# Staff Memorandum 2026-18
# Draft of 2026 Annual Report

At its October 27, 2026 meeting, the Committee on Revision of the Penal Code directed staff to prepare a draft 2026 Annual Report that included the recommendations presented in Staff Memorandum 2026-16. Staff have prepared the attached draft for the Committee's review.

The draft report presents a description of each proposal the Committee discussed and an explanation of its purpose and rationale. **Please note that the data referenced throughout the draft report is not final and should not be relied upon for any reason.**

The Committee now needs to decide whether to approve the attached draft, with or without changes. In addition to any other comments on the Report, the Committee should consider the following:

1. The staff recommendation around pre-arraignment release procedures, see pages 42–45 of the draft, originally included addressing Penal Code § 1270.1, which limits courts from including serious and violent offenses in non-cash-bail schedules. After further research, staff now concludes that these limits should not currently be addressed and the draft of the Annual Report does not address this issue. The main reason staff made this conclusion was because existing data suggests that a significant number of people arrested for these offenses would be detained until arraignment, which might actually increase detention compared to the current situation.

2. Staff now recommends that the Committee not make the recommendation authorizing courts to reclassify sex offender registration tiers following a section 17(b) reduction. As noted during public comment at the October 9 meeting, the California Department of Justice currently makes these adjustments in some cases. An appellate court is currently considering this issue. Staff recommends waiting for the relevant appellate decision to issue before the Committee makes a recommendation. Staff will monitor the appellate case and report back. **Please note that the recommendation currently still appears in the draft report at pages 27–29 for the Committee to review as it considers this issue.**

Upon approval of the Committee, the report will be finalized by Committee staff with assistance from a graphic designer. Any changes made at this stage will not affect the substance of the Committee's report or recommendations. Such changes may include adding citations, data, graphics and other non-substantive stylistic, editorial revisions.

Respectfully submitted,

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# Draft 2026 Annual Report
# Committee on Revision of the Penal Code
# November 2026

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# Executive Summary

The Committee on Revision of the Penal Code was established by the Legislature and the Governor to study all aspects of criminal law and procedure and to issue recommendations that simplify and rationalize the law. The Committee's work is guided by the goals of improving public safety, making a better system for crime victims, reducing unnecessary incarceration, and addressing racial disparities in the criminal legal system.

This year, the Committee examined record relief processes, numerous issues related to sentencing, and California's cash bail system. The Committee also held its first meeting inside a California prison and heard from more than 20 currently incarcerated people during the meeting.

After receiving testimony from more than a dozen experts and practitioners, and analyzing, with assistance from the California Policy Lab, data from the California Department of Justice and Department of Corrections and Rehabilitation, the Committee recommends the following reforms:

Sentencing

1. Modernize the Aggravating Factors Used in Felony Sentencing
2. Establish Uniform Procedures for Proving Facts that Increase Punishment.
3. Prohibit Using the Same Prior Conviction for Upper-Term Sentencing and Three Strikes
4. Establish a Presumption of Misdemeanor Reduction for Certain Wobbler Offenses
5. Authorize Courts to Reclassify Sex Offender Registration Tiers Following a Section 17(b) Reduction
6. Repeal the 10-20-Life Firearm Enhancement
7. Repeal the Nickel Prior Enhancement
8. Clarify Court Authority to Correct Unauthorized Sentences After Judgment Becomes Final
9. Create a Separate Statutory Offense for First-Degree Burglary With a Person Present

Bail and Pretrial Release

10. Improve California's Bail System
    A. End the use of cash bail
    B. Increase opportunities for pre-arraignment release without cash bail
    C. Implement Kowalczyk with statewide uniformity and consistency
11. Create a Statewide Court Reminder Program

Diversion

12. Expand Judicial Diversion to Low-Level Felonies
13. Refine Existing Diversion Processes

Postconviction Record Relief

14. Require Enhanced Sealing of Misdemeanor Records
15. Update the Court Process for Criminal Record Relief
    A. Notify new recipients of automatic record relief
    B. Require courts to explain the denial of a discretionary relief petition

Reentry

16. Increase CDCR Discretion Over the Alternative Custody Program

This is the Committee's seventh Annual Report. Over the last seven years, more than two dozen bills have implemented Committee recommendations. This year, the Committee released a special report looking back at the Committee's work and cataloging each recommendation and whether it has become law or not. That report, *Looking Back and Looking Forward: The Work of the Committee on Revision of the Penal Code 2020–2026*, is available on the Committee's website.

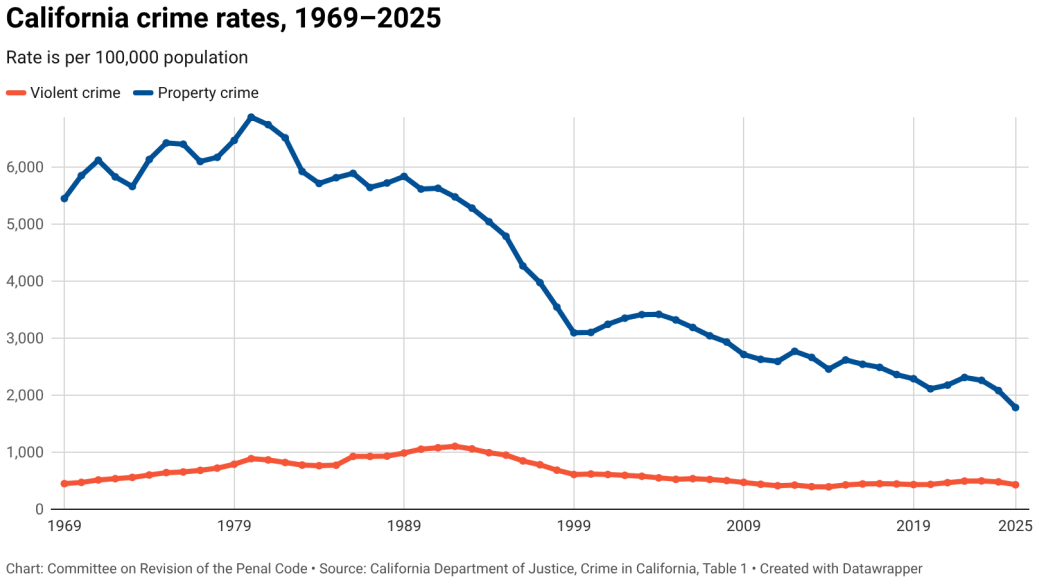
# Prefatory Notes & Data

## Crime and Clearance Rates

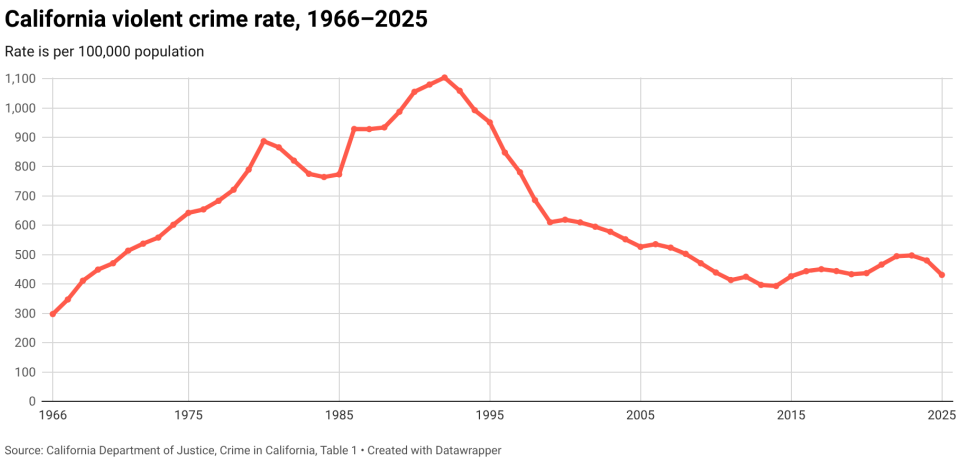
As it has in previous Annual Reports, the Committee presents updated information on statewide crime rates. These crime statistics are based on reports from local law enforcement to the California Department of Justice and represent the most complete data currently available.[1] Note that statewide crime data is not made publicly available by the California Department of Justice until the summer following the relevant year. And data from the California Department of Justice extends only to the late 1960s.

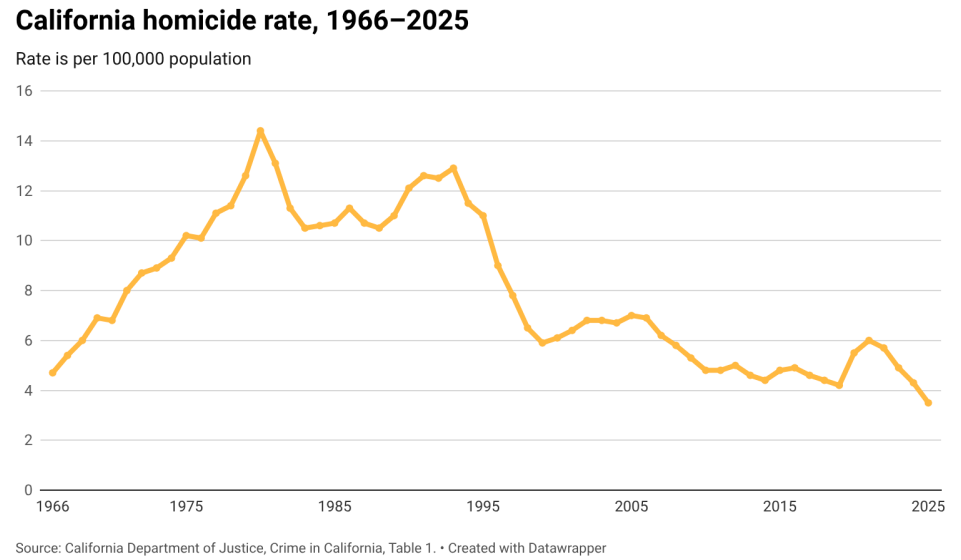
2025 statewide crime data shows:

- The property crime rate in 2025 was the lowest in California since at least 1969. The rate decreased 14.3% in 2025 compared to 2024. Property crimes include burglary, motor vehicle theft, and larceny-theft. Each of these individual offenses also showed their lowest rate since at least 1969.
- The violent crime rate in 2025 decreased 10.2% compared to 2024. Violent crime includes homicide, rape, robbery, and aggravated assault. The robbery rate was the lowest in the data since at least 1966.
- The homicide rate in 2025 was the lowest in California since at least 1966. The rate declined 18.6% compared to 2024.




[1] The below data is taken from California Department of Justice, *Crime in California 2025*, Table 1.



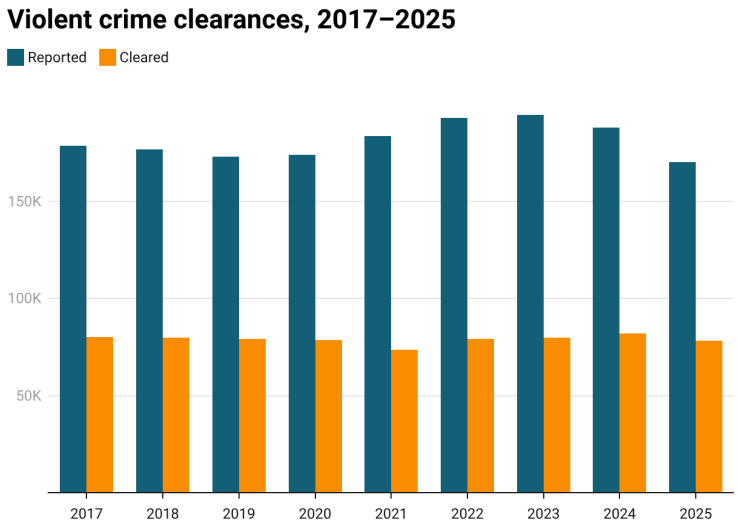




These trends appear to be continuing in 2026. Data from the FBI and other large law enforcement agencies in California compiled by the Committee and California Policy Lab show that through June 2026, property crime declined 10% and violent crime declined 4% across California. The data is available at californiacrimedata.org

While these statistics provide essential context, the Committee continues to caution that reported crime data do not capture the full range of harmful criminal conduct in California. Many crimes — including simple assault, sexual violence, fraud, wage theft, and other economic crimes — are not fully reflected in statewide reporting.

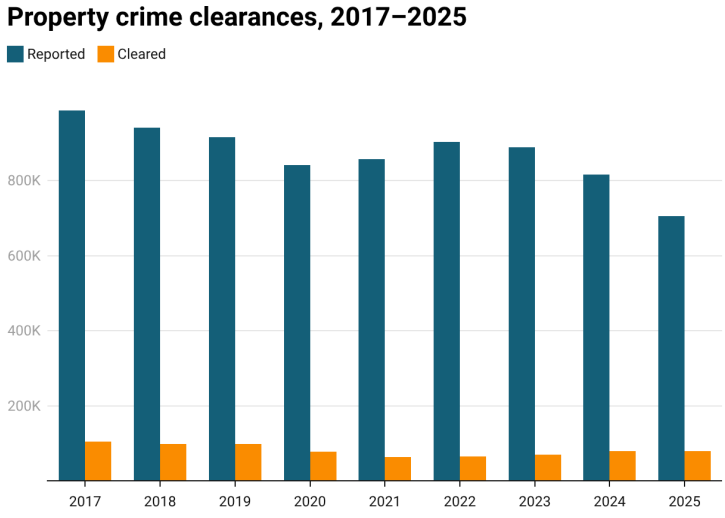
In addition, “clearances” by law enforcement — the term for when law enforcement identifies a suspect and turns them over for prosecution —

remained relatively low: law enforcement cleared 46% of reported violent offenses and 11% of reported property crimes.[2]




*Violent crime is homicide, rape, robbery, and aggravated assault.*

Chart: Committee on Revision of the Penal Code • Source: California Department of Justice • Created with Datawrapper




*Property crime is burglary, car theft, and larceny.*

Chart: Committee on Revision of the Penal Code • Source: California Department of Justice • Created with Datawrapper

These data highlight the need for continued support for crime victims, including those whose cases never result in an arrest or prosecution and those who never report their victimization.[3] The Committee has made numerous

[2] California Department of Justice, *Crime in California 2025*, Table 15.

[3] See Californians for Safety and Justice, *California Crime Survivors Speak: A Statewide Survey of California Crime Survivors Views on Safety and Justice*, 2 (2019) (finding that less than one in five crime victims reported receiving financial assistance, counseling, medical assistance, or other types of services).

recommendations to improve services and protections for crime victims, but most have yet to receive legislative action.[4]

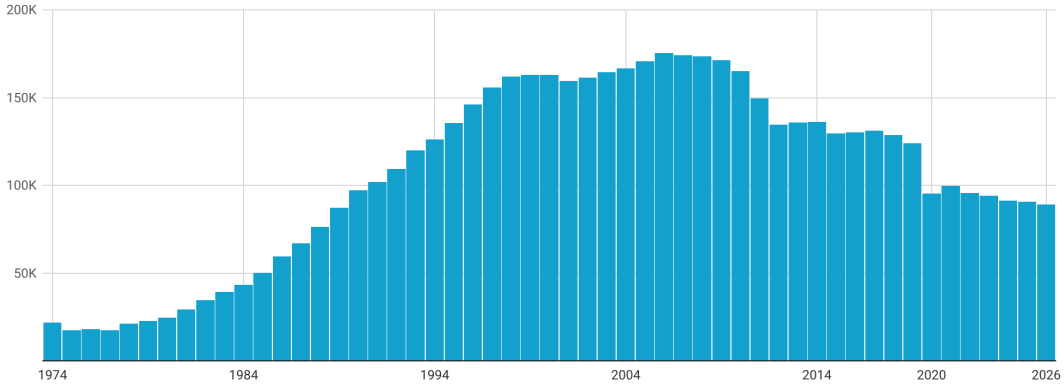
[4] Committee on Revision of the Penal Code, *Looking Back and Looking Forward: The Work of the Committee on Revision of the Penal Code 2020–2026*, 16–17.

## Incarceration Trends

California's prison population remains near a 37-year low. Approximately 90,000 people are currently incarcerated in state prison — an almost 50% decrease from the historical high in 2006 and an almost 30% decline since before the COVID-19 pandemic.

