

Stanford Law School
Three Strikes Project



Progress Report: Three Strikes Reform (Proposition 36)

1,000 Prisoners Released

*Co-published by the Stanford Law School Three Strikes Project
and NAACP Legal Defense and Education Fund*

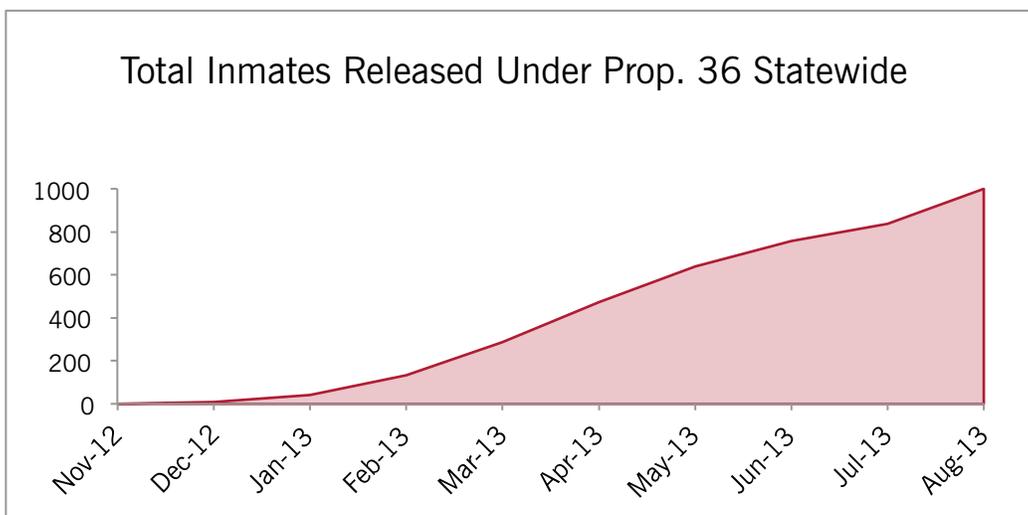
Introduction

California is in the midst of a prison crisis. The United States Supreme Court has ruled that California prisons are unconstitutionally overcrowded. As a result, the State must reduce its prison population by thousands of inmates by the end of the year. Despite multiple federal court orders, the State refuses to release prisoners, arguing that doing so will compromise public safety. At the same time, counties throughout California have been implementing the Three Strikes Reform Act of 2012 (“Proposition 36”), which voters overwhelmingly approved in November. Proposition 36 shortens the sentences of prisoners who are serving life terms for non-serious, non-violent crimes and who no longer pose a threat to public safety.

To date, over 1,000 prisoners have been released from custody under Proposition 36, according to data provided by the California Department of Corrections. Each of these prisoners had been sentenced to life under the Three Strikes law for a minor crime, such as petty theft or simple drug possession, and demonstrated to a judge that they are not an “unreasonable risk of danger to public safety,” under new procedures established by Proposition 36. (See new Penal Code Section 1170.126.) So far, judges have found that the vast majority of inmates eligible for relief under Proposition 36 deserve shorter sentences and have granted these inmates early release.

Over 2,000 additional prisoners who are eligible for relief under Proposition 36 are still waiting to have their cases reviewed in county courts. In Los Angeles County alone, over 800 cases of inmates eligible for relief under Proposition 36 have yet to be resolved.

The recidivism rate of prisoners released under Proposition 36 to date is well below state and national averages. Fewer than 2 percent of the prisoners released under Proposition 36 have been charged with new crimes, according to state and county records. By comparison, the average recidivism rate over a similar time period for non-Proposition 36 inmates leaving California prisons is 16 percent. Nationwide,



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

30 percent of inmates released from state prisons are arrested for a new crime within six months of release.

Critical issues remain. Prisoners released under Proposition 36 are returning home to a dire lack of resources. Unlike all other prisoners released from California prisons, inmates released under Proposition 36 are not eligible for state and county support services, leaving them without housing, jobs, or drug treatment. In many cases, prisoners freed under Proposition 36 are released from custody without warning, clothing, money for transportation, or notice to their families or attorneys.

