



The “Three Strikes and You're Out” Law —A Preliminary Assessment

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.

Because the measure has been in effect for a short time, considerable uncertainty exists about its precise impact. Nevertheless, some preliminary trends are beginning to emerge:

- *Thousands of offenders have so far been charged with crimes under the measure.*
- *Many cases are backing up in the local criminal justice system because most offenders are refusing to plead guilty and instead are taking their cases to trial.*
- *In order to handle the increased cases, some counties have augmented the budgets of their criminal justice agencies, some counties have increased the number of non-“Three Strikes” inmates who are released early from jail and some courts are diverting their resources from civil cases to criminal cases.*
- *Some judges, juries, and victims have responded to the “Three Strikes” law in ways that reduce the effects of the measure.*
- *Most offenders are being prosecuted and convicted under the measure for nonviolent, nonserious offenses.*

This Status Check reviews the measures's preliminary impacts, assesses their implications, and identifies implementation issues that will need to be resolved.

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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 it 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. Figure 1 shows the changes enacted by the measures.

ASSESSING THE PRELIMINARY IMPACTS OF “THREE STRIKES”

In assessing the effects of the measure, we reviewed information obtained from local prosecutors, public defenders and defense

counselors, county jails, the state Board of Corrections (which oversees jails), judges and trial court administrators, the state Judicial Council, and the Department of Corrections (CDC). We also reviewed preliminary data compiled from surveys conducted by the California District Attorney's Association and the Board of Corrections, and conducted our own survey of criminal justice agencies in six counties of various sizes that represent about half of the state's population and criminal justice workload.

We found that most of the data collected during the first eight months may be reflective of the difficulties of implementation rather than suggestive of the ongoing impact of the measure. Several jurisdictions, such as Los Angeles County, are in the process of developing more detailed systems to track the impacts. We also found that some entities, such as Santa Clara County and the RAND Corporation, have completed thoughtful analytical studies on the projected impacts of the measure.

Figure 2 (on page 4) shows the preliminary impacts of the measure on the criminal justice system and the responses of the system to these impacts. The impacts and responses are discussed in more detail below.

Figure 1

“Three Strikes And You’re Out” Law—What it Does



Increases Sentences for Repeat Offenders

- If an offender has *one previous* serious or violent felony conviction (a first-strike), the mandatory sentence for *any new* felony conviction (the second-strike) is *twice* the term otherwise required under law for the new conviction.
- If an offender has *two or more previous* serious or violent felony convictions, the mandatory sentence for *any new* felony conviction (the third-strike) is life imprisonment with the minimum term being the *greater* of (1) three times the term otherwise required under law for the new felony conviction, (2) 25 years, or (3) the term determined by the court for the new conviction.



Counts Previous Convictions of a Minor

- Crimes committed by a minor, who was at least age 16 at the time of the crime, would count as strikes.



Restricts Prison Credits

- Offenders who have been convicted previously of one or more serious or violent felonies may not earn credits to reduce the time they spend in prison by more than one-fifth (rather than the previous maximum of one-half).



Eliminates Alternatives to Prison

- Requires that persons convicted of any felony who have been previously convicted of a serious or violent felony will be sentenced to state prison (they could not be granted probation or placed in an alternative punishment or treatment program).

WHAT ARE THE IMPACTS ON THE CRIMINAL JUSTICE SYSTEM?

In this section we look at some of the preliminary impacts of implementing “Three Strikes.” These impacts are primarily experienced by counties.

Thousands of Cases Being Prosecuted. Our review found that there are thousands of offenders being charged under the provisions of

“Three Strikes.” A survey of 42 counties conducted by the District Attorney’s Association found that, 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. 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.

“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.”

