

Judges use discretion to cut 3-strikes terms



"There's a lot of things wrong with three strikes in my opinion. But ... there's a lot things right about it. ...there is something sick about a society that has to ...say the same thing to individuals."

JUDGE JAMES PIERCE, Sept. 25, 1998, while sentencing Gabriel Mendez, a 35-year old former Long Beach resident to 27 years to life for possession of a firearm by a felon.

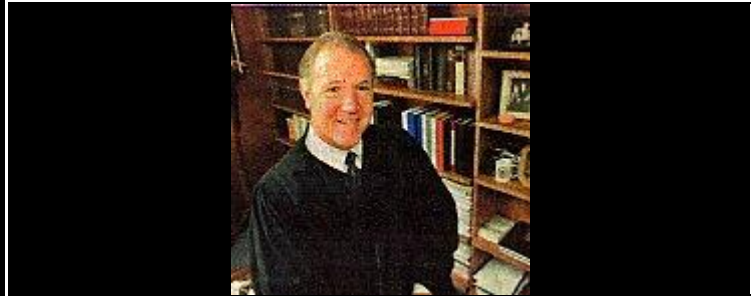


"People will do anything, once they get hooked (on drugs), not to go through withdrawals, and that includes stealing or worse. So it pains me to send somebody saway for 25 years to life, but (the defendant) has no redeeming qualities."

JUDGE VICTOR BARRERA, Nov. 13, 1996, while sentencing Jose Ramirez, a 45-year-old Long Beach man, to 25 years to life for possession of heroin, Ramirez's priors were rape of an incompetent person and forcible lewd conduct on a child.

"This is not the crime of the century, but I believe this is a classic example of the three-strikes law at work and how it is intended to keep career criminals off the street."

JUDGE BRADFORD ANDREWS, June 5, 1997, while sentencing 41-year-old Jose Garcia - a heroin user and three-time robber from Wilmington - to 25 years to life for joyriding.



Editor's note: Almost 80 percent of local three-strikes defendants receive less than the "mandatory minimum" prison term of 25 years to life, approved by voters six years ago, according to a Press-Telegram study of defendants sentenced in the Long Beach courthouse. Most of the reduced sentences stem from plea-bargain deals offered by prosecutors. But judges, too, play a role in reducing third-strike sentences.

By Wendy Thomas Russell

Staff writer

This is a reproduction of the Long Beach Press-Telegram series on Three Strikes. Dated October 30, 2000.

LONG BEACH - Gerry Tyrone Brown's best chance to escape the three-strikes law was staring him in the face. But he didn't much like the way it looked.

Brown, a 44-year-old with a 15-year history of burglaries, had been charged with stealing tools from a residential garage in Long Beach. Under California's three-strikes law, he faced a mandatory 25-year-to-life sentence. But on this day in 1998, a Long Beach Superior Court prosecutor had offered him a deal: seven years in prison in exchange for a plea of guilty or no contest. If he turned down the deal and was convicted at trial, only a judge's mercy could save him from the more ominous three-strikes sentence. And Judge Arthur Jean, who was presiding over Brown's case, made it clear that his hands were tied more tightly than the prosecutor's.

Still, court transcripts show, Brown was hesitant. Seven years didn't seem too "generous" for one commercial burglary, he told Judge Jean.

"Look, Mr. Brown, we have a three-strikes law on the books," warned Jean, who could sense Brown's best chance beginning to fade.

"Essentially, what the people of this state have said is, 'We're sick and tired of being ripped off, of having our homes and cars stolen and burgled and entered and having our garages entered. We're sick and tired of people doing this stuff. And it's time to start increasing prison sentences, time to start putting guys away for longer and longer periods of time.'"

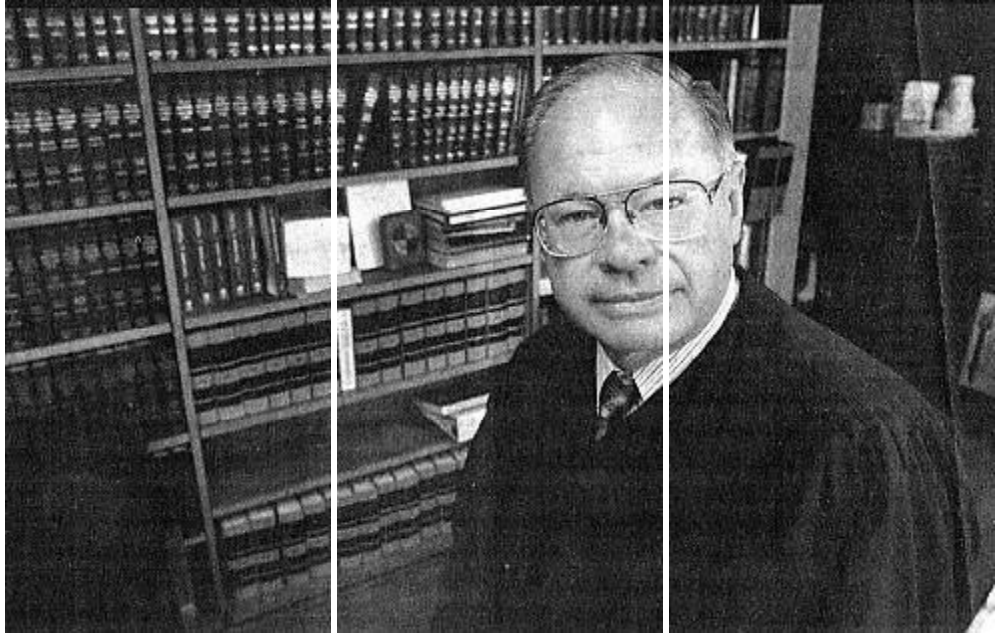
"The voters want that," Jean continued, the governor wants that. The Legislature wants that. My neighbors want that. The people that I see at a community function want that. The jurors want that. The people who are living law-abiding lives in homes, and want to be safe in their homes, and want to keep what they work for, want that.

"So," Jean said, "You're caught up in that whether you like it or not. And that's the way it is. Some pretty tough sentences have come out of this courthouse in the last two years ... We get people going away for 25-to-life for a pack of cigarettes because of their back.' ground, their long history of criminal activity."

The speech was one of many Jean has made over the last six years. Often, he says, felons are oblivious to the ramifications of the law, and it's up to court officials to explain them - especially when a felon is

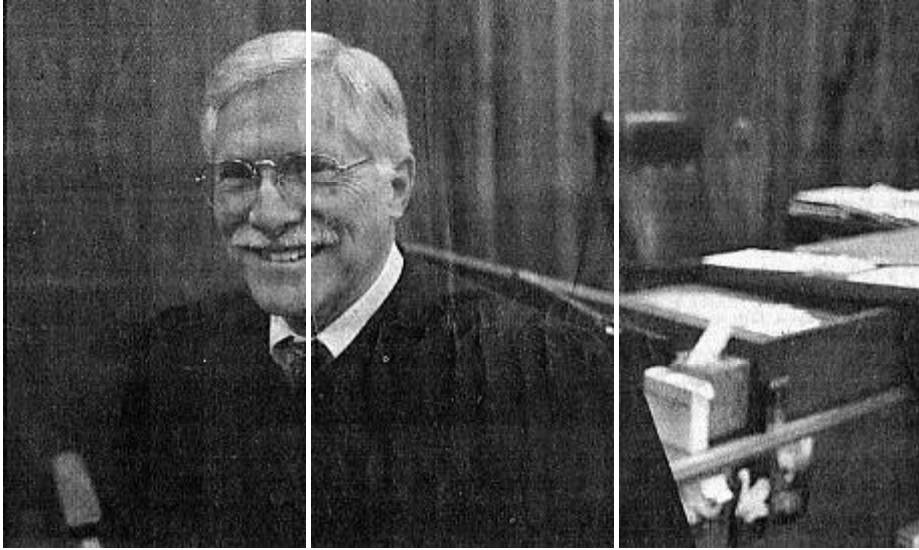
"As much as I dislike the law and would change it if were to have the power, I don't think that I can exercise discretion to strike a strike in this case... The only breaks in (the defendant's) law-breaking record is when he's in custody or in camp or in prison."

JUDGE ARTHUR JEAN, March 21, 1997, while sentencing Ronnie Williams to 25 years to life for forging a check. Williams, now 31, had four burglaries, two robberies and one count of receiving stolen property on his record. His first two burglary convictions were commiffed at ages 14 and 15.



The three-strikes law, which cracks down on criminals with at least two serious or violent felonies on their records, was passed March 7, 1994, in an effort to stop convicted criminals from committing further crimes. Under the law, any felony can count as a third strike.

In fact, records show, thousands of three-strikes candidates, like Brown, have been given chances to avoid the law's clutches.



"The court declines to strike any strikes in this case. Probably if I even considered it, I'd probably be overruled on appeal, but that's not the reason. The reason is the defendant's prior record - especially the priors for which the strikes have been alleged - are very serious and had the great potential for violence back then."

JUDGE CHARLES SHELDON, May 5, 1998, while sentencing Richard Richardson, of Lynwood, to 30 years to life for robbing a Home Depot store in Signal Hill. Richardson's priors included three robberies and a joyriding conviction.

In most cases, its prosecutors who offer to dismiss prior strikes as part of plea bargains. But in 1996, a U.S. Supreme Court case, *People v. Romero*, gave judges the right to strike strikes as well.

Romero was a landmark decision for judges, many of whom felt justice was sacrificed when their sentences were set in stone.

"You cannot turn a judge into an ATM that just spits out a ruling as some kind of equation," says Norwalk Superior Court Judge Michael Cowell.

Many Long Beach criminal attorneys, especially defense attorneys, support judges' discretion, saying it brings balance back to the courtroom.

"Many of the judges here are as offended by imposing 25 to life as the guy on the street would be," says Kenneth McDonald, a deputy public defender. "They are exercising discretion and they are striking priors."

Landmark decision

Unlike prosecutors, judges don't have full discretion. A 1998 Supreme Court decision, *People v. Williams*, set guidelines for dismissing priors in three-strikes cases, effectively prohibiting judges from exercising the breadth of power they exercise in most other cases.

In the *Williams* case, the high court ruled that a prior conviction may be dismissed if present and past felonies, background, character and prospects put the defendant "outside the scheme's spirit."

