Staff Memorandum 2026-05
Sentencing Enhancements, Aggravating Factors, 17(b) Reductions, and Related Matters

At its May meeting, the Committee will consider frequently applied sentencing laws that play a role in determining felony sentences in California. This memorandum gives general background and staff recommendations for the Committee's consideration.

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Introduction

This memorandum examines several frequently applied sentencing laws that play a central role in determining felony sentences in California: aggravating factors governing upper-term sentencing, Penal Code section 17(b) reductions, consecutive sentencing rules, and certain commonly-imposed enhancements.

These laws are applied routinely in felony cases and often operate together in determining a person's sentence. While each law is governed by its own legal framework and developed for a distinct purpose, they frequently intersect within a single case and collectively shape the overall sentence imposed.

In practice, these sentencing provisions are often used as tools to arrive at a negotiated sentence, rather than being applied independently in a sequential manner. Judges and parties may use these mechanisms in combination to reach an overall sentence that reflects their assessment of the case, with individual components serving as a means to that end.

This memorandum provides an overview of the governing law in these areas and identifies issues related to clarity, consistency, and proportionality. It concludes with preliminary staff recommendations for further consideration.

Aggravating Factors and High Term Sentencing

Aggravating factors are specific facts or circumstances that courts can use to justify imposing a middle or upper term sentence.[1] These factors are primarily set forth in the California Rules of Court, Rule 4.421, and various sections of the Penal Code. The Appendix has the current list of aggravating and mitigating factors from the Rules of Court and those that are statutorily-specified.

The use of aggravating factors has undergone significant legal changes in recent years, most notably with the passage of Senate Bill 567 in 2021, which now requires most aggravating facts to be found by a jury beyond a reasonable doubt. These changes have altered the role of aggravating circumstances in sentencing and created problems for a framework originally designed to guide flexible judicial discretion rather than as elements of strict jury fact finding.

A. Evolution of the aggravating factor framework

The current framework is best understood in light of its historical development.

1977: Determinate Sentencing Law

Aggravating factors were first developed following the enactment of the Uniform Determinate Sentencing Law in 1976, which replaced most indeterminate sentencing with a triad system specifying three possible terms of imprisonment — lower, middle, and upper — for each offense.[2] The original Determinate Sentencing Law provided only four different triads and in each of them, the upper term added only one additional year of imprisonment.[3] Courts were required to impose the middle term unless they identified aggravating or mitigating circumstances that, in their discretion, warranted a lower- or upper-term sentence.[4]

To implement this new system, the Legislature directed the Judicial Council of California to adopt criteria to guide judicial selection among these terms and promote uniformity in sentencing.[5] The Council developed a list of aggravating and mitigating factors relating to the crime and the defendant.[6] Under the original framework, courts applied these factors using a preponderance of the evidence standard.[7]

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[1] See Penal Code § 1170.3.

[2] Penal Code § 1170 et seq.

[3] The original four triads were: 16, 24, or 36 months; 24, 36, or 48 months; 36, 48, or 60 months; and 60, 72 or 84 months. Sheldon L. Messinger & Phillip E. Johnson, California's Determinate Sentencing Statute: History and Issues, Determinate Sentencing: Reform or Regression, 30 (March 1978).

[4] Id.

[5] Penal Code § 1170.3(a). See also *Chavez Zepeda v. Superior Court*, 97 Cal.App.5th 65, 73 (2023) (describing history).

[6] See California Rules of Court, Rules 4.421 and 4.423.

[7] See *People v. Lovelace*, 108 Cal.App.5th 1081, 1090 (2025).

2007: *Cunningham* and the shift to complete judicial discretion
The DSL framework remained in place until the United States Supreme Court's decision in *Cunningham v. California* in 2007, which held that this system violated the Sixth Amendment right to a jury trial because it allowed judges, rather than juries, to find facts (aggravating factors) that were legally required to increase a defendant's sentence.[8]

In response, the Legislature quickly eliminated the presumptive middle term and granted courts broad discretion to select any term within the statutory triad without requiring additional factfinding beyond a statement of reasons.[9]

2022: SB 567 and the return to structured discretion
In 2021, the Legislature restructured the determinate sentencing system with SB 567. The law designated the middle term as the presumptive maximum sentence, and specified that courts could impose an upper-term sentence only when aggravating factors had been found true beyond a reasonable doubt by a jury, or admitted by the defendant.[10] The law also required courts to impose the lower term if youth (under 26), trauma, or victimization (domestic violence or trafficking) contributed to the crime, unless aggravating factors substantially outweigh these circumstances.[11]

As a result of these changes, aggravating factors are the functional equivalent of elements of an offense or sentence enhancement when they are required to increase punishment to the high term of a triad.[12] By contrast, aggravating facts used to support imposition of the middle term, as well as mitigating facts, can still be determined solely by the court and can impact a sentence without additional jury findings.[13]

2025: California Supreme Court further limits judicial factfinding
Consistent with the Sixth Amendment, SB 567 specified that courts determining aggravating factors related to criminal history may rely on certified records of conviction without submitting those facts to a jury.[14] Courts interpreted this authority broadly to allow qualitative assessments of a defendant's criminal history, such as whether prior convictions were "numerous" or "of increasing

[8] See *Cunningham v. California,* 549 U.S. 270, 281 (2007). See also, *Apprendi v. New Jersey,* 530 U.S. 466, 490 (2000); *Blakely v. Washington,* 524 U.S. 296, 301, 303–04 (2004).
[9] See *People v. Lovelace,* 108 Cal.App.5th 1081, 1090 (2025); SB 40 (Romero) Chapter 3, Statutes of 2007.
[10] Penal Code § 1170(b).
[11] Penal Code § 1170(b)(6).
[12] *People v. Lynch,* 16 Cal.5th 730, 760 (2024).
[13] Id. at 767.
[14] Penal Code § 1170(b)(3).

