

ANNUAL REPORT AND RECOMMENDATIONS

Committee on Revision of the Penal Code



2023

- 03 Executive Summary
- 04 Introduction
- 06 Prefatory Notes
- 64 Administrative Report
- 71 Appendix

RECOMMENDATIONS

- 12 Support Law Enforcement Assisted Diversion (LEAD)
- 17 Improve Data Access for the Racial Justice Act
- 22 Create General Resentencing Procedures
- 27 Apply the “Nickel Prior” Reform Retroactively
- 31 Expand Second-Look Resentencing
- 36 Clarify That SB 81’s Updates to Penal Code § 1385 Apply to Strikes
- 39 Focus Welfare Fraud Prosecutions on the Most Serious Cases
- 47 Reduce the Scope of Criminal Fines and Fees
- 52 Lessen Unfair Pressure to Plead Guilty
- 58 Require or Incentivize Counties to Safely Reduce Short Prison Stays

Table of Contents

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 make recommendations that would simplify and rationalize the law. The Committee's goals remain finding ways to improve public safety, reduce unnecessary incarceration, improve equity, and address racial disparities in the criminal legal system.

This is the Committee's fourth Annual Report fulfilling its mandate. The 10 recommendations in this Report are unanimously recommended by the Committee and include support and statutory guidance for Law Enforcement Assisted Diversion, creating more efficient resentencing procedures, and increasing data access to allow resolution of claims under California's landmark Racial Justice Act.

This Report also updates an ongoing project from the Committee of cataloging offenses that have not resulted in an arrest or conviction, which the Legislature can use to delete obsolete or unneeded sections from California law.

The Committee's recommendations are based on testimony from more than 40 witnesses, public comment, thorough staff research, and deliberations of Committee members over the course of 4 public meetings. The recommendations are supported by legal analysis, empirical research, experience from other jurisdictions, and data provided to the Committee by the California Department of Corrections and Rehabilitation and the California Department of Justice and analyzed by the California Policy Lab.

As described in detail below, the recommendations are:

1. Support Law Enforcement Assisted Diversion (LEAD)
2. Improve Data Access for the Racial Justice Act
3. Create General Resentencing Procedures
4. Apply the "Nickel Prior" Reform Retroactively
5. Expand Second-Look Resentencing
6. Clarify That SB 81's Updates to Penal Code § 1385 Apply to Strikes
7. Focus Welfare Fraud Prosecutions on the Most Serious Cases
8. Reduce the Scope of Criminal Fines and Add-On Charges
9. Lessen Unfair Pressure to Plead Guilty
10. Require or Incentivize Counties to Safely Reduce Short Prison Stays

Introduction

The Penal Code Committee was created to improve California’s criminal legal system by recommending reforms that simplify and rationalize substantive law and procedure while improving equity and public safety. Numerous recommendations by the Committee have become law in 16 bills passed by the Legislature and signed by the Governor, including 4 bills this year.

In 2023, over the course of four public meetings, the Committee focused on the effects of recent reforms, including resentencings, reducing court-ordered debt, and the initial implementation of the Racial Justice Act. The Committee also considered prosecutorial discretion, from the reality that the vast majority of convictions are obtained through guilty pleas to how welfare fraud is treated differently county to county.

The Committee heard from more than 40 witnesses about the current system in practice and the latest empirical research on how it is functioning.

Chief Assistant District Attorney Michael Fermin of San Bernardino County explained that the Racial Justice Act helps ensure that justice is done for both defendants and victims but that fundamental questions about access to data for such claims remain unresolved.¹ Anita Lee, Principal Fiscal and Policy Analyst for the California Legislative Analyst’s Office, told the Committee that despite the great progress the state has recently made in eliminating criminal fines and fees, the entire structure of the system still needs to be revised to better align with the state’s criminal justice goals.² Francine Byrne, Director of Criminal Justice Services for the Judicial Council of California, presented research showing that recent reforms requiring judges to consider a person’s ability-to-pay before imposing traffic fines increased both equity and revenue.³

The Committee also heard testimony about promising new approaches being used across the country and in California that improve public safety while reducing incarceration and convictions. One program, Law Enforcement Assisted Diversion (LEAD), was praised by law enforcement officials to the Committee. Captain Geoffrey Deedrick of the Los Angeles County Sheriff’s Department noted that this program – where police officers connect people to high-quality services instead of bringing them to jail – had tremendous support amongst law enforcement in Los Angeles but needed further resources to expand.⁴ And Long Beach City Prosecutor Doug Haubert said that LEAD is an essential component in an ecosystem of diversion programs that reduce the impact of the criminal legal system.⁵ Dr. Jennifer Doleac, Executive Vice President of Criminal Justice at Arnold Ventures, also presented compelling research that not prosecuting lower-level offenses reduced future offending of those not prosecuted.⁶ Alex Chohlas-Wood, Executive Director of the Computational Policy Lab, shared research showing the inefficiency of current arrest and charging procedures that result in many people arrested in California spending between 1 and 3 days in jail only to never be charged with a crime.⁷

The Committee also considered the discrete crime of welfare fraud. The majority of people prosecuted for this offense are women of color, almost all of whom are struggling financially. Andrea Brayboy, Chief of the California Department of Social Services CalFresh and Nutrition Branch, explained the extremely complex system for

1 Committee on Revision of the Penal Code meeting on March 17, 2023, Part 1 of 3, 1:15:17–1:18:20.

2 Committee on Revision of the Penal Code meeting on June 23, 2023, Part 3 of 4, 0:01:21–0:09:54.

3 *Id.* at 0:13:00–0:21:00.

4 Committee on Revision of the Penal Code meeting on June 23, 2023, Part 1 of 4, 0:25:06–0:27:49.

5 *Id.* at 0:38:53–0:39:30.

6 Committee on Revision of the Penal Code meeting on October 2, 2023, Part 1 of 4, 0:32:20–0:37:21.

7 *Id.* at 0:26:13–0:32:00.

receiving benefits and noted that the current threshold for charging someone with felony welfare fraud can be just one month of benefits for some families.⁸

In addition to the witnesses that testified during public meetings, Committee staff also consulted with dozens of other stakeholders, practitioners, and directly impacted people from across the state.

The Committee's research and analysis of California's criminal legal system continues to be relied on by courts⁹ and has been cited by other state bodies, including the Reparations Task Force – which recommended repealing the Three Strikes law and prohibiting pretextual traffic stops, both of which the Committee has also previously recommended.¹⁰ Committee staff also testified regularly before the Legislature, providing technical expertise for bills based on Committee recommendations and for other issues, including addressing fentanyl-related offenses.

Though the Committee has contributed to significant reforms in its four years of existence, there is much more work to be done to make our criminal system more rational, safe, and effective for incarcerated people, crime victims, and the public. High incarceration rates and alarming racial disparities continue to plague our system.¹¹ While the state's jail population dropped significantly during the COVID-19 pandemic, the number of people with mental health needs has continued to increase, and now represents more than half of those in jail.¹² In addition, the state continues to grapple with needed changes to its pretrial systems: three courts have found unconstitutional existing law that authorizes detention after arrest based on how much money someone has¹³ and Los Angeles County recently implemented a major change to its bail system with the goal of better protecting public safety.¹⁴

The Committee will continue its mission of thoroughly examining California's criminal laws and using data and direct experience from practitioners, impacted people, crime victims, and others to enhance public safety while reducing unnecessary incarceration and improving racial equity. The recommendations in this report are important strides towards those objectives.

⁸ Committee on Revision of the Penal Code meeting on June 23, 2023, Part 2 of 4, 0:07:01–0:11:40, 1:10:35–1:11:23.

⁹ See, e.g., *People v. Doron*, 95 Cal.App.5th 1, 8 (2023) (explaining that the amended mental health diversion law broadened eligibility criteria based on the Committee's recommendation); *People v. Hardin*, 84 Cal.App.5th 273, 290 (2022) (discussing the Committee's research on special circumstances); *People v. Butler*, 2022 WL 892009, (Cal. Ct. App. March 25, 2022) (discussing the Committee's recommendation on recall and resentencing procedures).

¹⁰ California Task Force to Study and Develop Reparation Proposals for African Americans, *The California Reparations Report*, 752, 754 (June 2023).

¹¹ See Mia Bird et al., *Sentence Enhancements in California*, California Policy Lab, 31–37 (March 2023) (finding that Black and Hispanic people have a higher likelihood of serving a sentencing enhancement); Daniel Trautfield et al., *Life Without Parole and Felony Murder: Sentencing in California*, UCLA Center for the Study of Women, 8 (July 2023) (finding that while Black people account for 5% of California's population, they account for 37% and 43% of people sentenced to life without parole and convicted of felony murder, respectively); Heather Harris and Thomas Sloan, *Pandemic Policymaking and Changed Outcomes in Criminal Courts*, Public Policy Institute of California, 14 (April 2023) (finding that racial inequity in conviction and sentencing outcomes predated the pandemic and persisted amid it).

¹² Magnus Lofstrom and Brandon Martin, *County Jails House Fewer Inmates, but Over Half Face Mental Health Issues*, Public Policy Institute of California, October 25, 2023.

¹³ 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; *Urquidí v. City of Los Angeles*, Los Angeles Superior Court, Case No. 22STCP04044 (May 16, 2023 order).

¹⁴ Superior Court of California, County of Los Angeles, *2023 Felony Bail Schedule*, October 18, 2023.

Prefatory Notes

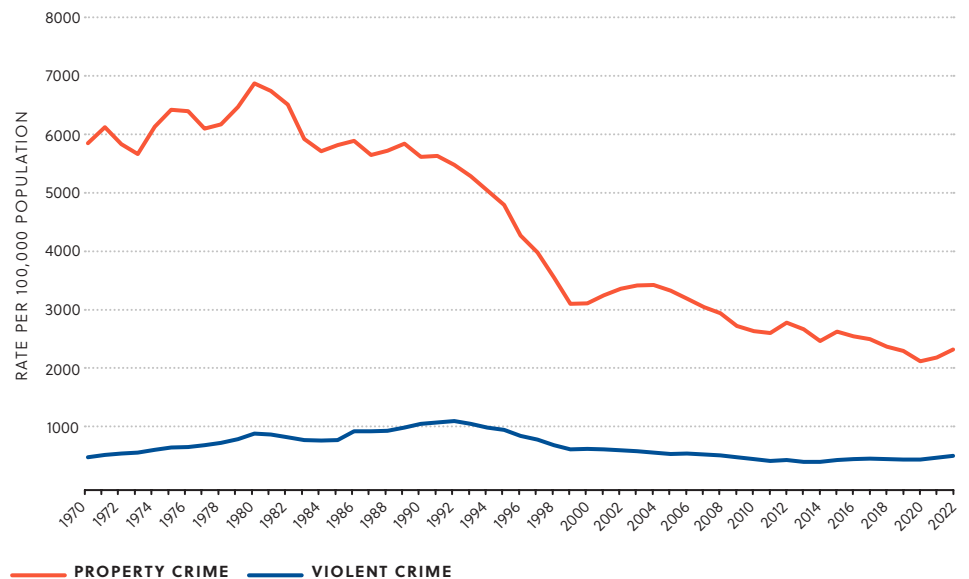
CRIME AND CLEARANCE RATES

As it has in previous Reports, the Committee presents the most recently available information about crime rates in California. Statewide crime data is not made publicly available until the summer following the relevant year. Data from 2022 in California shows the following:

- The overall violent crime rate increased by 6% compared to 2021. Violent crime consists of homicide, aggravated assault, robbery, and rape.
- The overall property crime rate increased by 6% compared to 2021. Property crime consists of burglary, car theft, and all other thefts.
- The statewide homicide rate decreased by 5% after increasing significantly during the first two years of the COVID-19 pandemic.¹⁵

Despite recent increases in some categories of offenses, crime rates across California continue to be at record lows. In 2022, California’s violent crime rate was 55% less than the peak violent crime rate recorded in 1992, and the property crime rate was 66% less than the peak rate from 1980.¹⁶

CALIFORNIA CRIME RATES (1970–2022)



Source: California Department of Justice, *Crime in California 2022*, Table 1.

¹⁵ California Department of Justice, *Crime in California 2022*, Table 1.
¹⁶ *Id.* These calculations have been updated from this Report’s original release on December 19, 2023. In the original release, the decrease from the peak rates was incorrectly calculated and overstated the decline in crime rates for both violent and property crime.

While the overall crime rate rose in 2022 compared to 2021, available data for 2023 shows promising signs. According to data from the Major Cities Chiefs Association, violent crime appears to be trending downward, with data through September from eight of the largest jurisdictions in California showing an overall 3% decrease in violent crime – including a 16% decrease in homicides – compared to the same period in 2022. (The Major Cities Chiefs Association does not report on property crime.)

YEAR TO-DATE VIOLENT CRIME STATISTICS FOR JANUARY – SEPTEMBER, 2023 VS. 2022

| Agency | All violent crime | Homicides | Homicide percent change | Rapes | Rape percent change | Robberies | Robbery percent change | Aggravated assaults | Aggravated assault percent change |
|-------------------------|-------------------|-----------|-------------------------|-------|---------------------|-----------|------------------------|---------------------|-----------------------------------|
| Fresno PD | -8.54% | -19 | -41.30% | +8 | +3.05% | -69 | -8.98% | -135 | -9.36% |
| Long Beach PD | +22.88% | -13 | -43.33% | +22 | +13.17% | -2 | -0.31% | +448 | +38.96% |
| Los Angeles PD | -5.65% | -66 | -21.29% | -131 | -8.28% | -677 | -9.53% | -517 | -3.31% |
| Los Angeles Sheriff | -5.81% | 0 | 0.00% | -27 | -4.23% | -109 | -3.62% | -557 | -6.85% |
| Oakland PD | +21.90% | +1 | +1.04% | +1 | +0.70% | +724 | +34.57% | +316 | +13.04% |
| Sacramento PD | -18.16% | -18 | -40.00% | -63 | -40.13% | -59 | -6.19% | -519 | -20.99% |
| San Diego PD | -1.69% | -4 | -10.00% | -49 | -12.50% | -89 | -9.11% | +64 | +2.00% |
| San Francisco PD | -7.09% | 0 | 0.00% | -120 | -46.69% | +127 | +7.08% | -297 | -14.86% |
| CA cities combined | -3.15% | -119 | -15.80% | -359 | -9.97% | -154 | -0.89% | -1197 | -3.28% |
| LA County jurisdictions | -4.23% | -79 | -16.26% | -136 | -5.70% | -788 | -7.32% | -626 | -2.51% |
| Non-CA cities | -3.85% | -590 | -10.06% | -1343 | -7.11% | -1844 | -2.99% | -6521 | -3.60% |

Source: Calculations based on Major Cities Chiefs Association, *Violent Crime Survey – National Totals, Comparison, January 1 to September 30, 2023, and 2022*, November 5, 2023. San Jose excluded from analysis because it did not report data past June 2023. LA County jurisdictions are Long Beach PD, Los Angeles PD, and Los Angeles Sheriff's Department. Non-CA cities are the 60 non-California U.S. cities included in the Major Cities Chiefs Association survey.

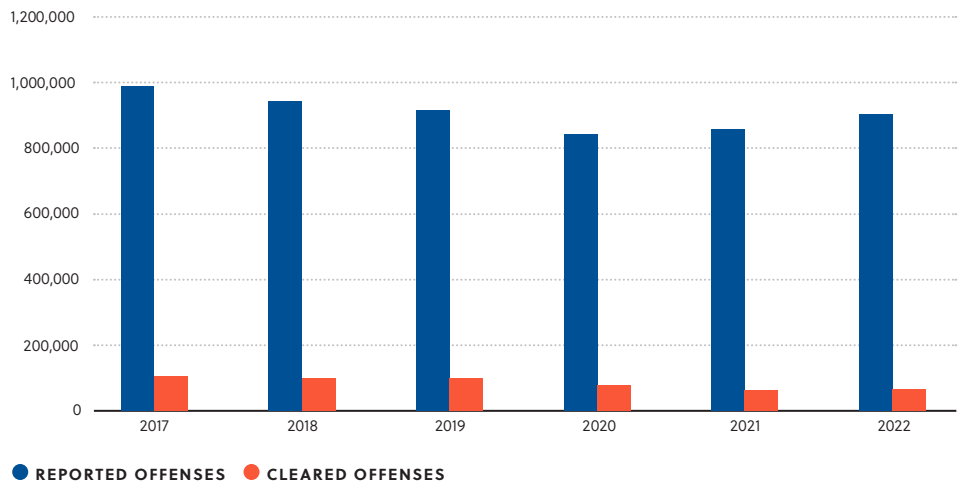
Finally, while these statistics are important, they do not present a full picture of crime rates. Nationwide, most crime is unreported.¹⁷ And the violent and property crime rates reported by the California Department of Justice leave a lot out, including simple assault crimes, other sex offenses, most white-collar offenses, drug crimes, and other economic crimes such as wage theft.¹⁸

¹⁷ Alexandra Thompson and Susannah N. Tapp, *Criminal Victimization*, 2022, U.S. Department of Justice, Bureau of Justice Statistics, Table 4 (September 2023).

¹⁸ See, e.g., Sandhya Dirks, *Rising Crime Statistics Are Not All That They Seem*, National Public Radio, November 3, 2022.

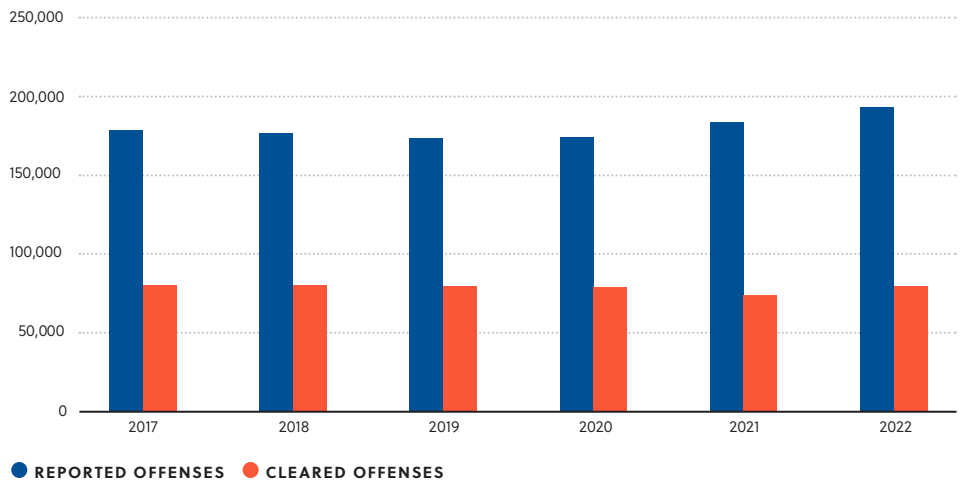
And in California, the clearance rate – the rate at which law enforcement arrests a perpetrator – was 41% for violent offenses and 7% for property crimes.¹⁹

CALIFORNIA PROPERTY CRIME AND CLEARANCES (2017–2022)



Source: California Department of Justice, *Crime in California 2022*, Table 15.

CALIFORNIA VIOLENT CRIME AND CLEARANCES (2017–2022)



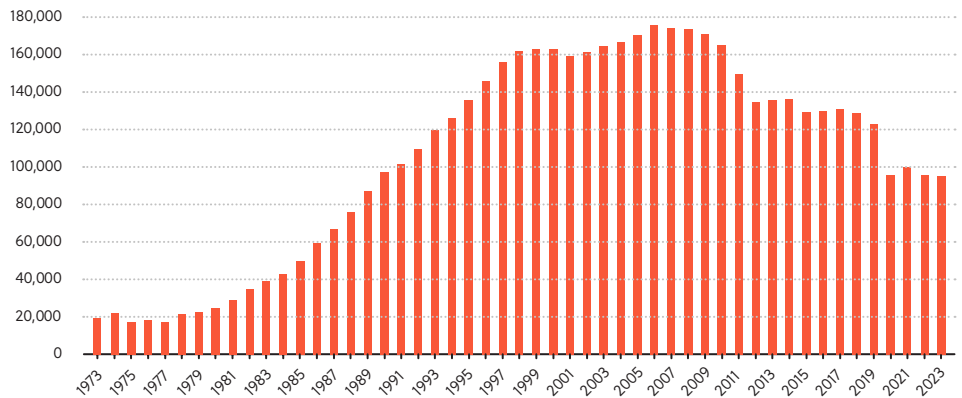
Source: California Department of Justice, *Crime in California 2022*, Table 15.

¹⁹ California Department of Justice, *Crime in California 2022*, Table 15.

INCARCERATION TRENDS

California’s prison population is currently around 95,000 people, the lowest level since 1990.²⁰ As the Committee explored in research with the California Policy Lab, the percentage decrease in the prison population caused by the COVID-19 pandemic – which required state prisons to stop accepting new admissions for a period of time, among other policy responses – was greater than that caused by other significant reforms, including Public Safety Realignment in 2011, which specified county jail instead of state prison as the punishment for many lower-level felony offenses, and Proposition 47, which reclassified some common felony offenses as misdemeanors.²¹

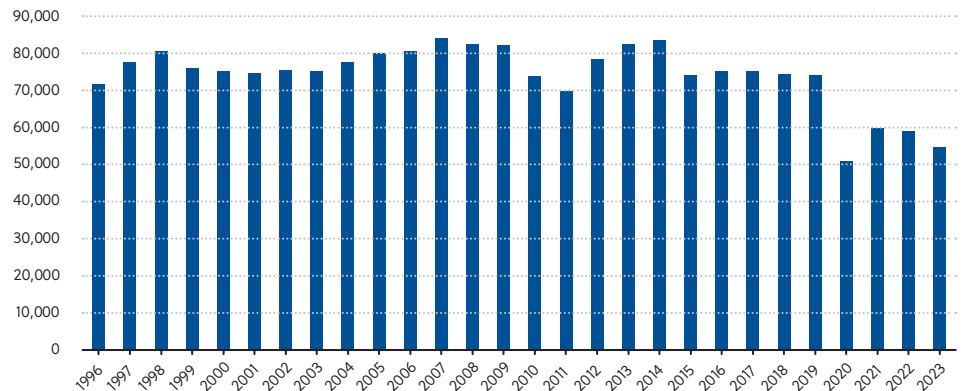
CALIFORNIA PRISON POPULATION (1973–2023)



Source: Patrick A. Langan, et al., *Historical Statistics on Prisoners in State and Federal Institutions Yearend 1925–1986*, Bureau of Justice Statistics (May 1988); Bureau of Justice Statistics, *Corrections Statistical Analysis Tool (CSAT) - Prisoners (for 1978–2019)*; CDCR, *Weekly Report of Population, As of Midnight, December 31, 2020 and 2021, and November 22, 2023*.

California’s jail population is also lower than it was before the COVID-19 pandemic. Though the population has increased since a dramatic decrease early in the pandemic, it is still 25% lower than it was before the pandemic and is around 54,000 people.²²

CALIFORNIA JAIL POPULATION (1996–2023)



Source: California Jail Profile Survey. Data is average daily population at June of each year.

20 Bureau of Justice Statistics, *Corrections Statistical Analysis Tool (CSAT) - Prisoners (for 1978–2019)*; CDCR, *Weekly Report of Population, As of Midnight, December 6, 2023*.

21 Molly Pickard, Nefara Riesch, and Alissa Skog, *COVID-19 and Incarceration: A California Overview*, California Policy Lab (April 2023)

22 Board of State and Community Correction, *Jail Profile Surveys*. California’s jails had an average daily population in February 2020 of 72,387; in June 2023 it was 54,573.

LEGISLATIVE UPDATE

In 2023, 4 bills passed by the Legislature and signed by the Governor implemented recommendations originated or supported by the Committee in previous reports.

| BILL | TOPIC |
|---|--|
| AB 600 (Ting) | Judicial power to resentence if law has changed |
| AB 60 (Bryan) | Notice of restorative justice programs |
| Budget Act of 2023, SB 101, 5225-019-0001 | Led by Senator Skinner, \$40 million for CDCR's existing reentry "MCRP" programs |
| AB 1266 (Hart) | Judicial impoundment of licenses |

UNUSED OFFENSES

Last year, the Committee asked the California Policy Lab to research which non-wobbler felony offenses in the Penal Code have not resulted in either an arrest, conviction, or an arrest-but-no-conviction over periods of 3, 5, and 10 years. The results of that research showed that almost 30% of the relevant offenses – 88 of 299 – had not been the basis of a conviction in the 5 year period ending in 2021.

This year, analysis focused on felonies outside of the Penal Code that were not “wobblers” (offenses that can be charged as a felony or misdemeanor). In this group of offenses, 50% – 114 of 228 – have not resulted in a conviction in the 5 years between 2017 and 2021. The full list of offenses and methodology are in Appendix B.

As the Committee recommended last year, the Legislature should consider whether it may be appropriate to repeal any of the offenses listed here because they are obsolete or rendered unnecessary by other statutes. Some of these offenses, such as mutilating human remains,²³ may be appropriate to retain, but others, such as transporting kitchen grease without valid registration with a prior conviction for the same,²⁴ may be suitable for removal with little effect on the administration of justice and public safety.

Future analysis will focus on additional offenses, including wobblers and misdemeanors, as well as offenses that are used infrequently or only in certain counties.

| UNUSED FELONY OFFENSES OUTSIDE OF THE PENAL CODE | | | |
|--|-----------|---------------------------|---------------|
| | No arrest | Arrest without conviction | No conviction |
| 10 years (2012–2021) | 34% | 9% | 38% |
| 5 years (2017–2021) | 34% | 18% | 50% |
| 3 years (2019–2021) | 34% | 27% | 61% |

²³ Health & Safety Code § 7052.

²⁴ Vehicle Code §§ 2470 & 2478(b).

DATA COLLECTION AND ANALYSIS

Since its inception, the Committee has prioritized the use of empirical research and data to inform its recommendations. The Legislature vested special authority in the Committee to receive data from state and local agencies.²⁵

For the past 4 years, the Committee has been compiling one of the largest collections of criminal legal system administrative data in the country, and this Report relies on the latest data provided by the California Department of Corrections and Rehabilitation and the California Department of Justice.

Data collected by the Committee was analyzed with the help of the California Policy Lab, a policy-focused research lab at the University of California, Berkeley, and the University of California, Los Angeles.²⁶

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

- *Three Strikes in California* (March 2023)
- *COVID-19 and Incarceration: A California Overview* (April 2023)
- *Racial and Gender Disparities in Police Stops: What Does the 2021 Racial Identity and Profiling Act Data Tell Us?* (May 2023)
- *Felony Offenses and Sentencing Triads in California* (October 2023)

LANGUAGE AND TERMINOLOGY USED THROUGHOUT THIS REPORT

As in previous reports, this Report avoids using the term “inmate,” “prisoner,” or “offender.” Instead, the report uses “incarcerated person” and similar “person-first” language. Other official bodies have made similar choices about language,²⁷ and the Committee encourages stakeholders – including those drafting legislation – to consider doing the same.

²⁵ Government Code §§ 8286, 8286.5.

²⁶ Note that the analysis in this report of Automated Criminal History System (ACHS) data from the Department of Justice may differ from local records because it is based on what is reported to the California DOJ, not the information maintained by local agencies.

²⁷ See, e.g., Alexandra Cox, *The Language of Incarceration*, *Incarceration*, 1(1), 3–4 (July 2020); Nancy G. LaVigne, *People First: Changing the Way We Talk About Those Touched by the Criminal Justice System*, Urban Institute, April 4, 2016; John E. Wetzl, *Pennsylvania Dept. of Corrections to Discard Terms ‘Offender,’ ‘Felon’ in Describing Ex-prisoners*, *Washington Post*, May 26, 2016; Karol Mason, *Guest Post: Justice Dept. Agency to Alter Its Terminology for Released Convicts, to Ease Reentry*, *Washington Post*, May 4, 2016; Morgan Godwin and Charlotte West, *The Words Journalists Use Often Reduce Humans to the Crimes They Commit. But That’s Changing*, *Poynter*, January 4, 2021.

| | |
|-----------------------------------|----|
| Recommendation | 13 |
| Relevant Statutes | 13 |
| Background and Analysis | 13 |
| Empirical Research | 15 |
| Insights from Other Jurisdictions | 16 |

1. Support Law Enforcement Assisted Diversion (LEAD)

Support Law Enforcement Assisted Diversion (LEAD)

RECOMMENDATION

With LEAD, instead of jail, police officers take people directly to community-based service providers who deliver continuing care based on the person's specific needs. LEAD pilot projects in San Francisco and Los Angeles demonstrated that LEAD significantly reduces recidivism among participants. But state funding has expired and the COVID-19 pandemic may have also stalled momentum for the development of LEAD programs in additional cities.

The Committee therefore recommends the following:

1. Re-establish LEAD pilot programs with the following specifications:
 - Eligible offenses include those in the original LEAD pilot (drug possession, subsistence sales, and prostitution), *and* offenses related to theft, burglary, and trespassing.
 - Allow counties to further expand the list of eligible offenses.
2. Update Penal Code § 849 to encourage police officers in all jurisdictions (even those without LEAD programs) to release people arrested for low-level offenses to community-based supportive services in lieu of jail booking and referral to prosecution.

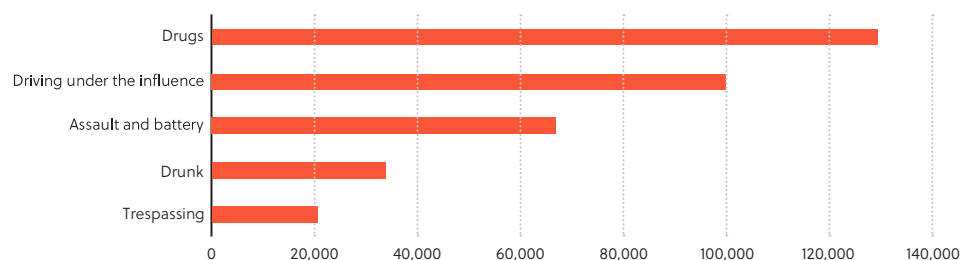
RELEVANT STATUTES

Penal Code §§ 849, 1001.85–1001.88.

BACKGROUND AND ANALYSIS

Low-level offenses dominate California's criminal legal system – 88% of current arrests are for misdemeanors and nonviolent felonies.²⁸ Arrests for drug-related offenses continue to make up a large portion of all arrests even after Proposition 47 reduced the penalty for drug possession.²⁹ Many arrests are of the same people who frequently come into contact with police for issues related to homelessness, mental illness, or substance abuse.

MOST FREQUENT ADULT MISDEMEANOR ARRESTS (2022)

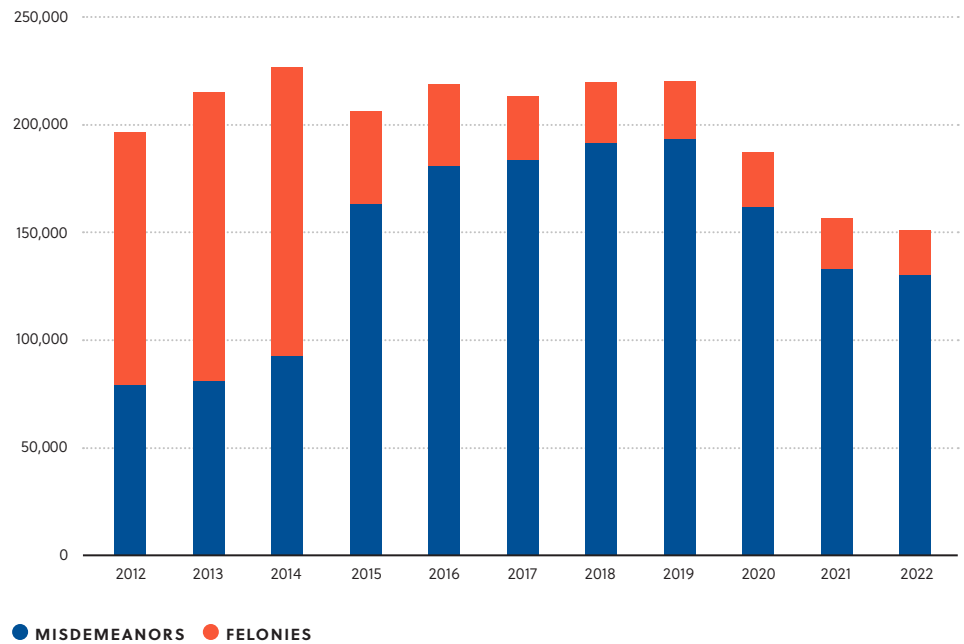


²⁸ California Department of Justice, *Crime in California 2022*, Tables 30 & 31.