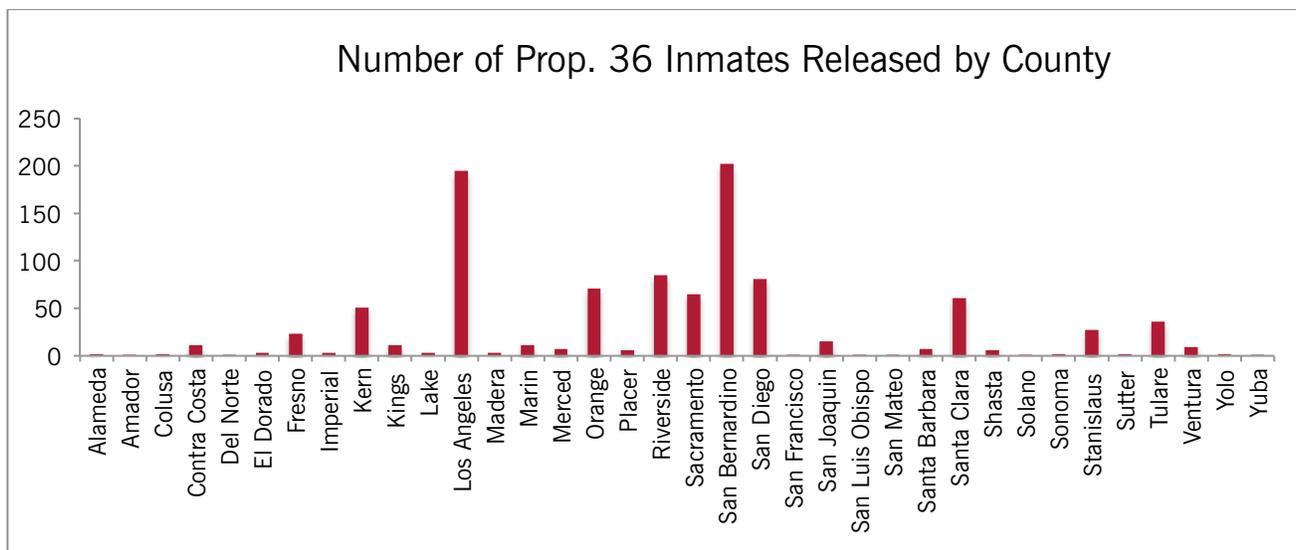
A disproportionate number of inmates sentenced to life in prison for petty offenses suffer from mild to severe mental illness. While all inmates released under Proposition 36 should have access to support services, it is especially vital that mentally ill inmates, who are particularly vulnerable, have access to a level of care that adequately addresses their needs.

In the cases pending review under Proposition 36, administrative and procedural obstacles are preventing timely dispositions. In some counties, lack of prosecutorial resources has significantly slowed the process. In other counties, public defender offices have been deprived adequate means to investigate and prepare these cases.

Proposition 36 has already generated significant financial savings and freed prison capacity for dangerous and violent prisoners. Since the law took effect in November 2012, Proposition 36 has saved the California prison system between \$10 and \$13 million. If courts fully implemented the initiative by reducing the sentences of all eligible inmates, the State would realize almost \$1 billion in savings over the next ten years.

In light of the federal court order to reduce the prison population, the overwhelming public support for Proposition 36, and the success of those inmates who have already been released under the initiative, this report makes the following recommendations:

- The State should commit more resources to expedite review and end unnecessary delay of over 2,000 cases currently pending under Proposition 36. Prosecutors must have adequate resources to expeditiously review petitions and recommend new sentences in appropriate cases without compromising public safety; and defense counsel must be given comparable resources to thoroughly investigate cases and prepare comprehensive reentry plans for their clients to maintain the low recidivism rate of inmates released under the initiative.
- Courts should ensure consistent application of Proposition 36 throughout the state. Uniform standards of review and procedural protections should be implemented to provide accurate assessments of inmate risk.
- More public and private resources should be committed to provide services to inmates released under Proposition 36 to ensure their successful reentry into the community. Every prisoner released under Proposition 36 should have access to temporary housing, sobriety support, and employment assistance services equal to those services provided to all other inmates leaving prison.