Trial judges who strike strikes over the wishes of prosecutors are at risk of having their decisions challenged by prosecutors and overturned by appellate courts, which tend to interpret the law more conservatively.

Prosecutors are limited by similar language, but their discretion is rarely appealed. Nonetheless, a judge's considerations in striking strikes are similar to a prosecutor's. They look at the defendant's entire record in combination with the current offense. Then they look at the person's efforts to go straight.

If a third striker is in school or is legitimately providing for a family or can prove he's been a productive member of society, the chances are much greater he'll be treated with lenience.

"What I look for," Long Beach Superior Court Judge James Pierce told one three-strikes defendant, "is an individual who has, in some way, turned his life around and has contributed in some degree or another to society"

Judge's discretion

Robert Francis, of Paramount, escaped the maximum after stealing batteries from a Home Depot store in Signal Hill. While prosecutors said Francis, 44, fit the three-strikes mold, Judge Robert LaFont disagreed. The defendant's court files included a guide to better bowling written by Francis, the self-titled "Sparemaster," and numerous letters in his support written by friends and relatives. LaFont imposed eight years for the theft, noting that Francis' four priors were 1988 arson fires in which no one was hurt.

Denny Moreno - AKA Ruben Penny - might have been as lucky as Francis had he cared a little more about getting his life back on track. The 36-year-old Long Beach resident was convicted of possessing an eighth of a gram of cocaine after burglarizing four homes in 1991.

But at his August 1995 sentencing, Judge Pierce noted that Moreno had been paroled for less than a year when he was discovered with the cocaine.

"This person," Pierce said at the time, "never even contacted his parole officer - ever - in that one-year period; it wasn't even a full one year. He stands before the court using an alias. All his priors have been under different names. This is not a man seeking rehabilitation."

Moreno's sentence: 25 years to life.

Many judges say the biggest question in their minds is whether defendants are likely to commit further crimes. Judges say they look for good risks, and then they gamble.

"There are some cases where you are guessing only whether the person is still committing serious crimes and crimes of violence because such a length of time has gone by (since his or her last serious offense)," says Charles Sheldon, a Long Beach Superior Court judge.

Guessing game

Sometimes the judges guess correctly and sometimes they don't.

Long Beach Superior Court Judge Bradford Andrews says he's had both types of cases. Once, he says, he took a chance on a man charged with stealing aluminum cans out of recycling bins. The defendant had a series of robberies on his record from when he was a teenager, but Andrews decided to strike the man's priors and grant him probation.

Nine months later, the can collector was back in court on a similar theft charge. This time, Andrews says, he got 25 years to life.

Judges are sworn to uphold the law, says Sheldon, and that means they must save their discretion until they're offered compelling reasons to use it.

"So long as judges use good judgment and as long as judges are somewhat on the same wavelength as far as when we strike strikes, then I believe we have built in a way to avoid bad miscarriages of justice," he says.

Judge Jean says he believes third strikes should be limited to serious or violent felonies. But that's not what the law says, so he has to put his personal opinion on the hack burner in the courtroom.

"In being faithful to the law," Jean says, "I find myself committing people on these low-grade felonies to prison for 25 years to life ...and I'm wondering if we, as a society, should be committing our resources to sending these people to prison for the rest of their lives."

Others, like Judge Pierce, put the onus more on the defendants. Some defendants choose to live in ways that repeatedly get them sent to prison, Pierce has said, so imprisoning them for 25 years to life isn't such a stretch. He once told a repeat offender: "You're already doing life..., life on the installment plan."

Longer sentences

A judge's discretion extends past striking strikes.

Often, 25 years to life is the bare minimum a defendant faces, and a judge must decide whether to tack more time onto the sentence. Under the law, if a person's "third strike" consists of more than one felony - a robbery and burglary, for instance - then each felony must be sentenced individually. But it's up to the judge whether to sentence each count concurrently (to be served at the same time) or consecutively (one after the other).

Even before the three-strikes law, other habitual offender laws allowed - and still allow - prosecutors to enhance prison sentences.

Gun enhancements, for example, allow judges to pile extra time on for felons convicted of using a dangerous weapon in the commission of a

crime. And habitual-offender enhancements can add years onto a prison term.

An extreme example of consecutive three-strikes sentencing in Long Beach occurred in Judge Joseph DiLoreto's courtroom three years ago. Demetrous Jackson, a third striker who'd raped his stepmother on several occasions, was given 385 years to life. The sentence is implausible but impactful. If he lived long enough, the 38-year-old would be eligible for parole in 2305.

Whether to strike strikes, run sentences concurrently or invoke sentence enhancements is a delicate decision that must be made on a case-by-case basis, judges say.

Comparing cases

Laid side by side, three-strikes cases can sometimes show strange discrepancies.

Arthur Johnson, for instance, is serving 75 years to life for three burglaries in 1997. The 45-year-old's priors consisted of four burglaries, a grand theft and a drug charge.

Meanwhile, two sex offenders -Terrance Amos, 37, and Eldon Till-man, 40 - were sentenced to less time than Johnson.

Amos - who'd served prison terms for residential burglary robbery and attempted robbery in the 1980s and '90s - was convicted of two counts of molesting a young girl and sentenced in 1997 to 65 years to life.

Tillman, whose priors included a residential burglary with the infliction of great bodily injury used a gun to keep a girl prisoner while he forced her to orally copulate him three years ago. He is serving 40 years to life.

But while judges have discretion under the three-strikes law, a defendant's greatest chance to escape a long sentence lies with the prosecutor in the plea-bargain stages of a case.

That's where career burglar Gerry Tyrone Brown found himself on that fateful day in 1998, as he sat in Judge Jean's courtroom, weighing the judge's lecture on accepting a seven-year deal.

In a three-minute speech, Jean tried to convey the complexities of the three-strikes law. The judge told Brown not to expect any miracles during the trial, nor to expect any clemency during sentencing.

The choice was Brown's to make, but the window of opportunity wouldn't stay open much longer, Jean warned: Take the plea bargain and serve seven years, or go to trial and risk a life sentence.

"In just looking at these allegations on the complaint, you've spent probably about as much time in a courtroom as I have," said Jean, as he scanned Brown's file. "So you make your own choices. You do your own thinking. If I can answer any questions for you, I'd be glad to."

A few moments passed, then Brown's attorney broke the silence. "Your honor," said the defense attorney, "Mr. Brown indicates he will enter a plea of no contest."

Most third-strikes are non-violent, local sentencings show. But most of those sentenced had violence in their past.

By Wendy Thomas Russell

Staff writer

This is a reproduction of the Long Beach Press-Telegram series on Three Strikes. Dated October 31, 2000.

Terry Bryant was 37 years old, homeless and drunk when she stole several pairs of boxer shorts from a Long Beach JC Penney store in July 1997.

The cost of the clothing. \$24.99. The cost of her crime: 25 years to life in a Chowchilla women's prison.

Bryant, who already had two robberies and an assault on her record, was one of 196 defendants sentenced at the Long Beach courthouse to at least that mandatory minimum term during the first five years of California's "three-strikes" law.

The law targets habitual offenders - criminals with at least two serious or violent felonies on their records - who commit another felony, regardless of severity. It also doubles the



sentences for second strikes.

Not all habitual offenders are swept up in the net, however. About 80 percent of the Long Beach third-strike defendants sentencing during the law's first five years received terms of less than 25 to life, primarily through plea bargaining.

To find out who was making the cut, the Press-Telegram reviewed the case files of 191 Long Beach third-strike defendants sent away for 25 to life between March 1994 and March 1999. (Five files were unavailable).

Here's what we found:

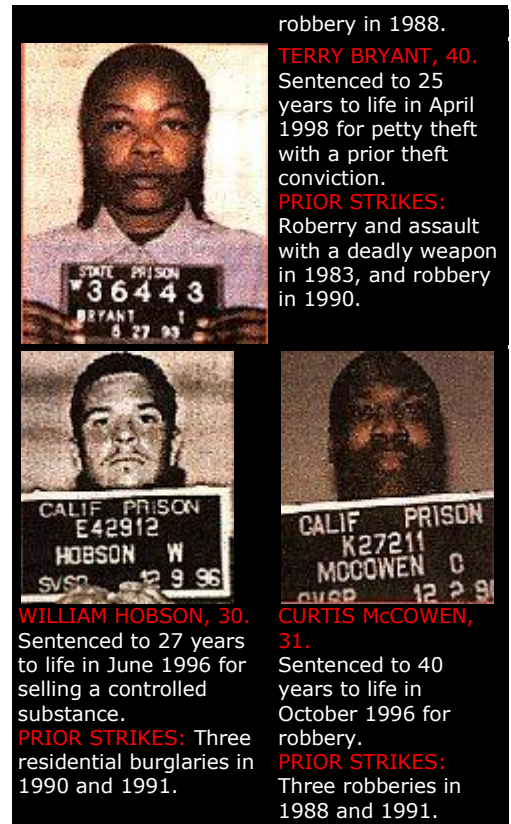
Seventy percent - or 133 - of those studied were convicted of nonviolent third strikes, such as burglary, joyriding or petty theft with a prior theft conviction.

Burglary accounted for 20 percent of the total cases studied. Residential burglaries are considered a serious crime because of the potential for violence, while commercial burglaries are not.

Thirty percent - or 58 - of the 191 were convicted of violent third strikes, such as robbery, assault, child abuse and murder.

Robbery was the most common violent offense, accounting for 13 percent of the 191 cases studied.

More than a quarter of the third-strikers (continued)



robbery in 1988.

TERRY BRYANT, 40. Sentenced to 25 years to life in April 1998 for petty theft with a prior theft conviction.

PRIOR STRIKES: Robbery and assault with a deadly weapon in 1983, and robbery in 1990.

WILLIAM HOBSON, 30. Sentenced to 27 years to life in June 1996 for selling a controlled substance.

PRIOR STRIKES: Three residential burglaries in 1990 and 1991.

CURTIS MCCOWEN, 31.

Sentenced to 40 years to life in October 1996 for robbery.

PRIOR STRIKES: Three robberies in 1988 and 1991.

IN THEIR WORDS

In the first five years of the three-strikes law's existence, 192 men and women were sentenced under it in the Long Beach Courthouse. Here are excerpts from some of their letters:

"I feel if I were more educated about three strikes, or on how to make a living, I would not be here. ... The three-strikes law could be a good law, if it were applied to the right type of criminal, and if the judges had total discretion on how to apply it."

