

## Requested Amendments to California's Three Strikes Law

Families to Amend California's Three Strikes requests the following amendments to California's "Three Strikes" Law which is defined under Sections 667 and 1170.12 of the California Penal Code.

- All felonies, both prior and current, defined under the Three Strikes law shall be for violent felonies only as defined under subdivision (c) of Section 667.5.
- Only violent felonies committed on or after March 7, 1994 (the enactment of the 3-strikes law) shall constitute violent felonies under the law.
- There shall be a ten year "wash-out" such that prior violent felonies have been (1) committed within the prior ten years of the current violent felony or (2) the release from confinement for commission of the crime was within the prior ten years of the current violent felony.
- The court shall have greater discretion to impose sentences consecutively or concurrently with other prior sentences or current felony counts.
- A prior juvenile adjudication shall not constitute a prior violent felony.
- The prosecutor and the court shall have the discretion to count multiple counts during one action as a single strike.
- Discretion shall be given to allow for some of the sentence to be served at rehabilitation facilities.

In addition we request specific provisions that state the amended law is applicable retroactively to persons previously sentenced under the law and that the legislature need only amend the law in the future by a majority vote.

The following pages indicate how the 3-strikes law should be amended to accomplish the above goals (italics are words added and strike-throughs are words deleted).

An act to amend Sections 667 and 1170.12 of the Penal Code, relating to sentencing.

SECTION 1. Section 667 of the Penal Code is amended to read:

667. (a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

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

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

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

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

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

(c) Notwithstanding any other law, if a defendant has been convicted of a felony *defined as any offense defined in subdivision (c) of Section 667.5 as a violent felony* and it has been pled and proved that the defendant has one or more prior felony convictions as defined in subdivision (d), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction *defined as any offense defined in subdivision (c) of Section 667.5 as a violent felony*.

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

~~(3) The length of time between the prior felony conviction and the current felony conviction shall not affect the imposition of sentence.~~

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

~~(5)~~ (3) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed

and shall not accrue until the defendant is physically placed in the state prison.

~~(6)~~ (4) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively or concurrently on each count pursuant to subdivision (e).

~~(7)~~ (5) If there is a current conviction for more than one ~~serious or~~ violent felony as described in paragraph ~~(6)~~ (4), the court shall impose the sentence for each conviction consecutive or concurrent to the sentence for any other conviction for which the defendant may be ~~consecutively~~ sentenced in the manner prescribed by law.

~~(8)~~ (6) Any sentence imposed pursuant to subdivision (e) will be imposed consecutive or concurrent to any other sentence which the defendant is already serving, unless otherwise provided by law.

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

(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony ~~or any offense defined in subdivision (c) of Section 1192.7 as a serious felony~~ in this state committed on or after March 7, 1994. The determination of whether a prior conviction is a prior felony conviction for purposes of subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior felony for purposes of subdivisions (b) to (i), inclusive:

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

(B) The stay of execution of sentence.

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

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

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

(3) A prior juvenile adjudication shall not constitute a prior felony conviction for purposes of sentence enhancement ~~under this section. if:~~

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

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

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

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

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

conviction:

(1) If a defendant has one prior felony conviction as *defined in subdivision(d)* that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction *defined as any offense defined in subdivision (c) of Section 667.5 as a violent felony.*

(2) (A) If a defendant has two or more prior felony convictions as defined in subdivision (d) that have been pled and proved, the term for the current felony conviction *defined as any offense defined in subdivision (c) of Section 667.5 as a violent felony* shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the ~~greater of~~ *greatest of the following:*

(i) Three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior felony convictions.

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

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

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

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

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

(3) *The prosecuting attorney or the court may move to count multiple prior violent felony counts during a single action to be counted as a single prior violent felony count.*

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

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

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

(j) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote

entered in the journal, ~~two-thirds~~ majority of the membership concurring, or by a statute that becomes effective only when approved by the electors.

