

# Felony Offenses and Sentencing Triads in California

THOMAS M. NOSEWICZ AND MOLLY PICKARD

## INTRODUCTION

California’s felony sentencing structure has become increasingly complex over the last forty years. Despite this complexity, this analysis also shows that changing just one section of the Penal Code — a default sentence that has not been adjusted since 1976 — would affect the sentence length of 71% of felony offenses in current law.

## KEY TAKEAWAYS

- Of more than 1,400 felony offenses in California law, more than half are defined outside the Penal Code.
- The default sentencing triad (16 months, 24 months, and 36 months) is used for 71% of felonies defined in California law.
- 63% of felony offenses are “realigned” — meaning they are punishable by a county jail, not state prison, sentence.
- California sentencing law has grown in complexity since the last comprehensive change to sentencing law in 1977, with far more felony offenses, sentencing enhancements, and sentencing triads today.

### Felony offenses are defined in almost every part of California law

There are more than 1,400 distinct felony offenses in California law. Of California’s 29 codes — collections of laws addressing a broad topic — 25 contain felony offenses. Though the Penal Code — in other words, the “punishment” code — defines a majority (53%) of the felony offenses, felonies are specified in almost every area of California law. [Figure 1](#) shows the distribution.

### A default sentence of 16 months, 24 months, or 36 months applies to 71% of felonies defined in the law

Sentences for most felony offenses are set using a “triad” of three values: a low, middle, or high term.<sup>1</sup> At sentencing, a court has discretion to choose the low or middle term and may choose the high term in some circumstances.<sup>2</sup> If sentencing enhancements, such as use of a firearm or certain prior convictions, have been adequately proven, additional time from those enhancements can be added to the triad term. The range of possible total sentences also sets the terms for plea bargaining, which is how the overwhelming majority of felony convictions are obtained.<sup>3</sup>

For felony offenses where the law does not explicitly specify a triad, a default triad of 16 months, 24 months, or 36 months is used.<sup>4</sup> This default triad applies to 71% of felony offenses defined in the law.<sup>5</sup> The second most common sentencing triad, 24-36-48 months, is used for less than 10% of felony offenses. The third most common, 24-48-72 months, accounts for only 3% of felony offenses.

The triads were formulated in 1976 based on how much time people actually served in prison before being found suitable for release by the parole board.<sup>6</sup> Though the Legislature has changed sentencing triads for many offenses since their original formulation in 1976, it has not revised the default triad.

### The majority of California’s felony offenses provide for a county jail, not state prison, sentence

In addition to its length, another key aspect of a sentence is where it is served. Until the end of 2011, the general rule in California was that sentences for felony convictions were served in state prison, not county jail.<sup>7</sup>

But a major policy change that year — Public Safety Realignment — specified that sentences for certain felony offenses were to be served in county jail, not state prison.<sup>8</sup> All of the “realigned” offenses were classified as non-violent, non-serious, and non-sex-offenses under the law, though not all non-violent and non-serious offenses were realigned.<sup>9</sup>

Public Safety Realignment helped reduce overcrowding in California’s prisons, which federal courts had found to be the cause of unconstitutional conditions of confinement leading to unnecessary deaths and other suffering.<sup>10</sup>

Today, more than 900 felony offenses authorized in the law are realigned — close to two-thirds (63%) of all defined felonies.

In three codes (Civil, Harbors and Navigation, and Water), all felony offenses are realigned. In the Penal Code, slightly more than half (54%) of all defined offenses are realigned. Figure 2 shows the proportion of realigned felony offenses for each code. Two codes have a single felony offense, and it is not realigned: Probate, and Streets and Highways.

