

Staff Memorandum 2026-11
Updates on Preliminary Proposals:
Sentencing Enhancements, Aggravating Factors,
Section 17(b) Reductions, and Related Matters

This memorandum provides preliminary staff proposals for topics discussed at the May 2026 Committee meeting.

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Preliminary Staff Proposals

Direct the Judicial Council to update the aggravating factors in the Rules of Court.

Summary Staff Proposal

Direct the Judicial Council to revise Rule 4.421 so that aggravating factors are defined with the level of precision typically required of criminal statutes.

Current Law

Most common aggravating factors are contained in the California Rules of Court, which are promulgated by the Judicial Council of California.

Background

As discussed at the May meeting, aggravating factors — facts which can be used to impose an upper-term sentence — were originally drafted by the Judicial Council to guide judicial sentencing discretion, not jury factfinding.¹ As part of the Determinate Sentencing Act enacted in 1976, the Legislature directed the Judicial Council to adopt sentencing rules providing criteria “for the consideration of the trial judge” when deciding which term to impose.²

But recent court decisions and legislation now require juries and not judges to determine most aggravating facts, applying the standard of proof beyond a reasonable doubt.³ The existing factors were not designed for this role. Many use broad or qualitative standards that courts have recognized would be impermissibly vague if used to define criminal offenses.⁴ Yet aggravating factors now function like elements of an offense because they are facts that must be proven before a defendant is exposed to an upper-term sentence.⁵

In an Invitation to Comment on revisions to felony sentencing rules published earlier this year, the Judicial Council Criminal Law Advisory Committee declined to recommend substantive revisions to the aggravating factors, explaining that, “notwithstanding the council’s delegated authority to adopt rules on aggravating factors,” it viewed “the promulgation of aggravating factors as a policy determination that is fundamentally a legislative function.”⁶ However, because the Judicial Council has expertise in developing sentencing rules and jury instructions and has historically been tasked by the Legislature with developing and revising sentencing rules, it is best positioned to revise the existing factors to conform to the current jury factfinding framework.⁷

Staff Proposal

The Committee should consider recommending that the Legislature direct the Judicial Council to update the existing aggravating factors in Rule 4.421 are sufficiently precise and capable of application by a jury. The Judicial Council

¹ See *People v. Sandoval*, 41 Cal.4th 825, 840 (2007).

² Penal Code § 1170.3.

³ SB 567 (2021); Penal Code § 1170(b). See also, *People v. Wiley*, 17 Cal.5th 1069, 1086 (2025).

⁴ *People v. Sandoval*, 41 Cal.4th 825, 840 (2007) (quoting *People v. Thomas*, 87 Cal.App.3d 1014, 1023–1024 (1979)).

⁵ See *People v. Lynch*, 16 Cal.5th 730, 760 (2024).

⁶ See Judicial Council of California, Invitation to Comment, SPR26-15, *Criminal Procedure: Revisions to Felony Sentencing Rules* (Deadline: May 18, 2026), 5–6.

⁷ See Penal Code § 1170.3(a) (directing the Judicial Council to adopt rules providing sentencing criteria for trial courts). See also Senate Bill 40 (2007) § 6(b) (following the United States Supreme Court’s decision in *Cunningham v. California*, 549 U.S. 270 (2007), the Legislature directed the Judicial Council to report back on implementation of the revised upper-term sentencing scheme, including “the development of revised rules of court”).

should be directed to modify, consolidate, or eliminate existing factors as necessary, but not to create new aggravating factors.

Unify procedures for establishing facts that increase punishment.

Summary Staff Proposal

As required for sentence enhancements, require aggravating factors and facts used to justify consecutive sentences to be alleged in the charging document, supported by probable cause at the preliminary hearing when practicable, and either admitted by the defendant or found true by a jury beyond a reasonable doubt.

Current Law

Aggravating factors generally need not be included in the charging document or established at the preliminary hearing. Judges have broad discretion to impose consecutive sentences based on criteria established by the California Rules of Court, but the facts they rely on are not required to be formally alleged or proven.

