

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Penal Code Section 667, Subdivisions (a)
Through (j), Chapter 12, Statutes of 1994

By the County of Los Angeles

NO. CSM – 4503

*Sentencing: Prior Felony Convictions
(Three Strikes)*

STATEMENT OF DECISION
PURSUANT TO GOVERNMENT
SECTION 17500 ET SEQ. ;
TITLE 2, CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates was adopted on June 25, 1998.

This Decision shall become effective on June 25, 1998.



PAULA HIGASHI, Executive Director

ITEM # 3

PROPOSED STATEMENT OF DECISION
Penal Code Section 667, Subdivisions (a) through (j)
Chapter 12, Statutes of 1994
County of Los Angeles, Claimant

Sentencing: Prior Felony Convictions (Three Strikes)

Executive Summary

This test claim was heard by the Commission on March 26, 1998, and May 28, 1998. On May 28, 1998, the Commission denied the test claim with a 6-1 vote.

The Legislature stated its intent in enacting the Three Strikes legislation "to ensure longer sentences and greater punishment" for those who commit a felony and have been previously convicted of serious and/or violent felony offenses. Consequently, once a defendant is charged with a felony, and prior serious and/or violent felony convictions have been pled and proven, the defendant is subject to Three Strikes' sentencing provisions. A double strike defendant is sentenced to double the term of imprisonment. The sentence for a third strike defendant is life imprisonment, with the earliest possibility of parole in 25 years.

The Commission determined that Three Strikes was subject to Government Code section 17556, subdivision (g), the "crimes and infractions" exclusion, since Three Strikes changed the penalty for a crime or infraction.

Furthermore, based on the plain and ordinary meaning of the words used by the Legislature, the Commission concluded that subdivision (g) encompasses those activities that directly relate to the enforcement of the statute which changed the penalty for a crime from arrest through conviction and sentencing.

The Commission disagreed with the claimant's contention that the only activities directly related to the enforcement of Three Strikes are those performed by the Department of Corrections and Parole Board following conviction. Rather, in view of the oral testimony and briefs filed by the parties, the Commission concluded that *all* of the activities required of counties including the capture, detention, prosecution, defense, sentencing and appeals of a defendant under Three Strikes directly relate to the enforcement of the Three Strikes penalty and, thus, fall within the "crimes and infraction" exclusion of Government Code section 17556, subdivision (g). Accordingly, the test claim was denied because the Commission concluded that the costs associated with Three Strikes are *not* reimbursable "costs mandated by the state. "

Staff Recommendation

Based on the foregoing, staff recommends that the Commission approve the attached Proposed Statement of Decision which accurately reflects the Commission's decision to deny this test claim.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Penal Code Section 667, Subdivisions (a) through (j), as added by Chapter 12, Statutes of 1994

And filed on December 27, 1995;

By the County of Los Angeles, Claimant.

NO. CSM - 4503

*SENTENCING: PRIOR FELONY
CONVICTIONS (THREE STRIKES)*

PROPOSED STATEMENT OF
DECISION PURSUANT TO
GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2,
CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

(Presented for adoption on
June 25, 1998)

PROPOSED STATEMENT OF DECISION

This test claim was heard by the Commission on State Mandates (Commission) on March 26, 1998, and May 28, 1998, during regularly scheduled hearings. Mr. Leonard Kaye appeared for the County of Los Angeles. Mr. Cyrus J. Rickards, Deputy Attorney General, representing the Department of Finance, and Mr. James Apps appeared for the Department of Finance. The following persons were witnesses for the County of Los Angeles: Mr. George Kanoke, Mr. Alex Ricciardulli, Mr. Robert Kalunian, Mr. Stephen Morris, Mr. Jake Katz, and Ms. Martha Zavala. The following persons appeared as witnesses for Families to Amend Three Strikes: Mr. Stuart Cox and Ms. Donna Warren.

At the hearings, evidence both oral and documentary were introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

The Commission, by a vote of 6 to 1, denied this test claim.

BACKGROUND

Prior to the enactment of Three Strikes, felony sentencing was governed by determinate sentencing. (Pen. Code, § 1170.) Determinate sentencing provided for three sentencing alternatives, one of which the sentencing judge was required to impose upon a judgment of imprisonment. The court would generally impose the middle term of the three sentencing alternatives, unless there were circumstances in aggravation or mitigation of the crime.