- Luca Argilago, 42. Sentenced to 25 years to life in October 1997 for selling cocaine. Prior strikes: Two residential burglaries.

had at least four prior strikes on their records at the time of their arrest. Among the 191 cases, the number of prior strikes ranged from two to 15. The average was three.

About 12 percent had never been convicted of a violent crime, meaning residential burglary was the worst crime on their records.

Fifty percent had committed no prior crime more violent than robbery at the time of their latest arrest. Robbery means taking property from another person by means of force or fear.

Twelve percent had committed some type of sexual offense in their past. Three-quarters of these sex offenders were locked up for nonviolent third strikes.

Drug possession was logged as the third strike in 17 percent of the cases, and drug sales in another 4 percent. All the possession cases involved cocaine, heroin or methamphetamines; marijuana possession was never counted as a strike.

Juvenile crimes were counted as first or second strikes in 5 percent of the cases. Violent juvenile offenses - such as rape, armed robbery or murder - may be counted as prior strikes if the juvenile was at least 16 years old at the time of the crime.

In scores of other cases, juvenile felonies were present but



"I had served my sentences prior to the bill passing. I was punished for the crimes I was charged with. I feel that it is double jeopardy to use them against me once more, and for a petty theft years later to seal my fate. ... Stealing two pairs of boxers from JCPenney costing \$24 has cost me my life in prison."

- Terry Bryant, 40. Sentenced in April 1998 to 25 years to life for petty theft with a prior theft conviction. Prior strikes: Two robberies and an assault with a deadly weapon.



"We have to share with the worst of the worst, such as killers, violent gang members, rapists and people with assaults. ... They put us in a place where nothing is funny, and if it is you who takes a chance if you laugh. That could get you into an altercation and maybe even stabbed. For a petty offense, why would

weren't counted - either because there were at least two adult felonies that could count instead or because a prosecutor opted to ignore the juvenile offense.

Grocery theft

Marlene Jamison's misdemeanor record worked against her, too. In 1995, Jamison walked into a Ralphs grocery store in Long Beach and walked out with a shopping cart full of groceries, worth about \$360. Jamison, now 46, already had two robbery convictions and more than a dozen misdemeanor convictions for prostitution. She was sentenced to 27 years to life for theft.

Some of the law's toughest critics, such as Los Angeles County District Attorney candidate Steve Cooley, say people such as Jamison should be treated much less harshly, despite their repeated offenses. They say judges and prosecutors should assign third-strike penalties only to violent or serious offenders.

Families to Amend California's Three Strikes, a Los Angeles-based group formed in 1996, says nonviolent or non-serious felonies should be erased from the list of eligible crimes, just as they are in the more than 30 other states with three-strikes laws.

Too often, the group argues, the law is being applied to people who are no longer violent - or who have never been violent.

Isiah Lucas, 36, a three-time residential burglar, is serving a 50-year-to-life sentence for two counts of receiving stolen property. He recently wrote a letter to the Press-Telegram about life as a "lifer" in Lancaster State Prison.

"We have to share space with the worst of the worst, such as killers, violent gang members, rapists, people with assaults," he wrote. "Why would the system do this to us and why do the people, the (Legislature) and even the president allow it to happen!"

War of rhetoric

It's against statistics such as these that the three-strikes debate continues to rage, sparking passionate and politically charged rhetoric from supporters and opponents.

Critics contend that the law doesn't work - that its goal of removing serious and violent recidivists from the streets has fallen far from the mark.

They complain that nonviolent offenders are being bused to already overcrowded prisons to live out the rest of their lives on the taxpayer's dole, that the state's dropping crime rate has nothing to do with a law that sweeps pizza-stealers off the streets, and that the Eighth Amendment, banning cruel and unusual punishment, is being chipped away with each passing three-strikes case.

Supporters of three-strikes say the law is doing exactly what it was intended to do - that its efficacy lies in its ability to catch career criminals committing crimes - and that jailing a rapist is a good thing, even if it's for writing a bad check.

Common sense asserts that any law pulling people out of the cycle of crime must get some credit for dropping the crime rate, they argue. And it's about time that victims' rights win out over the rights of felons.

Critics are correct when they say the law is being invoked most often for nonviolent crimes. Of the cases studied, 70 percent involved nonviolent third offenses.

The crimes were burglary, drug possession, petty theft with a prior theft conviction, possession of

the system do this to us and why do the people, the (Legislature) and even the President, allow it to happen?"

- Isiah Lucas, 36, Sentenced to 50 years to life in April 1998 for two counts of receiving stolen property. Prior strikes: three residential burglaries.

"It gives the local prosecutor the power to choose who gets life and who doesn't. It also let the D.A. go back in time 10, 20, 30, 40, 50 years or even further to charge you with a serious or violent felony that you finished parole on."

- Jeremiah Sheppard, 56. Sentenced to 25 years to life in October 1996 for two counts of receiving stolen property. Prior strikes: Four robberies between 1966 and 1972.

"How do I feel about the law as it's written? It stinks. It sucks. The public was lied to and cheated."

- Derril Peck, 46. Sentenced to 25 to life in September 1996 for a second-degree burglary. Prior strikes: Four residential burglaries in 1985, and assault with deadly weapon in 1985 and a robbery in 1977.

"My feelings concerning this law is that it's very unfair and unfortunate that it wasn't used for its purpose, and that so may people are being affected in the wrong ways."

a firearm by a felon, drug sales, receiving stolen property, eluding police or reckless driving, joyriding, forgery, grand theft, failure to register as a sex offender, burning property and extortion.

"There are certain three-strikes cases that we understand," says Kenneth McDonald, a Long Beach deputy public defender. "We don't understand - and think it's outrageous - when it's a petty theft, a rock of cocaine, stealing a car."

"It's the most painful thing to watch," adds one courtroom assistant, speaking on condition of anonymity. "People don't realize that (criminals) are going away for as little as stealing a pack of batteries"

Range of profiles

Records show, however, that even those picked up for nonviolent offenses represent a wide range of profiles. The more sympathetic among them include middle-aged men whose once-serious or violent crimes have waned into theft, young men whose prior strikes were committed as juveniles, and people who have never raised a fist or weapon to another person, but instead have spent countless nights crawling into empty houses searching for stereos to pawn.

Joseph Pires, Jr., for example, robbed several people between 1975 and 1982. But in recent years, the 45-year-old had turned away from violence. In the '90s, he was convicted of fraud and receiving stolen property. Then, three years ago, Pires shoplifted from a San Pedro Top Value Market. He was sentenced to 25 years to life.

John Davis, 28, had a short, youthful rap sheet. He was twice convicted of robbery - once when he was 16 years old, and again when he was 19. Then, in 1997, Davis burglarized a car and was sentenced a year later to 25 years to life. Of the 191 third-strikers studied, he was one of 11 whose juvenile offenses counted as strikes.

William Hobson, 30, couldn't even drink legally when he was convicted of residential burglary - two in 1990 at the age of 19, one in 1991 at the age of 20. In 1995, he was convicted of selling drugs in the 1100 block Daisy Avenue.

He is now serving 27 years to life in prison.

McCrimmon and Hobson were two of the 22 strikers studied who had never been convicted of a violent crime. Residential burglary was the worst crime on their record.

If the three-strikes law hadn't existed at the time, McCrimmon would have faced a maximum sentence of three years in prison plus up to three years for his prior offenses. In all likelihood, he would have been paroled by now.

Past records

"Nonviolent third-strikers" aren't necessarily sympathetic ones. There are those who have made a habit of sticking guns in store clerks' faces, whose two-and three-year prison stints have done little to curb their criminal behavior, and whose earlier violence hasn't waned at all, but who happened to get caught selling drugs rather than assaulting a stranger.

Jeffrey Martin's criminal history runs the gamut. In 1977, he was convicted of manslaughter and assault with a deadly weapon. In 1980, he was convicted of rape, robbery and burglary. He was convicted of robbery in 1988, and again in 1991. But his luck ran out in 1995, when the 38-year-old Compton man tried to cash three stolen checks at a Long Beach bank. His crime was forgery, but his two-decade felony career netted him 25 years to life. Without the three-strikes law, Martin would have faced less than four and a half years in prison, plus up to five years for his prior offenses.

Like Martin, more than a quarter of the 191 third-strikers studied had at least four previous serious or violent crimes on their records.

Rodney Jones, 38, had been imprisoned numerous times during his lifetime. Between 1982 and 1993, the Lynwood resident burglarized seven homes and was convicted of six counts of receiving stolen property - a crime often charged when burglary can't be proven. His career hadn't changed four years later when he was arrested, once again, for burglary. But the law had changed, and he was sent to prison for 50 years to life.

- Curtis McCowen, 31. Sentenced to 40 years to life in October 1996 for robbery. Prior strikes: three robberies in 1988 and 1991.

William Morrison, 32, had two convictions for armed robbery on his record before he was caught with a gun two years ago in the Long Beach hotel where he'd been living. Given his track record, officials said, Morrison was probably waiting for his chance to commit another armed robbery. He was sentenced last year to 25 years to life.

Worst cases

The 58 remaining third-strikers studied were those imprisoned for violent third strikes: robbery, assault with a deadly weapon, sexual assault, murder, terrorist threats, carjacking, kidnapping, assault or battery of a police officer, battery, shooting into an inhabited dwelling, child abuse, arson or voluntary manslaughter.

Gregory Burr's crimes escalated through his criminal career. In 1986, when Burr was 22, he was convicted of burglarizing a home. In 1989, he was convicted of armed robbery. And in 1998, he was convicted of aiding and abetting a second-degree murder and attempted murder.

According to prosecutor Marilyn Seymour, Burr stood by as his buddy fatally shot Danielle Williams in her Long Beach apartment during a dispute over drugs. The conviction signified Burr's third - and most brazen - strike, and he was sentenced to 110 years to life in prison.

Had the three-strikes law not been in effect, Burr still would have faced a hefty sentence: 26 years to life plus up to 15 years for his prior offenses, Seymour says.

Troy Mendenhall, 33, showed a similar escalating pattern. He served prison terms for assault with a deadly weapon in 1985 and again in 1990. Two years ago, the San Pedro man was convicted of robbery, assault with a deadly weapon, kidnapping in the commission of a carjacking and eluding a police officer. His sentence: 121 years to life.