²⁹ California Department of Justice, *Crime in California 2016*, Tables 19 & 25; California Department of Justice, *Crime in California 2022*, Tables 19 & 25.

Source: California Department of Justice, *Crime in California 2022*, Table 28.

ARRESTS FOR DRUG OFFENSES (2012–2022)



Source: California Department of Justice, *Crime in California 2016 & 2022*, Tables 19 & 25. Includes adult and juvenile arrests.

A unique approach first developed in Seattle – Law Enforcement Assisted Diversion (LEAD) – has shown that connecting this group of people with supportive services is better for public safety than the traditional jail booking and prosecution process.

In 2016, California established the LEAD Pilot Program which allotted \$15 million in funding over 2.5 years.³⁰ San Francisco and Los Angeles received funding, most of which was for housing, case management, and other health services for LEAD participants.³¹ In each county, the pilots proved successful in reducing future arrests of people who received LEAD intervention compared to similar people who were arrested and brought to jail.³²

Dr. Aili Malm of California State University Long Beach helped evaluate the pilot projects for the Legislature and told the Committee that the LEAD pilot programs were extremely effective, but also faced significant barriers, including lack of police officer enthusiasm, and disruption from the COVID-19 pandemic.³³

While momentum may have stalled LEAD in some places, Los Angeles County has expanded its program to serve more people. Los Angeles County Sheriff's Department Captain Geoffrey Deedrick, who supervised the implementation of LEAD in his department, told the Committee that LEAD enhanced community safety by putting frequently-arrested people on a path to success.³⁴ Long Beach City Prosecutor Doug Haubert – who is responsible for prosecuting all misdemeanors in the city of Long Beach – told the Committee that his office is working on making LEAD operational in all of Long Beach instead of focusing on a specific area.³⁵

30 Penal Code §§ 1001.85–1001.88.

31 Aili Malm, Dina Perrone, and Erica Magaña, *Law Enforcement Assisted Diversion (LEAD) External Evaluation Report to the California State Legislature*, 119, Table 7-3 (January 2020). See also Aili Malm and Dina Perrone, *Law Enforcement Assisted Diversion (LEAD) External Evaluation Report to the California State Legislature – 2020 Addendum*, 15, Table 2-3 (January 2021).

32 Aili Malm, Dina Perrone, and Erica Magaña, *Law Enforcement Assisted Diversion (LEAD) External Evaluation Report to the California State Legislature*, 14, 55 (January 2020). See also Aili Malm and Dina Perrone, *Law Enforcement Assisted Diversion (LEAD) External Evaluation Report to the California State Legislature – 2020 Addendum*, 13–14 (January 2021).

33 Committee on Revision of the Penal Code meeting on June 23, 2023, Part 1 of 4, 0:04:35–0:11:38.

34 *Id.* at 0:25:06–0:26:11.

35 *Id.* at 0:40:30–0:40:56. The initial LEAD pilot was limited to North Long Beach.

While the LEAD program in San Francisco was terminated after the completion of the pilot, San Francisco Chief of Police Bill Scott has recently said he wants to reintroduce the program to help address the city's drug problem.³⁶

The original LEAD pilot was targeted at low-level offenses, particularly those related to drugs and prostitution, and the only felony eligible for LEAD was subsistence drug sales.³⁷ Other low-level felonies such as burglary and theft were not eligible, nor were many common misdemeanors like theft and trespassing.³⁸ Erica Shehane, Los Angeles County Office of Diversion and Reentry Director for LEAD, told the Committee that any new LEAD pilot program should expand the list of eligible crimes and give counties the flexibility to decide to make additional offenses LEAD-eligible.³⁹

In addition to expanding eligible offenses in the pilot program, the Penal Code should encourage law enforcement agencies that do not have official LEAD programs to develop similar pre-booking diversion practices. There is no law that prevents counties that did not receive pilot funding from implementing LEAD or similar programs and some counties have done so.⁴⁰

Additionally, current law, Penal Code section 849, allows officers to release an arrested person without further proceedings in some circumstances, including when a person is under the influence of drugs and delivered to a hospital for treatment.⁴¹ But this law does not authorize release to LEAD or similar programs. As explained to the Committee by Los Angeles Sheriff's Department Captain Geoffrey Deedrick, a Penal Code provision specifically authorizing officers to use pre-booking diversion (through LEAD or other similar programs) would empower more officers to use their discretion to divert appropriate cases.⁴²

Expanding Penal Code section 849 to allow police officers to refer someone to community-based supportive service programs like addiction or mental health counseling rather than taking them to jail would achieve this goal.

Recognizing that LEAD has proven to be a more effective and efficient model for addressing minor offenses than arrest and prosecution, the state should increase the use of LEAD and similar programs throughout the state.

EMPIRICAL RESEARCH

An evaluation by researchers from California State University, Long Beach of the LEAD pilot project in San Francisco and Los Angeles showed the following results:

- In San Francisco, at the 12-month follow-up period, felony arrests for non-LEAD participants were 257% higher and misdemeanor arrests were 623% higher compared to similarly-situated people who did participate in LEAD.⁴³
- In Los Angeles, at the 12-month follow-up period, felony arrests for non-LEAD participants were 537% higher and misdemeanor arrests were 153% higher.⁴⁴
- The lower recidivism for LEAD clients translated into significant cost savings over system-as-usual individuals.⁴⁵

36 David Sjustedt, *San Francisco Police Chief Pushes To Restart Program to Help Drug Users*, *The San Francisco Standard*, June 23, 2023.

37 Penal Code § 1001.87(b).

38 *Id.*

39 Committee on Revision of the Penal Code meeting on June 23, 2023, Part 1 of 4, 0:22:53–0:24:12.

40 See Sara Bastomski, Lindsey Cramer, and Emily Reimal, *Evaluation of the Contra Costa County Law Enforcement Assisted Diversion Plus Program*, Urban Institute (August, 2019); *City Response*, City of Stockton.

41 Penal Code § 849.

42 Committee on Revision of the Penal Code meeting on June 23, 2023, Part 1 of 4, 1:07:10–1:07:43. An example of this type of provision can be found in Washington state, which in addition to establishing grant funding for LEAD programs, directs police officers to offer any person arrested for possession of drugs a referral to supportive services, including but not limited to LEAD, in lieu of booking. RCWA §§ 10.31.115, 36.28A.450.

43 Aili Malm, Dina Perrone, and Erica Magaña, *Law Enforcement Assisted Diversion (LEAD) External Evaluation Report to the California State Legislature*, 8 (January 2020).

44 Aili Malm and Dina Perrone, *Law Enforcement Assisted Diversion (LEAD) External Evaluation Report to the California State Legislature — 2020 Addendum*, 6 (January 2021). This data has been updated from this Report's original release on December 19, 2023, to more precisely reflect how it was presented in the research.

45 Aili Malm, Dina Perrone, and Erica Magaña, *Law Enforcement Assisted Diversion (LEAD) External Evaluation Report to the California State Legislature — 2020 Addendum*, 6 (January 2021). This data has been updated from this Report's original release on December 19, 2023, to more precisely reflect how it was presented in the research.

INSIGHT FROM OTHER JURISDICTIONS

Former Albany, New York Police Chief and Director of Policing Strategies for the LEAD National Support Bureau, Brendan Cox told the Committee that his organization assists many states and localities in the development and implementation of LEAD programs.⁴⁶ States including Colorado, Maryland, New Mexico, and Washington have established state-funded LEAD programs.⁴⁷ Other states, including New Jersey, have secured grant funding to establish LEAD programs.⁴⁸

Notably, in New Jersey, the list of LEAD-eligible offenses is more expansive than what was included in California's pilot program and includes theft, fraud, and trespass offenses.⁴⁹

The Narcotics Arrest Diversion Program in Chicago, Illinois is a program similar to LEAD that allows police officers to connect people arrested for drug possession with a substance use counselor in lieu of proceeding with the traditional criminal process.⁵⁰ Unlike in LEAD, arrested people are taken to jail to be connected with a service provider stationed in the facility, though once the person is connected to the program they face no prosecution related to the arrest.⁵¹ Researchers from the University of Chicago Crime Lab and Vanderbilt University found that over 79% of people who are diverted go on to start treatment, and that nearly half of those who start treatment remain engaged 60 days after.⁵²

⁴⁶ Committee on Revision of the Penal Code meeting on June 23, 2023, Part 1 of 4, 0:45:33–0:45:39.

⁴⁷ Colorado Senate Bill 17-207 (2017 Regular Session); Maryland House Bill 432 (2018 Regular Session); New Mexico House Bill 453 (First Session, 2019); Washington Substitute Senate Bill 5380 (2019 Regular Session).

⁴⁸ See State of New Jersey Department of Law & Public Safety, Law Enforcement Assisted Diversion.

⁴⁹ Committee staff received this information from the New Jersey Office of Attorney General.

⁵⁰ See Ashna Arora and Pankla Bencsik, *Policing Substance Use: Chicago's Treatment Program for Narcotics Arrests*, University of Chicago Crime Lab (November 2021).

⁵¹ *Id.* at 2.

⁵² *Id.* at 3.

| | |
|-------------------------|----|
| Recommendation | 18 |
| Relevant Statutes | 18 |
| Background and Analysis | 18 |

2. Improve Data Access for the Racial Justice Act

Improve Data Access for the Racial Justice Act

RECOMMENDATION

The Racial Justice Act allows a person to seek modification of their conviction or sentence if it was tainted by racial bias as shown by direct statements during the case or statistical evidence. But several current laws or policies prevent people from obtaining necessary data to bring RJA claims.

The Committee therefore recommends expanding access to data in the following ways for people bringing claims under the Racial Justice Act:

1. Expand the detail and format of existing reports by the California Department of Corrections and Rehabilitation, Judicial Council, and the California Department of Justice.
2. Amend current law to increase access to probation and police reports if the request is related to a Racial Justice Act claim.
3. Fund the Justice Data Accountability and Transparency Act to support the collection and publication of data from prosecutors.

RELEVANT STATUTES

Penal Code §§ 745, 1170.45, 1203, 1203.5, 11370
Government Code §§ 7923.600–7923.630

BACKGROUND AND ANALYSIS

The Racial Justice Act, passed by the Legislature and signed by Governor Newsom in 2020, is a historic and important effort to address racial bias in the criminal legal system. It allows a conviction or sentence to be modified or even vacated if it was tainted by racial bias.⁵³ But the early days of the law have shown that practitioners have a significant difficulty obtaining data to even begin to bring claims.

The RJA allows two paths to relief: the first requires showing actual bias or use of “racially discriminatory language,” while the second relies on a statistical showing of disparate treatment and requires gathering information about other cases to show a discriminatory pattern. For claims that rely on statistics, the law requires the following:

- Defendants must prove they were charged, convicted, or sentenced more severely compared to “similarly situated” people of a different race, ethnicity, or nationality.⁵⁴
- The differences between racial groups must exist in the same county where the defendant was sentenced. In other words, statewide data is insufficient.

But this data is difficult to obtain, so few – if any – statistics-based claims have been fully litigated. Data collection and sharing practices vary by county and agency and have created unnecessary barriers to bringing statistics-based claims.⁵⁵ While the RJA provides for discovery from law enforcement agencies after a showing of “good cause,”⁵⁶ unnecessary restrictions in current law and practice prevent people

⁵³ Penal Code § 745(a); AB 2542 (Kaira 2020) § 2.

⁵⁴ Penal Code § 745(a)(3) & (4). Relief is also available if harsher sentences are based on the race of the victims.

⁵⁵ See Department of Justice Research Center, Presentation for the Task Force to Study Reparations Proposals for African Americans Public Hearing, March 3, 2023.

⁵⁶ Penal Code § 745(d). See also *Young v. Superior Court of Solano County*, 79 Cal.App.5th 138, 144 (2022) (“good cause” is “a plausible case, based on specific facts, that any of the four enumerated violations of [the Racial Justice Act] could or might have occurred” and requires a court to balance additional factors).

from obtaining the data needed to even make the initial showing of good cause. In addition, some agencies may not collect the data requested or refuse to disclose it.⁵⁷

The Racial Justice Act will also soon begin to have retroactive application and more claims will soon make their way to courts throughout California.⁵⁸ To ensure claims are resolved efficiently and meaningfully, data access should be expanded in the following ways through any necessary statutory changes, which would benefit defendants, prosecutors, courts, and the public generally:

(1) Expand the scope of publicly available data.

Some agencies already publish data relevant to an RJA claim, but not in a format or at a level of detail that the RJA requires. For example, some reports only give statewide statistics or break down offenses into broad categories, such as violent or property offenses, which are not useful for RJA claims that require detailed analysis of “similar conduct” and “similarly situated” people. And this information may only be released in a summary form, without the underlying data available for further analysis, which also prevents parties from using it in RJA cases.

Instead of these limited reports, information should be released similarly to California’s Racial Identity and Profiling Act (RIPA), which requires data collection and reporting about traffic stops by law enforcement.⁵⁹ Each year, the California Department of Justice releases RIPA data on individual stops, including demographic data, the reason and time for the stop, and what resulted. The most recent data covered more than 3 million stops and was released in a format that allowed researchers to perform additional analysis.⁶⁰

A similar approach should be taken as specified below, which would assist both defense counsel and prosecutors in evaluating RJA claims. And while it is important to provide as much information as possible, any changes should also respect the privacy interests of individual people covered by the data.

- *California Department of Corrections and Rehabilitation.* CDCR has extensive data about people sent to state prison and regularly provides information to researchers and others who request it. Instead of requiring these individual requests, CDCR should provide more granular demographic and sentencing information about people currently or historically in their custody in a format that allows further analysis. While CDCR has taken important first steps by creating publicly-accessible data dashboards, the information available in these resources is too general to support analysis for an RJA case.⁶¹

In addition, CDCR should report information about the statutory special circumstances that lead to the imposition of life without parole and death sentences.⁶² CDCR does not currently do this, even though the information is typically included on court paperwork sent to CDCR. As the Committee has explored, existing data on the use of special circumstances shows troubling racial disparities: almost 80% of people currently serving life without parole are non-white.⁶³ Other research has shown racial disparities in the application of special circumstances involving gangs and felony murder.⁶⁴

⁵⁷ The Orange County District Attorney recently refused such a request for felony diversion records and other data, asserting the information was exempt as attorney work product, but a court disagreed and ordered much of the data to be released. Noah Biesiada, *Orange County District Attorney Forced to Release Racial Data on Who Gets Prosecuted*, Voice of OC, August 31, 2023.

⁵⁸ See AB 256 (Kaira 2022).

⁵⁹ See Penal Code § 13519.4.

⁶⁰ See RIPA Stop Data at the California Department of Justice OpenJustice Data Portal. The data was released in .xlsx format and was greater than 1 gigabyte in size.

⁶¹ Offender Data Points and CDCR Recidivism dashboards <public.tableau.com/app/profile/cdcr.or>

⁶² See Penal Code § 190.2(a).

⁶³ See Committee on Revision of the Penal code, 2021 Annual Report, 50–55.

⁶⁴ Grosso, et al., *Death by Stereotype: Race, Ethnicity, and California’s Failure to Implement Furman’s Narrowing Requirement*, 66 UCLA Law Review 1394, 1426 (2019) (reviewing cases from 1978–2002).

- *Judicial Council.* Since 1998, the Penal Code has required the Judicial Council to collect and report data on criminal case dispositions according to the race and ethnicity of the defendant.⁶⁵ An annual report to the Legislature measures conviction rates, conviction offense level, prison sentencing rates, and prison sentence length.⁶⁶ While this data is a helpful starting point, the analysis only reports statewide information and is of limited use in assessing county-based disparities, which is necessary for an RJA claim. The reports also aggregate information on different offenses and do not disaggregate these categories by race or ethnicity, further limiting their relevance to RJA claims.

Since the Judicial Council already reports similar information, they should be required to report county-level data and to disaggregate dispositions by offense type and to make raw data publicly-accessible.

- *California Department of Justice.* The Department of Justice publishes aggregate county-level data about arrests, including demographic information.⁶⁷ But the data specifies only whether an offense is for a violent, property, drug, sex, or other offense, which is too general for the RJA. The arrest data also does not indicate the final court disposition, if any, which prevents analysis of what happens after an arrest. The Department of Justice already collects much of this information and should include it with the arrest data.

(2) Expand access to existing data for attorneys investigating an RJA claim.

For the next category of information – probation reports and police reports – existing law allows some access to the reports but only for a limited time. The information contained in these reports is often highly detailed and potentially of great relevance in RJA claims. To help appropriately protect the private and sensitive information in these reports, access can be limited to attorneys investigating or litigating an RJA claim and courts could order redactions or issue protective orders to further safeguard these interests.

- *Probation reports.* These reports, which are required to be compiled before sentencing in felony cases, contain detailed information about individual cases that is often exclusive to the report.⁶⁸ Under existing law, the entire report is publicly available for 60 days after a case concludes.⁶⁹ After that, courts consider requests for access on a case-by-case basis. One appellate court has held that anyone seeking these reports must provide notice to the subject of each report,⁷⁰ an impossible task for anyone seeking multiple reports to compare conviction or sentencing outcomes.

The Penal Code should be amended to require the release of probation reports to attorneys investigating or litigating an RJA claim.

- *Police reports.* Similar to probation reports, police reports and other law enforcement records contain detailed information about particular offenses

⁶⁵ Penal Code § 1170.45.

⁶⁶ See, e.g., Judicial Council of California, *Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant* (November 2021).

⁶⁷ See Arrests data at the California Department of Justice OpenJustice Data Portal.

⁶⁸ Penal Code § 1203(b)(1).

⁶⁹ Penal Code § 1203.05(a).

⁷⁰ *People v. Connor*, 115 Cal.App.4th 669 (2004).

that may be extremely relevant to RJA claims. The California Public Records Act addresses law enforcement records,⁷¹ but courts have held that access is limited to recent reports.⁷² One appellate court upheld a county's denial of a request to provide law enforcement records because the information the petitioner sought was 11 months old at the time it was requested.⁷³

The law should be amended to access to non-contemporaneous information from law enforcement if it is sought by an attorney investigating or litigating an RJA claim.

(3) Fund the Justice Data Accountability and Transparency Act (AB 2418).

The Justice Data Accountability and Transparency Act (AB 2418 (Kalra 2022)) created new obligations for prosecutors to collect and disclose data to the California Department of Justice, which would, among other responsibilities, publish reports using the data.⁷⁴ The law specifies more than 50 data elements, including demographic information about defendants and victims, charging information, plea offers, and case dispositions.⁷⁵

But the requirements of AB 2418 are not yet in effect and only become operational upon funding from the Legislature.⁷⁶ The Justice Data Accountability and Transparency Act should be funded. The extensive data that would be collected would significantly enhance transparency and public access to data, thus supporting RJA claims.

• • •

The RJA is an exceptionally important tool to address racial disparities in the criminal legal system and the state should ensure sufficient data access so that meritorious claims can be brought in court.

⁷¹ Government Code §§ 7923.600–7923.630.

⁷² *Kinney v. Superior Court*, 77 Cal.App.5th 168 (2022); *County of Los Angeles v. Superior Court (Kusar)*, 18 Cal.App.4th 588 (1993).

⁷³ *Kinney v. Superior Court*, 77 Cal.App.5th 168 (2022).

⁷⁴ Penal Code §§ 11370(e) & (b)(1)(E). The law also requires the creation of a Prosecutorial Transparency Advisory Board, which includes as a member the chair of the Committee on Revision of the Penal Code.

Penal Code § 11370(b)(1)(F)(v).

⁷⁵ Penal Code § 11370(e).

⁷⁶ Penal Code § 11370(c)(1).

| | |
|-----------------------------------|----|
| Recommendation | 23 |
| Relevant Statutes | 23 |
| Background and Analysis | 23 |
| Insights from Other Jurisdictions | 26 |

3. Create General Resentencing Procedures

Create General Resentencing Procedures

RECOMMENDATION

For more than a decade, California has allowed thousands of incarcerated people to return to court to have their sentences reconsidered. However, each new reform comes with different or undefined procedural rules which has resulted in variation and inefficiency across the state in how resentencings are handled.

The Committee therefore recommends the following:

Establish general procedures that apply to all resentencings and address each of the following components:

1. *Mandatory stakeholder meetings*: Require stakeholders to meet and collaborate in advance of any new resentencing law.
2. *Specialized courts*: Require the presiding judge to determine whether cases will be assigned to one judge or a designated set of judges.
3. *Counsel*: Require the appointment of counsel.
4. *Assistance from CDCR*: Require that CDCR assist litigants with obtaining institutional records.
5. *Plea bargains*: Expressly allow resentencing in convictions by guilty pleas without prosecutorial consent.
6. *Full resentencings*: Specify that at every resentencing hearing the full sentence may be considered by the court.
7. *Notice*: Require that a trial court provide notice to petitioners of any ruling.
8. *Abstracts of judgment*: Clarify that resentencing paperwork be sent electronically to CDCR and specify quick timeframes for sending and acting on the paperwork when a person is close to their new release date.

RELEVANT STATUTES

Penal Code §§ 1172–1172.75, 1213

BACKGROUND AND ANALYSIS

Beginning with Proposition 36 in 2012 and the resentencing of people serving a Three Strikes sentence for a non-violent felony, the state has continued to pass ameliorative sentencing legislation on a regular basis. Nonetheless, each time a new law passes practitioners and courts are often left with little specific guidance for how to put the laws into practice, leading to inefficiency and unnecessary litigation.

To give some concrete examples, consider SB 483 (Allen 2021), which authorized courts to retroactively reduce sentences for people serving a sentence with a 1 or 3 year enhancement for certain prior convictions. Despite the state’s history with resentencing, and SB 483’s attempts to address some recurring issues – for example, by clearly stating counsel is assigned – procedural issues arose that had to be resolved with lengthy appellate litigation.

For example, people seeking resentencing had to litigate whether courts should review their entire sentence or just the prior enhancements under SB 483.⁷⁷ An appellate court recently ruled that different pieces of the same sentence had different rules for when they could be changed following a plea bargain, a confusing result that will almost certainly result in more litigation.⁷⁸ And even in a case where the Attorney General agreed that a defendant was entitled to be resentenced, the California Supreme Court had to intervene to tell the lower court to reconsider the case.⁷⁹ Practitioners have also experienced lengthy delays in both getting records from CDCR and transmitting new court judgments to CDCR.⁸⁰

To avoid this sort of unnecessary litigation and delay, the minimum procedures specified below should apply to all resentencings:

- *Mandatory stakeholder meetings.* Stakeholders – including the district attorney’s office, the public defender’s office, the clerk’s office, the presiding judge, the local jail, and a representative from CDCR – should be required to meet and decide on initial resentencing procedures and then hold regular meetings to address issues as they arise during implementation. Matthew Wechter, Supervising Attorney at the San Diego County Public Defender, explained that in San Diego County, a similar collaborative process resulted in less court appearances and litigation.⁸¹
- *Allow specialized courts.* In some counties one judge hears all requests for resentencings and can develop expertise on the law and set clear case management policies, similar to other specialized courts like drug courts and behavioral health courts.⁸² This process may not work for all counties so a resentencing law should require the presiding judge to decide whether to centralize all resentencings in the county to one judge or a designated set of judges, providing flexibility while also promoting the efficient resolution of cases.
- *Appointment of counsel.* Counsel for incarcerated people is critical to implementation – in addition to understanding new resentencing laws, attorneys obtain and review records relevant to resentencings. The most recently enacted resentencing laws have required the appointment of counsel and every resentencing should require the same.⁸³
- *Assistance from CDCR.* In resentencings where the incarcerated person is in prison, attorneys rely on CDCR to provide records necessary for resentencing, including information about an incarcerated person’s behavior and progress while in prison. This process can be slow and inefficient. In federal court, the First Step Act of 2018 contained language that required

⁷⁷ *People v. Monroe*, 85 Cal.App.5th 393, 402 (2022).

⁷⁸ *People v. Coddington*, 96 Cal.App.5th 562 (2023) (holding that while the Legislature intended that the striking of prior prison term would not provide a basis for rescinding a plea agreement, this rule does not apply to other possible sentence reductions that occur in the same resentencing). A few weeks later, another appellate court reached the opposite conclusion. See *People v. Robert Otto Carter Jr.*, 2023 WL 8518903 (2023).

⁷⁹ See *People v. Kimble*, 2023 WL 7031434 (Cal. Supreme Court, Oct. 25, 2023).

⁸⁰ Submission of Matthew Wechter, Supervising Deputy Public Defender, San Diego County Department of the Public Defender, for March 17, 20203, Meeting of Committee on Revision of the Penal Code, 2–4. One recent study of Proposition 36 implementation found that the creation of county-wide implementation workgroups led to greater consistency and efficiency in implementation. Elsa Y. Chen, Emily Chung and Emily Sands, *Courtroom Workgroup Dynamics and Implementation of Three Strikes Reform*, University of Denver Law & Policy, Oct. 22, 2023.

⁸¹ *Id.* at 7.

⁸² Markus B. Zimmer, *Overview of Specialized Courts*, International Journal for Court Administration (August 2009), 1–3.

⁸³ See, e.g., Penal Code §§ 1172.7(d)(5), 1172.75(d)(5), 1172.1(b)(1), 1172.6(b)(3).

the Bureau of Prisons to assist litigants in obtaining institutional records.⁸⁴ Similar statutory guidance should be created for every resentencing.

- *Application to plea bargains.* Unless an exception is created by the Legislature, a sentence that was imposed following a plea bargain generally cannot be modified without the agreement of the prosecutor.⁸⁵ The SB 483 resentencings described above, as well as law-enforcement initiated resentencings, expressly allow resentencings in plea bargained cases without prosecutorial consent.⁸⁶ This should be the case in all resentencings as the reach of any resentencing law would be significantly curtailed if it did not apply to plea bargains since the vast majority of felony convictions in California result from plea bargains, as explored elsewhere in this Report. It also ensures that a person's sentence is consistent with current law. However, resentencings would not be automatic and prosecutors would still have the right to present arguments to the court.
- *Full resentencings.* The Penal Code should specify that at every resentencing the entire sentence can be reconsidered by the court, not just the individual component that triggered the resentencing. This is the general rule that has been applied by the California Supreme Court in resentencings and including it in the Penal Code would prevent future confusion.⁸⁷
- *Notice.* AB 1540 (Ting 2021) required courts to provide notice to incarcerated people of any resentencing request initiated by law enforcement.⁸⁸ As the Committee noted in its 2020 Annual Report, at the time, many trial courts provided virtually no process or notice when considering those resentencing requests.⁸⁹ The Penal Code should require courts to notify people seeking resentencing of any actions taken by the court, including rulings, which would protect due process and facilitate the right to appeal.
- *Abstracts of judgment.* The abstract of judgment – a written summary of the sentence – created by courts is transmitted to CDCR so that they may administer the sentence. Current law provides that an abstract should be sent “forthwith,” with no specific timeframe.⁹⁰ CDCR regulations then provide another 5 days for CDCR to act on the abstract.⁹¹ CDCR cannot release someone until they receive the amended abstract, yet sometimes courts may take several weeks to send them⁹² – and may not be allowed to do so electronically⁹³ – resulting in people staying in custody longer than necessary. The Penal Code should specify that where the anticipated remaining time to serve is less than 30 days, the abstract must be submitted to CDCR electronically within 24 hours and CDCR must act on the abstract within a similar amount of time.

Specifying general procedures for resentencings would help resolve cases efficiently and consistently across the state while avoiding costly litigation.

⁸⁴ 18 U.S.C. § 3582(d)(2)(A)(iii) (directing the federal Bureau of Prisons to “assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction”).

⁸⁵ See *People v. Stamps*, 9 Cal.5th 685, 706 (2020).

⁸⁶ SB 483 (Allen 2021) § 1 (“It is the intent of the Legislature that any changes to a sentence as a result of the act that added this section shall not be a basis for a prosecutor or court to rescind a plea agreement.”); Penal Code § 1172.1(a)(3).

⁸⁷ *People v. Buycks*, 5 Cal.5th 857, 893–895 (2018).

⁸⁸ Penal Code § 1172.1(b).

⁸⁹ Committee on Revision of the Penal Code, 2020 Annual Report and Recommendations, 66.

⁹⁰ Penal Code § 1213.

⁹¹ 15 Cal. Code Regs. § 3371.1(e)(2).

⁹² See Letter from Office of the State Public Defender to Committee on Revision of the Penal Code, October 21, 2022, 1 (presenting anecdotal information from public defenders throughout the state, including cases where abstracts had not been received weeks after resentencing).

⁹³ The relevant statute does not specify whether electronic service is acceptable.

INSIGHTS FROM OTHER JURISDICTIONS

Resentencings in federal court have operated more smoothly despite encountering similar challenges as state courts in California.

- In 2014, the United States Sentencing Commission voted unanimously to reduce the presumptive sentence for drug trafficking offenses and to give the law retroactive effect.⁹⁴ By June 2015, less than one year after the change, courts had resolved more than 12,000 petitions, granting 79% of them.⁹⁵ By 2021, courts resolved more than 50,000 cases, granting more than 31,000 of them (63%).⁹⁶
- The Fair Sentencing Act of 2018 expanded the use of “compassionate release” for reducing sentences.⁹⁷ Courts resolved more than 27,000 cases by September 2022 and granted 16% (4,502) of them.⁹⁸

Part of the success in federal court was due to the appointment of counsel, which ensured people in prison had adequate representation. While federal law did not require the appointment of counsel in these circumstances, many district courts, including in California, issued general orders appointing the federal defender who was then responsible for determining whether persons qualified for relief and presenting any petition on their behalf.⁹⁹

Unsurprisingly, appointment of counsel appears to have meaningfully increased relief. For example, the federal district court in Oregon assigned the federal defender in most cases, resulting in a 65% grant rate, while the Western District of Oklahoma, which did not appoint counsel, had a grant rate of less than 4%.¹⁰⁰

⁹⁴ United States Sentencing Commission, *2014 Drug Guidelines Amendment, Retroactivity Data Report*, 1–2 (December 2015).

⁹⁵ *Id.* at Table 1.

⁹⁶ The early release did not increase recidivism. A United States Sentencing Commission study found no statistically significant difference between the recidivism rates for people convicted of drug trafficking who had served their full sentences and those who received a sentence reduction. United States Sentencing Commission, *Retroactivity and Recidivism: The Drugs Minus Two Amendment*, 2–6, (July 2020).

⁹⁷ 18 U.S.C. § 3582(c)(1)(A)(i).

⁹⁸ United States Sentencing Commission, *Compassionate Release Data Report*, Table 1, (December 2022).

⁹⁹ See, e.g., In the Matter of Appointment of Counsel in Criminal Cases Potentially Affected by *Johnson v. United States*, 135 S. Ct. 2551 (2015), General Order No. 649, S. D. Cal., December 8, 2015; In re: First Step Act of 2018 (Dec. 21, 2018), Application of Fair Sentencing Act of 2010, Misc. Order, N. D. Cal., January 25, 2019 (amended April 27, 2020)

¹⁰⁰ Casey Tolán, *Compassionate Release Became a Life-or-Death Lottery for Thousands of Federal Inmates During the Pandemic*, CNN, September 30, 2021.

| | |
|-------------------------|----|
| Recommendation | 28 |
| Relevant Statutes | 28 |
| Background and Analysis | 28 |
| Empirical Research | 29 |

4. Apply the “Nickel Prior” Reform Retroactively

Apply the “Nickel Prior” Reform Retroactively

RECOMMENDATION

For more than three decades, judges lacked the power to dismiss a very common sentencing enhancement: the “nickel” prior that adds 5 years to a prison sentence. The Legislature recently restored discretion to judges to dismiss this enhancement but did not make the law retroactive.