Under determinate sentencing, the district attorney had *the discretion* to plead and prove a prior conviction to enhance or impose additional terms on the sentence. (Pen. Code, § § 667, subd. (a), 667.5 and 1170.1.)¹

However, to *ensure longer prison sentences and greater punishment*, Three Strikes :

- Requires the district attorney to plead and prove all known prior serious or violent felony convictions, including qualified out of state and juvenile convictions, regardless of when they occurred;
- Prohibits plea bargaining of prior convictions for purposes of sentencing; and
- Prohibits the district attorney to dismiss a prior felony conviction unless, upon motion, the court finds there is insufficient evidence to prove the prior conviction, or the dismissal of the prior conviction promotes the furtherance of justice (Pen. Code, § 667, subds. (f) and (g).)

Section 667, subdivisions (f) and (g) specifically provide as follows:

“(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 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.

(g) Prior felony convictions *shall not* be used in plea bargaining as defined in subdivision (b) of Section 1192.7. The prosecuting attorney *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).”

(Emphasis added.)

¹ There are several enhancement statutes in the Penal Code. These include, but are not limited to, the following: conduct enhancements (possession or use of a weapon during the current offense); injury enhancements (the current offense resulted in great bodily injury); victim enhancements (injury to pregnant female or child); property enhancements (depending of value of property); gang activity enhancements; drug enhancements; prior conviction enhancements and prior prison term enhancements.

Further, the court may *not* grant probation, suspend execution or imposition of sentence, divert the defendant, or commit the defendant to any facility other than state prison. (Pen. Code, § 667, subds. (c)(2) and (c)(4) .)

Consequently, once a defendant is charged with a felony, and prior serious and/or violent felony convictions have been pled and proven, the defendant is subject to the following sentencing provisions:

- Double the term for second strike defendants;
- Minimum of 25 to life for third strike defendants. Those defendants who are sentenced to life become eligible for parole on a date calculated by the greater of (1) three times the term otherwise provided for the current conviction; (2) twenty five years; or (3) the term required by section 1170 (determinate sentencing) for the current conviction including any enhancements, the term required by section 190 (concerning homicide), or the term required by section 3046 (concerning life sentences).

The subject of Three Strikes has been brought before the Commission on at least two prior occasions at the hearings on SB 1033 applications filed by the County of Los Angeles (heard January 12, 1996) and the County of Sacramento (heard March 31, 1995). During those hearings, the district attorneys of both counties testified that Three Strikes resulted in an increase in workload and costs for the counties' criminal justice systems, from pre-adjudication through trial.²

Consistent with the testimony at the SB 1033 hearings, the claimant asserts that Three Strikes has resulted in additional research of the defendant's criminal history, increased trial rates and third strike appeals, and increased workload for its sheriff and probation departments.

The Commission does not dispute that Three Strikes has resulted in an increase in local costs and workload for county departments. However, given the clear intent "to ensure longer prison sentences and greater punishment," the Commission determined that the salient issue is whether the crimes and infractions exclusion (Gov. Code, § 17556, subd. (g)) precludes the Commission from finding reimbursable costs mandated by the state.³

² The Los Angeles County district attorney testified that Three Strikes directly resulted in a felony trial increase of 27.1 % . In addition, the claimant has submitted a *Report on the Impact of Three Strikes* prepared by Los Angeles County Criminal Justice Coordination Committee describing similar results.

³ Since the primary issue in this case is whether Three Strikes imposes "costs mandated by the state" upon local governmental agencies under Government Code section 17556, the Commission did not decide whether the activities required under Three Strikes constitute a new program or higher level of service.

COMMISSION FINDINGS

Issue: Do the costs associated with Three Strikes qualify as reimbursable “costs mandated by the state” under article XIII B, section 6 of the California Constitution and Government Code section 175 14? ⁴

While Three Strikes creates a higher workload for counties, the question before the Commission is whether the costs associated with this legislation qualify as reimbursable “costs mandated by the state. ”

Government Code section 17556, subdivision (g), provides that a test claim contains no costs mandated by the state if the Commission finds that:

“The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, *but only for that portion of the statute relating directly to the enforcement of the crime or infraction.* ” (Emphasis added.)

Three Strikes Changed the Penalty for a Crime or Infraction. The claimant asserted that subdivision (g) does not apply to this test claim because “Three Strikes did not change the penalty for a crime, ” but merely created a larger punishment for a certain status of offender.