seriousness" or "whether the defendant had performed unsatisfactorily" on supervision — aggravating factors specified in the Rules of Court.[15]

In *People v. Wiley*, the California Supreme Court, interpreting United States Supreme Court precedent, sharply limited this practice. The Court clarified that "a defendant is entitled to a jury trial on all aggravating facts, other than the bare fact of a prior conviction and its elements, that expose the defendant to imposition of a sentence more serious than the statutorily provided midterm."[16] Applying this principle, the Court concluded that determinations such as whether a defendant's prior convictions are numerous or of increasing seriousness or whether a defendant's performance on supervision was unsatisfactory must be found true by a jury, absent waiver or stipulation.[17]

These and other developments significantly narrowed the scope of judicial factfinding and further shifted aggravating factors toward jury-determined findings.[18]

B. Interaction between aggravating factors and sentencing enhancements. Aggravating factors can also intersect with the various sentence enhancements in California law, including both conduct-based enhancements such as those for use of a firearm, and person-based enhancements such as second- or third-strike sentencing. While the same underlying facts may support both the finding of aggravating factors and imposition of an enhancement, sentencing rules prohibit the same facts from being used both to aggravate a sentence and impose an enhancement in the same case.[19]

In some cases, a defendant may be subject to a lower overall sentence if the conduct is treated as an aggravating factor supporting an upper-term sentence, rather than a separate enhancement carrying a consecutive term of additional punishment. Consider a defendant convicted of robbery involving a gun: the firearm can justify imposing the high term of five years or a sentence enhancement that adds 10 years on top of the triad sentence — but not both.[20]

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[15] Penal Code § 1170(b)(3). See also *People v. Towne*, 44 Cal.4th 63, 78 (2008), *People v. Black*, 41 Cal.4th 799 (2007).
[16] *People v. Wiley*, 17 Cal.5th 1069, 1086 (2025).
[17] Id.
[18] Rule 4.421(c) previously allowed courts to consider any other factors "reasonably related" to the defendant or the crime. However, an appellate court decision invalidated this "residual clause" as unconstitutionally vague, ruling that it provided no objective criteria and allowed for arbitrary sentencing. *People v. Lovelace*, 108 Cal.App.5th 1081 (2025).
[19] See Penal Code § 1170(b)(5). See also California Rules of Court, Rule 4.420(c), (g).
[20] See Penal Code § 213(a)(2) (triad for second-degree robbery is 2, 3, or 5 years); California Rule of Court 4.421(a)(2) (weapon aggravating factor); Penal Code § 12022.53(b) (10 year sentencing enhancement).

C. Procedural issues

Courts have held that aggravating factors need not be pled or proven at the preliminary hearing stage because, unlike elements of offenses, they do not define criminal liability.[21] This creates a procedural structure in which aggravating facts must ultimately be proven to a jury beyond a reasonable doubt but are not subject to the preliminary hearing process — a critical safeguard in felony prosecutions guaranteed by the California Constitution which requires a judicial determination of probable cause before a defendant may be held to answer on felony charges.[22]

Additionally, while California law generally prohibits the "dual use" of a fact to both impose an enhancement and justify an upper-term sentence, a prior conviction can be used to support both an upper-term sentence and a sentence increase under the Three Strikes Law because courts have determined that the Three Strikes law created an "alternative sentencing scheme," not a sentence enhancement.[23] In a conconcurring opinion denying review of a lower court decision, Justice Goodwin Liu, joined by Justice Evans and Groban, invited legislative reconsideration of whether this approach is consistent with recent reforms.[24]

D. Substantive issues

The substantive standards governing aggravating factors present additional challenges. Many factors rely on broad and qualitative language — such as whether a crime involved "great violence," whether a victim was "particularly vulnerable," or whether a taking was of "great monetary value." Courts have also long required that aggravating circumstances reflect conduct that is "distinctively worse than the ordinary" commission of the offense — a determination which jurors may have difficulty assessing.[25]

The California Supreme Court has previously noted that the aggravating circumstances set forth in the sentencing rules "were not drafted with a jury in

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[21] *Chavez Zepeda v. Superior Court*, 97 Cal.App.5th 65, 96–97 (2023).

[22] See Cal. Const. art. I, § 14; Penal Code § 872. See also *Whitman v. Superior Court*, 54 Cal.3d 1063 (1991). Although federal law does not recognize a constitutional right to a preliminary hearing beyond the probable cause determination necessary to justify continued detention, California law and tradition have long treated the preliminary hearing as a substantial procedural safeguard in felony prosecutions. See *People v. Eid*, 31 Cal.App.4th 114 (1994). The Penal Code permits defendants to challenge unlawful commitments and procedural violations occurring during the preliminary hearing. Penal Code § 995.

[23] Penal Code § 1170(b)(5). See *People v. Castaneda-Morales*, B341744, 2025 WL 3033224, *4 (Ct. App. 2025) (non-published opinion).

[24] See *People v. Castaneda-Morales*, S294254, February 11, 2026 (Liu, J., concurring in denial of review).