Background

Current law does not require aggravating facts supporting an upper-term sentence to be alleged in the charging document or supported by probable cause at the preliminary hearing, even though they may be later used to increase the defendant's maximum sentence.⁸ Likewise, the decision to impose consecutive sentences generally remains based on judicial factfinding guided by the California Rules of Court.⁹

By contrast, elements of a crime and sentence enhancements generally must be specified in a charging document and survive a preliminary hearing, where a judge determines whether there is probable cause to believe the defendant committed the charged offense before the case proceeds to trial.¹⁰

Like sentencing enhancement, aggravating factors and consecutive sentencing factors increase the punishment imposed for a defendant's conduct. Applying comparable procedural safeguards would simplify this area of sentencing law and promote greater consistency by requiring that facts increasing punishment generally be identified early in the proceedings, supported by probable cause, and ultimately established through constitutionally appropriate procedures.¹¹

⁸ See *Chavez Zepeda v. Superior Court*, 97 Cal.App.5th 65, 96–97, n.8 (2023).

⁹ Penal Code § 1170.1(d)(3). See also, California Rules of Court, Rule 4.425.

¹⁰ See Cal. Const., art. I, § 14; Penal Code § 872.

¹¹ See generally, *In re Vaquera*, 15 Cal.5th 706, 713 (2024) (noting that due process requires “right to fair notice of any sentencing allegation that, if proven, will increase the punishment for a crime”).

Existing procedures already permit prosecutors, in limited circumstances, to add charges and enhancements after the preliminary hearing when they are supported by the evidence presented and arise from the same transaction or course of conduct.¹² A similar procedure could be adopted for alleging aggravating factors or consecutive sentencing facts discovered after the preliminary hearing.

Staff Proposal

The Committee should consider recommending that aggravating factors and facts supporting consecutive sentences be alleged in the charging document, supported by probable cause at the preliminary hearing when practicable, and either admitted by the defendant or found true by a jury beyond a reasonable doubt. The Committee should also consider recommending that prosecutors be allowed to add aggravating factors and consecutive sentencing facts after the preliminary hearing under procedures comparable to those currently governing the addition of charges and enhancements.

Clarify that the same fact may not be used both for upper-term sentencing and Three Strikes.

Summary Staff Proposal

Prohibit use of the same fact both to impose an upper-term sentence and to increase punishment under the Three Strikes law or other recidivist sentencing schemes.

Current Law

California generally prohibits dual use of facts to both aggravate a sentence and impose a sentence enhancement. However, courts have distinguished the Three Strikes law from traditional sentence enhancements.

Background

The Three Strikes law has been characterized by courts as an “alternative sentencing scheme” rather than an enhancement. As a result, courts have concluded that the general prohibition on dual use of facts in Penal Code section 1170(b)(5) does not apply when the same prior conviction is used both as an aggravating factor supporting an upper-term sentence and to increase the length of the sentence pursuant to the Three Strikes law.¹³

¹² Penal Code § 739. See also *Parks v. Superior Court In and For Alameda County*, 38 Cal.2d 609, 612 (1952). If there is no holding order, the prosecutor cannot file an information at all. See *People v. Luna*, 140 Cal.App.3d 788, 793, fn 3 (1983).

¹³ See *People v. Castaneda-Morales*, B341744, 2025 WL 3033224, *4 (Ct. App. 2025) (non-published opinion); *People v. Castaneda-Morales*, S294254, February 11, 2026 (Liu, J., concurring in denial of review).

In a recent concurrence, California Supreme Court Justice Goodwin Liu questioned whether the same prior conviction should be permitted both to support an upper-term sentence and increase punishment under the Three Strikes law and expressly invited legislative reconsideration of that rule.¹⁴

At the May meeting, Committee members asked about the origin of the “alternative sentencing scheme” distinction that allows the dual use of facts as described above and whether the Penal Code should instead classify any law that increases punishment as a sentence enhancement and discard the concept of an alternative sentencing scheme.