The Committee recommends the following:

Allow people incarcerated or under supervision with a 5-year “nickel” prior as part of their sentence to petition a court for a reduced sentence if the sentence was imposed before 2019.

RELEVANT STATUTES

Penal Code §§ 667(a)(1) & 1385

BACKGROUND AND ANALYSIS

In 2018, the Legislature gave judges power to dismiss one of the most common and harsh sentencing enhancements in the Penal Code: the 5 year “nickel prior.”¹⁰¹ This sentencing enhancement adds 5 years to the sentence of anyone convicted of a “serious” offense who had a prior conviction for a serious offense.¹⁰² But the Legislature’s action in 2018 applied only prospectively and thousands of people remain in prison whose sentence may be more harsh than if they were sentenced today.¹⁰³

The Legislature’s restoration of judicial discretion to dismiss the nickel prior helped correct some of the long-standing harshness the enhancement had caused. The nickel prior was created by a voter initiative in 1982, Proposition 8, that had the goal of dramatically increasing the prison population by enacting measures that would “take the handcuffs off the police and put[] them on the criminals, where they belong.”¹⁰⁴ In the first years of the nickel prior, trial courts had the power to dismiss this enhancement as they did any other. But the Legislature took that power away in 1986.¹⁰⁵ When the Legislature took steps to give judges this power back in 2018, the *Los Angeles Times* editorial page praised the action, noting that it was an effective way to address “some of California’s tough-on-crime mistakes of the past.”¹⁰⁶

As Senior District Attorney Robert Mestman of Orange County explained to the Committee, nickel priors punish people for recidivism, even when the prior convictions are “very old.”¹⁰⁷ In addition, the same conviction that’s the basis for a nickel prior can also be used to impose even more time on a sentence under the Three Strikes law. The nickel prior is also a harsher version of another sentencing enhancement that adds 3 years to a sentence for a violent offense if the person was previously convicted of a violent offense within the last 10 years – a more balanced approach than the nickel prior which has no limit on how old the prior serious conviction can be.¹⁰⁸ In addition, empirical research has found no proof that the nickel prior enhancement helped deter crime.¹⁰⁹

¹⁰¹ SB 1393 (Mitchell 2018).

¹⁰² Penal Code § 667(a)(1). The list of “serious” offenses is in Penal Code §§ 1192.7(c) & 1192.8(a). The “violent” offenses from Penal Code § 667.5(c) are generally also “serious” ones.

¹⁰³ Some people may have been eligible for a reduction through SB 483, which removed the 1 and 3 year sentence enhancements, and allows for the consideration of the entire sentence, including whether other sentence enhancements should continue to be imposed. See, e.g., *People v. Monroe*, 85 Cal.App.5th 393, 402 (2022).

¹⁰⁴ Voter Information Guide for 1982, Primary Election, 34 (1982). See also *id.* at 35 (“THERE IS ABSOLUTELY NO QUESTION THAT THE PASSAGE OF THIS PROPOSITION WILL RESULT IN MORE CRIMINAL CONVICTIONS, MORE CRIMINALS BEING SENTENCED TO STATE PRISON, AND MORE PROTECTION FOR THE LAW-ABIDING CITIZENRY.” (capitals in original)).

¹⁰⁵ See California Statutes of 1986, Chapter 85 (amending Penal Code § 1385 and abrogating *People v. Fritz*, 40 Cal. 3d 227 (1985), which allowed dismissal of the enhancement under Penal Code § 1385).

¹⁰⁶ Los Angeles Times Editorial Board, *Editorial: Fixing some of California’s tough-on-crime mistakes of the past*, Los Angeles Times, May 25, 2018.

¹⁰⁷ Committee on Revision of the Penal Code, Meeting on March 17, 2023, Part 2, 0:19:33–0:20:00.

¹⁰⁸ Penal Code § 667.5(a).

¹⁰⁹ Steven Raphael, *The Deterrent Effect of California’s Proposition 8: Weighing the Evidence*, Criminology & Public Policy, Vol. 5, No. 3, 471–478, 476 (2006).

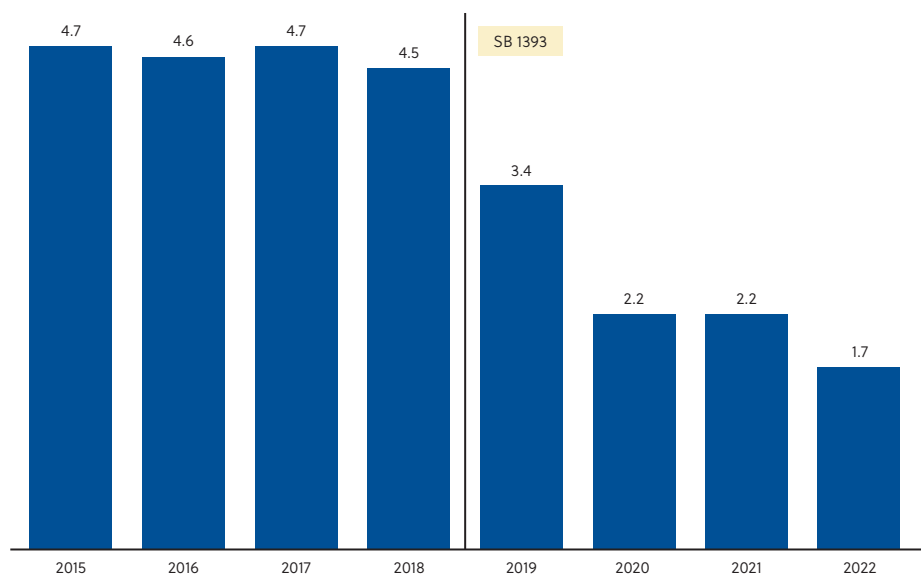
As the Committee has noted before, California has a well-established history of offering retroactive application of significant reforms, including changes to the Three Strikes law in 2012 and reforms to the felony-murder rule in 2018.¹¹⁰ And in 2021, the Legislature – following a Committee recommendation – made retroactive the elimination of sentencing enhancements that added 1 or 3 years because of prior convictions.¹¹¹

The same principle of equity should be applied to the nickel prior. Doing so would not automatically result in short prison sentences. Instead, a judge would merely have the opportunity, considering public safety and relevant facts, to decide whether the nickel prior was still appropriate in an individual case.

EMPIRICAL RESEARCH

The restoration of judicial discretion to dismiss the nickel prior appears to be associated with reduced use of the enhancement. From 2015 to 2018, approximately 4.5% of all admissions to prison had a nickel prior enhancement. After the restoration of judicial discretion to dismiss the enhancement began in 2019, the share of admissions dropped to 3.4% and continued dropping, with only 1.7% of admissions having a nickel prior in 2022.¹¹² Though other factors may have caused this decline, this decrease in the use of the nickel prior suggests that judges are using their discretion to dismiss nickel priors in appropriate cases.

PERCENT OF ADMISSIONS TO STATE PRISON WITH A NICKEL PRIOR



Source: CPL analysis of CDCR data.

CDCR has used its authority to initiate resentencing hearings for more than 700 people because they have a nickel prior imposed under the old law. More than 275 of these people have had their sentence reduced by a court, with some cases still pending.¹¹³

¹¹⁰ Penal Code §§ 1170.126 & 1172.6.

¹¹¹ Penal Code §§ 1172.7 & 1172.75.

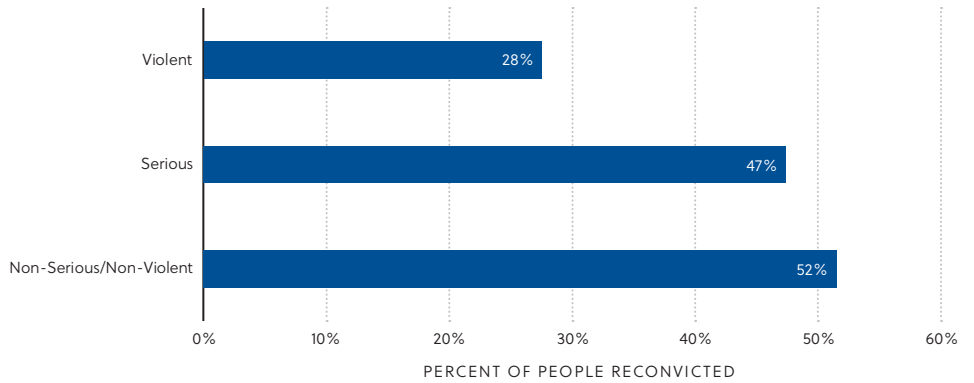
¹¹² California Policy Lab analysis of CDCR data.

¹¹³ Data provided by CDCR as of December 6, 2023.

The vast majority of people with a nickel prior are people of color – only around 20% are white, the same proportion as the current prison population as a whole.

Data from CDCR shows that people convicted of “serious” and “violent” offenses – which are the population of people who may have a nickel prior as part of their sentence – have lower recidivism rates than people convicted of non-serious and non-violent offenses.

RECONVICTION RATE WITHIN THREE YEARS OF RELEASE BY OFFENSE TYPE



Source: CDCR Recidivism Data Dashboard. Data is for people released in Fiscal Year 2017-18.

| | |
|-----------------------------------|----|
| Recommendation | 32 |
| Relevant Statutes | 32 |
| Background and Analysis | 32 |
| Empirical Research | 34 |
| Insights from Other Jurisdictions | 35 |

5. Expand Second-Look Resentencing

Expand Second-Look Resentencing

RECOMMENDATION

Research shows that long prison sentences do not improve public safety and produce significant racial disparities. CDCR, prosecutors, and other law enforcement personnel can now request resentencing at any time, but incarcerated people cannot initiate these requests on their own.¹¹⁴ An expansion of California’s current second-look resentencing laws to allow people who have served a significant period of time in prison to apply for resentencing directly to a court would create significant cost savings for the state while preserving public safety.

The Committee therefore recommends the following:

- Allow any person who has served more than 15 years to request reconsideration of a sentence directly from the court.

If this recommendation is too ambitious, the state can still expand second-look resentencing to smaller populations in one or both of the following ways:

- Allow resentencing for people who have served more than 15 years in prison and:
 - (1) were under the age of 26 at the time of the offense, or
 - (2) are at least 50 years old.

RELEVANT STATUTES

Penal Code § 1172.1

BACKGROUND AND ANALYSIS

In its 2020 Annual Report, the Committee recommended a broad second-look resentencing law that would allow any incarcerated person who had served 15 years to ask to be resentenced.¹¹⁵ As Judge Daniel Lowenthal of Los Angeles County Superior Court explained to the Committee, “long sentences don’t age well [and] evolving norms generally will render a proportion of prison sentences of one time period disproportionate in the next.”¹¹⁶ And research has consistently shown that long sentences have little or no public safety value.¹¹⁷

The Legislature has repeatedly strengthened second-look resentencing laws, but the impact, while significant, has been limited, in large part because only certain law enforcement officials – including District Attorneys and CDCR – can request resentencing.¹¹⁸

A recent evaluation by RAND of the first 18 months of a pilot program of prosecutor-initiated resentencings found slow progress. Among cases awaiting a decision on whether to proceed by the prosecutor, 72% had been under review for more than 6 months.¹¹⁹ Of the 684 case reviews initiated, only 105 cases had been referred to the court for resentencing – 321 had been rejected and 258 were still being reviewed.¹²⁰ But once reviewed and referred to court, almost all were granted – 91 of the 94 cases that have been reviewed by a court were granted.¹²¹

¹¹⁴ Penal Code § 1172.1.

¹¹⁵ Other aspects of the Committee’s recommendation around the current second-look sentence process were enacted as AB 1540 (Ting 2021).

¹¹⁶ Committee on Revision of the Penal Code, Meeting on March 17, 2023, Part 1, 0:37:45–0:37:59.

¹¹⁷ See, e.g., Daniel Nagin, *Incarceration & Public Safety*, Arnold Ventures (July 2022); Daniel M. Petrich et al., *Custodial Sanctions and Reoffending: A Meta-Analytic Review*, *Crime and Justice*, Vol. 50 (2021); Steven Raphael and Michael A. Stoll, *Why Are So Many Americans in Prison?*, 222 (2013); National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, 130–156, The National Academies Press (2014).

¹¹⁸ Penal Code § 1172.1.

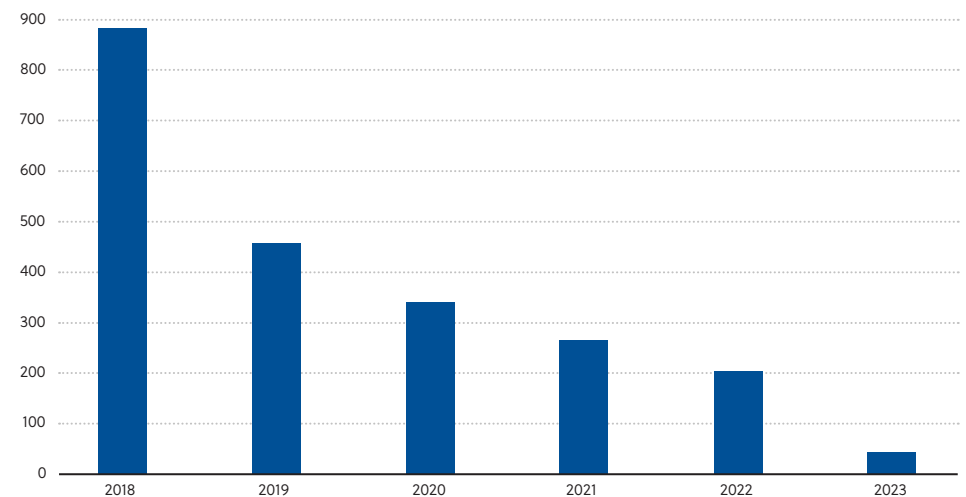
¹¹⁹ Lois M. Davis et al., *Evaluation of the California County Resentencing Pilot Program: Year 2 Findings*, The RAND Corporation, vi (September 27, 2023).

¹²⁰ *Id.*

¹²¹ *Id.*

CDCR recommendations have also slowed. Though CDCR made close to 900 referrals in 2018 alone, the pace has decreased significantly since then, with a little over 200 in 2022 and less than 50 so far this year.¹²²

CDCR REFERRALS FOR RESENTENCING



Source: CDCR Tracking Log. Referrals are limited to people where the CDCR Secretary sent a letter to court requesting recall of sentence. 2023 data is as of December 6, 2023.

In total, only around 1,300 people have been resentenced statewide under California's second-look law in the last 5 years, with more than 70% of those cases originating in referrals from CDCR.¹²³ Some prosecutors do not even engage in their own resentencing process and instead rely entirely on recommendations from CDCR, as Deputy District Attorney Robert Mestman of Orange County told the Committee.¹²⁴

Judges also have the power to reconsider a sentence but in much more limited circumstances than prosecutors and CDCR. Historically, a judge's power was limited to the 4 months following imposition of a sentence. But AB 600 (Ting) recently authorized judges beginning in 2024 to recall a sentence any time the applicable sentencing rules have changed.¹²⁵ While AB 600 is an important step forward, its eventual impact is unclear – the law does not require the judge to reconsider a sentence and provides no process for incarcerated people to request resentencing.

Finally, even though the Legislature expanded parole eligibility to older and youthful offenders, release rates for these groups are not high. Between 2017–2022, the elderly parole grant rate was between 14–23% and for youthful offender parole it was 16–22%.¹²⁶

Resentencing should be more widely available. Beginning with limited categories of eligibility – for example, people who have served at least 15 years and were either under age 26 at the time of offense (around 8,500 people) or are currently over the age of 50 (around 11,700) – would allow judges to focus on people who present the lowest risk to public safety. Courts, with input from prosecutors and victims, would still make the ultimate decision on whether a resentencing was justified and to what degree.

¹²² Data provided by CDCR as of December 6, 2023. See also 15 CCR § 3076.1–3076.5 (CDCR's regulations for making sentencing referrals).

¹²³ Data provided by CDCR shows 954 resentencings as of October 25, 2023. According to For the People, an organization that works with prosecutors to remedy unjust sentences, approximately 350 people have been resentenced as a result of prosecutor referrals as of February 2023.

¹²⁴ Committee on Revision of the Penal Code meeting on March 17, 2023, Part 2, 0:43:14–0:43:46.

¹²⁵ AB 600 (Ting).

¹²⁶ California Board of Parole Hearings, *Reports of Significant Events*. The grant rates are based on the total number of hearings scheduled each year. Elderly parole is available, with some exceptions, for people who are age 50 or older and have served at least 20 years. Penal Code § 3055. Youthful offender parole is available, with some exceptions, to those who were under the age of 26 at the time of the offense and have served 15, 20, or 25 years, depending on the type of sentence they received. Penal Code § 3051(b)(1).

Allowing people to apply directly to courts for resentencing, without relying on or waiting for law enforcement to identify them, will increase access to resentencing without harming public safety.

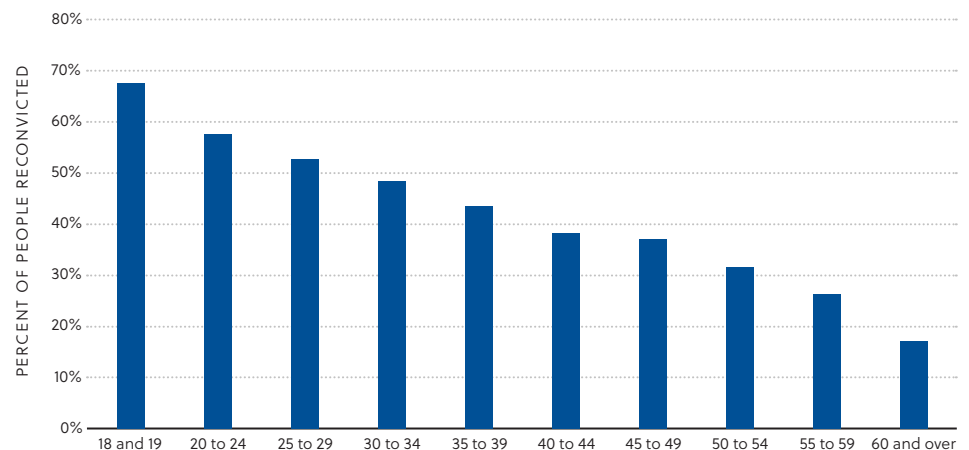
EMPIRICAL RESEARCH

As the Committee has noted before, research shows that long prison sentences do not improve public safety while also having significant racial disparities.¹²⁷ For example, Black people are heavily over-represented among people serving sentences with strike enhancements in California – while only 6% of the people in the state are Black, approximately 45% of the people serving a third-strike sentence (25-to-life) are Black and 33% of the people serving a sentence doubled by a second strike are Black.¹²⁸

New analysis by the Committee and California Policy Lab shows that those released under Proposition 36 have lower rates of new conviction than the broader population of CDCR releases. Proposition 36, a ballot initiative approved by the voters in 2012, allowed people serving a life sentence for a nonviolent offense that had been imposed under the Three Strikes law to be resentenced if a court concluded they did not present a risk to public safety.¹²⁹ Overall, about 46% of all people released from prison had a new conviction within 3 years, but only 27% of people who were released early under Proposition 36 did – a 42% difference. And only a very small percentage of those released early under Proposition 36 – less than 2% – had a new conviction for a violent offense within 3 years of release.

Most (66%) of the people released under Proposition 36 were at least fifty years old, but still had a lower reconviction rate than people the same age released from CDCR: 31% for all releases but only 23% for Proposition 36, a 26% difference.¹³⁰ That result is consistent with research establishing that the older someone is, the less likely they are to commit offenses, as shown by recidivism data from people released from prison in California.¹³¹

RECONVICTION RATE WITHIN THREE YEARS BY AGE AT RELEASE



127 See, e.g., Committee on Revision of the Penal Code, 2020 Annual Report and Recommendations, 9–10, 67–68; 2021 Annual Report and Recommendations, 7–9. The Committee also had a meeting in June 2020 on the relationship between long prison sentences and public safety.

128 Mia Bird et al, *Three Strikes in California*, California Policy Lab, August 2022, 27.

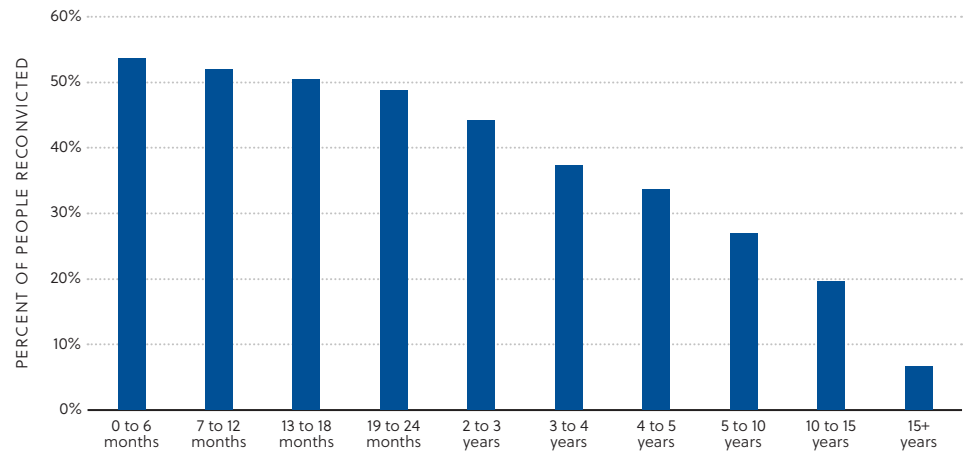
129 To be resentenced, a court had to determine the person did not “pose an unreasonable risk of danger to public safety.” Penal Code § 1172.6(f).

130 This analysis uses releases from CDCR for Fiscal Years 2013–2014 and 2014–2015, as almost all people resentenced under Proposition 36 were released during this time. CDCR data is from the CDCR Recidivism Data Dashboard. CDCR does not indicate the proportion of reconditions that are violent felonies, nonviolent felonies, or misdemeanors.

131 See 2020 Annual Report and Recommendations, 9; Robert Weisberg, Debbie Mukamal, and Jordan Segall, *Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California*, Stanford Law School Criminal Justice Center, 17 (2011).

Source: CDCR Recidivism Data Dashboard. Data is for people released in Fiscal Year 2017–18.

RECONVICTION RATE WITHIN THREE YEARS OF RELEASE BY LENGTH OF PRISON STAY



Source: CDCR Recidivism Data Dashboard. Data is for people released in Fiscal Year 2017–18.

A report from Human Rights Watch on 125 people released from CDCR between 2011 and 2019 who had originally been sentenced to life without parole but had their sentences commuted found a very low recidivism rate. Only 4 people were subsequently convicted of a crime – 1 felony and 3 misdemeanors – during the 3 years following their release.¹³²

INSIGHTS FROM OTHER JURISDICTIONS

Though no jurisdiction currently has a universal second-look law, Washington, D.C., allows people who have been incarcerated for more than 15 years and who were under the age of 25 at the offense to ask for resentencing.¹³³ In 2021, Maryland passed a law allowing people who were under 18 at the offense and who have served 20 years to ask for resentencing.¹³⁴ The American Bar Association adopted Resolution 502 in 2022, which urges governments to enact legislation that would allow courts to revisit any sentence when an individual has been incarcerated for 10 years.¹³⁵ The Model Penal Code suggests that states enact “second-look” sentencing that allows someone to ask a judge for resentencing after serving 15 years of imprisonment.¹³⁶

Federal courts may grant resentencing if “extraordinary and compelling reasons” warrant a reduction.¹³⁷ The United States Sentencing Commission recently expanded the list of reasons that can warrant resentencing¹³⁸ and also created a new category for unusually long sentences. This new category allows courts to apply changes in the law that were not made retroactive when the defendant is serving an “unusually long sentence,” has served at least 10 years of the sentence, and an intervening change in the law has produced a great disparity in the sentence being served and the sentence likely to be imposed today.¹³⁹

¹³² Human Rights Watch, “I Just Want to Give Back”: *The Reintegration of People Sentenced to Life Without Parole*, 14 (June 2023) (the 125 people examined represented 87% of the commutations made).

¹³³ See *D.C. Council Passes Second Look Amendment Act of 2019*, District of Columbia Corrections Information Council, May 19, 2019.

¹³⁴ Maryland Code of Criminal Procedure § 8-110.

¹³⁵ American Bar Association Resolution 502 (August 2022).

¹³⁶ Model Penal Code: Sentencing § 305.6, Comment (a) (“[This] provision reflects a profound sense of humility that ought to operate when punishments are imposed that will reach nearly a generation into the future, or longer still. A second-look mechanism is meant to ensure that these sanctions remain intelligible and justifiable at a point in time far distant from their original imposition.”).

¹³⁷ 18 U.S.C. § 3582(c)(1)(A).

¹³⁸ United States Sentencing Commission, *Amendments to the Sentencing Guidelines*, 3–5, April 27, 2023 (for example, public health emergencies, when specialized medical care is not being provided, a broader list of family circumstances for care of dependents, and when a defendant has suffered abuse while in custody).

¹³⁹ *Id.* at 5–6 (changes to the guidelines manual that the Commission has not made retroactive are excluded).

| | |
|-------------------------|----|
| Recommendation | 37 |
| Relevant Statutes | 37 |
| Background and Analysis | 37 |
| Empirical Research | 38 |

6. Clarify That SB 81's Updates to Penal Code § 1385 Apply to Strikes

Clarify That SB 81's Updates to Penal Code § 1385 Apply to Strikes

RECOMMENDATION

Judges have long possessed the discretion to dismiss sentence enhancements in the interest of justice. SB 81 (Skinner 2021), implementing a Penal Code Committee recommendation, specified a list of mitigating circumstances to guide judges when exercising this discretion. But – contrary to the Committee's original recommendation – courts have held that the changes made by SB 81 do not apply to people sentenced under the Three Strikes law, which excludes a significant group of people facing long sentences that may not improve public safety.

The Committee therefore recommends the following:

Clarify that the guidance created in SB 81 applies to strikes.

RELEVANT STATUTES

Penal Code § 1385

BACKGROUND AND ANALYSIS

In its 2020 Annual Report, the Committee recommended that the Penal Code should provide guidance to judges on how to exercise their long-standing authority to dismiss sentencing enhancements. But even though that recommendation became law in 2022, courts have decided it does not apply to the most common sentencing enhancement – prior strike convictions.

The Committee's recommendation became law via SB 81, a bill authored by Committee member Senator Nancy Skinner that updated Penal Code § 1385.¹⁴⁰ Following SB 81, judges now have statutory guidance for how to exercise this discretion in the form of nine mitigating circumstances, including that the current offense is connected to mental illness or that the current offense is not a violent felony.¹⁴¹ The presence of any of these circumstances “weighs greatly in favor of dismissing the enhancement” unless the court finds that “dismissal of the enhancement would endanger public safety.”¹⁴²

Practitioners reported to the Committee that SB 81 and other recent sentencing reforms increased judges using their discretion to dismiss enhancements.¹⁴³ But appellate courts have decided that SB 81 does not apply to prior strike convictions, which can double sentences for new convictions and, in some circumstances, result in a life sentence.¹⁴⁴ Courts have excluded strikes from SB 81's coverage on technical grounds by concluding that strikes are an “alternative sentencing scheme and not a sentencing enhancement.”¹⁴⁵

The Committee now recommends that strike enhancements be treated like all other enhancements for purposes of SB 81's changes. There is no rational reason to treat prior strikes differently from other sentencing enhancements and the Committee's 2020 report did not make such a distinction.¹⁴⁶ Strikes are the most common sentencing enhancement in California and people sentenced under the Three Strikes Law are also more likely to be people of color and more likely to suffer from a mental illness.¹⁴⁷

¹⁴⁰ Penal Code § 1385(c)(1). See generally *People v. Superior Court (Romero)*, 13 Cal. 4th 497 (1996).

¹⁴¹ Penal Code § 1385(c)(2)(D) & (F).

¹⁴² Penal Code § 1385(c)(2). The law further specifies that “‘Endanger public safety’ means there is a likelihood that the dismissal of the enhancement would result in physical injury or other serious danger to others.” Penal Code § 1385(c)(2).

¹⁴³ Committee on Revision of the Penal Code meeting on March 17, 2023, Part 2, 0:08:24–0:09:50.

¹⁴⁴ Penal Code §§ 667(c) & 1170.12.

¹⁴⁵ *People v. Burke*, 89 Cal.App.5th 237, 244 (2023); *People v. Hempstead*, 2023 WL 3141009, *5 (Cal. Ct. App. April 8, 2023); *People v. Oliveros*, 2023 WL 3108543, *9 (Cal. Ct. App., April 27, 2023); *People v. Pimentel*, 2023 WL 3220922, *3–*5 (Cal. Ct. App. May 3, 2023); *People v. Poliquin*, 2023 WL 3367690, *3 (Cal. Ct. App. May 11, 2023); *People v. Gomez*, 2023 WL 3402597, *3–*5 (Cal. Ct. App. May 12, 2023); *People v. Gray*, 2023 WL 3593929, *2 (Cal. Ct. App. May 23, 2023); *People v. Scott*, 2023 WL 3833259, *1–*3 (Cal. Ct. App. June 6, 2023).

¹⁴⁶ See Committee on Revision of the Penal Code, 2020 Annual Report and Recommendations, 37–42. See also *Burke*, 89 Cal.App.5th at 243, n. 3 (noting that the 2020 Report “did not distinguish strikes from enhancements and did not exclude them from its recommendation”).

¹⁴⁷ Mia Bird et al., *Three Strikes in California*, California Policy Lab, 27 (August 2022).

By excluding prior strike enhancements from the reforms of SB 81, the law curtails judicial discretion for a group of people for whom the mitigating circumstances likely apply. As SB 81 currently provides, judges would retain the discretion to determine whether those mitigating circumstances apply and could still impose strike enhancements if justified by public safety.

EMPIRICAL RESEARCH

In September 2023, approximately 28% of people in prison were serving a sentence enhanced by the Three Strikes Law with 23% (around 21,600 individuals) serving a term enhanced by a second strike and 5% (around 5,200 individuals) serving a term enhanced by a third strike.¹⁴⁸ And from 2015 to 2021, nearly 65% of people admitted to prison to serve a term enhanced by a second strike had been convicted of a non-violent, non-serious offense.¹⁴⁹ People of color, particularly Black people, are overrepresented among people serving these sentences.¹⁵⁰

As the Committee has repeatedly noted, there is a broad consensus among academic studies of decades of nationwide crime and incarceration data concluding that long sentences have little or no public safety value.¹⁵¹

¹⁴⁸ *Id.* at 13.

¹⁴⁹ *Id.* at 14.

¹⁵⁰ *Id.* at 27.

¹⁵¹ See, e.g., Steven Raphael and Michael A. Stoll, *Why Are So Many Americans in Prison?*, 222 (2013). See also National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, The National Academies Press, 134–140 (2014).

| | |
|-----------------------------------|----|
| Recommendation | 40 |
| Relevant Statutes | 40 |
| Background and Analysis | 40 |
| Empirical Research | 45 |
| Insights from Other Jurisdictions | 46 |

7. Focus Welfare Fraud Prosecutions on the Most Serious Cases

Focus Welfare Fraud Prosecutions on the Most Serious Cases

RECOMMENDATION

Welfare fraud prosecutions in the criminal legal system have concerning race and gender disparities, with women of color making up more than 50% of convictions over a 10-year span. Criminal prosecution in these cases is often not needed as there is already an administrative process that can require the return of funds and even lifetime bans on receiving future benefits.

The Committee therefore recommends the following:

1. Without changing current law in the following cases, continue to allow criminal prosecutions for welfare fraud regardless of the monetary amount:
 - *Multiple counties*: intentionally and unlawfully receiving benefits in more than one county.
 - *Stolen or fake identities*: intentionally receiving benefits using a fictitious identity.
 - *Trafficking*: using, selling, or transferring benefits unlawfully.
2. In cases involving a person's misrepresentation of income that results in an overpayment, require at least \$25,000 in excess benefits before criminal prosecution is permissible. Current law allows misdemeanor prosecutions at any dollar amount and allows felony prosecutions at \$950 in excess benefits.