[25] *People v. Black*, 41 Cal.4th 799, 817 (2007) (quoting *People v. Moreno*, 128 Cal.App.3d 103, 110 (1982)).

mind," but instead were intended to provide "criteria for the consideration of the trial judge."[26] The Court further recognized that these standards are framed more broadly than criminal statutes and necessarily "partake of a certain amount of vagueness which would be impermissible if those standards were attempting to define specific criminal offenses."[27]

In response to developments following Senate Bill 567 and recent case law, the Judicial Council's Criminal Law Advisory Committee has proposed revisions to the jury instructions to reflect that aggravating factors must now be found true beyond a reasonable doubt, and in most cases, by a jury.[28] However, the Committee declined to recommend substantial revisions to the substance of the aggravating factors themselves, asserting that the development of aggravating factors requires policy determinations that are "fundamentally a legislative function."[29]

Consecutive Sentencing

California law permits courts to impose consecutive sentences when a person is convicted of multiple offenses, resulting in terms that are served sequentially rather than concurrently.

Consecutive sentences generally add terms equal to one-third of the middle term for each additional offense (including enhancements), though in some cases — such as certain sex offenses — fully consecutive terms may be required or imposed at the court's discretion.[30]

Since 2015, approximately 44% of people admitted to prison were convicted on multiple felony offenses, making them eligible for consecutive sentencing.[31] Among those cases, just over half (51%) received at least one consecutive sentence, resulting in consecutive sentencing being applied in roughly 22% of all prison admissions.[32] While not imposed in every case, consecutive sentencing significantly increases prison sentence length, adding approximately three years on average among those who receive it.[33]

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[26] *People v. Sandoval*, 41 Cal.4th 825, 840 (2007).
[27] Id. (quoting *People v. Thomas*, 87 Cal.App.3d 1114 (1979)).
[28] Judicial Council of California, *Criminal Procedure: Revisions to Felony Sentencing Rules*.
[29] Id.
[30] Penal Code § 1170.1(a). If the person has a prior strike, any one-third subordinate terms are doubled. *People v. Nguyen*, 21 Cal. 4th 197, 200 (1999); See also Penal Code § 667.6(c) (specified sex offenses), Penal Code §§ 1170.15 & 1170.13 (specified crimes against witnesses), Penal Code § 1170.1(b) (kidnapping of multiple victims), Penal Code § 1170.16 (multiple voluntary manslaughter convictions).
[31] Omair Gill, et al., *Consecutive Sentencing in California*, California Policy Lab and the Committee on Revision of the Penal Code, 15, Figure 3 (February 2024).
[32] Id.
[33] Id. at 31.

In general, courts have broad discretion to decide whether sentences will run consecutively or concurrently.[34] In limited circumstances, consecutive sentencing is required.[35]

But in most cases, the Penal Code directs courts to consider the sentencing rules adopted by the Judicial Council.[36]

California Rules of Court, Rule 4.425 provides general criteria, including whether the offenses are distinct from one another or involve separate acts of violence or threats.[37] The rule also allows judges to consider "any circumstances in aggravation or mitigation, whether or not they have been stipulated to by the defendant or found true by a jury beyond a reasonable doubt" in deciding whether to impose consecutive sentences.[38] The Rules also specify that the listed sentencing factors are not exhaustive, and that courts may rely on additional criteria reasonably related to the decision, so long as they are stated on the record.[39]

The current framework for consecutive sentencing resembles high term sentencing because in both scenarios facts beyond the bare elements of an offense can increase the total sentence length. But facts that support consecutive sentencing are treated quite differently than aggravating factors that can support a high term: they are not required to be pled or proven to a jury beyond a reasonable doubt, and can include considerations beyond those identified in the Court Rules or in statute. This inconsistent approach was criticized by Justice

[34] See Penal Code § 669(a). The primary limitation on this discretion is Penal Code section 654, which prohibits multiple punishment for the same act or omission. The determination of whether conduct constitutes "separate acts" or a single course of conduct is highly fact-dependent and has been described by courts as difficult to apply consistently. See *People v. Corpening*, 2 Cal.5th 307, 312 (2016). If a court does not specify the relationship between sentences, the Penal Code specifies that the sentences are concurrent with each other. Penal Code § 669(b).

[35] For example, under the Three Strikes Law, when a defendant is convicted of multiple current offenses that were not committed on the same occasion and do not arise from the same set of operative facts, the court must impose consecutive sentences. Penal Code §§ 667(c)(6), 1170.12(a)(6). In addition, any sentence imposed under the Three strikes Law must run consecutively to any term the defendant is already serving. Penal Code § 667(c)(8).

[36] Penal Code § 1170.1(d)(3).

[37] California Rules of Court, Rule 4.425. Rules of court are not as authoritative as the Penal Code but are "entitled to a measure of judicial deference." *In re Abbigail A.*, 1 Cal.5th 83, 92 (2016) (quotation marks and citations omitted).

[38] California Rules of Court, Rule 4.425. Facts used to impose an upper term, enhance a sentence, or that are elements of a crime cannot also be used as a basis for consecutive sentencing.

[39] California Rules of Court, Rule 4.408. Courts should also consider the general objectives of sentencing found in Rule 4.410.

Antonin Scalia of the United States Supreme Court who wrote that such an "odd rule" was not consistent with the Sixth Amendment.[40]

Penal Code Section 17(b) Reductions

Penal Code section 17(b) authorizes courts to reduce "wobbler" offenses from felonies to misdemeanors.[41] A wobbler is a criminal offense that can be charged either as a misdemeanor or felony at the prosecution's discretion. California law contains about 900 wobbler offenses — approximately 60% of all offenses that can be sentenced determinately.[42]

A. Timing and Effect of Reduction

Until this year,, the Penal Code allowed judges to grant section 17(b) reductions only before or during the preliminary hearing, or post-sentencing.[43] A recent law change expanded courts' authority and judges may now grant reductions at any time before trial starts, at sentencing, or during the probationary period.[44]

Once reduced, the offense is generally treated as a misdemeanor "for all purposes" going forward, though the legal effect of the reduction can depend on the specific statutory scheme at issue.[45] For example, a post-judgement reduction generally does not eliminate strike status under the Three Strikes Law unless the offense was converted to a misdemeanor before or at the initial sentencing.[46]

Another exception relates to sex offender registration requirements for felony offenses. While the offense requiring registration may be reduced to a misdemeanor, such a reduction does not allow courts to adjust the registration tier that applied to the initial felony conviction.[47] This can create a disconnect between the court's determination that an offense warrants misdemeanor treatment and the persistence of consequences associated with a felony conviction.

