

## WHAT WOULD PROPOSITION 36 MEAN FOR CALIFORNIA?

**P**roposition 36 would amend the state's "Three Strikes" law to shorten prison sentences for many offenders who receive a third strike for a nonviolent, nonserious felony. The measure also would allow some current third strikers to petition the courts to reduce their sentences. This *Budget Brief* provides an overview of the measure and discusses what it would mean for the state budget and local budgets. The California Budget Project neither supports nor opposes Proposition 36.

### Three Strikes: An Overview

In 1994, California voters passed Proposition 184 – the "Three Strikes and You're Out" law – which increased prison terms for certain felony offenders.<sup>1</sup> The Three Strikes law created two new categories of offenders:

- **Second strikers.** Offenders with one prior conviction for a violent or serious felony who are convicted of *any* new felony – a "second-strike" offense – receive a prison term that is twice what it would otherwise be under state law.<sup>2</sup> Most second strikers "are automatically released from prison after completing their sentences" and are supervised either by state parole agents or county probation officers, depending on whether or not the most recent conviction was for a violent or serious crime.<sup>3</sup>
- **Third strikers.** Offenders with at least two prior violent or serious felony convictions who are convicted of *any* new felony – a "third-strike" offense – receive a life sentence with a minimum term of 25 years.<sup>4</sup> Under current law, the first group of third strikers will be eligible for parole in approximately seven years, with parole decisions to be made by the state Board of Parole Hearings (BPH).<sup>5</sup>

### What Would Proposition 36 Do?

Proposition 36, the "Three Strikes Reform Act of 2012," would amend state law to:

- **Shorten prison sentences for many offenders who receive a third strike for a nonviolent, nonserious felony.** Under Proposition 36, an individual with two or more violent or serious felony convictions who commits a new felony that is *not* classified as violent or serious generally would be sentenced to a shorter prison term than under current law. Specifically, this offender would receive a sentence that is twice the length of the standard term for the crime, rather than a 25-years-to-life sentence as required by current law. In other words, this individual would receive a prison term equivalent to that received by a second striker.
- **Continue to impose a minimum 25-years-to-life term on other offenders who receive a third strike for a nonviolent, nonserious felony.** Some offenders whose third strike is classified as a nonviolent or nonserious felony would *not* be eligible for the shorter sentences required by Proposition 36. Instead, these offenders would receive a minimum 25-years-to-life term as required by current law. Specifically, Proposition 36 would require a minimum 25-years-to-life sentence for:
  - Third strikers whose *current* offense involves the use of a firearm, intent to cause great bodily injury, or certain drug or sex charges; or
  - Third strikers with a *prior* violent or serious felony conviction for a sexually violent offense, child molestation, murder or attempted murder, solicitation to

commit murder, assault with a machine gun on a peace officer or firefighter, possession of a weapon of mass destruction, or any violent or serious felony offense punishable in California by life in prison or death.

- **Allow some current third strikers to petition the courts for resentencing.** Proposition 36 would allow some current third strikers to petition the courts to reduce their sentences. This option would be available to third strikers whose current felony is not classified as violent or serious and “who have not committed specified current and prior offenses, such as certain drug-, sex-, and gun-related felonies.”<sup>6</sup> In general, judges would be required to resentence a third striker who meets these criteria, with the new sentence equaling twice the standard term for the offender’s most recent conviction – that is, the sentence imposed on second strikers. However, judges could decline to resentence offenders if they determine – based on an individual’s criminal history, disciplinary record, and other factors – that a reduced sentence “would pose an unreasonable risk of danger to public safety.” Third strikers who are denied resentencing would remain in prison to serve out their original terms. The Department of Corrections and Rehabilitation (CDCR) estimates that the measure’s resentencing provisions could

