

Three Strikes Resentencing under Proposition 36 (2012)

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Research series examining second look policies in California

The five policy briefs and [overview report](#) in this series describe the characteristics and recidivism rates of individuals affected by second look policies in California.

California's Three Strikes sentencing law lengthens prison sentences based on an individual's prior convictions, specifically adding a "strike" for each prior "serious" or "violent" felony. Under the original law, a person with two prior strikes who was convicted of any third felony — regardless of whether it was serious or violent — faced a mandatory sentence of 25 years to life. This approach led to lengthy sentences for individuals whose third offense was neither serious nor violent, prompting concern about fairness and over-incarceration. In response, voters passed Proposition 36 in 2012, which generally limits the 25-years-to-life sentence to cases in which the third felony is also serious or violent.

Although Prop 36 did not change the rule that a second strike results in a doubled sentence, it created a resentencing pathway for people serving third-strike life sentences for non-serious, non-violent offenses. Individuals that met the new criteria could petition the court for a reduced sentence, helping align past sentences with current sentencing standards. This brief examines who was resentenced under Prop 36, the offenses for which they were originally convicted, and their recidivism rates following release.

Key findings

- **More than 2,200 people were resentenced and released earlier due to changes in California's Three-Strikes sentencing.** There were 2,217 people incarcerated in California's prisons for a non-serious, non-violent third-strike that were released earlier after Prop 36 prohibited the application of a 25-year-to-life sentence for these offenses and allowed people already incarcerated with this sentence to apply for resentencing.
- **People released under Prop 36 were largely Black and aged 50 or older at the time of release.** Almost half (46%) of those released under Prop 36 were Black — compared to approximately 6% of California's resident population and 24% of people released from prison in fiscal year 2018-19. Over two-thirds were 50 years old or older at release and 59% spent more than 15 years in prison.
- **Three-year recidivism rates for people released due to Prop 36 resentencing were lower than the total release population.** Twenty-five percent of people released under Prop 36 were convicted of a new offense within three years, and nearly two-thirds of those convictions were for misdemeanors. In comparison, 42% of total releases were convicted of a new offense within three years, and 26% were misdemeanors.

Policy context

California is one of 24 states, along with the federal government, that enacted some form of Three Strikes sentencing in the 1990s.¹ Under California's version of this policy, individuals with two prior serious or violent felony convictions faced a 25-year-to-life sentence upon conviction for a new, third felony. California's law contained some of the most severe sentence enhancements, applied to an especially broad group of felony offenses, and was used more extensively in sentencing in criminal cases than in any other state. (Chen, 2008).

In 2012, California voters approved Proposition 36, which reformed the Three Strikes law by eliminating the mandatory 25-to-life sentence for individuals whose third felony was non-serious and non-violent. Instead, these individuals now receive a doubled-sentence enhancement — meaning, for

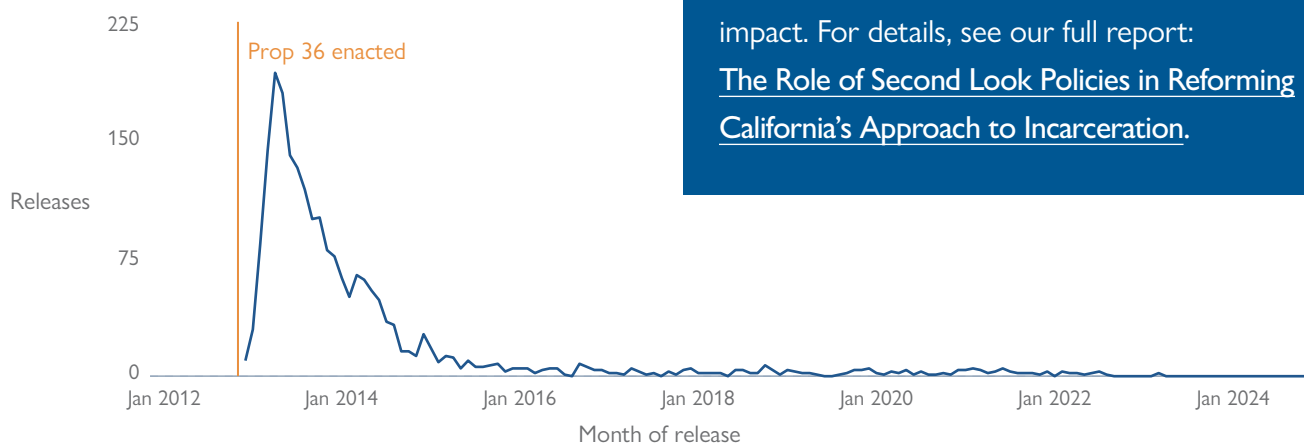
example, that a five-year sentence would become a ten-year sentence (rather than a 25-to-life sentence). This reform also allowed for the resentencing of individuals who were already serving 25-to-life sentences for a non-violent, non-serious third-strike (Couzens and Bigelow, 2017).

