

**Proposition 36**  
**Three Strikes Law. Sentencing for Repeat Felony Offenders.**  
**Initiative Statute.**

**Background**

There are three categories of crimes: felonies, misdemeanors, and infractions. A felony is the most serious type of crime, and an individual convicted of a felony may be sentenced to state prison under certain circumstances. Individuals convicted of felonies who are not sentenced to state prison are sentenced to county jail, supervised by the county probation department in the community, or both.

Existing law classifies some felonies as “violent” or “serious,” or both. Examples of felonies currently defined as violent include murder, robbery, and rape. While almost all violent felonies are also considered serious, other felonies are defined only as serious, such as assault with intent to commit robbery. Felonies that are not classified as violent or serious include grand theft (not involving a firearm) and possession of a controlled substance.

As of May 2012, there were about 137,000 inmates in the California prison system. The state’s prison system in 2012-13 is budgeted for almost \$9 billion.

***Three Strikes Sentencing.*** Proposition 184 (commonly referred to as the “three strikes” law) was adopted by voters in 1994. It imposed longer prison sentences for certain repeat offenders. Specifically, the law requires that a person who is convicted of a felony and who previously has been convicted of one or more violent or serious felonies be sentenced to state prison as follows:

- ***Second Strike Offense.*** If the person has *one previous* serious or violent felony conviction, the sentence for *any new* felony conviction (not just a serious or violent felony) is *twice* the term otherwise required under law for the new conviction. Offenders sentenced by the courts under this provision are referred to as “second strikers.” As of March 2012, about 33,000 inmates were second strikers.
- ***Third Strike Offense.*** If the person has *two or more previous* serious or violent felony convictions, the sentence for *any new* felony conviction (not just a serious or violent felony) is a life term with the earliest possible parole after 25 years. Offenders convicted under this provision are referred to as “third strikers.” As of March 2012, about 9,000 inmates were third strikers.

While the law requires the sentences described above, in some instances the court may choose not to consider prior felonies during sentencing. When this occurs, an offender who would otherwise be sentenced as a second or third striker would be sentenced to a lesser term than required under the three strikes law.

***Prison Release Determination.*** Under current law, most second strikers are automatically released from prison after completing their sentences. In contrast, third strikers are only released upon approval by the state Board of Parole Hearings (BPH). After third strikers have served the minimum number of years required by their sentence, a BPH panel conducts a parole consideration hearing to consider their possible release. For example, BPH would conduct such a hearing for a third striker sentenced to 25-years-to-life after the third striker served 25 years. If BPH decides not to release the third striker at that hearing, the board would conduct a subsequent hearing in the future. Since the three strikes law came into effect in 1994, the first third strikers

will become eligible for hearings on their possible release from prison near the end of this decade.

***Post Release Supervision.*** All second and third strikers are required under current law to be supervised in the community after release from prison. If a second striker's most recent conviction was for a nonserious, non-violent crime, he or she will generally be supervised in the community by county probation officers. Otherwise, the second striker will be supervised in the community by state parole agents. All third strikers are supervised in the community by state parole agents following their release. When second or third strikers violate the terms of their community supervision or commit a new offense, they could be placed in county jail or state prison depending on the circumstances.

## **Proposal**

This measure reduces prison sentences served under the three strikes law by certain third strikers whose current offenses are nonserious, non-violent felonies. The measure also allows resentencing of certain third strikers who are currently serving life sentences for specified nonserious, non-violent felonies. Both of these changes are described below.

***Shorter Sentences for Some Third Strikers.*** The measure requires that an offender who has *two or more prior* serious or violent felony convictions and whose *new* offense is a nonserious, non-violent felony receive a prison sentence that is twice the usual term for the new offense, rather than a minimum sentence of 25-years-to-life as is currently required. For example, a third striker who is convicted of a crime in which the usual sentence is two to four years would instead receive a sentence of between four to eight years—twice the term that would otherwise apply—rather than a 25-years-to-life term.