[40] *Oregon v. Thomas Eugene Ice,* 555 U.S. 160 (Scalia, J. dissenting).
[41] Penal Code § 17(b).
[42] California Center for Judicial Education and Research, *Felony Sentencing Handbook* (there are 907 wobbler offenses out of 1457 offenses where a determinate felony sentence is available).
[43] See *People v. Mitchell*, 17 Cal.5th 228, 243 (2024).
[44] AB 321 (Schultz 2025); Penal Code § 17(b)(1)–(5).
[45] *People v. Moreno*, 231 Cal.App.4th 934 (2014). See also *People v. Gilbreth*, 156 Cal.App.4th 53, 57 (2007) (where a felony conviction for evading an officer had been reduced to a misdemeanor under section 17(b), the defendant could not be convicted of possession of a firearm by a convicted felon based on that conviction).
[46] See *People v. Park*, 56 Cal.4th 782, 794–795 (2013).
[47] See *People v. Manzoor*, 95 Cal.App.5th 548 (2023).

B. Data

As the table below shows, many common offenses — including domestic violence, unlawful taking of a vehicle, and grand theft — are all wobblers and are often resolved as misdemeanors.

Wobbler convictions in California, 2021–2024

Only the top 13 most frequent offenses are shown. Convictions includes both misdemeanor and felony dispositions.

Code section	Offense	Convictions	% of convictions that are misdemeanors
PC 273.5(a)	Domestic violence	112,747	53.3%
VC 10851(a)	Vehicle theft / unlawful taking of a vehicle	111,097	20.1%
PC 487(a)	Theft of at least $950	88,278	25.9%
PC 245(a)(4)	Assault likely to cause great bodily injury	75,956	16.7%
VC 2800.2(a)	Flight from police in willful or wanton disregard for safety of person or property	53,009	7.0%
PC 245(a)(1)	Assault with a deadly weapon other than a firearm	47,192	33.2%
PC 594(b)(1)	Vandalism of at least $400	40,518	49.2%
PC 496(a)	Receiving stolen property of at least $950	34,640	56.5%
PC 530.5(a)	Identity theft	32,368	25.7%
PC 496D(a)	Receiving a stolen vehicle	31,662	26.7%
PC 21310	Carrying concealed dirk or dagger	27,512	56.4%
PC 25850(a)	Carrying loaded firearm in public	23,913	58.6%
PC 273A(a)	Child endangerment	18,906	36.9%

Each charge that results in a conviction is counted, even if it's not the controlling offense. As a result, if someone is convicted of multiple of these wobblers, they'll be counted multiple times.

Table: Committee on Revision of the Penal Code • Source: California DOJ Automated Criminal History System • Created with Datawrapper

C. Court's Discretion

While the trial court's discretion is broad, it must be impartial and guided by legal principles.[48] Courts have described the inquiry as an "intensely fact-bound" determination requiring the consideration of the offense, the offender, and the public interest. While not statutorily defined, decisional law has identified relevant factors such as the nature of the offense, the defendant's background, and their attitude and demeanor.[49] Reduction is often intended for cases in which felony punishment and its lasting collateral consequences would adversely affect the defendant's rehabilitation.[50]

Case law has also held that section 17(b) reductions cannot be conditioned (or suggested to be conditioned) on the defendant entering a guilty plea, as this constitutes an abuse of discretion and coercion,[51] and that discretion cannot be exercised solely based on a court's "aversion to a particular statutory scheme," such as the Three Strikes Law.[52]

In practice, these general standards leave substantial room for judicial discretion, and outcomes can vary significantly depending on how courts assess the underlying facts of a case. For example, in the 1990s the California Supreme Court upheld a reduction of a felony drug possession offense to a misdemeanor, whether the conduct involved a small quantity of drugs and was nonviolent, despite the defendant's significant but dated criminal history.[53] By contrast, courts have upheld the denial of a request to reduce a conviction for assault by means of force likely to produce great bodily injury where the underlying conduct, as reflected in the probation report, showed that the offense involved a retaliatory shooting into an occupied residence.[54] Similarly, courts have upheld the denial of a 17(b) reduction of a felony assault with a deadly weapon charge where the defendant struck two people in the face with a hollow bamboo stick, causing scratches and welts, emphasizing that the manner in which the weapon was used and the potential for more serious injury warranted felony treatment.[55]

While the current statute and applicable standards provides flexibility, it is broadly framed and does not establish a structured methodology for decision-making. Additionally, the factors identified in case law may not always be reflected in the record, particularly those relating to demeanor and attitude,

[48] See *People v. Superior Court (Alvarez)*, 14 Cal.4th 968, 977 (1997) (citing cases).
[49] Id. at 978–979.
[50] *In re Anderson*, 69 Cal.2d 613, 644–645 (1968).
[51] See *People v. Hartman*, 135 Cal.App.3d 205, 207 (1982).
[52] See *People v. Dent*, 38 Cal.App.4th 1726, 1731 (1995).
[53] *People v. Superior Court (Alvarez)*, 14 Cal.4th 968 (1997).
[54] *People v. Tran*, 242 Cal.App.4th 877 (2015).
[55] *People v. Dryden*, 60 Cal.App.5th 1007 (2021).

which may depend on limited courtroom interactions rather than developed evidence.