Robert Creswell's mother might be alive today if the three-strikes law had been enacted a decade earlier. The 63-year-old Long Beach man had a record littered with robberies, drug convictions and burglaries dating back to the 1950s. In November 1996, Creswell severely beat his 81-year-old mother, who died three months later. He was sentenced last year to 55 years to life in prison.

Cases reviewed Ultimately, says Stephen Kay, head deputy at the Long Beach District Attorney's Office, it's the person's criminal record - not his third strike - that spells his fate.

Determining which strikers deserve life sentences requires in-depth reviews of each case, he says. Shoplifter Terry Bryant, for instance, had two robberies and an assault with a deadly weapon on her record, along with a felony drug charge and some misdemeanors.

It is this procedural step - studying each prior case - that justifies locking up drug users and shoplifters for prison terms usually allotted to rapists and murderers, some prosecutors say.

"You're not sending them away for petty theft with a prior," Long Beach Deputy District Attorney Christopher Frisco stresses. "You're sending them away for their felony history."

If it weren't for a drug offense, for instance, two-time sex offender Jose Ramirez, of San Pedro, would still be on the streets. Ramirez, 45, raped a 31-year-old mentally disabled woman in 1981. Six years later, he forced a lewd act upon a 15-year-old girl. His third offense, possession of heroin, was far less serious than his previous two, but it was the one that got him locked up for 25 years to life.

Fifteen of the 28 sex offenders studied were, like Ramirez, picked up for nonviolent crimes.

It takes only two previous serious or violent felonies to invoke the three-strikes law, but some of the strikers studied had dozens of felonies on their rap sheets. Many were on parole when their third strike was committed. George Payton, 53, was picked up for a petty theft after committing 15 robberies between 1969 and 1989. Had the three-strikes law been on the books during the height of his criminal activity, his last 11 robberies would have been avoided.

Others, such as 30-year-old Mark Williams, had relatively few felonies on record. In 1992, he was convicted by a single jury of two residential burglaries. Four years later, under the three-strikes law, he was sentenced to 25 years to life after he tried to sell stolen goods to a Long Beach pawn shop.

Even misdemeanor convictions may be used to underscore a person's felony record, although they don't count as strikes. Rarely registered in court files, they sometimes show up in transcripts of third-strike sentencings.

Prisoner's newsletter

Richard Keech, an 80-year-old prisoner at the California Men's Colony in San Luis Obispo, offers a unique perspective on the law. Keech, of East Long Beach, garnered media attention in 1996 when he shot his daughter's husband to death and was sentenced to 35 years to life. While not a striker himself, Keech wrote in his own newsletter about the addition of strikers to the longterm prison populations

"Thanks to (three) strikes," he wrote, the prison is "populated with a lot of decent guys who are largely victims of a somewhat over-eager (district attorney and) court system where careers are based on conviction ratios."

He added: "I am in prison because I killed a man. I can accept that a few years in prison is a fair trade. But my friends around me who face the same hardships I do aren't all as lucky. One is in prison for life because he was convicted of shoplifting paint cans at Home Depot. His ability to face that destiny for that reason calls for a greater bravery than mine does."

Keech says the three-strikes net is too wide. That's the crux of the three-strikes debate.

Long Beach Superior Court Judge Richard Charvat, who sentenced Terry Bryant to 25 years to life, knew that her third strike - stealing men's underwear from a department store - would hardly shock the public's conscience.

But, he says, he had little choice.

She was a drug user and a petty crook - and she had a violent streak.

"She just had total recidivist behavior, and her rehabilitation efforts were nil," says Charvat, now a civil court judge.

"But don't think I didn't think about it (afterward). I tell you, you lose sleep over some of these things."

To hear activists talk, there are two types of felons being locked away for 25 years to life under California's three-strikes law:

Rapists and pizza thieves.

The controversial law, passed in 1994, provides prison sentences of 25 years to life for people with two or more serious or violent felonies on their records who go on to commit another felony, violent or not.

In debates, three-strikes supporters like to cite Richard Allen Davis, whose crime and callousness are widely credited with sparking passage of the law. A paroled rapist, kidnapper and robber, Davis snatched a 12-year-old Petaluma girl from her bedroom and killed her in 1994.

Opponents invoke the case of Jerry Dewayne Williams, a former robber who stole a piece of pizza from a group of boys near the Redondo Beach Pier and got 25 years to life. His sentence was later reduced following public protests.

The crux of the debate should third-strike sentences go only to those whose third strike is serious or violent has become a leading issue in the Los Angeles County District Attorney's race.

Incumbent Gil Garcetti's office prosecutes both kinds of third-strike cases violent and nonviolent disposing of most of them with plea-bargained lesser sentences.

Challenger Steve Cooley says if he's elected, he would stop prosecuting nonviolent crimes as third-strike cases. That stance would have eliminated about 70 percent of the third-strike sentences imposed in the Long Beach courthouse during the law's first five years.

So, who are the people the county has been sending away for 25 years to life? How serious were the crimes that ultimately put them in prison? And what were the previous crimes that set them up for third-strike status in the first place?

To find out, the Press-Telegram studied 191 of the 196 Long Beach cases that ended in three-strikes convictions during the law's first five years. (Five of the case files were unavailable for review.)

Our study revealed:

Men far outnumber women: 187 of those studied are men, while only four are women.

Their average age is about 39.

Of the 70 percent convicted of nonviolent third offenses, the most common third strikes were burglary, drug possession, petty theft and possession of a firearm by a felon.

Most of the remaining 30 percent committed robbery as a third strike. Other crimes included assault with a deadly weapon, rape and murder.

Many of the third-strike crimes were committed in the neighborhood where the perpetrator lived.

Two men are on the list twice for separate third-strike offenses. Their sentences will be served consecutively.

More than a quarter of the third-strikers had at least four previous strikes serious or violent felonies on their records at the time of their arrest. The number of prior strikes ranged from two to 15; the average was three. The average number of prior felonies, including strikes and nonstrikes, was five.

The prior strikes on record many of which were out-of-state offenses ran the gamut. The most common was robbery.

More than 40 percent had some type of drug offense reflected in their criminal files. Others may have had drug problems that were not recorded.

Twelve percent had committed some type of sexual offense in their pasts. Three-quarters of them were locked up for nonviolent third strikes.

Five percent had committed at least one of their prior strikes as a juvenile. Violent juvenile offenses such as rape, armed robbery and murder, may be counted as prior strikes if the juvenile was at least 16 years old at the time.

Fifty-eight of the strikers studied received longer sentences than 25 years to life. They were convicted of more than one "third strike," or other sentence-enhancement laws were invoked in addition to the three-strikes law.

For example, Glen Schafer was sentenced to 28 years to life for drug possession because the law allows an additional year to be tacked onto his sentence for every prior felony. He had three.

LONG BEACH'S 3RD-STRIKE CONVICTIONS

NAME	AGE	THIRD STRIKE	WORST PRIOR STRIKE	NO. OF PRIOR STRIKES	NO. OF OTHER FELONIES	SENTENCE
Barger, Mark	24	Assault on police officer	Robbery	2	0	25/L
Wilson, David	41	Assault on a police officer	Robbery	3	1	35/L
Torres, Padilla	31	Assault with a deadly weapon	Robbery	2	0	26/L
Brock, Aaron	34	Assault with a deadly weapon	Robbery	3	0	111/L
Clayton, Curtis	34	Assault with a deadly weapon	Robbery	3	1	80/L
Bryant, Wayne	47	Assault with a deadly weapon	Robbery	3	1	25/L

Dominici, Joseph	34	Assault with a deadly weapon	Robbery	8	0	25/L
Duron, Guadalupe	46	Assault with a deadly weapon	Manslaughter	2	1	31/L
Burroughs, Marichal	31	Assault with a deadly weapon	Attempted murder	2	0	25/L
Mendenhall, Troy	34	Assault with a deadly weapon	Assault	4	0	121/L
Jones, James	30	Assault with a deadly weapon	Injury on a spouse	3	2	49/L
Burkley, Albert	35	Attempted carjacking	Robbery	3	0	35/L
Kent, Michelle	30	Attempted robbery	Robbery	2	3	30/L
Faletogo, Aragon	25	Attempted robbery	Robbery	2	0	25/L
Fidel, Mark	46	Attempted robbery	Robbery	3	1	30/L
Thomas, Marvin	37	Attempted robbery	Robbery	2	3	35/L
Canela, Ascension	34	Battery	Burglary	4	0	40/L
Stewart, Tony	37	Battery of police officer	Robbery	2	4	30/L
Warren, Timothy	33	Battery with serious injury	Robbery	2	1	35/L
Bennet, Robert	47	Carjacking	Rape	2	2	44/L
Cooksey, Kenneth	40	Child abuse	Rapte	2	2	25/L
Creswell, Robert	63	Inflicting harm on elderly adult	Robbery	4	6	55/L
Amos, Terrance	37	Lewd act with child under 14	Robbery	3	0	65/L
Allison, Andre	34	Lewd act with child under 14	Lewd act with child	6	1	25/L
Thomas, Robert	29	Murder	Kidnapping	2	0	120/L
Jackson, Bobby	43	Murder	Robbery	3	2	40/L
Burr, Gregory	36	Murder	Robbery	2	4	110/L
Tillman, Eldon	40	Oral copulation with child under 14	Assault	2	1	40/L
Martin, James	36	Rape	Robbery	2	0	39/L
Jackson, Demetrius	39	Rape	Lewd conduct	2	0	385/L
Garrett, Robert	42	Robbery	Arson	2	0	35/L
Lewis, Jason	22	Robbery	Burglary	2	0	25/L
Lewis, Kevin	38	Robbery	Burglary	4	0	25/L
Mingo, Frederick	44	Robbery	Robbery	10	1	35/L
Andrew, Billy	40	Robbery	Robbery	2	0	40/L
Bridgewater, Michael	42	Robbery	Robbery	2	0	35/L
Brown, Ernest	32	Robbery	Robbery	3	0	37/L
McCowen, Curtis	32	Robbery	Robbery	6	0	40/L
Moore, Anthony	35	Robbery	Robbery	3	5	40/L
Ransom, Bryan	42	Robbery	Robbery	2	2	35/L
Delatorre, Steven	46	Robbery	Robbery	2	0	55/L
Lackey, Harvey	30	Robbery	Robbery	2	3	25/L
Stove, John	28	Robbery	Robbery	2	2	25/L
McGee, Kendle	35	Robbery	Robbery	2	2	30/L
Pabon, Miguel	34	Robbery	Robbery	2	0	25/L
Richardson, Richard	-	Robbery	Robbery	3	1	30/L
Aguirre, Frank	52	Robbery	Forcible sodomy	4	0	40/L
Funches, George, Jr.	40	Robbery	Lewd act with child	5	3	40/L
Burts, Tony	36	Robbery	Assault	3	2	35/L
Blanco, Jose	24	Robbery	Assault	3	0	35/L
White, Lawrence	37	Robbery	Assault	4	2	65/L
Garcia, Lawrence	51	Robbery	Manslaughter	4	2	25/L
Hightower, Donald	34	Sexual battery by restraint	Robbery	2	3	87/L
Ford, Tyrone	35	Shooting into inhabited dwelling	Robbery	2	1	35/L
Teal, Bennie	40	Terrorist threats	Spousal rape	4	1	25/L
Jones, Gregory	41	Terrorist threats	Manslaughter	3	3	29/L
Smith, Michael	30	Threatening school officer	Robbery	2	2	25/L
Sage, Gerald	60	Voluntary manslaughter	Robbery	2	4	26/L
McCoy, Jerry	35	Attempted burglary	Robbery	3	6	25/L
Panapa, Luliano	36	Burning property	Arson	2	0	25/L
Brown, Gordon	37	Burglary	Arson	4	1	27/L
McCrimmon, Richard	37	Burglary	Burglary	3	2	28/L

