

AUGUST 2022

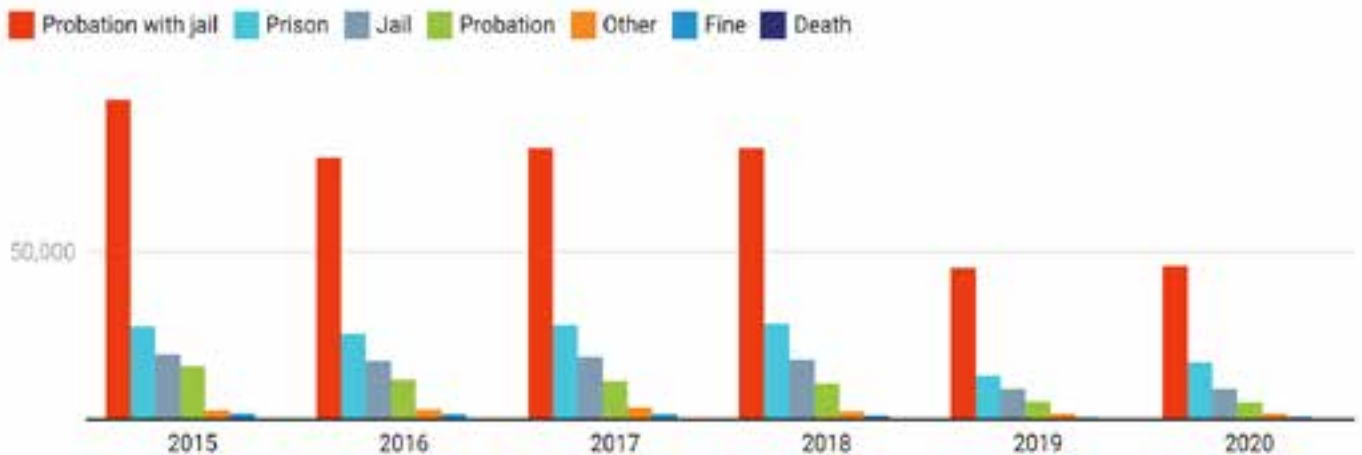
An Overview of Sentencing in California

MIA BIRD, OMAIR GILL, JOHANNA LACOE, MOLLY PICKARD, STEVEN RAPHAEL AND ALISSA SKOG

INTRODUCTION

Sanctioning in California often results in an individual being placed under the custody of one or more correctional authorities. For less serious offenses, criminal sentences may involve a short jail sentence or probation term, with county-level agencies (i.e., sheriff departments, county probation) implementing and controlling the sanction. For most sanctions, substantial proportions of the incarceration sentence are often served prior to conviction. Under AB 1950, implemented in 2020, probation sentences are limited to one year for misdemeanors and two years for felonies, unless longer probation sentences are explicitly called for within the specific Penal Code an individual is being charged under.

FIGURE 1: Type of Sentence: Dispositions of adult felony convictions by sentence type, 2015-2020



Source: California Department of Justice

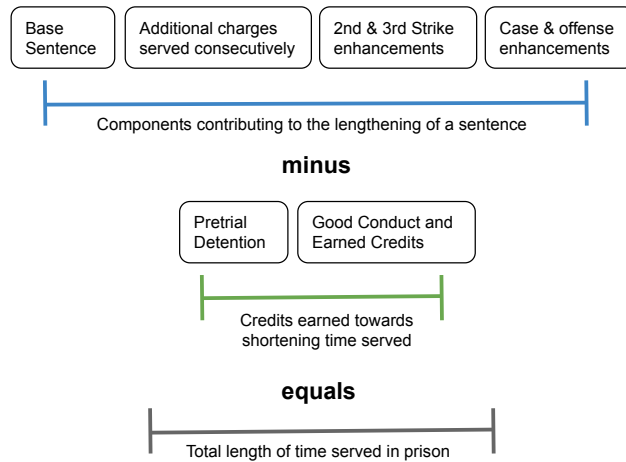
Commitment to a state prison is typically reserved for people convicted of more serious offenses, though someone’s conviction history can also require a prison sentence for a new offense with the sentence length and ultimate length of stay in a state institution governed by a complex set of factors. Most sentences have a fixed maximum length, though a minority of sentences involve a minimum sentence and a maximum of life. The fixed-length sentences (referred to as determinate sentences) as well