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

Key Findings

- Over 1,000 inmates have been released from custody under Proposition 36 to date, according to the Department of Corrections. Each of these prisoners was released following an individualized review and finding by a Superior Court judge that they no longer pose an “unreasonable risk of danger to public safety.”
- The recidivism rate of inmates released under Proposition 36 is far below state and national averages. Less than 2 percent of the inmates released so far under Proposition 36 have been charged with a new crime.
- Proposition 36 has already saved California taxpayers between \$10 and \$13 million. If the reform were applied to all eligible inmates, Californians would save almost \$1 billion over the next ten years.
- Over 2,000 cases brought under Proposition 36 are still waiting to be heard. In Los Angeles County, more than 800 prisoners eligible for relief under Proposition 36 are waiting for their cases to be resolved. Hundreds of prisoners, some with serious health issues, have been waiting months for their cases to be reviewed by prosecutors and judges.
- Of the 1,000 inmates released under Proposition 36 thus far, many have been unable to obtain the same critical reentry support that is available to other inmates leaving the state prison system. The continued success of those released under Proposition 36 is dependent upon access to these vital services. There is no reason to exclude prisoners released under Proposition 36 from the services provided to all others released from custody in California.

Background

When it was enacted in 1994, California's "Three Strikes and You're Out" law was the harshest sentencing law in the country. Thousands of inmates were sentenced to life in prison for minor crimes, including petty theft and simple drug possession.

In 2012, Proposition 36 passed with over 69 percent of the statewide vote, representing a shift in public attitude toward criminal sentencing. A majority of voters in every county in California voted for the initiative. Proposition 36 made history as the country's first voter initiative to shorten prison sentences of people currently behind bars.

The path to reforming California's Three Strikes law began with a failed reform initiative in 2004. That measure ("Proposition 66") identified a problem with California's recidivist sentencing scheme but was viewed as not providing adequate safeguards to protect public safety. Proposition 66 was narrowly defeated by voters. Despite its failure at the polls, however, Proposition 66 played a key role in raising public consciousness of the harsh, unintended consequences of the Three Strikes law.

Two years ago, the NAACP Legal Defense and Education Fund ("LDF") launched the ballot campaign for Proposition 36. The Stanford Three Strikes Project served as local counsel for LDF. Unlike the reform campaign in 2004, statewide leaders in law enforcement were official proponents of Proposition 36. Among the initiative's most outspoken supporters were then-Los Angeles District Attorney Steve Cooley, San Francisco District Attorney and former Police Chief George Gascón, and Los Angeles Chief of Police Charlie Beck. A diverse coalition of national leaders also endorsed the campaign, from Grover Norquist, George Shultz, and Bill Bratton to Corey Booker and Bill Bradley.

As Steve Cooley recently said, "During my 12 years as a Los Angeles County District Attorney, I worked to see that the state's Three Strikes law was fairly applied. A critical element of Three Strikes reform includes the review of 25-year to life sentences for relatively minor offenses."



THE NAACP LEGAL DEFENSE FUND

The NAACP Legal Defense and Educational Fund, Inc. ("LDF") is the country's premier legal organization fighting for racial justice. Founded in 1940 by Thurgood Marshall, LDF pursues litigation, advocacy, and public education, to expand democracy, eliminate disparities, and achieve racial justice in America. President Obama recently described LDF as "simply the best civil rights law firm in American history."

LDF was the principal organization behind the campaign for Proposition 36. LDF championed the cause for reforming California's Three Strikes law, which stood as one of the country's harshest and most infamous criminal sentencing statutes, and was applied disproportionately against African-Americans.

Shortly before his untimely death, John Payton, then-President and Director-Counsel of LDF, explained that "The Three Strikes Reform Act helps restore fairness and justice to the Three Strikes law. As the voters originally intended, it reserves the harshest sentences for those convicted of serious or violent crimes. We should not waste precious resources sending people to prison for life for shoplifting."

For more information about LDF visit naacpldf.org.