Trujillo, Gregory	38	Burglary	Burglary	5	1	25/L
Washington, James	37	Burglary	Burglary	2	6	25/L
Hollins, David	43	Burglary	Burglary	2	12	35/L
Johnson, Charles	38	Burglary	Burglary	4	2	35/L
Martinez, Carlos	35	Burglary	Burglary	3	0	31/L
Thomas, Mark	31	Burglary	Burglary	3	3	40/L
Johnson, Arthur	45	Burglary	Burglary	4	2	75/L
Jones, Rodney	38	Burglary	Burglary	7	7	50/L
Sanchez, Ruben	43	Burglary	Burglary	3	1	25/L
Rodriguez, Juan	37	Burglary	Robbery	2	0	25/L
Bonds, Mark	40	Burglary	Robbery	3	1	25/L
Clementa, Librado	39	Burglary	Robbery	4	1	32/L
Hammond, Frank	46	Burglary	Robbery	3	5	25/L
Jamison, Marlene	46	Burglary	Robbery	2	1	27/L
Lee, Kenneth	39	Burglary	Robbery	3	3	28/L
Pratcher, Kenneth	33	Burglary	Robbery	2	2	35/L
Wommack, Eugene	55	Burglary	Robbery	2	0	30/L
Blackwell, James	40	Burglary	Robbery	2	5	25/L
Brown, Richard	46	Burglary	Robbery	3	3	25/L
Chavez, Michael	35	Burglary	Robbery	14	2	25/L
Davis, John	28	Burglary	Robbery	2	1	25/L
Dursma, Joseph	38	Burglary	Robbery	3	1	25/L
Dursma, Joseph	38	Burglary	Robbery	3	0	25/L
Fanning, Cory	37	Burglary	Robbery	4	3	25/L
Finley, Robert	42	Burglary	Robbery	2	3	35/L
Hampton, Michael	42	Burglary	Robbery	3	2	35/L
Parker, Jamel	30	Burglary	Robbery	2	0	25/L
Westbrook, Earl	48	Burglary	Rape	5	1	25/L
Allen, Andre	38	Burglary	Rape	4	0	25/L
Acker, Gordon	56	Burglary	Assault	2	0	35/L
Clark, Verlin	39	Burglary	Attempted murder	3	2	25/L
Morgan, Michael	42	Burglary	Assault	3	5	25/L
Peck, Derril	47	Burglary	Assault	8	5	25/L
Walter, Duke	44	Burglary	Assault	4	0	65/L
Fitzpatrick, Mark	37	Burglary	Kidnapping	3	2	25/L
Murphy, Robert	28	Burglary	Assault	3	0	25/L
Mercer, Frank	41	Drug possession	Arson	2	1	25/L
Moreno, Denny	36	Drug possession	Burglary	4	0	25/L
Means, Ray	40	Drug possession	Burglary	3	1	25/L
Clark, Harvey	44	Drug possession	Robbery	5	2	25/L
Wiley, Leon	48	Drug possession	Robbery	4	1	25/L
Collins, Robert	39	Drug possession	Robbery	7	2	25/L
Hamilton, Marques	45	Drug possession	Robbery	2	4	25/L
Roundtree, Benny	38	Drug possession	Robbery	2	7	30/L
Santellane, Jesus	39	Drug possession	Robbery	3	0	25/L
Stadtländer, William	42	Drug possession	Robbery	3	10	25/L
Wood, Michael	47	Drug possession	Robbery	5	1	25/L
Benavidez, Robert	62	Drug possession	Robbery	3	2	25/L
Lopez, Adolfo	35	Drug possession	Robbery	2	3	25/L
Cooper, Craig	41	Drug possession	Lewd act with child	2	3	25/L
Ramirez, Jose	45	Drug possession	Rape	2	0	25/L
Schafer, Glen	35	Drug possession	Forcible sodomy	3	1	28/L
Steward, Mark	43	Drug possession	Rape	3	1	25/L
Morrison, Don	42	Drug possession	Rape	3	3	25/L
Cortez, Jesse	34	Drug possession	Assault	3	1	25/L
Gross, Charles	58	Drug possession	Assault	3	0	25/L
Marcus, Sonya	51	Drug possession	Assault	2	10	25/L
Prince, Kelvin	42	Drug possession	Assault	3	3	25/L
Carter, Jerome	43	Drug possession	Assault	3	2	25/L
Fortnell, Neil	39	Drug possession	Assault	3	1	25/L
Mino, Randy	41	Drug possession	Assault	3	1	25/L
Dixon, Robert	49	Drug possession	Kidnapping	4	0	25/L
Jenkins, Marnell	26	Drug possession	Assault	2	0	25/L
Walker, Michael	47	Drug possession	Assault	6	0	26/L
Williams, Charles	38	Drug possession	Assault	2	3	25/L
Baskin, Wendel	26	Drug possession	Robbery	2	0	25/L
Fomby, Joseph	30	Drug possession	Robbery	3	0	25/L
Noussias, Nicholas	41	Drug possession for sale	Robbery	2	4	25/L
Bristol, Donald	35	Eluding police officer	Burglary	2	1	25/L
Southward, Henrico	27	Evading police officer	Robbery	2	0	25/L
Yeager, Ronald	35	Evading police officer	Robbery	3	0	25/L
Silva, Ralph	38	Evading police officer	Assault	3	1	25/L
Edwards, Vicenson	43	Evading police officer	Attempted murder	3	1	53/L
Downton, Robert	39	Extortion	Rape	4	0	25/L
Ivan, Bryant	47	Failure to register as sex offender	Lewd act with child	2	2	25/L

Williams, Ronnie	31	Forgery	Robbery	2	5	25/L
Martin, Jeffrey	38	Forgery	Rape	8	0	25/L
Hughes, Ralph	52	Forgery	Attempted murder	3	0	25/L
Green, Andre	36	Grand theft	Robbery	3	0	25/L
Williams, Kevin	37	Grand theft	Robbery	4	2	25/L
Tucker, Milton Jr.	35	Joyriding	Robbery	2	0	25/L
Garcia, Jose	41	Joyriding	Robbery	3	1	25/L
Gomez, Nelson	39	Joyriding	Forcible sodomy	5	1	25/L
Patterson, Wally	46	Joyriding	Manslaughter	2	0	25/L
Nagle, James	37	Petty theft with a prior theft	Burglary	4	1	25/L
Saunders, Mike	29	Petty theft with a prior theft	Burglary	3	3	25/L
Stevens, Philbert	37	Petty theft with a prior theft	Burglary	3	2	25/L
Williams, Norman	37	Petty theft with a prior theft	Burglary	2	4	25/L
Bradley, William	35	Petty theft with a prior theft	Robbery	4	1	25/L
Bernoudy, Ricky	50	Petty theft with a prior theft	Robbery	3	3	25/L
Catrieer, Mary	50	Petty theft with a prior theft	Robbery	5	5	25/L
Collins, Alonzo	38	Petty theft with a prior theft	Robbery	5	1	25/L
Perryman, Donnie	47	Petty theft with a prior theft	Robbery	3	2	25/L
Payton, George	53	Petty theft with a prior theft	Robbery	15	0	25/L
Pires, Joseph	45	Petty theft with a prior theft	Robbery	10	2	25/L
Stadtlander, William	42	Petty theft with a prior theft	Robbery	3	10	25/L
Popielski, Paul	53	Petty theft with a prior theft	Rape	3	7	25/L
Bryant, Terry	41	Petty theft with a prior theft	Robbery	3	1	25/L
Compian, Christopher	40	Petty theft with a prior theft	Assault	2	3	25/L
Jones, Nataniel	54	Petty theft with a prior theft	Assault	4	3	25/L
Wilson, Kevin	39	Petty theft with a prior theft	Assault	4	9	25/L
Gaither, Willie	45	Possession of firearm by felon	Burglary	3	3	25/L
Jones, Terril	29	Possession of firearm by felon	Robbery	3	0	25/L
Oatis, Shedrick	27	Possession of firearm by felon	Robbery	2	3	25/L
Parrish, Tracy	36	Possession of firearm by felon	Robbery	2	2	25/L
Daniels, Eric	36	Possession of firearm by felon	Robbery	3	1	25/L
Mendez, Gabriel	35	Possession of firearm by felon	Robbery	5	2	27/L
Morrison, William	32	Possession of firearm by felon	Robbery	2	0	25/L
Spells, Everet	44	Possession of firearm by felon	Robbery	2	3	25/L
Tufunga, Glen	40	Possession of firearm by felon	Robbery	2	4	29/L
West, Perry	37	Possession of firearm by felon	Robbery	2	1	25/L
Hill, Willie	44	Possession of firearm by felon	Rape	6	1	25/L
Smith, Anthony	35	Possession of firearm by felon	Manslaughter	3	1	25/L
Shibata, Oscar	29	Possession of firearm by felon	Manslaughter	2	1	25/L
Williams, Mark	30	Receiving stolen property	Burglary	2	0	25/L
Davidson, Paul	33	Receiving stolen property	Burglary	3	1	25/L
Luca, Isiah	36	Receiving stolen property	Burglary	3	0	50/L
Sheppar, Jeremiah	56	Receiving stolen property	Robbery	4	3	25/L
Ball, Richard	35	Receiving stolen property	Robbery	2	0	25/L
Jenkins, Eddie	39	Receiving stolen property	Robbery	6	0	25/L
Romero, Joseph	35	Receiving stolen property	Robbery	6	0	25/L
Argilago, Lucas	42	Selling/transporting drugs	Burglary	3	2	25/L
Woodard, Derrell	25	Selling/transporting drugs	Robbery	2	1	25/L
Maisonet, Jose	39	Selling/transporting drugs	Robbery	2	5	25/L
Rios, Alberto	41	Selling/transporting drugs	Murder	2	0	25/L
McKinley, Terry	36	Selling/transporting drugs	Attempted murder	2	2	25/L
Padilla, Nestor	66	Selling/transporting drugs	Assault	3	3	25/L
Hobson, William	30	Selling/transporting drugs	Burglary	3	1	27/L
Lockett, Gregory	49	Selling/transporting drugs	Rape	7	0	25/L