as the minimum length of the open sentences (referred to as indeterminate sentences) depend on multiple factors, including legislatively prescribed sanctions for specific offenses, the composition of charges and counts involved in a specific incident, aspects of the person’s criminal history, and aggravating factors such as the use of a firearm. A small percentage of people admitted to prison each year are sentenced to life without the possibility of parole and an even smaller percentage receive a death sentence.¹

TABLE 1: [Definition of terms](#)

| | |
|------------------------|---|
| Concurrent sentences | Sentences for separate convictions that are served at the same time |
| Condemned | A sentence of the death penalty |
| Consecutive sentence | Sentences for separate convictions that are served one after the other |
| Determinate sentences | A prison sentence with a set length that cannot be changed by a parole board ² |
| Earned Credit | Credit earned through completing ‘special’ or ‘designated’ programming |
| Felony | A crime that can carry a sentence to custody of more than one year in California |
| Good Conduct Credit | Credit that is earned for “good time” and earned time while incarcerated, which includes complying with regulations and rules, and performing assigned duties satisfactorily |
| Indeterminate sentence | A prison sentence that is a range of years, consisting of a minimum date where an individual is first eligible to go before a parole board, and a maximum length of stay that is life in prison |
| LWOP | Life without the possibility of parole |
| Misdemeanor | A crime that carries a maximum sentence of one year in county jail in California |
| Pretrial Detention | The time that is spent incarcerated while a person is awaiting or actively in trial. If convicted, pretrial detention counts towards time served on an individual’s sentence |
| Realignment | AB 109, effective in 2011, shifted responsibility for monitoring individuals who committed some non-serious, non-violent, non-sex offense from state prison to county jail custody, and made county probation responsible for post-release supervision of those individuals |
| Sentence Enhancements | Case and offense enhancements are used to add additional time to an individual’s sentence in addition to the time served on their base sentence |
| Sentencing Triad | A set of three sentence lengths (for example, 2, 3, or 4 years) that set the basis for a determinate sentence |
| Wobbler | A type of crime that varies in seriousness and can be charged as either a misdemeanor or a felony |

FIGURE 2: Factors contributing to the length of an individual’s prison sentence



The above chart demonstrates the breakdown of the many components that make up the total length of time an individual is sentenced to prison. An individual’s base sentence is determined by the primary offense they are convicted for, which is typically the most serious offense and carries the longest sentence out of their charges. If someone is convicted of multiple charges in a single incident, or has multiple counts (e.g. two counts of robbery), sometimes they will have to serve time for each charge consecutively (one after the other). An individual can also have time added to their sentence if they have committed previous serious or violent felony offenses under the Three Strikes laws or through other types of sentence enhancements.

SENTENCE TRIADS

For determinate sentences in California, the Penal Code spells out specific sentence lengths defining a triad of low, medium, and high values to be chosen by the sentencing judge upon conviction or agreed upon by the defendant and prosecutor in a plea bargain. For example, robbery in the first degree (PC 211) carries low, medium, and high sentence values of 3, 4, and 6 years. Burglary in the first degree (PC 459) has triad values of 2, 4, and 6 years. Carjacking (PC215(a)) has defined triad values of 3, 5, and 9 years. Indeterminate sentences in California specify minimum values and a maximum value equal to a life term. For example, second degree murder carries a sentence of 15 years to life.