Data on prison admissions and releases for 2015–2025 are now publicly available through California Prison Population Dashboards developed by the Committee and the California Policy Lab that provide regularly-updated county-level, offense-level, and demographic information. The resource is available at californiaprisondata.org

**California prison population, 1974–2026**

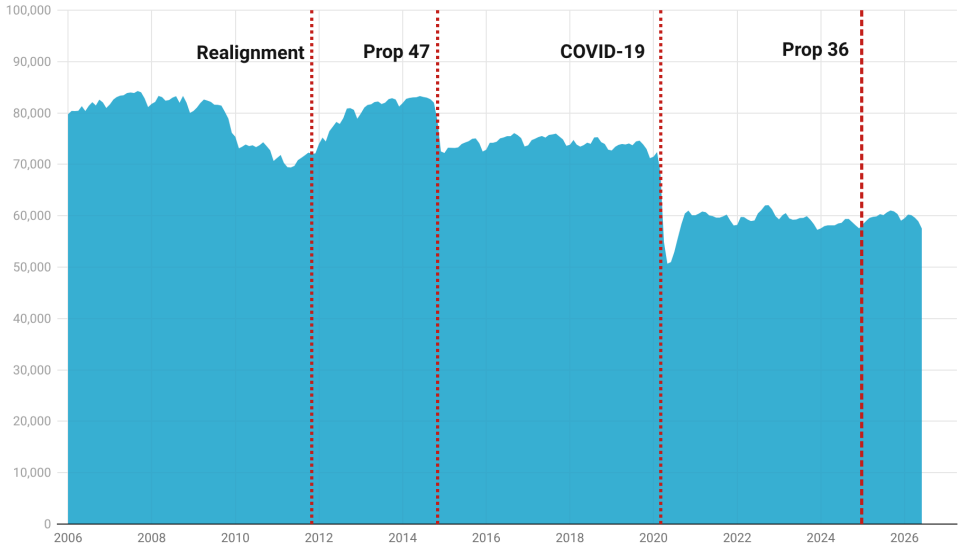



*Population is at yearend 1974–2024. 2026 data is as of September 9, 2026.*

Chart: Committee on Revision of the Penal Code • Source: Patrick A. Langan et al., Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925–86 (May 1988) (1974–1977); Bureau of Justice Statistics, Corrections Statistical Analysis Tool (CSAT) Prisoners (1978–2018); CDCR Monthly & Weekly Population Reports (2019–2026) • Created with Datawrapper

Similar to the prison population, the jail population remains approximately 20% below the pre-pandemic level.

**California jail population, 2006–2026**




*Data is monthly average daily population and ends June 2026. Realignment was a policy change in 2011 that required sentences for certain non-violent and non-serious felony offenses to be served in county jail, not state prison. Proposition 47 was a 2014 voter initiative that reclassified some felony or wobbler offenses to misdemeanors.*

Chart: Committee on Revision of the Penal Code • Source: California Board of State and Community Corrections • Created with Datawrapper

## Implementation Updates

In 2026, 2 bills implementing recommendations from prior Committee reports were signed into law. AB 2428 (Rodriguez) eliminates specified court fees and SB 1211 (Gonzalez) allows easier access to discovery tools for prosecutor conviction-integrity units.

In addition, new regulations from the Board of Parole Hearings implemented a recommendation from the Committee to provide structured review of life without parole sentences.[5]

On November 5, Governor Newsom indicated his intention to commute the death sentences of everyone on California's death row, a recommendation the Committee made in its Death Penalty Report. The Committee also sent a letter to the Governor reiterating its support of clemency on October 30, 2026.

Committee staff continued to provide technical assistance to the Legislature, including giving testimony on California's DUI laws.[6]

Courts — including the California Supreme Court which largely adopted the Committee's recommendation around judicial disqualifications under Code of Civil Procedure section 170.6 — continue to rely on the Committee's analysis when interpreting and applying the law.[7]

## Data Collection and Analysis

The Committee continues its partnership with the California Policy Lab, which provides data analysis and publishes research based on administrative data obtained by the Committee with its statutory authority. This relationship is funded in the state budget.

In 2026, CPL and the Committee launched a public California Crime Data Dashboard, which provides — for the first time in California — up-to-date crime data covering most of the California population, as well as historical information going back to the 1960s. The dashboard is available at californiacrimedata.org

This crime data dashboard joins the Prison Population Dashboard, available at calforniaprisondata.org, which allows policymakers, journalists, researchers, and community members to access up-to-date information on prison admissions, releases, length of stay, and population trends. This dashboard was refreshed this year with an updated design and data through June 2026.

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[5] See, e.g., California Code of Regulations, title 15, §§ 2840–2859.

[6] Committee staff testified at a Joint Hearing of the Senate Public Safety Committee and Senate Transportation Committees on March 10, 2026.

[7] *J.O. v. Superior Court*, 19 Cal.5th 753 (2026); *In re Kowalczyk*, 19 Cal.5th. 593 (2026) (Justice Groban concurring opinion); *In re Silvavong*, 2026 WL 2198663 (Cal. Ct. App. 2026).

In addition to data presented in this report, the Committee and California Policy Lab produced the following data reports in the last year:

- *Racial and Ethnic Disparities in Prisons After California's Justice Reforms* (November 2006)
- *Trends in California's Application of Gang Enhancements* (August 2026)
- *The Effects of California's Domestic Violence Pilot on Recidivism Outcomes* (July 2026)
- *Domestic Violence in California* (July 2026)
- *The Use of Gun Enhancements in California Before and After Senate Bill 620* (May 2026)
- *Racial Disparities in Searches During Police Stops: Analysis of 2023 Racial Identity and Profiling Act Data* (Jan 2026)

## Language and Terminology

As in past years, this report uses person-first language and avoids terms such as "inmate" or "offender," except when quoting statutory text or court decisions.

# Recommendations

## 1. Modernize the Aggravating Factors Used in Felony Sentencing

**Recommendation**
California's aggravating factors were originally developed to guide judicial discretion in selecting prison sentences. Under recent legislative changes and court decisions, however, most aggravating factors used to impose an upper-term sentence must now be proven to a jury beyond a reasonable doubt. Many existing factors use broad or subjective language that was not designed for use by juries.

The Committee therefore recommends the following:

- The Legislature should direct the Judicial Council to review and revise the aggravating factors in California Rule of Court 4.421 to ensure that they are sufficiently precise to be consistently applied by juries.
- The Judicial Council should be authorized to modify, consolidate, or eliminate existing factors as necessary, but not to create new aggravating factors.

**Relevant Statutes and Authorities**
Penal Code §§ 1170(b), 1170.3
California Rules of Court, Rules 4.421, 4.420

**Background and Analysis**
California's aggravating factors were originally developed as part of the Determinate Sentencing Law enacted in 1976.[8] That law established a sentencing system in which most felony offenses carried three possible prison terms — lower, middle, and upper.[9] Courts were generally required to impose the middle term unless aggravating or mitigating circumstances justified a different sentence.[10] To guide these decisions, the Legislature directed the Judicial Council to adopt sentencing rules identifying factors courts should consider when selecting among the three terms.[11]

[8] Penal Code § 1170 et seq. See also *Chavez Zepeda v. Superior Court*, 97 Cal.App.5th 65, 73 (2023) (describing the history of California's determinate sentencing system).
[9] Penal Code § 1170(b). See also Sheldon L. Messinger & Phillip E. Johnson, *California's Determinate Sentencing Statute: History and Issues, Determinate Sentencing: Reform or Regressio*n, 30 (March 1978).
[10] See *Lovelace v. Superior Court*, 108 Cal.App.5th 1081, 1090 (2025) (describing the original middle-term presumption and subsequent sentencing reforms).
[11] Penal Code § 1170.3(a). See also *Chavez Zepeda v. Superior Court*, 97 Cal.App.5th 65, 73 (2023).

The Judicial Council developed a list of aggravating factors relating to the offense and the defendant, now contained primarily in California Rules of Court, Rule 4.421.[12] These factors were intended to guide judicial discretion, rather than define facts that must be proven to a jury beyond a reasonable doubt.[13] As a result, many are written in broad or subjective terms that rely on judges' experience evaluating a wide range of criminal cases, such as whether a crime involved "great violence," whether the victim was "particularly vulnerable," or whether property taken was of "great monetary value."[14]

California's sentencing system has changed substantially since these factors were first adopted in the 1970s. In 2007, the United States Supreme Court held in *Cunningham v. California* that the state's sentencing framework violated the Sixth Amendment because it allowed judges to find facts necessary to impose an upper-term sentence.[15] In response, the Legislature eliminated the presumptive middle term and gave courts broad discretion to select any term within the statutory range without requiring additional factfinding beyond a statement of reasons.[16]

In 2021, the Legislature passed Senate Bill 567 to restore the middle term as the maximum sentence and require most aggravating factors used to impose an upper term to be admitted by the defendant or proven to a jury beyond a reasonable doubt.[17] The bill's supporters argued that the changes were necessary to ensure that the harshest sentences received greater scrutiny and were reserved for cases involving proven aggravating circumstances, consistent with the original intent of the Determinate Sentencing Law.[18] They also expressed concern that judges were imposing upper-term sentences based on information that defendants had insufficient opportunity to challenge.[19]

SB 567 included an exception for aggravating factors related to a defendant's criminal history that allowed courts to consider prior convictions based on certified records of conviction without submitting those facts to a jury.[20] Courts interpreted this exception broadly, allowing judges to make additional findings about a person's criminal history, such as whether prior convictions were

[12] California Rules of Court, Rule 4.421(a)–(b). See also Rule 4.423 (circumstances in mitigation).
[13] See *People v. Sandoval*, 41 Cal.4th 825, 840 (2007) (explaining that the aggravating factors were developed as criteria for judicial sentencing decisions rather than jury findings).
[14] California Rules of Court, Rule 4.421(a)(1), (3), (9).
[15] *Cunningham v. California*, 549 U.S. 270, 288–293 (2007). See also *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *Blakely v. Washington*, 542 U.S. 296, 301, 303–304 (2004).
[16] SB 40 (2007). See also *Lovelace v. Superior Court*, 108 Cal.App.5th 1081, 1090 (2025).
[17] SB 567 (2021); Penal Code § 1170(b)(1)–(2).
[18] Assembly Committee on Public Safety, Analysis of SB 567, 6 (June 29, 2021).
[19] Assembly Floor Analysis of SB 567 (2021), 4.
[20] Penal Code § 1170(b)(3).

numerous or of increasing seriousness, or whether the defendant had performed unsatisfactorily on probation or parole.[21] These findings could then be used to impose an upper-term sentence without a jury determination.[22]

In 2025, the California Supreme Court held that this practice violated the Sixth Amendment right to a jury trial.[23] The Court explained that the exception for prior convictions permits judges to determine only the existence of a prior conviction and its elements.[24] Any additional findings, including assessments of whether prior convictions were increasingly serious or whether a defendant's performance on probation was unsatisfactory, must be proven to a jury beyond a reasonable doubt before they can be used to justify an upper-term sentence.[25]

Taken together, these changes have fundamentally altered the role of aggravating factors in California sentencing. Although the factors were originally designed to guide judicial discretion, they now function much like elements of a criminal offense because they must be established before a defendant can receive an upper-term sentence.[26] Yet the substantive language of the factors has remained largely unchanged.

The California Supreme Court previously recognized this problem, observing that the aggravating factors were "not drafted with a jury in mind" and were instead intended as criteria for judges to consider.[27] The Court also acknowledged that many factors contain a degree of vagueness that would be impermissible if they were used to define criminal offenses.[28]

Despite these concerns, the Judicial Council has not substantially revised the factors to reflect the changes. In 2026, its Criminal Law Advisory Committee proposed revisions to the felony sentencing rules but declined to recommend substantive changes to the aggravating factors.[29] The Advisory Committee explained that defining aggravating factors involves policy determinations that are fundamentally legislative in nature, notwithstanding the Judicial Council's existing authority to adopt sentencing rules.[30]

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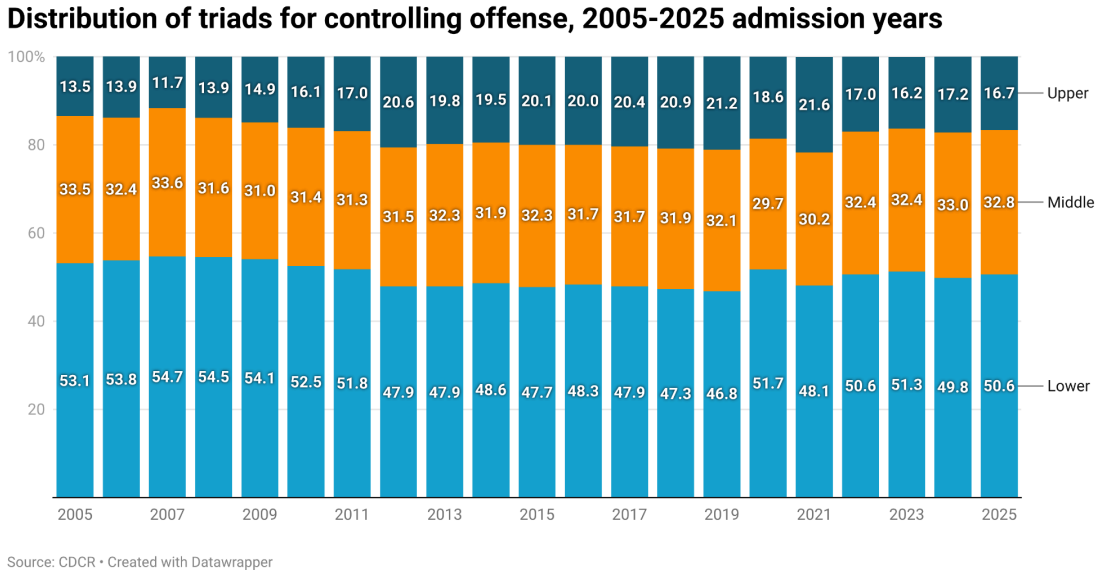
[21] See *People v. Wiley*, 17 Cal.5th 1069 (2025); California Rules of Court, Rule 4.421(b)(2), (3), (5).
[22] See *People v. Wiley*, 17 Cal.5th 1069 (2025); Penal Code § 1170(b)(3).
[23] *People v. Wiley*, 17 Cal.5th 1069, 1086 (2025).
[24] Id. at 1086. See also *Erlinger v. United States*, 602 U.S. 821, 838–839 (2024).
[25] *People v. Wiley*, 17 Cal.5th 1069, 1086 (2025).
[26] *People v. Lynch*, 16 Cal.5th 730, 760 (2024).
[27] *People v. Sandoval*, 41 Cal.4th 825, 840 (2007).
[28] Id. (quoting *People v. Thomas*, 87 Cal.App.3d 1014, 1023–1024 (1979)).
[29] Judicial Council of California, Invitation to Comment, SPR26-15, *Criminal Procedure: Revisions to Felony Sentencing Rules*, 5–6.
[30] Id.

But the Judicial Council has long had a role in developing the aggravating factors. When the Legislature enacted the Determinate Sentencing Law, it expressly directed the Judicial Council to develop the criteria for selecting among sentencing terms.[31] The Legislature again relied on the Judicial Council when implementing changes to the sentencing system following the *Cunningham* decision in 2007.[32] The Judicial Council also has substantial experience developing sentencing rules and jury instructions, making it well positioned to revise the factors to conform to the current jury fact--finding framework.

The Committee therefore recommends that the Legislature expressly direct the Judicial Council to revise the existing aggravating factors to provide clearer standards for juries and greater consistency in their application. The Judicial Council should be authorized to modify, consolidate, or eliminate existing factors as necessary, but not to create new aggravating factors.

**Empirical Research**

With the assistance of the California Policy Lab, Committee staff analyzed CDCR data on the proportion of prison sentences receiving lower, middle, and upper terms over time. Despite significant changes to California's sentencing laws, including the effective date of SB 567 in January 2022, the data do not show dramatic changes in the proportion of sentences receiving each term.




Note that this data captures only the longest term imposed in each case, rather than all terms imposed for multiple offenses, and also does not show whether the overall sentence length changed.

[31] Penal Code § 1170.3(a).
[32] SB 40 (2007) § 6(b).

Another consideration is that relatively few criminal cases are resolved through trial, where the requirements governing proof of aggravating factors would have their most direct application. According to the Judicial Council, in fiscal year 2023–24, approximately 96% of convictions in felony cases were obtained through guilty pleas, compared with only 4% through trial.[33]

Although most cases are resolved through plea agreements, sentencing laws still influence those negotiations. The punishment a defendant could receive following conviction at trial affects the sentences prosecutors can seek and the offers defendants may be willing to accept. Changes to the standards governing upper-term sentencing may therefore affect sentencing outcomes even in cases resolved without trial.