(k) *This section shall not be applicable in cases where more than ten years have elapsed since the expiration of the maximum sentence or sentences of the previous conviction, or adjudication or adjudications of delinquency, and the time of the commission of the last felony for which he has been convicted. In computing the period of time as provided herein, any period of servitude by a person in a penal institution, within or without the state, shall not be included in the computation of any of said ten-year periods.*

(1) *In the furtherance of justice, any amended provisions of this section shall be applicable retroactively to any person whose sentence would be less had the amendments been in effect when the person was previously sentenced under this section.*

SEC. 2. Section 1170.12 of the Penal Code is amended to read:

1170.12. (a) Notwithstanding any other provision of law, if a defendant has been convicted of a felony *defined as any offense defined in subdivision (c) of Section 667.5 as a violent felony* and it has been pled and proved that the defendant has one or more prior felony convictions, as defined in subdivision (b), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction *defined as any offense defined in subdivision (c) of Section 667.5 as a violent felony.*

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

~~(3) The length of time between the prior felony conviction and the current felony conviction shall not affect the imposition of sentence.~~

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

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

~~(6)~~ (4) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively or concurrently on each count pursuant to this section.

~~(7)~~ (5) If there is a current conviction for more than one serious or violent felony as described in paragraph ~~(6)~~ (4) of this subdivision, the court shall impose the sentence for each conviction consecutive or concurrent to the sentence for any other conviction for which the defendant may be ~~consecutively~~ sentenced in the manner prescribed by law.

~~(8)~~ (6) Any sentence imposed pursuant to this section will be imposed

consecutive or concurrent to any other sentence which the defendant is already serving, unless otherwise provided by law.

(b) Notwithstanding any other provision of law and for the purposes of this section, a prior conviction of a felony shall be defined as:

(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony ~~or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state committed on or after March 7, 1994.~~ The determination of whether a prior conviction is a prior felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior felony for purposes of this section:

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

(B) The stay of execution of sentence.

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

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

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

(3) A prior juvenile adjudication shall *not* constitute a prior felony conviction for purposes of sentence enhancement ~~under this section. if:~~

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

~~(B) The prior offense is~~

~~(i) listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, or~~

~~(ii) listed in this subdivision as a felony, and~~

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

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

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

(1) If a defendant has one prior felony conviction as defined in subdivision (b) that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction defined as any offense defined in subdivision (c) of Section 667.5 as a violent felony.

(2) (A) If a defendant has two or more prior felony convictions, as defined in paragraph (1) of subdivision (b), that have been pled and proved, the term for the current felony conviction defined as any offense defined in subdivision (c) of Section 667.5 as a

violent felony shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the ~~greater~~ *of greatest of the following:*

(i) ~~three~~ *Three* times the term otherwise provided as punishment for each ~~current~~ *current* felony conviction subsequent to the two or more prior felony convictions, ~~or~~.

(ii) ~~twenty-five~~ *Twenty-five* years ~~or~~.

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

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

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

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

(3) *The prosecuting attorney or the court may move to count multiple prior violent felony counts during a single action to be counted as a single prior violent felony count.*

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

(f) *All references to existing statutes in subdivisions (a) to (e), inclusive, are to statutes as they existed on June 30, 1993.*

(g) *The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, majority of the membership concurring, or by a statute that becomes effective only when approved by the electors.*

(h) *This section shall not be applicable in cases where more than ten years have elapsed since the expiration of the maximum sentence or sentences of the previous conviction, or adjudication or adjudications of delinquency, and the time of the commission of the last felony for which he has been convicted. In computing the period of time as provided herein, any period of servitude by a person in a penal institution, within or without the state, shall not be included in the computation of any of said ten-year periods.*

(i) *In the furtherance of justice, any amended provisions of this section shall be applicable retroactively to any person whose sentence would be less had the amendments been in effect when the person was previously sentenced under this section.*