At Lancaster State Prison, convicts pass time in the exercise yard or in their bunks. There's not much else.



Inmates pass time inside the Lancaster State Prison exercise yard. More than 4,000 inmates are housed at Lancaster, Los Angeles County's largest penitentiary.

By Wendy Thomas Russell

Staff writer

This is a reproduction of the Long Beach Press-Telegram series on Three Strikes. Dated November 2, 2000.

LANCASTER Rap music plays softly on a radio as Carl Jones steps into his cell at Lancaster State Prison and clicks on an overhead light.

The 38-year-old Los Angeles man convicted five years ago of burglarizing Crenshaw High School is one of hundreds of "third strikers" now serving 25-years-to-life sentences in Los Angeles County's largest penitentiary.

Jones says he was caught, empty-handed, crawling out of a window on campus. His prior "strikes" were two burglaries, in 1989 and 1990.

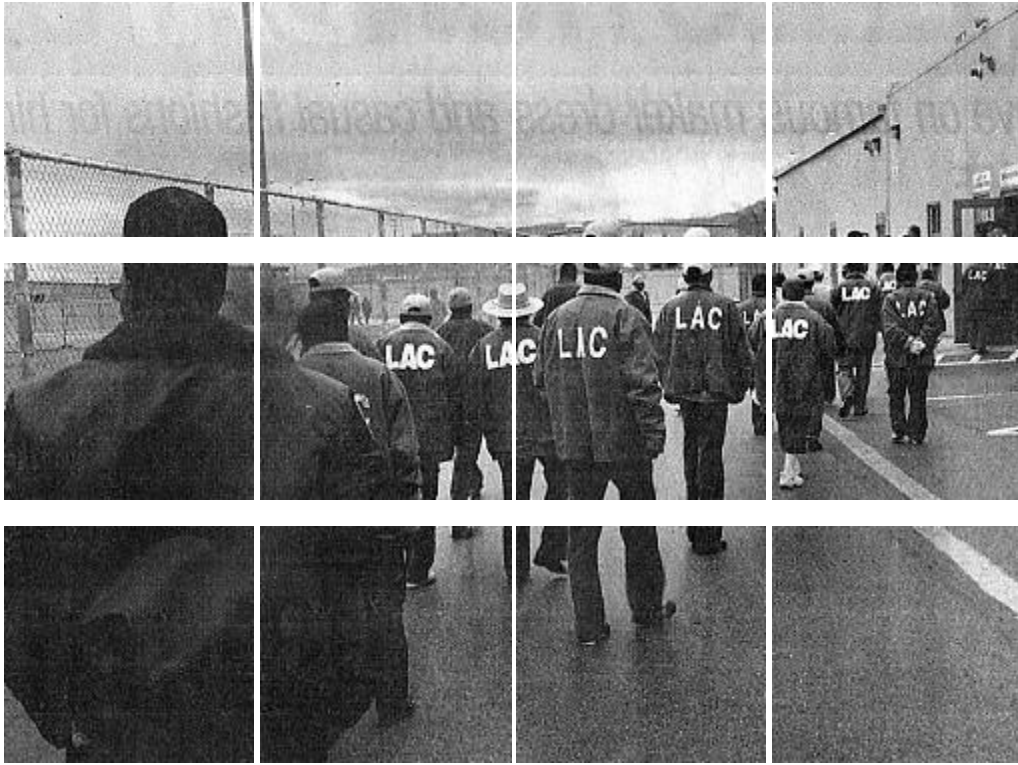
His new home, a 10-by-6-foot concrete cell that he shares with another inmate, is as comfortable as it can be with a metal sink and lid-less toilet affixed in one corner.

Bunk beds take up half of the cramped but clean living space, and pictures of Jones' three children, ages 12 to 18, adorn one wall. A single shelf opposite the bunk beds brims with personal items: magazines, snack food, a television set.



Carl Jones, 48, sits in his cell at Lancaster State Prison, serving a thrid-strike sentence for second-degree burglary. His priors were two burglaries in 1989 and 1990.

STRIKES: Boredom reigns



Inmates are escorted from the exercise yard to the education room. Other doors lead to a library, and art room, a chapel and clothing exchange. At the chapel, regular sermons are well attended. Tall wire fencing encloses a Native American sweat lodge, where people of all nationalities pray and meditate.

They are reminders of a world Jones knows he may never see again, and, on good days, they manage to mask the darkness of a life behind bars.

On this rainy morning, Jones rests on his lower bunk and longs, as he does so often, for freedom.

"If I had another chance out on the street," says the three-time burglar, "I'd get my life together. I'd do everything it takes to do the right thing. I'm not a bad person; I never have been."

No more chances

While Jones would like someone to believe in him to give him just one more shot in society the three-strikes law does the opposite. It assumes the worst about repeat felons: that they won't ever learn to "do the right thing."

Outside the heavy steel door of Jones' cell, inmates in orange jump suits or blue chambray shirts and jeans buzz around metal tables in what can best be described as a lobby. The large, open room is surrounded on three sides by two levels of cells. The white linoleum floors and concrete walls are shiny and spotless.

Lancaster's population, which fluctuates daily, is 4,142 inmates, says prison spokeswoman Diane Gonzalez. Most are housed in one of 2,000 cells, divided into four "blocks," or campuses. The overflow crowd sleeps in a gymnasium.

Here, in cell block B nicknamed Bravo it's a typical day.

Inmates arise by 5:30 a.m. and begin filing out of their cells and into the dining hall at 6 a.m. Those with jobs begin their 9-to-5 shifts, as clerks or cooks, librarians or porters.

Others are free to roam the yard or loiter in the lobby. On this morning, two TVs placed high on one wall are largely ignored. Most inmates prefer to talk, pace or just sit quietly and observe the workings of a caged culture.

Inmates are ordered back to their cells by 8:45 p.m., but there is no specific lights-out time unless a lock-down occurs. That's when trouble occurs such as a fight between inmates and guards force inmates to stay in their cells 23 hours a day. Then, they're fed in their cells and prohibited from showering. This can go on for several weeks.

Community Center

The only forms of rehabilitation occur in a rectangular building a few yards from the cell block. The non-descript, gray building houses a series of rooms including the dining hall that are all accessible from the yard: a library, an art room, a school, a chapel and a clothing exchange.

"It's a little community inside a community," says Gonzalez.

The dining hall, like the rest of the prison, is sparsely furnished. Shiny silver tables and stools are bolted to the floor below large signs reading, "No Warning Shots Fired." That doesn't mean the guards won't shoot, Gonzalez explains. It means that the concrete walls pose a ricochet risk to bystanders, so any shots fired will be directed at an inmate.

Prisoners eat in shifts and bring their own plastic utensils and cups to and from their cells. Meals are prepared on a monthly schedule.

"It's basically like your school cafeteria menus," Gonzalez says.

On this day, the makeshift chapel complete with pulpit and fold-up chairs is empty, save for one inmate entertaining himself on an electric organ. Religion is embraced here, and regular sermons are well attended, Gonzalez says. Tall wire fencing encloses a sweat lodge for Native Americans, where people of all nationalities mediate and pray.

"We offer numerous religious services for almost every denomination under the sun," Gonzalez says.

Books and art

The library has several bookcases full of literature, pulp fiction and resource guides, but law books are the most frequently checked out, Gonzalez says.

The art room allows an outlet for creative inmates.

But much more of the prisoners' time is spent in the prison yard, where a large, paved track surrounds several sports fields soccer, basketball, handball. Members of prison gangs hunch over picnic tables. Others stand aside, smoking cigarettes and talking in hushed tones. Most wear blue jeans and dull gray jackets with "LAC" on their backs.

Guards do random pat-down checks and keep an armed watch from a tower overlooking the yard. Prisoners speak relatively openly of drugs being smuggled in and sold on the yard.

The yard allows inmates some privacy away from prison personnel to discuss their plans, criminal or otherwise. A few years ago, Gonzalez says, the state ordered all weight-lifting equipment, except exercise bars, banned from prison yards. Too many inmates were getting "beefed up" only to continue their lives of violence and intimidation on the streets.

In the cell blocks, just as in the yard, prisoners congregate largely by race. Whites use one shower, blacks another, Latinos a third. Eight prisoners do duty as barbers, says Correctional Officer Duane Bennett, and it's rare to see a barber cut the hair of a man of a different race.

Prison officials don't approve of the voluntary segregation, Bennett says, but they don't try to stop it. It's one of the few ways in which prisoners can assert their own boundaries.

The rest of the time, the prisoners are treated largely like children sleeping when told, moving in single file, abiding by rules every hour of the day.

Law unfair?

Not surprisingly, those convicted under the three-strikes law tend to say it isn't fair.



Curtis Roberts, 37, Gets a haircut. The third-striker pleaded guilty to robbery and burglary. His priors were robbing a drive-through restaurant of \$76 and possessing \$20 worth of rock cocaine. He blames all of his criminal activity on his drug habit.

