PROPOSITION

66

Limitations on "Three Strikes" Law. Sex Crimes. Punishment. Initiative Statute.

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

Limitations on "Three Strikes" Law. Sex Crimes. Punishment. Initiative Statute.

- Amends "Three Strikes" law to require increased sentences only when current conviction is for specified violent and/or serious felony.
- Redefines violent and serious felonies. Only prior convictions for specified violent and/or serious felonies, brought and tried separately, would qualify for second and third "strike" sentence increases.
- Allows conditional re-sentencing of persons with sentences increased under "Three Strikes" law if previous sentencing offenses, resulting in the currently charged felony/felonies, would no longer qualify as violent and/or serious felonies.
- Increases punishment for specified sex crimes against children.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Net state savings of potentially several tens of millions of dollars initially, increasing to several hundred million dollars annually, primarily to the prison system.
- Increased county costs of potentially more than ten million dollars annually for jail and court-related costs.

ANALYSIS BY THE LEGISLATIVE ANALYST

Background

There are three kinds of crimes: felonies, misdemeanors, and infractions. A felony is the most serious type of crime. About 18 percent of persons convicted of a felony are sent to state prison. The rest are supervised on probation in the community, sentenced to county jail, or both.

Existing law classifies some felonies as "violent" or "serious," or both. Of the inmates sentenced to prison in 2003, approximately 30 percent were convicted for crimes defined as serious or violent. Examples of felonies currently defined as violent include murder, robbery, and rape and other sex offenses. Felonies defined as serious include the same offenses defined as violent felonies, but also include other offenses such as burglary of a residence and assault with intent to commit robbery. There are other felonies that are not classified as violent or serious, such as grand theft and possession of a controlled substance.

As of April 2004, there were about 163,000 inmates in California prisons, as well as some state-contracted facilities. The costs to operate the state prison system in 2004–05 are estimated to be approximately $5.7 billion.

Three Strikes. Proposition 184 (commonly referred to as the "Three Strikes and You're Out" law) was adopted by the voters in 1994. It imposed longer prison sentences for certain repeat offenders. Specifically, it requires that a person who is convicted of a felony and who has been previously 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 often referred to as "second strikers." As of March 2004, about 35,000 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 life imprisonment with the minimum term being 25 years. Offenders convicted under this provision are frequently referred to as "third strikers." As of March 2004, about 7,000 inmates were third strikers.

Sex Offenses. California law sets penalties for a variety of sex offenses, including sex offenses committed against children. Current law requires a prison sentence of 3, 6, or 8 years (depending on the circumstances of the crime) for anyone convicted of sexual penetration or oral copulation with a minor who is under the age of 14 and more than 10 years younger than the offender.

Proposal

This measure amends the Three Strikes law and also amends the law relating to sex crimes against children. These changes are described below.

Three Strikes Law

New Crime Must Be Violent or Serious. This measure requires that an offender would be subject to a longer sentence under the Three Strikes law only if the conviction for the new crime is for a violent or serious felony, instead of any felony as provided under current law.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

Narrows Felonies Considered Violent or Serious. This measure reduces the number of felony offenses considered serious or violent. Figure 1 lists for illustration purposes selected felonies that would no longer be considered serious or violent. These changes are not limited to convictions under the Three Strikes law and, therefore, would also affect some other aspects of sentencing, such as the amount of credits inmates can earn towards a reduced sentence.

FIGURE 1

Selected Felonies No Longer Considered Violent or Serious Offenses Under Proposition 66

- Attempted burglary
- Conspiracy (multiple people planning) to commit assault
- Nonresidential arson resulting in no significant injuries
- Threats to commit criminal acts that would result in significant personal injury
- Burglary of an unoccupied residence
- Interfering with a trial witness without the use of force or threats and not in the furtherance of a conspiracy
- Participation in felonies committed by a criminal street gang
- Unintentional infliction of significant personal injury while committing a felony offense

Requires Strikes to Be Tried Separately. Under current law, a defendant can receive multiple strikes in a single trial. For example, a defendant in a burglary case can be convicted of two separate burglary offenses in the same trial and get two strikes. This measure requires that eligible offenses be brought and tried in separate trials in order for each of them to be counted as a strike. This provision could result in counties holding separate trials in cases where local law enforcement officials want to obtain longer sentences under the Three Strikes law.

