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Your Responsibility When Using the Information Provided Below:

When we wrote this Informational Material we did our best to give you useful and accurate information because we know that people in prison often have difficulty obtaining legal information and we cannot provide specific advice to everyone who requests it. The laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in your institution law library.

INFORMATION RE:
CALIFORNIA'S "THREE STRIKES" AND "TWO STRIKES" LAW
February 2023

We received your request for information, advice, or assistance concerning California's "three strikes" or "two strikes" law, Penal Code § 667(b)-(i). We apologize for sending this form letter, but we are unable to provide individual responses to everyone who seeks our help.

We assume you wrote because you have a three strikes or two strikes sentence and want to have it reduced so you are released earlier. We cannot provide advice or assistance regarding your particular sentence. The laws are very complicated and the specific facts of your case may be very important. If you have questions or believe you are entitled to a reduced sentence, you should try to get information and help from your trial or plea attorney, appellate attorney, or the public defender's office for the county where you were convicted.

The rest of this letter gives an overview of the current law for when you can get a three strikes or two strikes sentence. We then briefly list some of the ways that some people with three strikes or two strike sentences may be able to have their sentences reduced or get early parole consideration, and where to get more information about these topics.

The Current Three Strikes and Two Strikes Law

The three strikes and two strikes law is in Penal Code § 667(b)-(i). The purpose of the law is to sentence a person to a longer prison term if they have prior convictions for one or more serious or violent felonies ("strikes") and then commit a new crime. The law went into effect in 1994, but it has been changed by the legislature, voters, and courts many times over the years. Some of the changes to the law applied only to future cases, and some affected cases that were non-final (on appeal or reopened for resentencing) when the change in the law took effect.

Currently, a court can give you a **two strikes** sentence if the District Attorney charges and proves that you have one prior “strike.” Your current crime can be any felony – it does not have to be a serious or violent felony “strike.” (The law sometimes confuses people because they think – wrongly – that they aren’t a “second-striker” if they only one “strike” conviction.) A two strikes sentence means the court doubles the sentences for your new felony crimes. In other words, if a crime is normally punished by a 4-year term, your doubled term would be 8 years. If your current felony has an indeterminate term, the minimum term is doubled; for example, 7 years to life would become 14 years to life.

A court can give you a **three strikes** sentence if the District Attorney charges and proves that (1) you have two or more prior convictions for serious or violent “strike” felonies AND (2) either your prior strike cases or your current case involve certain circumstances. If the District Attorney does not prove additional circumstances, then the court cannot impose more than a two-strikes sentence. The additional circumstances for which a three strikes sentence is allowed are:

Your **current** felony is any of the following:

- a serious or violent felony;
- a controlled substance crime which involved large quantities of drugs;
- statutory rape or a crime which requires sex offender registration (with a few exceptions);
- a crime during which you used a firearm, were armed with a firearm or deadly weapon, or intended to cause great bodily injury.

OR

At least one of your **prior** strikes was for any of the following:

- a “sexually violent offense”;
- oral copulation, sodomy, or sexual penetration with a child under 14 and more than 10 years younger than you;
- a lewd or lascivious act involving a child under 14;
- any type of homicide or attempted homicide, or solicitation to commit murder;
- assault with a machine gun on a police officer or firefighter;
- possession of a weapon of mass destruction;
- any serious or violent felony punishable by life imprisonment or death.

A three strikes sentence means that the court sentences you to life with the possibility of parole for your new crimes, with the minimum term being 25 years or triple the normal term for the crimes, whichever is longer. If your current crime normally is punishable by an indeterminate life term, your three-strikes minimum term is triple the normal minimum term or 25 years, whichever is longer.

There are many statutes and court cases about what crimes or juvenile offenses count as strikes, whether sentences for multiple counts must or may run consecutive to each other, whether a sentencing court may exercise its discretion to dismiss priors in order to avoid a two strikes term or three strikes term, and other sentencing issues.