RELEVANT STATUTES

Welfare and Institutions Code § 10980
7 Code of Federal Regulations § 273.16(a)

BACKGROUND AND ANALYSIS

California's public assistance programs, including CalWorks and CalFresh, serve millions of people every year and are important tools in fighting poverty.¹⁵² About 5 million Californians live in poverty and that number is on the rise since pandemic era relief programs have ended.¹⁵³ In 2023, more than 3 million more people would have been in poverty without California's safety net programs.¹⁵⁴ Given the importance of these programs to so many Californians, fraud — when a person makes false statements or fails to report important information to receive benefits to which they are not entitled to¹⁵⁵ — is unacceptable.

Fraud by a recipient of benefits occurs in an exceedingly small number of cases.¹⁵⁶ As explained by Kimberly Brauer, Section Chief for the California Department of Social Services Data Stewardship and Integrity Bureau, people having their benefits stolen from them is more common.¹⁵⁷ Indeed, a recent analysis of data from the California Department of Social Services shows that theft from cash aid recipients' Electronic Benefits Transfer cards has increased since the start of the COVID-19 pandemic and currently amounts to \$10 million a month in losses compared to \$2 million a month just one year ago in 2022.¹⁵⁸

¹⁵² California counties are also required to operate a program of General Assistance or General Relief for indigent people residing in the county who are not eligible for other programs. See Welfare and Institutions Code § 17000 et seq.

¹⁵³ Caroline Danielson et al., *Poverty in California*, Public Policy Institute of California (October 2023).

¹⁵⁴ *Id.*

¹⁵⁵ Welfare and Institutions Code § 10980.

¹⁵⁶ Between October and December 2019, there were less than 75,000 fraud investigations pending or concluded out of over 4 million people receiving CalFresh benefits, and less than 700 of those investigations led to a referral to an administrative disqualification hearing or criminal prosecution. Department of Social Services, *Public Assistance Facts and Figures Report*. See also Department of Social Services, *Fraud Investigation Activity Report, Federal Fiscal Year 2019–20*.

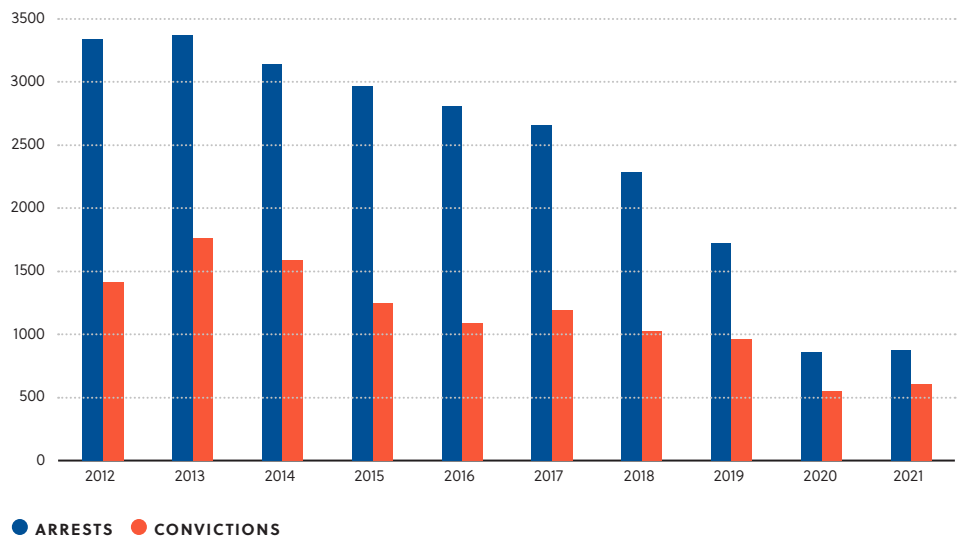
¹⁵⁷ Committee on Revision of the Penal Code meeting on June 23, 2023, Part 2 of 4, 0:13:32–0:16:54. Gerry Bonilla, Division Chief of Program Compliance at the Los Angeles County Department of Public Social Services (which handles fraud investigations in the county), recently told CalMatters that recipient fraud is not a widespread issue but that between 4,000 and 10,000 Los Angeles County residents claim their benefits were stolen each month. Jeanne Kuang, *California Missed Chances to Stop EBT Theft. It's Lose Tens of Millions of Taxpayer Dollars Since*, CalMatters, November 8, 2023.

¹⁵⁸ Jeanne Kuang, *California Missed Chances to Stop EBT Theft. It's Lost Tens of Millions of Taxpayer Dollars Since*, CalMatters, November 8, 2023.

Although prosecutions for welfare fraud make up a relatively small part of California’s criminal justice system, they have significant consequences for the thousands of people who enter the system because of an accusation that they committed fraud.¹⁵⁹

Over a 10-year span from 2012–2021, there were approximately 24,000 arrests and 11,000 convictions for welfare fraud in California.¹⁶⁰ While most convictions in recent years are for misdemeanors, felony convictions are available if the amount of excess benefits received is at least \$950.¹⁶¹ The vast majority (80%) of people convicted for welfare fraud during this time period do not have any prior convictions.¹⁶² Importantly, welfare fraud is prosecuted under different statutes than unemployment fraud,¹⁶³ which surged during the COVID-19 pandemic.¹⁶⁴

ANNUAL WELFARE FRAUD ARRESTS AND CONVICTIONS (2012-2021)



Source: CPL analysis of Automated Criminal History System data. Misdemeanors and felonies combined.

¹⁵⁹ “Welfare” is a blanket term for a variety of government-funded programs that provide financial and other types of aid to individuals and families but the term is increasingly outdated due to the negative implications it has developed, as discussed below. See Language, Please, *Welfare*; Kaaryn Gustafson, *The Criminalization of Poverty*, 99 *Journal of Criminal Law and Criminology* 643, 644 (2009).

¹⁶⁰ Arrest and conviction data referenced throughout this recommendation comes from California Policy Lab analysis of California Department of Justice Automated Criminal History System (ACHS) data.

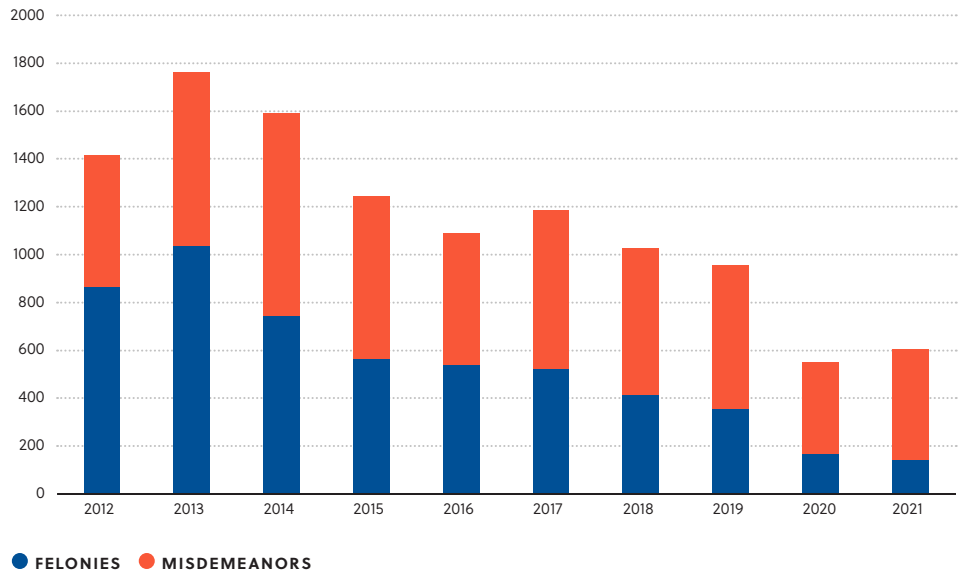
¹⁶¹ See Welfare and Institutions Code § 10980(c)(2).

¹⁶² Criminal history includes any conviction in California between January 1, 2012 and the date of the conviction in the welfare fraud case.

¹⁶³ Unemployment Insurance Code § 2101.

¹⁶⁴ See Eric Westervelt, *Pandemic-Related Fraud Totaled Billions. California is Trying to Get Some of it Back*, National Public Radio, October 18, 2022.

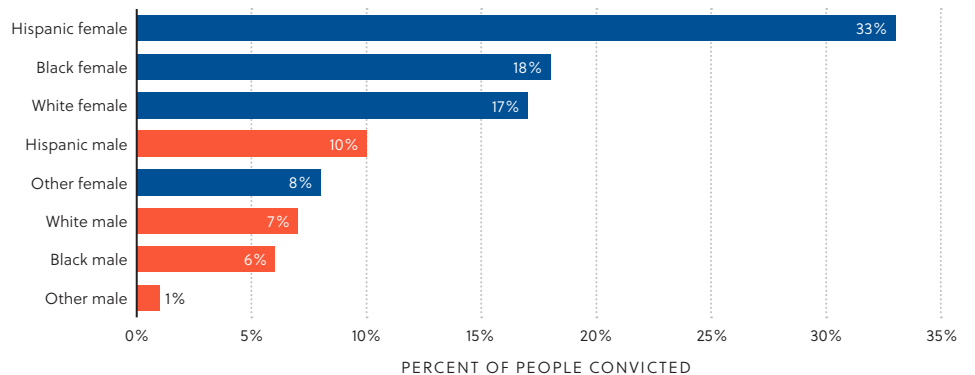
ANNUAL WELFARE FRAUD CONVICTIONS BY OFFENSE TYPE (2012-2021)



Source: CPL analysis of Automated Criminal History System data.

Like many other aspects of the criminal legal system, prosecutions for welfare fraud have a sordid racial history that includes the widespread stereotype that low-income women of color take advantage of the public benefits system.¹⁶⁵ The most recent data shows alarming race and gender disparities in arrests and convictions: women comprise 75% of arrests and convictions, and Black and Hispanic women account for over 50% of all arrests and convictions combined.

DEMOGRAPHICS OF WELFARE FRAUD CONVICTIONS (2012-2021)



Source: CPL analysis of Automated Criminal History System data. Misdemeanors and felonies combined.

¹⁶⁵ The "welfare queen" caricature — one promoted by former California Governor (and later President) Ronald Reagan was politicized to promote ideas about government waste and crime control. Over time, these racialized concerns led to more stringent income verification requirements, heightened scrutiny of administrative records, and increased administrative and criminal penalties. See Kaaryn Gustafson, *The Criminalization of Poverty*, 99 *Journal of Criminal Law and Criminology* 643, 648-64 (2009).

While the total number of arrests and convictions for welfare fraud have been declining for several years, racial disparities have persisted in many counties:

| County | 2012–2016 Convictions | 2012–2016 Of convictions, % nonwhite | 2017–2021 Convictions | 2017–2021 Of convictions, % nonwhite |
|----------------|-----------------------|--------------------------------------|-----------------------|--------------------------------------|
| El Dorado | 143 | 21% | 53 | 25% |
| Fresno | 377 | 81% | 148 | 86% |
| Kern | 514 | 76% | 145 | 82% |
| Los Angeles | 1397 | 92% | 187 | 92% |
| Placer | 217 | 31% | 39 | 33% |
| Riverside | 982 | 80% | 224 | 79% |
| San Bernardino | 500 | 81% | 560 | 82% |
| San Joaquin | 86 | 66% | 224 | 79% |
| Santa Barbara | 167 | 74% | 68 | 78% |
| Sonoma | 50 | 42% | 57 | 51% |
| Tulare | 432 | 77% | 56 | 79% |

Note: These 11 counties are the only ones that had sufficient convictions in both time periods to allow comparison.

California’s welfare fraud statute covers a wide range of fraudulent conduct, including committing fraud by making multiple applications or using a false identity.¹⁶⁶ But the vast majority of arrests (89%) and convictions (92%) for welfare fraud stem from allegations that a person made false statements or failed to disclose an important fact.

California takes great steps to prevent and detect recipient fraud in its public benefit programs. Under the oversight of the California Department of Social Services, each county maintains a fraud investigation unit staffed with law enforcement officers.¹⁶⁷ State and local hotlines specifically dedicated to welfare fraud allow anyone to report suspected fraud to law enforcement. The state and counties also implement the federally-mandated Income and Eligibility Verification System – a data exchange system that uses various databases to track earnings and benefits.¹⁶⁸

While federal law requires that states take steps to prevent fraud and address it when it is discovered, states are given the discretion to decide whether to handle cases of suspected fraud through either a criminal or administrative process.¹⁶⁹ The administrative process carries significant consequences: findings of fraud can result in orders to repay excess benefits, the suspension of benefits, or lifetime bans from receiving assistance.¹⁷⁰

¹⁶⁶ Welfare and Institutions Code § 10980.

¹⁶⁷ California Department of Social Services Manual of Policies and Procedures § 20-005.21.

¹⁶⁸ 7 Code of Federal Regulations § 273.2(f)(9).

¹⁶⁹ 7 Code of Federal Regulations § 273.16(a); 42 USC § 602 (a)(6).

¹⁷⁰ See California Department of Social Services Manual of Policies and Procedures §§ 20-300.3, 20-353.

But the consequences in the criminal process are more severe because, in addition to repaying or being suspended from receiving benefits, convictions can result in incarceration, loss of employment and housing, severe immigration consequences, and court-ordered debt.¹⁷¹

Antionette Dozier, Senior Attorney at the Western Center on Law and Poverty, told the Committee that the current law unnecessarily criminalizes people who are unable to meet the demands of the cumbersome and rigorous reporting process within the public benefits system.¹⁷² In many cases, hardships related to the recipient's poverty, disability, or language access can be reasons for noncompliance.¹⁷³

California state regulations direct county welfare departments to refer cases to the District Attorney when there is clear and convincing evidence that fraud occurred,¹⁷⁴ but there is a great deal of variation in whether criminal charges are brought because each District Attorney has a different monetary threshold for prosecuting fraud.¹⁷⁵ While some counties frequently prosecute these offenses, others almost never do. As shown in the table below, over a 5-year span between 2017–2021, several counties did not convict a single person for a welfare fraud offense.

WELFARE FRAUD CONVICTIONS BY TYPE, 2017–2021

| County | No felony convictions | No misdemeanor convictions |
|-----------|-----------------------|----------------------------|
| Alpine | X | X |
| Calaveras | X | X |
| Del Norte | | X |
| Inyo | | X |
| Mariposa | X | |
| Modoc | X | X |
| Napa | X | X |
| Plumas | X | X |
| Sierra | X | X |
| Siskiyou | X | X |
| Trinity | X | X |
| Yuba | | X |

¹⁷¹ Council of Economic Advisors, *Economic Perspectives on Incarceration and the Criminal Justice System*, Executive Office of the President of the United States (April 2016).

¹⁷² Committee on Revision of the Penal Code meeting on June 23, 2023, Part 2 of 4, 0:32:24–0:38:12. See also Lisa Newstrom and Ann Block, *No Crime to be Poor: Defending Welfare Fraud Allegations in Criminal, Administrative, and Immigration Proceedings*, Immigrant Legal Resource Center (October 2023).

¹⁷³ *Id.*

¹⁷⁴ California Department of Social Services Manual of Policies and Procedures § 20-300.21.

¹⁷⁵ See California State Auditor, *Department of Social Services: For the CalWorks and Food Stamp Programs, It Lacks Assessments of Cost-Effectiveness and Misses Opportunities to Improve Counties Antifraud Efforts* (November 2009) (finding that that counties had inconsistent prosecution thresholds and recommending that DSS work with counties to implement more consistent prosecution methods); California State Auditor, *Follow-Up — California Department of Social Services: It Has Not Corrected Previously Recognized Deficiencies in Its Oversight of Counties' Antifraud Efforts for the CalWorks and CalFresh Programs* (June 2015) (finding that DSS had not taken action to implement previous recommendations). See also California Department of Social Services All County Letter 17-118.

¹⁷⁶ The 28 counties are: Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, Glenn, Inyo, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Napa, Nevada, Plumas, San Benito, San Francisco, San Luis Obispo, Sierra, Siskiyou, Sutter, Trinity, Tuolumne.

¹⁷⁷ Committee on Revision of the Penal Code meeting on June 23, 2023, Part 2 of 4, 0:28:45–0:30:23.

There is also county variation in the number of people arrested. For example, while there were over 1,800 arrests for welfare fraud offenses in San Bernardino County between 2017–2021, there were 25 or less arrests per county in nearly half (28) of all counties during the same time period.¹⁷⁶

As explained to the Committee by Kamaria Henry, Managing Deputy District Attorney at the Riverside District Attorney's Office, many prosecutors focus their attention on fraud that occurs over a long period of time and results in high monetary losses.¹⁷⁷

However, there is no statutory requirement for them to do so,¹⁷⁸ and according to John Martire, President of the California Welfare Fraud Investigators Association, in some counties, the prosecutor-established threshold is as high as \$15,000, while in others it is \$3,000.¹⁷⁹

Andrea Brayboy, California Department of Social Services CalFresh and Nutrition Branch Chief, explained to the Committee that \$950, the threshold for a felony prosecution, is just one month of benefits for some families.¹⁸⁰ In contrast to the low threshold for felony welfare fraud, a number of felony tax fraud crimes in California require losses amounting to \$25,000 or more to charge a felony.¹⁸¹ Adopting the same loss threshold for welfare fraud prosecutions would provide a more equitable approach to the criminal legal system and ensure consistency in the treatment of fraud offenses across different areas of the law.

The state should continue its efforts to prevent fraud, but the administrative process already in place is sufficient to handle almost all cases. Focusing welfare fraud prosecutions on the most serious cases, as specified above, can free up scarce criminal justice resources and improve confidence in our legal system.

EMPIRICAL RESEARCH

A recent report by the Public Policy Institute of California found that nearly 4 million more Californians would have been in poverty without safety net programs like CalFresh and CalWORKS.¹⁸² Other research suggests that providing people with public benefits may reduce criminal activity.¹⁸³ Despite these benefits, California's safety net programs are underutilized – only approximately 4.8 million of the 6.5 million people eligible for CalFresh participate in the program each month, and only about 60% of families eligible for CalWORKS were enrolled in the program.¹⁸⁴

Other research from the Public Policy Institute of California shows that complicated and confusing reporting requirements cause more than a third of CalFresh recipients to drop out of the program after six months, when many people are still eligible for benefits.¹⁸⁵ Researchers suggest that efforts to automate income reporting would help reduce this drop-off, and such efforts could also reduce the need for criminal prosecutions.

¹⁷⁸ See Welfare and Institutions Code § 10980.

¹⁷⁹ Committee on Revision of the Penal Code meeting on June 23, 2023, Part 2 of 4, 0:41:45–0:42:42.

¹⁸⁰ Committee on Revision of the Penal Code meeting on June 23, 2023, Part 2 of 4, 1:10:35–1:11:23. See also Department of Social Services, *All County Information Notice No. 1-78-21* (indicating a maximum CalFresh benefit of \$992 per month for a family of 5). Fraudulently receiving over \$950 in benefits can be prosecuted as a misdemeanor or a felony but knowingly making more than one application for aid, or making an application for aid for a fictitious or nonexistent person can be a felony regardless of the amount of loss. Welfare and Institutions Code § 10980.

¹⁸¹ See Revenue and Taxation Code §§ 7153.5, 9354.5, 30480, 40187, 41143.4, 60707.

¹⁸² Caroline Danielson, Patricia Malagon, and Sarah Bohn, *Poverty in California*, Public Policy Institute of California (October 2022).

¹⁸³ See Manasi Deshpande and Michael G. Mueller-Smith, *Does Welfare Prevent Crime? The Criminal Justice Outcomes of Youth Removed from SSI*, Working Paper 29800, National Bureau of Economic Research (February 2022) (finding that removing youth from the Supplemental Security Income (SSI) program at age 18 increased the number of criminal charges by 20% over 20 years, and the likelihood of incarceration by 60%).

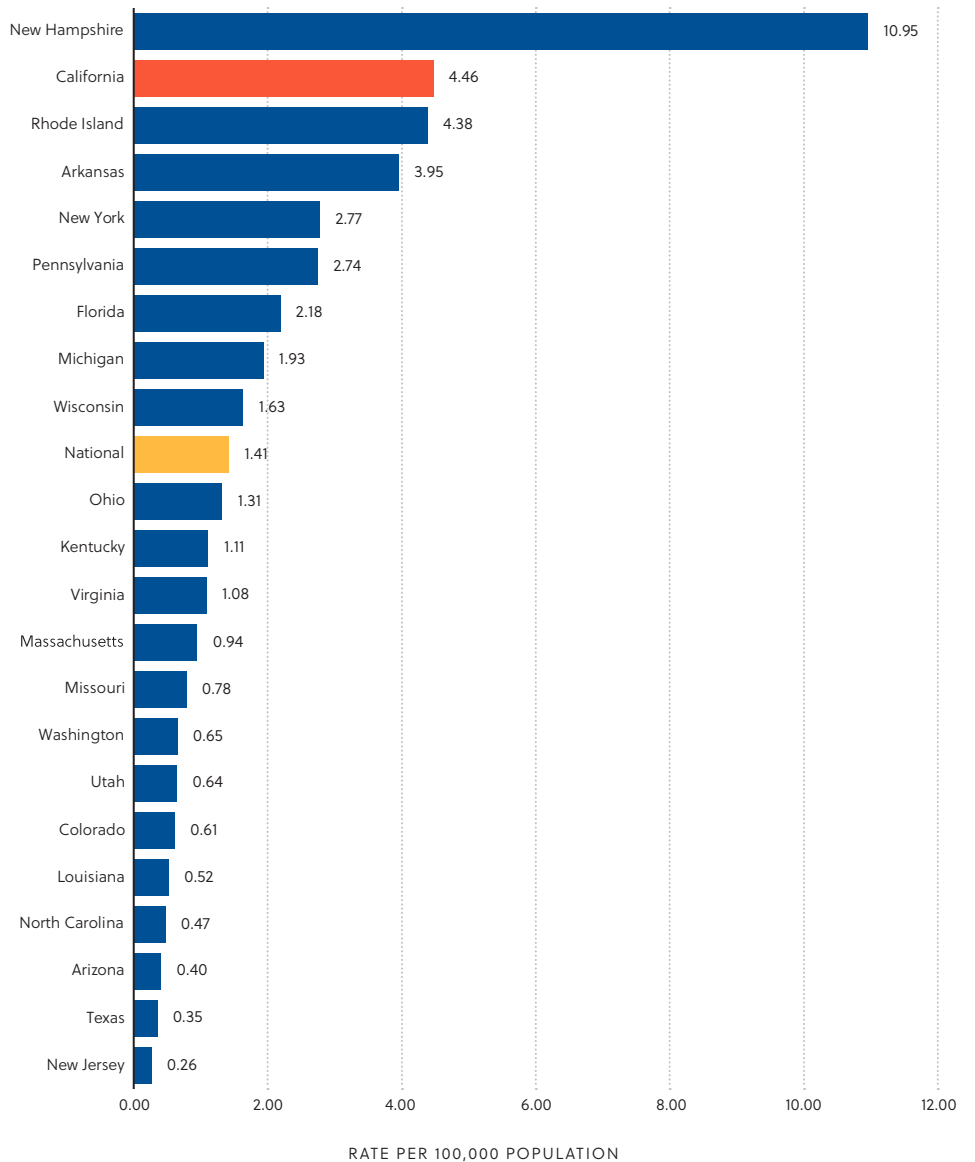
¹⁸⁴ Caroline Danielson, Tess Thorman, and Patricia Malagon, *The Role of CalFresh in Stabilizing Family Incomes*, Public Policy Institute of California, 3 (September 2022). See also California Legislative Analyst's Office, *Estimating the CalWORKS Take-Up Rate*, February 2, 2021.

¹⁸⁵ Tess Thorman, Caroline Danielson, and Patricia Malagon, *Employment Patterns for CalFresh Adults*, Public Policy Institute of California (July 2022). See also Caroline Danielson, Tess Thorman, and Patricia Malagon, *The Role of CalFresh in Stabilizing Family Incomes*, Public Policy Institute of California, 3 (September 2022).

INSIGHT FROM OTHER JURISDICTIONS

Data on state activity in the Supplemental Nutrition Assistance Program (called CalFresh in California) collected by the U.S. Department of Agriculture shows that California is an outlier among other states in the number of prosecutions it brings for welfare fraud. Even accounting for its large population, California's prosecution rate is more than three times the national rate.

SNAP FRAUD PROSECUTION RATE (FISCAL YEAR 2020)



Source: Supplemental Nutrition Assistance Program State Activity Report, Fiscal Year 2020, Table 16. Population data is from US Census. Rate is per 100,000 population. Prosecutions are convictions, signed disqualification consent agreements, and acquittals. States with less than 20 prosecutions excluded.

| | |
|-----------------------------------|----|
| Recommendation | 48 |
| Relevant Statutes | 48 |
| Background and Analysis | 48 |
| Empirical Research | 50 |
| Insights from Other Jurisdictions | 51 |

8. Reduce the Scope of Criminal Fines and Fees

Reduce the Scope of Criminal Fines and Fees

RECOMMENDATION

Criminal fines and related add-on fees have become part of every misdemeanor and felony conviction in the state. But ordering people to pay amounts they cannot afford does not improve public safety.

The Committee therefore recommends the following:

1. Prohibit courts from imposing fines when a person is:
 - Convicted of a misdemeanor or felony, and
 - Indigent as indicated by their receipt of public benefits, earning 125% or less of the federal poverty standard, or representation by a public defender.
2. In the remaining cases, require courts to conduct ability-to-pay determinations before imposing fines and to use their discretion to set fines in amounts compatible with a person's financial ability.
3. Eliminate all add-on fees so that any fine ordered by a court reflects the full cost of what a person owes.

RELEVANT STATUTES

Penal Code §§ 19, 672, 1202.4, 1464, 1465.7, 1465.8

Government Code §§ 70372, 76000, 76000.5, 76104.6, 76104.7

BACKGROUND AND ANALYSIS

People convicted of criminal offenses are routinely required to pay fines, restitution to crime victims, and a dizzying variety of add-on charges (called fees, penalties, assessments, interest, and surcharges). However, many people ordered to pay are unable to, and California's fine and fee system has resulted in billions of dollars of unpaid debt which the state and counties struggle to collect.¹⁸⁶ Additionally, research has shown that the imposition of fines and fees amplifies race and wealth disparities in the criminal legal system while making no improvement to public safety.¹⁸⁷

In 2019, the Legislature took a major step towards rethinking the state's fines and fees system by passing a bill that would have required courts to determine whether someone had the ability to pay a fine, fee, or assessment before they could be imposed.¹⁸⁸ But Governor Newsom vetoed the bill, explaining that while California "must tackle the issue of burdensome fines, fees and assessments that disproportionately drag low-income individuals deeper into debt and away from full participation in their communities," such reforms should be handled in the budget process.¹⁸⁹

In 2020 and 2021, the Legislature used the budget process to eliminate over 40 different add-on charges, resulting in nearly \$3 billion in dismissed or vacated criminal administrative fees.¹⁹⁰ Despite these efforts, criminal fines and add-on charges remain

¹⁸⁶ Report on Statewide Collection of Court-Ordered Debt for 2021–22, Judicial Council of California, 5–13 (December 2022).

¹⁸⁷ Brittany Friedman et al., *What is Wrong With Monetary Sanctions? Directions for Policy, Practice, and Research*, The Russell Sage Foundation Journal of the Social Sciences, Vol. 8, Iss. 1 (January 2022).

¹⁸⁸ AB 927 (Jones-Sawyer 2019).

¹⁸⁹ Governor Newsom veto message on AB 927, October 9, 2019.

¹⁹⁰ AB 1869 (2020 Committee on Budget); AB 177 (2021 Committee on Budget). See also Report on Statewide Collection of Court-Ordered Debt for 2021–22, Judicial Council of California, 10 (December 2022).

a common feature of criminal sentencing, and people convicted of crimes are often ordered to pay amounts they cannot afford.

This court-ordered debt is used both to punish people convicted of crimes and to generate revenue for state and local public safety programs.¹⁹¹ Like many states, California requires courts to impose various add-on charges in addition to any fine that is imposed, significantly increasing the total amount of court-ordered debt.¹⁹² For example, under current law, when a court orders a person to pay a base fine of \$500, the person will also be required to pay add-on fees including a \$500 state penalty assessment, a \$350 county penalty assessment, and a \$100 state surcharge, among others.¹⁹³ While many other states impose add-on fees, a 50-state survey of administrative fees conducted by the Fines and Fees Justice Center in 2022 found that California has among the highest fees in the country.¹⁹⁴

Unlike fines, which judges use their discretion to set within a range authorized by statute, judges do not have discretion to determine the amount of add-on charges.

| FINES AND FEE SCHEDULE | | |
|---|---|---------|
| Fine or Fee | Assessment | Example |
| Base Fine | Up to \$1,000 for misdemeanors, up to \$10,000 for felonies | \$1,000 |
| State Penalty Assessment (PC § 1464) | \$10 for every \$10 of a base fine | \$1,000 |
| County Penalty Assessment (GC § 76000) | \$7 for every \$10 of a base fine | \$700 |
| Court Construction Penalty Assessment (GC § 70372) | \$5 for every \$10 of a base fine | \$500 |
| Prop 69 DNA Penalty Assessment (GC § 76104.6) | \$1 for every \$10 of a base fine | \$100 |
| DNA Identification Fund Penalty Assessment (GC § 76104.7) | \$4 for every \$10 of a base fine | \$400 |
| EMS Penalty Assessment (GC § 76000.5) | \$2 for every \$10 of a base fine | \$200 |
| State Surcharge (PC § 1465.7) | 20% of base fine | \$200 |
| Court Operations Assessment (PC § 1465.8) | \$40 per conviction | \$40 |
| Restitution Fund Fine (PC § 1202.4) | \$150 minimum for misdemeanors and \$300 minimum for felonies | \$150 |

191 See Anjali Verma and Bryan L. Sykes, *Beyond the Penal Code: The Legal Capacity of Monetary Sanctions in the Corpus of California Law*, *The Russell Sage Foundation Journal of the Social Sciences*, Vol. 8, Iss. 1, 36–62 (January 2022).

192 Legislative Analyst's Office, *Overview of State Criminal Fines and Fees and Probation Fees*, 3 (February 5, 2019) (finding that the total penalty for a stop sign violation had increased by 54% since 2005).

193 See Penal Code §§ 1464 & 1465.7; Government Code § 76000. The add-on charges listed here are the most widely applicable but there are also several offense-specific charges including an alcohol testing fee for DUI cases, and a seizure and disposition fee for drug manufacturing cases. See Penal Code § 1463.14(b) and Health and Safety Code § 11470.1. While many add-on charges are mandatory, some require the County Board of Supervisors approval to impose. See Government Code § 76000.5.

194 *Assessments & Surcharges: A 50-State Survey of Supplemental Fees*, Fines and Fees Justice Center (December 2022).

195 Committee on Revision of the Penal Code meeting on June 23, 2023, Part 3 of 4, 0:50:38–0:54:09. See also Written Submission of Lisa Foster to Committee on Revision of the Penal Code, June 23, 2023.