[33] Judicial Council of California, *2026 Court Statistics Report*, 87 (2026).

## 2. Establish Uniform Procedures for Proving Facts that Increase Punishment

**Recommendation**
Different types of facts increasing punishment in California are subject to very different procedural requirements. Sentence enhancements generally must be alleged in the charging document and supported by probable cause at a preliminary hearing. In contrast, aggravating factors used to impose an upper-term sentence are not subject to the same requirements, and facts supporting consecutive sentences generally remain within the court's discretion.

The Committee therefore recommends the following:

Require aggravating factors and facts supporting consecutive sentences to be alleged in the charging document, supported by probable cause at the preliminary hearing and either admitted by the defendant or proven to a jury beyond a reasonable doubt.

**Relevant Statutes and Authorities**
Penal Code §§ 739, 872, 995, 1170(b), 1170.1(d)
California Constitution, article I, § 14
California Rules of Court, Rules 4.421, 4.425

**Background and Analysis**
California law imposes different procedural requirements on facts that can increase a defendant's prison sentence. Elements of an offense and sentence enhancements generally must be alleged in the charging document and supported by probable cause at a preliminary hearing.[34] This process requires prosecutors to identify the allegations against a defendant early in the proceedings and provides an opportunity for judicial review before the case proceeds to trial.[35]

Aggravating factors, however, are not subject to the same requirements. Although Senate Bill 567 (2021), as explained above, requires most aggravating facts used to impose an upper-term sentence to be admitted by the defendant or proven to a jury beyond a reasonable doubt, prosecutors are not required to allege those factors in the charging document or establish probable cause at the preliminary hearing.[36] As a result, facts that may increase a defendant's maximum sentence are not subject to the same preliminary procedural safeguards as sentence enhancements.

[34] Cal. Const., art. I, § 14; Penal Code §§ 872, 995. See also *In re Vaquera*, 15 Cal.5th 706, 713 (2024).
[35] See *In re Vaquera*, 15 Cal.5th 706, 713 (2024).
[36] SB 567 (2021); Penal Code § 1170(b)(2); *Chavez Zepeda v. Superior Court*, 97 Cal.App.5th 65, 96–97, fn. 8 (2023).

The rules governing consecutive sentencing are even more permissive. When a defendant is convicted of multiple offenses, courts generally have discretion to determine whether the sentences will be served concurrently or consecutively.[37] Consecutive sentences can substantially increase the overall length of imprisonment, typically by adding one-third of the middle term for each additional offense, although fully consecutive terms may apply in certain circumstances.[38]

Judges exercise this discretion using the criteria in California Rule of Court 4.425. These include whether the offenses involved separate acts of violence, were committed at different times or places, or involved independent objectives.[39] The rule also expressly allows judges to consider aggravating and mitigating circumstances that have not been admitted by the defendant or proven to a jury beyond a reasonable doubt.[40] Unlike aggravating factors used to impose an upper-term sentence, facts supporting consecutive sentences generally need not be formally alleged or proven to a jury.[41]

This process comports with United States Supreme Court case law. In a 2009 decision, the United States Supreme Court held that judges could make factual findings authorizing consecutive sentences without violating the Sixth Amendment, even when state law otherwise required concurrent sentences.[42] The Court emphasized the historical role of judges in consecutive sentencing decisions.[43] But Justice Scalia dissented, arguing that facts permitting consecutive sentences increase the punishment a defendant may receive and therefore should be proven to a jury beyond a reasonable doubt.[44]

Although the United States Supreme Court's decision permits judicial factfinding for consecutive sentencing, the Committee believes that comparable procedural protections should apply when facts are used to increase punishment, regardless of whether they support an upper-term sentence, a sentence enhancement, or consecutive sentences. Requiring these facts to be alleged and supported by probable cause would provide greater consistency in California's sentencing procedures.

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[37] Penal Code § 669(a). See also *People v. Corpening*, 2 Cal.5th 307, 312 (2016) (discussing restrictions on multiple punishment under Penal Code § 654).
[38] Penal Code § 1170.1(a). See also Penal Code §§ 667.6(c), 1170.13, 1170.15, 1170.16 (providing for fully consecutive terms in specified circumstances).
[39] Penal Code § 1170.1(d)(3); California Rules of Court, Rule 4.425(a).
[40] California Rules of Court, Rule 4.425(b).
[41] See Penal Code § 1170.1(d)(3); California Rules of Court, Rules 4.408, 4.425. See also *Oregon v. Ice*, 555 U.S. 160, 168–172 (2009).
[42] *Oregon v. Ice*, 555 U.S. 160, 163–164, 168–172 (2009).
[43] Id. at 168–170.
[44] Id. at 173–178 (Scalia, J., dissenting).

The Committee also recognizes that facts supporting additional punishment may not always be known before the preliminary hearing. Existing law allows prosecutors, in certain 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.[45] Similar procedures should apply to aggravating factors and facts supporting consecutive sentences, allowing prosecutors to add allegations when warranted while preserving appropriate procedural protections.

**Empirical Research**

According to a recent report by the California Policy Lab, approximately 44% of people admitted to prison since 2015 were convicted of multiple felony offenses.[46] Of these individuals, 51% received at least one consecutive sentence. Among people receiving consecutive sentences, those sentences added approximately three years of incarceration on average.[47]

[45] Penal Code § 739. See also *Parks v. Superior Court,* 38 Cal.2d 609, 612 (1952).
[46] Omair Gill, et al., *Consecutive Sentencing in California*, California Policy Lab, 5, Figure 3 (February 2024).
[47] Id. at 5, Figure 3, 31.

## 3. Prohibit Using the Same Prior Conviction for Upper-Term Sentencing and Three Strikes

**Recommendation**
California law generally prohibits courts from using the same fact both to impose an upper-term sentence and to impose a sentence enhancement. But courts have characterized the Three Strikes law as an "alternative sentencing scheme" rather than a sentence enhancement. As a result, a prior conviction may be used both to justify an upper-term sentence and to increase that sentence under the Three Strikes Law.

The Committee therefore recommends the following:

Amend the Penal Code to prohibit using the same prior conviction to impose an upper-term sentence and to increase a sentence under the Three Strikes Law.

**Relevant Statutes and Authorities**
Penal Code §§ 667(b)–(i), 1170(b)(5), 1170.12
California Rules of Court, Rule 4.405(5)

**Background and Analysis**
Penal Code section 1170(b)(5) generally prohibits courts from using the same fact both to impose an upper-term sentence and to impose a sentence enhancement. For example, a prior serious felony conviction used to impose the 5-year nickel prior enhancement cannot also be used as an aggravating fact to justify an upper-term sentence.[48] However, courts have interpreted this prohibition to apply only to traditional sentence enhancements, not alternative sentencing schemes such as the Three Strikes law.[49] As a result, a prior conviction can be used both to justify an upper-term sentence and to increase that sentence under the Three Strikes law by doubling a determinate sentence, altering the applicable sentencing range, or requiring an indeterminate life sentence.[50]

The distinction between sentence enhancements and alternative sentencing schemes did not become prominent in California law until the Three Strikes law was enacted 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 California Rules of Court — the Three Strikes law

[48] See *People v. Barker*, 182 Cal.App.3d 921, 940–941 (1986).
[49] Penal Code § 1170(b)(5). See *People v. Castaneda-Morales*, B341744, 2025 WL 3033224, *4 (Ct. App. 2025) (nonpublished opinion).
[50] See *People v. Castaneda-Morales*, B341744, 2025 WL 3033224, *4 (Ct. App. 2025) (nonpublished opinion); *People v. Castaneda-Morales*, S294254 (Feb. 11, 2026) (Liu, J., concurring in denial of review).

altered the sentencing scheme applicable when a defendant had a qualifying prior serious or violent felony conviction.[51]

Two years after the Three Strikes law was enacted, the California Supreme Court described the law as an "alternative sentencing scheme."[52] Although that characterization was not necessary to the Court's holding, subsequent decisions have relied on both the Rules of Court definition of an enhancement and the Court's characterization when determining whether statutory provisions applicable to sentence enhancements also apply to the Three Strikes law.[53]

In February 2026, California Supreme Court Justice Goodwin Liu, joined by Justices Evans and Groban, questioned whether this distinction should continue to permit the same prior conviction to increase punishment in two different ways.[54] In a statement concurring in the denial of review of an appellate court decision, Justice Liu observed that using a prior conviction both to justify an upper-term sentence and to increase punishment under the Three Strikes law was difficult to reconcile with recent sentencing reforms.[55] He expressly invited the Legislature to reconsider the practice.[56] The Committee recommends that the Legislature do so.

[51] Penal Code §§ 667(b)–(i), 1170.12; California Rules of Court, Rule 4.405(5). See also *People v. Superior Court (Romero)*, 13 Cal.4th 497, 526–527 (1996).
[52] *People v. Superior Court (Romero)*, 13 Cal.4th 497, 526–527 (1996).
[53] 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).
[54] *People v. Castaneda-Morales*, S294254 (Feb. 11, 2026) (Liu, J., concurring in denial of review, joined by Groban and Evans, JJ.).
[55] Id.
[56] Id.

## 4. Establish a Presumption of Misdemeanor Reduction for Certain Wobbler Offenses

**Recommendation**
Penal Code section 17(b) gives courts broad discretion to reduce offenses punishable as either felonies or misdemeanors, commonly known as "wobblers," to misdemeanors. However, the statute provides no guidance on when reduction to a misdemeanor is appropriate, leaving decisions largely to individual judicial discretion.

The Committee therefore recommends the following:

- Establish a presumption that property offense and drug possession wobblers be reduced to misdemeanors under section 17(b), while allowing courts to retain felony treatment when justified by the circumstances.
- Factors that may overcome the presumption 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.
    - Other circumstances — including a high value of stolen or destroyed property — demonstrate that felony treatment is warranted in the interests of justice.

**Relevant Statutes and Authorities**
Penal Code §§ 17(b), 470, 487, 496(a), 594(b)(1)
Health and Safety Code § 11395

**Background and Analysis**
California law allows certain offenses, commonly known as wobblers, to be punished as either felonies or misdemeanors. Penal Code section 17(b) authorizes courts to reduce these offenses to misdemeanors at various stages of criminal proceedings, including when imposing sentence or after granting

probation.[57] Once reduced, the offense is generally treated as a misdemeanor for all purposes, subject to specified exceptions.[58]

Courts have broad discretion in deciding whether to grant a section 17(b) reduction.[59] The California Supreme Court has directed judges to consider the nature and circumstances of the offense, the defendant's conduct and criminal history, and the defendant's background and prospects.[60] However, section 17(b) itself provides no guidance concerning when misdemeanor treatment is appropriate or what circumstances justify retaining a felony conviction.[61]

This discretion has significant consequences. Felony convictions generally carry more severe punishment and collateral consequences than misdemeanor convictions, including restrictions on employment, professional licensing, and other opportunities.[62] For offenses involving relatively minor criminal conduct, these consequences may be disproportionate to the seriousness of the offense and can create additional barriers to rehabilitation.

The Committee recommends establishing a presumption of misdemeanor treatment for property offenses and drug possession wobblers. These include offenses such as grand theft, receiving stolen property, forgery, check fraud, and vandalism.[63] The presumption would also apply to repeat drug possession and theft offenses under Health and Safety Code section 11395, which was created by Proposition 36 in 2024.[64] Although Proposition 36 authorized felony punishment for these offenses, it classified them as wobblers, preserving judicial discretion to impose misdemeanor punishment.[65]

The presumption would not eliminate judicial discretion to impose felony punishment when warranted. Courts could consider factors such as recent felony convictions, repeated similar criminal conduct despite prior interventions, a substantial risk of continued offending, or circumstances demonstrating that the offense warrants felony treatment in the interests of justice.

The Committee also recommends expressly preserving a court's existing authority to reduce other eligible wobbler offenses to misdemeanors. The

[57] Penal Code § 17(b). See also *People v. Superior Court (Alvarez)*, 14 Cal.4th 968, 974–975 (1997).
[58] Penal Code § 17(b). See *People v. Park*, 56 Cal.4th 782, 794–795 (2013) (discussing the legal effect of reducing a felony conviction to a misdemeanor).
[59] Penal Code § 17(b); *People v. Superior Court (Alvarez)*, 14 Cal.4th 968, 977 (1997).
[60] *People v. Superior Court (Alvarez)*, 14 Cal.4th 968, 978 (1997).
[61] Penal Code § 17(b). See *People v. Superior Court (Alvarez)*, 14 Cal.4th 968, 977–978 (1997).
[62] See, e.g., Business and Professions Code §§ 480, 481; Government Code § 12952.
[63] Penal Code §§ 470, 476a, 487, 496(a), 594(b)(1).
[64] Proposition 36 (2024); Health and Safety Code § 11395.
[65] Health and Safety Code § 11395; Proposition 36 (2024).

proposed presumption would provide greater guidance and consistency for property offenses and drug possession without restricting judicial discretion in other cases.

**Empirical Research**

California Department of Justice data examined by the California Policy Lab for the Committee demonstrate that many common wobbler offenses — including domestic violence, unlawful taking of a vehicle, and grand theft — are often resolved as misdemeanors. However, a substantial number of these offenses continue to result in felony convictions, suggesting that there is room for greater use of misdemeanor treatment, particularly for lower-level property and drug offenses.

## 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

Research also suggests that reducing the use of felony convictions can improve long-term employment and public safety outcomes. A 2021 study examining diversion programs for first-time felony defendants in Harris County, Texas, found that people who avoided felony convictions had approximately half the rate of subsequent offending and nearly 50% higher quarterly employment rates over ten years.[66]

[66] Michael Mueller-Smith & Kevin T. Schnepel, *Diversion in the Criminal Justice System*, 88 Review of Economic Studies 883, 883–884 (2021).

Similarly, a 2018 study by the Public Policy Institute of California examined the effects of Proposition 47, which reduced penalties for certain lower-level property and drug offenses from felonies to misdemeanors.[67] Using data from 12 California counties, the researchers found that two-year reconviction rates were 3.1 percentage points lower following the reform, while rearrest rates declined by 1.8 percentage points.[68] The researchers cautioned that these reductions could reflect changes in law enforcement and prosecution practices rather than reductions in actual reoffending.[69]

[67] Proposition 47 (2014); Mia Bird, et al., *The Impact of Proposition 47 on Crime and Recidivism*, Public Policy Institute of California (June 2018).
[68] Mia Bird, et al., *The Impact of Proposition 47 on Crime and Recidivism*, Public Policy Institute of California (June 2018), 2.
[69] Id.

## 5. Authorize Courts to Reclassify Sex Offender Registration Tiers Following a Section 17(b) Reduction

**Recommendation**
California's sex offender registration system establishes different registration periods based on a person's conviction and designated registration tier. For certain wobbler offenses, a felony conviction requires lifetime registration, while a misdemeanor conviction for the same conduct carries none, or a shorter registration period.

However, when a court reduces a felony conviction to a misdemeanor under Penal Code section 17(b), the reduction does not change the person's registration tier. This can leave individuals subject to lifetime registration even after a court has determined that misdemeanor treatment is appropriate.

The Committee therefore recommends the following:

Authorize but not require courts to reclassify a person's registration tier when the conviction requiring registration is reduced to a misdemeanor under section 17(b).

**Relevant Statutes and Authorities**
Penal Code §§ 17, 290(d), 290.006

**Background and Analysis**
California requires people convicted of certain sex offenses to register as sex offenders.[70] Under the state's tiered registration system, people generally must register for a minimum of 10 years, 20 years, or life, depending on their conviction and assigned tier.[71] Registration carries continuing reporting requirements and can create significant barriers to housing, employment, and reintegration.[72]

For certain offenses punishable as either felonies or misdemeanors, the registration requirements differ substantially depending on how the offense is classified. For example, certain misdemeanor sexual battery and child pornography convictions are assigned to tier one, requiring registration for a minimum of 10 years, while felony convictions for the same offenses are assigned to tier three, requiring lifetime registration.[73]

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[70] Penal Code §§ 290(b), (c), 290.006.
[71] Penal Code § 290(d)(1)–(3).
[72] 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 employment and housing as significant reintegration barriers).
[73] Penal Code § 290(d)(1)(A), (3)(J), (R).