Randy Johnson, a 40-year-old Bakersfield man with a neck covered in tattoos, says he was convicted in 1998 of possessing heroin after serving prison time twice for robbery.

"I don't feel it's right that someone like me" should be targeted for a three-strikes sentence, he says. "I got kids. I got family. I want to see my family grow up."

Few inmates here think of themselves as career criminals a term they save for the most ruthless offenders, such as rapists and murderers.

When asked what alternative the state has to deal with repeat offenders, the inmates overwhelmingly suggest rehabilitation. They blame their crimes on drug use, primarily. And they complain of too few programs aimed at helping prisoners kick their addictions and stay out of trouble.

Johnny McKinney, 50, says he knew nothing of the three-strikes law when he was sentenced in 1994 for stealing plastic containers in Los Angeles a petty theft. The former robber and burglar says he should have been put in a voluntary work program to pay back the debt, and then allowed to transition back into society.

For Curtis Roberts, a 37-year-old third-striker from Big Bear, prison means sobriety.

A husband, father and former plumber, Roberts says he's one of a few prisoners who admit their crimes in his case, a couple of robberies, a burglary and cocaine possession. Now, he's serving 50 years to life.

"I never would have done any of this without the drugs," he says. "I do believe I should be punished, but I don't believe it should have cost me that much."

Multiple burglaries

Richard Banales, a tall, lanky man of 35, was caught with a small quantity of heroin, which he says wasn't his. He says multiple burglaries in 1991 made him eligible for the three-strikes law, which he hopes will be amended soon.

"I think it'll change," says Banales, a former San Fernando Valley resident. "There's too much money being spent (that) could be spent on rehabilitation. Is 25 years of incarceration going to kick their habit?"

Says another inmate, 32-year-old Michael Banyard: "You have people here who may have drug problems, but they are not 25-to-life people. They are not murderers."

Banyard had a robbery and an assault with a deadly weapon on his record before he was sentenced in 1996 for possessing a small amount of cocaine. The scar extending from his left eye to his cheek bone is a symbol of his hard life a life that isn't getting easier.

"Everyone has hope," he says, glancing around at the men who make up Lancaster State Prison. "We don't really believe that something like this could happen."

Richard McCrimmon's day in court came and went.

In 1996, he was convicted of stealing two speakers from an old-model car parked in the 2200 block of East 10th Street in Long Beach. With three residential burglaries already on his record, he was sentenced to 28 years to life under the three-strikes law.

Before the law took effect, McCrimmon would have faced no more than one year in prison, with an additional three years for his prior burglaries.

But McCrimmon, 36, was optimistic.

Maybe, he thought from his cell in Lancaster State Prison, the Second District Court of Appeal would find his sentence constituted cruel and unusual punishment. Maybe the judges there would see he didn't deserve to die in prison.

Like thousands of third strikers, McCrimmon pinned his hopes for freedom on the appeals court. And like thousands, his hopes have been shattered.

More than 92 percent of three-strikes convictions appealed to the Second Appellate District - one of six districts in California - are affirmed in full, says Joseph Farnan, a Los Angeles appeals attorney. That means the three-judge panel finds no reason to overturn the convictions or send the defendants back to the trial judge for resentencing.

In McCrimmon's case, San Francisco attorney Chris Redburn argued that his client's sentence constituted cruel and unusual punishment - a violation of the Eighth Amendment. He noted that the prisoner's prior strikes took place in 1985 and 1986.

"The punishment imposed on Mr. McCrimmon is among the most harsh known to our criminal justice system," Redburn wrote in a brief. "He received a sentence of 28 years to life for taking speakers from a 'junkie' car."

McCrimmon's punishment was disturbingly higher than that imposed for much more serious offenses, Redburn argued. In the absence of prior strikes, one might have received no more than four years for disfiguring someone with acid, for instance, or sodomizing a child.

But most strikes cases fail to prove the "cruel and unusual punishment" theory, which requires a penalty to be "so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity."

Farnan says the Second District's pat response is: "How can it be unusual if we have 1,000 cases (just like it)?"

Jay Glaser, a Long Beach defense attorney, takes issue with that logic.

"Just because we're doing it frequently, that makes it OK?" he asks. "We said the same thing about asbestos."

But the appeals court hasn't sat idly by watching trial courts make all the decisions, either.

Stalking, burglary

Gordon Acker, 56, was sentenced in 1996 to 60 years to life after being convicted of stalking and burglarizing a woman in Long Beach. His priors - a residential burglary and assault with a deadly weapon - were almost 15 years old at the time.

Two years ago, the higher court ruled the sentence was too harsh, and Long Beach Superior Court Judge Margaret Hay reset the penalty at 35 years to life.

Sentences also get reduced when courts of appeal decide to overturn three-strikes cases on technicalities.

Robert Taylor, 41, was sentenced in April 1996 to 25 years to life for felony joyriding, having been convicted of aggravated robbery in both 1979 and 1983. But the appeals court said the jury in Taylor's case should have been able to consider misdemeanor joyriding as an alternative to felony joyriding.

The court granted Taylor a new trial in late 1997. And, as part of a subsequent plea bargain, he agreed to spend 32 months in Mule Creek State Prison.

When Los Angeles County voters go to the polls Tuesday to elect a district attorney, they'll be voting not only for a man, but for a policy on the much-debated "Three Strikes and You're Out Law."

A vote for District Attorney Gil Garcetti would affirm his policy of pursuing three-strikes prison sentences 25 years to life for violent or nonviolent repeat offenders whose previous records are littered with violent or serious offenses.

Challenger Steve Cooley, on the other hand, says he would enforce the law only when a third strike is serious or violent a simple change that cuts to the core of what three-strikes opponents have been trying to do for six years through the courts, the Legislature and voter initiative.

Cooley's softer enforcement wouldn't change the law itself, but would remove its effects from hundreds of third-strikers in Los Angeles County every year.

In Long Beach, for example, more than 90 nonviolent, nonserious offenders were sent to prison for 25 years to life during the law's first five years, a Press-Telegram study found. While their third strike wasn't defined as serious or violent, their prior histories were, with first and second strikes ranging from burglary to rape, from robbery to murder.

Under Cooley's leadership, most of these people would have been prosecuted for their new crimes but not under the three-strikes law, with its longer minimum sentence.

Key issue

"This is a critical core issue and one in which we differ," says Cooley, a head deputy in Garcetti's office. "I emphasize that the nature of the new (third) offense is a very important factor in whether we seek a 25-to-life sentence."

Garcetti agrees that the three-strikes law is a "big issue" in the election and stands behind his track record.

"This is one of the key reasons that crime is down," he says. "We have vigorously enforced the law, and it has truly acted as a deterrent."

But has it? That's a hard question to answer.

It's true that the number of crimes reported in California has dropped steadily over the last seven years, according to the state Department of Justice.

But analysts point out that crime is down everywhere. In San Francisco, where the three-strikes law is little enforced, reported incidents of crime have fallen at the same rate as in Los Angeles County. Those rates mirror declines around the country, including states with no three-strikes law.

It's nearly impossible to isolate individual factors that affect crime rates, most analysts say. A strong economy, school programs, better policing and changing demographics have all been cited.

But common sense must give some credit to the three-strikes law, says Long Beach Superior Court Judge Bradford Andrews, who has presided over numerous three-strikes cases.

"It seems logical," he says, "that (when you) take the most active criminals and put them in prison for long periods of time, it's got to have a beneficial effect."

Too early?

What clouds the issue is that only six years have gone by since the first third-striker was sent to prison. Many of the inmates now serving 25 years to life would still be serving time without the three-strikes law. Their most recent offense and their record of prior offenses would have guaranteed them years of prison time.

Under one law, for example, anyone convicted of a serious felony can get an extra five years in prison for each prior serious felony on his record, as long as the crimes are less than 10 years old.

Another law adds one year for each prior felony when the new offense is any felony meriting a prison sentence. The priors must be less than five years old.

These laws are often imposed in combination with the three-strikes law, elevating a sentence, for example, from 25 years to life to 35 years to life.

So, the real comparisons in crime rates may not come until a few more years have passed. That's when, without the law, the first third-strikers would normally be getting out of prison. Not that the law is being pressed to its maximum potential, despite Garcetti's tough stance.

In Long Beach, the Press-Telegram found, nearly 80 percent of three-strikes defendants sentenced between March 1994 and March 1999 received less than the law's so-called "minimum" term. In downtown Los Angeles, the percentage was even higher, according to figures provided by the Los Angeles County District Attorney's Office.

Strikes ignored

Most of the reduced sentences resulted from prosecutors or judges "striking strikes" ignoring one or more of a defendant's previous crimes in exchange for a guilty plea.

In an interview, Garcetti acknowledged that plea bargains play a major role in his policy. He says his prosecutors offer deals to all third-strikers deemed deserving, and pursue 25 years to life for the rest. "The rest" means those whom prosecutors see as a consistent danger to society or a drain on the system.

Garcetti says he's enforcing the law the way voters wanted it enforced. Despite the number of plea bargains, the county still provides 42 percent of the state's three-strikes prison population, according to the California Department of Corrections.

That's far more than any other county in the state the closest being San Diego County, which provides only about 9 percent of three-strikes prisoners.

Mike Reynolds, the law's author, says placing the three-strikes issue at the forefront of the county's district attorney race is entirely appropriate. He says it's up to voters to help mold the law by electing a district attorney who thinks the way they do.

"This law is reaffirmed every four years when you re-elect a D.A.," says Reynolds, a Fresno man who wrote the three-strikes initiative after his daughter, Kimber, was killed by two repeat felons. "The voters have the opportunity to adjust the law to the intensity that they want."

In fact, from its inception, the three-strikes law has always made a terrific foundation for a campaign platform.

The law began as Reynold's brainchild, and its tough-on-crime concept was as simple to understand as the strikeout call it was named after: Commit two serious or violent felonies, and the next felony gets you 25 years to life.

Slow start

Initially, legislators didn't see a need to increase prison terms. When then-Assemblymen Jim Costa and Bill Jones took Reynolds' proposal AB 971 to the state Assembly's Public Safety Committee, the bill was roundly rejected.

Reynolds persisted, starting a petition drive to get a three-strikes initiative on the ballot. And it was during the drive that Reynolds got his big albeit tragic break: the kidnapping and murder of 12-year-old Polly Klaas.

