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Romero, Cooley heading for another try on three strikes

By [Malcolm Maclachlan](#)

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Senator Gloria Romero, D-Los Angeles, and L.A. District Attorney Steve Cooley say it is "highly likely" that voters will see another initiative designed to change the state's three-strikes sentencing law in 2008. The pair, who worked together this year on a stalled Senate proposal to change the law, said they still think voters are ready to alter the sentencing policy.

But Cooley's efforts have set off a civil war within the California District Attorneys Association (CDAA), which has sought to head off changes in the three-strikes law. In fact, Cooley said, he has left the organization, and the rift over the three-strikes issue is the main reason why.

The CDAA countered that the efforts to defeat Romero's bill were driven primarily by members. The CDAA's executive director, David LaBahn, also said that he had received no official word from Cooley that he had resigned from the organization.

Romero's bill "was so ill-crafted that it didn't require a lot of staff work for prosecutors to read it and say 'This is a bad bill,'" LaBahn contended. The bill would have placed an initiative before voters to limit the offenses that would qualify as a third strike, generally to violent or otherwise serious offenses. Disagreement over this bill led to a flurry of letters back and forth between Romero, Cooley, the CDAA and Senate offices, consisting largely of differing contentions over what the bill would and would not do.

"They ran a dirty disinformation campaign," Romero said. "They lied about the bill and what it would do. They 'Willie Hortonized' this measure."

In a May 25 letter to Sen. Elaine Alquist, D-Santa Clara, from Santa Clara County District Attorney George Kennedy. It called SB 1642 "a serious threat to public safety" and contended that it would free offenders whose third strike consisted of elder abuse, child molestation and other serious crimes. This prompted a pointed reply from Cooley, who contended that the bill included 25-years-to-life sentences for many of these crimes.

But Cooley and Romero have run a foul of some three-strikes reformers for their support of maintaining possession of a firearm by a felon as a third-strike offense. This is a frequent charge, contends Geri Silva,

executive director of Families to Amend California's Three Strikes (FACTS), often applied to people who have been crime-free for years and are merely found in possession of a gun, or even just in the same house as one. Many people keep guns for protection, she said, noting that ex-cons often are relegated to dangerous neighborhoods by lack of employment opportunities and sex-offender zoning laws.

The bill also was doomed by election-year politics, Romero said, noting it would have come up six days before a primary election in which several senators were running for statewide office and concerned about seeming "soft on crime." Romero said that after talks with other Democrats, she agreed to not take the bill to the floor unless she could count getting the 21 votes she needed. That count never made it past 16.

"It's quite ironic," Romero said. "The senators running for statewide office, essentially they all lost," She noted the one exception was Debra Bowen, D-Marina del Rey, who beat Deborah Ortiz, D-Sacramento, in a senator-on-senator race for the Democratic nomination for secretary of state. She also praised Sen. Liz Figueroa, D-Sunol, as a member running statewide who pledged to support SB 1642; Figueroa lost the Democratic primary for lieutenant governor. Ortiz voted for the bill in Senate Appropriations.

Cooley wrote a potential ballot initiative, substantially similar to S.B. 1642, and took it to the CDAA's winter meeting in Palm Springs on January 23. Not only was the idea rejected, he said, but also some hard-line members asked him to sit out of any further discussion on three strikes. By May, he said, several other DAs were working to have him removed from the CDAA board, where he then served as secretary/treasurer.

The legal paper The Daily Journal reported on May 25 that Cooley would leave the CDAA. Cooley confirmed the details of the story. He said he had not officially resigned, but did not renew his \$2,250 dues, allowing his membership to lapse as of July 1. The office also will no longer reimburse deputy district attorneys for dues and, perhaps most importantly, will no longer participate in CDAA-sponsored training sessions.

Three strikes was moved to the top of many district attorneys' priority lists by Proposition 66 in 2004. This measure was narrowly defeated by voters after a late full court press by law enforcement groups and Gov. Arnold Schwarzenegger. Cooley opposed that measure, saying it went much too far in terms of eliminating third-strike offenses.

However, he said, it got him thinking about the need for reform. This led to a Dec. 3, 2004, meeting in San Francisco between himself, San Francisco District Attorney Kamala Harris and Alameda District Attorney Tom Orloff. Cooley said the meeting spurred him to write numerous measures, including 1642 and a currently-active ballot measure, number 1213, on the secretary of

state's Web site. Cooley said that after consulting recently with campaign consultant John Shallman, he decided there was not time to qualify the initiative this year.

Even Schwarzenegger has talked about changing the law. Days before the November 2004 vote, Schwarzenegger told reporters he was "going to have conversations with Attorney General Bill Lockyer, and with the legislators, to look into the three strikes system and see if there's anything that ought to be adjusted."

Cooley said that he believes other district attorneys saw an attempt to reform three strikes as a potential loss of their power. However, he said he bristled at taking three-strikes advice from small county district attorneys who see "two or three" such cases a year. His office has seen about 3,000 he said. Cooley's jurisdiction contains 40 percent of the state's three-strikes cases, he said, allowing him to see the problems with the law.

"I think a few modest reforms will help save three strikes in the future," Cooley said.

Orloff said that he is skeptical of three-strikes reform efforts. He said the current law allows for enough discretion by district attorneys, and that he personally reviews every case. He also said that the number of three-strike cases has been going down each year, and he fears what might happen if the three-strikes Pandora's Box is opened.

"I'm afraid of how opponents of three strikes can package certain situations to make it seem like it's being abused," Orloff said.

Harris, meanwhile, has had a controversial three-strikes case going on in her jurisdiction. Charley Charles was acquitted last year for being a felon in possession of a firearm, but faces new potential third strike charges for threatening prosecutors. Most people remember him by his original name, Charles Rothenberg. In 1983, Rothenberg made national headlines for setting his six-year-old son on fire, maiming him for life. He served a mere six and one-half years for that crime.

Charles is appealing his 25-to-life conviction. Several people agreed that his case, like that of killer Richard Allen Harris over 10 years ago, was likely to complicate any efforts to reform the three-strikes law. Not surprisingly, LaBahn said Charles would go free under 1642, while Cooley and Romero said this was not true.

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