Figure 2

Preliminary Impacts of and Responses to the “Three Strikes” Law



Impacts

- Thousands of cases being prosecuted
- Fewer guilty pleas by defendants
- Significant increase in jury trials
- Increase in persons awaiting trial in county jails
- Less immediate impact on state prison population than expected



Responses

- Backlogs push less serious cases out of courts
- Early release of sentenced offenders from county jails
- Increase in jail security
- Augmentations to budgets of some counties criminal justice agencies
- Behavioral responses from some judges, juries, and victims

Fewer Guilty Pleas by Defendants. Prior to the enactment of Chapter 12 about 94 percent of all felony cases statewide were disposed of through plea bargaining. In such a case, a defendant agrees to plead guilty in exchange for a shorter sentence, often to a single charge when multiple charges are possible, or to a lesser offense.

Chapter 12 seems to be having a significant effect on plea bargaining. Public defenders and criminal defense attorneys appear to be advising their clients that there is little to lose by refusing to plea bargain and taking their cases to jury trial, given the much longer prison sentences defendants 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. In addition, there is some evidence that persons charged with a violent or serious offense for the *first* time (a first-strike) are also less likely to plead guilty because a conviction would result in any subsequent offenses being charged under the “Three Strikes” law.

We found that counties that currently expect a significant increase in cases going to trial have historically had a higher percentage of cases disposed of through plea bargaining. Thus, counties that have in the past relied to a greater extent on plea bargaining to manage criminal trial workloads will be more adversely affected than other counties and will face a relatively greater increase in their costs to handle these cases.

It should be noted that some local officials expect only a minor decrease in plea bargaining in their jurisdictions. According to these officials, the offenders covered under "Three Strikes" would have likely proceeded to a jury trial in the past given the county's reluctance to plea bargain.

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. For example, the Los Angeles County District Attorney estimates that the number of jury trials will increase from about 2,410 in 1994—roughly the number handled annually since 1992—to 5,875 in 1995, an increase of 144 percent. More than half of this increase is expected to be third-strike cases. Similarly, the San Diego County Public Defender expects the number of jury trials to increase threefold—from about 500 in 1993 to 1,500 in 1994. In addition, Santa Clara County reviewed its cases from 1992 and estimated that, if the "Three Strikes" law had been in place at that time, the number of jury trials would have increased from 200 to 585—an increase of almost 200 percent.

Increase in Persons Held in County Jail Awaiting Trial. The impacts discussed above—more cases, fewer plea bargains, more jury trials—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.

Our review indicates that most counties anticipated a significant increase in the number of inmates that will have to be housed in local jails under the "Three Strikes" law. Orange and Santa Clara Counties estimate that they will need an additional 500 and 137 beds, respectively, to accommodate the number of "Three Strikes" inmates that will be housed during their pretrial detention. Los Angeles County estimates that more than 1,000 "three strikes" inmates are currently being housed in its county jails awaiting trial.

In addition, because third-strike offenders face possible life in prison if convicted, they are considered "high-security" inmates while in jail since they have little to lose by assaulting staff and fellow inmates or attempting to escape. High-security inmates require 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 state's prison population is

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expected to increase substantially as a result of “Three Strikes” because the measure increases prison sentences, limits the ability of repeat offenders to earn credits to reduce the time they spend in prison, and requires more persons who could have been granted probation or sentenced to county jail to be sentenced to state prison. The CDC originally estimated that the measure would increase the prison population by about 1,700 inmates in 1994-95, with further gradual increases to 80,000 inmates by 1999, 149,000 inmates in 2003-04, and 274,000 inmates by 2026-27 and annually thereafter.

Although the CDC has not released a new, long-range estimate of the measure, it now assumes that, at least in the short run, the number of inmates sent to prison under the “Three Strikes” law will be less than expected, 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 estimating the impact of the “Three Strikes” law using more sophisticated techniques than it used when it assessed the impact of the proposed legislation. According to the CDC, this last factor alone accounts for a reduction of about

19,000 inmates from the 80,000 estimated by 1999.

Although the current estimate of the measure's impact is somewhat less than first expected, it will nevertheless have a major impact on the state's prison population. In order to just maintain existing levels of overcrowding, the department will need at least 15 new prisons by 1999.