Recent reforms in other areas of sentencing law illustrate a more structured approach to the exercise of discretion. For example, Senate Bill 81 (based on a Committee recommendation) amended Penal Code section 1385 to provide specific guidance for courts considering whether to dismiss sentence enhancements in the furtherance of justice.[56] The statute now identifies enumerated mitigating circumstances to which courts must give "great weight," and establishes a presumption in favor of dismissal in certain cases, subject to a public safety exception.[57]

Another related example can be found in juvenile court. Welfare and Institutions Code section 702 requires that when a minor is found to have committed an offense that would be punishable as either a felony or misdemeanor if committed by an adult, the court "shall declare the offense to be a misdemeanor or a felony."[58] Courts have held that this requirement is mandatory, not merely directory, because it ensures that the juvenile court is aware of, and actually exercises, its discretion.[59] Although the juvenile system does not apply a presumption in favor of misdemeanor treatment, it reflects a more structured approach to discretionary decision-making in a system oriented toward rehabilitation. Incorporating a similar requirement in adult court — particularly for property-based wobblers — could help ensure that courts explicitly consider whether felony treatment is warranted.

Enhancements: Nickel Priors and Firearm Enhancements

The Committee has examined numerous sentencing enhancements but has not directly considered whether two very common enhancements — the nickel prior and the 10-20-life firearm enhancement — should remain a part of California's sentencing law.

As the Committee has noted numerous times, research on sentencing outcomes suggests that increasingly lengthy prison terms provide diminishing returns in terms of public safety benefits, particularly with respect to deterrence and recidivism reduction.[60]

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[56] SB 81 (2021 Skinner).
[57] Penal Code § 1385(c)(2).
[58] Welfare and Institutions Code § 702.
[59] *In re Manzy W.*, 14 Cal.4th 1199 (1997); *In re L.J.*, 72 Cal.App.5th 37 (2021).
[60] See Committee on Revision of the Penal Code, 2020 *Annual Report and Recommendations*, 42 (2021). As Professor Steven Raphael advised the Committee, "[t]here is very little evidence of an impact of extremely harsh punishments (that is, longer sentences, capital punishment) on the levels of the crimes they are intended to deter." Written Submission of Professor Steven Raphael to Committee on Revision of the Penal Code, 5 (June 26, 2020).

A. Nickel prior

The prior serious felony enhancement, commonly referred to as the "nickel prior," was enacted through Proposition 8 in 1982. It adds a five-year consecutive term for each prior "serious" felony conviction when the new offense is a serious felony.[61] This enhancement essentially superseded a narrower three-year enhancement that was part of the original Determinate Sentencing Law that could be applied when a person with a violent felony conviction was convicted of a new violent felony offense.[62]

While the use of nickel prior enhancements has been declining in recent years — including following the passage of SB 1393 in 2018 that gave courts discretion to dismiss the nickel prior —the enhancement remains one of the most commonly used sentencing provisions and has accounted for tens of thousands of years of incarceration in recent decades.[63]

B. "10-20-life" firearm enhancement

California's "10-20-Life" firearm enhancement law was first enacted in 1997 as Penal Code section 12022.53.[64] The law was championed by Mike Reynolds — the architect of California's Three Strikes Law — and was designed to dramatically increase prison sentences for firearm use during specified serious felonies.[65]

Under section 12022.53, a person convicted of personally using a firearm during the commission of certain felonies can be sentenced to an additional and consecutive 10-year term.[66] A person convicted of discharging the firearm can be sentenced to an additional consecutive 20-year term.[67] And a person convicted of personally discharging a firearm causing great bodily injury or death can be sentenced to an additional consecutive term of 25 years to life.[68]

These enhancements are imposed in addition to the punishment for the underlying offense, which may itself already carry an indeterminate life

[61] The enhancement applies regardless of how old the prior conviction is.
[62] Penal Code § 667.5(a), as enacted in Stats. 1976, Ch. 1139, Sec. 268. See also, *People v. Jones*, 5 Cal.4th 1142, 1147 (1993).
[63] Molly Pickard, et al., *California's Nickel Prior Enhancement and Recent Reforms,* California Policy Lab and the Committee on Revision of the Penal Code, 3 (December 2023). Nickel priors have an outsized impact on indeterminate sentences because, while the enhancement may generally be imposed only once across multiple determinate terms, courts have held that the same prior conviction may be used to impose a separate five-year enhancement on each indeterminate term, resulting in extremely long (98 years on average) aggregate sentences. Id. See also *People v. Sassar*, 61 Cal.4th 1 (2015) (determinate terms); *People v. Williams*, 34 Cal.4th 397 (indeterminate terms).
[64] AB 4 (1997 Bordonaro).
[65] See Dan Morain, *Panel OKs Bill Aimed at Gun-Related Crimes,* Los Angeles Times (July 9, 1997).
[66] Penal Code § 12022.53(b).
[67] Penal Code § 12022.53(c).
[68] Penal Code § 12022.53(d).

sentence. A separate firearm enhancement under Penal Code section 12022.5 (which was already in place when section 12022.53 was enacted) can add 3, 5, or 10 years to a sentence, without additional findings beyond personal use.[69]

Prior to 2018, several gun enhancements were mandatory, if charged and proven by prosecutors. But in 2017, Senate Bill 620 restored judicial discretion to strike or reduce many of the most severe firearm enhancements.[70]

Sentencing Errors and Review of Unauthorized Sentences

Staff also identified recurring issues with errors in abstracts of judgment prepared by courts and transmitted to the California Department of Corrections and Rehabilitation (CDCR) following sentencing. These abstracts are an important record used by CDCR to calculate release dates, custody classifications, and other aspects of a person's incarceration.[71]

Committee staff consulted with CDCR Case Records personnel, who reported that sentencing errors often require substantial time and resources to resolve. When Case Records staff identify a potential error, it notifies the sentencing court that the sentence "may be in error," describes the issue, and requests the court to review the issue.[72] Errors are often identified years after the original sentencing.[73] Many of these errors are clerical, but others are substantive and affect the legality of the sentence.