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THE STANFORD THREE STRIKES PROJECT

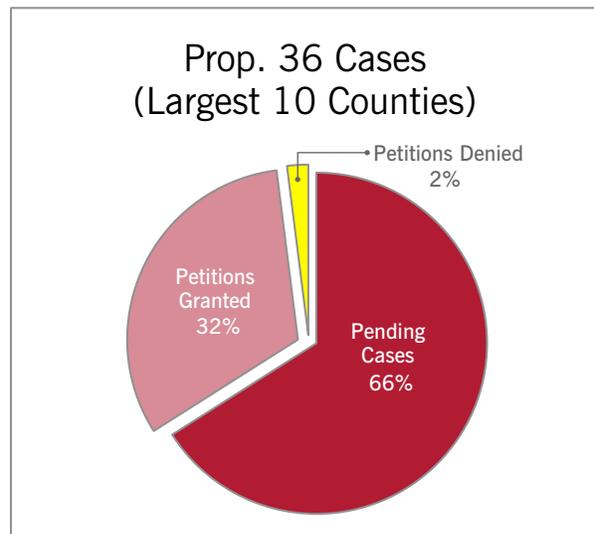
The Stanford Three Strikes Project represents individuals sentenced to life for minor crimes under California's Three Strikes law. The Three Strikes Project is based at Stanford Law School and relies on law students to conduct the organization's work, including policy advocacy and litigation in state and federal court on behalf of institutional and individual clients.

The Three Strikes Project served as counsel to the NAACP Legal Defense Fund in its campaign for Proposition 36. Since the enactment of Proposition 36, the Project has worked with courts, public defenders, community service providers, law enforcement, and other public agencies to coordinate and ensure effective implementation of the reform. The Project continues to represent individual prisoners seeking release under Proposition 36.

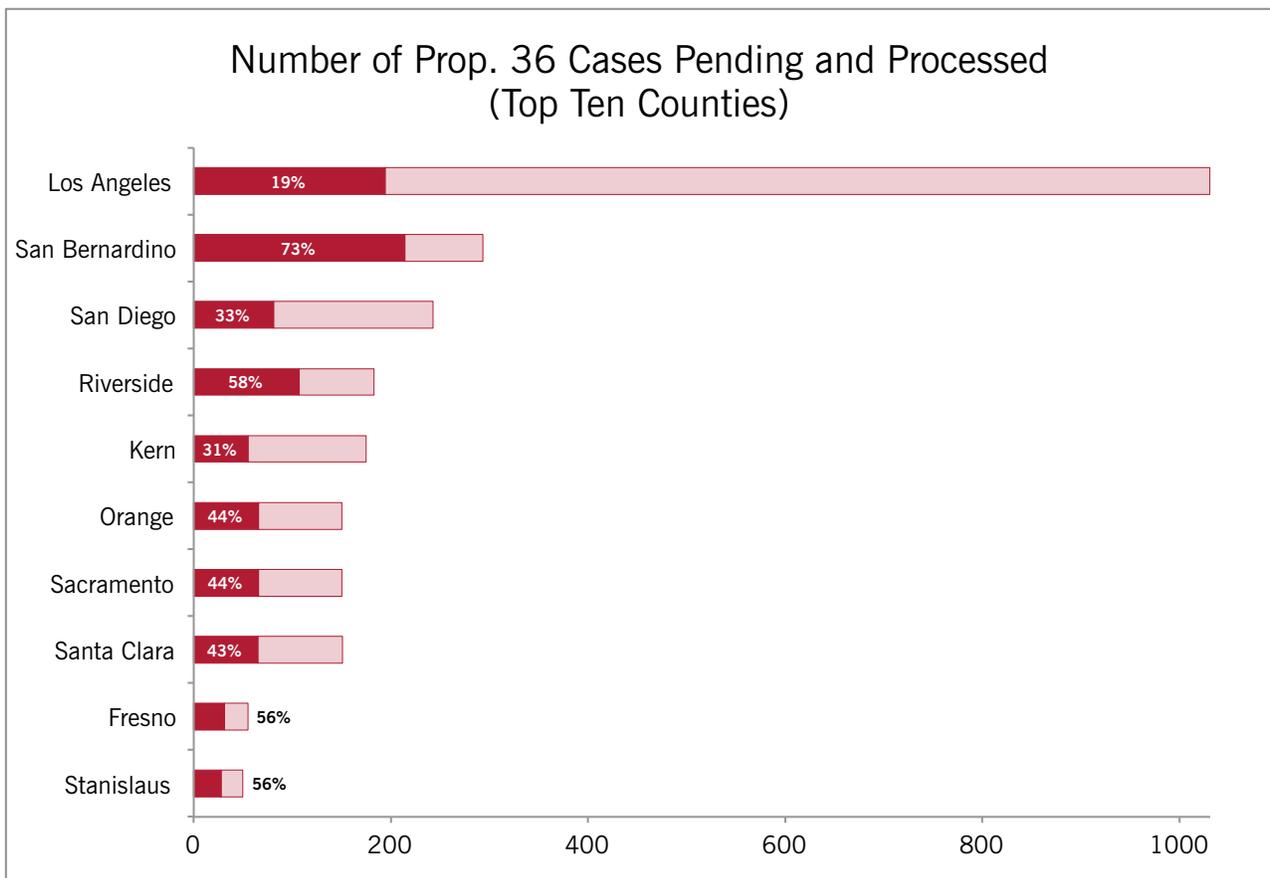
For more information about the Stanford Three Strikes Project visit threestrikesproject.org.