The distinction did not become prominent in California law until the Three Strikes law was added to the Penal Code in 1994. Rather than adding a separate, additional term of imprisonment to the sentence for the current offense — the definition of an enhancement under the Rules of Court — the Three Strikes law altered the sentencing scheme that applied to the offense when a defendant had a qualifying prior serious or violent felony conviction.¹⁵

Two years after the passage of the Three Strikes law, the California Supreme Court in *People v. Superior Court (Romero)* described the law as an alternative sentencing scheme.¹⁶ Although that characterization was not necessary to the Court’s holding,¹⁷ subsequent decisions have relied on both the Rules of Court enhancement definition and *Romero* when determining whether statutory provisions applicable to sentencing enhancements also apply to the Three Strikes law as an alternative sentencing scheme.¹⁸

This technical distinction now affects multiple areas of California sentencing law. For example, Penal Code section 186.22 generally adds sentence enhancements for gang-related felonies.¹⁹ However, subdivision (b)(4) prescribes an indeterminate life sentence for certain underlying felonies committed for the benefit of a gang.²⁰ Because this subdivision is treated as an alternative sentencing scheme rather than an enhancement, courts have held that the resulting sentence may be doubled under the Three Strikes law, even though sentence enhancements, including those found in other subdivisions of section 186.22, generally are not subject to Three Strikes doubling.²¹

¹⁴ See *People v. Castaneda-Morales*, S294254, February 11, 2026 (Liu, J., concurring in denial of review).

¹⁵ See Penal Code §§ 667, 1170.12; California Rules of Court, Rule 4.405(5).

¹⁶ *People v. Superior Court (Romero)*, 13 Cal.4th 497 (1996).

¹⁷ *Id.* at 526–527.

¹⁸ See *People v. Jefferson*, 21 Cal.4th 86, 101 (1999); *People v. Acosta*, 29 Cal.4th 105, 118–119 (2002); *People v. Burke*, 89 Cal.App.5th 237, 243–244 (2023).

¹⁹ Penal Code § 186.22.

²⁰ Penal Code § 186.22(b)(4).

²¹ See *People v. Jefferson*, 21 Cal.4th 86 (1999); *People v. Jones*, 47 Cal.4th 566 (2009).

Similarly, the One Strike law establishes an alternative sentencing scheme for specified sex offenses by prescribing indeterminate life sentences when enumerated aggravating circumstances are present.²² Because the One Strike law is not a sentence enhancement, courts have held that it may operate together with the Three Strikes law.²³ For example, a prior strike conviction may both subject a defendant to One Strike sentencing and lengthening the minimum term of the One Strike by the Three Strikes law.²⁴

Because the distinction between sentence enhancements and alternative sentencing schemes have become embedded throughout California sentencing law, redefining that distinction could have unintended consequences beyond the issues identified here. For this reason staff does not recommend a wholesale elimination of the concept but instead extending specific statutory provisions prohibiting excessive punishment to specific alternative sentencing schemes where appropriate. This includes the recommendation here to not allow a prior conviction to be used to justify both a high-term sentence and an increased sentence under the Three Strikes law.²⁵

Staff Proposal

The Committee should consider recommending that the same prior conviction cannot be used both to impose an upper-term sentence and to increase punishment under the Three Strikes law.

Create presumption of misdemeanor reduction for property offense and drug possession wobblers.

Summary Staff Proposal

Create a presumption that property-offense and drug-possession wobblers be reduced to misdemeanors under Penal Code section 17(b), while preserving judicial discretion to treat an offense as a felony when warranted, including in specified circumstances.

Current Law

Section 17(b) reductions are made based on judicial discretion without further guidance in the Penal Code.

Background

Section 17(b) gives courts broad authority to reduce wobblers to misdemeanors after, as specified in case law, considering the circumstances of the offense and

²² See Penal Code § 667.61.

²³ See *People v. Hammer*, 30 Cal.4th 756 (2003).