FIGURE 1: Distribution of felony offenses by code

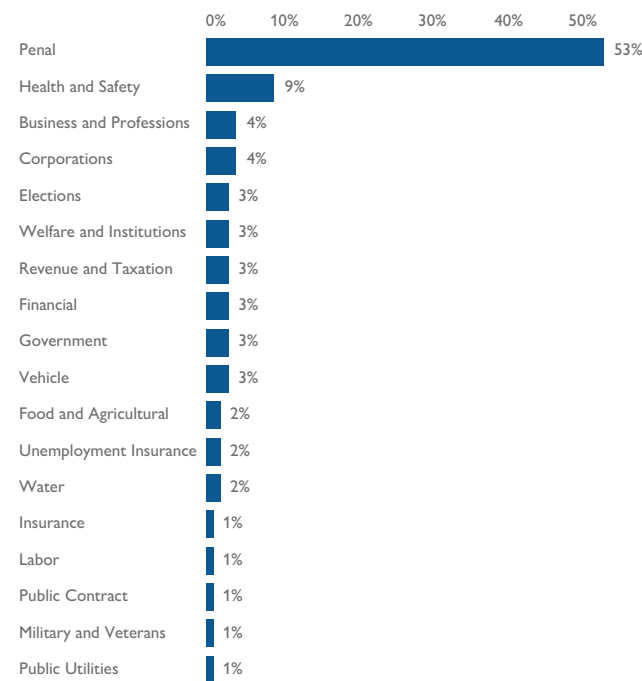
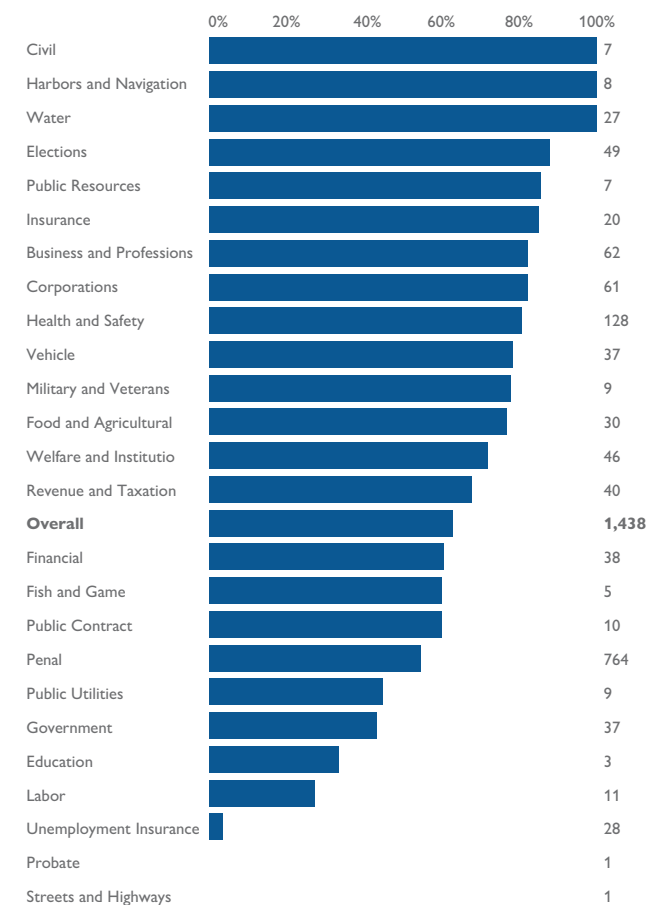


FIGURE 2: Proportion of realigned felony offenses



Note: The numbers reference the count of felony offenses within each code section.

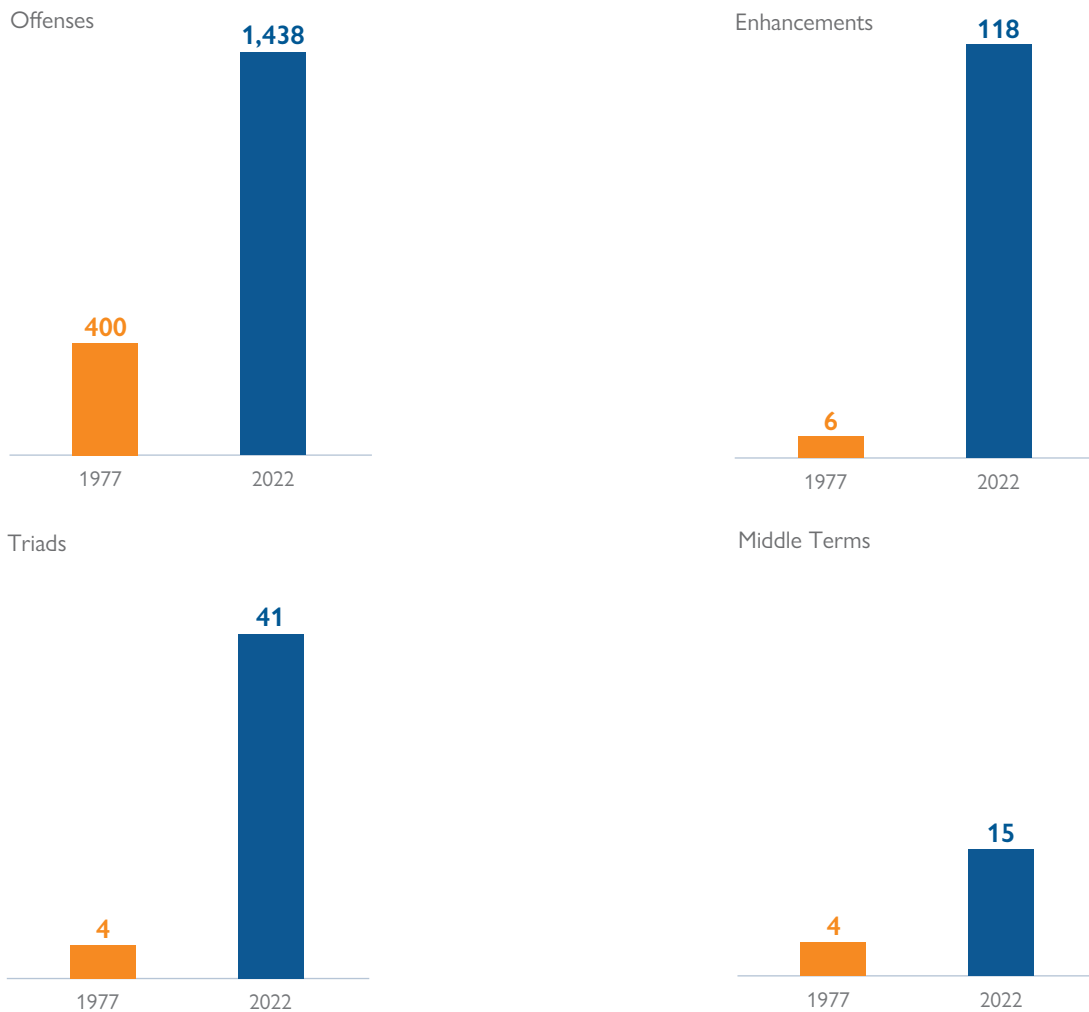
## California has added significantly more felony offenses, sentencing triads, and sentencing enhancements since the passage of the Uniform Determinate Sentencing Act of 1976