At the time of Prop 36's passage, the California Department of Corrections and Rehabilitation (CDCR) estimated approximately 3,000 people were eligible for resentencing (Leonard, 2012). People incarcerated on a non-violent, non-serious third-strike could petition the sentencing court directly for resentencing, requesting their term be reduced to a second-strike sentence. Prop 36 allowed courts to deny petitions only if "the petitioner would pose an unreasonable risk of danger to public safety" (Penal Code § 1170.126).

Descriptive characteristics

Most people resentenced under Prop 36 were quickly released from prison. By the end of 2013, nearly two-thirds of people resentenced were released from CDCR (Figure 1), with a median time to release of just under one year following passage of the law.

FIGURE 1: Monthly releases of individuals resentenced under Prop 36



Source: California Department of Corrections and Rehabilitation (2013–24).

Data and methods: This brief uses data from the California Department of Corrections and Rehabilitation and the California Department of Justice to describe the scope of resentencing policies — including the number of people released, recidivism rates, and factors linked to recidivism. It does not assess causal impact. For details, see our full report: [The Role of Second Look Policies in Reforming California's Approach to Incarceration.](#)

Note on language: Information on race and ethnicity may not be self-reported and can reflect classifications made by prison staff, court officials, or arresting agencies. All reported sex fields refer to sex assigned at birth and may not reflect someone's gender identity.

For a point of comparison, we provide descriptive statistics of people released from prison in fiscal year 2018–19 (“total releases”) (CDCR, 2024). Summary statistics are available (Table 1) and key takeaways are:

- **Women** represented a small fraction of those resentenced under Prop 36 (less than 2%), compared to 7% of total releases, reflecting substantial gender differences in rates of those arrested and convicted under the Three-Strikes law.
- Eighty-eight percent of people resentenced under Prop 36 were **over 45 years old** at release, and 15% were **60 or older**. In contrast, only 23% of total releases were over 45.
- **Black individuals** represented 46% of those resentenced under Prop 36, compared to 24% of total releases and 6% of the resident population in California. White people represented 25% of people resentenced, while another 25% of people sentenced were Hispanic.
- People resentenced under Prop 36 had already spent a median of **15 years in CDCR custody**, meaning most were admitted in their mid- to late-30s. This was much longer than the total release population, where only 4% had served more than 15 years, and nearly 85% were released after less than five years.
- By definition, the resentenced group was more likely to have **multiple prior prison admissions**. Approximately 80% had two or more prior admissions to CDCR, compared to 35% of total releases.

TABLE 1: Summary statistics of people resentenced under Prop 36

	TOTAL RELEASES	PROP 36
TOTAL	36,086	2,206
Sex		
Female	7.3	1.6
Male	92.7	98.4
Release Age		
Under 45	76.7	11.9
45–49	8.1	21.4
50–54	6.6	29.8
55–59	4.8	21.9
60 and over	3.7	14.5
Race/Ethnicity		
American Indian/Alaska Native	1.2	1.1
Asian or Pacific Islander	1.6	—
Black	23.9	45.6
Hispanic	44.8	25.3
Another race	3.2	2.7
White	25.4	25.2
Length of stay		
Less than 10 years	92.5	12.0
10 to 15 Years	3.5	28.7
15+ years	4.1	59.3
Prior CDCR commitments		
0	48.1	2.3
1	16.6	19.0
2	7.9	29.6
3+	27.4	49.1

Sources: California Department of Corrections and Rehabilitation (2013–24) and [Recidivism Report for Individuals released from CDCR in Fiscal Year 2018–19](#).