Penal Code section 17(b) allows courts to reduce qualifying felony convictions to misdemeanors when warranted by the circumstances of the offense and the defendant.[74] However, in 2023, an appellate court held that reducing a felony conviction of Penal Code section 288.2 to a misdemeanor did not eliminate the person's lifetime sex registration requirement even when misdemeanor conviction of that offense did not require registration at all.[75] As a result, a person whose felony conviction has been reduced to a misdemeanor may remain subject to registration requirements based on the original felony classification and not the misdemeanor.[76]

The Committee believes that courts should have discretion to reconsider registration requirements when they determine that an offense warrants misdemeanor treatment. In some cases, the circumstances supporting a section 17(b) reduction may also justify reducing the registration tier to the level applicable to a misdemeanor conviction. In others, a court may determine that the original registration requirements remain appropriate.

Making tier reclassification discretionary, and not automatic, would also avoid discouraging courts from granting otherwise appropriate section 17(b) reductions out of concern that the reduction would automatically shorten or eliminate registration requirements. The Committee therefore recommends authorizing, but not requiring, courts to reclassify the registration tier when a conviction requiring registration is reduced to a misdemeanor under section 17(b).

**Empirical Research**

With assistance from the California Policy Lab, Committee staff reviewed California Department of Justice conviction records for common wobbler offenses requiring sex offender registration between 2021 and 2025. The analysis found substantial variation in the proportion of convictions resulting in felony rather than misdemeanor conviction — ranging from approximately 31% for indecent exposure to more than 90% for offenses involving unlawful sexual conduct with minors and lewd conduct.

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[74] Penal Code § 17(b); *People v. Superior Court (Alvarez)*, 14 Cal.4th 968, 977–978 (1997).

[75] *People v. Manzoor*, 95 Cal.App.5th 548, 551–555 (2023).

[76] In pending litigation, the California Department of Justice has argued that *Manzoor* applies only to Penal Code § 288.2 convictions because it is the only wobbler sex offense for which misdemeanor violations do not require sex offender registration. Other wobbler sex offenses require registration regardless of whether the conviction is a felony or misdemeanor, although applicable tiers may differ. The California Department of Justice maintains that it has authority to adjust registration tiers following section 17(b) reductions for these offenses without a separate court order. The Second Appellate District Court of Appeal is considering this interpretation in *People v. Trout-Castro* (No. B346333). If the court adopts DOJ's interpretation, legislation authorizing tier reclassification for most offenses may be unnecessary.

**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

Although these data do not establish whether misdemeanor treatment would be appropriate in individual cases, they suggest that the Committee's recommendation could affect a substantial number of people. The data also exclude offenses subject to discretionary registration under Penal Code section 290.006, meaning the number of potentially affected cases may be greater.

Research also indicates that people required to register as sex offenders have relatively low rates of subsequent criminal convictions compared with other people released from prison. CDCR's most recent statewide recidivism report found that the three-year reconviction rate for people required to register was 24.2%, compared with 41% for people not required to register.[77] Among registrants who were reconvicted, most convictions involved nonsexual offenses or failure to register, rather than new sexual offenses.[78]

[77] California Department of Corrections and Rehabilitation, *Statewide Recidivism Report for Individuals Released from the California Department of Corrections and Rehabilitation in Fiscal Year 2020–21*, 26 (June 2026). See also *People v. Williams*, 17 Cal.5th 99 (2024) (Liu, J., dissenting).
[78] California Department of Corrections and Rehabilitation, *Statewide Recidivism Report for Individuals Released from the California Department of Corrections and Rehabilitation in Fiscal Year 2020–21*, 26 (June 2026)

## 6. Repeal the 10-20-Life Firearm Enhancement

**Recommendation**
Penal Code section 12022.53 imposes additional consecutive sentences of 10 years for personal firearm use, 20 years for intentional discharge, and 25 years to life for intentional discharge causing great bodily injury or death during specified felonies. These enhancements can add substantial punishment on top of already lengthy sentences.

Repeal would not eliminate the substantial additional punishment available for firearm-related conduct. Courts could continue to impose firearm enhancements under section 12022.5, great bodily injury enhancements under section 12022.7, and other applicable punishment, including enhanced sentences under the Three Strikes law.

The Committee therefore recommends the following:

Repeal Penal Code section 12022.53.

**Relevant Statutes and Authorities**
Penal Code §§ 12022.53, 12022.5, 12022.7

**Background and Analysis**
California enacted the 10-20-life firearm enhancement in 1997 to substantially increase punishment for using a firearm during the commission of specified felonies, including robbery, carjacking, and murder.[79] The law was championed by Mike Reynolds, a key sponsor of California's Three Strikes law, and reflected the ultra-punitive approach to criminal justice that characterized the 1990s.[80] Under Penal Code section 12022.53, personal use of a firearm adds 10 years to the sentence for the underlying offense, intentional discharge adds 20 years, and intentional discharge causing great bodily injury or death adds 25 years to life.[81]

When enacted, these enhancements were generally mandatory if charged and proven.[82] In 2017, the Legislature passed Senate Bill 620, which gave courts discretion to dismiss firearm enhancements in the interests of justice.[83] Although courts now have this discretion, the enhancements remain a significant source of lengthy prison sentences in California.[84]

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[79] AB 4 (1997); Penal Code § 12022.53(a).
[80] Dan Morain, Panel OKs Bill Aimed at Gun-Related Crimes, Los Angeles Times (July 9, 1997).
[81] Penal Code § 12022.53(b)–(d).
[82] See SB 620 (2017); Penal Code § 12022.53(h).
[83] SB 620 (2017); Penal Code §§ 12022.5(c), 12022.53(h).
[84] Thomas Sloan, et al., *The Use of Gun Enhancements in California Before and After Senate Bill 620*, California Policy Lab, 3–5 (May 2026).

Committee staff reviewed the laws of several large states and the federal system.[85] California remains among the more punitive jurisdictions reviewed because its firearm enhancements add substantial punishment to the sentence for the underlying offense and generally impose longer additional terms than most other jurisdictions. For example, while Florida also provides lengthy minimum sentences for firearm use, including a 10-20-25-to-life scheme similar to California's, those terms generally operate as minimum sentences for the underlying offense rather than additional consecutive terms.[86]

Repealing section 12022.53 would not eliminate other substantial additional punishment available for firearm-related conduct. Courts could continue to impose enhancements under Penal Code section 12022.5 for personal firearm use, generally adding three, four, or ten years, and section 12022.7 for personally inflicting great bodily injury, generally adding three years.[87] The California Supreme Court has held that both enhancements may be imposed for the same offense.[88] Additional punishment would also remain available under the Three Strikes law, consecutive sentencing provisions, and the penalties prescribed for the underlying offense.[89]

The Committee recognizes the seriousness of firearm-related violence and the need for substantial punishment when warranted. However, the 10-20-life enhancement can add exceptionally lengthy terms to sentences that already account for the seriousness of the offense and resulting injuries. Repeal would eliminate one significant source of cumulative punishment while preserving other provisions that allow courts to impose lengthy prison sentences.

**Empirical Research**

A recent California Policy Lab study examined firearm enhancements before and after Senate Bill 620 (2017), which authorized judges to dismiss certain firearm enhancements in the interests of justice.[90] The study found that nearly 25,000 people incarcerated in December 2025 had a firearm enhancement included in their sentence, representing approximately one-third of the prison

[85] See Wash. Rev. Code § 9.94A.533(3); Mich. Comp. Laws § 750.227b; N.Y. Penal Law §§ 70.02, 265.01–265.04; Fla. Stat. § 775.087; 18 U.S.C. § 924(c).
[86] Fla. Stat. § 775.087(2)–(3).
[87] Penal Code §§ 12022.5(a), 12022.7(a).
[88] *People v. Ahmed*, 53 Cal.4th 156, 160 (2011).
[89] Penal Code §§ 667(b)–(i), 669, 1170.1, 1170.12.
[90] Thomas Sloan, et al., *The Use of Gun Enhancements in California Before and After Senate Bill 620*, California Policy Lab, 5 (May 2026).

population.[91] Of those 25,000 people, more than 14,000 had a 10-20-life enhancement.[92]

The study also found that firearm enhancement sentences became shorter following SB 620.[93] Among people who received firearm enhancements affected by the law, the average additional sentence decreased from 12.1 years before the reform to 10.3 years afterward.[94] The researchers estimated that this reduction was equivalent to approximately 17,500 fewer years of imprisonment imposed between 2018 and 2025.[95] The use of shorter firearm enhancements also increased relative to the longer enhancements under Penal Code section 12022.53.[96] For example, enhancements under section 12022.5(a), which carry terms of three, four, or ten years, increased from 41% of all firearm enhancements in 2014 to 60% in 2025, while ten-year enhancements under section 12022.53(b) declined from 19% to 11%.[97]

Despite these changes, firearm enhancements continue to add substantial prison time. Even after judges were given discretion to dismiss them, the average enhancement affected by SB 620 added more than ten years of imprisonment.[98]

Research suggests that increasingly severe punishment has limited additional deterrent effects.[99] A comprehensive review of deterrence research found substantially stronger evidence that the certainty of apprehension deters crime than that increasing the severity of punishment does.[100] The research concluded that lengthy prison sentences and mandatory minimum penalties have little empirical support as strategies for deterring crime.[101]

[91] Id. at 2 (24,859 people incarcerated in December 2025 had a firearm enhancement on their sentence).
[92] Id. at 5.
[93] Id. at 4–5.
[94] Id. at 7 (Figure 4).
[95] Id. at 5.
[96] Id. at 4–5.
[97] Id. at 6, Figure 3.
[98] Id. at 4–5.
[99] Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 Crime and Justice 199, 199–200 (2013).
[100] Id.
[101] Id.

## 7. Repeal the Nickel Prior Enhancement

**Recommendation**
Penal Code section 667(a), commonly known as the "nickel prior," requires a consecutive five-year enhancement for each qualifying prior serious felony conviction when the current offense is also a serious felony. Although courts may now dismiss the enhancement in the interests of justice, it continues to contribute substantially to cumulative sentence length.

The Committee therefore recommends the following:

Repeal Penal Code section 667(a).

**Relevant Statutes and Authorities**
Penal Code §§ 667, 667.5(a), 1170.12, 1385

**Background and Analysis**
California's five-year prior serious felony enhancement, commonly known as the "nickel prior," was enacted in 1982 by Proposition 8.[102] The law requires an additional consecutive five-year sentence for each qualifying prior serious felony conviction when the current offense is also a serious felony, regardless of how much time has passed since the prior conviction.[103] The enhancement was originally subject to dismissal in the interests of justice, but the Legislature eliminated that discretion in 1986.[104] In 2018, Senate Bill 1393 restored courts' authority to dismiss the enhancement, effective January 1, 2019.[105]

The nickel prior operates alongside other sentencing laws that increase punishment based on a person's criminal history. In particular, the Three Strikes law doubles the sentence for a new felony conviction when a defendant has a prior serious or violent felony conviction.[106] The same prior conviction may be used both to double the sentence under Three Strikes and to impose an additional five-year nickel prior enhancement when the statutory requirements are met.[107] As a result, a single prior conviction can substantially increase the overall length of imprisonment through multiple sentencing provisions.

Repealing the nickel prior would not eliminate increased punishment for people with prior serious or violent felony convictions. Courts could continue to impose

[102] Proposition 8 (1982), § 5; Penal Code § 667(a).
[103] Penal Code § 667(a)(1). See also *People v. Valencia,* 207 Cal.App.3d 1042, 1046–1047 (1989) (discussing the absence of a washout period for the five-year serious felony enhancement).
[104] See *People v. Superior Court (Fritz),* 40 Cal.3d 227, 230–231 (1985); Penal Code § 1385(b), as amended by AB 2049 (1986).
[105] SB 1393 (2018); Penal Code § 1385(b).
[106] Penal Code §§ 667(e)(1), 1170.12(c)(1).
[107] Penal Code § 667(a), (e)(1); *People v. Dotson*, 16 Cal.4th 547, 555–560 (1997).

longer sentences under the Three Strikes law. In addition, Penal Code section 667.5(a) provides a separate three-year enhancement when a person convicted of a new violent felony has previously served a prison term for a violent felony.[108] This enhancement is subject to a ten-year washout period during which the person must remain free of both prison custody and the commission of an offense resulting in a felony conviction.[109] Repeal would eliminate one additional consecutive enhancement that contributes to cumulative sentence length while preserving other statutory mechanisms for considering prior criminal conduct.

Because the nickel prior was enacted through Proposition 8, a voter initiative, repeal would require approval by a two-thirds vote of each house of the Legislature or another voter initiative.[110]

**Empirical Research**

The nickel prior enhancement has been one of the most frequently imposed sentence enhancements in California.[111] A 2023 study by the California Policy Lab and the Committee found that the enhancement accounted for tens of thousands of additional years of incarceration over the period studied.[112] Its use has declined in recent years, including following Senate Bill 1393 (2018), which gave courts discretion to dismiss the enhancement in the interests of justice.[113]

The enhancement can have particularly significant effects on people serving indeterminate sentences. Unlike determinate sentencing, where a prior serious felony conviction generally results in a single five-year enhancement, courts have permitted the same prior conviction to support a separate five-year enhancement for each indeterminate term.[114] The California Policy Lab study found that people receiving nickel prior enhancements in indeterminate sentencing cases had aggregate prison sentences averaging approximately 98 years.[115]

Research also raises questions about the public safety benefits of increasing sentences that are already lengthy. In a 2020 submission to the Committee presenting research findings on the relationship between incarceration and crime rates, UC Berkeley Professor Steven Raphael explained that longer prison

[108] Penal Code § 667.5(a).
[109] Id.
[110] Proposition 8 (1982), § 5; Penal Code § 667(j).
[111] Molly Pickard, et al., *California's Nickel Prior Enhancement and Recent Reforms,* California Policy Lab, 3 (December 2023).
[112] Id. at 1.
[113] Id. at 2; SB 1393 (2018).
[114] *People v. Sasser*, 61 Cal.4th 1, 6–7 (2015); *People v. Williams*, 34 Cal.4th 397, 404–405 (2004).
[115] Molly Pickard, et al., *California's Nickel Prior Enhancement and Recent Reforms,* California Policy Lab, 3 (December 2023).

sentences generally have limited additional deterrent effects, particularly when enhancements add time to sentences that are already substantial.[116] A 2022 California Policy Lab study examining the Three Strikes law similarly concluded that the law did not explain statewide declines in crime following its enactment, although individual studies have reached different conclusions about its deterrent effects.[117]

[116] Steven Raphael, *The Relationship Between Incarceration and Crime Rates*, Written Submission to the Committee on Revision of the Penal Code, 1–5 (June 26, 2020).
[117] Mia Bird, et al., *Three Strikes in California,* California Policy Lab, 32, 41 (August 2022).

## 8. Clarify Court Authority to Correct Unauthorized Sentences After Judgment Becomes Final

**Recommendation**
Case Records at the California Department of Corrections and Rehabilitation regularly identifies potentially unauthorized sentences when reviewing records and calculating release dates. However, California appellate courts have reached differing conclusions about whether a sentencing court retains jurisdiction to correct an unauthorized sentence after judgment becomes final. This uncertainty can delay correction of unlawful sentences and lead to inconsistent treatment of similarly-situated individuals.

The Committee therefore recommends the following:

Clarify that trial courts retain jurisdiction to correct unauthorized sentences identified by CDCR Case Records after judgment becomes final, but only when the correction would reduce an illegally long sentence.

**Relevant Statutes and Authorities**
Penal Code § 1172.1

**Background and Analysis**
The California Department of Corrections and Rehabilitation (CDCR) is responsible for calculating and maintaining the sentences and release dates of people in state prison. When CDCR Case Records staff identify a potential sentencing error, they notify the sentencing court and request clarification or correction.[118] (This process is different from when the Secretary of CDCR requests recall and resentencing of a sentence under Penal Code section 1172.1). These errors may be discovered years after the original sentencing proceeding.