Ways in Which Some People May Be Able to Get Resentenced in a Three Strikes or Two Strikes Case

NOTE: Proposition 36, passed by the voters in November 2012, limited the situations in which a three strikes sentence can be imposed on a person whose current crime is a *not* a serious felony or violent felony “strike.” Proposition 36 allowed people who had been sentenced prior to November 2012 to file petitions asking to have their sentences reduced under the new law. However, courts could refuse to resentence someone if reducing their sentence would pose an unreasonable risk of danger to public safety. The deadline for filing a Proposition 36 petition ended in November 2014, except if a person can show “good cause” for filing a petition after the deadline. (Penal Code § 1170.126.)

Here is a general list of ways in which some people currently may be able to get resentencing on a three strikes or two strikes case:

- a direct appeal , which must be filed within a short time after sentencing;
- a state court petition for writ of habeas corpus, usually based on new information that is not already in the criminal case record;
- as part of a resentencing due to a Penal Code § 1172.1 CDCR, county jail administrator, or District Attorney recommendation for resentencing in the interest of justice. Reasons for recommendations can include exceptional conduct in prison, changes in the law, sentencing discrepancies, or law enforcement recommendations.
- as part of a Penal Code § 1172.7 or § 1172.75 resentencing of a one-year Penal Code § 667.5(b) enhancement or three-year Health and Safety Code § 11370.2 enhancement. CDCR should have identified people who are eligible for this type of resentencing and the sentencing court should have considered their cases by December 31, 2023 (Note: there are disagreements in the courts about whether and when a three-strikes sentence can be reduced at this type of resentencing);
- as part of a resentencing due to a Penal Code § 1172.6 petition for reduction of a homicide or attempted homicide conviction;
- as part of a resentencing due to a Penal Code § 1170.91 petition to consider trauma resulting from military service;
- as part of a resentencing due to a Penal Code § 1172.2 compassionate release resentencing recommendation;

- as part of a resentencing due to a Penal Code 1170(d)(1) petition asking for reduction of a de facto life without parole term imposed on a person who was under age 18 at the time of the crime.

Prison Law Office has information letters with more detailed information about the eligibility requirements and procedures for these types of legal actions. You can request that information by writing to General Delivery, San Quentin, CA 94964. The information is also on the Resources page of Prison Law Office's website at: www.prisonlaw.com. However, the laws are very complicated and even the courts may disagree about how the laws should be applied. Thus, you should try to get information and advice about your particular case from your trial attorney, appellate attorney, or the county public defender's office for the county where you were convicted.

Ways in Which Some People May Be Able to Get Early Parole Consideration in a Three Strikes or Two Strikes Case

Some people with three strikes or two strikes sentences may be eligible for one of more of CDCR's early parole consideration programs. These types of early parole consideration include:

- non-violent offender parole for someone whose current offense and enhancements are all non-violent felonies;
- youth offender parole for someone who committed their crime when they were under age 26;
- elderly parole for someone who is over age 50 (for a two strikes case) or age 60 (for a three strikes case);
- medical parole for someone who is permanently medically incapacitated.

Please write to Prison Law Office, General Delivery, San Quentin, CA 94964 if you want to request more information about the detailed eligibility requirements and procedures for these types of early parole consideration. The information is also on the Resources page of Prison law Office's website at: www.prisonlaw.com.

There is information on your legal rights and how to protect your rights in *The California Prison and Parole Law Handbook*, published by the Prison Law Office. The *Handbook* is on CDCR electronic tablets and kiosks in the Law Library/California/Secondary Sources/The California Prison and Parole Law Handbook. In addition, people who have internet access can view and print the *Handbook* under the Resources tab at www.prisonlaw.com. As of early 2024, we are in the process of updating the *Handbook* to reflect changes in the law since 2019. Updated chapters will state the dates on which they were updated.