

RESOLUTION 09-20-06

DIGEST

Sentencing: Three Strikes Law Limited to Serious or Violent Felonies

Amends Penal Code sections 667 and 1192.7 to require that a current conviction under the Three Strikes Law be limited to serious or violent felonies.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to Resolutions 01-05-96, 01-07-96, 01-06-97, 05-13-97, 07-06-99, 11-08-02, all of which were approved and Resolution 11-07-02 which was withdrawn.

Reasons:

This resolution amends Penal Code sections 667 and 1192.7 to require that a current conviction under the Three Strikes Law be limited to serious or violent felonies. This resolution should be approved in principle because the current statute sometimes results in punishment grossly disproportionate to the crime(s) committed and this change will conform the law to its original intent.

A defendant with two or more felony convictions or “strikes” who is convicted of a third felony must be sentenced to 25 years to life. (Pen. Code, § 667.) A defendant is not eligible to serve anything less than the mandatory minimum of 25 years. (*In re Cevera* (2001) 24 Cal.4th 1073.) The first and second strikes must be serious or violent felonies. (Pen. Code, § 667.5.) However, the third strike may be any felony under California law. This would include “wobbler” offenses which could be charged and sentenced as a felony, such as petty theft with a prior. (*People v. Terry* (1996) 47 Cal.App.4th 329.) Therefore the law can escalate the punishment for deescalating behavior.

A 2002 survey by the Washington Post indicated that more than one-half of those sentenced under the Three Strikes Law were sentenced for a third strike of a non-violent or non-serious felony. The intent of the law was to punish those who are repeat offenders of serious and violent felonies. In its current form however, the law allows for greater punishment of an individual who commits less serious or violent behavior. Sentencing should be proportionate to the magnitude of the crime. People should not be imprisoned for the rest of their lives for such minor offenses as petty theft or drug possession.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Penal Code sections 667 and 1192.7 to read as follows:

1 § 667:

2 (a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a
3 serious felony who previously has been convicted of a serious felony in this state or of any

4 offense committed in another jurisdiction which includes all of the elements of any serious
5 felony, shall receive, in addition to the sentence imposed by the court for the present
6 offense, a five-year enhancement for each such prior conviction on charges brought and
7 tried separately. The terms of the present offense and each enhancement shall run
8 consecutively.

9 (2) This subdivision shall not be applied when the punishment imposed under other
10 provisions of law would result in a longer term of imprisonment. There is no requirement of
11 prior incarceration or commitment for this subdivision to apply.

12 (3) The Legislature may increase the length of the enhancement of sentence provided
13 in this subdivision by a statute passed by majority vote of each house thereof.

14 (4) As used in this subdivision, "serious felony" means a serious felony listed in
15 subdivision (c) of Section 1192.7.

16 (5) This subdivision shall not apply to a person convicted of selling, furnishing,
17 administering, or giving, or offering to sell, furnish, administer, or give to a minor any
18 methamphetamine-related drug or any precursors of methamphetamine unless the prior
19 conviction was for a serious felony described in subparagraph (24) of subdivision (c) of
20 Section 1192.7.

21 (b) It is the intent of the Legislature in enacting subdivisions (b) to (i), inclusive, to
22 ensure longer prison sentences and greater punishment for those who commit a serious
23 and/or violent felony and have been previously convicted of serious and/or violent felony
24 offenses.

25 (c) Notwithstanding any other law, if a defendant has been convicted of a serious
26 and/or violent felony and it has been pled and proved that the defendant has one or more
27 prior serious and/or violent felony convictions as defined in subdivision (d), the court shall
28 adhere to each of the following:

29 (1) There shall not be an aggregate term limitation for purposes of consecutive
30 sentencing for any subsequent serious and/or violent felony conviction.

31 (2) Probation for the current offense shall not be granted, nor shall execution or
32 imposition of the sentence be suspended for any prior offense.

33 (3) The length of time between the prior serious and/or violent felony conviction and
34 the current serious and/or violent felony conviction shall not affect the imposition of
35 sentence.

36 (4) There shall not be a commitment to any other facility other than the state prison.
37 Diversion shall not be granted nor shall the defendant be eligible for commitment to the
38 California Rehabilitation Center as provided in Article 2 (commencing with Section 3050)
39 of Chapter 1 of Division 3 of the Welfare and Institutions Code.

40 (5) The total amount of credits awarded pursuant to Article 2.5 (commencing with
41 Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of
42 imprisonment imposed and shall not accrue until the defendant is physically placed in the
43 state prison.