Resentencing of Offenders. This measure requires the state to resentence offenders currently serving an indeterminate life sentence under the Three Strikes law if their third strike resulted from a conviction for a nonviolent and nonserious felony offense, as defined by this proposition. Resentencing must occur no later than 180 days after this measure takes effect. The resentencing requirement will result in reduced prison sentences for some inmates and release from prison for others.

Sex Offenders of Children Under 14 Years of Age

This measure increases a prison sentence to 6, 8, or 12 years for the first conviction for sexual penetration or oral copulation with a minor who is under the age of 14 and more than 10 years younger than the offender. However, if the victim is under the age of 10, the district attorney has the discretion to seek imprisonment of 25 years to life. This measure requires that a second conviction for these offenses shall result in a sentence of 25 years to life. It also requires the state to provide counseling services for these offenders while they are in prison and for at least one year following release from prison.

Fiscal Effects

Three Strikes Law

State Prison Savings. The prison population would be lower because of the proposition's provisions that (1) limit new Three Strikes qualifying convictions to serious or violent felonies, (2) require resentencing of some third strikers, and (3) reduce the number of crimes that are considered serious or violent. The combined effect of these changes would be prison operations savings of potentially several tens of millions of dollars in the first couple of years, growing to as much as several hundred millions of dollars in ongoing savings when the full impact of the measure is realized in about a decade. The lower prison population resulting from this measure would potentially result in capital outlay savings in the long term associated with prison construction and renovations that would otherwise have been needed.

State Parole Supervision Costs. This measure would accelerate the release of some state prisoners to parole due to the shorter prison sentences served by those inmates. The cost associated with this increase in the parole caseload is unknown, but could be about ten million dollars annually when the full impact of the measure is realized.

Costs for Court-Related Activities and County Jails. This measure would result in additional state and local costs for the courts and county jails. Three factors primarily account for the increased costs. First, the resentencing provision would increase court caseloads, and local jails would likely house inmates during the proceedings. Second, it is likely that some offenders released from prison because of this measure will be subsequently prosecuted and convicted for new crimes. Third, some offenders who would be sentenced to state prison under current law will be sentenced to jail, instead of prison, under this measure for crimes newly defined as nonserious and nonviolent. We estimate these additional costs could be as much as a few tens of millions of dollars annually when the full impact of the measure is realized. These costs would be split between state and local governments.

Other Impacts on State and Local Governments. There could be other costs to the extent that offenders released from prison because of this measure require other government services, or commit additional crimes that result in victim-related government costs, such as government-paid health care for persons without insurance. Alternatively, there could be offsetting revenue to the extent that offenders released from prison become taxpaying citizens. The extent and magnitude of these impacts is unknown.

Sex Offenders of Children

The annual cost of incarcerating and providing counseling services to the sex offenders affected by this measure would likely grow from a couple hundred thousand dollars to as much as a couple of million dollars on an ongoing basis.

For text of Proposition 66 see page 110.

PROP 66

LIMITATIONS ON "THREE STRIKES" LAW. SEX CRIMES. PUNISHMENT. INITIATIVE STATUTE.

ARGUMENT in Favor of Proposition 66

Ten years ago, voters were asked to pass tougher sentences for repeat violent criminals. We approved the Three Strikes law because that's what we were told it would do.

We weren't told that Three Strikes would also lock up nonviolent, petty offenders for life.

VOTING YES ON PROPOSITION 66 WILL RESTORE THREE STRIKES TO ITS PROMISE AND THE ORIGINAL INTENT OF VOTERS.

Voting *YES ON PROPOSITION 66* will:

- Not result in the release of criminals currently serving time for murder, rape, kidnapping, child molestation, and other truly violent and serious crimes.
- Apply commonsense sentences to nonviolent, petty offenders.
- Save taxpayers hundreds of millions of dollars every year that are wasted on keeping videotape, bread or T-shirt thieves and bad check writers in prison for life.
- Protect our children by stopping child molesters with a "1 Strike" sentence.

Proponents of the 1994 law claimed that, "Three Strikes keeps career criminals, who rape women, molest innocent children and commit murder, behind bars where they belong."

But, according to the California Department of Corrections, almost 65% of those serving second and third strike sentences were convicted of nonviolent, petty offenses such as writing a bad check, stealing a videotape, loaf of bread or pack of T-shirts.

CALIFORNIANS INTENDED THAT THE THREE STRIKES LAW TARGET MURDERERS, RAPISTS, AND KIDNAPPERS, NOT VIDEOTAPE AND T-SHIRT THIEVES. PROPOSITION 66 WILL RESTORE THREE STRIKES TO WHAT VOTERS INTENDED.

