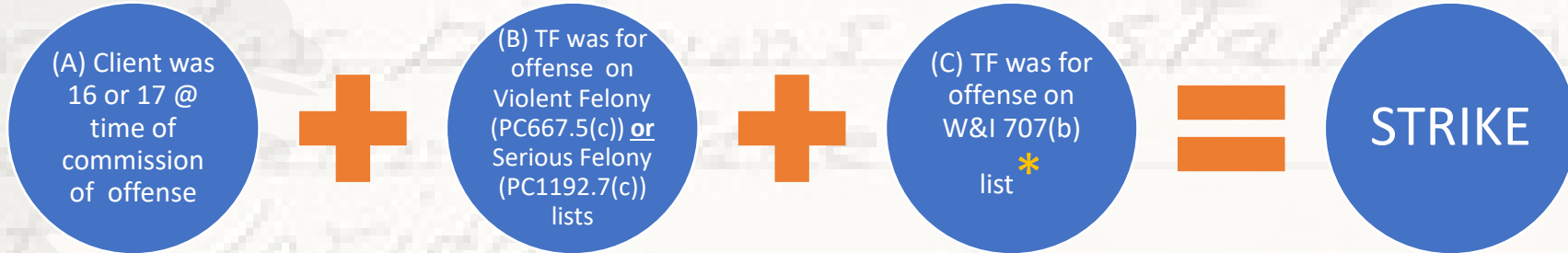


GIDEON GUIDE: When can a juvenile True Finding (TF) be charged as a strike in an adult case? (PC 667(d)(3))

Why do juvenile TF's count as strikes? B/c the strike statute (PC667(d)(3)) specifically includes them in the definition of a serious or violent felony for **strike purposes**.

General Rule:



Stated another way ---

Juvenile prior offense counts as a strike if:

- (A) Client committed prior offense when 16 or 17 yrs. old AND
- (B) The prior offense is listed on either the violent or serious felony lists AND
- (C) The prior offense is also listed on the W&I 707(b) list

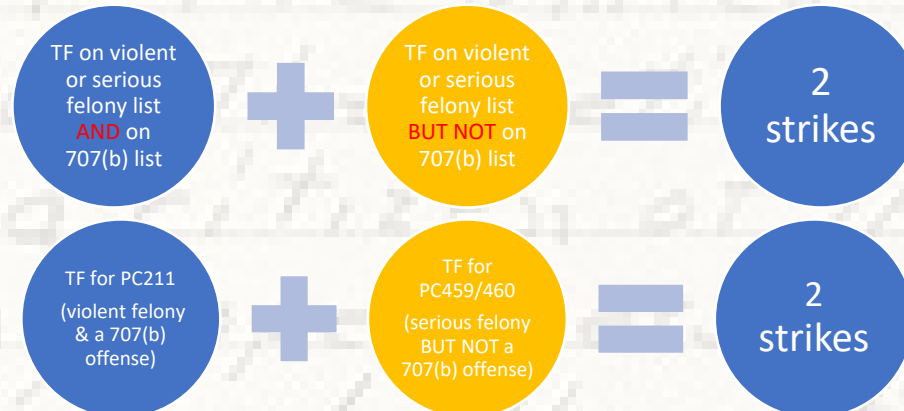
1) Exception to requirement that prior offense be a 707(b) offense (note: (A) & (B) must still be true):

- a) If multiple offenses from the same juvenile proceeding (i.e., charged in the same charging document) AND
- b) At least one of the offenses is a 707(b) offense
- c) Then offenses which are not 707(b) offenses are also strikes

* Exception: when can a non-707(b) offense count as a strike?

(P v. Garcia (1999) 21 Cal.4th 1)

If in the **same juvenile proceeding** (i.e., charged in the same charging document), the prior offenses meet (A) and (B) as shown in General Rule, and @ least one of these priors is a 707(b) offense but others are not 707(b) offenses, the non-707(b) offenses also qualify as strikes.



Key definitions:

"Offense" – the juvenile prior being alleged as a strike in adult case; client must have been declared a 602 Ward for the offense for it to potentially count as a strike.

True Finding (TF) – legal determination of guilt in juvenile court; juveniles are "true found", not "convicted".

602 Ward – juvenile who has been adjudicated as having violated the law and is brought under the jurisdiction of the juvenile court.

Note: W&I 707(b) list contains fewer offenses than those on the PC667.5(c) or PC1192.7(c) lists. See next page for 707(b) list.

★ Remember: Juvenile TF's can never be nickels (PC667(a)(1)).

Why? Nickels must be convictions. A TF is not a conviction for PC667(a)(1) purposes.

What else to look for in fighting an allegation of a juvenile strike?

W&I 782 dismissal of TF *before* commission of adult offense = TF cannot be used as a strike (P v. Haro (2013) 221 Cal.App. 4th 718)

W&I 1772 expungement = still a STRIKE

(Not familiar with juvenile practice? Consult with juvenile expert to review the juvenile record!)

W&I 707(b) Offenses

- (1) Murder.
- (2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.
- (3) Robbery.
- (4) Rape with force, violence, or threat of great bodily harm.
- (5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.
- (6) A lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.
- (7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.
- (8) An offense specified in subdivision (a) of Section 289 of the Penal Code.
- (9) Kidnapping for ransom.
- (10) Kidnapping for purposes of robbery.
- (11) Kidnapping with bodily harm.
- (12) Attempted murder.
- (13) Assault with a firearm or destructive device.
- (14) Assault by any means of force likely to produce great bodily injury.
- (15) Discharge of a firearm into an inhabited or occupied building.
- (16) An offense described in Section 1203.09 of the Penal Code.
- (17) An offense described in Section 12022.5 or 12022.53 of the Penal Code.
- (18) A felony offense in which the minor personally used a weapon described in any provision listed in Section 16590 of the Penal Code.
- (19) A felony offense described in Section 136.1 or 137 of the Penal Code.
- (20) Manufacturing, compounding, or selling one-half ounce or more of a salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.
- (21) A violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which also would constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.
- (22) Escape, by the use of force or violence, from a county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 if great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.
- (23) Torture as described in Sections 206 and 206.1 of the Penal Code.
- (24) Aggravated mayhem, as described in Section 205 of the Penal Code.
- (25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.
- (26) Kidnapping for purposes of sexual assault, as punishable in subdivision (b) of Section 209 of the Penal Code.
- (27) Kidnapping as punishable in Section 209.5 of the Penal Code.
- (28) The offense described in subdivision (c) of Section 26100 of the Penal Code.
- (29) The offense described in Section 18745 of the Penal Code.
- (30) Voluntary manslaughter, as described in subdivision (a) of Section 192 of the Penal Code.