44 (6) If there is a current conviction for more than one serious and/or violent felony
45 count not committed on the same occasion, and not arising from the same set of operative
46 facts, the court shall sentence the defendant consecutively on each count pursuant to
47 subdivision (e).

48 (7) If there is a current conviction for more than one serious and/or violent felony as

49 described in paragraph (6), the court shall impose the sentence for each conviction
50 consecutive to the sentence for any other conviction for which the defendant may be
51 consecutively sentenced in the manner prescribed by law.

52 8) Any sentence imposed pursuant to subdivision (e) will be imposed consecutive to
53 any other sentence which the defendant is already serving, unless otherwise provided by
54 law.

55 (d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i),
56 inclusive, a prior conviction of a serious and/or violent felony shall be defined as:

57 (1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any
58 offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The
59 determination of whether a prior conviction is a prior felony conviction for purposes of
60 subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is
61 not affected by the sentence imposed unless the sentence automatically, upon the initial
62 sentencing, converts the felony to a misdemeanor. None of the following dispositions shall
63 affect the determination that a prior conviction is a prior serious and/or violent felony for
64 purposes of subdivisions (b) to (i), inclusive:

65 (A) The suspension of imposition of judgment or sentence.

66 (B) The stay of execution of sentence.

67 (C) The commitment to the State Department of Health Services as a mentally
68 disordered sex offender following a conviction of a felony.

69 (D) The commitment to the California Rehabilitation Center or any other facility
70 whose function is rehabilitative diversion from the state prison.

71 (2) A conviction in another jurisdiction for an offense that, if committed in
72 California, is punishable by imprisonment in the state prison. A prior conviction of a
73 particular serious and/or violent felony shall include a conviction in another jurisdiction for
74 an offense that includes all of the elements of the particular serious and/or violent felony as
75 defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

76 (3) A prior juvenile adjudication shall constitute a prior serious and/or violent felony
77 conviction for purposes of sentence enhancement if:

78 (A) The juvenile was 16 years of age or older at the time he or she committed the
79 prior offense.

80 (B) The prior offense is listed in subdivision (b) of Section 707 of the Welfare and
81 Institutions Code or described in paragraph (1) or (2) as a felony.

82 (C) The juvenile was found to be a fit and proper subject to be dealt with under the
83 juvenile court law.

84 (D) The juvenile was adjudged a ward of the juvenile court within the meaning of
85 Section 602 of the Welfare and Institutions Code because the person committed an offense
86 listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

87 (e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any other
88 enhancement or punishment provisions which may apply, the following shall apply where a
89 defendant has a prior serious and/or violent felony conviction:

90 (1) If a defendant has one prior serious and/or violent felony conviction that has been
91 pled and proved, the determinate term or minimum term for an indeterminate term shall be
92 twice the term otherwise provided as punishment for the current serious and/or violent
93 felony conviction.

94 (2) (A) If a defendant has two or more prior serious and/or violent felony convictions as
95 defined in subdivision (d) that have been pled and proved, the term for the current serious
96 and/or violent felony conviction shall be an indeterminate term of life imprisonment with a
97 minimum term of the indeterminate sentence calculated as the greater of:

98 (i) Three times the term otherwise provided as punishment for each current serious
99 and/or violent felony conviction subsequent to the two or more prior serious and/or violent
100 felony convictions.

101 (ii) Imprisonment in the state prison for 25 years.

102 (iii) The term determined by the court pursuant to Section 1170 for the underlying
103 conviction, including any enhancement applicable under Chapter 4.5 (commencing with
104 Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

105 (B) The indeterminate term described in subparagraph (A) shall be served
106 consecutive to any other term of imprisonment for which a consecutive term may be
107 imposed by law. Any other term imposed subsequent to any indeterminate term described in
108 subparagraph (A) shall not be merged therein but shall commence at the time the person
109 would otherwise have been released from prison.

110 (f) (1) Notwithstanding any other law, subdivisions (b) to (i), inclusive, shall be
111 applied in every case in which a defendant has a prior serious and/or violent felony
112 conviction as defined in subdivision (d). The prosecuting attorney shall plead and prove
113 each prior serious and/or violent felony conviction except as provided in paragraph (2).

114 (2) The prosecuting attorney may move to dismiss or strike a prior felony conviction
115 allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient
116 evidence to prove the prior conviction. If upon the satisfaction of the court that there is
117 insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the
118 allegation.

119 (g) Prior felony convictions shall not be used in plea bargaining as defined in
120 subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior
121 felony convictions and shall not enter into any agreement to strike or seek the dismissal of
122 any prior felony conviction allegation except as provided in paragraph (2) of subdivision (f).

123 (h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to
124 statutes as they existed on June 30, 1993.