At the Committee's June 2023 meeting, Lisa Foster, a former California Superior Court Judge and current Co-Executive Director of the Fines and Fees Justice Center explained that California's current system of add-on charges is effectively a tax system that only applies to the most marginalized groups in society.¹⁹⁵

Research has shown that Black and Hispanic people are more likely to be arrested and incarcerated than white people¹⁹⁶ – making it more likely that they will be subject to court-ordered debt. And while wealthier people are able to quickly pay their debts and fulfill their sentences, low-income people, who are disproportionately people of color and immigrants, are subjected to continued legal involvement and additional sanctions for failure to pay.¹⁹⁷

California has taken several significant steps to address this disproportionate impact, including mandating ability-to-pay determinations in infraction cases, the lowest level of criminal offense and largely consisting of traffic tickets.¹⁹⁸ Courts are advised to consider factors such as whether a person receives public benefits, whether their income is 125% or less of federal poverty guidelines, and to use their discretion to issue fines in amounts that are reasonable and compatible with the person's financial ability.¹⁹⁹ Early results presented to the Committee by the Judicial Council demonstrated that setting fines and fees at amounts people can afford resulted in increased repayment rates and revenue.²⁰⁰

In addition to the infraction fine reforms, the restitution fund fine (which ranges from \$150 to \$10,000) was recently earmarked for elimination in 2024, subject to future budget appropriations.²⁰¹

Despite these reforms, current law – which is in flux as appellate courts have reached conflicting results on whether judges must consider someone's ability-to-pay before imposing certain add-on charges²⁰² – still allows courts to sentence people convicted of misdemeanors and felonies to pay fines and fees without considering their ability to pay.²⁰³ Judges can sentence people to pay fines and add-on fees even when their likelihood of paying the debt is unrealistic because criminal convictions reduce employment and earnings,²⁰⁴ and often also include incarceration.

Anita Lee, Senior Fiscal Policy Analyst at the California Legislative Analyst's Office, emphasized to the Committee the need for the Legislature to continue to improve the criminal fines and fee system.²⁰⁵ Among other measures, the Legislative Analyst's Office recommends that the Legislature reevaluate the goals of the system and consider whether and how ability-to-pay should be incorporated into it.²⁰⁶ Notably, the LAO also recommends that the state consolidate most fines and add-on charges into a single statewide charge while taking steps to address the fiscal impact that eliminating fees could have on local governments.²⁰⁷

Expanding ability-to-pay reforms to misdemeanor and felony cases and eliminating add-on fees would make California's system more equitable and efficient.

EMPIRICAL RESEARCH

Requiring people convicted of crimes to pay money has little effect on recidivism or may increase it. A recent multi-state analysis found no evidence that imposing fines and fees deterred crime but that fines and fees were concentrated on those less likely to pay, placing them at higher risk of other negative outcomes such as arrest warrants and additional fines.²⁰⁸ Studies conducted in Florida, Oklahoma, and Pennsylvania have reached similar conclusions.²⁰⁹

¹⁹⁶ See Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, Nature and Human Behavior, Vol. 4 (2020) (finding that Black and Latinx drivers were more likely to be arrested during traffic stops – the most common point of contact between civilians and police). See also Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparities in State Prisons* (October 13, 2021) (finding that California is one of 9 states that maintain a Black/white disparity in incarceration rates larger than 9 to 1).

¹⁹⁷ See Lindsay Bing, Becky Pettit, Ilya Slavinski, *Incomparable Punishments: How Economic Inequality Contributes to the Disparate Impact of Legal Fines and Fees*, The Russell Sage Foundation Journal of the Social Sciences, Vol. 8, Iss. 1 (January 2022). See also Amairini Sanchez et al., *Punishing Immigrants: The Consequences of Monetary Sanctions in the Crimmigration System*, The Russell Sage Foundation Journal of the Social Sciences, Vol. 8, Iss. 1 (January 2022).

¹⁹⁸ California Rules of Court Rule 4.335. Infractions are offenses for which the only authorized punishment is a fine. Penal Code § 19.6.

¹⁹⁹ California Rules of Court Rule 4.335 Advisory Committee Comment.

²⁰⁰ See *Report to the Legislature: Online Infraction Adjudication and Ability-to-Pay Determinations*, Judicial Council of California, 9 (February 2023).

²⁰¹ SB 189 (Committee on Budget and Fiscal Review), Section 77. Though prioritized for funding in 2024–25, the elimination of the restitution fund fine is not automatic and requires additional legislation to be implemented.

²⁰² *People v. Dueñas*, 30 Cal.App.5th 1157 (2019). See also *People v. Hicks*, 40 Cal.App.5th 320 (2019) (review granted); *People v. Kopp*, 38 Cal.App.5th 47 (2019) (review granted).

²⁰³ Penal Code §§ 19, 672, 1202.4, 1464, 1465.7, 1465.8. See also Gov't Code §§ 70372, 76000, 76000.5, 76104.6, 76104.7. According to the county public defender, courts in Contra Costa County often do not sentence people to pay fines and fees if they are indigent.

²⁰⁴ See Michael D. Tanner, *Poverty and Criminal Justice Reform*, Cato Institute, 2 (October 2021).

²⁰⁵ Committee on Revision of the Penal Code meeting on June 23, 2023, Part 3 of 4, 0:01:14–0:09:54.

²⁰⁶ See Submission of Anita Lee to Committee on Revision of the Penal Code for Meeting on June 23, 2023.

²⁰⁷ *Id.*

²⁰⁸ Keith Finlay et al., *The Impact of Criminal Financial Sanctions: A Multi-State Analysis of Survey and Administrative Data*, NBER Working Paper No. 31581 (August 2023).

²⁰⁹ See Devah Pager et al., *Criminalizing Poverty: The Consequences of Court Fees in a Randomized Experiment*, American Sociological Review, 87(3)(2022). See also Alex R. Piquero, Michael T. Baglivio, and Kevin T. Wolff, *A Statewide Analysis of the Impact of Restitution and Fees on Juvenile Recidivism in Florida Across Race & Ethnicity*, Youth Violence and Juvenile Justice, Vol. 21, Iss. 4 (2023); Alex Piquero and Wesley G. Jennings, *Research Note: Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, Youth Violence and Juvenile Justice, 15(3), 235–340 (2017).

Data from the Judicial Council of California shows that 33% of fines and fees, which includes those issued in infraction cases, are in default and counties spend a substantial sum – up to 40% of the money they eventually recover – on debt collection.²¹⁰ Counties also designate hundreds of millions of dollars in debt as uncollectable each year, which means they've given up on trying to recover it.²¹¹

In contrast, California's experience with ability-to-pay determinations in traffic cases has shown that ordering people to pay less can be a more effective and efficient means of collecting revenue. Analysis performed by the Judicial Council found that cases granted a reduction in the amount ordered to pay had a 61% success rate for full repayment while cases denied relief had a 29% success rate.²¹² Data also indicated that repayment success increases when litigants are ordered to pay less.²¹³

INSIGHT FROM OTHER JURISDICTIONS

In April 2023, the United States Department of Justice issued guidance to state and local courts cautioning that the imposition of fines and fees on individuals who cannot afford to pay them can erode trust in government, increase recidivism, undermine rehabilitation and reentry, and generate little or no net revenue.²¹⁴

Several state legislatures have made ability-to-pay considerations an explicit part of their fine and fee systems and taken steps to limit the application of add-on fees:

- At least 12 states require courts to conduct an ability-to-pay determination whenever they impose fines, fees, costs, surcharges or assessments.²¹⁵
- At least 7 states have codified standards that trigger a presumption that a person is indigent and unable to pay fines, fees, costs, surcharges or assessments, in cases involving a violation of law.²¹⁶ For example, Washington law specifies that people who receive public benefits, earn 125% or less of the federal poverty standard, or are represented by a public defender are presumed to be unable to pay discretionary fines.²¹⁷
- At least 16 states ensure that all judges have discretion to waive or modify all fines, fees, costs, surcharges or assessments based on ability to pay, at imposition or at any point afterwards.²¹⁸

Other states have taken steps to limit the application of add-on fees. Recently passed legislation in Washington eliminated add-on charges that were previously required to be issued upon conviction.²¹⁹ Similarly, New Mexico recently abolished most criminal legal fees imposed as administrative costs to fund government programs.²²⁰ Many other states including Arizona, Illinois, Indiana, Montana, and Texas have passed laws eliminating court fees in juvenile cases.²²¹

²¹⁰ Report on Statewide Collection of Court-Ordered Debt for 2021–22, Judicial Council of California, 9, 14, Chart 7 (December 2022).

²¹¹ *Id.* at 11–12, Chart 9. In 2021–22, court and county collections programs discharged over \$230 million in uncollectable debt.

²¹² Report to the Legislature: Online Infraction Adjudication and Ability-to-Pay Determinations, Judicial Council of California 4–5, Table 1 and Table 2 (February 2023).

²¹³ *Id.* at 6, Figure 2.

²¹⁴ U.S. Department of Justice, *Dear Colleague Letter* (April 2023).

²¹⁵ The states are Arizona (Ariz. S. Ct. Amin, Order No. 2017-18), Indiana (IN ST §§ 33-37-2-3, 35-38-1-18), Montana (MT ST §§ 46-18-232, 46-18-231), Nebraska (NE ST § 29-2206), New Jersey (NJ ST 2C:44-2), New Mexico (NM R MAG CT RCRP Rule 6-2071), North Dakota (ND ST 12.1-32-05), Oklahoma (OK ST CR A CT Rule 8.1), Rhode Island (RI ST § 12-21-20), Texas (TX CRIM PRO Art. 42A.655), Utah (State of Utah 2023 Uniform Fine and Fee Schedule), and Washington (State v. Blazina),¹⁸² Wash.2d 827 (2015). See also National Center for Access to Justice, *Fines and Fees Data Set, Benchmark 5: Ability to Pay*.

²¹⁶ The states are Connecticut (CT ST § 52-259b), Georgia (GA ST § 42-8-102(e)), Illinois (IL ST CH 725 § 5/120A-20 (only applies to assessments, not fines)), Kentucky (KY ST §§ 453.190, 534.030), Mississippi (MS ST § 99-19-201), Rhode Island (RI ST 12-20-10 (applies to costs, assessments, and fees)), and Washington (WA ST §§ 10.01.160(3), 10.01.010, 10.01.180(3)(b)). See also National Center for Access to Justice, *Fines and Fees Data Set, Benchmark 8: Presumption of Indigence*.

²¹⁷ See *State v. Blazina*, 182 Wash.2d 827 (holding that sentencing courts must make individualized inquiries into a person's current and future ability to pay before imposing discretionary fines); RCW 10.01.160(3) (specifying that courts shall not order a person to pay costs if they are indigent); RCW 10.01.010(3) (defining indigency).

²¹⁸ The states are Connecticut (CT ST § 52-259b, 54-74), Georgia (GA ST § 42-8-102(e)(2)), Hawaii (HI ST §§ 706-645, 706-644(4)), Illinois (IL ST CH 705 § 135/5-10(b); IL ST CH 725 § 5/124A-20), Missouri (MO R ORD AND TRAF VIOL Rule 37.65(c)), Montana (MT ST §§ 46-18-232(2), 46-18-231(3)), Nebraska (NE ST §§ 29-2206(1)(c), 29-2412(1)(c)), Nevada (NV ST §§ 176.085, 176.087), New Jersey (NJ ST 2B:19-8(a); NJ ST 2C:46-3), North Carolina (NC ST §§ 15A-1363, 15A-1364(c)), North Dakota (ND ST § 12.1-32-08(f)), Oklahoma (OK ST CR A CT Rule 8.5), Rhode Island (RI ST § 12-20-10(a)), South Dakota (SD ST § 23A-27-25.1, 16-2-29.2), Texas (TX CRIM PRO Art. 45.0491), and West Virginia (WV ST § 50-3-2a(d)(3)). See also National Center for Access to Justice, *Fines and Fees Data Set, Benchmark 9: Judicial Discretion to Waive or Modify Fines and Fees*.

²¹⁹ HB 1169 (Simmons 2023–2024 Regular Session).

²²⁰ HB 139 (Cadena 2023 Regular Session).

²²¹ See Michael Friedrich, *States Across the Political Spectrum are Reforming Juvenile Court Fees*, Arnold Ventures, September 13, 2023.

| | |
|-----------------------------------|----|
| Recommendation | 53 |
| Relevant Statutes | 53 |
| Background and Analysis | 53 |
| Empirical Research | 57 |
| Insights from Other Jurisdictions | 57 |

9. Lessen Unfair Pressure to Plead Guilty

Lessen Unfair Pressure to Plead Guilty

RECOMMENDATION

An overwhelming majority of criminal convictions are resolved by plea bargaining. The severity of punishment in the modern criminal legal system can often push people to plead guilty to avoid or be freed from incarceration, not because it is a fair resolution. Discrete changes to the Penal Code can address some of the more unfair aspects of the plea bargaining system.

The Committee therefore recommends the following:

- Allow courts to revisit pretrial detention whenever a prosecutor makes a plea offer.
- Prohibit the use of the same fact for conviction of the offense and imposition of a sentence enhancement.
- Allow juries to consider lesser-related offenses for specified charges.
- Add a presumption for probation to the default sentencing triad.

RELEVANT STATUTES

Penal Code §§ 18(a), 245(a)(2), 1159, 1289, 12022.5

BACKGROUND AND ANALYSIS

In California, as in the rest of the United States, guilty pleas are the dominant process for resolving criminal cases. In counties reporting data to the Judicial Council for Fiscal Year 2021–2022, 75% of dispositions of felony cases were guilty pleas, while around 20% were dismissals. Less than 3% were trials.²²² As this data shows, plea bargaining – when a defendant and prosecutor negotiate a guilty plea to specific charges and sentence instead of having a trial²²³ – accounts for almost all convictions. Defendants who plea bargain typically receive shorter sentences than people convicted at trial.²²⁴

But this system is one where prosecutors sometimes have an unfair advantage, with no benefit to public safety. Several factors, including harsh sentencing laws and pretrial incarceration, can make the risks of going to trial intolerable, giving the prosecutor significant power in plea bargaining.²²⁵ Even innocent people plead guilty: of the more than 3,300 people exonerated since 1989, 25% had pleaded guilty.²²⁶

²²² Judicial Council of California, 2023 Court Statistics Report, Tables 8a & 8b.

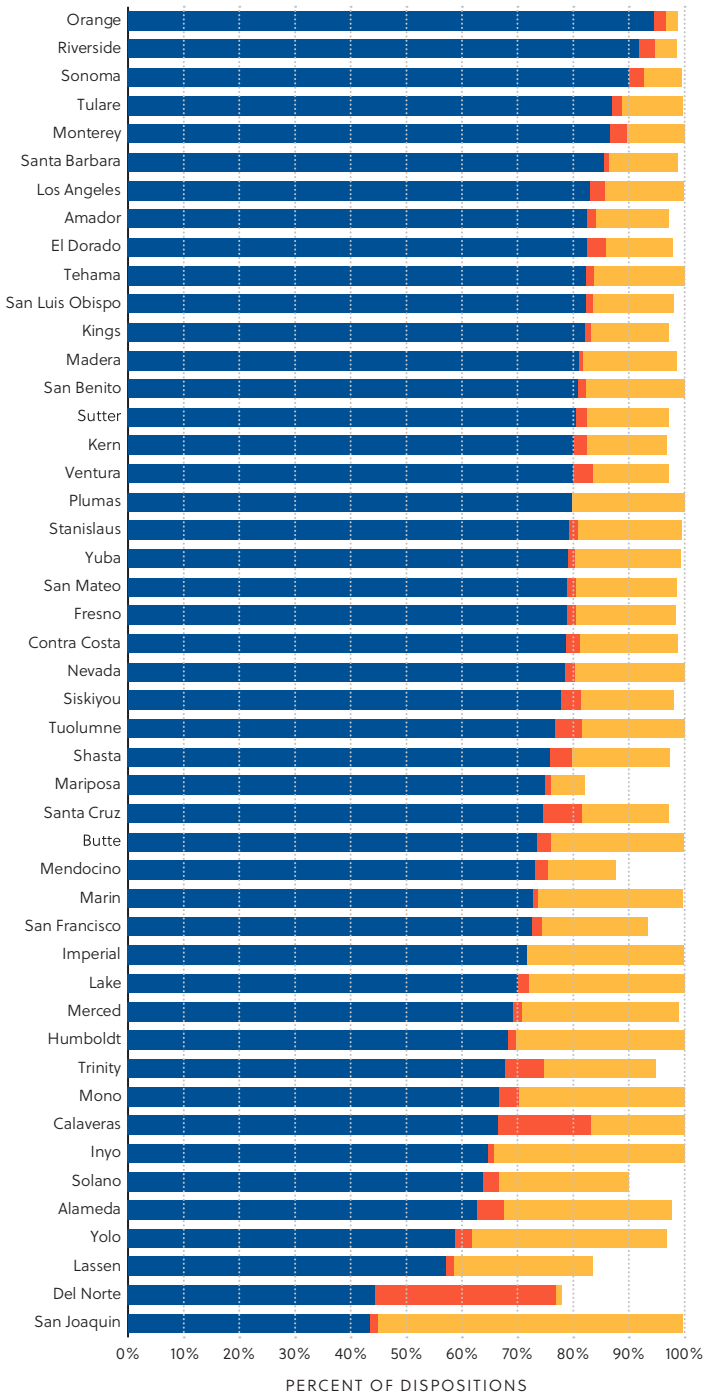
²²³ See Penal Code § 1192.5.

²²⁴ Shawn D. Bushway, Allison D. Redlich, and Robert J. Norris, *An Explicit Test of Plea Bargaining in the "Shadow of the Trial,"* *Criminology*, 52(4): 723–754 (2014).

²²⁵ American Bar Association 2023 Plea Bargain Task Force Report, 16 (February 2023).

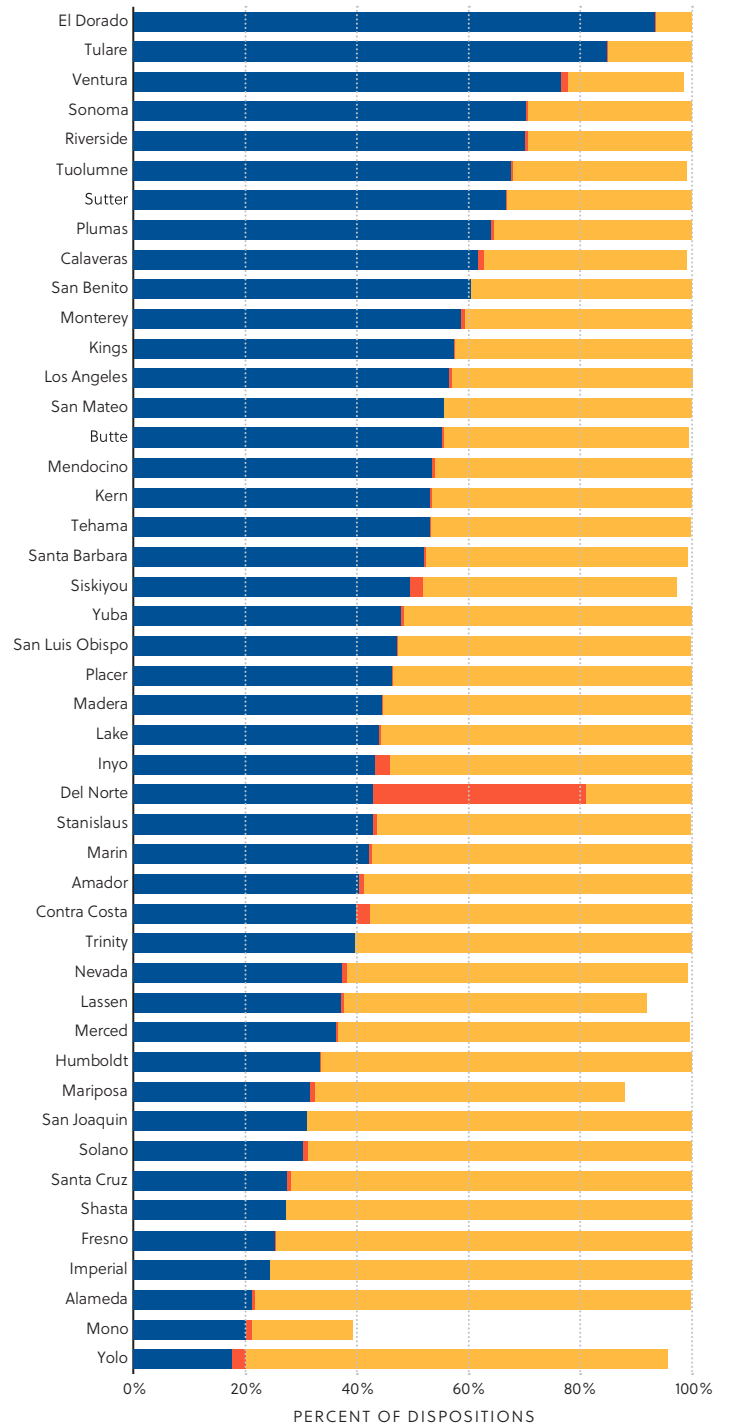
²²⁶ The National Registry of Exonerations, *2022 Annual Report*, 11 (May 2023).

**DISPOSITIONS OF FELONY FILINGS BY PROCESS
(FISCAL YEAR 2019–2020)**



Source: Judicial Council of California, 2021 Court Statistics Report, Tables 8a & 8b. Dismissals: Table 8a columns D & E (“Other,” which is dismissals and transfers) minus Table 8b column F (“Transfers”). Counties are ordered by the percentage of dispositions that are guilty pleas. Court and jury trials are combined. Dispositions that are transfers and felony petitions are excluded. Counties that did not report complete data are excluded.

**DISPOSITIONS OF MISDEMEANOR FILINGS BY PROCESS
(FISCAL YEAR 2019–2020)**



Source: Judicial Council of California, 2021 Court Statistics Report, Table 9a. Counties are ordered by the percentage of dispositions that are guilty pleas. Court and jury trials are combined. Excludes traffic misdemeanors. Excludes bail forfeitures. Counties that did not report complete data are excluded.

As Professor Carissa Byrne Hessick told the Committee, “[P]retrial detention can ... exert a lot of pressure for people to plead guilty, especially if a guilty plea is going to get them out of detention.”²²⁷ Professor Amy Lerman further explained that the emotional and financial hardships a person faces while incarcerated influences their decision making because people will do anything to avoid staying in jail.²²⁸ And as the Committee explored last year, almost any period of pretrial detention is harmful to the incarcerated person and community.²²⁹ Pretrial detention is often the single best predictor of case outcomes: it increases the likelihood of a conviction, the severity of conviction, and the length of a sentence. At the same time, pretrial detention reduces future employment and access to social safety nets.²³⁰

The Committee recognizes, as this data and experience show, that guilty pleas are foundational to the functioning of the criminal legal system but present serious equity issues. Past efforts to ban the practice in California — specifically, a prohibition from 1982’s Proposition 8 on plea bargaining in cases where a serious felony was charged — have failed.²³¹ The goal of the recommendations that follow is to lessen some of the undue pressure to plead guilty in some cases, including by limiting part of the uncertainty of what sentence a court may impose after trial:

- *Revisit pretrial detention.* California law allows bail to be revisited — to both increase or reduce the amount — for “good cause,” which is not otherwise defined. This law should be amended to specify that a presumption of good cause exists when public safety concerns have diminished or further pretrial incarceration is unfair. Specifically, “good cause” should be defined to include: (1) whenever a plea offer is made by a prosecutor, particularly if the offer is to time served or its equivalent or (2) the defendant has been incarcerated for the maximum amount of time, including credits, that they could serve if convicted. The law should also provide that a motion on these grounds can be made by the defendant immediately without notice.
- *Using the same fact for conviction and enhancement.* In some circumstances, the same fact can be used to support an underlying offense and a sentencing enhancement. For example, personally using a firearm during a felony, can add 3, 4, or 10 years to a sentence. While it generally does *not* apply to offenses that necessarily require the use of a gun as an element of the underlying offense,²³² it is permissible when someone is charged with assault with a firearm²³³ — even though the firearm is already an element of the offense.²³⁴ The assault offense is a wobblers with a maximum punishment of 4 years in prison, which means the firearm enhancement can easily double the potential sentence. More than two-thirds of people serving a prison sentence for assault with a firearm had a sentence lengthened by this firearm enhancement.²³⁵ The Penal Code should give guidance in Penal Code section 1385 for judges to presumptively dismiss enhancements when the same fact is punished twice or directly repeal the exception that allows the firearm use enhancement to increase sentences for assault with a firearm.
- *Lesser-related offenses.* Under current law, jurors have the choice to acquit a defendant or find them guilty of the charged offense or a “lesser-included offense,” such as second-degree burglary instead of first-degree burglary.²³⁶

²²⁷ Committee on Revision of the Penal Code meeting on October 2, 2023, Part 2 of 4, 0:07:15–0:07:27. See also Ram Subramanian et al., *In the Shadows: A Review of the Research on Plea Bargaining*, Vera Institute, 11–15 (September 2020); Human Rights Watch, *Not In It for Justice: How California’s Pretrial Detention and Bail System Unfairly Punishes Poor People*, 57 (April 2017); Vanessa A. Edkins and Lucian E. Dervan, *Freedom Now or a Future Later: Pitting the Lasting Implications of Collateral Consequences against Pretrial Detention in Decisions to Plead Guilty*, 24 *Psychology, Public Policy, & Law* 204 (2018) (the rate of innocent individuals who pleaded guilty in a psychological study tripled where defendants were held pretrial); Megan T. Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, 34 *Journal of Law, Economics, & Organization*, 511–542 (2018).

²²⁸ Committee on Revision of the Penal Code meeting on October 2, 2023, Part 2 of 4, 0:13:32–0:14:20.

²²⁹ Committee on Revision of the Penal Code, 2022 Annual Report and Recommendations, 62.

²³⁰ 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.

²³¹ Penal Code § 1192.7(a). A few years after the passage of Proposition 8 in 1982, the California Department of Justice recognized that it only encouraged a shift of discretionary practices to different points in the system because “it is impossible to sharply limit the discretion available to legal actors.” Candace McCoy and Robert Tillman, *Controlling Felony Plea Bargaining in California: The Impact of the “Victims’ Bill of Rights”*, California Department of Justice, 12 (August 1986). See also ABA 2023 Plea Bargain Task Force Report, 12.

²³² Penal Code § 12022.5.

²³³ Penal Code § 245(a)(2).

²³⁴ Penal Code § 12022.5(d). The firearm enhancement can also be applied to “murder if the killing is perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury or death.” *Id.*

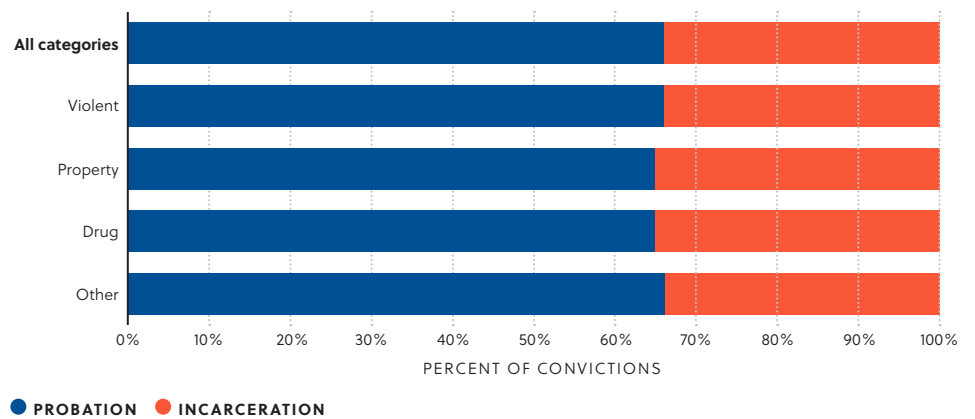
²³⁵ Mia Bird et al., *Sentence Enhancements in California*, California Policy Lab, Table 12 (March 2023).

²³⁶ Penal Code § 1159.

But proof at trial often shows a different offense that is not technically a lesser-included one, such as trespassing instead of burglary. A jury’s inability to consider these lesser-related offenses may drive people to plead guilty because they fear conviction of the more serious offense even though the evidence shows a less serious offense. The Penal Code should allow defendants to request that a jury be instructed on lesser-related offenses when warranted by the evidence.²³⁷ These lesser-related offenses should be limited to specific charges: for example, that brandishing a weapon is a lesser-related of assault with a deadly weapon and that trespassing is a lesser-related of burglary.

- *Presumptive probation.* A default sentencing triad of 16, 24, or 36 months applies to more than 70% of felony offenses defined in California law.²³⁸ While probation is often a permissible sentence for these offenses, the default triad should be updated so that probation is the presumptive sentence, unless the interests of justice require a sentence of incarceration. This would align the Penal Code with the reality that the most common disposition for felony offenses – even for violent crimes – is probation. A period of incarceration in a county jail would still remain as a possible condition of any probation term.²³⁹

FELONY SENTENCE TYPE BY OFFENSE CATEGORY (2022)



Source: California Department of Justice, *Crime in California 2022*, Table 40. Probation includes "probation" and "probation with jail" sentences. Incarceration includes "state institutions" and "jail" sentences.

The Committee’s recommendations are a starting place for improving the current system without attempting to uproot plea bargaining’s position at the core of the criminal legal system.

²³⁷ A version of this policy was in effect from 1984 to 1998, when the California Supreme Court reversed an earlier decision allowing it. See *People v. Birks*, 19 Cal.4th 108 (1998). A bill last year, AB 2435 (Lee), would have restored the ability for defense counsel to ask for lesser-related offenses but it failed passage on the Assembly Floor.

²³⁸ See Thomas M. Nosewicz and Molly Pickard, *Felony Offenses and Sentencing Triads in California*, California Policy Lab (October 2023).

²³⁹ Penal Code § 1203.1(a).

EMPIRICAL RESEARCH

Plea bargaining can exacerbate racial disparities.²⁴⁰ For example, two studies reviewing data from the New York County District Attorney’s office found that after controlling for various demographic and case factors, Black people who enter into plea agreements were 2.1 times more likely than white people to receive jail offers and 1.7 times more likely to receive a plea-to-the-charge offer (i.e. no charge reduction) than white people.²⁴¹

People held in pretrial detention are more likely to plead guilty, to do so earlier in their case, and to receive longer sentences than those who were released. One study, using data from hundreds of thousands of misdemeanor cases in Harris County, Texas, found that people detained pretrial were 25% more likely to plead guilty, 43% more likely to be sentenced to jail, and received jail sentences that were more than double – around 9 additional days – than those of people who were not detained.²⁴²

People may also plead guilty because they fear a “trial penalty” – the difference between a plea bargain and the sentence a person faces or receives after trial.²⁴³ A 2018 report by the National Association of Criminal Defense Lawyers found an average 7 year difference between sentences after trial compared to those imposed after a guilty plea in federal felony cases.²⁴⁴

INSIGHTS FROM OTHER JURISDICTIONS

Many countries, including Germany, Italy, and Spain, do not rely on plea bargaining to the extent the United States does.²⁴⁵ In these jurisdictions, prosecutors are subject to tighter bureaucratic controls, including training, articulated standards and guidelines that dictate the sentencing discount, and robust internal review.²⁴⁶ Criminal law in other countries also provides for less severe penalties than the United States, confining prosecutors within narrower bounds of potential sentences in plea bargaining.²⁴⁷

While in most states defendants are entitled to jury instructions only on lesser-included offenses,²⁴⁸ in at least 4 states – Colorado, Hawaii, Michigan, and Montana – instructions on lesser-related offenses or their equivalent may be required in some circumstances.²⁴⁹ In these states, courts generally require that the evidence at trial establish the elements of the lesser-related offense.²⁵⁰ And in at least one state, Colorado, jury instructions for a lesser-related offense may be requested by the defendant.²⁵¹

Other states, such as Kansas, Kentucky, New Jersey, and North Dakota, provide that the presumptive sentence for certain low-level felonies is probation.²⁵² Some states allow courts to impose a sentence of incarceration if specific aggravating factors are present to justify departing from probation.²⁵³

²⁴⁰ ABA 2023 Plea Bargain Task Force Report, 6.

²⁴¹ Besiki Luka Kutateladze, *Opening Pandora’s Box: How Does Defendant’s Race Influence Plea Bargaining*, 33 *Justice Quarterly* (2016), 413–420; Ram Subramanian et al., *In the Shadows: A Review of the Research on Plea Bargaining*, Vera Institute, 24–26 (September 2020).

²⁴² Paul Heaton, Sandra Mayson, and Megan Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 *Stanford Law Review* 711, 747 (March 2017).