²⁴ Id. at 771.

²⁵ Another example is the Committee's recommendation in 2023 to extend the provisions of Penal Code § 1385(c) to strikes.

the defendant.²⁶ There is no statutory guidance for when such a reduction is warranted.²⁷

This recommendation would establish a presumption of misdemeanor treatment only for property-offense and drug-possession wobblers. The presumption is intended to reflect the Committee’s judgment that misdemeanor treatment should ordinarily be appropriate for these categories of offenses. It is not intended to limit a court’s existing discretion to reduce other wobblers to misdemeanors when warranted. Offenses that could be subject to the presumption include grand theft, receiving stolen property, forgery, check fraud, vandalism, and drug possession under Health and Safety Code section 11395 (the “Treatment-Mandated” offense created by Proposition 36 in 2024).²⁸

Courts would retain the same authority they currently possess to grant section 17(b) relief in all other cases. The statute making this change should specify that “nothing in this subdivision shall be construed to limit the court’s authority to reduce any other eligible offense to a misdemeanor pursuant to this section.”

The factors a court should consider in deciding whether the presumption was overcome could include:

- The defendant has been convicted of a felony offense within the preceding five years;
- The defendant has repeatedly engaged in similar criminal conduct despite prior misdemeanor sanctions, diversion, probation, or less restrictive interventions;
- The defendant presents a substantial risk of continued similar offending that is not adequately addressed through a misdemeanor conviction and punishment; and
- Other circumstances — including a high value of stolen or destroyed property — demonstrate that felony treatment is warranted in the interests of justice.

These factors could provide greater structure and uniformity while preserving judicial discretion.

²⁶ Penal Code § 17(b). See *People v. Superior Court (Alvarez)*, 14 Cal.4th 968, 977 (1997) (citing cases).

²⁷ Penal Code § 17(b).

²⁸ See Penal Code §§ 487, 496(a), 470, 594(b)(1); Health & Safety Code § 11395. Proposition 36, approved by voters in 2024, created section 11395, which allows certain repeat drug offenses to be punished as felonies. The initiative nevertheless made the offense a wobbler, preserving discretion to treat it as a misdemeanor. The proposed presumption would guide the exercise of that discretion, rather than eliminate it.

Staff Proposal

The Committee should consider recommending a presumption that property offense and drug possession wobblers be reduced to misdemeanors under section 17(b), while expressly preserving the court's existing discretion to grant section 17(b) reductions in all other eligible cases. The recommendation could also identify nonexclusive factors that may justify felony treatment notwithstanding the presumption.

Authorize, but not require, reclassification of sex offender registration tier when a section 17(b) reduction is granted.*Summary Staff Proposal*

Permit courts to reclassify a person's sex offender registration tier when a section 17(b) reduction is granted and the reduced offense is the offense requiring registration.

Current Law

Section 17(b) reductions do not alter registration tiers.

Background

People convicted of certain sex offenses are required to register as sex offenders. Registration imposes continuing reporting and public notification requirements and can create significant collateral consequences, including barriers to housing and employment.²⁹ The Penal Code generally assigns registrants to one of three tiers, which establish registration periods of 10 years, 20 years, or life.³⁰ For some registerable wobblers, felony or misdemeanor convictions carry different tier assignments. For example, certain misdemeanor sexual battery and child pornography convictions generally fall within tier one, while felony convictions for the same offenses are expressly designated as tier three.³¹

Under current law, reducing a registerable wobbler to a misdemeanor generally does not affect the registrant's tier assignment, even though the conviction is thereafter considered a misdemeanor for most purposes.³² As a result, individuals whose offenses have been judicially determined to warrant misdemeanor treatment remain subject to the registration period applicable to the original felony conviction.

²⁹ See Penal Code §§ 290.012–290.015, 290.46; See also California Sex Offender Management Board, *Recommendations for Successful Reintegration of 290 Registrants: Funding Court Mandated Treatment* (March 2026) (identifying access to employment and housing as significant reintegration barriers for California sex offender registrants).