WHAT HAS BEEN THE RESPONSE TO THE PRELIMINARY IMPACTS?

In this section we look at the 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 handled in the trial courts. Currently, the state's trial courts are about evenly divided between courts that handle criminal cases and courts that handle civil cases, although criminal cases take legal precedence over civil cases. As a result of the increase in criminal cases going to trial, more courts are diverting their resources from hearing civil cases to hearing criminal cases.

Los Angeles County provides the most dramatic example of this diversion. As of October 1994, no civil cases were being tried in three of the county's ten superior court districts. In addition, more than half of the 50 courtrooms in the central district that are normally used for civil cases were being diverted to criminal trials. By early 1995, the Los Angeles County Superior Court expects that 60 of the 120 judges currently hearing civil cases will be redirected to criminal cases. In addition, the county estimates that in 1995 two-thirds to three-fourths of all courtrooms that hear civil cases will be devoted to criminal trials.

Such diversions will result in longer periods to resolve civil cases and may lead to more cases being decided in alternative judicial forums, such as arbitration or so-called "private judging." In addition, the reduction in civil case processing could result in the state and counties receiving smaller amounts of revenues from civil filing fees, which are used by the state and counties to offset a portion of the costs of supporting the courts.

Early Release of Sentenced Offenders From County Jails. The increased demand for county jail space to house persons awaiting trial under the "Three Strikes" law comes at a time when many jails are operating under court-ordered population caps or federal mandates limiting jail overcrowding. Currently,

the jail population in 28 counties, representing more than 70 percent of the state's total jail beds, are capped by court order. When a county's jail population is capped, the sheriff is generally responsible to ensure *every day* that the population is at or below the cap, or be subject to legal sanctions. Most counties under a population cap can only release sentenced inmates (instead of those awaiting trial) early in order to keep populations down.

As a consequence of the large numbers of "Three Strikes" offenders awaiting trial, some counties have been forced to release more sentenced inmates in order to stay within their population caps. For example, prior to enactment of "Three Strikes," sentenced offenders in Los Angeles County generally served about two-thirds of their sentence before being released. Recently, however, offenders are serving only about 45 percent of their sentence in order to make room for more "Three Strikes" offenders awaiting trial. Prior to "Three Strikes," the county's jail population consisted of roughly 60 percent sentenced offenders and 40 percent pre-sentenced offenders. Recently, however, that number has changed to 30 percent sentenced offenders and 70 percent pre-sentenced offenders. The San Bernardino County jail no longer accepts offenders being booked for misdemeanors because of the growth of its "Three Strikes" pre-sentenced population.

“ . . . about 70 percent of all second- and third-strikes are for nonviolent and nonserious offenses.”

Increase in Jail Security. As we indicated earlier, persons in county jail awaiting trial under “Three Strikes” are considered high security inmates, thus requiring closer supervision and restricted housing arrangements. In a survey of 15 counties conducted by the Board of Corrections, six counties indicated that they have modified their inmate security systems to better handle and track second- and third-strike inmates, and five counties indicated that they plan to increase their security levels.

Augmentations to Budgets of Criminal Justice Agencies in Some Counties. Because of the increase in workload brought about by “Three Strikes,” 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.” Similarly, Santa Clara County’s Board of Supervisors recently approved augmentations of \$1.3 million.

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 appear to be refusing to consider the qualifying prior convictions when sentencing offenders for new offenses, which is inconsistent with the intent of the measure.

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 this section, we provide a brief overview of the characteristics of offenders charged and convicted under “Three Strikes” thus far.

Most Offenders Charged With Nonviolent, Nonserious Offenses.

Data we obtained from local agencies indicate 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 charged 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. Santa Clara County's statistical study of defendants sentenced in 1992, who would have qualified for sentencing under "Three Strikes," confirmed that the overwhelming proportion of cases would have been for nonviolent offenses.