125 (i) If any provision of subdivisions (b) to (h), inclusive, or the application thereof to
126 any person or circumstance is held invalid, that invalidity shall not affect other provisions or
127 applications of those subdivisions which can be given effect without the invalid provision or
128 application, and to this end the provisions of those subdivisions are severable.

129 (j) The provisions of this section shall not be amended by the Legislature except by
130 statute passed in each house by rollcall vote entered in the journal, two-thirds of the
131 membership concurring, or by a statute that becomes effective only when approved by the
132 electors.

133 § 1170.12:

134 (a) Notwithstanding any other provision of law, if a defendant has been convicted of
135 a serious and/or violent felony and it has been pled and proved that the defendant has one or
136 more prior serious and/or violent felony convictions, as defined in subdivision (b), the court
137 shall adhere to each of the following:

138 (1) There shall not be an an aggregate term limitation for purposes of consecutive

139 sentencing for any subsequent serious and/or violent felony conviction.
140 (2) Probation for the current offense shall not be granted, nor shall execution or
141 imposition of the sentence be suspended for any prior offense.
142 (3) The length of time between the prior serious and/or violent felony conviction and
143 the current serious and/or violent felony conviction shall not affect the imposition of
144 sentence.
145 (4) There shall not be a commitment to any other facility other than the state prison.
146 Diversion shall not be granted nor shall the defendant be eligible for commitment to the
147 California Rehabilitation Center as provided in Article 2 (commencing with Section 3050)
148 of Chapter 1 of Division 3 of the Welfare and Institutions Code.
149 (5) The total amount of credits awarded pursuant to Article 2.5 (commencing with
150 Section 2930) of Chapter 7 of Title 1 Part 3 shall not exceed one-fifth of the total term of
151 imprisonment imposed and shall not accrue until the defendant is physically placed in the
152 state prison.
153 (6) If there is a current conviction for more than one serious and/or violent felony
154 count not committed on the same occasion, and not arising from the same set of operative
155 facts, the court shall sentence the defendant consecutively on each count pursuant to this
156 section.
157 (7) If there is a current conviction for more than one serious or violent felony as
158 described in paragraph (6) of this subdivision, the court shall impose the sentence for each
159 conviction consecutive to the sentence for any other conviction for which the defendant may
160 be consecutively sentenced in the manner prescribed by law.
161 (8) Any sentence imposed pursuant to this section will be imposed consecutive to
162 any other sentence which the defendant is already serving, unless otherwise provided by
163 law.
164 (b) Notwithstanding any other provision of law and for the purposes of this section, a
165 prior conviction of a serious and/or violent felony shall be defined as:
166 (1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any
167 offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The
168 determination of whether a prior conviction is a prior serious and/or violent felony
169 conviction for purposes of this section shall be made upon the date of that prior conviction
170 and is not affected by the sentence imposed unless the sentence automatically, upon the
171 initial sentencing, converts the felony to a misdemeanor. None of the following dispositions
172 shall affect the determination that a prior conviction is a prior serious and/or violent felony
173 for purposes of this section:
174 (A) The suspension of imposition of judgment or sentence.
175 (B) The stay of execution of sentence.
176 (C) The commitment to the State Department of Health Services as a mentally
177 disordered sex offender following a conviction of a felony.
178 (D) The commitment to the California Rehabilitation Center or any other facility
179 whose function is rehabilitative diversion from the state prison.
180 (2) A conviction in another jurisdiction for an offense that, if committed in
181 California, is punishable by imprisonment in the state prison. A prior conviction of a
182 particular serious and/or violent felony shall include a conviction in another jurisdiction for
183 an offense that includes all of the elements of the particular serious and/or violent felony as

184 defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.
185 (3) A prior juvenile adjudication shall constitute a prior serious and/or violent felony
186 conviction for the purposes of sentence enhancement if:

187 (A) The juvenile was sixteen years of age or older at the time he or she committed
188 the prior offense, and

189 (B) The prior offense is
190 (i) listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, or
191 (ii) listed in this subdivision as a serious and/or violent felony, and

192 (C) The juvenile was found to be a fit and proper subject to be dealt with under the
193 juvenile court law, and

194 (D) The juvenile was adjudged a ward of the juvenile court within the meaning of
195 Section 602 of the Welfare and Institutions Code because the person committed an offense
196 listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

197 (c) For purposes of this section, and in addition to any other enhancements or
198 punishment provisions which may apply, the following shall apply where a defendant has a
199 prior serious and/or violent felony conviction:

200 (1) If a defendant has one prior serious and/or violent felony conviction that has been
201 pled and proved, the determinate term or minimum term for an indeterminate term shall be
202 twice the term otherwise provided as punishment for the current serious and/or violent
203 felony conviction.

