

Attorney and Client Guide to

THREE STRIKES LAW

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“Three Strikes” laws are statutes enacted by governments requiring courts under their jurisdiction to hand down mandatory and extended periods of incarceration to persons convicted of serious criminal offenses on three or more separate occasions. The term comes from baseball, where a batter is out on the third strike.

Imposing longer prison sentences on repeat offenders is a concept that’s been around for a long time. For instance, the State of New York adopted a “Persistent Felony Offender” law in the late 19th Century. But, sentences were not compulsory, and judges had some discretion as to how much prison time to impose.

Less flexible Three Strikes laws experienced a surge of popularity in the mid-1990s, and 10 years later, 26 states and the federal government had laws mandating life sentence in prison (usually with no possibility of parole for 25 years) for a third felony conviction.

California adopted its own Three Strikes provisions after the 1993 murder of Polly Klaas, a little girl from Petaluma, north of San Francisco.

Polly was kidnapped and killed by a convicted violent felon who later confessed to the crime. The heinous crime generated wide media coverage and prompted legislators in the spring of 1994 to adopt Assembly Bill 971. The governor signed the bill the day it passed, and it went into effect immediately.

A few months later, the people of California voted overwhelmingly for Proposition 184, amending the state constitution to make it difficult for lawmakers to soften those provisions. The substantive provisions of the proposition are codified in ***California Penal Code sections 667 (e) (2) (A) (ii) and 1170.12 (c) (2) (A) (ii).***

Some unusual scenarios have resulted from Three Strikes laws in the Golden State. For instance, some defendants have been given sentences of 25 years to life for crimes such as shoplifting golf clubs or videotapes.

In one high-publicity case, a man was sentenced to 26-years-to-life for stealing four chocolate chip cookies – however, it must be noted that the six-time parole violator allegedly was attempting to

burglarize a restaurant's safe when he triggered an alarm system. When arrested, his pockets were full of cookies he had taken from the business.

Three Strikes laws have been appealed to the U.S. Supreme Court and upheld by a narrow margin. On March 5, 2003, the nation's top court held 5-4 that such sentences do not violate the Eighth Amendment of the U.S. Constitution, which prohibits "cruel and unusual punishment." In two separate opinions handed down on the same day, the court upheld California's Three Strikes law in ***EWING V. CALIFORNIA, 538 U.S. 11*** and ***LOCKYER V. ANDRADE, 538 U.S. 63***.

Writing for the plurality in ***Ewing***, Justice Sandra Day O'Connor analyzed the serious problem of recidivism among criminals in California and concluded: "It is enough that the State of California has a reasonable basis for believing that dramatically enhanced sentences for habitual felons advances the goals of its criminal justice system ... To be sure, Ewing's sentence is a long one. But, it reflects a rational legislative judgment, entitled to deference, that offenders who have committed serious or violent felonies and who continue to commit felonies must be incapacitated."

Some common questions and answers about Three Strikes laws:

- ***Does the third felony have to be a violent offense?*** – No. It can be any felony, no matter how trivial. People have been prosecuted under this law for a variety of minor offenses, including minimal amounts of marijuana.
- ***What kind of felonies must the first two strikes be?*** – Any felony punishable by death or life imprisonment or any felony involving a variety of charges, such as: use of a deadly weapon, residential burglary, continuous sexual abuse, great bodily injury, kidnapping, rape, mayhem, arson, or robbery.
- ***Can a felony committed as a child count?*** – Yes. Any serious felonies committed by a child over the age of 16 can be counted as strikes.
- ***Are there special consequences for a second strike?*** – Yes. Anyone convicted of two felonies (with the first being a violent or serious charge) will have his or her sentence doubled.

There are at least 18 ways to avoid a doomsday sentence under Three Strikes laws.

Naturally, you won't serve any time if you're found not guilty of any new charges. But, it's also possible for your attorney to convince a judge to dismiss prior "strikes."

This can be done through a variety of means, including reducing previous cases from felonies to misdemeanors or arguing that you were not properly advised or represented when you pled guilty to your earlier charges.

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THREE STRIKES LAW VICTORIES BY BERG & ASSOCIATES:

- In 2009, one of our clients with a prior strike was charged with four new crimes. He faced at least 13 years in state prison. Berg & Associates convinced the Shasta County district attorney and the court to dismiss the prior strike and also got them to promise the defendant would avoid prison.
- In a residential robbery case, Berg & Associates convinced the jury to acquit our client of the strike charge against him. The court later granted our motion for a new trial and threw out all of the convictions, because of juror misconduct at trial. See People v. John Paul Cuellar, Shasta County Superior Case No. 98-1287.

WHY CHOOSE BERG & ASSOCIATES . . .

Our business is protecting you and your family with the best possible legal representation. Your crisis is our crisis. We fight hard for you.

Berg & Associates is a Northern California law firm based in Redding and Chico. We have experienced and highly qualified attorneys and support staff who specialize in criminal defense, divorce, family law, and personal injury cases. We also have a full investigative team.

Berg & Associates is small enough to provide personalized services, yet is large enough to guarantee a spirited in-depth defense fully protecting your rights.

Our offices are conveniently located in Shasta and Butte counties at:

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