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The hidden impact of three strikes

STATE LAW IS WIDELY USED TO COERCE PLEA BARGAINS

By JULIA REYNOLDS
Herald Staff Writer

Across California, hundreds of criminals convicted of non-serious, non-violent, non-sexual crimes last month were no longer sent to prison under the state's massive inmate realignment — but this group of "low level" offenders does not include more than 2,200 inmates currently imprisoned for the exact same crimes.

They are serving life sentences under California's three-strikes law.

It is this incongruity that again has inspired a reform effort aimed at requiring that an offender's third strike be a



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serious, violent offense.

"Most people don't realize a petty theft with priors is a third strike and can get you life in prison," said Salinas-based defense attorney Brian Worthington.

Men in Monterey County have been sentenced to 25 years to life for crimes

ranging from petty theft to drug possession to second-degree burglary, the same offenses that now qualify others for county jail, probation and rehab programs.

A third strike doesn't have to be serious, violent or sexual. It can even be what criminal attorneys call a "wobbler" — a crime that's allowed to be prosecuted as either a misdemeanor or a felony.

In Monterey County, where the overall numbers are small, such relatively minor crimes have put more than 10

HERALD QUESTION OF THE DAY

Should voters reform the state's three-strikes law through a ballot measure?

Yes

No

Go to: montereyherald.com

to place your vote
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Please see **Three strikes** page **A11**

What is three strikes?

California's three-strikes law was passed by voters in 1994 to impose lengthier prison sentences for repeat criminal offenders.

The first two strikes must be "serious, violent" crimes, although some critics have questioned including certain burglaries in that category.

A second strike imposes double the usual prison sentence for that crime.

A third strike can be any felony, even if it is not violent or serious. It imposes a mandatory 25-years-to-life sentence.



VERN FISHER/The Herald

Operation Christmas Cheer recipient Alejandra Perez sits with her son Victor Gonzales, 15 months, and daughter Desiree Gonzales, 8, in their Seaside home. Victor suffered second-degree burns that became infected and required hospitalization.

Nation closes border crossings; Clinton, Panetta offer condolences

Pakistan blames NATO strike for 24 troop deaths

By KARIN BRULLIARD
The Washington Post

ISLAMABAD, Pakistan — The Pakistani military said Saturday that NATO helicopters and fighter jets had fired on two border checkpoints and killed 24 soldiers, an incident that sent the two nations' uneasy alliance into new crisis and fanned domestic criticism of Pakistan's cooperation with the U.S. war effort in Afghanistan.

Pakistan issued swift and furious condemnations of the early-morning strike in the Mohmand tribal region along the Afghan border, which the military deemed unprovoked "aggression." Within hours of the incident, Pakistan responded by shutting down the two border crossings used by trucks to ferry about half of supplies to coalition troops fighting in Afghanistan. Pakistan does not allow those coalition forces to enter or fire inside its territory.

The strike, which NATO officials in Kabul said was being investigated, came toward the end of a year in which the bilateral relationship has suffered unprecedented blows, including the American raid to kill Osama bin Laden in Pakistan in May. Pakistan condemned the Saturday strike as an intolerable breach of sovereignty, one officials and politicians said demonstrated American disregard for Pakistani life and would stoke terrorism.

Secretary of State Hillary Rodham Clinton and Defense Secretary Leon Panetta said in a joint statement late Saturday that they offered their "deepest condolences for the loss of life and support fully NATO's intention to investigate immediately." Clinton and other senior U.S. officials called their Pakistani counterparts, stressing "the importance of the U.S.-Pakistani partnership," the statement said.

A senior military official in Washington said that "everybody is taking this very, very seriously. There's no question about that." The official and others, who would not speak on the record about the sensitive issue, said the incident followed months of tension along the border as a U.S. offensive against Pakistani-based insurgents in eastern Afghanistan has been under way.

"Everybody is taking this very, very seriously. There's no question about that."

senior military official

RECOVERING FROM TRAUMA

CHILD'S BURN ACCIDENT STRESSES SEASIDE FAMILY

By JIM JOHNSON
Herald Staff Writer

Victor Gonzales III is a rambunctious bundle of energy these days, scurrying around his home with an indefatigable exuberance.