After ten years, Three Strikes has stuck California taxpayers with a $6 billion bill to punish videotape and T-shirt thieves, and other nonviolent petty offenders.

Voting yes on Proposition 66 will save taxpayers billions of dollars over the next decade by doing what makes sense—ensuring that only truly dangerous or violent repeat criminals, such as murderers and kidnappers, spend the rest of their lives in prison.

Don't be fooled by what opponents say. No one serving time for rape, murder, kidnapping, or child molestation will be released by passage of Proposition 66.

PROPOSITION 66 IS NOT ABOUT GETTING SOFT ON CRIME, IT'S ABOUT GETTING SMART ON CRIME.

Read what others are saying:

- *Orange County Register*: "The measure . . . will end the unreasonable practice under current law of sending those convicted of petty offenses to life in prison at great cost to taxpayers."
- *The Sacramento Bee*: "California needs to modify its three-strikes law, the harshest in the nation."
- *San Jose Mercury News*: "The law is wasting tens of millions of tax dollars . . . and wasting lives."
- *Fresno Bee*: "Californians have a legitimate interest in protecting themselves by putting away for life . . . violent habitual criminals. But the "Three Strikes" law should not be netting nonviolent, three-time shoplifters for 25-years-to-life sentences."
- *San Francisco Chronicle*: ". . . studies by criminal-justice experts show the law to be unduly costly . . . and failing in its primary mission to curb crime."

VOTING YES ON PROPOSITION 66 WILL RESTORE THREE STRIKES TO THE ORIGINAL INTENT OF THE VOTERS, SAVE TAXPAYERS BILLIONS OF DOLLARS, AND PROVIDE EVEN STRONGER PROTECTION FOR OUR CHILDREN FROM PREDATORY CHILD MOLESTERS.

VOTE YES ON PROPOSITION 66.

www.yesonproposition66.com

RED HODGES, *President*
Violence Research Foundation

REV. RICK SCHLOSSER, *Executive Director*
California Church Impact

RONALD HAMPTON, *Executive Director*
National Black Police Association

REBUTTAL to Argument in Favor of Proposition 66

A wealthy businessman whose adult son is in prison for killing two people and seriously injuring another spent $1.57 million to put Proposition 66 on the ballot. If it passes, his son will be released early. So could some 26,000 other convicted criminals, according to the California District Attorneys Association—which is why the Governor, the Attorney General and every District Attorney in California oppose it.

Proponents of Proposition 66 want you to believe California prisons are filled with petty criminals serving life sentences for writing bad checks and stealing T-shirts. In fact, the average California inmate is convicted of five felonies before ever being sent to state prison. These are hardcore criminals who've worked hard to be in prison.

Judges and district attorneys already have the discretion not to prosecute petty crimes as "strike" offenses. In those rare cases where petty criminals have received disproportionate sentences, the courts have shortened them.

Proposition 66 won't keep murderers, rapists, child molesters, and other violent criminals in prison. It releases thousands of inmates with long records of serious and violent crime—including murder, rape, and child molesting.

Nor will Proposition 66 protect children. It puts some of California's most notorious child molesters back on the street.

Proposition 66 won't save tax money. It will cost taxpayers millions to return thousands of inmates to county jails for re-sentencing and release, and billions more to deal with the cost of higher crime and violence.

Even if you believe "3 Strikes" should be modified, Proposition 66 isn't the answer.

CAM SANCHEZ, *President*
California Police Chiefs Association

JON COUPAL, *President*
Howard Jarvis Taxpayers Association

SHEILA ANDERSON, *President*
Prevent Child Abuse California

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ARGUMENT Against Proposition 66

Don't be fooled. Proposition 66 won't protect children or save tax money. It creates a new legal loophole for convicted criminals that will cost taxpayers millions of dollars and flood our streets with thousands of dangerous felons, including rapists, child molesters, and murderers. That's why Proposition 66 is strongly opposed by every major public safety, taxpayer, and child protection group in California, including:

- California Police Chiefs Association
- California District Attorneys Association
- Prevent Child Abuse California
- National Tax Limitation Committee
- California Sexual Assault Investigators Association
- California State Sheriffs' Association
- Mothers Against Gang Violence
- Marc Klaas, Klaas Kids Foundation