California passed the Uniform Determinate Sentencing Act (DSL) in 1976, with an effective date of July 1977. This made it the second state, after Maine, to transition from an indeterminate scheme — where almost every felony offense resulted in a life sentence with the parole board determining release — to a determinate sentencing structure with set terms of incarceration that could only be reduced by credit for good conduct while incarcerated.<sup>11</sup>

Compared to the original DSL effective in 1977, the structure of determinate sentencing today has become much more complicated as shown in [Figure 3](#):

- The 1977 DSL had about 400 felony offenses that were addressed with 4 distinct triads, compared to more than 1,400 felony offenses and 41 triads today.<sup>12</sup>
- The number of middle terms — which from 1977 to 2007 was the presumptive sentence<sup>13</sup> — has nearly quadrupled (from 4 to 15 since 1977).<sup>14</sup>
- The number of sentence enhancements has increased nearly twenty-fold: from 6 in 1977 to 118 in 2023.<sup>15</sup>

FIGURE 3: Sentencing structures in 1977 vs 2022



The first major revision to the DSL became effective in 1979 and increased the triad lengths for around 40 offenses.<sup>16</sup> In 2007, researchers at Stanford Law School concluded that there had been at least eighty substantive increases in sentencing since 1977, with an increase coming from the Legislature almost every year in the three decades examined.<sup>17</sup> Table 1 shows some of the changes in sentence length for common offenses.<sup>18</sup>

TABLE 1: Evolution of sentencing ranges in months for selected offenses

| OFFENSE                    | PRE-DSL           | DSL '77  | DSL '79                | CURRENT                   |
|----------------------------|-------------------|--|------------------------|---------------------------|
| Murder 2                   | 60 months to life | 60-72-84   | 60-84-132              | 180 to life <sup>19</sup> |
| Voluntary manslaughter     | 6 to 180 months   | 24-36-48   | 24-48-72               | 36-72-132 <sup>20</sup>   |
| Robbery 2                  | 12 months to life | 24-36-48   | 24-36-60 <sup>21</sup> |                           |
| Burglary 1                 | 60 months to life | 24-36-48   | 24-48-72 <sup>22</sup> |                           |
| Assault with deadly weapon | 6 months to life  | 24-36-48 or up to 12 months in county jail <sup>23</sup> |                        |                           |

This table does not capture the reality that many people in prison — 23% of the current population<sup>24</sup> — have received a sentence using a doubled triad value under the Three Strikes law (enacted in 1994) because of a prior conviction for a serious or violent offense.<sup>25</sup>

## Conclusion

This analysis shows that California’s criminal law is not confined to the Penal Code and, despite sentencing structure growing greatly in complexity for the last four decades, a majority of felony offenses use a default triad that has not been adjusted since it was originally formulated in 1976.