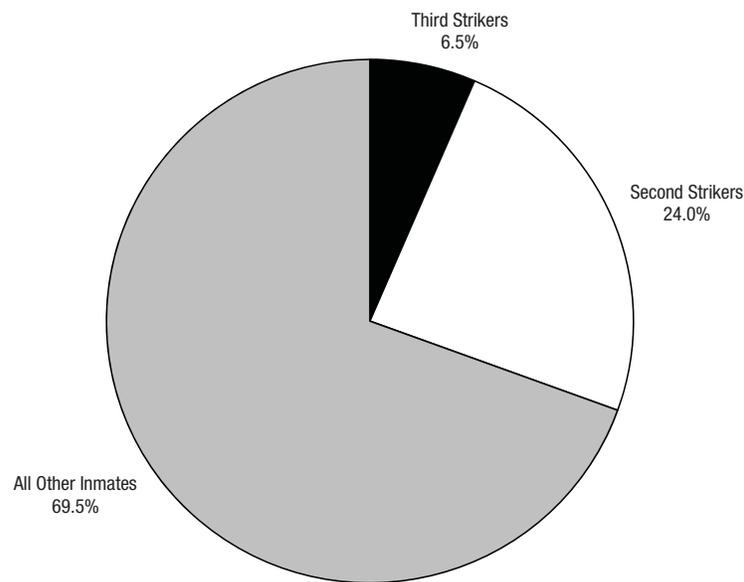
reduce the prison population by more than 2,700 in 2013-14, as many third strikers receive shorter terms and are released.<sup>7</sup>

## Key Facts About Second and Third Strikers

While the striker population initially increased rapidly following the implementation of Three Strikes, the rate of growth subsequently slowed as second strikers completed their sentences and were paroled.<sup>8</sup> California’s prisons housed 32,782 second strikers and 8,872 third strikers as of June 30, 2012 – approximately 30 percent of all state prison inmates (Figure 1).<sup>9</sup> Third strikers are generally older than second strikers (Figure 2). Nearly half (49.0 percent) of third strikers are age 50 or older, compared to fewer than one out of five second strikers (16.8 percent).<sup>10</sup>

Most strikers’ current offenses did not involve a crime against a person, such as rape, robbery, or assault with a deadly weapon. Among all strikers, fewer than half (47.3 percent) are serving time for a crime against a person (Figure 3).<sup>11</sup> Slightly more than two out of five strikers (41.5 percent) are serving prison sentences for property crimes (such as burglary, vehicle theft, or receiving stolen property) or drug crimes (such as

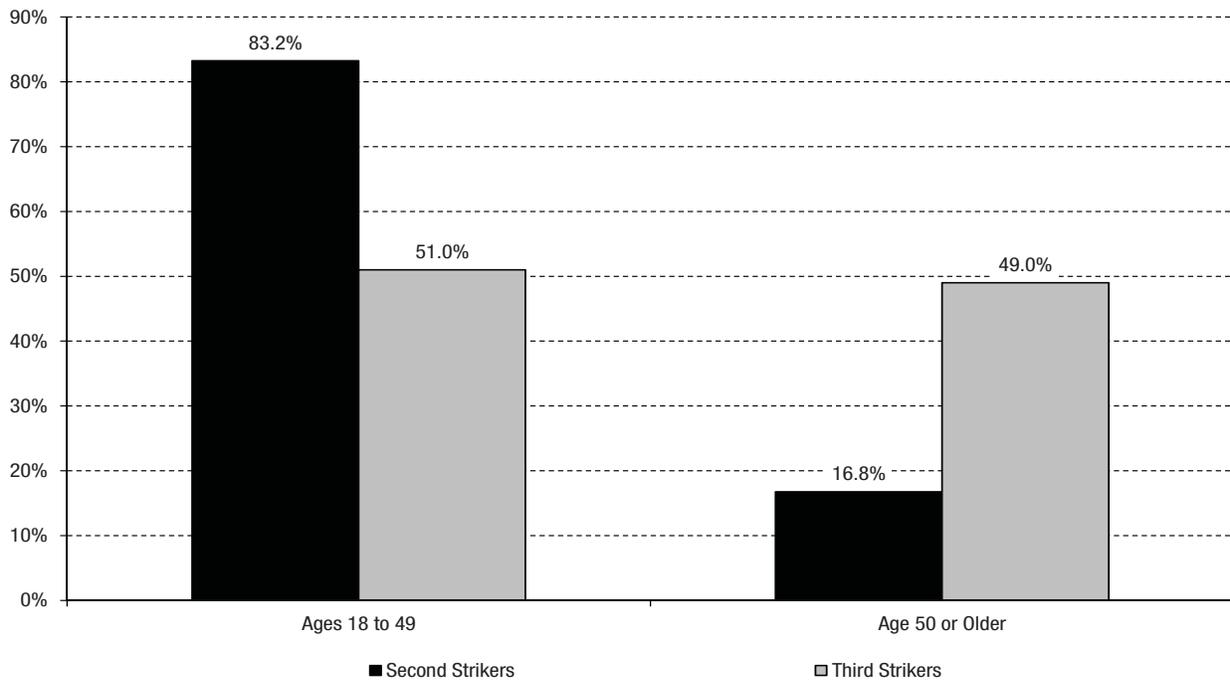
Figure 1: Second and Third Strikers Comprise Approximately 30 Percent of State Prison Inmates