A common clerical example involves first-degree burglary with a "person present" allegation. While first-degree burglary is a "serious" felony under California law, it becomes a "violent" felony when "another person, other than an accomplice, was present in the residence during the commission of the burglary."[74] There is no separate Penal Code section defining the offense of first-degree burglary with a person present. As a result, abstracts of judgment do not always clearly reflect the finding on the allegation, resulting in cases being sent back to trial courts for further review of this issue, which affects credit-earning and many other parts of the incarcerated experience.[75]

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[69] Penal Code § 12022.5(a).

[70] SB 620 (2017 Bradford).

[71] Penal Code § 1213; CDCR Department Operations Manual § 73010.4(c)(1).

[72] See CDCR Department Operations Manual § 71020.7.3; *People v. Singleton*, 113 Cal. App. 5th 783, 788-89 (2025).

[73] See, e.g., *People v. Sidebottom*, B343303, 2026 WL 368295, *1 (Ct. App. 2026) (non-published opinion) (Case Records letter arrived two decades after sentencing).

[74] Penal Code §§ 1192.7(c)(18) (serious felony) & 667.5(c)(21) (violent felony).

[75] A trial court failing to address an enhancement at the oral pronouncement of judgement would constitute a substantive judicial error requiring remand for resentencing. See *People v. Prater*, 71 Ca.App.3d 695 (1977). See also *People v. Vizcarra*, 236 Cal.App.4th 422 (2015).

While courts have held that clerical errors can be corrected at any time,[76] the law has recently become unsettled for a court's authority to correct non-clerical errors. Before 2020, courts would routinely update sentences if Case Records identified an error, including increasing sentences that had been imposed long before.[77] But a California Supreme Court decision in 2020 has led appellate courts across the state to reconsider whether courts had free-standing inherent jurisdiction to correct "unauthorized sentences" brought to their attention by CDCR Case Records.[78] Most courts to consider the issue have concluded that there is no such free-standing jurisdiction.[79] But there is a split in authority on the issue and multiple appellate judges have said the California Supreme Court should consider the issue.[80] To date, the California Supreme Court has denied review in cases presenting the issue.[81]

The current unsettled state of the law can lead to harsh outcomes. In one recently-decided case, the Case Records letter was sent to the sentencing court shortly before a defendant was due to be released; the trial court, in response to the letter, increased the defendant's sentence by more than 3 years.[82] Though an appellate court ultimately said that the resentencing should not have occurred, that determination itself came more than 18 months later and the defendant had already been released from prison.[83]

Even short of a court's inherent jurisdiction there are multiple venues to correct unauthorized sentences. The Penal Code authorizes a court to recall a sentence within 120 days of commitment and resentence the defendant for any reason.[84] A court also has the jurisdiction to recall a sentence at any time if sentencing law has changed.[85] The Penal Code additionally permits recall at any time upon recommendation of specified entities, including the Secretary of CDCR and

[76] *People v. Mitchell*, 26 Cal.4th 181, 185 (2001).
[77] *People v. Mohammed*, __ Cal.App.5th __, 2026 WL 1164805, *4 (Ct. App.2026)
[78] *In re G.C.*, 8 Cal.5th 1119 (2020).
[79] See, e.g., *People v. Mohammed*, __ Cal.App.5th __, 2026 WL 1164805 (Ct. App. 2026); *People v. Singleton*, 113 Cal.App.5th 783 (2025).
[80] *People v. Codinha*, 92 Cal.App.5th 976 (2023) ("In doing so, we acknowledge a conflict in published decisions and a lack of clarity in the law that would warrant review by our Supreme Court."); *People v. Mohammed*, __ Cal.App.5th __, 2026 WL 1164805, *8 (Danner, J., concurring in the judgment) ("I urge the Supreme Court to clarify whether and under what circumstances trial courts have the authority to correct criminal sentences whose errors are apparent from the face of the record.").
[81] *People v. Sidebottom*, B343303, 2026 WL 368295, *1 (Ct. App. 2026) (non-published opinion), review denied, S295739, April 22, 2026; *People v. Boyd*, 103 Cal.App.5th 56 (2024), review denied, S286107, September 11, 2025. Justice Groban would have had the Court review each case.
[82] *People v. Mohammed*, __ Cal.App.5th __, 2026 WL 1164805, *3 (Ct. App. 2026).
[83] *People v. Mohammed*, __ Cal.App.5th __, 2026 WL 1164805, *8 (Ct. App. 2026).
[84] Penal Code § 1172.1(a)(1).
[85] Id.

prosecutors.[86] However, there is no express statutory authority allowing recall of a sentence based on a notice from CDCR Case Records staff — as opposed to the Secretary of CDCR — identifying a potential error. And in all of the sentence recall scenarios, the new sentence may be "no greater than the initial sentence."[87]

An incarcerated person may also file a writ of habeas corpus to challenge an illegally long sentence.[88] And an unauthorized sentence may also be addressable on direct appeal of the case, including increasing the sentence from what was originally imposed.[89]

However, there is no express statutory authority allowing recall of a sentence based on a notice from CDCR Case Records staff — as opposed to the Secretary of CDCR — identifying a potential error.