The measure, however, provides for some exceptions to these shorter sentences. Specifically, the measure requires that if the offender has committed certain new or prior offenses, including some drug-, sex-, and gun-related felonies, he or she would still be subject to a life sentence under the three strikes law.

***Resentencing of Some Current Third Strikers.*** This measure allows certain third strikers to apply to be resentenced by the courts. The measure limits eligibility for resentencing to third strikers whose current offense is nonserious, non-violent and who have not committed specified current and prior offenses, such as certain drug-, sex- and gun-related felonies. Courts conducting these resentencing hearings would first determine whether the offender's criminal offense history makes them eligible for resentencing. The court would be required to resentence eligible offenders unless it determines that resentencing the offenders would pose an unreasonable risk to public safety. In determining whether an offender poses such a risk, the court could consider any evidence it determines is relevant, such as the offender's criminal history, behavior in prison, and participation in rehabilitation programs. The measure requires resentenced offenders to receive twice the usual term for their most recent offense instead of the sentence previously imposed. Offenders whose requests for resentencing are denied by the courts would continue to serve out their life terms as they were originally sentenced.

## **Fiscal Effects**

***State Correctional Savings.*** This measure would have a number of fiscal impacts on the state's correctional system. Most significantly, the measure would reduce state prison costs in two ways. First, fewer inmates would be incarcerated for life sentences under the three strikes law because of the measure's provisions requiring that such sentences be applied only to third

strikers whose current offense is serious or violent. This would reduce the sentences of some future felony offenders. Second, the resentencing of third strikers could result in many existing inmates receiving shorter prison terms. This would result in a reduction in the inmate population beginning in the near term.

The measure would also result in reduced state parole costs. This would occur because the offenders affected by this measure would generally be supervised by county probation—rather than state parole—following their release from prison. This is because their current offense would be nonserious and non-violent. In addition, the reduction in the third striker population would reduce the number of parole consideration hearings BPH would need to conduct in the future.

State correctional savings from the above changes would likely be around \$70 million annually, with even higher savings—up to \$90 million annually—over the next couple of decades. However, these annual savings could be tens of millions of dollars higher or lower depending on several factors. In particular, the actual level of savings would depend on the number of third strikers resentenced by the court and the rate at which BPH would have released third strikers in the future under current law.

***Resentencing Costs.*** This measure would result in a one-time cost to the state and counties related to the resentencing provisions of this measure. These provisions would increase court caseloads, which would result in added costs for district attorneys, public defenders, and county sheriff's departments that would manage this workload and staff these resentencing proceedings. In addition, counties would incur jail costs to house inmates during resentencing proceedings. These costs could be a few million dollars statewide over a couple of years.

***Other Fiscal Impacts.*** There would be some additional court-, probation-, and jail-related costs for the state and counties. This is because some offenders released from prison due to this measure would be supervised by probation departments instead of state parole, and would have court hearings and receive jail sentences if they violate the terms of their supervision or commit new crimes. We estimate that such long-term costs would not be significant.

This measure could result in a variety of other state and local government fiscal effects. For instance, governments would incur additional costs to the extent that offenders released from prison because of this measure require government services (such as government-paid health care for persons without private insurance coverage) or commit additional crimes. There also would be some additional state and local government revenue to the extent that offenders released from prison because of this measure entered the workforce. The magnitude of these impacts is unknown.

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**Yes/No Statement**

A **YES** vote on this measure means: Some criminal offenders with two prior serious or violent felony convictions who commit certain nonserious, non-violent felonies would be sentenced to shorter terms in state prison. In addition, some offenders with two prior serious or violent felony convictions who are currently serving life sentences for many nonserious, non-violent felony convictions could be resentenced to shorter prison terms.

A **NO** vote on this measure means: Offenders with two prior serious or violent felony convictions who commit any new felony could continue to receive life sentences. In addition, offenders with two prior serious or violent felony convictions who are currently serving life sentences for nonserious, non-violent felonies would continue to serve the remainder of their life sentences.