Other than a reddish discoloration on his chest and left arm, there is little evidence of the trauma the 15-month-old Seaside toddler experienced a month ago.

In early October, Victor and his mother, Alejandra Perez, were visiting his grandmother when the energetic little boy managed to tip a hot cup of coffee over onto his curly locks and down into his

zip-up, footed pajamas.

Perez said by the time she could get the pajamas off, Victor had sustained second-degree burns to his chest and left arm, and large chunks of skin had been torn off along with the pajamas. The 28-year-old single mother rushed her son to the Community Hospital of the Monterey Peninsula emergency room, where he was treated and released.

But that was only the beginning of the nightmare.

Over the next week, Perez said Victor's temperature

spiked to 104, he had developed a rash on his face and his back, was relying on regular doses of Tylenol with codeine just to stop him from shaking from the pain, and he was listless, unable to eat or drink much of anything.

Perez said she asked doctors at Community Hospital why her son was suffering so much, but she said it wasn't until a nurse suggested she contact a burn center in San Jose that Victor was finally diagnosed with a serious infection.

On Oct. 13, five days after

he was burned, Victor was taken by ambulance to Santa Clara Valley Medical Center for treatment.

There, Perez said, the toddler was treated and stayed in the hospital for a week, his mother by his side the entire time. Perez said her mother, Victor's father and their daughter Desiree also visited, offering critical support.

Besides the stress of little Victor's injuries and medical treatment, Perez said taking two weeks off work from her job as a cocktail server at Sly McFly's on Cannery Row was

Please see **Cheer** page **A11**



Inside Campaign coupon. **A11**

Americans Elect plans to hold convention on the Internet

Political moderates eye third candidate for 2012

By KRISAH THOMPSON
The Washington Post

The restless political middle, emboldened by the recent inability of a special congressional committee to agree on a debt-reduction deal, is staking out a controversial plan to insert itself into the 2012 election.

A bipartisan group of political strategists and donors known as Americans Elect has raised \$22 million and is likely to place a third presidential candidate on the ballot in

every state next year. The goal is to provide an alternative to President Barack Obama and the GOP nominee and break the tradition of a Democrat-vs.-Republican lineup.

The effort could represent a promising new chapter for political moderates, who see a wide-open middle in the political landscape as congressional gridlock and bitter partisan fights have driven down favorability ratings for both parties.

"Voters are saddened by

the inability of people in Washington to deal with the issues that are important to them," said the group's chief executive, Kahlil Byrd, a Republican strategist who once worked for Massachusetts Gov. Deval Patrick, a Democrat.

Americans Elect has ballot slots in Florida, Michigan, Nevada, Ohio and five other states, with certification pending in several others.

The group is relying on an ambitious plan to hold a

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Conservatives eye criminal justice spending

By **JULIA REYNOLDS**
Herald Staff Writer

Newt Gingrich, Jeb Bush, Ed Meese... They're not names most Americans would associate with a criminal justice reform movement calling for fewer prisons, shorter sentences, and lower incarceration rates.

But they and other conservatives are part of a growing national organization known as "Right on Crime," a response to decades of tough-on-crime policies that have left states like California staggering under astronomical imprisonment costs.

"We are a departure from what's traditionally thought to be conservative on criminal justice," says attorney Marc Levin, the group's founder. "It's not conservative to just throw money at a problem."

ORGANIZATION PUSHES PROACTIVE STEPS ON PRISON RELIANCE

A conservative variant of liberal "smart on crime" policies — as opposed to the tough-on-crime rhetoric espoused by politicians of all stripes during the past three decades — the Right on Crime movement has developed an unlikely stance based on fiscal reasoning that at times sounds like an ACLU manifesto.

"Conservatives are known for being tough on crime, but we must also be tough on criminal justice spending," read the group's Statement of Principles.