Proposition 36 Implementation

Proposition 36 establishes a procedure for inmates sentenced to life in prison for a non-serious or non-violent third strike crime to petition in court for a reduced sentence. A judge may grant the inmate's petition and reduce his or her sentence only if the judge determines that the prisoner's release would not create "an unreasonable risk of danger to public safety." The petition must be filed in the same county where the prisoner committed his or her most recent offense. (See new Cal. Penal Code Section 1170.126.) District attorneys must review each case and have the burden to contest an inmate's suitability for release. When a district attorney challenges the safety of releasing an inmate under Proposition 36, the Superior Court must hold a hearing at which evidence may be presented by both sides.



Source: County Records (Aug. 2013).



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

According to the Department of Corrections, Superior Courts throughout California have processed a total of 1,092 petitions under Proposition 36. Over 95 percent of these petitions have been granted, and a total of 1,011 prisoners have been released from custody to date.

Statewide, more than 2,000 cases filed under Proposition 36 have yet to be processed by the courts. In Los Angeles County, more than 800 prisoners eligible for relief under Proposition 36 are waiting for their cases to be resolved.

Real Life Success Stories

EDDIE GRIFFIN was sentenced to life under the Three Strikes law in 2000 for possession of crack cocaine. In prison, Eddie founded the “Hope For Strikers” peer support group and became a “model inmate,” according to testimony of several prison experts and staff members, including the former warden of San Quentin State Prison where Eddie was housed. This July, after 13 years in prison, a Superior Court judge found that Eddie’s rehabilitation in prison was “exemplary” and ordered him released from prison based on the time he had already served. Eddie was reunited with his family and now lives in a residential reentry facility for veterans in San Jose. Eddie is enrolled in an intensive employment program called “The Last Mile,” which connects former inmates with jobs in California’s technology sector.

CURTIS PENN was sentenced to life under the Three Strikes law in 1998 for shoplifting a pair of tennis shoes from a sporting goods store. While in prison, Curtis furthered his education through the Prison University Project. After 15 years in custody, Curtis was released in April. Immediately upon his release, Curtis enrolled in Options Recovery Services, a wrap-around residential drug treatment and job preparedness program in Berkeley. At Options, Curtis participates in a daily, intensive counseling program to maintain his sobriety. He also attends San Francisco State University, where he has nearly completed his Bachelor’s degree in social psychology. He works part-time as a landscaper and carpenter.



Eddie Griffin, released after serving 13 years for drug possession.

LARRY WILLIAMS was sentenced to life under the Three Strikes law in 1997 for possession of a stolen cell phone. In prison, Larry participated in extensive vocational, educational, and rehabilitation programming, earning praise and support of vocational counselors and correctional officers. After 16 years in prison, Larry was released from custody in April. Larry immediately entered the Salvation Army Adult Rehabilitation Program in Santa Ana, where he remains today. The Salvation Army Program is a comprehensive residential rehabilitation and job-training program. As a resident in the program, Larry participates in daily counseling and works in the Salvation Army warehouse.

DAVID GOMEZ was sentenced to life under the Three Strikes law in 1995 for joyriding. While in prison, David garnered the praise of supervisors and correctional officers and was selected for membership on the Men’s Advisory Council due to his leadership and the positive influence he had on other inmates. After 18 years in prison, David was released from custody in July with nothing but a used t-shirt and shorts that were far too small. David now lives at The Name of The Loving Father, a group home in San Jose. He works on general repairs, maintenance, and landscaping.

