

Requesting Resentencing Under Three Strikes Reform

On November 6, 2012, California voters approved the Three Strikes Reform Act of 2012, also known as Proposition 36. Proposition 36 amended the Three Strikes Law by making it less harsh, and by adding a resentencing procedure for some prisoners who were sentenced under the former Three Strikes Law. Please note that the new law can be very technical and this section is intended only as a brief summary. Family members and prisoners should be aware, however, that the law requires a petition for resentencing to be filed by November 6, 2014.

WHO IS ELIGIBLE FOR RESENTENCING?

Proposition 36 created a “post-conviction release proceeding” for any prisoner who is serving a life sentence under the Three Strikes Law for a crime that is not a serious violent felony, and who is not disqualified for other reasons.

A qualified prisoner may petition to be resentenced as a “second strike” offender – and avoid a life sentence – *unless* the court determines that resentencing would create an unreasonable risk of danger to public safety.

There are two steps in the process:

1. Eligibility determination: whether the changes in the law apply to the prisoner, and
2. Public safety determination: whether the court will decide that resentencing is appropriate in his case; in other words, whether the court believes releasing the prisoner creates an unreasonable risk to public safety.

WHO IS NOT ELIGIBLE FOR RESENTENCING?

A prisoner is not eligible to be resentenced under Proposition 36 if any of the following apply:

1. The prisoner was not sentenced to 25 to life because he had two or more "strike priors" on his record at the time he was convicted;
2. The offense for which the prisoner was sentenced to an indeterminate term of imprisonment was a serious or violent felony, a felony that requires registration as a sex offender, was a felony involving a firearm, other deadly weapon, or intent to cause great bodily injury to another person, or was a felony involving drugs defined in Health and Safety Code Sections 11370.4 or 11379.8; or
3. At least one of the prisoner's "strike prior" offenses was a "sexually violent offense," sexual molestation of a child who was under the age of 14 and who was more than 10 years younger than the prisoner at the time, a lewd or lascivious act involving a child under 14, any homicide or attempted homicide,

solicitation to commit murder, assault with a machine gun on a peace officer or firefighter, possessing a weapon of mass destruction, or a violent or serious felony punishable by life imprisonment or death.

WHAT CAN FAMILIES DO TO HELP?

If your loved one is eligible for resentencing according to the criteria above, the new law states that he should be contacted by the public defender from the county which sentenced him. However, because petitions for resentencing must be filed by November 6, 2014, prisoners who feel they are eligible for resentencing and who have *not* been contacted may wish to contact the public defender directly. Families can help their loved ones by reaching out to the public defender's office. For assistance with initiating a petition for resentencing, families can also contact Stanford Law School's Three Strikes Project or the Three Strikes Justice Center.

Stanford Three Strikes Project

Re: Potential Client
Mills Legal Clinic at Stanford Law School
559 Nathan Abbott Way
Stanford, California 94305-8610
Ph: (650) 736-7757

Three Strikes Justice Center

1540 Market St., Suite 490
San Francisco, CA 94102
Ph: (415) 625-7045
info@threestrikesjusticecenter.com

If your loved one is found eligible for resentencing consideration, you can help promote his resentencing by showing that he does not pose an "unreasonable risk of danger to public safety." This can be done by gathering support letters from members of the community just as you would for a parole hearing. (*For more information on writing support letters, see "Supporting a Lifer at a Parole Hearing" on page 50 of the Fighting for Our Rights: A Toolbox for Family Advocates of California Prisoners manual by LSPC.*)