Note: Cell sizes that represent fewer than 5 people are suppressed and will show a “—” in the table.

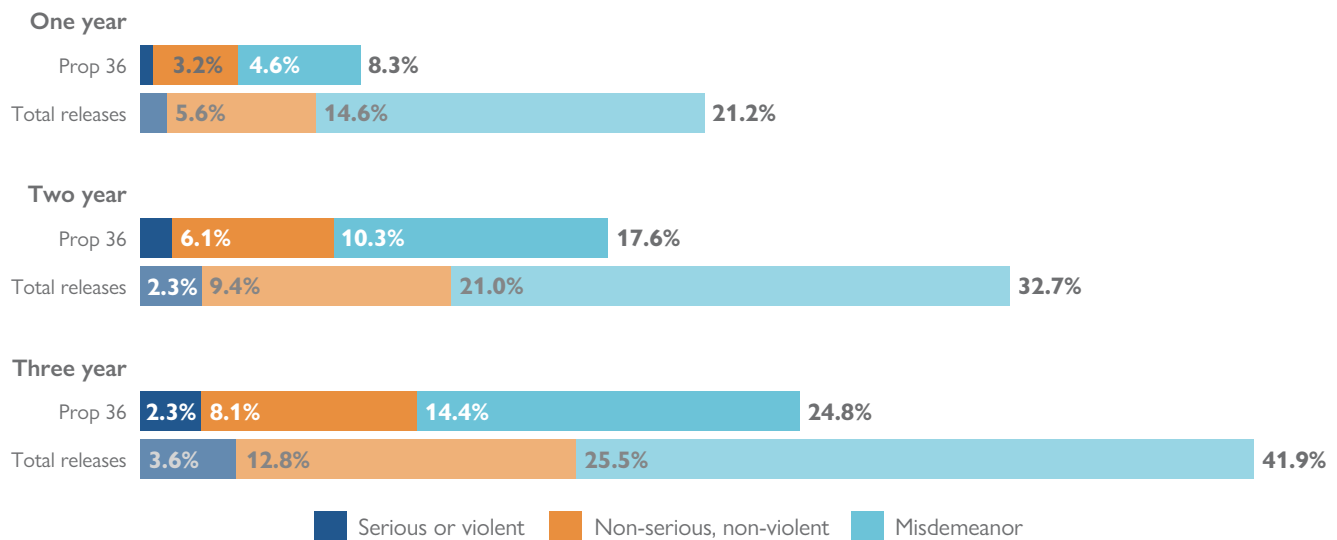
Recidivism rates

Primary recidivism measure: new convictions

Recidivism rates among the people resentenced under Prop 36 were low relative to the total release population (Figure 2). At year one, 8% of the resentenced group had been convicted of any new offense, compared to 21% of total releases. At year two, it was 18% for those who had been resentenced, compared to 33% for total releases. By year three, 25% of the resentenced group had been convicted, as compared to 42% of total releases.

Misdemeanor convictions were the most common (5% of people were convicted of a misdemeanor within one year, 10% within two years, and 14% within three years). Two percent of people resentenced under Prop 36 were convicted of a new serious or violent felony within three years of release.

FIGURE 2: New conviction rates for people resentenced under Proposition 36 and total releases, disaggregated by severity



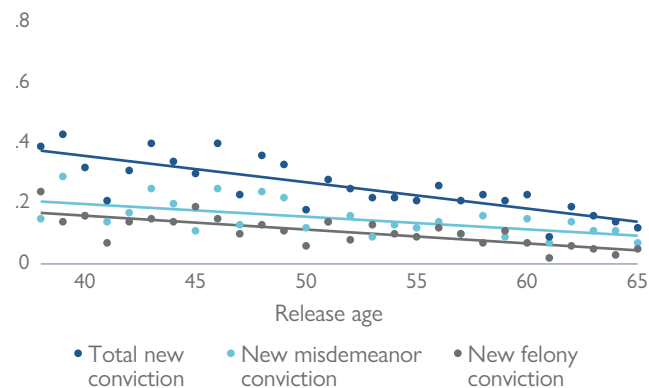
Sources: California Department of Corrections and Rehabilitation (2013–24), California Department of Justice Automated Criminal History System, and [Recidivism Report for Individuals released from CDCR in Fiscal Year 2018–19](#).