Recidivism

Less than 2 percent of prisoners released so far under Proposition 36 have been charged with a new crime, according to data provided by the Department of Corrections and counties throughout the state. Although these released prisoners have been out of custody for a relatively short period of time (4.4 months on average), their recidivism rate is well below state and national averages over similar time periods.

California has one of the highest recidivism rates in the country. Over 16 percent of inmates released from California prisons between 2003 and 2004 violated the terms of their parole due to new criminal charges within the first 90 days of their release. Within a year, over 40 percent were returned to custody. These inmates all received post-release support and parole supervision, unlike inmates released under Proposition 36. (Petersilia, et al.

“Assessing Parole Violations” (2009).) Nationwide, on average, 44 percent of inmates leaving state prisons are re-arrested within one year. (Langen & Levin, “Bureau of Justice Statistics Special Report,” U.S. Department of Justice (June 2002).)

The low recidivism rate of inmates released under Proposition 36 confirms the Department of Corrections’ static risk projections that inmates sentenced to life under the Three Strikes law for non-serious, non-violent crimes are among the safest to release from custody.

Recidivism Rates			
	90 days from release	6 months from release	1 year from release
California Average	16%	27%	40%
National Average	n/a	30%	44%
	Since Nov. 2012 (Average 4.4 months from release)		
Proposition 36	Less than 2%		

Sources: Petersilia, et al. (2009); Langen & Levin (2002); California Department of Corrections and Rehabilitation and county records (2013).

Reentering the Community After a Life Sentence

Perhaps the best predictor of whether a prisoner reentering the community will return to a life of crime is whether he has a stable, supportive, and sober living environment upon his release from custody.

Unlike all other prisoners released from state custody, no public resources are available to inmates released under Proposition 36. Inmates granted relief under Proposition 36 are released from custody without warning or money, and frequently without adequate clothing—sometimes nothing more than a disposable plastic jumpsuit. Mentally and physically disabled inmates released under Proposition 36 are especially

vulnerable and suffer disproportionately from the lack of reentry resources.

Due to the state’s failure to provide services, reentry service organizations across California are struggling to find the resources to meet the gap and help maintain the low recidivism rate of inmates released under Proposition 36. These organizations provide temporary housing, mental health services, sobriety maintenance, and job training at no cost. Leaders in this effort include the Delancey Street Foundation, Amity Foundation, the Anti-Recidivism Coalition, The Last Mile, and Californians for Safety and Justice. In

addition, the Los Angeles Regional Reentry Partnership has taken the lead in attempting to secure free housing, employment and rehabilitative services for the more than 1,000 inmates that are likely to return to Southern California under Proposition 36. Over one hundred additional organizations in the counties most impacted by the initiative are willing to help provide reentry services to inmates released from custody under Proposition 36.

These volunteer efforts are laudable. However, few of these services are easily accessible to inmates leaving prison. Many of the organizations lack adequate

Reentry Services and Supervision (per released inmate)

Post-Release Community Supervision	\$6,350
Parole	\$6,000
Prop. 36 (“gate money”)	\$200

Source: Legislative Analyst’s Office (Aug. 2013).

funding and support, and there are frequently service gaps in critical areas such as housing, employment and drug treatment and rehabilitation.

For more information about these reentry services, and a list of available resources, visit prop36.org/reentry.



© 2007 The Delancey Street Foundation

“IN OUR 43 YEARS, Delancey Street Foundation has understood that people coming back from prison require a lot of learning,” explains Delancey Street president and CEO Mimi Silbert. “They must learn to live a drug and alcohol free life, education and vocational skills, how to work in unity with all people, and how different life can be in an open society from what it is in a closed prison. Prop 36 has taken non-violent prisoners who need the help to work hand in hand with the community in all aspects in life.”

DELANCEY STREET

The Delancey Street Foundation has been recognized by the United States Congress as one of the best residential addiction treatment programs in the country. Delancey Street is based in San Francisco and has multiple locations nationwide, including residential centers in Los Angeles and New York. Potential Delancey Street residents must apply for admission and commit a minimum of two years to the program. The Delancey Street model provides intensive peer support, addiction treatment, and vocational training. Delancey Street boasts a success rate of over 95 percent for residents who complete their program.