Some errors are clerical, such as discrepancies between the court's oral pronouncement of sentence and the abstract of judgment. Courts have long retained authority to correct clerical errors at any time.[119] Other errors are substantive, including sentences that do not comply with applicable sentencing laws.[120]

In 2020, the California Supreme Court issued a decision that prompted appellate courts to reconsider whether trial courts have continuing authority to correct unauthorized sentences after the judgment has become final.[121] Subsequent

[118] See CDCR Department Operations Manual § 71020.5(c); *People v. Singleton*, 113 Cal. App. 5th 783, 788–89 (2025).
[119] *People v. Mitchell*, 26 Cal.4th 181, 185 (2001).
[120] See *People v. Prater,* 71 Cal.App.3d 695 (1977); *People v. Vizcarra*, 236 Cal.App.4th 422 (2015).
[121] *In re G.C.*, 8 Cal.5th 1119 (2020).

appellate decisions have reached different conclusions about the scope of that authority.[122] Although most courts addressing the issue have rejected a general, continuing power to correct unauthorized sentences, the disagreement remains unresolved.[123]

This uncertainty can have significant consequences. A sentencing error may result in a person serving more time in prison than authorized by law, yet the sentencing court may lack jurisdiction to correct the error after judgment becomes final. The conflicting appellate decisions also create the possibility that similarly situated defendants will receive different treatment depending on what line of authority a trial court follows.[124]

The Committee recommends clarifying that courts retain authority to correct unauthorized sentences identified by CDCR Case Records when doing so would reduce an illegally long sentence. This limited authority would allow courts to address imprisonment exceeding the punishment authorized by law without permitting sentence increases after judgment has become final. It would also preserve the interests in finality and predictability that arise when a sentence has already been imposed and the defendant has begun serving it.

**Empirical Research**
Sentencing errors are regularly identified by the California Department of Corrections and Rehabilitation when calculating and maintaining prison sentences. CDCR Case Records reported to Committee staff that through October of this year, it had sent more than 2,000 letters concerning sentencing issues requiring judicial clarification.

[122] Compare *People v. Codinha,* 92 Cal.App.5th 976 (2023), with *People v. Singleton,* 113 Cal.App.5th 783 (2025), and *People v. Mohammed,* 120 Cal.App.5th 222 (2026).
[123] See *People v. Mohammed,* 120 Cal.App.5th 222, 236 (2026) (Danner, J., concurring in the judgment) (urging the California Supreme Court to clarify when trial courts retain authority to correct sentences containing errors apparent on the record). See also *People v. Singleton,* 113 Cal.App.5th 783 (2025).
[124] See *Auto Equity Sales, Inc. v. Superior Court,* 57 Cal.2d 450, 456 (1962).

## 9. Create a Separate Statutory Offense for First-Degree Burglary With a Person Present

**Recommendation**
California law treats first-degree burglary differently when another person is present in the residence, classifying such conduct as a violent felony. However, the Penal Code does not create a separate substantive offense for first-degree burglary with a person present. Instead, the distinction depends on a separate allegation that is not always clearly reflected in abstracts of judgment.

This creates administrative difficulties for CDCR when determining how to classify convictions and calculate sentences.

The Committee therefore recommends the following:

Create a separate statutory offense for first-degree burglary with a person present, without changing the existing punishment or other substantive consequences of the offense.

**Relevant Statutes and Authorities**
Penal Code §§ 459, 460, 461, 667.5(c)(21)

**Background and Analysis**
California law distinguishes between first-degree burglary and first-degree burglary with another person present in the residence. First-degree burglary is classified as a serious felony, but qualifies as a violent felony when another person, other than an accomplice, was present in the residence during the burglary.[125] This distinction has important consequences for how a person is classified and treated during incarceration, including eligibility to earn conduct credits.[126]

Although these offenses are treated differently under California law, the Penal Code does not establish a separate substantive offense for first-degree burglary with a person present. Instead, the presence of another person must be established through a separate allegation, and the conviction is recorded under the same statutory provisions governing other first-degree burglaries.[127]

This structure creates recurring administrative difficulties for CDCR. When sentencing courts prepare abstracts of judgment, the documents do not always

[125] Penal Code §§ 460(a), 667.5(c)(21), 1192.7(c)(18). Knowledge that another person is present in the residence is not required. See *Doe v. Saenz*, 140 Cal.App.4th 960, 987 (2006); *People v. Munguia*, 7 Cal.App.5th 103 (2016).
[126] Penal Code § 2933.1; California Code of Regulations, title 15, § 3375.2.
[127] Penal Code §§ 459, 460(a), 667.5(c)(21).

clearly reflect whether a person-present allegation was found true. CDCR Case Records staff must then seek clarification from the sentencing court to determine whether the conviction qualifies as a violent felony. These errors can delay accurate classification and require additional resources from both CDCR and the courts.

Creating a separate statutory offense for first-degree burglary with a person present would allow the distinction to be reflected directly in the offense of conviction, reducing ambiguity in sentencing records. The Committee's recommendation would preserve the existing elements, punishment, and other legal consequences of the offense while improving the accuracy and administration of sentencing records.

# 10. Improve California's Bail System

## A. End the use of cash bail

**Recommendation**
Despite two landmark rulings from the California Supreme Court, the state's cash bail system presents persistent issues with workability, equity, and public safety.

The Committee therefore recommends the following:

Eliminate cash bail in California.

**Relevant Statutes and Authorities**
Penal Code §§ 1269, 1269b, 1269c, 1270.1, 1270.2, 1275

**Background and Analysis**
Bail is the process of releasing someone from jail with conditions that provide reasonable assurance of the person's appearance in court and maximize public safety.[128] While these conditions can include electronic monitoring, drug testing, and search requirements among others, our current system often requires "cash bail" — either a payment to the court or, far more frequently, a non-refundable payment to a commercial bail agent — to obtain release.[129] As it exists today, the system does not maximize protecting public safety or crime victims because detention is determined by wealth, not an arrested person's risk of committing new offenses, and it worsens existing racial disparities in the criminal legal system.[130]

The system is both overinclusive — because many people are confined who may not pose any risk simply because they cannot afford the amount on the bail schedule — and underinclusive — because others who might pose a greater risk to public safety may be released because they can afford to pay a high bail amount. As Los Angeles County Superior Court Presiding Judge Sergio Tapia noted to the Committee, "The result is pretty simple: high-risk individuals with

[128] The term "bail" is used differently across the country, in the law, and by history. It is used as both a noun and verb and can be defined variously as money, as a person, a particular form of bond, and the process of release. Timothy R. Schnacke, National Institute of Corrections, *Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform*, 2 (September 2014).
[129] Id. at 38.
[130] On average Black and Hispanic people detained pretrial are less likely to be able to post cash bail as a condition of release and often receive cash bail amounts higher than white defendants. See, e.g., Meghan Sacks, Vincenzo A. Sainato & Alissa R. Ackerman, *Sentenced to Pretrial Detention: A Study of Bail Decisions and Outcomes* (2014) 40 Am. J. Crim. Justice 661; Traci Schlesinger, *Racial and Ethnic Disparity in Pretrial Criminal Processing* (2005) 22 Justice Quarterly 170, 187–188.

access to money ha[ve] an opportunity to pretty much buy their way out of custody, while a low-risk individual without money usually s[its] in jail for days, weeks, or even longer."[131]

The process for ending cash bail in California is complicated. In a 2020 referendum, California voters rejected a law enacted by the Legislature and signed by Governor Jerry Brown, Senate Bill 10, that would have eliminated cash bail.[132] As a result of the referendum, the Legislature is prevented from reenacting any policies that are similar to the rejected policy, although the exact contours of what is permissible are highly uncertain.[133]

For the reasons noted above, the Committee recommends eliminating California's cash bail system. In doing so, the Committee echoes similar conclusions made almost a decade ago by the Legislature — which attempted to end cash bail with the passage of SB 10 — and the Pretrial Detention Reform Workgroup assembled by then-California Supreme Court Chief Justice Tani Cantil-Sakauye.[134]

Important questions remain unanswered about how such a complete restructuring of the pretrial release mechanism in California will occur and what should replace it. The Committee therefore recommends two interim measures as detailed below.

**Empirical Research**

As the Committee noted when it last addressed cash bail and pretrial release in 2022, studies have repeatedly shown that cash bail does not reduce the likelihood that people will commit new crimes[135] or improve the rate at which people return to court.[136] Pretrial incarceration may actually cause more harm than

[131] Committee on Revision of the Penal Code, Meeting on October 9, 2026, Part 1 of 3, 22:00–22:14.
[132] California Secretary of State, Statement of Vote, General Election, November 3, 2020, 14 (Proposition 25, titled "Eliminates Money Bail System," received 56.4% "No" votes).
[133] After a successful referendum, a law on the same topic must be "'essentially different' from the rejected provision and [] enacted 'not in bad faith, and not with intent to evade the effect of the referendum petition.'" *Assembly v. Deukmejian,* 30 Cal.3d 638, 678 (1982) (quoting *Gilbert v. Ashley*, 93 Cal.App.2d 414, 415–16 (1949)). There is limited caselaw on the limits of this doctrine.
[134] Pretrial Detention Reform Workgroup, *Pretrial Detention Reform — Recommendations to the Chief Justice* (October 2017).
[135] See e.g., Aurelie Ouss & Megan T. Stevenson, *Does Cash Bail Deter Misconduct?*, American Economic Journal: Applied Economics, vol. 15, no. 3, July 2023 (evaluating data before and after the Philadelphia District Attorney's Office implemented a new bail policy, finding no evidence that financial incentives increased compliance); Michael Jones, *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option*, Pretrial Justice Institute (2013); Tracey Meares & Arthur Rizer, *The "Radical" Notion of the Presumption of Innocence*, The Square One Project, 26–28 (May 2020).
[136] See id.

good: research shows that it has adverse effects on public safety.[137] It also results in increased pressure to take a plea, greater likelihood of a guilty verdict, harsher sentences, higher rates of new arrests, and the disruption or loss of housing, employment, parental rights, and family support.[138]

Recognizing these inequities, over the last decade, jurisdictions across the country have either eliminated or reduced reliance on cash bail. A 2024 report from the Brennan Center found there was no statistically significant difference in post-bail-reform crime trends in the 22 jurisdictions studied that adopted bail reform compared to the 11 that did not.[139]

### B. Increase opportunities for pre-arraignment release without cash bail

**Recommendation**

Between arrest and a first court appearance, an arrested person can typically pay cash bail, as set by a county-wide schedule, to be released from jail. In response to litigation, some counties have recently updated these schedules to authorize pre-arraignment release without cash bail. These updated schedules allow people to be cited and released without being taken to jail, booked into jail and released, or reviewed by a magistrate to determine whether they can be released before arraignment. These procedures vary by county and depend on the offense and other circumstances.

The Committee therefore recommends the following:

Amend the Penal Code to safely encourage pre-arraignment release without cash bail, which should include the following components:

- Require each court to adopt a bail schedule in the pre-arraignment context that includes offenses eligible for non-cash bail through cite and release and book and release.
- Preserve court discretion to determine which offenses are eligible for non-cash bail pre-arraignment. A court should also set its own exceptions based on prior warrant history or recent arrests.

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[137] See, e.g., Sandra Susan Smith, *Pretrial Detention, Pretrial Release & Public Safety*, Arnold Ventures, July 2022; Christopher Lowenkamp, *The Hidden Costs of Pretrial Detention Revisited*, Core Correctional Solutions, March 2022; Human Rights Watch, *Not in it for Justice: How California's Pretrial Detention and Bail System Unfairly Punishes Poor People*, 6 (April 2017).

[138] See, e.g., Megan T. Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, Journal of Law, Economics, and Organization, Sept. 2018, 34(4): 511–542; Will Dobbie, Jacob Goldin, and Crystal S. Yang, *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence From Randomly Assigned Judges*, American Economic Review (2018), 108(2), 203–205.

[139] Terry-Ann Craigie & Ames Grawert, *Bail Reform and Public Safety: Evidence from 33 Cities*, Brennan Center for Justice, 1, 8, August 15, 2024

- Allow law enforcement to elevate the category of release, e.g. book and release to magistrate review, for the offenses provided for in Penal Code section 1269c, which include all felonies, before arraignment.

**Relevant Statutes and Authorities**
Penal Code §§ 853.6, 853.85, 1269b, 1269c, 1275

**Background and Analysis**
The Penal Code requires the Superior Court of each county in California to publish a bail schedule for misdemeanor and felony offenses.[140] These bail schedules typically provide a set amount of cash bail that an arrested person can pay shortly after arrest to obtain release from jail, even before their first court appearance for arraignment.

Courts — in litigation against four counties in California — have universally held that the use of cash bail before arraignment without consideration of an arrested person's ability to pay violates the constitutions of California and the United States.[141] While some county courts have taken steps to address this issue by providing for opportunities for release without cash bail before arraignment, many counties have not.

The counties that have addressed pre-arraignment bail have done so by specifying in their bail schedules that, with some variety, an arrested person may be cited and released, booked and released (where they are arrested, fingerprinted, brought to the jail and then released from the jail), or held for a magistrate to review their individual circumstances (including prior criminal history, failures to appear in court, and the facts of the present offense)[142] and a

[140] Penal Code § 1269b(b).
[141] See *Buffin v. City and County of San Francisco*, Northern District of California, Case No. 15-cv-04959; *Welchen v. Bonta*, Eastern District of California, Case No. 16-cv-00185; *Urquidi et al., v. City of Los Angeles*, Superior Court of California, County of Los Angeles, Case No. 22STCP04044, Memorandum Decision and Order on Motion for Preliminary Injunction, May 16, 2023. These orders applied to all offenses in the bail schedule. In contrast, in Riverside County, based on the request of the plaintiffs, the court granted a preliminary injunction prohibiting defendants from jailing people arrested for 19 specified non-violent offenses. See *Sandoval et al. v. Riverside County et al.*, Superior Court of California, County of Riverside, Case No. CVR12502556, Preliminary Injunction, February 6, 2026.
[142] See e.g. Superior Court of California, County of Los Angeles, 2026 Felony Bail Schedule, 6. See also Penal Code § 1275(a)(1) ("In setting, reducing, or denying bail, a judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or at a hearing of the case. The public safety shall be the primary consideration.")

risk assessment.[143] These procedures also allow law enforcement to request further review from a magistrate before a person is released.

Counties should not wait to be sued to update pre-arraignment release procedures. The Penal Code should be updated to encourage pre-arraignment bail schedules that include opportunities for release without cash bail. These options should cover most low-level offenses, as is the case in counties that have already adopted these procedures.[144] Law enforcement should also be able to request magistrate review for any offense described in Penal Code section 1269c, including all felonies.

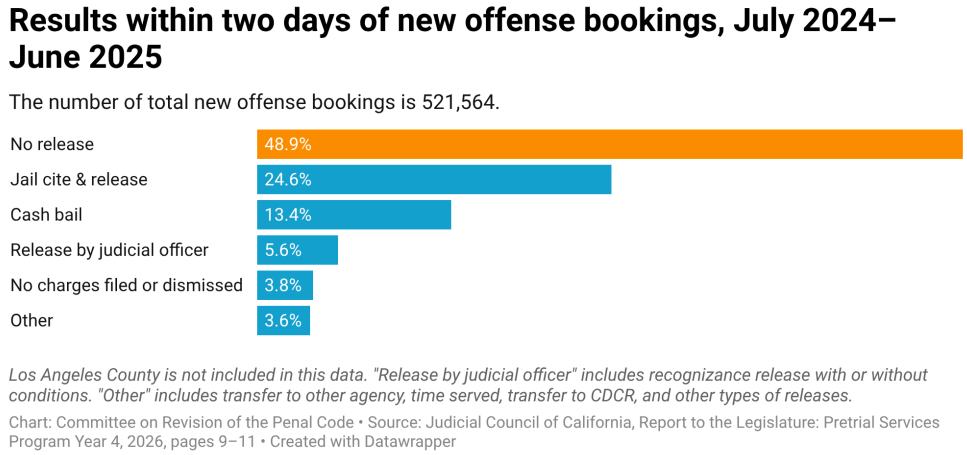
The Committee has serious concerns about the use of magistrate review in this context and does not encourage expanding its use beyond what is necessary. Data from Los Angeles County shows that 94% of arrested people who receive magistrate review remain detained until at least arraignment.[145] And because arraignment in California can occur days after arrest — a rule that the Committee recommended changing[146] — frequent use of magistrate review may result in unnecessarily long detention that can disrupt the life of the arrested person without benefits to public safety.

The intent of these changes to the pre-arraignment process should be to effectuate the speedy release of people who present a low risk to public safety. The ultimate balance of these options would be made by the county Superior Court under their existing authority to set bail schedules.

[143] See e.g. Superior Court of California, Bail Schedules: Contra Costa County, July 8, 2026; San Joaquin County, Tentative, July 23, 2026; Kern County, December 19, 2025; Los Angeles County, January 1, 2026.
[144] See id.
[145] Los Angeles County Superior Court, Pre-Arraignment Release Protocol (PARP) Dashboard.
[146] Committee on Revision of the Penal Code, *2022 Annual Report,* 60–62.