The Commission disagreed. The Legislature clearly outlined its intent in the Three Strikes legislation “*to ensure longer prison sentences and greater punishment*” for those who commit a felony and have been previously convicted of a serious or violent felony offense. Accordingly, Three Strikes changed the sentencing scheme by subjecting a double strike defendant to a penalty of double the term of imprisonment previously required under the Penal Code for the current crime committed. The sentence for a defendant who is convicted of a third strike is life imprisonment, with the possibility of parole, at the earliest, in 25 years.’

⁴ Although the claimant included subdivisions (a) and (j) in its test claim, the Commission found that subdivisions (a) and (j) are *not* part of the Three Strikes legislation as added by Chapter 12, Statutes of 1994. Chapter 12, Statutes of 1994, merely renumbered these provisions without making any substantive change. Subdivisions (a) and (j) were added by an initiative approved by the voters on June 8, 1982. Therefore, subdivisions (a) and (j) do not constitute a new program or higher level of service. In addition, these subdivisions are excluded from reimbursement under Government Code section 17556, subdivision (f), as duties expressly included in a ballot measure approved by the voters. The legislative version of Three Strikes is found in Penal Code section 667, subdivisions (b) through (i). (See *e.g.*, *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 505; *People v. Hazelton* (1996) 14 Cal.4th 101, 105.)

⁵ Penal Code section 667, subdivision (e), provides in relevant part the following:

“(1) If a defendant has one prior felony conviction that has been pled and proved, the determinate term or the minimum indeterminate term shall be twice the term otherwise provided as *punishment for the current felony conviction.* ”

“(2)(A) If a defendant has two or more prior felony convictions.. . , *the term for the current felony conviction* shall be an indeterminate term of life imprisonment.. . . ” (Emphasis added.)

Although Three Strikes takes the defendant's criminal history into account, it also changes the penalty and punishes the defendant for the *current* offense. (See, *People v. Murillo*⁶ where the court stated that "although a defendant's status, which is based on prior convictions may call for increased punishment, it is the conduct underlying the present offense rather than the status that is being punished;" and *People v. Cartwright*⁷ where the court stated that "the three strikes law punishes not only his current offense, but also his recidivism.")

Accordingly, the Commission found that Three Strikes changed the penalty for a crime or infraction under Government Code section 17556, subdivision (g).

Plain and Ordinary Meaning of Subdivision (g). Of significance in the wording of subdivision (g), is the phrase: "*but only for that portion of the statute relating directly to the enforcement of the crime or infraction.*" The parties dispute the meaning of this phrase.

The Department of Finance asserted that the term "enforcement of the crime or infraction" includes those activities associated with the capture, detention, prosecution and defense of the persons charged with Three Strikes crimes, and not to activities solely related to "law enforcement agencies in their law enforcement mode."

In its filing of October 30, 1996, the claimant asserted a narrower interpretation of subdivision (g). The claimant contended that only law enforcement agencies in their law enforcement mode" (i.e., *pre-conviction* activities) fall within the meaning of subdivision (g), and are therefore non-reimbursable.

In its filings of March 4, 1998, and May 1, 1998, and through testimony at the Commission hearings, the claimant asserted that:

- ⌘ Only *post conviction* activities performed by the Department of Corrections and the Parole Board falls within the meaning of subdivision (g) and is not reimbursable. The claimant states that criminal penalties may only be affixed upon conviction. The claimant cites Penal Code section 15 which defines a crime as "an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments.. . ."
- ⌘ The legislative history of former Revenue and Taxation Code section 2253.2, subdivision (b)(5), the predecessor to Government Code section 17556, subdivision (g), reveals a narrow intent to exclude from reimbursement direct costs only. However, reimbursement is required for indirect costs that are a "component of the process that leads to penalizing a defendant," such as the costs incurred by the public defender.
- ⌘ In a prior test claim on *Determinate Sentencing* (Stat. 1976, ch. 1139), the Board of Control determined that a reimbursable state mandated program existed despite the claimant's admission that the legislation changed a penalty for a crime.

The Commission noted that the first step in the interpretation of a statute is to look at the words of the statute and give them their plain and ordinary meaning. Where the words of the statute

⁶ *People v. Murillo* (1995) 39 Cal.App.4th 1298, 1307.

⁷ *People v. Cartwright* (1995) 39 Cal.App.4th 1123, 1136.

are clear, adding or altering the words to accomplish a purpose that does not appear on the face of the statute or from its legislative history is prohibited. Additionally, statutes must be given a reasonable and common sense construction, rather than a construction that will lead to absurd results.⁸

The “But Only” Modifier. Subdivision (g) contains the modifier, “but only for that portion of the statute relating directly to the enforcement of the crime or infraction.” The Commission first determined what portion of subdivision (g) the “but only” clause modifies.