One way to save money is to reduce "our reliance on prisons, which serve a critical role by incapacitating dangerous offenders and career criminals but are not the solution for every type of

offender. And in some instances, they have the unintended consequence of hardening nonviolent, low-risk offenders — making them a greater risk to the public than when they entered."

In addition to fiscal conservatives, Right on Crime supporters include formerly incarcerated conservatives, such as former California Assemblyman Pat Nolan, who spent two years in federal prison in the 1990s after pleading guilty to a racketeering charge.

Since then, Nolan has become president of the Justice Fellowship, a Christian-based organization that works for criminal justice reform and is an affiliate of the Prison Fellowship

founded by Chuck Colson, of the "Watergate Seven."

With a strong focus on reducing recidivism, Right on Crime advocates a cost-effective justice system that "protects citizens, restores victims, and reforms wrongdoers."

"We're really big on personal responsibility," Levin said. "We're not saying society is to blame for criminal activity. We reject the idea of that being an excuse, even though it's probably important to study the reasons why some people commit crimes."

The organization pushes for more victim involvement in the justice process, which the group says also helps the convicted, "since an offender fully recognizing and

acknowledging the harm they have caused another person is often critical to rehabilitation."

And while Right on Crime maintains imprisonment is necessary for public safety, it holds that communities are better protected when law enforcement focuses on data-driven deterrence methods — one example is Salinas' Ceasefire — followed by parole and probation strategies that "emphasize restitution, work, and treatment."

For the Right on Crime crowd, California often serves as a prime example of what not to do when it comes to prison policies.

"We encourage other states to take proactive stances as far as prison overcrowding," Levin said. "Take

proactive steps so you don't end up getting into federal court."

Levin said that while the nonprofit group cannot endorse specific legislation, he supports revision of the state's three-strikes policies. "I believe there are some flaws in the law in terms of the third strike being an extremely minor crime... it think it's appropriate to revise it," he said. "We're not minimizing the harm that been done by a lot of these defendants. The point is they did serve the sentence on previous offense."

"I think all of us want to prioritize prison space to maximize public safety."

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Three strikes

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percent of the county's third-strikers in state prison for life.

Of the county's 41 third-strikers in state prison as of June, five are serving life terms for offenses that fall squarely under realignment's definition of non-serious, non-violent and non-sexual.

The other 36 men — all of Monterey County's third-strikers are male — are in prison for more serious crimes such as robbery, weapon possession, assault, second-degree murder and manslaughter.

Monterey County's percentage of low-level third-strikers is well below California as a whole, where a quarter of the more than 8,000 third-strikers are in prison for low-level crimes.

This year, according to the Monterey County District Attorney's Office, there have been seven third-strike convictions. Five include non-serious crimes committed by inmates already serving life sentences in Monterey County prisons. The other two were for serious, violent crimes, records show.

Worthington and other defense attorneys acknowledge that Monterey County prosecutors tend to reserve a third strike for serious, sexual or violent crimes.

Hidden impact

But what third-strike conviction numbers don't reflect is how often the mere threat of applying the law — and therefore, a life sentence — is used to coerce plea agreements and prison time in low-level cases that otherwise could have ended with a few years' probation.

That, says Worthington, is the hidden impact of three strikes.

"I think people would also be surprised to know that you can get multiple strikes in one offense. They think it's for someone who has a long, illustrious career (in crime). But it could be one event with no prior record and it doesn't have to be their third or fourth time in front of a judge."

No escape

One such case was Luther Collins, whose previous two strikes came decades ago, one in 1981. To avoid a third strike, Collins recently accepted a plea deal and six years in prison on a drug possession charge — the same charge that, under realignment, has had others in the county placed on probation.

Worthington said a client of his recently accepted a prison sentence under the

threat of a third strike. He asked that the client not be named because a related case is still being adjudicated.

"I don't want to paint him as an angel," Worthington said. "But if he had a different background, he would have gotten felony probation and would have had the opportunity to have it reduced to a misdemeanor and have it dismissed. The two strikes in his background were such a powerful bargaining chip."

The man, in his mid-30s, had two previous strikes for domestic violence.

