

California's Three Strikes Reform Advocates Look Hard at 2012 Ballot Measure

California's three strikes law is broken. The United States Supreme Court ordered the state to reduce the overflowing prison population that is straining California's physical as well as monetary resources late in 2010, and a recent poll found that 74 percent of voters were ready for change to the controversial law.

But those who have long been advocating for reform are waiting anxiously and hopefully for a key donor to step up and provide the financial resources necessary to capitalize on the political opportunity that has opened up before them.

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[http://www.mercurynews.com/ci_18273887?IADID=Search-www.mercurynews.com-www.mercurynews.com&nclick_check=1] those at the forefront of the reform campaign are still waiting.

"We have been fighting to reform the harshest aspects of the three strikes law by any means. There are lots of different ways to ameliorate the harshest aspects: litigation, legislation, and public education," said Michael Romano, director of the Stanford law school's three strikes project.

But the project limits its work to two specific advocacy areas: working on individual litigation on behalf of clients, Romano said, and representing the NAACP Legal Defense Fund in advocating for more systemic reform.

"That is that," Romano said, offering no further comment on a report published in the San Jose Mercury News that his project is involved in an effort to put reform on a November 2012 ballot measure.

If advocates and donors want to move, they'll have to move fast. Garnering public support for a ballot measure takes lots of time and money – at least a year of planning and an estimated \$1.5 million in fundraising are still needed in order to have a chance at winning a majority in favor of three strikes reform.

"I think we will all know by the end of October," said Geri Silva, Director of Families to Amend California's Three Strikes.

Three strikes is a habitual offender law that dictates mandatory minimum sentencing of 25 years to life if an individual in the state of California has committed

and been convicted of three crimes. The law was instituted in 1994 with massive public support following the kidnapping and murder of 12-year-old Polly Klaas by an ex-convict.

Since then, several infamous cases brought negative attention to the law, and led to reform efforts like Cooley's. Gary Ewing was sentenced to 25-to-life under the three strikes law after shoplifting golf clubs; Jerry Dewayne Williams was also given a 25-to-life for stealing a slice of pizza.

While three strikes reformers in the state of California are holding their breath waiting for someone to field a ballot measure in 2012 that would amend the state's controversial three strikes law, many are hoping that such a measure would replicate the judicial model used by Los Angeles District Attorney Steve Cooley.

MODEL LOS ANGELES

Los Angeles District Attorney Steve Cooley's approach to enforcing the three strikes law – in which only felonies, and not misdemeanors, count towards the third strike that would result in a mandatory 25-to-life sentence – is a model that advocates say they want expanded across the entire state.

Three strikes “can be and is a law that removed violent criminals from our society,” said Cooley at a recent symposium on the three strikes law. “But it has also caught up incredibly petty offenders. The ‘gotcha’ mentality of some prosecutors was readily apparent in the early historical application of the law.”

Such application of the law, which Cooley called “grossly disproportionate” to the crimes being committed, led him to run for Los Angeles County District Attorney in 2000. He won that race by a landslide 28 points, with reforming three strikes as “the centerpiece issue of the campaign,” according to Cooley.

Now the LA district attorney's office only pursues 25-to-life sentences in the case of a violent or serious felony as the third strike.

“If the third offense was non-violent and non-serious as defined by California penal code, that individual will not see 25-to-life,” said Cooley.

While the motivation for a ballot measure in 2012 may be a keen sense of justice, activists say the move would have beneficial repercussions for debt-riddled California.

“The budget sucks, the prisons are eating up a lot of that money,” said Silva. “They can reduce it based on non-violent, non-serious, and non-sexual offenders. But for a ridiculous law, most of the guys in there would be out based on that.”

Mandatory minimum sentencing is a key contributor to prison overcrowding, reform advocates argue.

The three strikes law is costing California \$49,000 per prisoner per year; with over 40,000 people imprisoned under the three strikes law, according to the California Legislative Analysts' office, that adds up to nearly \$2 billion a year in costs for the state of California.

Litigation against the state has also spiked "quite a bit," as third-strikers sue against their sentences or over the overcrowded conditions they face, according to Jeannie Woodford, former director of the California Department of Corrections and Rehabilitation, adding further costs.

With such a high cost for prison stays, the state of California could save serious money by reforming three strikes, say activists -- and indeed such an opportunity might present itself with the potential ballot measure upcoming in 2012.