Total Number of State Prison Inmates as of June 30, 2012 = 136,431

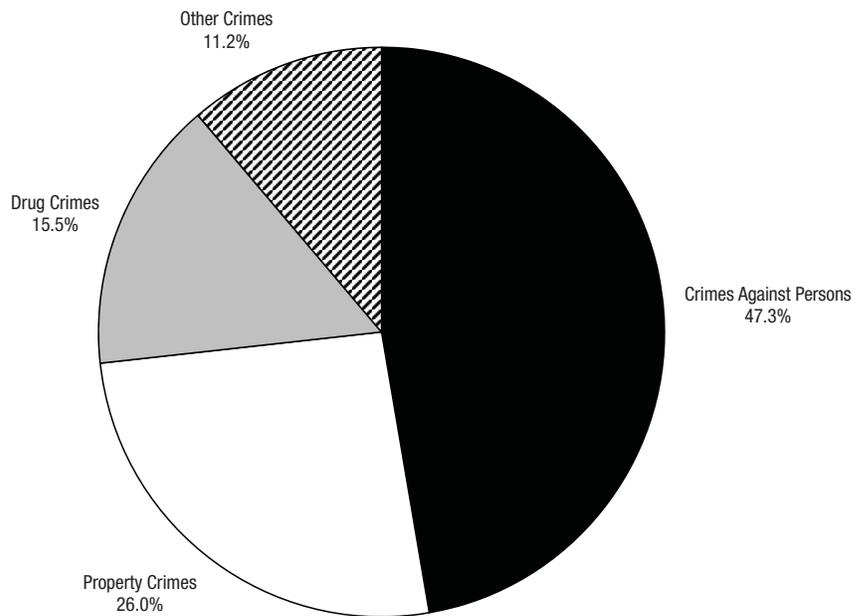
Source: Department of Corrections and Rehabilitation

Figure 2: Nearly Half of Third Strikers Are Age 50 or Older



Source: Department of Corrections and Rehabilitation

Figure 3: Fewer Than Half of Second and Third Strikers Are in Prison for a Crime Against a Person



Source: Department of Corrections and Rehabilitation

possession or possession for sale). The remaining strikers were convicted of other crimes, including unlawful possession of a weapon or driving under the influence.

## What Would Proposition 36 Mean for the State Budget and Local Budgets?

Proposition 36 would reduce state correctional costs. The Legislative Analyst's Office (LAO) estimates annual state savings of \$70 million to \$90 million.<sup>12</sup> These savings would be due to several factors. For example, fewer future offenders would receive 25-years-to-life terms, and some current third strikers would be resentenced, resulting in shorter prison terms. In addition, these offenders – upon their release from prison – generally would be supervised by county probation departments, rather than by state parole agents, according to the LAO.<sup>13</sup> This is because these offenders' most recent convictions would be for nonviolent, nonserious crimes, and counties generally are required to supervise such offenders upon their release from prison.<sup>14</sup>

Proposition 36 also would modestly increase some state and local costs. In the short term, the measure's resentencing provisions would boost court-related costs, including for district attorneys and public defenders, as well as jail costs related to housing third strikers during resentencing hearings. The LAO estimates that this short-term increase in state and local costs could total a few million dollars "over a couple of years."<sup>15</sup> The LAO points to some longer-term cost increases as well. Counties would face additional, ongoing costs related to supervising offenders released from prison who otherwise would have been supervised by state parole agents. Moreover, both the state and counties would experience new, ongoing costs if offenders violate the conditions of their local supervision or commit a new crime. These ongoing costs "would not be significant," according to the LAO.<sup>16</sup>