²⁴³ National Association of Criminal Defense Lawyers, *The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It*, 20–21 (2018); ABA 2023 Plea Bargain Task Force Report, 17, 244 *Id.*

²⁴⁴ *Id.*

²⁴⁵ Fair Trials, *Efficiency Over Justice: Insights Into Trial Waiver Systems in Europe*, 8 (December 2021).

²⁴⁶ Ronald F. Wright, *Reinventing American Prosecution Systems*, 46 *Crime & Justice* 395, 402 (2017).

²⁴⁷ *Id.*

²⁴⁸ See 50 A.L.R. 4th 1081.

²⁴⁹ *People v. Rivera*, 186 Colo. 24, 28 (1974); *State v. Kupau*, 63 Haw. 1 (1980); HRS § 701-109(4); *People v. Richardson*, 409 Mich. 126, 135–38 (1980); *State v. Gopher*, 194 Mont.227, 230–31 (1981).

²⁵⁰ *Id.*

²⁵¹ *People v. Rivera*, 186 Colo.24, 28 (1974).

²⁵² See e.g. K.S.A. 21-6604(a)(3) (Kansas); K.R.S. 218A.135 (Kentucky); N.J.S.A. 2C:44-1e (New Jersey); N.D. Cent. Code § 12.1-32-07.4 (North Dakota).

²⁵³ See e.g., N.D. Cent. Code § 12.1-32-07.4.

| | |
|-----------------------------------|----|
| Recommendation | 59 |
| Relevant Statutes | 59 |
| Background and Analysis | 59 |
| Empirical Research | 61 |
| Insights from Other Jurisdictions | 63 |

10. Require or Incentivize Counties to Safely Reduce Short Prison Stays

Require or Incentivize Counties to Safely Reduce Short Prison Stays

RECOMMENDATION

Thousands of people are released from state prison each year after staying only a year or less. But there would be better public safety outcomes for many of these people if these short sentences were served in county jail or on probation instead of prison.

The Committee therefore recommends the following:

Require or financially reward counties to maintain custody of people who would stay in prison for less than 1 year.

RELEVANT STATUTES

Penal Code §§ 1228–1233.12

Welfare & Institutions Code § 4336

BACKGROUND AND ANALYSIS

Each year, around 14,000 people are released from CDCR after staying in prison less than a year, once time served in county jail and good conduct credits are accounted for. These short prison stays have been an area of focus for the Committee in earlier reports because they do not promote public safety and are expensive.²⁵⁴ Research on California’s system has shown that sentences to state prison have worse recidivism outcomes compared to jail and probation.²⁵⁵ Short prison stays are also costly, in part because of transportation costs to prison and intake procedures to assign a classification score and assess medical and mental health needs for each new admission.²⁵⁶ But there is often little opportunity for rehabilitative programming to be completed because of the short length of stay.

In its 2020 Annual Report, the Committee recommended that the state eliminate short prison stays by requiring that CDCR only accept into prison people who would be there for at least a year. The Committee reiterates that recommendation now, but also offers another policy approach to address this issue: financial incentives to counties that reduce short prison terms.

For many years, California has used such incentives to encourage county decision-makers to safely reduce how many people are sent to state prison. The practice was recently expanded to state hospital admissions for people found incompetent to stand trial. These policies are all based on the recognition that county decision-makers may have been using state resources without a full appreciation of their costs and that other solutions can be more effective at improving public safety.

These past incentive programs include:

- *Juvenile charge-back.* In 1996, SB 681 (Hurt) shifted a larger share of the cost of incarcerating juveniles onto counties. The cost to counties ranged from \$150 to \$2,600 a month (\$300 to \$5,220 in today’s dollars) and depended on the seriousness of the offense.²⁵⁷

²⁵⁴ Committee on Revision of the Penal Code, 2020 Annual Report, 19–25; Committee on Revision of the Penal Code, 2021 Annual Report, 57–58.

²⁵⁵ Mia Bird, Viet Nguyn and Ryken Grattet, *Recidivism Outcomes Under a Shifting Continuum of Control*, American Journal of Criminal Justice, 48, 808–829 (2023). This research was also presented to the Committee at its July 2020 meeting.

²⁵⁶ See Christian Henrichson and Sarah Galagno, *A Guide to Calculating Justice-System Marginal Costs*, 15, Vera Institute (May 2013).

²⁵⁷ Aurélie Ouss, *Misaligned Incentives and the Scale of Incarceration in the United States*, 191 Journal of Public Economics, 2 (2020).

After the law was passed, the number of juveniles sent to state facilities dropped between 40% and 60%, with the decrease mostly driven by the number of cases that were dismissed.²⁵⁸ Juvenile crime continued to drop after the policy change.²⁵⁹

- *SB 678.* In 2009, SB 678 (Leno) created incentive-based funding for county probation departments to invest in evidence-based supervision and reduce probation revocations to prison. In the first two years of the program from 2011 to 2013, a county generally received \$11,600 to \$13,050 (\$15,800 to \$17,800 in today's dollars) for each less person sent to prison from probation compared to a baseline.²⁶⁰

SB 678 reduced the prison population by more than 6,000 after the first year and probation revocations by more than 30% after its first two years, without increases in crime rates.²⁶¹

- *Public Safety Realignment.* In 2011, Public Safety Realignment specified that sentences for certain low-level offenses would be served in county jail and post-release supervision for these offenses would be overseen by county probation departments.²⁶² This shift in responsibility from the state to counties was accompanied by funding, including financial incentives to reduce the number of people with a prior strike conviction sent to prison — \$27,309 a person.²⁶³ Realignment resulted in a significant reduction in the prison population without a corresponding increase in the jail population and without substantial impacts to public safety.²⁶⁴
- *State hospital admissions.* The 2022–23 budget established a cap for all counties for people committed to the state hospital for competency restoration treatment. Beginning this year, if a county's total number of annual felony competency commitments exceeds the county's baseline, the county will be subject to a penalty payment.²⁶⁵

With a similar incentive program targeted at short prison stays, the state should pay counties a portion of the savings to the state if they reduce the number of admissions to prison with a short stay. And to give counties flexibility to meet this goal, the Penal Code should be updated to allow a decision-maker — such as the sentencing judge or probation department — to designate county jail as where someone will serve their time if they are expected to serve a year or less in CDCR.²⁶⁶

At the same time, such an incentive program must be carefully designed to ensure that it does not reward the wrong behavior. A county should not be rewarded for sending a smaller percentage of its convicted people to state prison for less than a year because it lengthened sentences or expanded the pool of people it was prosecuting. Similarly, county jail populations should not be allowed to grow because of these incentives. To avoid these perverse outcomes, the program should be carefully tuned to a baseline that would not allow for gaming the system.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ Orlando Sanchez Zavala, *Achieving the Goals of the SB 678 County Probation Grant Program*, California Legislative Analyst's Office, 10 (October 2023). Counties received either 40% or 45% of the savings the state estimated were produced by each less revocation to prison, including typical prison and supervision costs.

²⁶¹ Mia Bird and Ryken Grattet, *SB 678: Incentive-Based Funding and Evidence-Based Practices Enacted by California Probation Are Associated with Lower Recidivism Rates and Improved Public Safety*, California Probation Resource Institute (March 2020). The Legislative Analyst's Office recently released a report recommending that SB 678 be updated to reflect the current context for community corrections but noted that the early years of the program "effectively achieve[d] its various goals." Zavala, *Achieving the Goals of the SB 678 County Probation Grant Program* at 14.

²⁶² See Magnus Lofstrom and Brandon Martin, *Public Safety Realignment: Impacts So Far*, Public Policy Institute of California, 2 (September 2015).

²⁶³ See Final Recommendation of Realignment Allocation Committee (October 2014).

²⁶⁴ Magnus Lofstrom, Mia Bird, and Brandon Martin, *California's Historic Corrections Reform*, Public Policy Institute of California, 6, 10–12 (September 2016); Steven Raphael and Magnus Lofstrom, *Incarceration and Crime: Evidence from California's Public Safety Realignment Reform*, *The Annals of the American Academy of Political and Social Science*, Vol. 664 (March 2016).

²⁶⁵ Welfare & Institutions Code § 4336.

²⁶⁶ People who have a prior strike conviction are currently required to be sentenced to state prison, a provision created by Proposition 184 in 1995, the Three Strikes law. Penal Code § 1170.12(a)(4). Modifying this policy may require a ⅔ vote in the Legislature because it was created by a voter initiative, but only a small portion (around 10%) of people who stay at CDCR less than a year have a prior strike conviction.

Additionally, money awarded under an incentive program should be limited on what it can be spent on – in particular, it should be spent on diversion and other non-incarceratory programs.

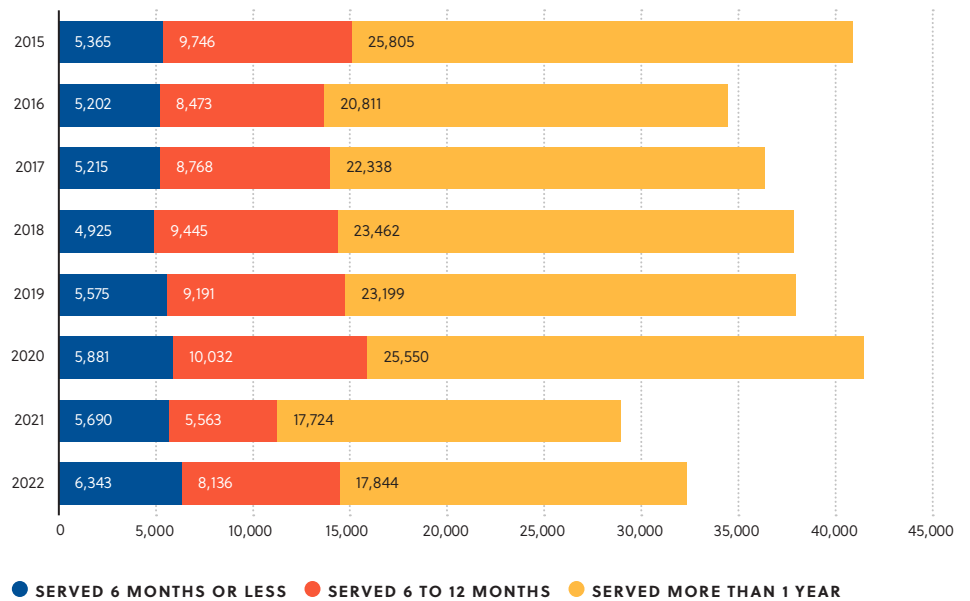
Finally, as the Committee has noted in the past, conditions in many county jails are constitutionally inadequate, with serious harm to the safety and health of people incarcerated there.²⁶⁷ Counties must improve the conditions of their jails as well as offering meaningful rehabilitative programming.

County incentives are a proven policy that can be used to reduce incarceration without impacts to public safety. The state should use this tool to incentivize counties to limit short stays in prison or, as previously recommended by the Committee, require that CDCR not admit people who are expected to stay in prison for less than 1 year.

EMPIRICAL RESEARCH

From 2015 to 2022, 39% of people released from CDCR had been there for less than a year – almost 114,000 people. More than 44,000 of these people had been at CDCR for six months or less.

PEOPLE RELEASED FROM CDCR BY LENGTH OF PRISON STAY (2015–2022)

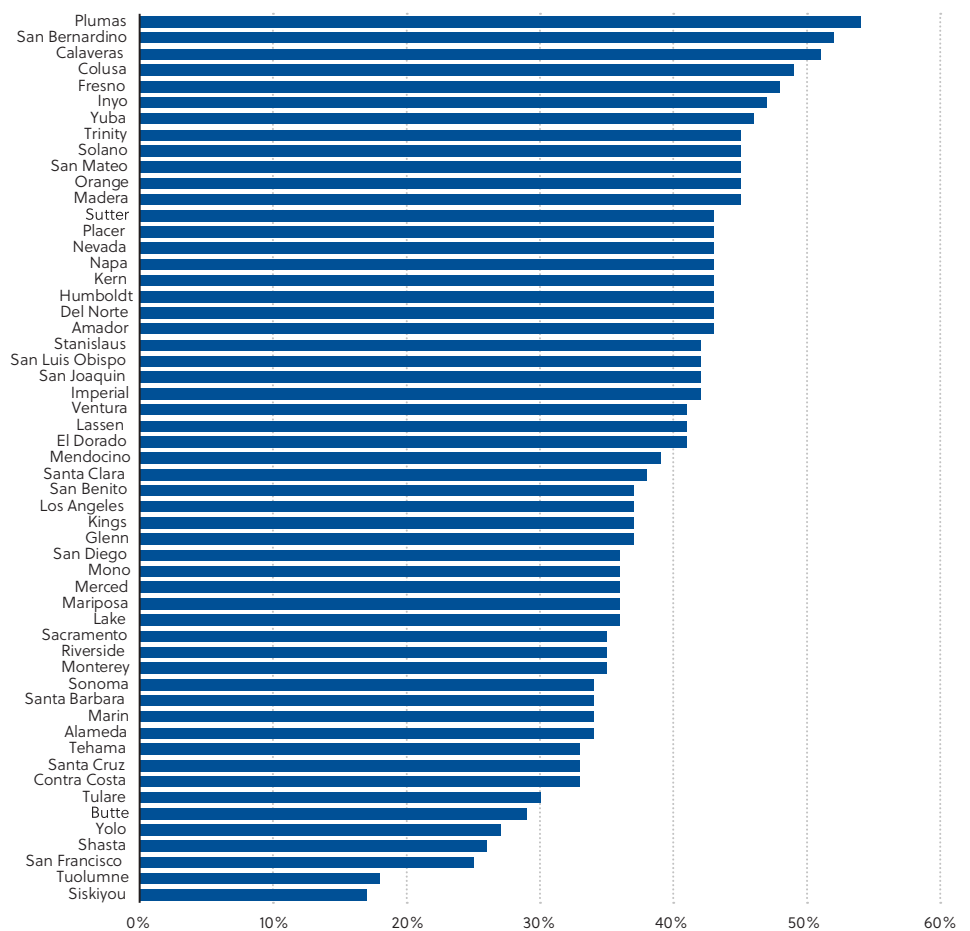


Source: CPL analysis of CDCR data.

²⁶⁷ See, e.g., Bob Egelko, *S.F. Must Allow People Held in San Bruno Jail Time Outdoors, Judge Rules*, San Francisco Chronicle, October 17, 2023; Alameda County Grand Jury, 2021–2022 Alameda County Grand Jury Final Report, 77–112; Christian Martinez, *L.A. County and ACLU Reach “Extraordinary” Agreement to Address Jail Conditions*, Los Angeles Times, June 17, 2023.

Counties vary widely in what proportion of their admissions to prison end up staying for a year or less. For some counties, only 25% or less of their admissions stay for a year, while for other counties almost half of the people they send to prison stay a year or less.

PERCENT OF PEOPLE RELEASED FROM PRISON BY COUNTY THAT STAYED LESS THAN ONE YEAR (2015–2022)



Source: CPL analysis of CDCR data. Alpine and Sierra Counties excluded because of the low number of releases.

268 Mia Bird, Viet Nguyn and Ryken Grattet, *Recidivism Outcomes Under a Shifting Continuum of Control*, *American Journal of Criminal Justice*, 48, 808–829 (2023). The 12 counties covered about 60% of the state population and were Alameda, Contra Costa, Humboldt, Fresno, Kern, Los Angeles, Orange, Sacramento, San Bernardino, San Francisco, Shasta, and Stanislaus. The research also compared recidivism across three high-volume offenses — car theft, burglary, and drug possession — and found lower reconviction rates for probation sentences for all three offenses compared to prison. For jail sentences, car theft and drug possession had lower reconviction rates than prison sentences, but burglary had a higher reconviction rate with a jail sentence than a prison sentence.

269 Eyal Aharoni, Heather M. Kleider-Offut, and Sarah F. Brosnan, *Correctional “Free Lunch”? Cost Neglect Increases Punishment in Prosecutors*, *Frontiers in Psychology*, November 12, 2021.

A study of data from 12 California counties showed that people with similar demographics and criminal histories were less likely to be reconvicted of new offenses if they were sentenced to county jail or probation instead of state prison.²⁶⁸

Other research has shown that cost information can shape discretionary decisions in the criminal legal system: in a survey of 178 prosecutors, those who were told about how much a sentence of incarceration would cost recommended prison sentences 33% shorter than prosecutors who were not told this information.²⁶⁹

INSIGHTS FROM OTHER JURISDICTIONS

California is a national leader in using financial incentives to safely reduce incarceration, but other states have taken similar steps:

- RECLAIM Ohio financially rewards juvenile courts that divert youth from incarceration to community-based rehabilitation. Since this program began in 1993, Ohio's youth prison population dropped from 2,600 in 1992 to 375 in 2020.²⁷⁰
- Adult Redeploy Illinois provides financial incentives to counties for programs that allow diversion of people from state prisons into community-based programs. Programs are rigorously evaluated and have resulted in reduced prison admissions and lower costs.²⁷¹ In 2021, the average intervention through the program cost \$4,400 per person, compared to per capita cost in state prison of \$43,400.²⁷²
- Since 1980, Wisconsin has provided each county with funding to pay for services and programs for its juvenile system. Counties are then charged the full cost of each youth placed in state correctional institutions (except for serious offenses) which eliminates the financial benefit to counties of placing young people in state custody.²⁷³

²⁷⁰ Ohio Department of Youth Services, RECLAIM.

²⁷¹ Adult Redeploy Illinois, *State Fiscal Year 2021: Annual Report*, Illinois Criminal Justice Information Authority (December 2022).

²⁷² *Id.* at 4.

²⁷³ Wisconsin Legislative Fiscal Bureau, 2021–2023 Budget Summary, Paper #220: Youth Aids Allocations, 1 (June 2021).

| | |
|---------------------------------|----|
| Creation of the Committee | 65 |
| Function and Procedure | 65 |
| Personnel of the Committee | 66 |
| Planned Activities for 2024 | 67 |
| Acknowledgments | 67 |
| Panelists | 68 |
| Philanthropic and Other Support | 70 |

2023 Administrative Report

2023 Administrative Report

The following report summarizes the Committee's activities during the past year from an administrative standpoint and briefly describes the Committee's future plans.

CREATION OF THE COMMITTEE

On January 1, 2020, the Committee on Revision of the Penal Code was formed.²⁷⁴

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.²⁷⁵ Neither body has any authority over the substantive work of the other²⁷⁶ and they each have different statutory duties.²⁷⁷

The Committee consists of 7 members. Five are appointed by the Governor for 4-year terms.²⁷⁸ One is an assembly member selected by the Speaker of the Assembly and one is a senator selected by the Senate Committee on Rules.²⁷⁹ The Governor selects the Committee's chair.²⁸⁰

FUNCTION AND PROCEDURE OF THE COMMITTEE

The principal duties of the Committee are to:

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.²⁸¹

The Committee is required to prepare an annual report for submission to the Governor and the Legislature.²⁸²

The Committee conducts its deliberations in public meetings, subject to the Bagley-Keene Open Meeting Act.²⁸³ In 2023, it held 4 meetings. Meetings were conducted entirely by teleconference.²⁸⁴

²⁷⁴ Government Code § 8280(b).

²⁷⁵ See Government Code § 8281.5(d).

²⁷⁶ Government Code § 8290(c).

²⁷⁷ Compare Government Code §§ 8289, 8290 (duties of Commission) with Government Code § 8290.5 (duties of Committee).

²⁷⁸ Government Code § 8281.5(a), (c).

²⁷⁹ Government Code § 8281.5(a).

²⁸⁰ Government Code § 8283.

²⁸¹ Government Code § 8290.5(a).

²⁸² Government Code § 8293(b).

²⁸³ Government Code §§ 11120–11132.

²⁸⁴ This was made possible by Government Code § 11133 (added by 2022 Cal. Stat. ch. 48 (SB 189) § 20 & 2023 Cal. Stat. ch. 196 (SB 143) § 6).

PERSONNEL OF THE COMMITTEE

At the time of this report in 2023, the following persons were members of the Committee:

CHAIR

Michael Romano

LEGISLATIVE MEMBERS

Senator Nancy Skinner

Assemblymember Isaac Bryan

GUBERNATORIAL APPOINTEES

Hon. Peter Espinoza

Hon. Carlos Moreno

Priscilla Ocen

Hon. Thelton Henderson also served as a member of the Committee from 2021 to 2023.

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

Joy F. Haviland

Senior Staff Counsel

Thomas M. Nosewicz

Legal Director

Rick Owen

Senior Staff Counsel

The following persons provide substantial support for the Committee's work:

Lizzie Buchen

Lara Hoffman

Natasha Minsker

The following people from the California Policy Lab provide data analysis and research support to the Committee:

Mia Bird

Omair Gill

Johanna Laco

Molly Pickard

Steven Raphael

Nefara Riesch

Alissa Skog

Thomas Sloan

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

Sharon Reilly
Executive Director

Debora Larrabee
Chief of Administrative Services

Megan Hayenga
Office Assistant

This report was designed by Taylor Le.

PLANNED ACTIVITIES FOR 2024

In 2024, the Committee expects to follow the same general deliberative process that it used in past years. It will hold regular public meetings with speakers representing all groups that have an interest in reform of the criminal justice system. At those meetings, the Committee will identify, debate, and develop recommendations for policies that improve public safety, reduce unnecessary incarceration, improve equity, and address racial disparities.

The Committee will also continue its work to establish a secure compendium of empirical data from various law enforcement and other 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 2023, shared their expertise with staff, made public comment, or otherwise contributed towards this report. The Committee is deeply grateful for their assistance. The keynote speakers and panelists are listed below. Inclusion of an individual or organization in this list in no way indicates that person's or their organization's view on the Committee's recommendations.

The Committee also extends special gratitude to Brian Hebert, who recently retired as the Executive Director of the California Law Revision Commission and played an integral part in establishing the Committee.

PANELISTS

(in alphabetical order)

W. David Ball

Professor of Law, Santa Clara University School of Law

Shima Baradaran Baughman

Professor of Law, Brigham Young University Law School

Mia Bird

Assistant Research Professor, UC Berkeley Goldman School of Public Policy

Doug Bond

Chief Executive Officer, Amity Foundation

Kimberley Brauer

Section Chief, California Department of Social Services Data Stewardship and Integrity Bureau

Andrea Brayboy

Chief, CalFresh and Nutrition Branch, California Department of Social Services

Francine Byrne

Director of Criminal Justice Services, Judicial Council of California

Carissa Byrne Hessick

Professor of Law, University of North Carolina School of Law

Alex Chohlas-Wood

Executive Director, Computational Policy Lab

Jeff Chorney

Deputy Public Defender, Alameda County

Brendan Cox

Director of Policing Strategies, LEAD National Support Bureau

Lois M. Davis

Senior Policy Research, RAND Corporation

Geoffrey Deedrick

Captain, Los Angeles Sheriff's Department

Leon Dixon

Managing Attorney and Acting Regional Counsel, Legal Services of Northern California

Jennifer Doleac

Executive Vice President of Criminal Justice, Arnold Ventures

Antionette Dozier
Senior Attorney, Western Center on Law and Poverty

Greg Fidell
Policy Director, Initiate Justice

Lisa Foster
Director, Fines and Fees Justice Center

Andrew Gutierrez
Supervising Deputy Public Defender, Office of the Public Defender, Santa Clara County

Jennifer Hansen
Deputy State Public Defender, Office of the State Public Defender

Doug Haubert
Long Beach City Prosecutor

Kamaria Henry
Managing Deputy District Attorney, Riverside County

Evan Kuluk
Deputy Public Defender, Alternate Defender Office, Contra Costa County

Anita Lee
Principal Fiscal and Policy Analyst, California Legislative Analyst's Office

Amy E. Lerman
Professor of Public Policy and Political Science, UC Berkeley Goldman School of Public Policy & Director, Possibility Lab

Aili Malm
Professor of Criminology and Criminal Justice, California State University Long Beach

John Martire
President, California Welfare Fraud Investigators Association

Robert Mestman
Senior Assistant District Attorney, Orange County

Aur lie Ouss
Assistant Professor, Department of Criminology, University of Pennsylvania

Allison Rosenmayer
Deputy Public Defender, San Joaquin County Public Defender's Office

Erica Shehane
Director for LEAD, Officer of Diversion and Reentry, Los Angeles County Department of Health Services

Tarra Simmons
Washington State Representative

Bryan Slater
Supervising Deputy District Attorney, Gang Team, Santa Clara County

Bryan Sykes
Associate Professor of Criminology, University of California, Irvine

Diana Teran
Director of Prosecution Support Operations, Los Angeles County District Attorney

Matthew Wechter
Supervising Attorney, San Diego County Public Defender

PHILANTHROPIC AND OTHER SUPPORT

The Committee is grateful to Arnold Ventures for providing generous support for the Committee's research and data analysis with the California Policy Lab. The Committee also extends special thanks to personnel at the California Department of Corrections and Rehabilitation Department of Research and the California Department of Justice Research Department. The Committee also received generous support from staff and faculty at Stanford Law School and the Three Strikes Project.

- 72 Appendix A:
Biographies of
2023 Committee
Members
- 74 Appendix B:
Unused Offenses
Data

Appendix

Appendix A: Biographies of 2023 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 Justice Advocacy 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 Isaac Bryan, of Los Angeles, has been a member of the Assembly since 2021 and represents the 54th Assembly District, which includes, among other neighborhoods, Baldwin Hills, Crenshaw, Century City, Culver City, and Westwood. Prior to his election, Assemblymember Bryan served as the founding Director of the UCLA Black Policy Project, a think tank dedicated to advancing racial equity through policy analysis, served as the first Director of Public Policy at the UCLA Ralph J. Bunche Center, and Director of Organizing for the Million Dollar Hoods project. Assemblymember Bryan has authored several influential policy reports and led several campaigns at the intersection of racial, economic, and social justice. He earned a Master of Public Policy from the University of California, Los Angeles.

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.

Carlos Moreno, of Los Angeles, has been a self-employed JAMS arbitrator since 2017. Moreno was United States Ambassador to Belize from 2014 to 2017. He was of counsel at Irell & Manella LLP from 2011 to 2013. Moreno was an associate justice of the California Supreme Court from 2001 to 2011 and served as a judge at the United States District Court, Central District of California, from 1998 to 2001. Moreno was a judge at the Los Angeles County Superior Court from 1993 to 1998 and at the Compton Municipal Court from 1986 to 1993. Moreno was senior associate at Kelley, Drye & Warren from 1979 to 1986. He was a deputy city attorney at the Los Angeles City Attorney's Office from 1975 to 1979. Moreno earned a juris doctor degree from Stanford Law School.

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.

Senator Nancy Skinner, of Berkeley, has been a member of the Senate since 2016. She was a member of the Assembly from 2006 to 2014. Senator Skinner represents California's 9th Senate District, which includes Oakland, Berkeley, and Richmond, and chairs the Senate Budget Committee. Senator Skinner is a longtime justice reform advocate and the author of two landmark California laws: SB 1421, which made police misconduct records available to the public for the first time in 40 years, and SB 1437, which reformed the state's felony murder rule so that people who do not commit murder can't be convicted of that crime. She also authored bills to reduce gun violence and allow people with prior felony convictions to serve on juries. Her legislative efforts have resulted in cuts to the number of juveniles incarcerated in state facilities by half; established a new, dedicated fund to reduce prison recidivism; reduced parole terms; and banned the box for higher education. She earned a master's degree in education from the University of California, Berkeley.

Appendix B: Unused Offenses Data

To conduct this analysis, the California Policy Lab used a list of felony offenses maintained by the California Department of Justice Criminal Justice Information Services (CJIS) Division. The list was limited to felonies outside the Penal Code and that were not “wobblers” (meaning they could be charged as either a felony or misdemeanor). This generated 228 felony offenses with corresponding CJIS codes. Those CJIS codes were then matched with criminal disposition data in California’s Automated Criminal History System (ACHS) to generate the results below. The offense names are largely those used in the California Center for Judicial Education and Research (CJER) Felony Sentencing Handbook.

Not every felony offense has a CJIS code assigned by the Department of Justice, so the list of unused offenses presented here is likely underinclusive – for example, the catalog of non-Penal Code felony offenses in the California Center for Judicial Education and Research Felony Sentencing Handbook has twice as many non-Penal Code felony offenses than have a code assigned by the Department of Justice.

The category of “no convictions” includes offenses for which there was no conviction, but there may have been an arrest. “No arrests” includes offenses for which there was no arrest, but there may or may not have been a conviction. “Arrest without convictions” includes offenses where there was an arrest but no convictions and is a subset of the “no convictions” category.

