



# Negotiating Three Strikes

## The Governor shut down Proposition 66, but reforms may be coming

By [Bobbi Murray](#)

When an ebullient Governor Arnold Schwarzenegger held a November 3 news conference to comment on the elections and all the ballot initiatives that his star power had helped make and break, among the broken was Proposition 66, the initiative to reform California's Three Strikes law.

The measure was defeated handily, 53 percent to 47 percent, when it had once looked like an easy winner. The reform measure enjoyed a 41-point lead in some polls until the governor took a last-minute central role in crushing it. For one thing, he pulled in former Governor Pete Wilson, who wrangled an Orange County billionaire to pour in \$1.5 million. Then the movie action-hero-turned-governor also starred in a seemingly endless loop of scare-tactic television commercials - using a configuration of "facts" so skewed that a superior court judge had ruled they couldn't be used in the official ballot arguments. So it was a little surprising that Schwarzenegger announced at his post-election press conference an interest in changing the controversial California law, which, unlike any other in the country, counts any felony - not merely those considered by law to be serious or violent - as a third strike requiring a 25-to-life sentence.

"I'm going to have conversations with Attorney General Bill Lockyer and you know, with the legislators," the governor declared to the assembled press corps, promising to "look into the Three Strikes system and see if there is anything that ought to be adjusted." And indeed, last week a spokesman for the attorney general's office confirmed that initial conversations between the offices of Lockyer and Schwarzenegger had begun.

But the attorney general's spokesman was emphatic about just how preliminary the discussion has been thus far. It's just one indication of just how difficult it may be to get Three Strikes legislation "adjusted," as the governor puts it. Any changes - from tinkering to turning the statute upside-down - must again go on the ballot, because Three Strikes was initially passed as a statutory initiative. "That presents a unique sort of problem," said Nathan Barankin, Lockyer's communications director. "The legislature can't just pass a bill the governor signs. Any changes would have to be ratified by the people."

But even getting reform through the legislature - the first step toward the ballot - could be tricky, given how gun-shy politicians are about being seen as weak about crime. Assemblywoman Jackie Goldberg has carried reform legislation that tracks closely with Proposition 66 reforms for several sessions now, and each time the bill has been killed by inaction. Legislative timidity was doubtless ratcheted up by the results of the

election and the way it has increased Schwarzenegger's political influence.

Despite fear-mongering by the opposition, Proposition 66 would not have flung open prison doors for child molesters and thugs, as the Schwarzenegger commercials warned. The initiative would have amended the law so that the third strike had to be a violent or serious felony - averting injustice in the future, as supporters saw it.

Another reform crucial to those already incarcerated: Proposition 66 would have permitted third strikers an appeal process that could enable them to be tried for the crime that constituted the third strike instead of receiving an automatic life sentence on strike three. "You'd go back to the same court, and it's set aside as a strike, and the person can be sentenced for the real thing," Goldberg explained in a phone interview. "It could be a third strike, or not," depending on the crime.

This last detail - providing a chance at a new trial and reduced or altered sentence for those already doing 25-to-life under the Three Strikes law - is non-negotiable for Families to Amend California's Three Strikes, or FACTS. "There's no way we can support anything that doesn't include retroactivity," said Geri Silva, FACTS's Executive Director.

It's also the part most likely to be jettisoned if Three Strikes reform ever does wend through the legislature to the ballot. Assemblyman Mark Leno, chair of the Assembly Public Safety Committee and a Proposition 66 supporter, doubts that any reform will be retroactive to permit a chance at resentencing for three-strikers now behind bars.

Schwarzenegger's press office had no comment on which way he leans on this matter, but his position will be critical. "You only have a chance of passing it if the governor has given even behind-the-scenes signals that he'll sign something," Leno said in a phone interview. Whatever passes the legislature before going to the ballot will not get there without a consensus led by the governor. "I don't think we're going to get anything retroactive through the legislature," Leno said.

But Goldberg expressed optimism both on the prospects for reform and getting retroactivity into the mix. "The fact that it took over \$8 million in the last few days and scaring everyone, shows we have momentum," she said. The political opening may even be provided by Schwarzenegger, who, Goldberg argued, wants to maintain a moderate image. The initial strong support for Proposition 66 may have made him want to get out in front of some reform.

One wild card remaining is the powerhouse California Correctional Peace Officers Association (CCPOA), the prison guards union, which was central to the passage of the three strikes initiative in 1994 and funneled a over a million dollars into defeating Proposition 66.

Their history suggests that they may obstruct any moves at reform, but it may be better for them politically to go along with any changes the governor tries to advance. They are further on the defensive as the prison system comes under increasing scrutiny for a series of apparent human rights abuses, from inmates forced to fight gladiator-style by armed guards to the inmate who bled to death in his cell while guards allegedly watched the Super Bowl and ignored his screams. The scandals have put the union under the microscope, accused by lawmakers and rights advocates of abetting a code of silence that covers for the perpetrators. CCPOA didn't return calls for comment.

FACTS's Silva says that the coalition that backed Proposition 66, which includes the ACLU and the Drug

Policy Alliance, a national organization for drug law reform founded by billionaire George Soros, is considering its next move. "All the players are out there," says Silva, "all talking, all meeting so we can come together on something that includes retroactivity so that third strikers in for nonserious, nonviolent crimes can get resentenced."

"There could be a way to modify the law where there'd be broad consensus," said Barankin, of the attorney general's office. But could there be a consensus if a new initiative didn't provide a chance at resentencing for those already imprisoned? "We're getting way ahead of ourselves here," Barankin cautioned, "because no one has put pen to paper on this."

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