"He served his time and was released. He's been law abiding and paying his child support since the mid-2000s. He's worked things out with his wife enough to be in his son's life."

Then he blocked a bathroom doorway during a bar argument.

"He never threw a punch. The security footage showed he tried to break it up, and he even pulled his co-defendant away."

He was charged with assault with force likely to cause great bodily injury and threatened with a third strike — which meant life in prison. "You don't have to touch anyone for it to be an assault," Worthington said.

The client ended up taking a deal for four years in prison on a false imprisonment charge.

"He should not be in prison (again) for his past crimes," Worthington said. "That's one of the problems with three-strikes laws — people can never escape it."

First reform

Monterey County public defender Jim Egar calls three strikes "an overwhelming coercive tool."

"It discourages innocent people from going to trial," he said. "The risk of conviction and punishment causes people to plead guilty. . . . You have a situation that is ripe for unfair results. Mistakes happen because people are afraid of the risk."

"I don't discount that they may feel leverage," said Monterey County District Attorney Dean Flippo, who has been "heavily involved in the political wars" over three strikes through the years.

Flippo said he and other district attorneys initially remained neutral when three strikes became law, but became supportive after they noted its popularity and saw that higher courts upheld it. "We were concerned about the third strike being non-serious and non-violent. But it picked up steam, and we embraced it."

"In the first few years (the initiative passed in 1994) there was tremendous

Offense:	Number
Total	41
Robbery	14
Burglary, first degree	5
Possession of weapon	5
Other assault/battery	3
Assault deadly weapon	2
Lewd act with child	2
Murder, 2nd degree	1
Manslaughter	1
Rape	1
Other sex offenses	1
Kidnapping	1
Burglary, 2nd degree	1
Petty theft with prior	1
Drug possession	1
Drug possession for sale	1
Drug other	1

Source: California Department of Corrections and Rehabilitation, as of Sept. 30, 2011

The Three-Strikes Reform Act of 2012

Requires approval by the attorney general and the collection of qualified signatures.

The proposed ballot measure promises to:

- Require that murderers, rapists and child molesters serve life sentences, even if convicted of a minor third-strike crime.
- Except for those exceptions, it would "restore the Three Strikes law to the public's original understanding by requiring life sentences only when a defendant's current conviction is for a violent or serious crime."
- Require repeat offenders convicted of non-violent, non-serious crimes such as shoplifting and simple drug possession to receive twice the normal sentence — but not life.
- "Save hundreds of millions of taxpayer dollars every year for at least ten years," because the state will finance housing and long-term health care for elderly, low-risk inmates serving life for minor crimes.
- Ease California's prison overcrowding problems.

Source: California Secretary of State

response. They were packing away people and the prisons filled up," he said. "Then it leveled off and it has stayed level."

Flippo acknowledges that in the early years there were some abuses, "the kind that would shock the conscience." But within two years, judges were given the ability to dismiss a strike, in an act known as the Romero decision.

"The first reform was the Romero decision," Flippo said. "Three strikes gave us discretion to say 'You've had as many breaks as the community can give you.' If the judge disagrees with the prosecutor, he has the power to strike the strikes."

Unlike some district attorneys in California, Flippo has had a written three-strikes policy for years.

While it encourages prosecutors to file strikes whenever possible, the policy also allows them to dismiss strikes if there are "compelling" considerations, such as multiple strikes stemming from the same incident, if many years have passed since the strikes occurred, or if the defendant has had a crime-free record for 10 years. Attorneys also can decline to file a strike if the new offense is possessing a small amount of drugs.

Still, Flippo doesn't hesitate to credit the law with lowered crime rates around the state.

"Crime rates have been



In Monterey County, relatively minor crimes have put more than 10 percent of the county's third-strikers in state prison for life.

Proposed change

Supporters of three strikes point out that the most shocking cases — Gregory Taylor, a homeless Southern California man given 25 to life for breaking into a soup kitchen comes to mind — are rare. In part because of this, three strikes has withstood nearly all attacks in higher courts and the voting booth.