FIGURE 3: Comparison of all admissions since 2015 and the population of people currently incarcerated



Source: California Department of Corrections and Rehabilitation

The vast majority (around 96%) of new convictions since 2015 have been determinate sentences, however at any given point in time, there is a much larger population (roughly 33%) of people incarcerated serving longer indeterminate sentences. This is because indeterminate sentences are typically for more serious offenses, and carry maximum lengths of life in prison. Similarly, the percentage of people sentenced to LWOP or death since 2015 is below one percent, but the current prison population is made up of six percent of people with either an LWOP or death sentence.

THREE STRIKES

California’s three strikes sentencing law is a form of sentence enhancement that lengthens sentences based on an individual’s criminal history. Specifically, for individuals with a serious or violent felony on their record, a second felony conviction results in the doubling of the sentence, and a third serious or violent felony conviction results in a sentence of 25 years to life. For more background on the impact of Three Strikes, see CPL’s 2022 report, “[Three Strikes in California.](#)”

SENTENCE ENHANCEMENTS

California uses what are known as both case and offense enhancements to increase the penalty and lengthen the sentence for a criminal offense. Case enhancements are additional increments in sentence length that may be applied due to the person’s criminal history or prison priors. Offense enhancements, on the other hand, are added due to aggravating circumstances associated with the criminal conviction or documented gang affiliations. While there are many different types of enhancements, a small proportion account for the majority of imposed enhancements as well as the overwhelming majority of additional years added through enhancements.

SENTENCE CREDITS

While there are many factors that can increase the amount of time someone is sentenced to serve in prison, individuals are also able to earn credits while incarcerated to shorten their length of stay. One way is called Good Conduct Credits (GCC), which are colloquially referred to as ‘Good Time’ credits, and are awarded for ‘good behavior.’ An additional way is Earned Credits, which can be awarded in the following four categories: educational merit, rehabilitative achievement, milestone completion, and extraordinary conduct.

[Table 2](#) shows how much credit individuals are eligible for based on the type of offense and type of facility an individual is housed in. For example, if an individual is serving a four year sentence for a nonviolent offense in jail, they can reduce their sentence by up to two years.

TABLE 2: “Good Conduct” Credits in California Jails and Prisons³

| CONVICTION TYPE | MAXIMUM PERCENT OF SENTENCE REDUCTION JAIL | MAXIMUM PERCENT OF POTENTIAL REDUCTION PRISON |
|--------------------|--|---|
| Nonviolent offense | 50% | 50% |
| Violent offense | 15% | 33.3% |

Source: http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2020.pdf

ACKNOWLEDGEMENTS

Support for this research was generously provided by Arnold Ventures. We also thank other supporters of the California Policy Lab, including the University of California Office of the President Multicampus Research Programs and Initiatives, MRP-19-600774 and M21PR3278, The James Irvine Foundation, and the Bylo Chacon Foundation for their generous support. The views expressed are those of the authors and do not necessarily reflect the views of our funders. All errors should be attributed to the authors.

Our research stems from a partnership between the California Policy Lab at the University of California and the Committee on Revision of the Penal Code, a state agency that studies and makes recommendations to improve California's criminal legal system.

The California Policy Lab builds better lives through data-driven policy. We are a project of the University of California, with sites at the Berkeley and Los Angeles campuses.

This research publication reflects the views of the authors and not necessarily the views of our funders, our staff, the California Policy Lab Advisory Board, the California Committee on the Revision of the Penal Code, the California Department of Corrections and Rehabilitation, or the Regents of the University of California.

Endnotes

- 1 While people are still occasionally sentenced to death in California, there has not been an execution since 2006
- 2 With the exception of nonviolent offenses that have been made eligible for early release by a parole board under Proposition 57, where people are eligible for review after serving complete time for their primary offense.
- 3 There are additional credit earning rates for individuals in prison in nonviolent minimum custody (66.6%) and people in fire camps (66.6% for nonviolent, and 50% for violent), however both of these groups are a very small portion of the prison population.