In a case that gripped America, Polly was snatched from her Petaluma bedroom on Oct. 1, 1993, and strangled by Richard Allen Davis, a paroled felon.

Polly's father, Marc, came out in support of Reynolds' initiative. So did California voters, who were deeply troubled by the murder and driven to do something about it.

"All of a sudden," Reynolds says, "we couldn't answer the phones fast enough."

The petition, which needed 380,000 signatures to qualify for a ballot measure, grew to 840,000 in a matter of weeks.

"It was the fastest-qualifying initiative in the state's history," Reynolds says. "There was no way that we would have qualified this without the Polly Klaas murder. It was a timing thing; it really was."

On March 7, 1994, Wilson signed the three-strikes law, with almost unanimous backing from the Assembly and state Senate. Eight months

later on Nov. 9 72 percent of the state's voters voiced their own support by passing Proposition 184 at the polls.

Since then, the sheer number of defendants who qualify for the three-strikes law almost 1,000 during the first five years in Long Beach alone has proved just how many offenders spend their lives walking through the revolving doors of prison.

Dire predictions

When the law was passed, opponents said it would lead to overcrowded prisons and other ill effects. Even Garcetti opposed the law, saying third-strikers would opt for trial in most cases because they faced 25 years to life if they admitted the charges.

But most of the negative forecasts have not held up.

In 1994, a study by RAND Corp., a Santa Monica-based think tank, predicted the three-strikes law would be prohibitively expensive to enforce. It said the Department of Corrections' portion of the state's general fund would jump from 9 percent in 1994 to 18 percent by 2002.

It's true that prison construction is on the rise it has been since the 1980s. But the 1999-2000 general fund allotted just 7.2 percent of its total, or \$4.6 billion, to the department. That was \$21,243 a year for each inmate, the department said.

Peter Greenburg, co-author of the RAND report, says the study was based on full enforcement of the law. But with so many criminals avoiding enforcement through plea bargains or judicial discretion the law has never reached full implementation.

Also, he says, the study's authors didn't count on a nationwide decline in crime.

"That's totally taking the pressure off both the courts and the prison system in terms of capacity," Greenwood says.

Some analysts predicted the law would clog the courts because defendants, facing mandatory terms of 25 years to life, would refuse to plead guilty. But the process of striking strikes has encouraged defendants to plead guilty and avoid the possibility of a third-strike sentence.

Second- and third-strike cases do account for a large number of criminal trials, but they haven't caused the anticipated logjam. Long Beach judges have estimated that about half of their criminal cases are two-strike and three-strike cases.

"There was a lot of anxiety when it first came out," says Judge Andrews. "Ultimately, it sort of worked itself out."

Falling crime rate

At the time the law was passed, its backers predicted that crime would plummet. And crime has, in fact, dropped significantly in the last several years.

But the role of the three-strikes law in decreasing crime shouldn't be overstated, says the Justice Policy Institute, which examined crime reports from the state's 12 largest counties in a report last year.

The institute, a San Francisco-based research group, compared the three-strikes sentences to the total number of felonies by county. It

says counties with the highest three-strikes sentencing rates Sacramento and Los Angeles saw no greater decline in crime than counties with the least San Francisco and Alameda.

Whatever the predictions, opponents of the law have made many attempts to get it changed over the past six years. But in the court of public opinion, the jury's still out.

A survey organized by professor Robert Nash Parker of the Presley Center for Crime and Justice Statistics, at the University of California at Riverside, quizzed about 4,200 Californians over a six-month period ending in September 1999.

The random phone survey found that 96 percent supported harsh sentences for violent offenders, but only 47 percent thought serious property crimes should be treated with similar vigor.

But earlier this year, a petition authored by Families to Amend California's Three Strikes, a Los-Angeles based organization made up mostly of third-strikers' relatives, failed to gain the 420,000 signatures required for a ballot initiative.

Their measure would have allowed voters to reconsider whether to limit a third strike to serious or violent felonies.

"I don't think we were close," conceded a co-founder of the California Three Strikes Project, the name given to the campaign.

Voter support

Ballot results in California's March 2000 primary showed a public tide in favor of stricter sentencing guidelines for repeat offenders. Proposition 21, authored by former Gov. Pete Wilson, expanded the list of crimes eligible as strikes to include extortion, threats to victims or witnesses, gang-related felonies and the use of a firearm in the commission of a felony. It also raised burglary to violent-crime status.

Attempts at softening the law through the Legislature have been short-lived.

Two years ago, Sen. Tom Hayden, D-Los Angeles, tried to pass Senate Bill 79, aimed at limiting the third strike to serious or violent felonies. After his bill was struck down on the Senate floor, Hayden came back with a gutted version that proposed a task force to review the law and make recommendations.

That version died early this year, as did a similar bill, Assembly Bill 2447, by Assemblyman Rod Wright, D-Los Angeles. It needed 41 Assembly members to vote yes; only 24 did.

Before Wright's bill died, Hayden aide Rocky Rushing lamented what he saw as continued embarrassment for California if the three-strikes law went unchanged.

"Petty thieves and junkies will continue to be sent away for 25 years to life," he said, "and the state will continue to waste valuable resources."

Part of the challenge in getting the law revised statewide is that the three-strikes initiative passed by voters requires a two-thirds vote in the Legislature to change it. And two-thirds is almost insurmountable, Rushing said.

Court rulings

Another hope for reformers lies in the state and federal supreme courts.

In January, the U.S. Supreme Court rejected a petition to hear the case of Michael Wayne Riggs, a man sentenced to 25 to life after stealing a bottle of vitamins from a supermarket. In a dissenting opinion, four of nine justices said they had "grave reservations" about "wobblers" being used as third strikes.

Wobblers are low-grade crimes such as joyriding or petty theft with a prior theft conviction that can be filed as either misdemeanors or felonies.

Some defense attorneys hold out hope that the next similar case will get the fifth vote needed for a hearing.

It wouldn't be the first time a higher court ruling has changed the way California treats third-strikers. And the court doesn't always come down on the same side.

In 1996, in *People vs. Romero*, the California Supreme Court gave judges the discretion to erase prior strikes. That was a win for three-strikes defendants.

Then in 1998, in *People vs. Benson*, the state Supreme Court upheld the prosecution's right to count closely related crimes as multiple offenses. A single incident involving robbery and assault convictions, for example, could count as two prior strikes. That was a win for the prosecutors.

But the Supreme Court has chosen not to remove the state's right to use nonviolent crimes as third strikes, despite a number of petitioners asking it to.

Nonviolent crimes

Opponents of the law say they're concerned over the number of third-strikers whose final crime was nonviolent burglary, drug possession, petty theft, among others. The *Press-Telegram* found that 70 percent of those convicted of third-strikes in the Long Beach courthouse during the law's first five years were arrested for nonviolent third crimes.

To Deputy Public Defender Kenneth McDonald, putting petty crooks in prison for mandatory life terms undermines the job of the court.

"The whole purpose of the criminal justice system is to temper the people's desire to get even," he says. "Three strikes doesn't temper that. It's out of proportion to what the person did." If given the chance, the law's opponents would like to see petty offenses, juvenile offenses, multiple strikes and old strikes all removed from the list of past crimes that count toward a third-strike sentence.

What's more, they say, the law shouldn't be retroactive. By making it apply to crimes committed before the law was passed, felons have no chance to take back past plea bargains struck in a day when their crimes had less bearing on future cases.

In 1988, for instance, a felon could agree to plead guilty to two counts of aggravated assault in exchange for a short jail term. Now, if he's

a third-striker, he's looking at 25 to life for any felony.

"The detriment of three-strikes is that it is a very large net," says Long Beach prosecutor Christopher Frisco, who supports the law. "And, in that net, you trap defendants who are not necessarily dangerous criminals and who would get sent away for 25 years to life for a nonviolent felony because they had one brush with the law when they were a juvenile."

Appeals fail

But California's appellate courts have not been sympathetic.

The Second District Court of Appeal, for example, upheld a sentence of 25 years to life for Alonzo Collins, 37, a third-striker who stole a microwave oven from a Montgomery Wards store in the Long Beach Plaza mall.

Collins "has relentlessly pursued a criminal career since 1980," said the three-judge panel in its written decision. "He asks us to look at the microwave theft in a vacuum and determine that his sentence is unduly harsh. But we must look at the entire picture, which reveals that (the) defendant will never comport himself legally."

Stephen Kay, head deputy for the district attorney's Long Beach branch, says each case is carefully reviewed and offers are made to those defendants deemed deserving of a second chance and sometimes a third, fourth or fifth.

The weakness in the system, say critics, is that it's sometimes hard to tell which third-strikers are deserving and which aren't.

"Everyone wants to lock up bad people," says Reynolds, still a three-strikes activist. "We're just having a little trouble figuring out who these bad people are."

But three-strikes comes closer than any other law in sorting out the good from the bad, he says. Sure, there may be some who don't belong in prison for the rest of their lives, he says. But there are many more who do.

"It's about chances and who's gonna get them," Reynolds says. "And, at some point, you need to say that the next chance has to belong to the would-be victim."

Klaas opposed

Meanwhile, the Klaas family has come out vehemently against the three-strikes law, saying it puts petty thieves on par with Polly's murderer, and there is something inherently wrong with that.

In a published letter, Joe Klaas once wrote: "Added to the grief that Polly's death has caused, my family now regrets that the law passed in her name casts too wide a net, fails to target the hard-core offenders it set out to reach and has diverted critical funds from crime prevention and education."

Even some prosecutors, such as Norwalk's Head Deputy District Attorney John Lynch, say tough-on-crime laws may be popular but they're also expensive.

Lynch, who ran against Garcetti in 1996, says such laws are powerful crime-fighters but the state may not be able to afford them for much

longer.

"It's a pendulum," Lynch says. "Now, it's swung pretty much as far as it can swing." But many prosecutors say the three-strikes law is a powerful crime-fighting device they hope to have in their tool boxes for years to come.

And including nonviolent crimes in the law's net is part of what makes it effective, Reynolds says. In states where the law applies only to violent offenders, few have been prosecuted under it. Reynolds says convicts know that.

"You think you're going to bluff these guys?" he says. "They've seen tough laws come and they've seen tough laws go. And nothing has gotten their attention. Now, this is getting their attention."