Staff Recommendations

The Committee may wish to consider the following proposals to address the issues raised in this memorandum.

Aggravating factors

- **Direct the Judicial Council to update the aggravating factors in the Rules of Court.**
  Revise Rule 4.421 to ensure that aggravating factors are defined with the level of precision typically required of criminal statutes.

- **Require that aggravating factors be formally pled and supported by probable cause at the preliminary hearing.**
  This would align aggravating factors with other factors that increase punishment and ensure early screening for legal sufficiency and notice to the defendant and would abrogate the decision in *People v. Chavez-Zepeda*.

- **Clarify that a single fact may not be used both to impose an upper-term sentence and to increase punishment under the Three Strikes law or other recidivist sentencing schemes.**
  Taking up Justice Liu's invitation to reconsider whether current dual-use practices are compatible with recent sentencing reforms.

[86] Id.
[87] Id.
[88] *People v. Singleton*, 113 Cal.App.5th 783, 798–799 (2025).
[89] See *People v. Massengale*, 10 Cal.App.3d 689, 693 (1970). This line of jurisprudence has apparently not been revisited following *G.C.* See *People v. Mohammed*, __ Cal.App.5th __, 2026 WL 1164805, *6 (Ct. App. 2026).

Penal Code section 17(b)

- **Create presumption of misdemeanor reduction for property offense wobblers.**
  Many of the most frequently charged wobblers are property offenses, and a substantial share of those cases result in felony convictions. The Legislature could establish a presumption that property offense wobblers be treated as misdemeanors, unless the court finds that felony treatment is warranted in the interests of justice. As with recent amendments to Penal Code section 1385, the 17(b) statute could direct courts to give meaningful weight to specified factors, without eliminating flexibility. These considerations could include the nature and circumstances of the offense, the defendant's recent criminal record (for example, within the past five years), and the extent to which felony punishment — and its collateral consequences — would adversely affect the defendant's rehabilitation. The non-exclusive list would provide a structured framework to promote more consistent decision-making.

- **Allow reclassification of sex registry tier when a section 17(b) reduction is granted and the reduced case was the offense requiring registration.**
  This would align registration requirements with the court's determination that the offense warrants misdemeanor treatment and would abrogate *People v. Manzoor*.

Other recommendations

- **Require any facts used to justify imposing consecutive terms be pled and proven to a jury beyond a reasonable doubt, unless admitted by the defendant.**
  This approach would align consecutive sentencing with the framework governing upper-term sentencing.

- **Repeal the nickel prior and 10-20-life firearm enhancements.**
  These enhancements can add substantial time to sentences that are already lengthy and are the most significant drivers of cumulative sentence length in California. Repealing the nickel prior outright would require a two-thirds vote in the Legislature or voter initiative. Consistent with other Committee recommendations, any such reforms should apply retroactively to individuals currently serving sentences that include these enhancements.

- **Specify a court's jurisdiction to address unauthorized sentences identified by CDCR Case Records.**
  Resolve the split in the appellate courts and clarify that a court only has jurisdiction to address unauthorized sentences identified by CDCR Case Records staff if correction would reduce, not increase the sentence. In those cases, consistent with Marsy's Law, notice would be required to be provided to the victim.

- **Create a separate statutory offense for first-degree burglary with a person present.**
  Applying the same definition and penalties as current law, this change would eliminate the need to separately track the allegation on abstracts of judgment and the likelihood of clerical error.

Conclusion

California's sentencing frameworks include several commonly applied laws that play a significant role in determining sentence length. As these laws have evolved, their interaction has created a system that may lack clarity, consistency, and proportionality in application. The Committee should consider recommendations that promote a more coherent and structured approach to sentencing.

Respectfully submitted,

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Appendix A:
Rules of Court on Aggravating and Mitigating Circumstances

Rule 4.421 Circumstances in Aggravation

Circumstances in aggravation include factors relating to the crime and factors relating to the defendant.

(a) Factors relating to the crime

Factors relating to the crime, whether or not charged or chargeable as enhancements include that:

(1) The crime involved great violence, great bodily harm, threat of great bodily harm, or other acts disclosing a high degree of cruelty, viciousness, or callousness;

(2) The defendant was armed with or used a weapon at the time of the commission of the crime;

(3) The victim was particularly vulnerable;

(4) The defendant induced others to participate in the commission of the crime or occupied a position of leadership or dominance of other participants in its commission;

(5) The defendant induced a minor to commit or assist in the commission of the crime;

(6) The defendant threatened witnesses, unlawfully prevented or dissuaded witnesses from testifying, suborned perjury, or in any other way illegally interfered with the judicial process;

(7) The defendant was convicted of other crimes for which consecutive sentences could have been imposed but for which concurrent sentences are being imposed;

(8) The manner in which the crime was carried out indicates planning, sophistication, or professionalism;

(9) The crime involved an attempted or actual taking or damage of great monetary value;

(10) The crime involved a large quantity of contraband; and

(11) The defendant took advantage of a position of trust or confidence to commit the offense.

(12) The crime constitutes a hate crime under section 422.55 and:

(A) No hate crime enhancements under section 422.75 are imposed; and

(B) The crime is not subject to sentencing under section 1170.8.

