individual has been convicted ( conviction file ). Currently, it takes more than one year from the date of conviction before the respective information is entered into the CHS. This backlog could detrimentally affect the implementation of the Three Strikes law, especially the ability of prosecutors to obtain accurate information on the background of an offender before charging the offender with a second- or third-strike. We discuss the backlog in our analysis of the DOJ later in this chapter.

## **Continued Monitoring and Planning Needed**

***Because of the magnitude of the changes enacted by Three Strikes and their potential fiscal and programmatic impacts, we recommend that the Legislature direct the Judicial Council, in cooperation with the state Board of Corrections, to monitor the implementation and impacts of the measure. We recommend that the Council and Board report to the Legislature during budget hearings on a plan for such a monitoring effort.***

As we indicated earlier, much of the information available on the effects of the Three Strikes law is preliminary and may reflect implementation difficulties. Several efforts to monitor the impact of the measure on the local level are ongoing. For example, Los Angeles County is developing a data base to compile more comprehensive data on the impact of the measure on that county's law enforcement system. Similarly, the Board of Corrections and the California State Sheriff's Association are conducting surveys of counties and plan to publish their analysis in March 1995.

At this time, however, there is no comprehensive statewide effort to monitor the implementation of Three Strikes and its impact on both the state and local criminal justice systems. Because the Three Strikes law is so significant, we believe that a systematic, statewide monitoring effort is essential to ensure that the measure is implemented consistent with the intent of the Legislature and the voters. Monitoring efforts should include collection of data on processing of Three Strikes cases by local and state governments, effects on local and state criminal justice systems, responses and strategies employed by local governments to process the Three Strikes caseload increases, characteristics of offenders. In addition, the monitoring efforts should seek to assess the impact of the measure on the state's crime rate.

We believe that such an effort should be accomplished by the state departments that work closely with local criminal justice agencies and officials as well as departments that are directly affected by Three Strikes. In our view, the Judicial Council, which works closely with the trial courts, and the state Board of Corrections, which works closely with sheriffs and probation departments, are the best candidates to coordinate such a monitoring effort. In fact, the Judicial Council advises that it has recently applied for a grant from the State Justice Institute to study the impacts on the courts. Thus, we recommend that the Judicial Council and the Board of Corrections present a joint plan during budget hearings to establish a monitoring mechanism. The plan should detail how the agencies will accomplish the monitoring efforts listed above, how much such an effort will cost and be financed, and how they will ensure that data and input are provided by the CDC, Office of Criminal Justice Planning, DOJ, trial courts, and local criminal justice officials.

In addition, much planning particularly on the part of the CDC is still required. This includes, among other things, developing plans to accommodate the increasing numbers of offenders sentenced to a prison system that is already severely overcrowded and reviewing changes to the security classification and inmate management systems to handle an inmate population with much longer time to serve. We discuss the CDC's planning efforts in our CDC analysis.

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