³⁰ Penal Code § 290(d).

³¹ Penal Code § 290(d)(1)(A), (3)(J), (R).

³² See *People v. Manzoor*, 95 Cal.App.5th 548 (2023).

Assisted by the California Policy Lab, staff reviewed conviction data for the most common registerable wobbler offenses between 2021 and 2025. The percentage of convictions that were felonies ranged from approximately 31% for indecent exposure to more than 90% for offenses involving unlawful sexual conduct with minors and lewd conduct.

Disposition of common wobblers requiring PC § 290 registration, 2021–2025

Offense	Convictions	Percent resolved as felony
PC § 311.1(a) (possess obscene matter)	5,902	81%
PC § 314(1) (indecent exposure)	3,482	31%
PC § 288(c)(1) (lewd and lascivious act with child 14 or 15 years of age)	3,112	97%
PC § 243.4(a) (sexual battery – victim restrained)	1,903	68%
PC § 287(b)(1) (oral copulation with minor under 18)	949	85%
PC § 288.2(a)(2) (send harmful materials to minor; no sexual depiction)	729	91%
PC § 311.11(c) (possession of specified obscene material)	802	93%
PC § 289(h) (sexual penetration with minor under 18)	487	91%
PC § 243.4(c) (sexual battery – misrepresentation of purpose)	274	92%
PC § 288.2(a)(1) (send harmful materials to minor)	136	92%
PC § 647.6(b) (annoy/molest child with unlawful entry)	120	100%
PC § 286(b)(1) (sodomy with minor under 18)	118	92%

Offenses with less than 100 convictions are excluded.

Table: Committee on Revision of the Penal Code • Source: DOJ ACHS • Created with Datawrapper

While these data do not indicate whether misdemeanor treatment is appropriate, they demonstrate that the Committee’s proposed recommendation could affect a meaningful number of cases. Notably, the data do not include offenses subject to discretionary registration under Penal Code section 290.006, which allows courts to require registration for offenses not otherwise requiring registration if the court finds the offense was committed as a result of sexual compulsion or for purposes of sexual gratification. As a result, the universe of cases potentially affected by this recommendation extends beyond offenses expressly listed in the registration statute or identified in available data.

Making tier reclassification discretionary would avoid discouraging courts from granting otherwise appropriate section 17(b) reductions in cases where a court determines that misdemeanor treatment is warranted but has concerns about the resulting change in registration requirements.

Staff Proposal

The Committee should consider recommending that when a registerable wobbler is reduced to a misdemeanor under section 17(b), and that offense is the basis for the person's registration obligation, the court be authorized, but not required, to reclassify the person's registration tier accordingly.

Repeal the 10-20-life firearm enhancements.*Summary Staff Proposal*

Repeal the 10-20-life firearm enhancement.

Current Law

Penal Code section 12022.53 applies to specified felonies — including robbery, carjacking, and murder — and adds 10 years for personal use of a firearm, 20 years for intentional discharge, and 25 years to life for intentional discharge causing great bodily injury or death.

Background

The 10-20-life firearm enhancement can add a substantial consecutive term to sentences that are already lengthy. Although courts now have discretion to dismiss this enhancement in the interests of justice, it remains among the most significant drivers of cumulative sentence length in California.³³

At the May meeting, Committee members requested additional information regarding how other jurisdictions punish firearm use during the commission of a felony.

Staff reviewed the laws of Washington, Michigan, New York, Florida, and the federal system.³⁴ Of all the jurisdictions reviewed, California remains among the more punitive systems in that California's gun enhancements add additional time to the sentence for the underlying offense and impose substantially longer additional punishment than most jurisdictions. For example, Florida also provides lengthy minimum sentences for firearm use — including a 10-20-25-to-life scheme similar to California's — but those terms generally operate as the minimum term for the underlying offense rather than an

³³ See Mia Bird, et al., *Sentence Enhancements in California*, California Policy Lab, 4 (March 2023); See also, Thomas Sloan, et al., *The Use of Gun Enhancements in California Before and After Senate Bill 620*, California Policy Lab, 3–5 (May 2026).