Yet one in four of the state's third-strikers is expected to grow old and likely die in prison for what is now called a "low-level" crime.

In light of the state's current prison and fiscal crises, this group of inmates represents a moral and financial quandary that troubles many Californians.

That quandary is leading to calls from diverse sectors to reform the law that 17 years ago became a

sentencing paradigm for much of the nation. The result is an unexpected convergence of conservatives and liberals calling for changes to California's three-strikes law.

A proposed ballot measure recently filed with the Secretary of State has been tentatively titled "The Three Strikes Reform Act of 2012," and it promises to "restore the original intent of California's Three Strikes law — imposing life sentences for dangerous criminals like rapists, murderers, and child molesters," but not for petty offenders.

It would allow many inmates convicted of petty offense third strikes to petition for re-sentencing under certain guidelines, but not if their previous strikes include rape, murder or child molesting.

"This is an absolutely necessary and important reform," said Worthington. "I would imagine the vast majority does not realize that the third strike can be any felony under the sun. That proposed reform would bring the law into (accordance with) what people think it is anyway."

Flippo said district attorneys are aware of the proposal and are studying it. While he said it appears to avoid "some of the mistakes" of earlier reform measures that "took a lot of serious and violent offenses and eliminated them," he's waiting for

further analysis.

'A practical question'

While supporters of the three-strikes law say cases like Taylor's are rare outliers among more than 8,700 third-strike convictions, they nonetheless tug at the consciences of many — including some judges and prosecutors who made them happen.

Egar and other defense attorneys were pleased when Judge Terrance Duncan last year dismissed two strikes pending against defendant Ronnie Troy after he violated probation stemming from a drug conviction.

"Duncan struck them both and put him on probation and he's doing beautifully," Egar said.

In Los Angeles County, a number of low-level third-strike cases have been revisited and their sentences reduced, as happened in Taylor's case.

The reversals have sprung from a surprising voice on the right — Los Angeles County District Attorney Steve Cooley. The cases are also the focus of Stanford Law School's Three Strikes Project, modeled after the famous Innocence Project.

Brian's father Tom Worthington, who shares criminal defense offices with his son, acknowledges that the extreme third-strike cases are rare. But the threat of third strike for a relatively minor crime is still quite common — and that is what has the biggest impact on prison overcrowding, he said.

"Statistically, (the extreme cases are) very few," Tom Worthington said. "But the leverage that's hanging out there causes these cruel outcomes in a large number of cases."

Egar said three-strikes sentences pose more than just moral questions.

"It's a practical question, because there are only so many prison beds and so much money. We're cutting aid to disabled children because this guy is in prison for the rest of his life," he said.

And, he said, it does nothing to address the real causes of repeat offending.

"More than 90 percent of my clients have substance abuse issues in their lives. If all you do is lock them up without treatment, they'll go right back to addiction. We haven't done anything with them or to them to break that cycle."

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Obama, daughters shop for books

WASHINGTON (AP) — President Barack Obama has pitched in to help small businesses get into the holiday shopping season.

The president took his daughters, Malia and Sasha, along on a shopping run to a bookstore a few blocks from the White House.

He says he made the visit because it's "small-business Saturday" and he wanted to support a small business. The retail industry is encouraging shoppers to patronize mom-and-pop businesses on the Saturday after Thanksgiving.

Cheer

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something she could ill afford with the demands of rent and bills as the holidays approached.


In stepped the Salvation Army, which helped the family with rental assistance, as well as a Thanksgiving and Christmas food basket and toys. Perez said the help was a godsend for her family.

Little Victor still goes to physical therapy and does regular exercises designed to stretch his skin where it

Cheer campaign

Operation Christmas Cheer is sponsored by The Herald, the Salvation Army and the 1st Capital Bank to help local families in need this time of year. Contributors can have a brief personalized holiday message published by using a coupon in The Herald or by printing it from www.montereyherald.com.

was burned to ensure it remains flexible, and he is not allowed to be exposed to the sun for a year. But his skin shows few signs of the horror he endured, and Perez said she's been told that he likely won't have scars remaining after he's fully healed.



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