To avoid ambiguity, rules of grammar suggest that modifiers be placed next to the word they modify.⁹ Also known as the “last antecedent rule,” this construction is not followed when strict adherence to the rules of grammar would result in statutory interpretation that contravenes legislative intent.¹⁰

In this case, the Commission recognized that the “last antecedent rule” means the “but only” clause modifies only the third phrase in subdivision (g) – changed penalties for crimes or infractions. This application is in accordance with legislative intent. It would not make sense for the “but only” clause to modify the first phrase-the creation of new crimes or infractions-because reimbursement for those statutes is already provided for in article XIII B, section 6, subdivision (b), of the California Constitution.¹¹ Similarly, it would not make sense for the “but only” clause to modify the second phrase-the elimination of crimes or infractions-because an eliminated crime cannot be enforced.

“The Enforcement of the Crime or Infraction.” The claimant argued that the subdivision (g) exclusion only applies to the activities performed by the Department of Corrections and the Parole Board that occur after the conviction of the defendant, namely, the incarceration of the defendant in state prison and subsequent parole.

However, the Commission found that the claimant’s interpretation of subdivision (g) misconstrues the plain wording of the statute. Claimant argues that the subdivision (g) exclusion *should be rewritten* to say:

“but only for that portion of the statute relating directly to the
enforcement of the penalty or punishment. ”

In actuality, subdivision (g) plainly reads:

“but only for that portion of the statute relating directly to the
enforcement of the crime or infraction.”

Accordingly, with the aid of the dictionary, the Commission determined the plain and ordinary meaning of the express words used by the Legislature.

⁸ **Burden v. Snowden** (1992) 2 Cal.4th 556, 562; **People v. King** (1993) 5 Cal.4th 59.

⁹ Strunk & White, *The Elements of Style* (3d ed. 1979) p. 30.

¹⁰ 67 Ops.Cal.Atty.Gen. 452, 454 (1984).

¹¹ Section 6 of article XIII B of the Constitution provides: “[T]he Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (b) Legislation definiig a new crime or changing an existing definition of a crime. ”

Webster's defines "**enforce**" ¹² as "to compel observance of a law. . . ." whereas "**enforcement**" ¹³ is "[t]he act of putting something such as a law into effect; **the execution** of a law. . . ." and "**execution**" ¹⁴ is "[c]arrying out some act or course of conduct to its completion. "

"**Penalty**"¹⁵ is "[a]n elastic term with many different shades of meaning; it involves idea of **punishment**, corporeal or pecuniary, or civil or criminal. . . ." ¹⁶ "**Punishment**" ¹⁷ is "[a]ny fine, penalty, or confinement inflicting upon a person by the authority of the law and the judgment and **sentence** of a court, for some **crime** committed by him, or for his omission of a duty enjoined by law." "**Sentence**" ¹⁸ is " [t]he judgment formally pronounced by the court or judge upon the defendant after his conviction in a **criminal** prosecution imposing the punishment to be inflicted, usually in the form of a *fine, incarceration, or probation.* "

Therefore, by applying the plain and ordinary meaning to all of the express words used by the Legislature, the Commission found that the phrase, "enforcement of the crime or infraction" means to carry out to completion the penalty or punishment imposed by the statute.

Subdivision (g) thus encompasses those activities that directly relate to the enforcement of the statute that changes the penalty for the crime from arrest through conviction and sentencing.

All of the Activities Performed by the County are directly related to the Enforcement of the Three Strikes Statute. In view of the oral testimony and briefs filed by the parties, the Commission found that *all* of the activities required of counties including pretrial detention prosecution defense, sentencing and appeals directly relate to the enforcement of the Three Strikes penalty imposed as a result of the defendant's current felony conviction.

The Commission noted that the activities performed by counties under Three Strikes have always been performed to complete the enforcement process through sentencing of a **crime** or infraction. Counties have traditionally performed pretrial detention activities in relation to criminal proceedings. Government Code section 29602 (added by Stats. 1947, ch.424) provides in relevant part:

"The expenses necessarily incurred in the support of persons charged with or convicted of a crime and committed to the county jail and the maintenance therein and in other county adult detention facilities of a program of rehabilitative services in the field of training , employment, recreation and prerelease activities and for other services *in relation to*

¹² Webster's New World Dictionary (3rd College Ed.).

¹³ Black's Law Dictionary (6th Ed.).