³⁴ See Wash. Rev. Code § 9.94A.533(3) (adding firearm enhancements of 18 months, three, or five years for qualifying felonies); Mich. Comp. Laws § 750.227b (separate firearm offense carrying consecutive terms of two years for a first conviction, five years for a second, and 10 years for a third or subsequent conviction); N.Y. Penal Law §§ 70.02, 265.01–265.04 (addressing firearm possession and use through separate offenses and violent felony sentencing provisions).

additional term imposed on top of the sentence for that offense.³⁵ However, it appears that California is the only state that gives courts discretion to dismiss firearm enhancements in the interests of justice.

Repealing this enhancement would not eliminate the possibility of substantial punishment for firearm-related conduct. Courts could continue to impose enhancements under Penal Code section 12022.5 for personal use of a firearm (generally 3, 4, or 10 years), and Penal Code section 12022.7 for personally inflicting great bodily injury (generally 3 years). The California Supreme Court has held that these enhancements may be imposed for the same offense.³⁶ Lengthy prison terms would also remain available through the punishment prescribed for the underlying offense, the Three Strikes law, consecutive sentencing, and other applicable sentencing provisions.

For example, a defendant with a prior strike conviction who discharges a firearm causing great bodily injury during a robbery could be sentenced to the middle term of 3 years for the underlying robbery, doubled to 6 years because of the prior strike. A five-year nickel prior enhancement could be added, along with a 10-year firearm enhancement under section 12022.5, and a 3-year enhancement for causing great bodily injury, resulting in a 24-year sentence. Even without the nickel prior and doubled term, a sentence of 16 years could be imposed.

Staff Proposal

The Committee should consider recommending repeal of the 10-20-life firearm enhancement.

Repeal the nickel prior enhancement.

Summary Staff Proposal

Repeal the five-year prior serious felony enhancement under Penal Code section 667(a).

Current Law

Penal Code section 667(a) adds a five-year consecutive term for each prior serious felony conviction when the current offense is also a serious felony. Courts may dismiss the enhancement in the interest of justice pursuant to Penal Code section 1385.

³⁵ Fla. Stat. § 775.087(1)–(3) (reclassifying certain felonies involving firearms and establishing mandatory minimum sentences generally ranging from 10 years for firearm possession, to 20 years for discharge, to 25 years to life when discharge causes death or great bodily harm; where the firearm minimum exceeds the otherwise authorized sentence, the minimum controls, and where the otherwise authorized sentence is longer, that sentence must include the firearm minimum. *Id.* at (2)(c).

³⁶ See *People v. Ahmed*, 53 Cal.4th 156, 160 (2011).

Background

The nickel prior was enacted by Proposition 8 in 1982 to increase punishment for people with prior “serious” convictions who were being sentenced for a new “serious” conviction.³⁷ Although courts have discretion to dismiss the enhancement, it remains one of the most frequently imposed sentencing enhancements in California and has accounted for tens of thousands of years of incarceration in recent decades.³⁸

Repealing the nickel prior would not eliminate enhanced punishment for people with prior convictions. Existing law would continue to permit sentence doubling under the Three Strikes law, and a separate three-year enhancement would continue to apply when a defendant with a prior violent felony conviction is convicted of a new violent felony.³⁹ Repeal would eliminate one additional consecutive enhancement that contributes substantially to cumulative sentence length. Because the nickel prior was established by a voter initiative, repeal would require a two-thirds vote in the Legislature.⁴⁰

Staff Proposal

The Committee should consider recommending repeal of the five-year prior serious felony enhancement under Penal Code section 667(a).

Specify a court’s jurisdiction to address unauthorized sentences identified by CDCR Case Records.*Summary Staff Proposal*

Clarify a court’s authority to correct unauthorized sentences identified by CDCR Case Records after judgment has become final by allowing only corrections that would reduce an unauthorized sentence.