204 (2)(A) If a defendant has two or more prior serious and/or violent felony convictions,
205 as defined in paragraph (1) of subdivision (b), that have been pled and proved, the term for
206 current serious and/or violent felony conviction shall be an indeterminate term of life
207 imprisonment with a minimum term of the indeterminate sentence calculated as the greater
208 of

209 (i) three times the term otherwise provided as punishment for each current serious
210 and/or violent felony conviction subsequent to the two or more prior serious and/or violent
211 felony convictions, or

212 (ii) twenty-five years or

213 (iii) the term determined by the court pursuant to Section 1170 for the underlying
214 conviction, including any enhancement applicable under Chapter 4.5 (commencing with
215 Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

216 (B) The indeterminate term described in subparagraph (A) of paragraph (2) of this
217 subdivision shall be served consecutive to any other term of imprisonment for which a
218 consecutive term may be imposed by law. Any other term imposed subsequent to any
219 indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall
220 not be merged therein but shall commence at the time the person would otherwise have been
221 released from prison.

222 (d) (1) Notwithstanding any other provision of law, this section shall be applied in
223 every case in which a defendant has a prior serious and/or violent felony conviction as
224 defined in this section. The prosecuting attorney shall plead and prove each prior serious
225 and/or violent felony conviction except as provided in paragraph (2).

226 (2) The prosecuting attorney may move to dismiss or strike a prior felony conviction
227 allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient
228 evidence to prove the prior conviction. If upon the satisfaction of the court that there is

229 insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the
230 allegation.

231 (e) Prior felony convictions shall not be used in plea bargaining, as defined in
232 subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior
233 felony convictions and shall not enter into any agreement to strike or seek the dismissal of
234 any prior felony conviction allegation except as provided in paragraph (2) of subdivision
235 (d).

(Proposed new language underlined, language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

Existing Law: Under the law commonly known as the “Three Strikes Law”, an individual who has one or more prior serious and/or violent felonies is subject to receiving either a doubled sentence or an indeterminate 25 to life prison term upon being convicted of any new felony.

Resolution: This resolution was drafted to amend the Three Strikes Law to limit its application to defendants who’s current conviction is for a serious and/or violent felony offense. The proposed resolution would set reasonable limits on determining which criminal acts to prosecute as second and/or third strikes. Limiting the Three Strikes Law to apply only to those persons who continue to commit serious and/or violent offense will conform the law to the original intent of the voters and it will result in an substantial tax savings.

The Problem: When the Three Strikes Law was before the Legislature and the voters, the law was promoted to protect law-abiding citizens by enhancing the sentences of repeat offenders who commit serious and or violent felonies. However, as currently drafted, the Three Strikes law is not limited to enhancing the prison sentences of offenders with whose current offense is for a serious and/or violent felony. The law also applies to individuals whose current felony conviction was for a non-violent offense. People have received 25 to life prison sentences under the Three Strikes Law when their current convictions were for such minor offenses as theft of a golf club, possession of 0.10 grams of cocaine, theft of a magazine. More than 35,000 people whose current offense was neither a violent nor serious felony have had their sentences enhanced under the Three Strikes law at a cost to tax payers of more than eight hundred million dollars per year. Public leaders, politicians and human rights organizations support similar amendments to California’s Three Strikes law: Senator Don Perata (D), Senator Sheila Kuehl (D), Senator Kevin Murray (D), Assemblymember Mark Leno (D), Assemblymember Mervyn Dymally (D), Assemblymember Jackie Goldberg (D), Assemblymember Paul Koretz (D), Joseph McNamara, Retired Police Chief City of San Jose, Bill Flores, recently retired Assistant Sheriff of San Diego County, Sgt. Ray Petty, Oakland Police Officer and President of the Western Region of the Black Police Association, California Labor Federation, California State Employees Association, California Faculty Association, California Federation of Teachers, American Federation of State, County and Municipal Employees (AFSCME), Children’s Defense Fund California, California National Organization for Woman (NOW), California State Conference of

the NAACP, National Black Police Association, National Alliance for the Mentally Ill (NAMI), American Civil Liberties Union (ACLU).

IMPACT STATEMENT

This resolution would not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Amanda F. Benedict, Law Offices of Amanda F. Benedict, 444 West C Street, Ste. 420, San Diego, CA 92101, voice 619-236-0054, fax 619-236-0153, e-mail law@amandabenedict.com.

RESPONSIBLE FLOOR DELEGATE: Amanda F. Benedict