Factors correlated with new convictions

Using multivariate regression analyses, we assess how individual and case characteristics are independently associated with recidivism among people released under Prop 36, holding all other factors constant. The likelihood of a new conviction within three years decreases by approximately one percentage point with each additional year of age at release (Table A-1), controlling for other factors, such as offense type, prior commitments to CDCR, and length of stay. Time served is independently correlated with a decrease in the likelihood of a new conviction within three years. A greater number of prior convictions are associated with increased recidivism risk.

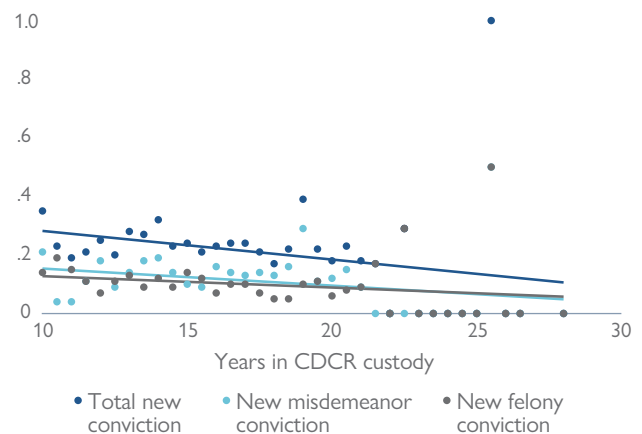
Recidivism rates vary with age and time served. Consistent with our regression results, the rate of new convictions within three years declined as age at release increased (Figure 3). A similar trend is observed with time served, and new conviction rates decreased as the length of incarceration increased (Figure 4).

FIGURE 3: Correlation between age at release and new conviction rate (three year) after Prop 36 resentencing



Sources: California Department of Corrections and Rehabilitation (2013–24) and California Department of Justice Automated Criminal History System.

FIGURE 4: Correlation between years in CDCR custody and new conviction rate (three year) after Prop 36 resentencing



Sources: California Department of Corrections and Rehabilitation (2013–24) and California Department of Justice Automated Criminal History System.

Supplemental recidivism measures: new arrests and returns to CDCR

New arrest rates, by definition, are higher than new conviction rates as not all arrests result in a conviction. Within one year, 22% of people resentenced under Prop 36 were arrested for a new offense (Table 2). One-third were arrested within two years and 39% within three years. Misdemeanor arrests were the most common across all years and new serious or violent felonies were the least common. In three years, 20% had been arrested for a new misdemeanor and 4% arrested for a new serious or violent felony. Across all years, the Prop 36 new arrest rates were substantially lower than the total releases arrest rates.

Returns to prison were uncommon with 3% returning within one year, 7% within two years, and 12% within three years. Less than 1% returned on a new serious or violent felony within one year, and just over 3% returned within three years.

TABLE 2: Supplemental three-year recidivism measures for people resentenced under Prop 36

	ONE YEAR (%)	TWO YEAR (%)	THREE YEAR (%)
NEW ARREST			
Total releases	51.9	62.0	66.7
Total Prop 36 releases	22.1	33.2	39.4
Serious or violent felony	2.3	3.5	4.1
Non-serious, non-violent felony	9.5	13.7	15.3
Misdemeanor	10.3	16.0	20.0
RETURN TO CDCR CUSTODY			
Total releases	5.5	10.4	16.8
Total Prop 36 releases	3.0	7.4	11.8
Serious or violent felony	0.3	1.6	3.2
Non-serious, non-violent felony	2.7	5.8	8.6
N	2,206	2,200	2,177

Sources: California Department of Corrections and Rehabilitation (2013–24) and California Department of Justice Automated Criminal History System.