Current law

Appellate courts have disagreed about a court’s authority to correct unauthorized sentences after judgment is final.

Background

CDCR Case Records — who are responsible for calculating and maintaining incarcerated people’s sentences and release dates — routinely notify sentencing courts when they identify a potentially unauthorized sentence. (This process is distinct from when the Secretary of CDCR recommends recall of a sentence under Penal Code section 1172.1).

³⁷ Proposition 8 (1982); Penal Code § 667(a).

³⁸ 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).

³⁹ Penal Code §§ 667, 667.5(a), 1170.12.

⁴⁰ Proposition 8, § 5 (1982) (adding Penal Code § 667); Penal Code § 667(j).

Committee members requested additional information regarding the number of sentencing issues identified by CDCR Case Records each year. Although CDCR was unable to provide complete historical data, available information shows that Case Records regularly identifies potential sentencing errors requiring judicial review. According to CDCR, through April 2026, nearly 1,000 letters for sentencing issues requiring judicial clarification were sent this year. While some of these potential errors may be clerical or similar errors that can be easily corrected by a court, others are the result of a misunderstanding of the governing sentencing law.⁴¹

California appellate courts have recently reached different conclusions regarding whether the trial court retains jurisdiction to correct an unauthorized sentence once the judgment has become final.⁴² As a result, similarly situated defendants may receive different treatment depending on the appellate district in which they were sentenced.

This uncertainty can delay the correction of sentencing errors and create unnecessary litigation over a court's jurisdiction rather than the merits of the sentencing issue. Clarifying the scope of the trial court's authority would promote uniformity and provide a consistent procedure for addressing unauthorized sentences identified after judgment.

As indicated above, this recommendation is limited to corrections that reduce an unauthorized sentence. Unlike errors that result in an unlawfully shorter sentence, sentencing errors that result in additional punishment require a defendant to serve a prison term longer than authorized by law. Limiting a court's continuing jurisdiction to those circumstances addresses unlawful incarceration while avoiding the broader finality concerns associated with increasing a sentence after judgment has become final.

Staff Proposal

The Committee should consider recommending that a trial court's jurisdiction to correct unauthorized sentences identified by CDCR Case Records after a sentence has become final exists only to modify an illegally long sentence.

⁴¹ See e.g., *People v. Powell*, 121 Cal.App.5th 595, 601 (2026).

⁴² See *People v. Codinha*, 92 Cal.App.5th 976 (2023); *People v. Mohammed*, 120 Cal.App.5th 222, 236 (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.").

Create a separate statutory offense for first-degree burglary with a person present.*Summary Staff Proposal*

Create a separate statutory offense for first-degree burglary with a person present.

Current Law

Burglary with a person present is classified as a violent felony in the list of “violent” offenses in Penal Code section 667.5(c) and does not have a Penal Code section distinct from other burglary offenses.

Background

California distinguishes between first-degree burglary and first-degree burglary with a person present for sentencing purposes, but it does not create a separate substantive offense for the latter. Instead, the presence of another person in the residence is identified through a separate allegation that determines whether the offense qualifies as a violent felony under Penal Code section 667.5.

This structure has created recurring confusion in CDCR’s processing of the abstracts of judgment sent by sentencing courts because the forms often fail to clearly indicate which version of the offense the person was convicted of.

Creating a separate statutory offense for first-degree burglary with a person present would eliminate these frequent errors, while leaving the substance of the law and its sentencing provisions unchanged.

This recommendation is not intended to change existing law but merely to prevent the administrative problems caused by ambiguous entries on sentencing forms.

Staff Proposal

The Committee should consider recommending a separate statutory offense for first-degree burglary with a person present, while maintaining the existing punishment for the offense.

Conclusion

These updated proposals reflect the Committee's discussion at the May meeting and additional research conducted by staff. Together, they provide targeted opportunities to improve the consistency, proportionality, and administration of California's sentencing laws.

Respectfully submitted,

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