(b) Factors relating to the defendant

Factors relating to the defendant include that:

(1) The defendant has engaged in violent conduct that indicates a serious danger to society;

(2) The defendant's prior convictions as an adult or sustained petitions in juvenile delinquency proceedings are numerous or of increasing seriousness;

(3) The defendant has served a prior term in prison or county jail under section 1170(h);

(4) The defendant was on probation, mandatory supervision, postrelease community supervision, or parole when the crime was committed; and

(5) The defendant's prior performance on probation, mandatory supervision, postrelease community supervision, or parole was unsatisfactory.

Rule 4.423. Circumstances in mitigation

Circumstances in mitigation include factors relating to the crime and factors relating to the defendant.

(a) Factors relating to the crime

Factors relating to the crime include that:

(1) The defendant was a passive participant or played a minor role in the crime;

(2) The victim was an initiator of, willing participant in, or aggressor or provoker of the incident;

(3) The crime was committed because of an unusual circumstance, such as great provocation, that is unlikely to recur;

(4) The defendant participated in the crime under circumstances of coercion or duress, or the criminal conduct was partially excusable for some other reason not amounting to a defense;

(5) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime;

(6) The defendant exercised caution to avoid harm to persons or damage to property, or the amounts of money or property taken were deliberately small, or no harm was done or threatened against the victim;

(7) The defendant believed that he or she had a claim or right to the property taken, or for other reasons mistakenly believed that the conduct was legal;

(8) The defendant was motivated by a desire to provide necessities for his or her family or self; and

(9) The defendant suffered from repeated or continuous physical, sexual, or psychological abuse inflicted by the victim of the crime, and the victim of the crime, who inflicted the abuse, was the defendant's spouse, intimate cohabitant, or parent of the defendant's child; and the abuse does not amount to a defense.

(10) If a firearm was used in the commission of the offense, it was unloaded or inoperable.

(b) Factors relating to the defendant

Factors relating to the defendant include that:

(1) The defendant has no prior record, or has an insignificant record of criminal conduct, considering the recency and frequency of prior crimes;

(2) The defendant was suffering from a mental or physical condition that significantly reduced culpability for the crime;

(3) The defendant experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence and it was a factor in the commission of the crime;

(4) The commission of the current offense is connected to the defendant's prior victimization or childhood trauma, or mental illness as defined by section 1385(c);

(5) The defendant is or was a victim of intimate partner violence or human trafficking at the time of the commission of the offense, and it was a factor in the commission of the offense;

(6) The defendant is under 26 years of age, or was under 26 years of age at the time of the commission of the offense;

(7) The defendant was a juvenile when they committed the current offense;

(8) The defendant voluntarily acknowledged wrongdoing before arrest or at an early stage of the criminal process;

(9) The defendant is ineligible for probation and but for that ineligibility would have been granted probation;

(10) Application of an enhancement could result in a sentence over 20 years;

(11) Multiple enhancements are alleged in a single case;

(12) Application of an enhancement could result in a discriminatory racial impact;

(13) An enhancement is based on a prior conviction that is over five years old;

(14) The defendant made restitution to the victim; and

(15) The defendant's prior performance on probation, mandatory supervision, postrelease community supervision, or parole was satisfactory.

(c) Other factors

Any other factors statutorily declared to be circumstances in mitigation or that reasonably relate to the defendant or the circumstances under which the crime was committed.

Appendix B: Statutory Circumstances in Aggravation

Statute	Description
PC § 136.1(f)	Use of force to dissuade a witness or victim from testifying or attending court
PC § 186.22(b)(2)	Gang-related felony committed on or near school grounds
PC § 243.4(i)	Sexual battery involving abuse of employer-employee relationship
PC § 278.6(a)(1)–(10)	Enumerated aggravating circumstances in child abduction cases
PC § 422.75(c)	Use of a firearm in commission of a hate crime
PC § 422.76	Hate crime motivation as an aggravating factor
PC § 502.9	Theft offense where the victim is an elder or dependant adult
PC § 515	Embezzlement offenses involving elder or dependent victims
PC § 525	Extortion offenses involving elder or dependent victims
PC § 653j(c)	Severity of underlying offense considered as aggravating factor for soliciting or encouraging a minor to commit a specified felony
PC § 667.95	Recording a violent felony to facilitate or promote the offense
PC § 1170.7	Robbery targeting pharmacists or controlled substances
PC § 1170.71	Use of obscene or harmful material to induce a minor in sexual offenses
PC § 1170.72–1170.74	Drug offenses involving minors, victims aged 11 or younger
PC § 1170.76	Specified offense committed in presence of a minor within a household or familial relationship
PC § 1170.78	Arson committed in retaliation for eviction or legal action
PC § 1170.8	Robbery or assault committed against a person in a religious structure, or arson of such a structure
PC § 1170.81	Attempted life-term offenses whether victim is a peace officer
PC § 1170.82	Drug offenses involving vulnerable individuals (e.g. pregnant women, prior violent offenders, or individuals in treatment)
PC § 1170.84	Tying, binding, or confining a victim during commission of a serious felony
PC § 1170.85(a)	For an assault or battery offense, that the offense was committed to prevent or retaliate against witness participation

PC § 1170.85(b)	Victim particularly vulnerable due to age or disability
PC § 1170.86	Sexual offense committed in school zones against students
PC § 1170.89	Knowledge that a firearm used in the offense was stolen
PC § 1204(f)(9)	Failure to disclose financial information relevant to restitution orders
HS § 11373(b)	Willful failure to complete court-ordered drug treatment program
HS § 11379.6(b)–(d)	Drug manufacturing in a structure where minors are present
VC § 23578	High blood alcohol concentration (0.15%+) or refusal to submit to testing in DUI cases