Notes: The denominator differs across each measure as we only keep people that have at least one-, two-, or three-years post-release. Recidivism measures are through June 30, 2024.

Conclusion

In summary, Prop 36 led to the resentencing and release of more than 2,200 people incarcerated in California serving 25-year-to-life sentences. Almost half of the resentenced group was Black (46%) and two-thirds were 50 years old or older at release. Most had spent more than 15 years in custody. People released early under Prop 36 had much lower recidivism rates than the total release population.

Second Look Series: This brief is part of a series of six publications focused on second look policies in California. To see the overall report and the four other policy-specific briefs, please visit: [Reforming California's Approach to Incarceration: The Role of Second Look Policies](#).

Acknowledgments

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Endnotes

- 1 See CPL's report on Three Strikes in California for additional details about the application of Three Strikes sentencing: <https://capolicylab.org/wp-content/uploads/2022/08/Three-Strikes-in-California.pdf>.

References

- Bird, M., Gill, O., Lacoë, J., Pickard, M., Raphael, S., and Skog, A. (2022a). An Overview of sentencing in California. California Policy Lab, University of California. <https://capolicylab.org/wp-content/uploads/2024/09/An-Overview-of-Sentencing-in-California.pdf>
- Bird, M., Gill, O., Lacoë, J., Pickard, M., Raphael, S., and Skog, A. (2022b). Three Strikes in California. California Policy Lab, University of California. <https://capolicylab.org/wp-content/uploads/2024/09/An-Overview-of-Sentencing-in-California.pdf>
- California Department of Corrections and Rehabilitation, Office of Research. (2024). Recidivism report for individuals released from the California Department of Corrections and Rehabilitation in Fiscal Year 2018–19. <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2024/02/Statewide-Recidivism-Report-for-Individuals-Released-in-Fiscal-Year-2018-19.pdf>
- Chen, E. (2008) The impact of ‘Three Strikes and You’re Out’ on crime trends in California and throughout the United States. *Journal of Contemporary Criminal Justice*, 24(4): 345–370.
- Couzens, J. and Bigelow, T. (2017). The amendment of the Three Strikes sentencing law. The Judicial Branch of California. <https://www.courts.ca.gov/documents/Three-Strikes-Amendment-Couzens-Bigelow.pdf>
- Leonard, J. (2012). Prop. 36 seeks to ease California’s three-strikes law. *Los Angeles Times*. <https://latimes.com/politics/la-xpm-2012-oct-27-la-me-prop36-3strikes-20121028-story.html>
- Three Strikes Project. (2013). Progress Report: Three Strikes Reform (Prop 36). <https://www.law.stanford.edu/wp-content/uploads/sites/default/files/child-page/441702/doc/slspublic/Three%20Strikes%20Reform%20Report.pdf>

Appendix

TABLE A-1: Correlates of new conviction within three years for people released under Prop 36

	PROBABILITY OF NEW CONVICTION WITHIN 3 YEARS
Age at release	-0.0116*** (0.00145)
Black	-0.0208 (0.0226)
Hispanic	-0.0543* (0.0258)
Other	-0.109 (0.0580)
Female	-0.0468 (0.0714)
Time in CDCR (Years)	-0.00540* (0.00257)
Any prior prison (binary)	0.0734 (0.0626)
Prior convictions (count)	0.0178*** (0.00215)
Assault	0.0298 (0.0422)
Burglary	0.00659 (0.0373)
Petty Theft	0.0346 (0.0404)
Receiving Stolen Property	0.0205 (0.0475)
Robbery	-0.00190 (0.0917)
Constant	0.693*** (0.104)
R ²	0.066
N	2,177

Sources: California Department of Corrections and Rehabilitation (2013–24) and California Department of Justice Automated Criminal History System.

Notes: * p<0.05 **p<0.01 ***p<0.001

All models also include controls for race, controlling offense, days for policy implementation to release, and month of release fixed effects.