

**DEFINITION OF SERIOUS FELONY CRIMES FOR THE PURPOSES
OF QUALIFICATION OF COUNSEL AND COMPENSATION,
EFFECTIVE JULY 1, 2007**

The definition of serious felony crimes is used both for purposes of compensation and qualification of applicants to the panel. Following is a detailed description of the specific charges included in the serious felony definition, which is in effect as of July 1, 2007, for all cases APPOINTED on or after that date.

If you have questions or comments about any of this information, please contact the Indigent Defense Administration at (415) 782-9000 or at IDA@sfbar.org.

I. HISTORICAL DEFINITION OF SERIOUS FELONIES

The following crimes have historically been defined as serious felonies by the Superior Court/BASF and have been eligible for compensation over and above that received on regular felony cases: **“sex cases, attempted murder, mayhem, non-vehicular manslaughter, gun use with great bodily injury, child abuse with great bodily injury, three or more separate instances of robbery, assault or residential burglary.”**

This definition has appeared on all applications for the criminal law panel.

Additionally, all life sentence crimes (with the exception of three strike cases in which the new charged offense did not constitute a serious felony as defined above) have historically been classified as serious felonies, eligible for increased compensation.¹

II. ADOPTING A NEW DEFINITION OF SERIOUS FELONIES WHICH MAKES SENSE LEGALLY AND FISCALLY

In 1982, the passage of Proposition 8* created a legal category of serious felonies which are enumerated in Penal Code section 1192.7(c). A quick reading of Penal Code sections 1192.7© and Penal Code section 667.5© reveals that many more crimes are defined as serious felonies and violent felonies in the Penal Code than have traditionally been considered “serious felonies” by the San Francisco Superior Court and BASF for qualification and compensation purposes.

In considering what crimes should constitute serious felonies for the purpose of increased compensation, an increase in penalty is only one factor. Increased

¹ In 1994, the legislature enacted the *Three Strikes Law*. Any serious or “violent felony” became a strike. This legislation changed the practice of criminal law in the State of California and immediately raised many concerns, including the budgetary consequences of its implementation. In response to these general concerns and specific concerns that there would be tremendous increase in the number of cases in which a life sentence was possible, BASF entered into an agreement with the court as to how *Three Strike* cases would be compensated to reduce their budget impact. It was agreed that while only lawyers who were qualified to handle serious felonies would handle *Three Strike* cases, if the new charge was not a serious felony as defined by BASF, then the case would be compensated at the rate of \$77.00, despite the fact that it was a life crime.

compensation is also appropriate when the complexity of the case requires greater legal expertise.

A subcommittee of the Conflicts Committee of the Bar Association analyzed the pertinent changes in the law and current practices and procedures in the San Francisco Superior Court and recommended to the Superior Court that the definition of serious felonies used for qualification purposes and compensation purposes be modified.

The Superior Court unanimously approved the current definition as set forth below. The following classes of crimes are serious felonies for billing and appointment purposes in all cases appointed on or after July 1, 2007.

III. CURRENT SERIOUS FELONY DEFINITION (last revised for clerical correction July 2009)

1. All felonies that are punishable by life imprisonment, including all three strikes cases
2. Attempted murder (Penal Code section 664/187)
3. Voluntary manslaughter (Penal Code section 192(a))
4. All **felony** sex crimes requiring registration under Penal Code section 290: (Only Statutory rape [Penal Code section 261.5] would not be a serious felony.)
5. Any felony in which it is alleged that a firearm was used pursuant to Penal Code sections 12022.53 (c) and (d)²
6. Three or more separate incidents of the following crimes (For the purpose of this section, three or more incidents contemplates three different times and locations, not just three different victims):
 - a. Residential burglary (i.e. three or more different premises - not just three victims)
 - b. Assault with personal use of a weapon alleged as an enhancement or great bodily injury alleged as an enhancement
 - c. Robbery, attempted robbery or carjacking
7. All petitions with motions filed under Welfare and Institutions Code section 707(a) or 707(c).
8. Arson of an inhabited dwelling (Penal Code section 451(b))
9. Cases in which the District Attorney is seeking a lifetime commitment pursuant to Penal Code section 6600³

The current definition eliminates serious felony compensation for: (1) simple mayhem (Penal Code section 203), (2) Statutory rape (Penal Code section 261.5), (3) “soft” assaults [Penal Code section 245 (a) (1)], (i.e., assaults which would not qualify as strikes upon conviction) and (4) child abuse with great bodily injury.

² Of course, any case in which there is an allegation pursuant to Penal Code section 12022.53(d) is a case punishable by imprisonment for life in state prison and is currently treated as a serious felony.

³ Legislation signed by the Governor of California eliminates the requirement of successive trials and creates a lifetime commitment for sexually violent predators. These cases have always required experienced counsel but were traditionally compensated as regular felonies. The increase in “punishment” and the complexity of the cases warrants increased compensation.

Complex fraud cases have been compensated at the regular felony level since 2004/2005 and continue to be compensated as regular felonies. The current definition also clarifies the meaning of three or more instances of certain conduct which make the series of charged offense eligible for serious felony compensation. (See number 6 above).

The current definition reflects changes in the practice of criminal law prompted by significant legislative changes increasing punishment and creating new crimes. The definition fosters and supports a common sense approach to compensation and appointment of qualified counsel and eliminates many ambiguous appointment and compensation questions.

For all cases in which counsel is appointed on or after July 1, 2007 counsel should carefully review the criteria for serious felony compensation and bill in accordance with the new guidelines approved by the San Francisco Superior Court.