The California District Attorneys Association estimates Proposition 66 will release as many as 26,000 convicted felons from California prisons and return them to the counties for re-sentencing, where cash-strapped jails are already overflowing. These are not petty criminals and low-level drug offenders who steal pizzas and videotapes. These are dangerous hardcore criminals with long histories of serious and violent crimes. Most will have their sentences dramatically reduced if Proposition 66 is approved, including:

- Edward Rollins, a career criminal with a thirty-year history of serious and violent crime that includes burglary, assault with a deadly weapon, battery of a police officer, robbery, battery with serious bodily injury, receiving stolen property, possession of a sawed-off shotgun, sexual assault and multiple parole violations. Under Proposition 66 he could be eligible to apply for release.
- Kenneth Parnell, the notorious child molester who kidnapped and sexually assaulted young Steven Staynor for seven years, and who recently was convicted of trying to buy a 4-year-old boy for $500. Instead of serving 25 years to life for his crimes against children, Proposition 66 will set him free within weeks.
- Steven Matthews, a member of the Aryan Brotherhood with a violent criminal history that includes robbery, kidnapping, murder, and the rape of his mother. Instead of serving 25 years to life, Proposition 66 will put him back on the street in early 2005.

If Proposition 66 passes, arson, residential burglary, attempted burglary, criminal threats, felony gang crimes, and felonies like drunk driving in which innocent people are seriously hurt or killed will no longer be considered "strikes." Likewise, juvenile sex offenders will no longer receive a strike for seriously injuring an elderly or disabled person during an assault with intent to commit rape.

California's crime rate has decreased by twice the national average since voters approved "Three Strikes" in 1994, according to FBI statistics. We've had two million fewer victims, taxpayers have saved an estimated $28.5 billion and dangerous career criminals have been taken off the street. Instead of "fine-tuning" this important public safety law, Proposition 66 destroys it.

According to Wayne Quint, Jr., President of the California Coalition of Law Enforcement Associations: "Crime will go up and innocent people will be hurt or killed if Proposition 66 passes. This is a very dangerous initiative."

We agree.

Don't give violent criminals another loophole to get out of prison. Vote NO on Proposition 66.

ARNOLD SCHWARZENEGGER, *Governor of California*
BILL LOCKYER, *Attorney General of California*
HARRIET SALARNO, *Chair*
Crime Victims United of California

REBUTTAL to Argument Against Proposition 66

DON'T BE FOOLED BY OPPONENTS' DECEPTIVE SCARE TACTICS.

- PROPOSITION 66 WON'T RELEASE A SINGLE "Striker," let alone thousands, serving time for rape, murder, or child molestation.
- PROPOSITION 66 DOES NOT STOP ANYONE CONVICTED OF A CRIME FROM BEING FULLY PUNISHED FOR THEIR CRIME—whether juvenile or adult, arsonist, murderer, or drunk driver, including examples cited by opponents.
- PROPOSITION 66 DOESN'T "DESTROY" THREE STRIKES. It does exactly what voters originally intended—punish repeat violent criminals with life sentences.

Our opponents hope you'll be fooled. Here's the truth about Proposition 66:

- PROPOSITION 66 *RESTORES VOTERS' INTENT* of keeping violent criminals off our streets.
- PROPOSITION 66 *PROTECTS CHILDREN* by providing a tougher 1-Strike sentence for child molesters.
- PROPOSITION 66 *STOPS BILLIONS OF TAX DOLLARS FROM BEING WASTED* imprisoning shoplifters and other nonviolent petty offenders for life.
- Proposition 66 will allow three to four thousand nonviolent petty offenders to apply for retrial, but *will not* release a single violent striker.
- Criminals opponents cite have served sentences for violent crimes BUT are now incarcerated for nonviolent offenses.

California is the only state with a Three Strikes law that can send someone to prison for life for stealing a loaf of bread. *Proposition 66 will make sure the time fits the crime.*

Major newspapers across California haven't been fooled by deceptive scare tactics and have repeatedly called for Three Strikes to match voters' intent.

RESTORE THREE STRIKES TO ITS PROMISE, TOUGHEN LAWS AGAINST CHILD MOLESTERS, SAVE TAXPAYERS BILLIONS.

VOTE YES ON PROPOSITION 66—Three Strikes as voters meant it to be in the first place.

MARK LENO, *Chairman*
California State Assembly Committee on Public Safety
RAMONA RIPSTON, *Executive Director*
A.C.L.U. of Southern California
JOE KLAAS, *Chairman*
Citizens Against Violent Crime

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