**Empirical Research**

Data from the Judicial Council shows that about half of people arrested in California obtain release before arraignment, with about 13% paying cash bail:




In October 2023, the Superior Court in Los Angeles County adopted a new bail schedule that sets forth a series of pre-arraignment release protocols (PARP), including cite and release, book and release, and magistrate review. A study of the first two months following implementation of PARP by the California Policy Lab found that both the average daily (by 2.4%) and pretrial (by 3.2%) county jail populations decreased with no effect on crime in the City of Los Angeles.[147]

Similarly, according to data presented to the Committee by the California Policy Lab, in Riverside County, there was no difference in the county jail population, bookings, or reported crime in the City of Riverside following introduction of new pre-arraignment protocols.[148]

### C. Implement *Kowalczyk* with statewide uniformity and consistency

**Recommendation**

The California Supreme Court has made clear that courts cannot use unaffordable cash bail as a way to detain someone before trial. Instead, cash bail — if it is appropriate at all — must be set at an amount the person can reasonably afford. Yet the Penal Code sections governing pretrial release have not been revised since these landmark rulings in *In re Humphrey* (2021) and *In re Kowalczyk* (2026).

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[147] Thomas Sloan, et al., The Short-Term Impacts of Bail Policy on Crime in Los Angeles, California Policy Lab, August 2024. Salil Dudani, Supervising Attorney at the Civil Rights Corps, additionally explained to the Committee that many people affected by PARP were held in station jails before arraignment and would not have been counted in the county jail population. Committee on Revision of the Penal Code, Meeting on October 9, 2026, Part 2 of 3, 0:14:34–0:17:02.

[148] Committee on Revision of the Penal Code, Meeting on October 9, 2026, Part 1 of 3, 01:21:08–01:31:28.

The Committee therefore recommends the following:

Amend the Penal Code so that the holdings in these decisions may be implemented with uniformity and consistency across the state. A statewide framework should include the following:

1. Require that cash bail be set as a last resort and only once a judicial officer has found by clear and convincing evidence that no combination of nonfinancial conditions can protect public safety and help ensure return to court.

2. Allow trial courts to rely on a proffer from the defendant or their counsel as long as there is no reason to doubt the reliability of the information.

3. Require trial courts, when determining what amount of cash bail is reasonably attainable, to consider only: (a) an individual person's ability to pay the entirety of the cash bail amount, not the amount of a potential bail bond premium; and (b) the individual's ability, not what any family member or other associate may be able to pay.

4. Establish a rebuttable presumption that a person is unable to afford any amount of cash bail if a person is receiving certain needs-based public benefits, such as CalFresh, Medi-Cal, or SSI, or is currently unhoused.

5. Require trial courts, if no presumption applies, to determine a person's ability to pay cash bail based on their monthly discretionary income or a very low flat percentage of overall monthly income.

6. Amend Penal Code § 1270.2 to require a court to reconsider bail if the person has been unable to pay within 5 days the cash bail previously set.

**Relevant Statutes and Authorities**
Penal Code §§ 1269b, 1270.2, 1275, 1289

**Background and Analysis**
The California Supreme Court has repeatedly emphasized that "liberty is the norm" when making pretrial release decisions.[149] And a court may only consider imposing cash bail if it concludes there is clear and convincing evidence that no other non-financial condition will protect public safety and ensure the defendant's return to court.[150] In other words, cash bail should not be the first pretrial release condition that a court considers and should not be required in many cases.

[149] *In re Kowalczyk*, 19 Cal.5th 593, 630 (2026) (citations omitted).
[150] Id. at 629.

While the California constitution permits outright pretrial detention, it is only in the limited circumstances of capital cases, felony cases involving acts of violence on another person, felony sexual assault offenses on another person, or felony cases where there is a threat of great bodily harm where a court makes a required finding by "clear and convincing evidence" of a "substantial likelihood" of certain harms.[151] The California Supreme Court has made clear that artificially inflated cash bail cannot be used as a way to effectuate pretrial detention.[152]

If a court concludes there is sufficient evidence that cash bail is necessary, it must, according to the California Supreme Court in *In re Kowalczyk*, set bail at an amount "reasonably attainable for the defendant" based on an "individualized assessment of the totality of the circumstances."[153] Those circumstances include public safety, seriousness of the charged offense, and a person's prior criminal record and history of complying with court orders.[154] Ultimately, the cash bail amount "need not be easily affordable or convenient to the defendant … [but must be] an amount that is consistent with, and designed to effectuate, a defendant's general right to pretrial release."[155]

These requirements largely do not appear in the Penal Code or in the Rules of Court. The Committee concludes that it is critical for the Legislature or the Judicial Council to create rules to implement the California Supreme Court's decisions consistently throughout the state that address the following issues:

- **Consider nonfinancial conditions first**: Many judges are too quick to consider cash bail. Under *Kowalczyk*, they must first consider whether nonfinancial conditions are sufficient to vindicate the state's interests in public safety and the defendant returning to court and only consider cash bail if there is clear and convincing evidence it is needed.

- **Allow informal proffers of financial status**: *Kowalczyk* did not specify particular information or the manner of proof to establish how much money a defendant may have available for cash bail. While making the ability to pay the defendant's burden is consistent with the law in other contexts, as a footnote in *Kowalczyk* explained,[156] the law should clarify that informal proffers at bail hearings are acceptable as long as there is no indication of unreliability and that sworn statements are not required.[157]

[151] Id. at 626; Cal. Const., art. 1, § 12
[152] Id. at 625.
[153] Id. at 607–8.
[154] Id. at 607.
[155] Id. at 631.
[156] Id. at 607, 630 n.25 (noting that in those contexts courts are not compelled to accept "unsupported, conclusory assertions of indigency or an inability to pay.")
[157] See *In re Harris*, 16 Cal.5th 292, 311–14 (2024) (noting the "conventional practices at bail hearings, which commonly involve informal proffers by the prosecution and defense alike"). The

This is consistent with the standard applied to prosecutors proving the pre-trial detention is appropriate.[158]

- **Additional guidance to courts on ability to pay:** *Kowalczyk* specified that cash bail must be "reasonably attainable" but not necessarily "easily affordable or convenient,"[159] but the Court did not give any guidance to trial courts on how to make this determination.

  To make this practice uniform throughout the state, trial courts should only consider an individual's ability to pay the entirety of the cash bail amount, not their ability to pay a bail bond,[160] or what a family member or other associate may be able to pay. The Penal Code takes this approach when someone is arrested for a probation violation.[161]

  A presumption of an inability to pay any amount of cash bail should apply if a person is receiving or is eligible for state or federal needs-based public benefits,[162] is, or within the past six months has been, unhoused,[163] or released from a residential facility, including jail or prison. This list should not be the exclusive list of presumptions. Under current state law, a presumption already applies for an inability to pay court fees and costs for people who receive public benefits under several state and federal assistance programs.[164]

  If no presumption applies, the trial court should determine a person's ability to pay based on their discretionary income, which is the money left after a person pays for all their essential living costs (e.g. housing, food, basic transportation, child support, and similar expenses).[165] In 2022, the

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Committee previously recommended reliance on sworn statements in this context. Committee on Revision of the Penal Code, 2022 Annual Report and Recommendations, December 2022. Additional years of practice since then have shown that sworn statements can present several practical issues and should not be a strict requirement in this context, a conclusion supported by the *Harris* decision.

[158] Id.

[159] *Kowalczyk*, 19 Cal.5th at 631.

[160] People primarily use a commercial bail bond to secure release from custody. A bail agent charges a nonrefundable fee (bail premium), historically 10% of the value of the bond, and the bail agent assumes risk of forfeiture of the bond to the court.

[161] Penal Code § 1203.25(c)(2).

[162] For example, CalFresh, Medi-Cal, or SSI.

[163] See U.S. Department of Housing and Urban Development, HUD Exchange. See also Shanelle Johnson, *First Steps Toward More Equitable Fines and Fees Practices*, Fines & Fees Justice Center, September 2024, 4–5.

[164] See Government Code § 68632(a).

[165] Under Massachusetts law, one way to determine what a defendant can afford is to "simply ask the defendant or defense counsel how much the defendant can reasonably afford to post." *Walsh v. Commonwealth*, 485 Mass. 567, 586–587 (2020). The judge may also consider income, net assets,

Committee recommended that it should be set relatively high, such as 50% of a person's monthly discretionary income. Because determinations of discretionary income may be inefficient at arraignment, as an alternative, it could be set at a very low percentage of a person's gross monthly income.[166]

California has already developed a statewide system — MyCitations — that allows for ability-to-pay determinations for paying the fines associated with traffic and other infractions. The tool uses answers to questions about income, benefits, household size, and expenses to reduce traffic fines by 50–90% reduction for defendants on public benefits and a sliding scale indexed to the federal poverty level.[167] Similarly, under state law a person is eligible for appointed counsel in a criminal case if they are unable to afford one.[168]

Courts should have flexibility to make this determination based on an individual's circumstances, yet the overriding goal, as the California Supreme Court has held, should be to effectuate release.[169]

- **Automatic review of bail decisions after 5 days**: Under current law, a person is entitled to automatic review of a bail determination within 5 days.[170] But these reviews often do not occur or may occur in a cursory fashion. If a person remains incarcerated 5 days after cash bail was set, it is likely the amount is not reasonably affordable and should be subject to meaningful review. Penal Code section 1289 should be amended to require a court to review the cash bail amount if a person remains incarcerated 5 days after the initial bail determination.

Even if all of the above reforms are enacted, many issues will remain with California's pretrial system. But these changes would help effect significant progress to ensure due process and equal justice in California by requiring that

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and financial obligations "including the amount necessary to meet minimum basic human needs such as food, shelter, and clothing for the defendant and his or her dependents." Id. at 587.

[166] Under the terms of a consent preliminary injunction, one North Carolina county agreed that when setting bail a rebuttable presumption would apply that a person is unable to pay any secured bond amount that exceeds 2% of that person's monthly income. *Allison v. Allen*, Consent Order for Preliminary Injunction, Middle District of North Carolina, Case No. 19-cv-1126, May 8, 2020.

[167] *Online Infraction Adjudication and Ability-to-Pay Determinations,* Report to the Legislature, Judicial Council of California, February 2025, 15.

[168] Penal Code § 987(a). The Judicial Council developed a form — CR 105 — that defendants may complete to assist courts in making this determination, which asks about monthly income, dependents, expenses, creditor payments, and assets owned.

[169] *In re Kowalczyk*, 19 Cal.5th 593, 631 (2026).

[170] Penal Code § 1270.2.

current law and practice comply with both the constitutional commands of *Kowalczyk* and *Humphrey* while satisfying public safety.

## 11. Create a Statewide Court Reminder Program

**Recommendation**
Automated court date reminders can significantly reduce missed court appearances, reduce bench warrants, and save money.

The Committee therefore recommends the following:

Require each county Superior Court to implement a court reminder program that sends text messages to all defendants in criminal cases notifying them of scheduled court appearances, including arraignment. The reminders should follow evidence-based best practices, including plain language for the date, time, and court of appearance; consequences for nonappearance; multiple reminders, and a message within one day after any missed appearance with information about how to resolve it.

**Background and Analysis**
People often miss court dates for innocuous reasons or those beyond their control — such as problems with getting time off of work, finding childcare, securing transportation, or simply forgetting — that are unrelated to criminal behavior or a desire to flee prosecution.[171] Court reminders — similar to those people receive from a dentist's office — address these issues by helping people remember their court date, understand the consequences of missing court, and know where to go.[172]

No universal statewide notification system exists in California.[173] Instead, notifications are often sent by county probation departments only to people receiving pretrial services.[174] There are no uniform rules for what must be in the reminder or when they should be sent.

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[171] Nazish Dholakia, *Millions of People in the U.S. Miss Their Court Date, With Dire Consequences,* Vera Institute of Justice, February 13, 2024.
[172] Alissa Fishbane, Shannon McAuliffe, and Yipling Li, *Improving Court Attendance: The Essential Guide to Court Reminders*, ideas42, May 2025; Joanna Thomas & Abdaziz Ahmed, New York City Criminal Justice Agency, *Court Date Notifications: A Summary of the Research and Best Practices for Building Effective Reminder Systems,* March 2021, 29–30.
[173] A bill introduced in 2023, SB 255 (Umberg), would have required the Judicial Council to make available a court reminder program and required law enforcement agencies to collect cell phone numbers of defendants upon booking or citation. At the time, the Judicial Council estimated one-time and ongoing costs ranging from $3.2 million to $4.5 million in the first three years of operation and $1.2 million annually thereafter to make the adequate information technology investments and address staff resources. SB 255, Senate Committee on Appropriations, Analysis of SB 255, 1 (April 21, 2023).
[174] Judicial Council of California, *Pretrial Release Program: Year 4 Report to the Legislature, April 24, 2026*, 1, 8, 14. Los Angeles County Superior Court has also begun sending reminders to people released under PARP. Committee on Revision of the Penal Code, Meeting on October 9, 2026, Part 1 of 3, 31:38–32:04.

Increasing appearance in court and reducing the rate of warrants benefits both individuals and courts. Individuals avoid consequences of warrants such as pretrial incarceration and less warrants reduce administrative burdens and costs on courts and jails. Reminders are a low-cost intervention — a mailed reminder can cost as little as $0.71 and a text reminder costs less.[175]

**Insights From Other Jurisdictions**

In response to a nationwide survey by Pew Charitable Trusts in 2024, 18 states reported they had statewide court date reminder programs.[176] Pew also reported that court reminders have broad bipartisan support with more than 7 in 10 adults in support of the practice.[177]

States with opt-in programs had substantially lower participation rates than states that automatically enrolled participants. For example, in 2019, the Colorado legislature unanimously passed a bill to create a statewide court text reminder program, but the program only had a usage rate of 20% because the program required defendants to opt-in for reminders.[178] In 2022, the legislature amended the law to enroll defendants automatically while allowing them to opt out, and participation increased dramatically: reminders rose from about 56,000 to 224,000 in one month and more than 99% were delivered without a request to opt out.[179]

Reaching people before their first appearance in court is crucial because it's the first time a person can show the court they will return as promised if they were released before arraignment. But providing reminders in this context is challenging. Police officers often do not collect contact information and courts often do not have a docket number to attach the reminder to. Adjusting how this information is collected can make a difference. According to the then-Criminal Courts Administrator, in Tarrant County (Fort Worth), Texas, the warrant issuance rate dropped from 9% to 2.6% over 8 years after embedding court staff during the jail intake process to collect accurate contact information.[180] The Texas Court Reminder Program is available to every county in the state for no charge.[181]

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[175] ideas42, *Stamping Out Missed Court Dates,* at 8.
[176] Pew Charitable Trusts, *States Underuse Court Date Reminders,* May 12, 2025.
[177] Pew Charitable Trusts, *Court Reminders Have Broad Bipartisan Support,* November 25, 2025.
[178] Colorado Legislature, Legislative Council Staff, Final Fiscal Note: SB 22-018, June 24, 2022.
[179] SB 22-018 (Colo. 2022); Alissa Fishbane, Shannon McAuliffe, and Yipling Li, *Improving Court Attendance: The Essential Guide to Court Reminders,* ideas42, May 2025, 6–7.
[180] Greg Shugart, *We Did Something Simple. It Worked. And Now I Know Why,* eCourtDate Blog, June 5, 2026.
[181] Texas Gov't Code § 75.601.

**Empirical Research**

Research has shown that reminders are effective at increasing return to court. For example, one study in Santa Clara County found that reminders sent by text reduced warrants issued for missed court dates by almost 20%.[182] And incarceration from missed court dates similarly reduced by 21%.[183] The study also estimated the average marginal cost of about 60 cents per defendant per case.[184] Another study showed that even mailed reminders can boost appearance — in Sacramento County mailed reminders reduced nonappearance by 16%.[185]

The content of the communication also matters. Tickets and letters sent from courts and law enforcement can be confusing and bury important information, such as where and when a person is required to show up. As Vanessa Thompson, Advocacy & Campaigns Director (Un)warranted at ideas42, told the Committee, "These reminders often bury two things that are really important for people to know, which is where to be and when to be there."[186] A simple redesign of a summons form in New York City that put court information at the top of the ticket and certain text in bold reduced failures to appear by 13%.[187]

[182] Alex Chohlas-Wood et al., *Automated Reminders Reduce Incarceration for Missed Court Dates: Evidence From a Text Message Experiment*, Science Advances 11(40), October 1, 2025.
[183] Id.
[184] Id.
[185] ideas42, *Stamping Out Missed Court Dates: How Mailed Reminders Boost Appearance,* Aug. 2024, 5.
[186] Committee on Revision of the Penal Code, Meeting on October 9, 2026, Part 3 of 3, 0:05:04–0:05:10.
[187] Alissa Fishbane, Aurelie Ouss, and Anuj K. Shah, *Behavioral Nudges Reduce Failure to Appear for Court*, Science 370, November 6, 2020.