¹⁴ Black's Law Dictionary (6th Ed.).

¹⁵ Black's Law Dictionary (6th Ed.).

¹⁶ Webster's New World Dictionary (3rd College Ed.) defines "penalty" as "a punishment fixed by law, as for a crime or breach of contract" or "**any** unfortunate consequence or result of an act or condition."

¹⁷ Black's Law Dictionary (6th Ed.).

¹⁸ Black's Law Dictionary (6th Ed.).

criminal proceedings for which no specific compensation is prescribed by law are county charges. . . .” (Emphasis added.)

Similarly, Penal Code section 4015, subdivision (a), originally added by Chapter 106, Statutes of 1941, provides:

“(a) The Sheriff shall receive all persons committed to jail by competent authority. The board of supervisors shall provide the sheriff with necessary food, clothing and bedding, for those prisoners, which shall be of a quality and quantity at least equal to the minimum standards and requirements prescribed by the Board of Corrections for the feeding, clothing, and care of prisoners in all county, city and local jails and detention facilities. Except as provided in Section 4016, the expenses thereof *shall be paid out of the county treasury.*” (Emphasis added.)¹⁹

While the purpose of pretrial detention is not to punish the accused for the commission of the crime, its purpose is to ensure the attendance of the accused at trial for prosecution of the felony offense. Nonetheless, the loss of freedom and privacy are inherent incidents of pretrial confinement and the accused is subject to a reasonable restraint of liberty while detained prior to trial.²⁰

The Commission also noted the court’s holding that the primary duties of county judges and attorneys in criminal proceedings have *not* been changed as a result of the Three Strikes legislation.

“The primary duties of the office of trial judge and prosecutor have not been changed by the three strikes law.. . . The change in duties of judges and prosecutors under the three strikes law is neither ‘new and special’ nor ‘entirely foreign’ to their existing duties.”²¹

Furthermore, the Commission recognized that the Three Strikes penalty is imposed only upon the prosecution and conviction of the defendant accused of committing a felony offense. (Pen. Code, § 667, subd. (c) .) Thus, the activities relating to prosecution and conviction are necessary to complete the enforcement of the Three Strikes legislation and “to ensure longer prison sentences and greater punishment.”

Finally, the Commission disregarded the test claim filed on *Determinate Sentencing* which was approved by the Board of Control under former Revenue and Taxation Code sections which

¹⁹ See also, *County of San Luis Obispo v. Abalone Alliance* (1986) 178 Cal.App.3d 848, 859, where the court recognized that counties have always been responsible for the expense of prosecution of persons charged with crime.

²⁰ *Bell v. Wolfish* (1979). 1861, 1873.

²¹ *People v. Cartwright* (Third Dist., 1995) 39 Cal.App.4th 1123, 1133-1134; See also, *People v. Kinsley* (Second Dist., 1995) 40 Cal.App.4th 1621, 1629; and *People v. Spears* (Fifth Dist., 1995) 40 Cal.App.4th 1683, 1689-1690.

have been *repealed*.²² The Commission noted that it is entitled to disregard old test claims since test claims have no precedential *value*.²³

CONCLUSION

Based on the foregoing, the Commission concluded that the activities relating to the capture, detention, prosecution, defense and sentencing of a defendant under Three Strikes directly relate to the enforcement of the Three Strikes legislation and, thus, fall within the “crimes and infraction” exclusion of Government Code section 17556, subdivision (g). Accordingly, the tests claim was denied because the Commission concluded that the costs associated with Three Strikes are *not* reimbursable “costs mandated by the state.”

²² See also Government Code section 17552 which provides that “[t]his chapter [Chapter 4, Identification and ‘Payment of Costs Mandated by the State’] shall provide the sole and exclusive procedure by which a local agency or school district may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution.”

²³ 72 Ops.Cal.Atty.Gen. 173, 178, fn.2 (1989), which states: “It is long settled that due process permits substantial deviation by administrative agencies from the principles of stare decisis. [Citation omitted.] An agency may disregard its earlier decision, provided that its action is neither arbitrary or unreasonable. [Citation omitted.]”

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment and business address is 1300 I Street, Suite 950, Sacramento, California 95814.

On June 25, 1998, I served the attached Adopted Statement of Decision for ***“Sentencing: Prior Felony Convictions (Three Strikes),”*** of the Commission on State Mandates by placing a true copy thereof in an envelope addressed to each of the persons listed on the **attached mailing list**, and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 25, 1998, at Sacramento, California.


CHRISTINE WEIN