## What Do Proponents Argue?

Proponents of Proposition 36, including Steve Cooley, Los Angeles County district attorney, and George Gascon, San Francisco

district attorney, argue that "criminal justice experts and law enforcement leaders carefully crafted Prop. 36 so that truly dangerous criminals will receive no benefits whatsoever from the reform. Repeat criminals will get life in prison for serious or violent third strike crimes. Repeat offenders of non-violent crimes will get more than double the ordinary sentence. Any defendant who has ever been convicted of an extremely violent crime – such as rape, murder, or child molestation – will receive a 25 to life sentence, no matter how minor their third strike offense."<sup>17</sup>

## What Do Opponents Argue?

Opponents of Proposition 36, including Keith Royal, president of the California State Sheriffs' Association, and Carl Adams, president of the California District Attorneys Association, argue that "at the time Three Strikes was approved by the voters, some thought it might be too harsh or too costly. Voters rejected that view in 2004. But even if you believe that the Three Strikes law should be reformed, Proposition 36 is not the answer. Any change to the sentencing laws should only apply to future crimes committed – it should not apply to criminals already behind bars – cutting their sentences short. It is simply not fair to the victims of crime to have to relive the pain of resentencing and early release of these dangerous criminals."<sup>18</sup>

## Conclusion

Proposition 36 would amend the state's "Three Strikes" law to shorten prison sentences for many offenders who receive a third strike for a nonviolent, nonserious felony. In addition, the measure would allow some current third strikers to petition the courts to reduce their sentences. If voters approve Proposition 36, state correctional costs would decline by an estimated \$70 million to \$90 million per year, while other state and local costs – including for court proceedings and supervision of offenders released from prison due to the measure – would modestly increase.

*Scott Graves prepared this Budget Brief with assistance from Phaelen Parker and Marisa Pereira Tully. The California Budget Project (CBP) neither supports nor opposes Proposition 36. This Budget Brief is designed to help voters reach an informed decision based on the merits of the issues. The CBP was founded in 1994 to provide Californians with a source of timely, objective, and accessible expertise on state fiscal and economic policy issues. The CBP engages in independent fiscal and policy analysis and public education with the goal of improving public policies affecting the economic and social well-being of low- and middle-income Californians. General operating support for the CBP is provided by foundation grants, subscriptions, and individual contributions. Please visit the CBP's website at [www.cbp.org](http://www.cbp.org).*