## 12. Expand Judicial Diversion to Low-Level Felonies

**Recommendation**
Diversion programs allow a person to avoid a criminal conviction and potential incarceration by fulfilling conditions set by a judge. For more than 5 years, courts have had the discretion to grant diversion in many misdemeanor cases with lasting beneficial impact to grantees.

The Committee therefore recommends the following:

Allow judges to grant discretionary diversion to low-level felonies (i.e. non-serious, non-violent, and not eligible for sex offender registration).

**Relevant Statutes and Authorities**
Penal Code § 1001.95

**Background and Analysis**
Since January 2021, courts have had the ability to grant diversion in many misdemeanor cases, with exceptions for sex offenses requiring registration, domestic violence, stalking, and DUI.[188] The court has discretion to set conditions of diversion that balance public safety, accountability, and rehabilitation.[189] Diversion can last 2 years.[190]

Courts only grant diversion after hearing from both the defendant and prosecutor.[191] Important victim rights — including restitution and orders of protection limiting contact with victims — are honored during the diversion period.[192] Once the program is successfully completed, charges are dismissed.[193] If a person does not complete the terms of diversion, the case proceeds in the usual manner and the person may ultimately end up convicted and potentially incarcerated.[194]

Judicial diversion should not be limited to misdemeanor offenses but should extend to low-level felonies that often arise from similar conduct and present similar public safety risks. As is the case with the current policy, the ultimate decision on diversion should be left to a court informed by arguments and evidence from defense counsel and prosecutors.

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[188] This program was created by AB 3234 (Ting 2020), which added Penal Code §§ 1001.95–97. See also Vehicle Code § 23640(a); *Tan v. Superior Court of San Mateo County*, 76 Cal.App.5th 130 (2022).
[189] Penal Code § 1001.95(b). See also *People v. Hill*, 116 Cal.App.5th Supp. 1, 10 (2025); *Bobo v. Appellate Division of the Superior Court of San Diego County*, 120 Cal.App.5th 25, 43 (2026).
[190] Penal Code § 1001.95(b).
[191] Penal Code § 1001.95(a).
[192] Penal Code § 1001.96(b)–(c).
[193] Penal Code § 1001.95(c).
[194] Penal Code § 1001.95(d).

**Empirical Research**

A developing body of research shows that avoiding a criminal conviction has long-term impacts to preserving employment and increasing public safety.[195]

For example, a study in Suffolk County, Massachusetts, found that nonprosecution of a nonviolent misdemeanor led to a 60% reduction in the number of new criminal complaints over the following two years.[196] Another study in Harris County, Texas, of first-time felony defendants found that diversion reduced recidivism by half and increased employment rates by 53% over 10 years.[197]

[195] John Eric Humphries et al., *Conviction, Incarceration, and Recidivism: Understanding the Revolving Door*, Quarterly Journal of Economics, Volume 140, Issue 4 (November 2025) (study of Virginia defendants finding that, compared to dismissing charges, convictions without an incarceration sentence "leads to a large and long-lasting increase in recidivism for felony defendants"); Alexa Cinque et al., *Program Outcomes in a Light-Touch Prosecutor-Led Misdemeanor Diversion Program,* Journal of Criminal Justice, Volume 101, November–December 2025 (misdemeanor diversion program where requirements were two meetings with a social service provider led to a reduction in future arrests and incarceration).

[196] Amanda Agan, Jennifer L. Doleac, & Anna Harvey, *Misdemeanor Prosecution,* The Quarterly Journal of Economics, 138:3, August 2023.

[197] Michael Mueller-Smith & Kevin T. Schnepel, *Diversion in the Criminal Justice System*, 88 Review of Economic Studies 883, 883–884 (2021).

## 13. Refine Existing Diversion Processes

**Recommendation**
California has a range of diversion opportunities in the Penal Code, but there are inconsistencies among the programs, statutory gaps that have emerged in practice, and other updates that can be taken to improve the programs.

The Committee therefore recommends the following:

1. Harmonize sealing obligations after diversion is completed.
2. Allow DMV to assess points for vehicular manslaughter diversion.
3. Specify the evidence a court may consider for misdemeanor military diversion.
4. Clarify that requests for mental health diversion may be made until sentencing.
5. Mandate a study of mental health diversion.

**Relevant Statutes and Authorities**
Penal Code §§ 851.92, 1001.36, 1001.80, 1001.95, 1001.97
Vehicle Code §§ 1803, 12810

**Background and Analysis**

*Sealing After Completion of Diversion*
While the laws governing misdemeanor, mental health, and military diversion all intend for arrest records to be sealed after the successful completion of the respective diversion program, the statutes are inconsistent and incomplete on how to achieve sealing.[198]

This issue has come to the attention of the Judicial Council's Criminal Law Advisory Committee, which recommended legislation amending the relevant statutes to improve consistency in how arrest records are sealed when a person successfully completes diversion.[199] The Advisory Committee also recommended an amendment to Penal Code section 851.92 to include a catchall provision applying the respective procedures to future diversion statutes, should the Legislature create more diversion programs.

[198] Compare Penal Code § 1001.36(h) (mental health diversion specifies notice to the California Department of Justice and general sealing of arrest records) with § 1001.80(k) (military diversion specifies notice to the California Department of Justice but does not address sealing arrest records) with § 1001.97(a) (misdemeanor diversion does not directly address notice to the California Department of Justice or sealing of arrest records).
[199] Judicial Council of California, *Judicial Council-Sponsored Legislation: Procedures for Sealing Arrest Records (DRAFT)*, September 16, 2026.

The Committee's recommendation aligns with the recommendation of the Criminal Law Advisory Committee — the Penal Code should be amended to improve consistency in how arrest records are sealed when a person successfully completes diversion. And a catchall provision should be added as the Legislature considers for opportunities for diversion.

*DMV Points for Vehicular Manslaughter*
While DUI offenses are not eligible for misdemeanor diversion, the misdemeanor offense of vehicular manslaughter without gross negligence is eligible.[200] But a person who successfully completes diversion for this offense will likely not receive "points" on their license — which can lead to a license suspension — as they would if convicted.[201] Requiring the DMV to assess points against a person's license in this manner promotes public safety.

*Military Diversion*
Military diversion, first available in 2015, allows current and former members of the U.S. military who "may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of their military service" to be diverted instead of being prosecuted.[202]

Military diversion was limited to misdemeanors until January 2025, when most felony offenses became eligible.[203] While the statute is clear on eligibility, there is little specificity on how a court should exercise its discretion to find a person suitable for diversion.[204] Courts may identify their own factors or criteria for suitability as long as they are consistent with the statutory objectives of treatment and rehabilitation.[205]

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[200] *Bobo v. Appellate Division of the Superior Court of San Diego County,* 120 Cal.App.5th 25, 30 (2026).
[201] Vehicle Code § 12810(d)(1). See also Robert Lewis, *How a speeding ticket can be worse than killing someone with your car in California,* CalMatters, December 17, 2025. The DMV also possesses statutory authority to investigate the driver in any fatal or serious crash for possible license suspension and other penalties without the driver needing to be convicted. Vehicle Code § 13800. See also Robert Lewis, *After his crash killed a child, the DMV renewed his license — then it hid his records,* CalMatters, March 9, 2026 ("Data provided to CalMatters show that, from 2022 through 2024, the agency opened just 3,300 investigations into drivers for their role in a fatal or serious-injury crash, a time in which California tallied nearly 56,000 such collisions.").
[202] Penal Code § 1001.80. The program was created by SB 1227 (Hancock 2014). Unlike other diversion programs, military diversion is available on misdemeanor charges of DUI or DUI causing injury. Penal Code § 1001.80(l).
[203] SB 1025 (Eggman 2024). Ineligible felonies are the same as those ineligible for mental health diversion and include sex offenses, murder, and voluntary manslaughter. Penal Code § 1001.80(o).
[204] *Wade v. Superior Court,* 33 Cal.App.5th 694, 709–710 (2019).
[205] Id. at 715.

One appellate court recently called on the Legislature to fix an inconsistency in the military diversion statute.[206] While the statute specifically describes the type of evidence or record the court may consider for felony eligibility — such as a police report, statement by the defendant's mental health treatment provider, or medical records — the statute does not similarly address what is appropriate evidence for misdemeanor offenses.[207] The same standards should apply for both misdemeanor and felony cases.

*Mental Health Diversion*
Mental health diversion allows people with mental health diagnoses to complete a court-ordered treatment plan instead of receiving a criminal conviction.[208] While many offenses are eligible to be considered for diversion, murder, voluntary manslaughter, sex offenses, and DUI are not.[209]

An application for mental health diversion can be brought "until adjudication."[210] In 2023, the California Supreme Court interpreted this language to mean the request can be made until a jury is sworn for a trial or a defendant enters a guilty plea.[211] Justices Kelli Evans and Goodwin Liu dissented because, in their view, "until adjudication" was better interpreted to mean until sentencing occurred.[212] According to Justice Evans, the decision to enter mental health treatment is not always made "on a neat and tidy timeline."[213] Amending the law to allow judges to consider requests made up until sentencing promotes the goals of mental health diversion while also maintaining judicial discretion.

In addition, while the mental health diversion program was created in 2018, very little data exists about the effectiveness of the program and its impact on public safety. Without robust data, anecdotal reports can dominate discussion of California's mental health diversion law. Mandating a study that evaluates the effectiveness of mental health diversion would allow future refinements of the law to be based on actual data, rather than arguments arising from individual cases. Legislative action is needed to require this type of study because the data needed to complete it is held by multiple entities at the local level, which may

[206] *People v. Holliday*, 116 Cal.App.5th 664, 675 (2025).
[207] Compare § 1001.80(c)(2)(C) (felonies) with § 1001.80(b) (misdemeanors).
[208] Penal Code § 1001.36.
[209] Penal Code § 1001.36(d). DUI offenses are also generally not eligible, unless the defendant has been found incompetent to stand trial. See *Persiani v. Superior Court of Orange County*, 100 Cal.App.5th 48 (2024).
[210] Penal Code § 1001.36(f)(1).
[211] *People v. Braden*, 14 Cal.5th 791, 819 (2023).
[212] Id. at 825 (Evans, J., dissenting).
[213] Id. at 837. The defendant in the case at issue had a schizophrenia diagnosis and had represented himself at trial and been convicted; as soon as counsel was appointed after trial, a request for mental health diversion was made.

include Superior Courts and probation departments, that do not typically share data for this type of study.

## 14. Require Enhanced Sealing of Misdemeanor Records

**Recommendation**
While automatic record relief and expungement provide relief from many civil penalties and disabilities as a result of a criminal conviction, the record is still visible to law enforcement and many professional and state licensing boards.

The Committee therefore recommends the following:

Grant enhanced sealing — thereby fully limiting access to records — of misdemeanor arrest and conviction records that have received automatic record relief, subject to some exceptions.

**Relevant Statutes and Authorities**
Penal Code §§ 851.93, 1203.425

**Background and Analysis**
A criminal record can have lasting and profound impacts on employment, professional licensing, immigration status, stable housing, and parental rights.[214] Limiting public access to certain criminal records after a person completes their sentence can increase employment and earnings and reduce recidivism.[215]

California does not have total expungement or sealing of arrest or conviction records except in limited circumstances for factual innocence,[216] arrests and convictions for marijuana possession,[217] and records for survivors of human trafficking who committed a crime as a direct result of being a victim.[218] For every other conviction, the state instead provides for record relief, which limits *public* disclosure of relieved records and, for those entities still able to access relieved records, requires notating the record that certain relief has been provided. In other words, record relief does not erase the actual record that a person had been convicted of a crime; it merely relieves the person from many civil penalties and disabilities as a result of the conviction.[219]

[214] Beth Hustedt, Kristin Bechtel, & Pamela Lattimore, *Understanding the Intent and Impact of State-Initiated Record Clearing Policies*, 22 Ohio State Journal of Criminal Law 219, 221 (2025).
[215] Id. at 222–223.
[216] Penal Code § 851.8.
[217] Health & Safety Code § 11361.5.
[218] Penal Code §§ 236.14, 236.15.
[219] *Adams v. County of Sacramento*, 235 Cal.App.3d 872, 877–878 (1991). See also *People v. E.B.*, 51 Cal. App. 5th 47, 57 (2020) ("It does not, in other words, act to nullify, annul, cancel, or make void a conviction.").

While California has taken significant steps to simplify the process of obtaining record relief — including automating the process in many cases — the underlying burdens of having a criminal record remain for certain professions even after automatic relief. For example, state and local government agencies may still see the original conviction and the arrest or conviction must be disclosed when a person applies for public office, a position as a peace officer, and certain state or professional licensing boards.

The Committee recommends building on this existing framework and making misdemeanor arrest and conviction records eligible for enhanced record sealing. The arrest or conviction itself should still be made available for a person or their authorized legal representative to retrieve their own record and sufficiently de-identified records should also be available for research purposes.

The framework should include the following:

- **Individuals may apply to a court immediately but relief would apply automatically following a waiting period.** Individual defendants may request enhanced sealing from a court at any time which would be granted at a court's discretion. For automatic sealing, the ceiling of the waiting period should be 5 years after automatic relief is granted. For requests related to employment or licensing with vulnerable populations — such as those listed in Penal Code sections 11105(k)-(o), such as foster care, child care, nursing homes, and law enforcement, and requests related to healthcare professions — the waiting period should be no more than 10 years after automatic relief.

- **Waiting period must be conviction-free.** A person must not receive any new criminal convictions, felony or misdemeanor, during the waiting period in order to receive enhanced sealing. The waiting period would restart in the event a person is convicted of a new offense during the waiting period.

- **Ineligible offenses.** Misdemeanor convictions that can be relied on later to enhance punishment — most prominently DUI and domestic violence offenses — should be exempted altogether from enhanced sealing. Enhanced sealing should also not affect the validity of any unexpired criminal protective orders, restitution orders, or firearms prohibitions.[220]

[220] Current law expressly states that automatic relief of a conviction does not affect a person's authorization to own or possess a firearm if they are otherwise prohibited. Penal Code § 1203.425(a)(4)(E).

- **Public safety objections.** As is the case with automatic record relief, prosecutors should be able to object to enhanced sealing of any record on public safety grounds.[221]

[221] Penal Code § 1203.425(b).

## 15. Update the Court Process for Criminal Record Relief

### A. Notify new recipients of automatic record relief

**Recommendation**
Almost 90% of adults who are convicted of criminal offenses in California every year are likely eligible to have their criminal record given automatic relief once the applicable waiting period has passed.[222] Yet recipients of relief are not notified by the California Department of Justice.

The Committee therefore recommends the following:

Require the Department of Justice to notify new recipients of automatic record relief via a telephone number collected at sentencing if the defendant chooses to disclose it.

**Relevant Statutes and Authorities**
Penal Code §§ 851.93, 1203.425

**Background and Analysis**
The California Department of Justice must identify eligible records and grant automatic relief for those eligible records on a monthly basis.[223] Once identified, the DOJ then adds a notation to each eligible arrest or conviction stating that relief has been granted pursuant to the relevant Penal Code section, either 851.93 (arrests) or 1203.425 (convictions), and then sends an electronic notification to the court that relief was granted.[224] The court then cannot disclose information about an arrest or conviction given relief, except to the person whose conviction or arrest was granted relief or a criminal justice agency.[225]

According to a report from California Policy Lab, almost 90% of Californians with criminal records are likely to benefit from automatic record relief, largely because most people with conviction records have misdemeanors.[226] In 2025, more than 752,000 old arrest records and more than 138,000 conviction records were automatically cleared.[227]

While this automation is important, affected individuals are not notified directly. A person can only know what has been automatically relieved by requesting

[222] Alissa Skog, et al., *Who Benefits from Automatic Record Relief in California?*, California Policy Lab, 4 (October 2024).
[223] Penal Code §§ 1203.425(a)(1)(A), 851.93(a)(1).
[224] Penal Code §§ 1203.425(a)(2)(B), 1203.425(a)(3)(A), 851.93(b)(2).
[225] Penal Code §§ 1203.425(a)(3)(A), 851.93(c).
[226] Alissa Skog, et al., *Who Benefits from Automatic Record Relief in California?*, California Policy Lab, 4 (October 2024).
[227] California Department of Justice, *AB 1076 Annual County Level Arrest and Conviction Relief Counts for 2025, and Percentage of Arrests Without Disposition Statistics* (July 2026).

their own criminal record from the California Department of Justice, which requires submitting LiveScan fingerprint images and a processing fee.[228] As a result, some people may continue to disclose criminal convictions or arrests that have in fact been relieved.