The human cost is also staggering, with the essential warehousing of people caused by overcrowded conditions resulting in a severe cut of social services like rehabilitation and health care and health care.

Arnold Steinberg, a Republican political strategist who supports the Los Angeles model of three strikes implementation, said that non-violent, non-serious three strikers offenders were being put into extreme prison situations, making a clear case for sentencing reform.

"I've toured Gitmo, where I felt perfectly safe," he said. "Then I toured LA County jail, where I felt precisely the opposite."

A three strikes sentence -- and the mandatory minimum sentence of 25-to-life that it requires -- means that prisoners can be classified as much more violent than they actually are.

Elsewhere in the state, jurisdictions are sending three strikes prisoners who are "not your typical gang member to prisons with more violent individuals," according to Woodford.

"More and more of these inmates asking for protective housing," she said. "We were now mixing what were typically drug offenders with more high-level offenders who would generally be getting a 25-to-life sentence."

Add to the fact that California's prisons are overcrowded, with non-violent and non-serious criminals being housed in the same facilities as gangs, the fact that the law in its application is "pretty much dealing with homeless drug addicts," according to Michael Romano, director of Stanford Law School's Three Strikes Project.

“Three strikers are twice as likely as other prisoners to be mentally ill and or physically ill,” said Romano.

PRETTY INTENSE

One such man sentenced to a 25-to-life punishment under the California three strikes law is Isaac Ramirez. He was convicted in 1996 for petty theft with priors for stealing a VCR from a Sears department store. There was no violence involved.

His two priors were theft from a Lucky store and theft of a television from K-mart, both in 1992. After serving a six-month sentence for those first two offenses, he turned to drugs. Four years later, he was sentenced to life in prison for his third theft.

“It was pretty intense for me,” he said.

He was locked up in the highest security prison possible.

“It’s very difficult in there. Racial riots. Lockdowns. Programs are shut down that could help you process,” he said.

The state has cut drug rehabilitation programs and education programs for prisoners due to budget constraints for the past several decades.

Such cuts to rehabilitative programs in prisons are “short-term savings at long-term costs,” according to Matthew Cate, the Secretary of the California Department of Corrections and Rehabilitation.

With the assistance of legal advocates, Ramirez got his sentence overturned and is now a free man. After finding God in prison, he found work as a full-time pastor at a church in Corona.

While Cooley thinks the system as a whole has self-corrected, implementation of three strikes still depends largely on the whim of a particular jurisdiction’s district attorney.

Cooley said that his policy of counting felonies but not misdemeanors towards the third strike has been “very well received by the public at large, who saw it as fair, law enforcement, who saw it as rational, and the courts and the defense bar, who saw it as a good way to go with this powerful, powerful tool.”

Indeed, Los Angeles Police Chief Charlie Beck supports Los Angeles’ unique model. “Justice shouldn’t be cookie cutter,” Beck said.

"I basically agree with the way that Steve Cooley prosecutes three strikes," he said. "You have to have progressive sentencing for continued criminality. To me, that's one of the hallmarks, the tenets of our justice system. But you also have to have some discretion to make sure that you are truly targeting the right people. And I think [Cooley and his team] do that."

While Cooley's model is heralded by Republicans, Democrats, and advocates for and against the complete repeal of three strikes, his policy is not without criticism.

"Steve is the only Republican I've ever voted for, and that says a lot," said Ronald Brown, the chief public defender of Los Angeles County. But that doesn't mean his three strikes policy is perfect. "One of the problems with Steve's policy is he still wants all the discretion to be in the DA's office. My fear is that judges are afraid to make the right call because they have to be re-elected every 6 years."

And Cooley's stance is not, he admits, wildly popular across the state of California.

"I paid a political price for my reform efforts," Cooley said. "Take a look at the last attorney general race."

Cooley lost the 2010 statewide Attorney General race to Kamela Harris, albeit by a razor-thin margin. He speculates that, were he not a reformer on three strikes, he might have won.

Under Governor Jerry Brown, who is tough on law and order, legislators are not interested in reforming three strikes and being perceived as soft on crime, according to Gloria Romero, a former California State Senator who says she pushed for reform and lost her seat as a result.

As a consequence of Sacramento's political hesitation on three strikes reform, advocacy groups are still holding their cards close to their chest with regards to a potential 2012 ballot measure.

"Only the person who has the money to put behind this can say if it's a go or not," said Silva. "But I'm feeling convinced it's going to happen. We know there's interest in it. It's the perfect time."