## ENDNOTES

- <sup>1</sup> The Three Strikes law was initially enacted as AB 971 (Jones, Chapter 12 of 1994) and then passed by the voters as Proposition 184 at the November 1994 general election. In addition to creating two new categories of offenders, the Three Strikes law limited the number of credits that “strikers” can earn to reduce their prison terms and required strikers who are convicted of multiple crimes to serve consecutive rather than concurrent sentences. See California Budget Project, *Steady Climb: State Corrections Spending in California* (September 2011) and Legislative Analyst’s Office, *A Primer: Three Strikes – The Impact After More Than a Decade* (October 2005), pp. 6-7.
- <sup>2</sup> Legislative Analyst’s Office, *A Primer: Three Strikes – The Impact After More Than a Decade* (October 2005), p. 5.
- <sup>3</sup> Second strikers whose most recent conviction was for a violent or serious crime are supervised upon release by state parole agents. Otherwise, they are generally supervised by county probation officers. Legislative Analyst’s Office, “Proposition 36: Three Strikes Law. Repeat Felony Offenders. Penalties. Initiative Statute. Analysis by the Legislative Analyst,” in Secretary of State’s Office, *California General Election Tuesday, November 6, 2012: Official Voter Information Guide*, p. 49.
- <sup>4</sup> Legislative Analyst’s Office, *A Primer: Three Strikes – The Impact After More Than a Decade* (October 2005), p. 6. Third strikers technically receive an “indeterminate” life sentence.
- <sup>5</sup> Under Proposition 36, third strikers who are paroled would be “supervised in the community by state parole agents following their release.” Legislative Analyst’s Office, “Proposition 36: Three Strikes Law. Repeat Felony Offenders. Penalties. Initiative Statute. Analysis by the Legislative Analyst,” in Secretary of State’s Office, *California General Election Tuesday, November 6, 2012: Official Voter Information Guide*, p. 49.
- <sup>6</sup> Legislative Analyst’s Office, “Proposition 36: Three Strikes Law. Repeat Felony Offenders. Penalties. Initiative Statute. Analysis by the Legislative Analyst,” in Secretary of State’s Office, *California General Election Tuesday, November 6, 2012: Official Voter Information Guide*, p. 50.
- <sup>7</sup> Department of Corrections and Rehabilitation, *Three Strikes Reform Act of 2012 Initiative: Third Strikers Whose Current Offense Is Nonserious/Nonviolent Resentenced as Second Strikers* (September 2012). The CDCR’s estimate assumes that “all eligible third strikers currently in prison would petition for resentencing and would be resentenced as second strikers,” with full impact occurring in July 2013. The CDCR cautions that its estimate “should be considered an approximation based on several generalized assumptions.”
- <sup>8</sup> Legislative Analyst’s Office, *A Primer: Three Strikes – The Impact After More Than a Decade* (October 2005), p. 15.
- <sup>9</sup> Department of Corrections and Rehabilitation, *Prison Census Data as of June 30, 2012* (August 2012), Table 10.
- <sup>10</sup> Among third strikers, 45.5 percent are ages 50 to 64, and 3.5 percent are age 65 or older. In contrast, 15.9 percent of second strikers are ages 50 to 64, and 0.8 percent are age 65 or older. Department of Corrections and Rehabilitation, *Second and Third Striker Felons in the Adult Institution Population June 30, 2012* (July 2012), Table 6.
- <sup>11</sup> Department of Corrections and Rehabilitation, *Second and Third Striker Felons in the Adult Institution Population June 30, 2012* (July 2012), Table 1. Second strikers and third strikers are equally likely to be in prison for a crime against a person (47.4 percent and 47.0 percent, respectively).
- <sup>12</sup> The LAO notes that “annual savings could be tens of millions of dollars higher or lower depending on several factors,” including the number of third strikers resentenced by the courts. Legislative Analyst’s Office, “Proposition 36: Three Strikes Law. Repeat Felony Offenders. Penalties. Initiative Statute. Analysis by the Legislative Analyst,” in Secretary of State’s Office, *California General Election Tuesday, November 6, 2012: Official Voter Information Guide*, p. 50.
- <sup>13</sup> Legislative Analyst’s Office, “Proposition 36: Three Strikes Law. Repeat Felony Offenders. Penalties. Initiative Statute. Analysis by the Legislative Analyst,” in Secretary of State’s Office, *California General Election Tuesday, November 6, 2012: Official Voter Information Guide*, p. 50.
- <sup>14</sup> Under the 2011 state-to-county “realignment” of programs and services – including some public safety responsibilities – counties are required to manage, supervise, and rehabilitate “low-level” offenders and parolees, all of whom previously would have served state prison sentences and been supervised by state parole agents upon their release from prison. For the purpose of local, postrelease supervision, “low-level” generally means that the released inmate did not serve his or her *just-completed* term for a violent or serious felony. There are some exceptions to this rule, including that counties are *not* required to supervise *any* third strikers upon their release from prison. However, the LAO’s analysis suggests that – under Proposition 36 – some offenders who initially were classified as *third strikers* instead would be treated as *second strikers* and thus would be supervised by county probation departments upon their release from prison. Such a change would result in additional county costs that were not anticipated when the state determined the amount of realignment revenues that would be needed to support counties’ new responsibilities. However, the LAO estimates that any ongoing costs attributable to Proposition 36 would not be significant. For more information about realignment, see California Budget Project, *Steady Climb: State Corrections Spending in California* (September 2011), pp. 3-4, and California Budget Project, *Finishing the Job: Moving Realignment Toward Completion in 2012* (June 2012).
- <sup>15</sup> Legislative Analyst’s Office, “Proposition 36: Three Strikes Law. Repeat Felony Offenders. Penalties. Initiative Statute. Analysis by the Legislative Analyst,” in Secretary of State’s Office, *California General Election Tuesday, November 6, 2012: Official Voter Information Guide*, p. 50.
- <sup>16</sup> Legislative Analyst’s Office, “Proposition 36: Three Strikes Law. Repeat Felony Offenders. Penalties. Initiative Statute. Analysis by the Legislative Analyst,” in Secretary of State’s Office, *California General Election Tuesday, November 6, 2012: Official Voter Information Guide*, p. 51.
- <sup>17</sup> “Argument in Favor of Proposition 36,” in Secretary of State’s Office, *California General Election Tuesday, November 6, 2012: Official Voter Information Guide*, p. 52.
- <sup>18</sup> “Argument Against Proposition 36,” in Secretary of State’s Office, *California General Election Tuesday, November 6, 2012: Official Voter Information Guide*, p. 53.