

## POLICY:

# THREE STRIKES & JAIL FOR BURGLARY

The state's principal job is to protect citizens from personal harm and provide for the secure enjoyment of their property. To deter crime, the state must ensure that it is detected and punished. This requires an adequately funded police force, a court system that delivers justice promptly and penalties that are properly enforced.

New Zealand has made good progress in reducing crime over recent years, partly on account of ACT's three strikes legislation, which makes a career of serious crime impossible. Nevertheless, law and order policies can still be improved.

Burglary is the crime New Zealanders are most likely to suffer, with about 55,000 reported annually. However, because uninsured victims typically do not report this crime, the actual number of burglaries is much higher. A 2006 Treasury report put the real number at 2.2 times the reported rate: that is, about 120,000 burglaries a year.

Burglary is a serious crime. Burglars do not merely steal their victims' property; they invade their homes. Many victims suffer a sense of violation far more distressing to them than the

loss of their property. Preventing burglary should be a priority for the state.

Unfortunately, burglary has a notoriously low "clear-up rate"; in only about 15% of cases do the police apprehend the burglars. Because burglars face a low chance of being caught, deterring them requires stiff penalties for those who are apprehended.

Yet only 40% of convicted burglars now receive a prison sentence. And, despite the maximum sentence for burglary being 10 years, the average sentence for those imprisoned is only 16 months, with most leaving prison on parole having served only 8 months. To our knowledge, no burglar has received the maximum 10 year sentence in the past 10 years. A career criminal with 388 convictions for burglary recently received a sentence of just two years and nine months for his latest addition to this total.

ACT therefore advocates adopting a variant of the UK "three strikes" policy for burglary. This will reduce the rate of burglary by deterring people from committing the crime and by incapacitating burglars who are not deterred by holding them in prison.

# POLICY DETAILS

- Three strikes for burglary will be a separate regime from the current three strikes regime for violent crime (introduced by ACT in 2010). Burglary convictions will not be counted as “strikes” within the violent crime regime and *vice versa*: violent crime convictions will not be counted as strikes within the burglary three strikes regime. The one exception is aggravated burglary, which will count as a strike offence in both regimes.
- Unlike the violent crime regime, where a third strike earns the maximum sentence for the crime without parole, a third strike for burglary will earn a minimum three year prison sentence with no parole (the unused maximum already being 10 years).
- Burglary convictions that pre-date the introduction of the legislation will count as prior offences as they do now. Any person who commits burglary after the law commences and has two prior convictions or more will be subject to the new minimum sentence. However, the legislation will impose no retrospective penalties; only new convictions for burglary will be counted as third strikes with mandatory three-year minimum sentences (that is, no previously imposed sentences will be extended to three years).
- The mandatory minimum sentence does not apply to offenders under 18. However, convictions obtained when under 18 count as priors.
- Judges need not apply the minimum three year, non-parole sentence when doing so would be manifestly unjust.

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# COSTS AND BENEFITS OF THE POLICY

Imprisoning someone for a year costs \$90,000 on average (though less for prisoners in low security prisons, where most burglars are held). So the cost of the policy to taxpayers is about \$90,000 times the difference it makes to the prison population. If it increased the prison population by 100, for example, it would cost taxpayers \$9 million a year – or about \$3 each.

What difference, then, will this three-strikes-for-burglary policy make to the prison population?

The answer cannot be known with certainty because it depends on the deterrence effect of the policy. If the policy strongly deters burglary, as expected, then it will reduce the number of burglaries, the number of convictions and the number of burglars in prison. It would then *reduce* the cost of our penal system and save taxpayers money. If it has only limited deterrence effect, however, it will increase the prison population as burglars who would have spent less than a year in prison instead spend 3 years there.

The three strikes policy will certainly have a deterrent effect. Unlike some “spontaneous” crimes, burglaries are planned. If only unconsciously, burglars weigh the likely benefit (in the value of stolen goods) against the likely cost: that is, the penalty for the crime multiplied by the probability of being convicted. By increasing the cost of committing burglaries, the three strikes policy will decrease the number of burglaries that appear profitable to burglars and decrease the number of burglaries committed.

Since a three-strikes-for-burglary policy was introduced in the England in 1999 the number

of burglaries has declined by 35%. Some of this decline is surely due to the three strikes policy and generally tougher sentencing introduced in the 1990s. The policy is likely to be more effective in New Zealand because our version does not allow for parole (which the English policy does) and because, unlike England, we are not vulnerable to “burglary tourism” from foreigners whose previous convictions are difficult to determine.

New Zealand’s experience of the three strikes policy for violent crime also suggests a significant deterrence effect of such policies. About 4,000 New Zealanders are sitting on a first strike but only 32 have a second strike. Since the policy was introduced in 2010, no one has been convicted of a third strike offence. Claims by opponents that the policy would result in a sharp rise in the prison population have proven false.

Of course, some will not be deterred, especially those using burglary to fund addictions to alcohol or other drugs. Incarcerating these burglars for longer gives the state a better opportunity to assist them with their addictions and will benefit those who they would have burgled if not incapacitated by imprisonment.

This is the main reason concern about the cost of imprisoning burglars is misguided. The cost of imprisoning burglars is small compared with the cost that burglary imposes on society. By deterring burglary and incapacitating burglars while they are imprisoned, the three strikes policy will significantly reduce the costs that burglars impose on their victims.

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In a 2006 report, the Treasury estimated the average cost of a burglary to be about \$9,000 (in 2014 dollars): over \$1 billion in total. (The method used to assign a monetary value to the emotional cost borne by the victims is likely to undervalue their anguish but, to avoid needless dispute, we accept the Treasury’s estimate.)

If our three strikes policy reduces the number of burglaries by 30% – or 12,000 a year – it will reduce the annual cost of burglary by more than \$320 million. The policy would deliver a

net benefit unless it more than quadrupled the number of people imprisoned for burglary from the current 1,200 to 4,800. Which it certainly will not. Because of the policy’s deterrent effect, we expect the policy to cause no significant increase in the prison population.

By trying to save money on the penal system, opponents of this policy impose far greater costs on the victims of burglary. That amounts to a dereliction of the state’s principle duty.