OFFENSES WITHOUT ANY CONVICTIONS (2012–2021)

Limited to non-wobbler felonies outside of the Penal Code

| CODE | § | OFFENSE NAME |
|--------------------------|-------------|--|
| Business and Professions | 10238.6(c) | False or misleading statements regarding property securities qualification |
| Business and Professions | 10250.52 | False or misleading statements regarding property securities qualification |
| Business and Professions | 11010(a) | Failure to notify real estate commissioner re sale of property |
| Business and Professions | 11019(a) | Failure to cease and desist activities when ordered re prop sales |
| Business and Professions | 11022(a) | False or misleading real estate advertising |
| Business and Professions | 17511.12(a) | Fraudulent telephonic sales methods |
| Business and Professions | 17511.3(a) | Fraudulent telephonic sales methods |
| Business and Professions | 2053 | Aiding or abetting another in the unauthorized practice of medicine |

| | | |
|--------------------------|-------------|--|
| Business and Professions | 580 | Sale of medical degree |
| Business and Professions | 581 | Fraudulent procurement or alteration of medical diploma |
| Business and Professions | 601 | Advertising medicine or means for producing miscarriage or abortion |
| Business and Professions | 7737(a) | Violation of preneed funeral arrangements provisions |
| Corporations | 31201 | Misrepresenting facts in offering to sell franchise |
| Corporations | 31410 | General violation of franchise investment law |
| Corporations | 31411 | Franchise fraud |
| Elections | 18201 | False making, destruction, or defacement of nomination papers |
| Elections | 18541(a)(1) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(a)(2) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(a)(3) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(a)(4) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(c)(1) | Soliciting votes or discussing voter qualifications in proximity of polling place, or photographing or videotaping voter entering or exiting polling place |
| Elections | 18541(c)(2) | Soliciting votes or discussing voter qualifications in proximity of polling place, or photographing or videotaping voter entering or exiting polling place |
| Elections | 18541(c)(3) | Soliciting votes or discussing voter qualifications in proximity of polling place, or photographing or videotaping voter entering or exiting polling place |
| Elections | 18568(g) | Offenses at the polls |
| Elections | 18568(h) | Offenses at the polls |
| Financial | 17414(b) | Misappropriate escrow funds |
| Financial | 3361 | Deposit of bank funds on condition of loan or advance |
| Financial | 3531 | Examiner's failure to report insolvency or unsafe condition of bank |

| | | |
|------------------------|------------------|---|
| Fish and Game | 12001 | Hunting with revoked/suspended license |
| Fish and Game | 3009 | Failure to render aid after shooting person while hunting |
| Food and Agricultural | 17551(a) | Alter brand of animal with intent to steal |
| Food and Agricultural | 17551(b) | Alter brand of animal with intent to steal |
| Food and Agricultural | 35283(b) | Manufacturing or processing for resale of any milk or milk product in an unlicensed milk products plant |
| Government | 27443(a) | Public administrator/guardian, etc., conflict of interest |
| Government | 27443(b) | Public administrator/guardian, etc., conflict of interest |
| Government | 8214.2(a) | Notarizing deed of single family residence knowing deed is false |
| Government | 8670.64(a)(3) | Causing or failing to report oil spill in marine waters with prior conviction |
| Government | 8670.64(c)(2)(D) | Causing or failing to report oil spill in marine waters with prior conviction |
| Harbors and Navigation | 304 | Ship's commander sinking or injuring vessel or cargo |
| Harbors and Navigation | 305 | Sinking or injuring vessel or cargo |
| Health and Safety | 103800 | Willful filing of false certificate or affidavit for birth certificate |
| Health and Safety | 109365 | False representation of cure for cancer |
| Health and Safety | 11104(a) | Transfer of substance with knowledge of intent to manufacture controlled substance |
| Health and Safety | 11152 | Issuing prescription to addict/habitual user of controlled substance |
| Health and Safety | 11383.7(a) | Possession of material with intent to sell or furnish materials to another with knowledge that they will be used to manufacture methamphetamine |
| Health and Safety | 11383(b) | Possession of isomers of PCP with intent to manufacture PCP |
| Health and Safety | 44209 | Falsifying vehicle emissions test report |
| Health and Safety | 443.17(a) | Altering or forging request for an aid-in-dying drug; concealing or destroying a withdrawal or rescission of such request |

| | | |
|------------------------|----------------|---|
| Health and Safety | 443.17(b) | Coercing or exerting undue influence on individual to request or ingest an aid-in-dying drug; administering aid-in-dying drug without consent |
| Health and Safety | 7051.5 | Unlawful removal or possession of dental gold or silver, or jewelry from human remains |
| Health and Safety | 7051(a) | Illegal transport of hazardous waste with prior conviction |
| Health and Safety | 7052(a) | Unauthorized removal, mutilation, or sexual penetration of human remains |
| Insurance | 833(a) | False statement to insurance commissioner, etc. |
| Public Resources | 14591(b)(1)(G) | Violation of Beverage Container Act—fraudulent claim exceeding \$950 |
| Revenue and Taxation | 30473 | Counterfeiting stamps or meter impressions |
| Unemployment Insurance | 2102(a) | False statement or representation or concealment to obtain benefits under employment laws of another state |
| Unemployment Insurance | 2114 | Report on registration of fictitious employer or employee and wages |
| Vehicle | 10501(a) | False report of stolen car with prior conviction |
| Vehicle | 1673.6 | False statement on smog impact fee refund claim |
| Vehicle | 1808.4(d) | Disclosure of home address of peace officer or family member contained in confidential DMV record resulting in bodily injury to these persons |
| Vehicle | 21464(a) | Interfere with traffic devices causing bodily injury/death |
| Vehicle | 21464(b) | Interfere with traffic devices causing bodily injury/death |
| Vehicle | 21464(c) | Interfere with traffic devices causing bodily injury/death |
| Vehicle | 21651(b) | Willful driving on the wrong side of a divided highway resulting in injury or death |
| Vehicle | 23109.1(a) | Motor vehicle speed contest causing serious bodily injury with prior conviction within 5 years |
| Vehicle | 23152(f) | DUI of alcohol/drugs with prior felony conviction of DUI or vehicular manslaughter within 10 years (term prescribed in Veh C §23350.5(a)) |
| Vehicle | 2470 | Transporting kitchen grease without valid registration certificate with prior conviction or with intent to defraud or mislead |
| Vehicle | 2472(a) | Interstate transporting of kitchen grease without registration or license with prior conviction or with intent to defraud or mislead |

| | | |
|--------------------------|---------------|---|
| Vehicle | 2472(b) | Interstate transporting of kitchen grease without registration or license with prior conviction or with intent to defraud or mislead |
| Vehicle | 2474 | Stealing, contaminating, or damaging kitchen grease, or containers thereof with prior conviction or with intent to defraud or mislead |
| Vehicle | 2476 | Taking possession of stolen kitchen grease or grease from unregistered transporter with prior conviction or with intent to defraud or mislead |
| Vehicle | 38318.5(b) | Removing marker from trail causing GBI |
| Vehicle | 38318(b) | Throwing things at off-highway vehicle capable of causing serious bodily injury |
| Water | 13387(e) | Falsifying water quality documents or tampering with water quality monitoring equipment (with prior conviction) |
| Water | 13499.2(a) | False statement to State Water Resources Control Board |
| Welfare and Institutions | 11482.5 | Welfare fraud via multiple applications or false identities |
| Welfare and Institutions | 1152(b) | Aiding or attempting to aid escape of DJJ ward or parolee with force or violence |
| Welfare and Institutions | 14025(a) | Purchase or sale of MediCal cards, MediCal labels, or MediCal beneficiary identification numbers |
| Welfare and Institutions | 14107.2(b) | Offer/pay bribe for MediCal referrals or services (with prior conviction) |
| Welfare and Institutions | 15656(a) | Willful causing of pain to or suffering of dependent adult |
| Welfare and Institutions | 17410 | Fraudulent buying welfare voucher |
| Welfare and Institutions | 1768.7(b) | Escape/attempted escape from DJJ with force or violence |
| Welfare and Institutions | 1768.7(b) | Escape/attempted escape from DJJ with force or violence |
| Welfare and Institutions | 3002 | Escape/attempted escape from addiction treatment facility |
| Welfare and Institutions | 8101(a) | Knowing gift or sale of deadly weapon to mental patient |
| Welfare and Institutions | 8103(f)(1)(B) | Possession of firearm by mentally disordered person |

OFFENSES WITHOUT ANY ARRESTS (2012-2021)

Limited to non-wobbler felonies outside of the Penal Code

| CODE | § | OFFENSE NAME |
|--------------------------|-------------|--|
| Business and Professions | 11018.2 | Sale or lease of property without public report |
| Business and Professions | 10238.6(c) | False or misleading statements regarding property securities qualification |
| Business and Professions | 10250.52 | False or misleading statements regarding property securities qualification |
| Business and Professions | 11019(a) | Failure to cease and desist activities when ordered re prop sales |
| Business and Professions | 11022(a) | False or misleading real estate advertising |
| Business and Professions | 17511.12(a) | Fraudulent telephonic sales methods |
| Business and Professions | 17511.3(a) | Fraudulent telephonic sales methods |
| Business and Professions | 580 | Sale of medical degree |
| Business and Professions | 7737(a) | Violation of preneed funeral arrangements provisions |
| Corporations | 31110 | Unlawful offering of franchise for sale |
| Corporations | 31201 | Misrepresenting facts in offering to sell franchise |
| Corporations | 31411 | Franchise fraud |
| Elections | 18201 | False making, destruction, or defacement of nomination papers |
| Elections | 18541(a)(1) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(a)(2) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(a)(3) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(a)(4) | Challenging person's right to vote without probable cause or on fraudulent grounds |

| | | |
|------------------------|------------------|--|
| Elections | 18541(c)(1) | Soliciting votes or discussing voter qualifications in proximity of polling place, or photographing or videotaping voter entering or exiting polling place |
| Elections | 18541(c)(2) | Soliciting votes or discussing voter qualifications in proximity of polling place, or photographing or videotaping voter entering or exiting polling place |
| Elections | 18541(c)(3) | Soliciting votes or discussing voter qualifications in proximity of polling place, or photographing or videotaping voter entering or exiting polling place |
| Elections | 18568(g) | Offenses at the polls |
| Elections | 18568(h) | Offenses at the polls |
| Financial | 17414(b) | Misappropriate escrow funds |
| Financial | 3361 | Deposit of bank funds on condition of loan or advance |
| Financial | 3531 | Examiner's failure to report insolvency or unsafe condition of bank |
| Fish and Game | 3009 | Failure to render aid after shooting person while hunting |
| Food and Agricultural | 17551(a) | Alter brand of animal with intent to steal |
| Food and Agricultural | 17551(b) | Alter brand of animal with intent to steal |
| Government | 8670.64(a)(3) | Causing or failing to report oil spill in marine waters with prior conviction |
| Government | 8670.64(c)(2)(D) | Causing or failing to report oil spill in marine waters with prior conviction |
| Harbors and Navigation | 304 | Ship's commander sinking or injuring vessel or cargo |
| Health and Safety | 109300 | Unauthorized sale of cancer treatment |
| Health and Safety | 11154(b) | Unauthorized disposal of radioactive material causing GBI or substantial probability of death |
| Health and Safety | 11174 | Unlawful disposal of hazardous substance used in manufacturing controlled substance |
| Health and Safety | 11383(c)(2) | Possession of materials with intent to manufacture PCP |
| Health and Safety | 109365 | False representation of cure for cancer |
| Health and Safety | 11104(a) | Transfer of substance with knowledge of intent to manufacture controlled substance |

| | | |
|------------------------|----------------|---|
| Health and Safety | 11152 | Issuing prescription to addict/habitual user of controlled substance |
| Health and Safety | 11383.7(a) | Possession of material with intent to sell or furnish materials to another with knowledge that they will be used to manufacture methamphetamine |
| Health and Safety | 11383(b) | Possession of isomers of PCP with intent to manufacture PCP |
| Health and Safety | 44209 | Falsifying vehicle emissions test report |
| Health and Safety | 443.17(a) | Altering or forging request for an aid-in-dying drug; concealing or destroying a withdrawal or rescission of such request |
| Health and Safety | 443.17(b) | Coercing or exerting undue influence on individual to request or ingest an aid-in-dying drug; administering aid-in-dying drug without consent |
| Health and Safety | 7051.5 | Unlawful removal or possession of dental gold or silver, or jewelry from human remains |
| Health and Safety | 7051(a) | Illegal transport of hazardous waste with prior conviction |
| Health and Safety | 7052(a) | Unauthorized removal, mutilation, or sexual penetration of human remains |
| Insurance | 833(a) | False statement to insurance commissioner, etc. |
| Public Resources | 14591(b)(1)(G) | Violation of Beverage Container Act—fraudulent claim exceeding \$950 |
| Revenue and Taxation | 19705(a)(2) | Willful filing of false return |
| Revenue and Taxation | 30473 | Counterfeiting stamps or meter impressions |
| Unemployment Insurance | 2114 | Report on registration of fictitious employer or employee and wages |
| Vehicle | 10752(b) | Fraudulent use of vehicle identification number (VIN) |
| Vehicle | 10501(a) | False report of stolen car with prior conviction |
| Vehicle | 1673.6 | False statement on smog impact fee refund claim |
| Vehicle | 21464(a) | Interfere with traffic devices causing bodily injury/death |
| Vehicle | 21464(b) | Interfere with traffic devices causing bodily injury/death |
| Vehicle | 21651(b) | Willful driving on the wrong side of a divided highway resulting in injury or death |

| | | |
|--------------------------|------------|---|
| Vehicle | 23109.1(a) | Motor vehicle speed contest causing serious bodily injury with prior conviction within 5 years |
| Vehicle | 23152(f) | DUI of alcohol/drugs with prior felony conviction of DUI or vehicular manslaughter within 10 years (term prescribed in Veh C §23550.5(a)) |
| Vehicle | 2470 | Transporting kitchen grease without valid registration certificate with prior conviction or with intent to defraud or mislead |
| Vehicle | 2472(a) | Interstate transporting of kitchen grease without registration or license with prior conviction or with intent to defraud or mislead |
| Vehicle | 2472(b) | Interstate transporting of kitchen grease without registration or license with prior conviction or with intent to defraud or mislead |
| Vehicle | 2474 | Stealing, contaminating, or damaging kitchen grease, or containers thereof with prior conviction or with intent to defraud or mislead |
| Vehicle | 2476 | Taking possession of stolen kitchen grease or grease from unregistered transporter with prior conviction or with intent to defraud or mislead |
| Vehicle | 38318.5(b) | Removing marker from trail causing GBI |
| Water | 13387(e) | Falsifying water quality documents or tampering with water quality monitoring equipment (with prior conviction) |
| Water | 13499.2(a) | False statement to State Water Resources Control Board |
| Welfare and Institutions | 11483.5 | Using multiple applications to obtain more than one aid payment |
| Welfare and Institutions | 1768.8(b) | Assault by DJJ resident on nonresident with deadly weapon or by means likely to produce GBI |
| Welfare and Institutions | 7326 | Aid in escape of person committed to state hospital |
| Welfare and Institutions | 8101(b) | Knowing gift or sale of firearm to mental patient |
| Welfare and Institutions | 11482.5 | Welfare fraud via multiple applications or false identities |
| Welfare and Institutions | 1152(b) | Aiding or attempting to aid escape of DJJ ward or parolee with force or violence |
| Welfare and Institutions | 14025(a) | Purchase or sale of MediCal cards, MediCal labels, or MediCal beneficiary identification numbers |
| Welfare and Institutions | 17410 | Fraudulent buying welfare voucher |
| Welfare and Institutions | 1768.7(b) | Escape/attempted escape from DJJ with force or violence |
| Welfare and Institutions | 1768.7(b) | Escape/attempted escape from DJJ with force or violence |
| Welfare and Institutions | 8101(a) | Knowing gift or sale of deadly weapon to mental patient |

OFFENSES WITH ARRESTS BUT NO CONVICTIONS (2012–2021)

Limited to non-wobbler felonies outside of the Penal Code

| CODE | § | OFFENSE NAME |
|--------------------------|---------------|---|
| Business and Professions | 11010(a) | Failure to notify real estate commissioner re sale of property |
| Business and Professions | 2053 | Aiding or abetting another in the unauthorized practice of medicine |
| Business and Professions | 581 | Fraudulent procurement or alteration of medical diploma |
| Business and Professions | 601 | Advertising medicine or means for producing miscarriage or abortion |
| Corporations | 31410 | General violation of franchise investment law |
| Fish and Game | 12001 | Hunting with revoked/suspended license |
| Food and Agricultural | 35283(b) | Manufacturing or processing for resale of any milk or milk product in an unlicensed milk products plant |
| Government | 27443(a) | Public administrator/guardian, etc., conflict of interest |
| Government | 27443(b) | Public administrator/guardian, etc., conflict of interest |
| Government | 8214.2(a) | Notarizing deed of single family residence knowing deed is false |
| Harbors and Navigation | 305 | Sinking or injuring vessel or cargo |
| Health and Safety | 103800 | Willful filing of false certificate or affidavit for birth certificate |
| Unemployment Insurance | 2102(a) | False statement or representation or concealment to obtain benefits under employment laws of another state |
| Vehicle | 1808.4(d) | Disclosure of home address of peace officer or family member contained in confidential DMV record resulting in bodily injury to these persons |
| Vehicle | 21464(c) | Interfere with traffic devices causing bodily injury/death |
| Vehicle | 38318(b) | Throwing things at off-highway vehicle capable of causing serious bodily injury |
| Welfare and Institutions | 14107.2(b) | Offer/pay bribe for MediCal referrals or services (with prior conviction) |
| Welfare and Institutions | 15656(a) | Willful causing of pain to or suffering of dependent adult |
| Welfare and Institutions | 3002 | Escape/attempted escape from addiction treatment facility |
| Welfare and Institutions | 8103(f)(1)(B) | Possession of firearm by mentally disordered person |

OFFENSES WITHOUT ANY CONVICTIONS (2017–2021)

Limited to non-wobbler felonies outside of the Penal Code

| CODE | § | OFFENSE NAME |
|--------------------------|--------------|--|
| Business and Professions | 11010(a) | Failure to notify real estate commissioner re sale of property |
| Business and Professions | 2053 | Aiding or abetting another in the unauthorized practice of medicine |
| Business and Professions | 581 | Fraudulent procurement or alteration of medical diploma |
| Business and Professions | 601 | Advertising medicine or means for producing miscarriage or abortion |
| Business and Professions | 10238.6(c) | False or misleading statements regarding property securities qualification |
| Business and Professions | 10250.52 | False or misleading statements regarding property securities qualification |
| Business and Professions | 11018.2 | Sale or lease of property without public report |
| Business and Professions | 11019(a) | Failure to cease and desist activities when ordered re prop sales |
| Business and Professions | 11022(a) | False or misleading real estate advertising |
| Business and Professions | 17511.12(a) | Fraudulent telephonic sales methods |
| Business and Professions | 17511.3(a) | Fraudulent telephonic sales methods |
| Business and Professions | 580 | Sale of medical degree |
| Business and Professions | 7737(a) | Violation of preneed funeral arrangements provisions |
| Civil | 1695.6(b)(1) | Violations by equity purchasers: accept instrument of conveyance |
| Corporations | 31410 | General violation of franchise investment law |
| Corporations | 31201 | Misrepresenting facts in offering to sell franchise |
| Corporations | 31411 | Franchise fraud |
| Elections | 18201 | False making, destruction, or defacement of nomination papers |

| | | |
|-----------------------|-------------|--|
| Elections | 18541(a)(1) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(a)(2) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(a)(3) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(a)(4) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(c)(1) | Soliciting votes or discussing voter qualifications in proximity of polling place, or photographing or videotaping voter entering or exiting polling place |
| Elections | 18541(c)(2) | Soliciting votes or discussing voter qualifications in proximity of polling place, or photographing or videotaping voter entering or exiting polling place |
| Elections | 18541(c)(3) | Soliciting votes or discussing voter qualifications in proximity of polling place, or photographing or videotaping voter entering or exiting polling place |
| Elections | 18568(g) | Offenses at the polls |
| Elections | 18568(h) | Offenses at the polls |
| Financial | 17414(b) | Misappropriate escrow funds |
| Financial | 3361 | Deposit of bank funds on condition of loan or advance |
| Financial | 3531 | Examiner's failure to report insolvency or unsafe condition of bank |
| Fish and Game | 12001 | Hunting with revoked/suspended license |
| Fish and Game | 3009 | Failure to render aid after shooting person while hunting |
| Food and Agricultural | 35283(b) | Manufacturing or processing for resale of any milk or milk product in an unlicensed milk products plant |
| Food and Agricultural | 17551(a) | Alter brand of animal with intent to steal |
| Food and Agricultural | 17551(b) | Alter brand of animal with intent to steal |
| Government | 27443(a) | Public administrator/guardian, etc., conflict of interest |
| Government | 27443(b) | Public administrator/guardian, etc., conflict of interest |
| Government | 8214.2(a) | Notarizing deed of single family residence knowing deed is false |

| | | |
|------------------------|------------------|---|
| Government | 8670.64(a)(3) | Causing or failing to report oil spill in marine waters with prior conviction |
| Government | 8670.64(c)(2)(D) | Causing or failing to report oil spill in marine waters with prior conviction |
| Harbors and Navigation | 305 | Sinking or injuring vessel or cargo |
| Harbors and Navigation | 304 | Ship's commander sinking or injuring vessel or cargo |
| Health and Safety | 103800 | Willful filing of false certificate or affidavit for birth certificate |
| Health and Safety | 11153(a)(1) | Issuing prescription to addict/habitual user of controlled substance |
| Health and Safety | 11353.5 | Sale by adult to minor of controlled substance at school, public playground, church, synagogue, or child daycare center |
| Health and Safety | 11353.7 | Sale by adult to minor of controlled substance in public park |
| Health and Safety | 11371 | Violate/solicit minor to violate controlled substance prescription laws |
| Health and Safety | 11371.1 | Violate/induce minor to violate controlled substance laws |
| Health and Safety | 11383.5(e) | Possession of chemicals sufficient to manufacture hydriodic acid or reducing agent with intent to manufacture methamphetamine |
| Health and Safety | 11383(a) | Possession of materials with intent to manufacture PCP |
| Health and Safety | 11383(c)(1) | Possession of materials with intent to manufacture PCP |
| Health and Safety | 120291(a) | Sale or transportation of mushrooms for controlled substance |
| Health and Safety | 7051 | Unlawful removal of human remains for sale or to dissect |
| Health and Safety | 7052 | Unauthorized removal, mutilation, or sexual penetration of human remains |
| Health and Safety | 109365 | False representation of cure for cancer |
| Health and Safety | 11104(a) | Transfer of substance with knowledge of intent to manufacture controlled substance |
| Health and Safety | 11152 | Issuing prescription to addict/habitual user of controlled substance |
| Health and Safety | 11154(b) | Unauthorized disposal of radioactive material causing GBI or substantial probability of death |

| | | |
|------------------------|----------------|---|
| Health and Safety | 11383.7(a) | Possession of material with intent to sell or furnish materials to another with knowledge that they will be used to manufacture methamphetamine |
| Health and Safety | 11383(b) | Possession of isomers of PCP with intent to manufacture PCP |
| Health and Safety | 11383(c)(2) | Possession of materials with intent to manufacture PCP |
| Health and Safety | 44209 | Falsifying vehicle emissions test report |
| Health and Safety | 443.17(a) | Altering or forging request for an aid-in-dying drug; concealing or destroying a withdrawal or rescission of such request |
| Health and Safety | 443.17(b) | Coercing or exerting undue influence on individual to request or ingest an aid-in-dying drug; administering aid-in-dying drug without consent |
| Health and Safety | 7051.5 | Unlawful removal or possession of dental gold or silver, or jewelry from human remains |
| Health and Safety | 7051(a) | Illegal transport of hazardous waste with prior conviction |
| Health and Safety | 7052(a) | Unauthorized removal, mutilation, or sexual penetration of human remains |
| Insurance | 1871.4(a)(4) | Preparing/presenting false/fraudulent workers' compensation claim or claim under return-to-work program |
| Insurance | 700 | Transacting insurance business without certification |
| Insurance | 833(a) | False statement to insurance commissioner, etc. |
| Public Resources | 5097.99(b) | Willfully obtaining or possessing Native American artifacts or human remains |
| Public Resources | 14591(b)(1)(G) | Violation of Beverage Container Act—fraudulent claim exceeding \$950 |
| Revenue and Taxation | 19721(a)(1) | Fraud involving income tax refund warrants |
| Revenue and Taxation | 30473 | Counterfeiting stamps or meter impressions |
| Unemployment Insurance | 2102(a) | False statement or representation or concealment to obtain benefits under employment laws of another state |
| Unemployment Insurance | 2106 | Failure or neglect to furnish reports |
| Unemployment Insurance | 2116(a) | False certification of the medical condition of any person in order to obtain disability insurance benefits |
| Unemployment Insurance | 2121 | Preparation or presentation of false or fraudulent document |

| | | |
|--------------------------|------------|---|
| Unemployment Insurance | 2114 | Report on registration of fictitious employer or employee and wages |
| Vehicle | 1808.4(d) | Disclosure of home address of peace officer or family member contained in confidential DMV record resulting in bodily injury to these persons |
| Vehicle | 21464(c) | Interfere with traffic devices causing bodily injury/death |
| Vehicle | 38318(b) | Throwing things at off-highway vehicle capable of causing serious bodily injury |
| Vehicle | 10501(a) | False report of stolen car with prior conviction |
| Vehicle | 1673.6 | False statement on smog impact fee refund claim |
| Vehicle | 21464(a) | Interfere with traffic devices causing bodily injury/death |
| Vehicle | 21464(b) | Interfere with traffic devices causing bodily injury/death |
| Vehicle | 21651(b) | Willful driving on the wrong side of a divided highway resulting in injury or death |
| Vehicle | 23109.1(a) | Motor vehicle speed contest causing serious bodily injury with prior conviction within 5 years |
| Vehicle | 23152(f) | DUI of alcohol/drugs with prior felony conviction of DUI or vehicular manslaughter within 10 years (term prescribed in Veh C §23550.5(a)) |
| Vehicle | 2470 | Transporting kitchen grease without valid registration certificate with prior conviction or with intent to defraud or mislead |
| Vehicle | 2472(a) | Interstate transporting of kitchen grease without registration or license with prior conviction or with intent to defraud or mislead |
| Vehicle | 2472(b) | Interstate transporting of kitchen grease without registration or license with prior conviction or with intent to defraud or mislead |
| Vehicle | 2474 | Stealing, contaminating, or damaging kitchen grease, or containers thereof with prior conviction or with intent to defraud or mislead |
| Vehicle | 2476 | Taking possession of stolen kitchen grease or grease from unregistered transporter with prior conviction or with intent to defraud or mislead |
| Vehicle | 38318.5(b) | Removing marker from trail causing GBI |
| Water | 13387(e) | Falsifying water quality documents or tampering with water quality monitoring equipment (with prior conviction) |
| Water | 13499.2(a) | False statement to State Water Resources Control Board |
| Welfare and Institutions | 11054 | False affirmation of welfare application |

| | | |
|--------------------------|---------------|--|
| Welfare and Institutions | 14107.2(a) | Solicit/receive bribe for MediCal referrals or service (with prior conviction) |
| Welfare and Institutions | 14107.2(b) | Offer/pay bribe for MediCal referrals or services (with prior conviction) |
| Welfare and Institutions | 15656(a) | Willful causing of pain to or suffering of dependent adult |
| Welfare and Institutions | 1768.7(a) | Escape/attempted escape from DJJ without force or violence |
| Welfare and Institutions | 3002 | Escape/attempted escape from addiction treatment facility |
| Welfare and Institutions | 8103(f)(1)(B) | Possession of firearm by mentally disordered person |
| Welfare and Institutions | 11482.5 | Welfare fraud via multiple applications or false identities |
| Welfare and Institutions | 11483.5 | Using multiple applications to obtain more than one aid payment |
| Welfare and Institutions | 1152(b) | Aiding or attempting to aid escape of DJJ ward or parolee with force or violence |
| Welfare and Institutions | 14025(a) | Purchase or sale of MediCal cards, MediCal labels, or MediCal beneficiary identification numbers |
| Welfare and Institutions | 17410 | Fraudulent buying welfare voucher |
| Welfare and Institutions | 1768.7(b) | Escape/attempted escape from DJJ with force or violence |
| Welfare and Institutions | 1768.7(b) | Escape/attempted escape from DJJ with force or violence |
| Welfare and Institutions | 1768.8(b) | Assault by DJJ resident on nonresident with deadly weapon or by means likely to produce GBI |
| Welfare and Institutions | 8101(a) | Knowing gift or sale of deadly weapon to mental patient |
| Welfare and Institutions | 8101(b) | Knowing gift or sale of firearm to mental patient |

OFFENSES WITHOUT ANY ARRESTS (2017–2021)

Limited to non-wobbler felonies outside of the Penal Code

| CODE | § | OFFENSE NAME |
|--------------------------|-------------|--|
| Business and Professions | 10238.6(c) | False or misleading statements regarding property securities qualification |
| Business and Professions | 10250.52 | False or misleading statements regarding property securities qualification |
| Business and Professions | 11018.2 | Sale or lease of property without public report |
| Business and Professions | 11019(a) | Failure to cease and desist activities when ordered re prop sales |
| Business and Professions | 11022(a) | False or misleading real estate advertising |
| Business and Professions | 17511.12(a) | Fraudulent telephonic sales methods |
| Business and Professions | 17511.3(a) | Fraudulent telephonic sales methods |
| Business and Professions | 580 | Sale of medical degree |
| Business and Professions | 7737(a) | Violation of preneed funeral arrangements provisions |
| Corporations | 31201 | Misrepresenting facts in offering to sell franchise |
| Corporations | 31411 | Franchise fraud |
| Corporations | 31110 | Unlawful offering of franchise for sale |
| Elections | 18201 | False making, destruction, or defacement of nomination papers |
| Elections | 18541(a)(1) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(a)(2) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(a)(3) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(a)(4) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(c)(1) | Soliciting votes or discussing voter qualifications in proximity of polling place, or photographing or videotaping voter entering or exiting polling place |
| Elections | 18541(c)(2) | Soliciting votes or discussing voter qualifications in proximity of polling place, or photographing or videotaping voter entering or exiting polling place |

| | | |
|------------------------|------------------|--|
| Elections | 18541(c)(3) | Soliciting votes or discussing voter qualifications in proximity of polling place, or photographing or videotaping voter entering or exiting polling place |
| Elections | 18568(g) | Offenses at the polls |
| Elections | 18568(h) | Offenses at the polls |
| Financial | 17414(b) | Misappropriate escrow funds |
| Financial | 3361 | Deposit of bank funds on condition of loan or advance |
| Financial | 3531 | Examiner's failure to report insolvency or unsafe condition of bank |
| Fish and Game | 3009 | Failure to render aid after shooting person while hunting |
| Food and Agricultural | 17551(a) | Alter brand of animal with intent to steal |
| Food and Agricultural | 17551(b) | Alter brand of animal with intent to steal |
| Government | 8670.64(a)(3) | Causing or failing to report oil spill in marine waters with prior conviction |
| Government | 8670.64(c)(2)(D) | Causing or failing to report oil spill in marine waters with prior conviction |
| Harbors and Navigation | 304 | Ship's commander sinking or injuring vessel or cargo |
| Health and Safety | 109300 | Unauthorized sale of cancer treatment |
| Health and Safety | 11174 | Unlawful disposal of hazardous substance used in manufacturing controlled substance |
| Health and Safety | 109365 | False representation of cure for cancer |
| Health and Safety | 11104(a) | Transfer of substance with knowledge of intent to manufacture controlled substance |
| Health and Safety | 11152 | Issuing prescription to addict/habitual user of controlled substance |
| Health and Safety | 11154(b) | Unauthorized disposal of radioactive material causing GBI or substantial probability of death |
| Health and Safety | 11383.7(a) | Possession of material with intent to sell or furnish materials to another with knowledge that they will be used to manufacture methamphetamine |
| Health and Safety | 11383(b) | Possession of isomers of PCP with intent to manufacture PCP |

| | | |
|------------------------|----------------|---|
| Health and Safety | 11383(c)(2) | Possession of materials with intent to manufacture PCP |
| Health and Safety | 44209 | Falsifying vehicle emissions test report |
| Health and Safety | 443.17(a) | Altering or forging request for an aid-in-dying drug; concealing or destroying a withdrawal or rescission of such request |
| Health and Safety | 443.17(b) | Coercing or exerting undue influence on individual to request or ingest an aid-in-dying drug; administering aid-in-dying drug without consent |
| Health and Safety | 7051.5 | Unlawful removal or possession of dental gold or silver, or jewelry from human remains |
| Health and Safety | 7051(a) | Illegal transport of hazardous waste with prior conviction |
| Health and Safety | 7052(a) | Unauthorized removal, mutilation, or sexual penetration of human remains |
| Insurance | 833(a) | False statement to insurance commissioner, etc. |
| Public Resources | 14591(b)(1)(G) | Violation of Beverage Container Act—fraudulent claim exceeding \$950 |
| Revenue and Taxation | 19705(a)(2) | Willful filing of false return |
| Revenue and Taxation | 30473 | Counterfeiting stamps or meter impressions |
| Unemployment Insurance | 2114 | Report on registration of fictitious employer or employee and wages |
| Vehicle | 10752(b) | Fraudulent use of vehicle identification number (VIN) |
| Vehicle | 10501(a) | False report of stolen car with prior conviction |
| Vehicle | 1673.6 | False statement on smog impact fee refund claim |
| Vehicle | 21464(a) | Interfere with traffic devices causing bodily injury/death |
| Vehicle | 21464(b) | Interfere with traffic devices causing bodily injury/death |
| Vehicle | 21651(b) | Willful driving on the wrong side of a divided highway resulting in injury or death |
| Vehicle | 23109.1(a) | Motor vehicle speed contest causing serious bodily injury with prior conviction within 5 years |
| Vehicle | 23152(f) | DUI of alcohol/drugs with prior felony conviction of DUI or vehicular manslaughter within 10 years (term prescribed in Veh C §23550.5(a)) |

| | | |
|--------------------------|------------|---|
| Vehicle | 2470 | Transporting kitchen grease without valid registration certificate with prior conviction or with intent to defraud or mislead |
| Vehicle | 2472(a) | Interstate transporting of kitchen grease without registration or license with prior conviction or with intent to defraud or mislead |
| Vehicle | 2472(b) | Interstate transporting of kitchen grease without registration or license with prior conviction or with intent to defraud or mislead |
| Vehicle | 2474 | Stealing, contaminating, or damaging kitchen grease, or containers thereof with prior conviction or with intent to defraud or mislead |
| Vehicle | 2476 | Taking possession of stolen kitchen grease or grease from unregistered transporter with prior conviction or with intent to defraud or mislead |
| Vehicle | 38318.5(b) | Removing marker from trail causing GBI |
| Water | 13387(e) | Falsifying water quality documents or tampering with water quality monitoring equipment (with prior conviction) |
| Water | 13499.2(a) | False statement to State Water Resources Control Board |
| Welfare and Institutions | 7326 | Aid in escape of person committed to state hospital |
| Welfare and Institutions | 11482.5 | Welfare fraud via multiple applications or false identities |
| Welfare and Institutions | 11483.5 | Using multiple applications to obtain more than one aid payment |
| Welfare and Institutions | 1152(b) | Aiding or attempting to aid escape of DJJ ward or parolee with force or violence |
| Welfare and Institutions | 14025(a) | Purchase or sale of MediCal cards, MediCal labels, or MediCal beneficiary identification numbers |
| Welfare and Institutions | 17410 | Fraudulent buying welfare voucher |
| Welfare and Institutions | 1768.7(b) | Escape/attempted escape from DJJ with force or violence |
| Welfare and Institutions | 1768.7(b) | Escape/attempted escape from DJJ with force or violence |
| Welfare and Institutions | 1768.8(b) | Assault by DJJ resident on nonresident with deadly weapon or by means likely to produce GBI |
| Welfare and Institutions | 8101(a) | Knowing gift or sale of deadly weapon to mental patient |
| Welfare and Institutions | 8101(b) | Knowing gift or sale of firearm to mental patient |