Most Convictions Were for Nonviolent, Nonserious Offenses. As of the end of November 1994, there were 2,912 persons in state prison for conviction of a second-strike, and only 63 offenders convicted of a third-strike. This very 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 500 or approximately 17 percent, were for a violent or serious offense (persons convicted of a second-strike face prison sentences that are at least twice as long as they were previously). Among this category, 164 were convicted of robbery and 132 were convicted of first-degree burglary. The remaining approximately 2,400 persons were convicted of a wide variety of lesser offenses, the largest being possession of controlled substances (546 inmates) and petty theft with a prior theft (398 inmates). In terms of other characteristics of these second-strike inmates:

- Forty-six percent came from Los Angeles County and 14 percent came from San Diego County.

- Two thousand, seven hundred and seventy-nine are male and 133 are female.
- Forty-eight percent are in their twenties, 33 percent are in their thirties, and 9 percent are under age 20.
- Thirty-seven percent are black, 33 percent are Hispanic, and 26 percent are white or of another race (these figures are roughly comparable to the state's overall prison population).

Of the third-strike offenders—who face minimums of 25 years to life in prison—about 20 of the 63 were convicted of a serious or violent offense. The largest category of offense—with 11 cases—was possession of controlled substances (data were not available on five cases). Los Angeles and San Diego Counties each accounted for 18 of the 63 inmates convicted of a third-strike. All are male, with 28 between the ages of 20 and 29, and 20 between the ages of 30 and 39. More than half are black, and the remainder are roughly split between whites and Hispanics.

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 govern-

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ments. The RAND Corporation's 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, and is also reflective of national trends. At this time, it is far too early to assess the impact of the measure on overall crime in California. Such assessments will take much more time to determine.

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 face in the coming months and years.

Legal and Technical Issues. Our discussions with law enforcement officials indicate that 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 would not have a major impact on the implementation of the measure. In other cases, however, the ultimate resolution of the issue could affect the number of offenders convicted and

sent to state prison and the length of time they are incarcerated. Many of these issues involve specific cases that are already being appealed in the state's Court of Appeals.

These issues include:

- The authority of a court to consider a *prior* conviction to be a misdemeanor instead of a felony thus eliminating consideration 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.
- Whether prison sentence enhancements (enacted previously) may be added to the sentence of an offender who has his or her sentence increased under “Three Strikes.”
- Whether an offender sent to state prison under the “Three Strikes” law may receive “preconfinement” credits (credits for the time they served in county jail awaiting trial and transfer to the CDC) to reduce the time they spend in state prison.

Severe Backlog of Criminal Histories Could Hinder Implementation.

Under current law, the California Department of Justice (DOJ) is required to maintain a number of criminal justice information systems for law enforcement agencies. One of the DOJ's systems is the Criminal History System (CHS), which contains two information files: arrests and convictions. The arrest file lists the specific offenses for which an individual has been arrested; the conviction file lists all offenses for which the individual has been convicted. Based on our review of information provided by the DOJ, both files within the CHS have substantial backlogs. The backlog for criminal arrests is approximately three months, while the backlog for criminal convictions *exceeds one year*. This means that, currently, it takes about three months from the date of arrest and more than one year from the date of conviction before the respective information is entered into the CHS.

These backlogs—especially the conviction file 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. For example, with a one-year backlog, it is possible for an individual to be convicted of a qualifying “Three Strike” offense, complete his or her sentence, and be standing trial for another offense

without the district attorney having knowledge of the prior conviction. As a result, some defendants could elude proper prosecution and sentencing under the measure.

Continued Monitoring and Planning Required. As we indicated earlier, much of the information available on the “Three Strikes” law is preliminary and may reflect implementation difficulties. Because the measure can be amended by the Legislature and Governor, it will be important to continue to monitor its implementation and effects on crime and the state's criminal justice system.

Several efforts to monitor the impact of the measure on the local level are ongoing. 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.

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 recently published a *Status Check* on accommodating growth in the state's prison population.)

In the meantime, we will continue to monitor implementation and identify issues for the Legislature in our *Analysis of the 1995-96 Budget Bill*, which will be released in February 1995.

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