
National Association of Criminal Defense Lawyers



Norman L. Reimer
Executive Director

February 4, 2016

Re: Opposition to HB 56 – “Three Strikes” Law

Dear Members of the Senate Committee on Public Affairs:

On behalf of the National Association of Criminal Defense Lawyers (NACDL), I write to express opposition to HB 56, which would expand the list of offenses that trigger mandatory life imprisonment under the state’s “three strikes” law. NACDL is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. A professional bar association founded in 1958, NACDL has approximately 9,200 direct members in 28 countries – and 90 state, provincial and local affiliate organizations totaling up to 40,000 attorneys – including private criminal defense lawyers, public defenders, military defense counsel, law professors and judges committed to preserving fairness and promoting a rational and humane criminal justice system.

There currently exists a national, bipartisan movement towards criminal justice reform that seeks to reduce the nation’s booming prison population, reform sentencing structures and reduce mandatory minimum sentencing for drug offenses, promote successful reentry, and remove the collateral consequences of conviction faced by returning citizens. These reforms are in contrast to earlier tough-on-crime policies that were popular in the 1990s. These policies “culminated with the enactment of ‘three strikes’ legislation around the nation. Beginning...in 1993, by the end of the decade, the federal government and over half of all states enacted some form of a ‘three strikes’ law.”¹ It is understandable to want to effectively address the issue of repeat offenders; however, studies have shown that “states that have implemented ‘three strikes’ laws have not experienced reductions

¹ Vitiello, Michael (2002). Three Strikes Laws: A Repeal or Imagined Deterrent to Crime? Human Rights Magazine, Vol. 29, No. 2. Retrieved from http://www.americanbar.org/publications/human_rights_magazine_home/human_rights_vol29_2002/spring2002/hr_spring02_vitiello.html

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in violent crime rates to any greater extent than those with no such legislation.”² For example, in California, “counties that used the law the least had reductions in crime slightly larger than counties that used the law the most.”³ “California’s declining crime rates were no different than in states without a ‘three strikes’ law.”⁴ In fact, national trends during that time indicated that crime in every region, regardless of incarceration practices, was dropping.⁵

The main premise behind imposing harsher sentences and “three strikes” legislation is to enhance public safety by preventing offenders from re-offending and by serving as deterrence to others. However, research on the deterrence effects of harsher sentences fails to support this logic.⁶ “When prisoners serve longer sentences they are more likely to become institutionalized, lose pro-social contacts in the community, and become removed from legitimate opportunities, all of which promote recidivism.”⁷ Instituting harsher, lengthy prison sentences is counterproductive to reducing crime. Research has also shown that even violent criminals mature out of lawbreaking behavior before reaching middle age.⁸ Incarcerating older prisoners for an extended period of time is very costly. According to a study of the California “three strikes” law, older prisons are more expensive to incarcerate than younger, healthier offenders.⁹

“An evidence-based approach [to reducing crime] would entail increasing the certainty of punishment by improving the likelihood that criminal behavior would be detected. Research [has shown that] increases in the *certainty* of punishment, as

² Jones, J. A. (2012). "Assessing the Impact of 'Three Strikes' Laws on Crime Rates and Prison Populations in California and Washington." *Student Pulse*, 4(09). Retrieved from <http://www.studentpulse.com/a?id=696>

³ Males, Mike (2011). Striking Out: California’s “Three Strikes and You’re Out” Law Has Not Reduced Violent Crime, A 2011 Update. San Francisco, CA: Center on Juvenile and Criminal Justice. Retrieved from http://www.cjcj.org/uploads/cjcj/documents/Striking_Out_Californias_Three_Strikes_And_Youre_Out_Law_Has_Not_Reduced_Violent_Crime.pdf.

⁴ *Ibid.*

⁵ Males, Mike (2011). Striking Out: California’s “Three Strikes and You’re Out” Law Has Not Reduced Violent Crime, A 2011 Update. San Francisco, CA: Center on Juvenile and Criminal Justice. Retrieved from http://www.cjcj.org/uploads/cjcj/documents/Striking_Out_Californias_Three_Strikes_And_Youre_Out_Law_Has_Not_Reduced_Violent_Crime.pdf.

⁶ Wright, Valerie (2010). Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment. Washington, DC: The Sentencing Project. Retrieved from <http://www.sentencingproject.org/doc/deterrence%20briefing%20.pdf>.

⁷ *Ibid.*

⁸ Goldstein, Dana (2015). Too Old to Commit Crime? The Marshall Project. Retrieved from <https://www.themarshallproject.org/2015/03/20/too-old-to-commit-crime#.fpRSMYD4M>.

⁹ Vitiello, Michael (2002). Three Strikes Laws: A Repeal or Imagined Deterrent to Crime? *Human Rights Magazine*, Vol. 29, No. 2. Retrieved from http://www.americanbar.org/publications/human_rights_magazine_home/human_rights_vol29_2002/spring2002/hr_spring02_vitiello.html

opposed to the *severity* of punishment, are more likely to produce deterrent benefits.”¹⁰ A 2014 study by the National Reentry Resource Center (NRRC) highlighted several states that have successfully lowered their recidivism rates by focusing on evidence-based recidivism-reduction initiatives. Such initiatives include: providing incentives for participation in programs designed to reduce the likelihood of a person reoffending; reentry planning and intensive supervision; and expanding the use of risk and needs assessments.¹¹ A more measured and evidence-based approach to criminal justice policies should be implemented instead of costly, unnecessarily harsh prison sentences.

For these reasons, NACDL urges you to oppose HB 56.



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¹⁰ Wright, Valerie (2010). *Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment*. Washington, DC: The Sentencing Project. Retrieved from <http://www.sentencingproject.org/doc/deterrence%20briefing%20.pdf>.

¹¹ Council of State Governments Justice Center, *Reducing Recidivism: States Deliver Results* (New York: Council of State Governments Justice Center, 2014). Retrieved from https://csgjusticecenter.org/wp-content/uploads/2014/06/ReducingRecidivism_StatesDeliverResults.pdf.