OFFENSES WITH ARRESTS BUT NO CONVICTIONS (2017–2021)

Limited to non-wobbler felonies outside of the Penal Code

| CODE | § | OFFENSE NAME |
|--------------------------|--------------|---|
| Business and Professions | 11010(a) | Failure to notify real estate commissioner re sale of property |
| Business and Professions | 2053 | Aiding or abetting another in the unauthorized practice of medicine |
| Business and Professions | 581 | Fraudulent procurement or alteration of medical diploma |
| Business and Professions | 601 | Advertising medicine or means for producing miscarriage or abortion |
| Civil | 1695.6(b)(1) | Violations by equity purchasers: accept instrument of conveyance |
| Corporations | 31410 | General violation of franchise investment law |
| Fish and Game | 12001 | Hunting with revoked/suspended license |
| Food and Agricultural | 35283(b) | Manufacturing or processing for resale of any milk or milk product in an unlicensed milk products plant |
| Government | 27443(a) | Public administrator/guardian, etc., conflict of interest |
| Government | 27443(b) | Public administrator/guardian, etc., conflict of interest |
| Government | 8214.2(a) | Notarizing deed of single family residence knowing deed is false |
| Harbors and Navigation | 305 | Sinking or injuring vessel or cargo |
| Health and Safety | 103800 | Willful filing of false certificate or affidavit for birth certificate |
| Health and Safety | 11153(a)(1) | Issuing prescription to addict/habitual user of controlled substance |
| Health and Safety | 11353.5 | Sale by adult to minor of controlled substance at school, public playground, church, synagogue, or child daycare center |
| Health and Safety | 11353.7 | Sale by adult to minor of controlled substance in public park |
| Health and Safety | 11371 | Violate/solicit minor to violate controlled substance prescription laws |
| Health and Safety | 11371.1 | Violate/induce minor to violate controlled substance laws |
| Health and Safety | 11383.5(e) | Possession of chemicals sufficient to manufacture hydriodic acid or reducing agent with intent to manufacture methamphetamine |

| | | |
|--------------------------|---------------|---|
| Health and Safety | 11383(a) | Possession of materials with intent to manufacture PCP |
| Health and Safety | 11383(c)(1) | Possession of materials with intent to manufacture PCP |
| Health and Safety | 120291(a) | Sale or transportation of mushrooms for controlled substance |
| Health and Safety | 7051 | Unlawful removal of human remains for sale or to dissect |
| Health and Safety | 7052 | Unauthorized removal, mutilation, or sexual penetration of human remains |
| Insurance | 1871.4(a)(4) | Preparing/presenting false/fraudulent workers' compensation claim or claim under return-to-work program |
| Insurance | 700 | Transacting insurance business without certification |
| Public Resources | 5097.99(b) | Willfully obtaining or possessing Native American artifacts or human remains |
| Revenue and Taxation | 19721(a)(1) | Fraud involving income tax refund warrants |
| Unemployment Insurance | 2102(a) | False statement or representation or concealment to obtain benefits under employment laws of another state |
| Unemployment Insurance | 2106 | Failure or neglect to furnish reports |
| Unemployment Insurance | 2116(a) | False certification of the medical condition of any person in order to obtain disability insurance benefits |
| Unemployment Insurance | 2121 | Preparation or presentation of false or fraudulent document |
| Vehicle | 1808.4(d) | Disclosure of home address of peace officer or family member contained in confidential DMV record resulting in bodily injury to these persons |
| Vehicle | 21464(c) | Interfere with traffic devices causing bodily injury/death |
| Vehicle | 38318(b) | Throwing things at off-highway vehicle capable of causing serious bodily injury |
| Welfare and Institutions | 11054 | False affirmation of welfare application |
| Welfare and Institutions | 14107.2(a) | Solicit/receive bribe for MediCal referrals or service (with prior conviction) |
| Welfare and Institutions | 14107.2(b) | Offer/pay bribe for MediCal referrals or services (with prior conviction) |
| Welfare and Institutions | 15656(a) | Willful causing of pain to or suffering of dependent adult |
| Welfare and Institutions | 1768.7(a) | Escape/attempted escape from DJJ without force or violence |
| Welfare and Institutions | 3002 | Escape/attempted escape from addiction treatment facility |
| Welfare and Institutions | 8103(f)(1)(B) | Possession of firearm by mentally disordered person |

OFFENSES WITHOUT ANY CONVICTIONS (2019–2021)

Limited to non-wobbler felonies outside of the Penal Code

| CODE | § | OFFENSE NAME |
|--------------------------|--------------|--|
| Business and Professions | 11010(a) | Failure to notify real estate commissioner re sale of property |
| Business and Professions | 2053 | Aiding or abetting another in the unauthorized practice of medicine |
| Business and Professions | 25603 | Bring alcohol into prison/jail, etc. |
| Business and Professions | 4336(a) | Use of minor as agent regarding pharmaceuticals by doctor/veterinarian, etc. |
| Business and Professions | 581 | Fraudulent procurement or alteration of medical diploma |
| Business and Professions | 601 | Advertising medicine or means for producing miscarriage or abortion |
| Business and Professions | 10238.6(c) | False or misleading statements regarding property securities qualification |
| Business and Professions | 10250.52 | False or misleading statements regarding property securities qualification |
| Business and Professions | 11018.2 | Sale or lease of property without public report |
| Business and Professions | 11019(a) | Failure to cease and desist activities when ordered re prop sales |
| Business and Professions | 11022(a) | False or misleading real estate advertising |
| Business and Professions | 17511.12(a) | Fraudulent telephonic sales methods |
| Business and Professions | 17511.3(a) | Fraudulent telephonic sales methods |
| Business and Professions | 580 | Sale of medical degree |
| Business and Professions | 7737(a) | Violation of preneed funeral arrangements provisions |
| Civil | 1695.6(b)(1) | Violations by equity purchasers: accept instrument of conveyance |
| Corporations | 31410 | General violation of franchise investment law |
| Corporations | 31110 | Unlawful offering of franchise for sale |

| | | |
|-----------------------|-------------|--|
| Corporations | 31201 | Misrepresenting facts in offering to sell franchise |
| Corporations | 31411 | Franchise fraud |
| Elections | 18201 | False making, destruction, or defacement of nomination papers |
| Elections | 18541(a)(1) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(a)(2) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(a)(3) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(a)(4) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(c)(1) | Soliciting votes or discussing voter qualifications in proximity of polling place, or photographing or videotaping voter entering or exiting polling place |
| Elections | 18541(c)(2) | Soliciting votes or discussing voter qualifications in proximity of polling place, or photographing or videotaping voter entering or exiting polling place |
| Elections | 18541(c)(3) | Soliciting votes or discussing voter qualifications in proximity of polling place, or photographing or videotaping voter entering or exiting polling place |
| Elections | 18568(g) | Offenses at the polls |
| Elections | 18568(h) | Offenses at the polls |
| Financial | 17414(b) | Misappropriate escrow funds |
| Financial | 3361 | Deposit of bank funds on condition of loan or advance |
| Financial | 3531 | Examiner's failure to report insolvency or unsafe condition of bank |
| Fish and Game | 12001 | Hunting with revoked/suspended license |
| Fish and Game | 3009 | Failure to render aid after shooting person while hunting |
| Food and Agricultural | 35283(b) | Manufacturing or processing for resale of any milk or milk product in an unlicensed milk products plant |
| Food and Agricultural | 17551(a) | Alter brand of animal with intent to steal |
| Food and Agricultural | 17551(b) | Alter brand of animal with intent to steal |

| | | |
|------------------------|----------------------|---|
| Government | 27443(a) | Public administrator/guardian, etc., conflict of interest |
| Government | 27443(b) | Public administrator/guardian, etc., conflict of interest |
| Government | 8214.2(a) | Notarizing deed of single family residence knowing deed is false |
| Government | 8670.64(a)(3) | Causing or failing to report oil spill in marine waters with prior conviction |
| Government | 8670.64(c) (2)(D) | Causing or failing to report oil spill in marine waters with prior conviction |
| Harbors and Navigation | 302 | Sinking/setting adrift vessel of 10 tons or more |
| Harbors and Navigation | 305 | Sinking or injuring vessel or cargo |
| Harbors and Navigation | 304 | Ship's commander sinking or injuring vessel or cargo |
| Health and Safety | 103800 | Willful filing of false certificate or affidavit for birth certificate |
| Health and Safety | 11153(a)(1) | Issuing prescription to addict/habitual user of controlled substance |
| Health and Safety | 11154(a) | Issuing prescription to addict/habitual user of controlled substance |
| Health and Safety | 11155 | Issuing prescription to addict/habitual user of controlled substance |
| Health and Safety | 11156 | Issuing prescription to addict/habitual user of controlled substance |
| Health and Safety | 11353.5 | Sale by adult to minor of controlled substance at school, public playground, church, synagogue, or child daycare center |
| Health and Safety | 11353.7 | Sale by adult to minor of controlled substance in public park |
| Health and Safety | 11353(b) | Adult inducing minor's involvement with controlled substance |
| Health and Safety | 11354(a) | Minor inducing minor's involvement with controlled substance |
| Health and Safety | 11363 | Cultivating/harvesting/processing peyote |
| Health and Safety | 11366.5(b) | Managing place for controlled substance and knowingly allowing it to be fortified against police |
| Health and Safety | 11366.7(b) | Sale of chemical, drug, or lab equip for unlawful use |

| | | |
|-------------------|-------------|---|
| Health and Safety | 11371 | Violate/solicit minor to violate controlled substance prescription laws |
| Health and Safety | 11371.1 | Violate/induce minor to violate controlled substance laws |
| Health and Safety | 11379.5(b) | Transportation for sale of PCP between noncontiguous counties |
| Health and Safety | 11379.6(b) | Offering to manufacture controlled substance |
| Health and Safety | 11383.5(e) | Possession of chemicals sufficient to manufacture hydriodic acid or reducing agent with intent to manufacture methamphetamine |
| Health and Safety | 11383(a) | Possession of materials with intent to manufacture PCP |
| Health and Safety | 11383(c)(1) | Possession of materials with intent to manufacture PCP |
| Health and Safety | 120291(a) | Sale or transportation of mushrooms for controlled substance |
| Health and Safety | 25189.6(b) | Violation of Health & S C §25189.6(a) that places person in imminent danger of serious harm or death |
| Health and Safety | 7051 | Unlawful removal of human remains for sale or to dissect |
| Health and Safety | 7052 | Unauthorized removal, mutilation, or sexual penetration of human remains |
| Health and Safety | 109300 | Unauthorized sale of cancer treatment |
| Health and Safety | 109365 | False representation of cure for cancer |
| Health and Safety | 11104(a) | Transfer of substance with knowledge of intent to manufacture controlled substance |
| Health and Safety | 11152 | Issuing prescription to addict/habitual user of controlled substance |
| Health and Safety | 11154(b) | Unauthorized disposal of radioactive material causing GBI or substantial probability of death |
| Health and Safety | 11174 | Unlawful disposal of hazardous substance used in manufacturing controlled substance |
| Health and Safety | 11383.7(a) | Possession of material with intent to sell or furnish materials to another with knowledge that they will be used to manufacture methamphetamine |
| Health and Safety | 11383(b) | Possession of isomers of PCP with intent to manufacture PCP |
| Health and Safety | 11383(c)(2) | Possession of materials with intent to manufacture PCP |

| | | |
|------------------------|----------------|---|
| Health and Safety | 44209 | Falsifying vehicle emissions test report |
| Health and Safety | 443.17(a) | Altering or forging request for an aid-in-dying drug; concealing or destroying a withdrawal or rescission of such request |
| Health and Safety | 443.17(b) | Coercing or exerting undue influence on individual to request or ingest an aid-in-dying drug; administering aid-in-dying drug without consent |
| Health and Safety | 7051.5 | Unlawful removal or possession of dental gold or silver, or jewelry from human remains |
| Health and Safety | 7051(a) | Illegal transport of hazardous waste with prior conviction |
| Health and Safety | 7052(a) | Unauthorized removal, mutilation, or sexual penetration of human remains |
| Insurance | 1871.4(a)(4) | Preparing/presenting false/fraudulent workers' compensation claim or claim under return-to-work program |
| Insurance | 700 | Transacting insurance business without certification |
| Insurance | 833(a) | False statement to insurance commissioner, etc. |
| Public Resources | 5097.99(b) | Willfully obtaining or possessing Native American artifacts or human remains |
| Public Resources | 14591(b)(1)(G) | Violation of Beverage Container Act—fraudulent claim exceeding \$950 |
| Revenue and Taxation | 19721(a)(t) | Fraud involving income tax refund warrants |
| Revenue and Taxation | 30475(b) | Transport tobacco products without permit with intent to evade tax |
| Revenue and Taxation | 30473 | Counterfeiting stamps or meter impressions |
| Unemployment Insurance | 2102(a) | False statement or representation or concealment to obtain benefits under employment laws of another state |
| Unemployment Insurance | 2106 | Failure or neglect to furnish reports |
| Unemployment Insurance | 2108 | Nonpayment of contributions due |
| Unemployment Insurance | 2116(a) | False certification of the medical condition of any person in order to obtain disability insurance benefits |
| Unemployment Insurance | 2116(b) | False or fraudulent written or oral material statement in support of any claim for disability insurance |
| Unemployment Insurance | 2121 | Preparation or presentation of false or fraudulent document |

| | | |
|------------------------|------------|---|
| Unemployment Insurance | 2114 | Report on registration of fictitious employer or employee and wages |
| Vehicle | 1808.4(d) | Disclosure of home address of peace officer or family member contained in confidential DMV record resulting in bodily injury to these persons |
| Vehicle | 21464(c) | Interfere with traffic devices causing bodily injury/death |
| Vehicle | 38318(b) | Throwing things at off-highway vehicle capable of causing serious bodily injury |
| Vehicle | 10501(a) | False report of stolen car with prior conviction |
| Vehicle | 10752(b) | Fraudulent use of vehicle identification number (VIN) |
| Vehicle | 1673.6 | False statement on smog impact fee refund claim |
| Vehicle | 21464(a) | Interfere with traffic devices causing bodily injury/death |
| Vehicle | 21464(b) | Interfere with traffic devices causing bodily injury/death |
| Vehicle | 21651(b) | Willful driving on the wrong side of a divided highway resulting in injury or death |
| Vehicle | 23109.1(a) | Motor vehicle speed contest causing serious bodily injury with prior conviction within 5 years |
| Vehicle | 23152(f) | DUI of alcohol/drugs with prior felony conviction of DUI or vehicular manslaughter within 10 years (term prescribed in Veh C §23550.5(a)) |
| Vehicle | 2470 | Transporting kitchen grease without valid registration certificate with prior conviction or with intent to defraud or mislead |
| Vehicle | 2472(a) | Interstate transporting of kitchen grease without registration or license with prior conviction or with intent to defraud or mislead |
| Vehicle | 2472(b) | Interstate transporting of kitchen grease without registration or license with prior conviction or with intent to defraud or mislead |
| Vehicle | 2474 | Stealing, contaminating, or damaging kitchen grease, or containers thereof with prior conviction or with intent to defraud or mislead |
| Vehicle | 2476 | Taking possession of stolen kitchen grease or grease from unregistered transporter with prior conviction or with intent to defraud or mislead |
| Vehicle | 38318.5(b) | Removing marker from trail causing GBI |
| Water | 13387(e) | Falsifying water quality documents or tampering with water quality monitoring equipment (with prior conviction) |
| Water | 13499.2(a) | False statement to State Water Resources Control Board |

| | | |
|--------------------------|---------------|---|
| Welfare and Institutions | 10980(d) | Use, acquire, transfer, or possess blank authorizations to participate in federal Supplemental Nutrition Assistance Program (SNAP) |
| Welfare and Institutions | 10980(e) | Counterfeit, altering, or using counterfeited or altered authorizations to participate in SNAP or receive CalFresh benefits (forgery offense) |
| Welfare and Institutions | 11054 | False affirmation of welfare application |
| Welfare and Institutions | 14107.2(a) | Solicit/receive bribe for MediCal referrals or service (with prior conviction) |
| Welfare and Institutions | 14107.2(b) | Offer/pay bribe for MediCal referrals or services (with prior conviction) |
| Welfare and Institutions | 15656(a) | Willful causing of pain to or suffering of dependent adult |
| Welfare and Institutions | 1768.7(a) | Escape/attempted escape from DJJ without force or violence |
| Welfare and Institutions | 3002 | Escape/attempted escape from addiction treatment facility |
| Welfare and Institutions | 8103(f)(1)(B) | Possession of firearm by mentally disordered person |
| Welfare and Institutions | 11482.5 | Welfare fraud via multiple applications or false identities |
| Welfare and Institutions | 11483.5 | Using multiple applications to obtain more than one aid payment |
| Welfare and Institutions | 1152(b) | Aiding or attempting to aid escape of DJJ ward or parolee with force or violence |
| Welfare and Institutions | 14025(a) | Purchase or sale of MediCal cards, MediCal labels, or MediCal beneficiary identification numbers |
| Welfare and Institutions | 17410 | Fraudulent buying welfare voucher |
| Welfare and Institutions | 1768.7(b) | Escape/attempted escape from DJJ with force or violence |
| Welfare and Institutions | 1768.7(b) | Escape/attempted escape from DJJ with force or violence |
| Welfare and Institutions | 1768.8(b) | Assault by DJJ resident on nonresident with deadly weapon or by means likely to produce GBI |
| Welfare and Institutions | 7326 | Aid in escape of person committed to state hospital |
| Welfare and Institutions | 8101(a) | Knowing gift or sale of deadly weapon to mental patient |
| Welfare and Institutions | 8101(b) | Knowing gift or sale of firearm to mental patient |

OFFENSES WITHOUT ANY ARRESTS (2019–2021)

Limited to non-wobbler felonies outside of the Penal Code

| CODE | § | OFFENSE NAME |
|--------------------------|-------------|--|
| Business and Professions | 10238.6(c) | False or misleading statements regarding property securities qualification |
| Business and Professions | 10250.52 | False or misleading statements regarding property securities qualification |
| Business and Professions | 11018.2 | Sale or lease of property without public report |
| Business and Professions | 11019(a) | Failure to cease and desist activities when ordered re prop sales |
| Business and Professions | 11022(a) | False or misleading real estate advertising |
| Business and Professions | 17511.12(a) | Fraudulent telephonic sales methods |
| Business and Professions | 17511.3(a) | Fraudulent telephonic sales methods |
| Business and Professions | 580 | Sale of medical degree |
| Business and Professions | 7737(a) | Violation of preneed funeral arrangements provisions |
| Corporations | 31110 | Unlawful offering of franchise for sale |
| Corporations | 31201 | Misrepresenting facts in offering to sell franchise |
| Corporations | 31411 | Franchise fraud |
| Elections | 18201 | False making, destruction, or defacement of nomination papers |
| Elections | 18541(a)(1) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(a)(2) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(a)(3) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(a)(4) | Challenging person's right to vote without probable cause or on fraudulent grounds |
| Elections | 18541(c)(1) | Soliciting votes or discussing voter qualifications in proximity of polling place, or photographing or videotaping voter entering or exiting polling place |

| | | |
|------------------------|------------------|--|
| Elections | 18541(c)(2) | Soliciting votes or discussing voter qualifications in proximity of polling place, or photographing or videotaping voter entering or exiting polling place |
| Elections | 18541(c)(3) | Soliciting votes or discussing voter qualifications in proximity of polling place, or photographing or videotaping voter entering or exiting polling place |
| Elections | 18568(g) | Offenses at the polls |
| Elections | 18568(h) | Offenses at the polls |
| Financial | 17414(b) | Misappropriate escrow funds |
| Financial | 3361 | Deposit of bank funds on condition of loan or advance |
| Financial | 3531 | Examiner's failure to report insolvency or unsafe condition of bank |
| Fish and Game | 3009 | Failure to render aid after shooting person while hunting |
| Food and Agricultural | 17551(a) | Alter brand of animal with intent to steal |
| Food and Agricultural | 17551(b) | Alter brand of animal with intent to steal |
| Government | 8670.64(a)(3) | Causing or failing to report oil spill in marine waters with prior conviction |
| Government | 8670.64(c)(2)(D) | Causing or failing to report oil spill in marine waters with prior conviction |
| Harbors and Navigation | 304 | Ship's commander sinking or injuring vessel or cargo |
| Health and Safety | 109300 | Unauthorized sale of cancer treatment |
| Health and Safety | 109365 | False representation of cure for cancer |
| Health and Safety | 11104(a) | Transfer of substance with knowledge of intent to manufacture controlled substance |
| Health and Safety | 11152 | Issuing prescription to addict/habitual user of controlled substance |
| Health and Safety | 11154(b) | Unauthorized disposal of radioactive material causing GBI or substantial probability of death |
| Health and Safety | 11174 | Unlawful disposal of hazardous substance used in manufacturing controlled substance |
| Health and Safety | 11383.7(a) | Possession of material with intent to sell or furnish materials to another with knowledge that they will be used to manufacture methamphetamine |

| | | |
|------------------------|----------------|---|
| Health and Safety | 11383(b) | Possession of isomers of PCP with intent to manufacture PCP |
| Health and Safety | 11383(c)(2) | Possession of materials with intent to manufacture PCP |
| Health and Safety | 44209 | Falsifying vehicle emissions test report |
| Health and Safety | 443.17(a) | Altering or forging request for an aid-in-dying drug; concealing or destroying a withdrawal or rescission of such request |
| Health and Safety | 443.17(b) | Coercing or exerting undue influence on individual to request or ingest an aid-in-dying drug; administering aid-in-dying drug without consent |
| Health and Safety | 7051.5 | Unlawful removal or possession of dental gold or silver, or jewelry from human remains |
| Health and Safety | 7051(a) | Illegal transport of hazardous waste with prior conviction |
| Health and Safety | 7052(a) | Unauthorized removal, mutilation, or sexual penetration of human remains |
| Insurance | 833(a) | False statement to insurance commissioner, etc. |
| Public Resources | 14591(b)(1)(G) | Violation of Beverage Container Act—fraudulent claim exceeding \$950 |
| Revenue and Taxation | 19705(a)(2) | Willful filing of false return |
| Revenue and Taxation | 30473 | Counterfeiting stamps or meter impressions |
| Unemployment Insurance | 2114 | Report on registration of fictitious employer or employee and wages |
| Vehicle | 10501(a) | False report of stolen car with prior conviction |
| Vehicle | 10752(b) | Fraudulent use of vehicle identification number (VIN) |
| Vehicle | 1673.6 | False statement on smog impact fee refund claim |
| Vehicle | 21464(a) | Interfere with traffic devices causing bodily injury/death |
| Vehicle | 21464(b) | Interfere with traffic devices causing bodily injury/death |
| Vehicle | 21651(b) | Willful driving on the wrong side of a divided highway resulting in injury or death |
| Vehicle | 23109.1(a) | Motor vehicle speed contest causing serious bodily injury with prior conviction within 5 years |

| | | |
|--------------------------|------------|---|
| Vehicle | 23152(f) | DUI of alcohol/drugs with prior felony conviction of DUI or vehicular manslaughter within 10 years (term prescribed in Veh C §23550.5(a)) |
| Vehicle | 2470 | Transporting kitchen grease without valid registration certificate with prior conviction or with intent to defraud or mislead |
| Vehicle | 2472(a) | Interstate transporting of kitchen grease without registration or license with prior conviction or with intent to defraud or mislead |
| Vehicle | 2472(b) | Interstate transporting of kitchen grease without registration or license with prior conviction or with intent to defraud or mislead |
| Vehicle | 2474 | Stealing, contaminating, or damaging kitchen grease, or containers thereof with prior conviction or with intent to defraud or mislead |
| Vehicle | 2476 | Taking possession of stolen kitchen grease or grease from unregistered transporter with prior conviction or with intent to defraud or mislead |
| Vehicle | 38318.5(b) | Removing marker from trail causing GBI |
| Water | 13387(e) | Falsifying water quality documents or tampering with water quality monitoring equipment (with prior conviction) |
| Water | 13499.2(a) | False statement to State Water Resources Control Board |
| Welfare and Institutions | 11482.5 | Welfare fraud via multiple applications or false identities |
| Welfare and Institutions | 11483.5 | Using multiple applications to obtain more than one aid payment |
| Welfare and Institutions | 1152(b) | Aiding or attempting to aid escape of DJJ ward or parolee with force or violence |
| Welfare and Institutions | 14025(a) | Purchase or sale of MediCal cards, MediCal labels, or MediCal beneficiary identification numbers |
| Welfare and Institutions | 17410 | Fraudulent buying welfare voucher |
| Welfare and Institutions | 1768.7(b) | Escape/attempted escape from DJJ with force or violence |
| Welfare and Institutions | 1768.7(b) | Escape/attempted escape from DJJ with force or violence |
| Welfare and Institutions | 1768.8(b) | Assault by DJJ resident on nonresident with deadly weapon or by means likely to produce GBI |
| Welfare and Institutions | 7326 | Aid in escape of person committed to state hospital |
| Welfare and Institutions | 8101(a) | Knowing gift or sale of deadly weapon to mental patient |
| Welfare and Institutions | 8101(b) | Knowing gift or sale of firearm to mental patient |

OFFENSES WITH ARRESTS BUT NO CONVICTIONS (2019–2021)

Limited to non-wobbler felonies outside of the Penal Code

| CODE | § | OFFENSE NAME |
|--------------------------|--------------|---|
| Business and Professions | 11010(a) | Failure to notify real estate commissioner re sale of property |
| Business and Professions | 2053 | Aiding or abetting another in the unauthorized practice of medicine |
| Business and Professions | 25603 | Bring alcohol into prison/jail, etc. |
| Business and Professions | 4336(a) | Use of minor as agent regarding pharmaceuticals by doctor/veterinarian, etc. |
| Business and Professions | 581 | Fraudulent procurement or alteration of medical diploma |
| Business and Professions | 601 | Advertising medicine or means for producing miscarriage or abortion |
| Civil | 1695.6(b)(1) | Violations by equity purchasers: accept instrument of conveyance |
| Corporations | 31410 | General violation of franchise investment law |
| Fish and Game | 12001 | Hunting with revoked/suspended license |
| Food and Agricultural | 35283(b) | Manufacturing or processing for resale of any milk or milk product in an unlicensed milk products plant |
| Government | 27443(a) | Public administrator/guardian, etc., conflict of interest |
| Government | 27443(b) | Public administrator/guardian, etc., conflict of interest |
| Government | 8214.2(a) | Notarizing deed of single family residence knowing deed is false |
| Harbors and Navigation | 302 | Sinking/setting adrift vessel of 10 tons or more |
| Harbors and Navigation | 305 | Sinking or injuring vessel or cargo |
| Health and Safety | 103800 | Willful filing of false certificate or affidavit for birth certificate |
| Health and Safety | 11153(a)(1) | Issuing prescription to addict/habitual user of controlled substance |
| Health and Safety | 11154(a) | Issuing prescription to addict/habitual user of controlled substance |

| | | |
|-------------------|-------------|---|
| Health and Safety | 11155 | Issuing prescription to addict/habitual user of controlled substance |
| Health and Safety | 11156 | Issuing prescription to addict/habitual user of controlled substance |
| Health and Safety | 11353.5 | Sale by adult to minor of controlled substance at school, public playground, church, synagogue, or child daycare center |
| Health and Safety | 11353.7 | Sale by adult to minor of controlled substance in public park |
| Health and Safety | 11353(b) | Adult inducing minor's involvement with controlled substance |
| Health and Safety | 11354(a) | Minor inducing minor's involvement with controlled substance |
| Health and Safety | 11363 | Cultivating/harvesting/processing peyote |
| Health and Safety | 11366.5(b) | Managing place for controlled substance and knowingly allowing it to be fortified against police |
| Health and Safety | 11366.7(b) | Sale of chemical, drug, or lab equip for unlawful use |
| Health and Safety | 11371 | Violate/solicit minor to violate controlled substance prescription laws |
| Health and Safety | 11371.1 | Violate/induce minor to violate controlled substance laws |
| Health and Safety | 11379.5(b) | Transportation for sale of PCP between noncontiguous counties |
| Health and Safety | 11379.6(b) | Offering to manufacture controlled substance |
| Health and Safety | 11383.5(e) | Possession of chemicals sufficient to manufacture hydriodic acid or reducing agent with intent to manufacture methamphetamine |
| Health and Safety | 11383(a) | Possession of materials with intent to manufacture PCP |
| Health and Safety | 11383(c)(1) | Possession of materials with intent to manufacture PCP |
| Health and Safety | 120291(a) | Sale or transportation of mushrooms for controlled substance |
| Health and Safety | 25189.6(b) | Violation of Health & S C §25189.6(a) that places person in imminent danger of serious harm or death |
| Health and Safety | 7051 | Unlawful removal of human remains for sale or to dissect |
| Health and Safety | 7052 | Unauthorized removal, mutilation, or sexual penetration of human remains |

| | | |
|--------------------------|---------------|---|
| Insurance | 1871.4(a)(4) | Preparing/presenting false/fraudulent workers' compensation claim or claim under return-to-work program |
| Insurance | 700 | Transacting insurance business without certification |
| Public Resources | 5097.99(b) | Willfully obtaining or possessing Native American artifacts or human remains |
| Revenue and Taxation | 19721(a)(1) | Fraud involving income tax refund warrants |
| Revenue and Taxation | 30475(b) | Transport tobacco products without permit with intent to evade tax |
| Unemployment Insurance | 2102(a) | False statement or representation or concealment to obtain benefits under employment laws of another state |
| Unemployment Insurance | 2106 | Failure or neglect to furnish reports |
| Unemployment Insurance | 2108 | Nonpayment of contributions due |
| Unemployment Insurance | 2116(a) | False certification of the medical condition of any person in order to obtain disability insurance benefits |
| Unemployment Insurance | 2116(b) | False or fraudulent written or oral material statement in support of any claim for disability insurance |
| Unemployment Insurance | 2121 | Preparation or presentation of false or fraudulent document |
| Vehicle | 1808.4(d) | Disclosure of home address of peace officer or family member contained in confidential DMV record resulting in bodily injury to these persons |
| Vehicle | 21464(c) | Interfere with traffic devices causing bodily injury/death |
| Vehicle | 38318(b) | Throwing things at off-highway vehicle capable of causing serious bodily injury |
| Welfare and Institutions | 10980(d) | Use, acquire, transfer, or possess blank authorizations to participate in federal Supplemental Nutrition Assistance Program (SNAP) |
| Welfare and Institutions | 10980(e) | Counterfeit, altering, or using counterfeited or altered authorizations to participate in SNAP or receive CalFresh benefits (forgery offense) |
| Welfare and Institutions | 11054 | False affirmation of welfare application |
| Welfare and Institutions | 14107.2(a) | Solicit/receive bribe for MediCal referrals or service (with prior conviction) |
| Welfare and Institutions | 14107.2(b) | Offer/pay bribe for MediCal referrals or services (with prior conviction) |
| Welfare and Institutions | 15656(a) | Willful causing of pain to or suffering of dependent adult |
| Welfare and Institutions | 1768.7(a) | Escape/attempted escape from DJJ without force or violence |
| Welfare and Institutions | 3002 | Escape/attempted escape from addiction treatment facility |
| Welfare and Institutions | 8103(f)(1)(B) | Possession of firearm by mentally disordered person |