Delancey Street has established a special admission process for inmates eligible for release under Proposition 36. Delancey Street residents are visiting over a dozen prisons throughout California, meeting with inmates eligible for relief under Proposition 36, and offering admission to qualified applicants. This program was developed in partnership with the Stanford Three Strikes Project and with unprecedented cooperation of the Department of Corrections.

For more information about Delancey Street visit delanceystreetfoundation.org.

SANTA CLARA COUNTY REENTRY RESOURCE CENTER

Santa Clara County is the only county in California that has a comprehensive reentry center, which provides free services and support to inmates released under Proposition 36. Released inmates are eligible to receive the same services provided to inmates released under county supervision, including housing, drug and alcohol counseling, employment and health services, clothing, and other support through the County Reentry Resource Center in San Jose.

Under leadership from the County Probation Department, the Santa Clara Board of Supervisors approved a plan for inmates released under Proposition 36 to receive resources provided under California's Post-Release Community Supervision program. Although all counties in California receive financial support for this program, Santa Clara County and Marin County are the only counties to extend these services to inmates released under Proposition 36.

For more information about the Santa Clara Reentry Resource Center visit sccgov.org/sites/reentry.



Santa Clara County Reentry Resource Center

Challenges & Recommendations

Despite the early success of Proposition 36, more work must be done in order to realize maximum benefit from the reform.

More resources need to be directed to processing petitions in county court systems. District Attorneys and Public Defenders alike must ensure that adequate resources are committed to processing Proposition 36 petitions in the county courts. For example, in Los Angeles County, which has the largest number of pending cases, one of the chief constraints in processing Proposition 36 cases is the relatively small number of prosecutors assigned to address them. Prosecutors are the first line in reviewing an inmate's petition for release, and they must evaluate each case to determine whether the petitioner is a genuine risk to public safety. In Los Angeles, hundreds of inmates have waited more than six months for prosecutors to respond to their petitions.

At the same time, public defender offices must also ensure that sufficient resources are devoted to Proposition 36 cases. In Kern County, for example, only one Deputy Public Defender has been assigned responsibility for handling over 180 Proposition 36 cases. Providing sufficient resources for counsel representing inmates under Proposition 36 is critical to the effective administration of the reform. In order to provide adequate representation, defense attorneys must have access to their clients to conduct thorough investigations of their criminal histories and records of rehabilitation in prison. Attorneys should consult with prison and mental health experts, develop risk analyses, and secure robust reentry plans to ensure that their clients have professional housing, drug treatment, and employment support services available upon release. An inmate with a comprehensive, professional reentry plan is far less of a risk to public safety and more likely to win relief under the initiative.

Judges must ensure that Proposition 36 is applied consistently throughout the state. Superior Court judges must follow consistent legal standards and burdens of proof. For example, under the Proposition 36 petition process, prosecutors bear the burden of proving that an eligible inmate poses an unreasonable risk to public safety. This rule has been upheld by the California Court of Appeal in *People v. Superior Court (Kaulick)*. However some Superior Court judges have ruled that the burden is on prisoners to prove that they are not a public safety threat. Proposition 36 has no such legal requirement, and shifting the burden to prisoners is contrary to controlling case law. In any legal proceeding, the burden of proof is a bedrock procedural requirement that should be strictly and consistently enforced. Judges should also monitor prosecutors and public defenders to ensure that they are processing cases in a fair and effective manner.

More resources must be devoted to prisoner reentry services. The low recidivism rate of inmates released under Proposition 36 is all the more remarkable given that inmates released under Proposition 36 receive virtually no state or county support or supervision for their transition from custody to the community. All other inmates leaving prison receive significant financial support, reentry services, and public safety supervision under either the state parole system or county probation departments. The vast majority of inmates released under Proposition 36 are not eligible for parole



Curtis Wilkerson, released after serving 16 years for shoplifting.

or probation, and state and county agencies have refused to extend to Proposition 36 inmates the same resources provided to all other inmates leaving custody. To ensure the continued success of those released under Proposition 36, these released inmates should be afforded parity of resources. Currently, Santa Clara and Marin are the only counties to extend the services provided under California's Post-Release Community Supervision program to Proposition 36 inmates. All counties should consider adopting this model.