To remedy this lack of notification, people who are convicted of an offense that may be eligible for automatic record relief should have the option of providing contact information, including a cell phone number for text messages, to receive updates about automatic record relief. Courts are already required to inform people at sentencing about automatic record relief and this notification option would build on that process.[229]

### B. Require courts to explain the denial of a discretionary relief petition

**Recommendation**
For records that are not covered by automatic record relief, Penal Code section 1203.4 allows a court to grant relief at its discretion in the interests of justice; however, a court is not required to explain the basis of its denial, leaving people unable to take necessary action for a second, successful petition.

The Committee therefore recommends the following:

Require courts to state on the record why a petition for relief under Penal Code sections 1203.4 et seq is not in the interest of justice.

**Relevant Statutes and Authorities**
Penal Code §§ 1203.4, 1203.4a, 12034b, 1203.41

**Background and Analysis**
Almost all convictions are now eligible for relief at the court's discretion, including felonies with state prison sentences, but excluding felonies that resulted in a requirement to register as a sex offender.[230] Whether to grant the petition is left up to an individual judge's discretion and guided only by the "interests of justice."[231]

If a court grants relief the conviction is "dismissed" and replaced with a "not guilty" plea, allowing a person to legally state on most private-sector job applications that they were not convicted of a crime. It can also improve a person's chances of obtaining certain professional licenses because the licensing board may view the dismissal as evidence of rehabilitation. However, the relief

[228] California Department of Justice, Criminal Records – Request Your Own.
[229] Penal Code § 1203.425(c).
[230] Penal Code § 1203.41(a)(6). Arrests can be given relief by a separate petition process. See, e.g., Penal Code § 851.91 (arrests that did not result in a conviction).
[231] *People v. McLernon*, 174 Cal.App.4th 569, 573 (2009).

does not actually erase the conviction and it is still available for law enforcement — including for use as a prior conviction — and many professional licensing purposes.[232]

There is no statutory requirement for the court to explain why it is denying a petition for discretionary record relief. Yet a person is entitled to file more than one petition on a conviction[233] so they may continue to be denied for the same reason without knowing why, such as the judge wanting more evidence of rehabilitation or more time following the conviction. Requiring an explanation of why relief was not granted would allow people to take the rehabilitative steps necessary to obtain relief in the future.

[232] Penal Code § 1203.4(a)(1). This process is sometimes referred to as "expunging" a conviction, but this is an imprecise description. See, e.g., *People v. Guillen*, 218 Cal. App. 4th 975, 996 (2013).
[233] See *People v. Myers*, 2025 WL 3676918, Dec. 18, 2025 (because rehabilitation may take years to achieve, denying a petition with prejudice frustrates these legislative goals).

## 16. Increase CDCR Discretion Over the Alternative Custody Program

**Recommendation**
California's Alternative Custody Program (ACP) allows eligible incarcerated individuals to serve the final portion of their prison sentences in community settings under supervision. However, current law categorically excludes broad groups of people based on their current offense, registration requirements, or other eligibility criteria, without permitting CDCR to make individualized determinations of suitability in all cases.

The Committee therefore recommends the following:

Amend Penal Code section 1170.05 to remove or narrow categorical exclusions from the Alternative Custody Program and provide CDCR greater discretion to determine eligibility through individualized assessments of public safety risk and suitability for community placement.

**Relevant Statutes and Authorities**
Penal Code § 1170.05
California Code of Regulations, title 15, §§ 3078.1–3078.5

**Background and Analysis**
California's Alternative Custody Program (ACP) allows eligible people incarcerated in state prison to serve the final portion of their sentences in community settings, including private residences, transitional care facilities, and residential treatment programs.[234] Participants remain under CDCR jurisdiction and are subject to electronic monitoring and supervision.[235]

Penal Code section 1170.05 restricts ACP eligibility to people serving determinate sentences and excludes several categories of incarcerated people, including those with current serious or violent felony convictions, a current or prior conviction requiring sex offender registration, and those assessed as presenting a high risk of violent reoffending.[236] CDCR regulations establish additional eligibility requirements and exclusions based on factors such as institutional misconduct, custody classification, and recent placement in restricted housing.[237] Under CDCR's current application process, individuals must already be housed in a community reentry program, such as the Male Community Reentry Program (MCRP), before they can apply for ACP.[238]

[234] Penal Code § 1170.05(a)–(b); California Code of Regulations, title 15, § 3078.1(a)(1).
[235] Penal Code § 1170.05(b), (e); California Code of Regulations, title 15, §§ 3078.3–3078.4.
[236] Penal Code § 1170.05(c)–(d).
[237] California Code of Regulations, title 15, §§ 3078.2–3078.3.
[238] California Department of Corrections and Rehabilitation, *Alternative Custody Program*.

Although CDCR is authorized to conduct individual risk and needs assessments and has discretion to approve participation, these determinations occur only after the statutory eligibility requirements are satisfied.[239] As a result, some people are excluded from consideration based on their convictions or other categorical criteria, regardless of whether their current circumstances would support safe placement in the community.

The Committee recommends expanding eligibility by removing or narrowing categorical exclusions and allowing CDCR greater discretion to determine suitability through individualized assessments. Relevant considerations could include a person's current risk to public safety, institutional conduct, rehabilitation, medical or treatment needs, and the availability of appropriate community supervision and services.

Expanding eligibility would not guarantee placement in the program. CDCR would retain authority to deny participation when community placement would be inappropriate or present an unacceptable risk to public safety. The recommendation would instead allow more people to be considered for supervised community custody during the final portion of their sentences, while preserving individualized review and appropriate safeguards.

**Empirical Research**

California's aging prison population has increased the cost of incarceration, particularly for people with significant medical needs. A 2026 CDCR report found that people 60 and older accounted for 27% of correctional health care expenditures despite representing only 14% of the prison population.[240]

CDCR's most recent statewide recidivism report found that people released after serving sentences for violent felonies had substantially lower recidivism rates than those convicted of other offenses. The three-year reconviction rate was 24.2% for people convicted of violent felonies, compared with 41.2% for serious but nonviolent felonies, and 48.7% for non-serious, non-violent felonies.[241]

These findings suggest that categorical exclusions based on offense classifications may prevent some people who present a relatively low risk of reoffending from participating in the Alternative Custody Program. Expanding eligibility would allow CDCR to consider more individuals for supervised

[239] Penal Code § 1170.05; California Code of Regulations, title 15, §§ 3078.2–3078.5.
[240] California Department of Corrections and Rehabilitation, *Alternatives to Incarceration for Individuals Who Are Advanced in Age, Disabled, or Have Significant Medical Needs,* 3 (March 2026).
[241] California Department of Corrections and Rehabilitation, *Statewide Recidivism Report for Individuals Released from the California Department of Corrections and Rehabilitation in Fiscal Year 2020–21,* 23, 36 (June 2026).

community custody based on their current circumstances and public safety risk rather than excluding them solely because of their conviction history.

# Administrative Report

## Organization of the Committee

The Committee on Revision of the Penal Code was formed on January 1, 2020.[242]

The principal duties of the Committee are to make recommendations that:

1. Simplify and rationalize the substance of criminal law.
2. Simplify and rationalize criminal procedures.
3. Establish alternatives to incarceration that will aid in the rehabilitation of offenders.
4. Improve the system of parole and probation.[243]

For administrative and budgetary purposes, the Committee was located within the California Law Revision Commission. There is no substantive overlap in the work of the Committee and the Commission. By law, no person can serve on both the Commission and the Committee simultaneously.[244] Neither body has any authority over the substantive work of the other[245] and they each have different statutory duties.[246]

The Committee consists of up to 7 members. Five are appointed by the Governor for 4-year terms.[247] One is an assembly member selected by the Speaker of the Assembly and one is a senator selected by the Senate Committee on Rules.[248] The Governor selects the Committee's chair.[249]

The Committee is required to prepare an annual report for submission to the Governor and the Legislature.[250]

The Committee conducts its deliberations in public meetings, subject to the Bagley-Keene Open Meeting Act.[251] In 2026, it held 4 meetings. Meetings were conducted entirely by teleconference.[252]

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[242] Government Code § 8280(b).
[243] Government Code § 8290.5(a).
[244] See Government Code § 8281.5(d).
[245] Government Code § 8290(c).
[246] Compare Government Code §§ 8289, 8290 (duties of Commission) with Government Code § 8290.5 (duties of Committee).
[247] Government Code § 8281.5(a), (c).
[248] Government Code § 8281.5(a).
[249] Government Code § 8283.
[250] Government Code § 8293(b).
[251] Government Code § 11120–11132.
[252] Government Code § 1123.5

## Personnel of the Committee

At the time this report was approved, the following people were members of the Committee:

**Chair**
Michael Romano

**Legislative Members**
Senator Scott Wiener
Assemblymember Sade Elhawary

**Gubernatorial Appointees**

Hon. Peter Espinoza
Mary Kennedy
Priscilla Ocen
Heidi Rummel

The following people are on the Committee's legal staff:

Joy F. Haviland
*Senior Staff Counsel*

Thomas M. Nosewicz
*Legal Director*

Rick Owen
*Senior Staff Counsel*

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The following people from the California Policy Lab provided data analysis and research support for the Committee:

Mia Bird
Johanna Lacoe
Manny Prunty
Steven Raphael
Nefara Riesch
Alissa Skog
Thomas Sloan
Elle Yang

The following people are staff of the California Law Revision Commission who provide managerial and administrative support for the Committee:

Sharon Reilly
*Executive Director*

Sarah Huchel
*Chief Deputy Director*

Christie House
*Chief of Administrative Services*

Megan Hayenga
*Analyst II*

This report was designed by Taylor Le.

## Activities Planned for 2027

In 2027, the Committee expects to follow the same general deliberative process that it used in past years. It will hold regular public meetings and will identify, debate, and develop recommendations for policies that improve public safety, make a better system for crime victims, reduce unnecessary incarceration, and address racial disparities.

The Committee will also continue its work to establish a secure compendium of empirical data from various sources in California. That data will be used by the Committee as a tool in evaluating the need for and effect of possible reforms.

## Acknowledgements

Many individuals and organizations participated in Committee meetings in 2026, shared their expertise with staff, made public comment, or otherwise contributed towards this report. The Committee is deeply grateful for their assistance. Panelists who presented to the Committee are listed below. Inclusion of an individual or organization in this list does not indicate that person's or their organization's view on the Committee's recommendations.

## Panelists and Presenters

(in alphabetical order)

Judge Richard Couzens (Ret.)

Salil Dudani
*Civil Rights Corps*

Dr. Muhammad Farooq
*Chief Medical Executive, California Institution for Men*

Stephanie Brooks Holliday
*RAND Corporation*

Hon. Brooke Jenkins
*District Attorney of San Francisco County*

Johanna Lacoe
*California Policy Lab*

Mary Lundeen
*Office of the Inspector General*

Orlando Sanchez Zavala
*Legislative Analyst's Office*

Hon. Nick Schultz
*Assemblymember; Chair of Assembly Public Safety Committee*

Alissa Skog
*California Policy Lab*

David Slayton
*Court Executive Officer, Superior Court of Los Angeles County*

Dr. Grace Song
*California Correctional Health Care Services*

Judge Sergio C. Tapia II
*Presiding Judge, Superior Court of Los Angeles County*

Vanessa Thompson
*ideas42*

Amber Williams
*Janus of Santa Cruz*

Scott Wyckoff
*Board of Parole Hearings*

## Other Support

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# Appendix: Biographies of 2026 Committee Members

Michael Romano, of San Francisco, serves as chair of the Committee on Revision of the Penal Code. Romano teaches criminal justice policy and practice at Stanford Law School and has been director of the Stanford Three Strikes Project since 2007. Romano has collaborated with numerous local, state, and federal agencies, including the United States Department of Justice and Office of White House Counsel under President Obama. He has also served as counsel for the NAACP Legal Defense and Educational Fund and other civil rights organizations. Romano was a law clerk for the Honorable Richard Tallman at the United States Court of Appeals for the Ninth Circuit from 2003 to 2004 and a legal researcher for the Innocence Project from 2000 to 2001. He earned a juris doctor degree with honors from Stanford Law School and a master of laws degree from Yale Law School.

Assemblymember Sade Elhawary, of Los Angeles, represents the 57th Assembly District, including the communities of Exposition Park, South Los Angeles, and Downtown Los Angeles. At Community Coalition for over 12 years, Elhawary was mentored by Mayor Karen Bass and City Council President Marqueece Harris-Dawson and served as a youth organizer recruiting and developing future leaders of the social justice movement. Assemblymember Elhawary holds a bachelor's degree from UCLA and a master's from Harvard Graduate School of Education.

Peter Espinoza, of Los Angeles, served as director of the Office of Diversion and Reentry at the Los Angeles County Department of Health Services from 2016 to 2021. He served as a commissioner and judge at the Los Angeles County Superior Court from 1990 to 2016. Espinoza was an attorney at Peter Espinoza Attorney at Law from 1984 to 1990. Espinoza was a deputy public defender at the Orange County Public Defender's Office from 1981 to 1983. He earned a juris doctor degree from the University of California, Los Angeles, School of Law.

Mary Kennedy, of Sacramento, was Chief Counsel for the California State Senate Committee on Public Safety from 2017 to 2024, where she was previously Counsel from 1996 to 2017. She earned a Juris Doctor degree from the University of the Pacific McGeorge School of Law and a Bachelor of Arts degree in Mass Communications from Saint Mary's College, Notre Dame.

Priscilla Ocen, of Los Angeles, is a Professor of Law at Loyola Law School, where she teaches criminal law, family law, and a seminar on race, gender and the law. Ocen received the inaugural PEN America Writing for Justice Literary Fellowship and served as a 2019–2020 Fulbright Fellow, based out of Makerere University School of Law in Kampala, Uganda, where she studied the relationship between gender-based violence and women's incarceration. Ocen recently served as a

Special Assistant Attorney General for the California Department of Justice and advised Attorney General Rob Bonta on issues related to criminal justice reform. She was also a member and former Chair of the Los Angeles Sheriff's Oversight Commission. She earned a juris doctor degree from the University of California Los Angeles, School of Law.

Heidi Rummel, of Los Angeles, is Clinical Professor of Law and Director, Post-Conviction Justice Project, at USC Gould School of Law. Under her supervision, second and third-year law students represent clients serving life terms in California prisons, many of whom were sentenced for crimes they committed in their youth. The Project has won the release of close to 200 clients through the parole process, on habeas corpus challenging the denial of parole, on resentencing petitions, and on habeas corpus challenging murder convictions where expert testimony of intimate partner violence was not admitted at trial. Prior to joining the USC Gould School of Law faculty, Rummel served in the United States Attorney's Office in Los Angeles from 1996–2005 prosecuting federal criminal civil rights offenses, including human trafficking, police misconduct, and hate crimes. She also prosecuted gang crimes, arson cases, and child pornography offenses, and served as deputy chief in the General Crimes Section. Previously, Rummel was an Assistant United States Attorney for the District of Columbia, where she handled state court prosecutions and appellate matters. She clerked for the Honorable Thomas Penfield Jackson of the United States District Court for the District of Columbia. Rummel holds a BA from the University of North Carolina at Chapel Hill with highest honors and a JD from the University of Chicago with honors.

Senator Scott Wiener, of San Francisco, has been a member of the Senate since 2016. Before his election to the Senate, Senator Wiener served on the San Francisco Board of Supervisors. Before his election to the Board of Supervisors, Senator Wiener spent fifteen years practicing law: as a Deputy City Attorney in the San Francisco City Attorney's Office, in private practice at Heller Ehrman White & McAuliffe, and as a law clerk for Justice Alan Handler on the New Jersey Supreme Court. He received a bachelor's degree from Duke University and a law degree from Harvard Law School.