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Softer California three-strikes law would save on older inmates

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By Dan Levine and Mary Slosson

SAN FRANCISCO (Reuters) - A ballot measure aimed at California's infamous "three strikes" sentencing law may be an opportunity for the state to put a dent in one problem besetting prison officials across the country: the high cost of aging inmates.

Under three strikes, a person convicted of a felony in California who has two or more prior convictions for certain offenses must be sentenced to at least 25-years-to-life in state prison, even if the third offense is nonviolent.

The American Civil Liberties Union and other prison-reform advocates point to three-strikes laws (California's was passed in 1994) as the prime driver for an increase in older inmates. Older prisoners are less likely to re-offend, advocates argue, and many can be safely released to ease prison overcrowding.

Yet attempts to reform three strikes in California have stalled both in the legislature and at the ballot box.

Even with a court order, and in a tough budget climate, where reducing the prison population could bring savings, success for reformers in November is far from assured.

"Three strikes has sort of become a sacred cow, sort of this litmus test on 'how law and order are you' in California," said Gloria Romero, the former state Senate majority leader whose 2006 bill to relax three strikes died awaiting a floor vote in her own chamber.

Greg Totten, the district attorney in Ventura County, nearly 70 miles northwest of Los Angeles, said the vast majority of state prosecutors will likely oppose any softening of three strikes.

"The advocates of reform don't want to talk about the crime and the criminal," said Totten, who opposes reform. "You see an aging prisoner, as they get older they probably look a little more sympathetic, a little less threatening."

Almost 125,000 prisoners around the country are 55 and older. At \$68,000 per year, they cost the state nearly twice as much to house as younger prisoners, according to a recent ACLU study, largely because of higher medical costs associated with care later in life. More than 14,000 of those inmates are in California prisons.

Prison overcrowding -- and the unconstitutional conditions it creates -- has been litigated in California for over 20 years. In response to a U.S. Supreme Court directive last year to cut the state inmate population by over 30,000 inmates, California began a massive shifting of responsibility and funding for low-level offenders to county jails from state prisons, a process known in California as realignment.

The lower number of incoming prisoners, combined with current inmates being paroled per usual, brought down the number of inmates in state prisons from an estimated 144,000 at the time of the high court ruling to 121,129 in June 2012, according to the state Department of Corrections. That is still roughly 55 percent over the capacity of California's 33 prisons.

Reformers say older prisoners are a prime population to cut.

The ballot measure this November could give roughly 3,000 inmates a chance at reducing their sentences, according to the Committee for Three Strikes Reform. If approved, it would revise the current three-strikes law to impose a life sentence only when the third felony conviction is serious or violent -- unless the second strike is a particularly egregious crime like murder or rape.

The measure would also allow for offenders currently serving life sentences on a third-strike conviction that was not serious or violent to have their sentences reconsidered.

Age 50 is the criminological consensus of when a prisoner becomes elderly since inmates age faster physiologically, according to the National Institute of Corrections. In its report the ACLU highlights reforms in Louisiana that allow inmates to apply for parole hearings if they reach age 60, dubbed "elderly parole."

"Such laws allow states to safely depopulate their prisons of the elderly and save on incarceration costs," the report said, "while simultaneously not forcing aging prisoners into homelessness by ensuring prisoners must elect to apply for parole."



Older inmates who rejoin society can easily find themselves evading one strikeout only to face another: no place to go and few prospects to build a life. Terri McDonald, the undersecretary of operations for California's Department of Corrections and Rehabilitation, said the prisons work with inmates to set up Medicaid and other benefits as they approach parole.

Still, she acknowledges the difficult planning process.

"If it's your parole release date, we release whether you have housing or not," McDonald said.

The ACLU says the elderly have no greater chance of becoming homeless than any other age group after imprisonment.

California legislators passed a medical parole law in 2010 to allow inmates with certain debilitating illnesses to seek release. The threshold is extremely stringent, however, requiring that inmates be terminally or permanently incapacitated and so cognitively or physically disabled that there is no possibility they could be a threat to the public. Such impairments obviously render a population already vulnerable upon release even more so. Only 37 prisoners have had their requests granted since that law was implemented.

The Los Angeles County Sheriff's Department, alongside a coalition of all California county sheriffs, have sponsored a bill in the current legislative session that would increase the eligible population for compassionate release, which frees terminally ill inmates expected to die within six months, and medical parole on the county level.

The bill's sponsor, Democratic state Senator Mark Leno, said it is odd that the otherwise liberal California trails much more conservative states on the issue of medical parole and compassionate release. "Texas does this significantly more often than we do," he said.

Even the law currently under consideration by the California legislature would affect, at most, 10 prisoners, according to the Los Angeles Sheriff's Department.

The hard-nosed stance on releasing inmates, despite prison overcrowding, is consistent with prior voting in the state. A 2004 effort to amend three strikes failed at the polls after it was opposed by then-Governor Arnold Schwarzenegger.

A similar reform measure in 2008 did not garner enough signatures to appear on the November ballot.

This year's reform ballot measure is more limited, said Steve Cooley, the Republican district attorney in Los Angeles who has long supported changing three strikes.

"I don't see (Governor Brown) opposing this thoughtful proposal," Cooley said.

Brown's office declined to comment on the initiative. The issue cuts across party lines, with some Republicans like Cooley in favor of reform and many Democrats opposed. A handful of Democrats opposed the reform bill in 2006, Romero said, because they were fearful of losing crucial law enforcement endorsements in an election year.

Even if three-strikes reform doesn't pass, under new prison regulations older inmates will be eligible for housing in cheaper, lower-security institutions, McDonald said. "As people age they're much less likely to escape."

Marvin Caldwell, 63, who occupies a closet-size cell in San Quentin State Prison, spoke to Reuters during a recent visit. Incarcerated for the possession and sale of methamphetamine in 1999, Caldwell was sentenced to 25 years to life in prison under California's three-strikes law. He is eligible for parole in 2024, when he will be 75 years old.

"A lot of people make mistakes in life and live to regret them," Caldwell said, standing in front of his narrow cell as inmates returned from an afternoon exercising in the yard to be counted by prison guards. "Speaking as one of those people, I believe I can make a difference now if given the chance."

(Editing by Lee Aitken and Prudence Crowther)

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