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Two strikes have large impact on prison population

Marisa Lagos, Chronicle Staff Writer
Sunday, July 31, 2011

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Lea Suzuki / The Chronicle
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California's "three strikes" law is best known for locking up career criminals for life, but the vast majority of offenders serving prison time under the sentencing mandate were actually charged under the less-noticed second-strike provision.

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These 32,390 inmates are serving sentences that were doubled as a strike-two penalty, and they account for nearly 20

percent of the state's prison population. Yet most efforts to reform the law have focused exclusively on the third-strike provision, which carries with it a mandatory 25 years-to-life sentence.

As prison costs in California continue to grow, and the state faces a Supreme Court order to reduce its inmate population by more than 30,000 over the next two years, the tens of thousands of second-strikers appear to pose a bigger challenge to state officials attempting to rein in prison costs than the 8,700 people serving time for a third strike.

"We're missing the significance of the second strike," said UC Berkeley's Barry Krisberg, director of research and policy at the school's Institute on Law and Social Policy. "It is having an enormous impact on our prison population, and many second-strikers are serving more time than third-strikers, but when people talk about the policy of reforming three strikes, nobody wants to touch the second strike."

'Arbitrary' sentencing

Under the three strikes law, approved by the Legislature and voters in 1994, anyone who was convicted of a serious or violent felony in the past can be charged with a strike if they commit a new felony. Someone charged with a second strike under the law will face double the prison time, regardless of whether the new offense is serious or violent; those charged with a third strike automatically are eligible for a 25 years-to-life sentence.

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San Francisco Public Defender Jeff Adachi said the law means that someone convicted of petty theft or burglary who had a prior felony could face four to six years in prison instead of two to three years; and someone convicted of armed robbery would spend at least a decade behind bars instead of five years - or perhaps longer if prosecutors added on sentencing enhancements for using a gun.

"The problem with strike sentences is that it's not based on an individual determination of protecting the public and ensuring that the personal characteristics of the accused are taken into consideration," he said. "The rationale for second-strike cases really is arbitrary because you're not making a determination as to whether this person needs to be locked up. It's a mathematical equation that you're up against."

Most past reform efforts have focused on limiting when someone can be convicted of a third strike. Krisberg, however, said the tens of thousands of inmates serving sentences for second strikes demonstrate that piecemeal reform of three strikes will not solve the state's larger prison problem: "stiff, determinate sentencing."

"The fact that second-strikers make up such a huge part of the prison population should tell people that that's where we should focus our energy," he said.

Reasons behind costs

Critics of the law, seen as the harshest in the nation, often focus their complaints on the most egregious cases, such as people serving life sentences for shoplifting, drug possession and other nonviolent offenses. But the costs of the second strike are significant as well.

For one, offenders sentenced in the future under three strikes won't be eligible to be diverted to local jails - even if their most recent crime is nonviolent - under Gov. Jerry Brown's realignment plan, which calls for keeping more low-level inmates in the community. Those sentenced under the law also stay in prison longer, because they are only eligible to earn a fraction of the "good-time" credits that other inmates may accrue.

"That's (one) big difference with strike cases - even if it's a nonserious felony, they have to do 85 percent of their sentence," Adachi said.

Additionally, anyone sentenced under "three strikes" is likely more expensive to house, because under state prison policies, their long sentence automatically classifies them as a higher-security inmate, even if their latest offense was not violent.

Punishment questioned

Jeanne Woodford, a former Corrections Department chief who spent most of her career as a correctional officer, then warden at San Quentin Prison, said the "three strikes" law has unquestionably helped drive the state's prison crowding and spending problems, in part because higher-security inmates must be housed in cells, rather than dormitory-style situations. She said those sentenced under the second strike provision are a bigger issue for state officials than those in prison for a third strike.

"Some of these guys are literally serving 60, 70 years - more time than three-strikers," she said. "The bottom line is that we really do need to look at our sentences. They are just so all over the place that people could commit a very serious crime and get less time than a second-striker who did something far less serious. To be a deterrent, the sentencing system has to be consistent."

Krisberg agreed, pointing to a report he authored in 2008, which concluded that the biggest driver of California's growing prison population isn't the number of criminals behind bars, but the amount of time they spend there. He calls "three strikes" the coup de grace of the determinate sentencing movement, which began in the 1970s and grew over the years to include not just tougher penalties but also fewer opportunities for



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How much is enough?

Longer sentences are especially troublesome when it comes to second-strikers, he said, because they are often eligible for sentencing enhancements on top of an automatically doubled sentence.

"If you get enhancements then a double penalty, you could end up serving 40 years, and it's not subject to (appeal) - they have to serve all their time," he said. "It comes back to the issue: What's enough time? Sometime along the way we've changed the assumption about what's proportionate, what's fair, what people deserve."

Second-strikers also have the potential to drive up prison costs in future years because they tend to come to prison in their 30s and 40s and often have decades-long sentences - setting the stage for growing medical costs as they age. A 2010 report by state auditor Elaine Howle concluded that on average, people sentenced under the law receive a sentence nine years longer than they would have without three strikes, at a cost of \$19.2 billion to taxpayers. Nearly half of that additional cost, \$7.5 billion, is spent on people whose most recent strike is for a nonviolent felony.

The report also found that a small, severely ill portion of the prison population accounts for 25 percent of the approximately \$2 billion the state spends on inmate health care every year.

Aging inmates tend to cost more, said Nancy Kincaid, a spokeswoman for the federal receiver in charge of medical care in state prisons. And, she said, those who are severely ill often have to be treated at hospitals outside prison walls - at an even higher cost to taxpayers.

"Our largest driver of costs is outside contract medical care, at \$390 million a year," she said. "Those inmates are the ones that are ... here long-term and are going to age and likely die in prison. The majority of medical costs come after age 60."

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The cons need remedial kindergarten lessons:

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