## Notes on the data

This analysis uses the list of felony offenses and enhancements provided in the California Center for Judicial Education and Research (CJER) Felony Sentencing Handbook (2022). The analysis focuses exclusively on felonies and includes only those offenses that can result in a determinate sentence of imprisonment. This analysis excludes the 40 felony offenses (all in the Penal Code) that can result in an indeterminate life sentence, life without parole, or death. And for wobbler offenses — those that can be treated as either a misdemeanor or felony — this analysis only considers the authorized felony sentence.

## ABOUT THIS RESEARCH

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

## ABOUT THE AUTHORS

Thomas M. Nosewicz is Legal Director of the California Committee on Revision of the Penal Code. Molly Pickard is a Research Manager at the California Policy Lab.

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## Endnotes

- 1 According to offense tables maintained by the California Department of Justice, around forty offenses provide for an indeterminate life sentence, which means that after a specified minimum amount of incarceration, the parole board determines whether someone should be released. Thirteen offenses provide for a determinate sentence, but don't use a triad: five provide for a sentence of "one year and one day," four provide for a sentence of 6 to 12 months, three provide for a five-year sentence, and one — sale of horsemeat for human consumption with a prior conviction, Penal Code § 598d(c) — provides for a sentence between two and five years.
- 2 The high term is permissible if "circumstances in aggravation" have been admitted by the defendant or proven beyond a reasonable doubt to a judge or jury. Penal Code § 1170(b)(2). In certain circumstances, including that the defendant was under 26 at the time of the offense, Penal Code § 1170(b)(6)(B), the judge must impose the low term unless "the aggravating circumstances outweigh the mitigating circumstances that imposition of the lower term would be contrary to the interests of justice." Penal Code § 1170(b)(6). For the historical evolution of these requirements, see endnote 13 below.
- 3 Judicial Council of California, 2023 Court Statistics Report: Statewide Caseload Trends, Appendix G, Table 8a.
- 4 Penal Code §§ 18(a) & 1170(h)(1). There is also a default indeterminate sentence of 7 years to life for offenses that specify that a sentence should be for "life" without giving a minimum term of imprisonment. Penal Code § 3046(a)(1).
- 5 Though this analysis focuses only on offenses and punishments defined in the law, initial analysis of people admitted to state prison from 2015 to September 2023 shows that the controlling offense for 40% of them is an offense that uses the default triad. The actual sentence imposed may be considerably longer if consecutive sentences or sentencing enhancements are also used.
- 6 Sheldon L. Messinger & Phillip E. Johnson, California's Determinate Sentencing Statute: History and Issues, *Determinate Sentencing: Reform or Regression*, 30 (March 1978). This analysis set the triads to cover the range of time served for 80% of people convicted of the relevant offenses. See also Albert J. Lipson and Mark A. Peterson, *California Justice Under Determinate Sentencing: A Review and Agenda for Research*, Rand, June 1980, 4 (explaining the original's law "neutrality" on sentence length).
- 7 Magnus Lofstrom and Brandon Martin, *Public Safety Realignment: Impacts So Far*, Public Policy Institute of California, September 2015.
- 8 See AB 109 and AB 117 (2011). People who have prior convictions for serious or violent offenses or are required to register as a sex offender must serve a new sentence of incarceration in state prison even if the current conviction is for a realigned offense. Penal Code § 1170(h)(3). The legislation also changed other important aspects of the criminal law, including how parole violations were handled. Lofstrom and Martin, *Public Safety Realignment: Impacts So Far*.
- 9 As one example, embezzlement of public money is still punishable by a state prison term. Penal Code § 424(a).
- 10 Plata v. Brown, 563 U.S. 493 (2011). One year after realignment went into effect, the prison population had decreased by almost 20%. Magnus Lofstrom and Brandon Martin, *Public Safety Realignment: Impacts So Far*, Public Policy Institute of California, September 2015.
- 11 See David Brewer, Gerald E. Beckett, and Norman Holt, *Determinate Sentencing in California: The First Year's Experience*, *Journal of Research in Crime and Delinquency* 18:2, 202 (1981). Under the original law passed in 1976, indeterminate sentencing was also still available for six offenses: first-degree murder, kidnap for ransom, trainwrecking, assault by a life prisoner, sabotage, and injury by explosives. See April K. Cassou & Brian Traugher, *Determinate Sentencing in California: The New Numbers Game*, 9 Pac. L. J. 5, 29 (1978).
- 12 See Stats. 1976, Ch. 1139 (SB 42). To determine the number of felony offenses in the original DSL, we searched the enacted law for "state prison" (which indicated offenses that were punishable as felonies) and for offenses that specified an offense was a felony but did not explicitly include state prison as part of the sentence. Other references to state prison that were not related to a sentence were excluded, as were sentencing enhancements and offenses that could result in life imprisonment. This resulted in 400 felony offenses.
- 13 The original DSL specified in Penal Code § 1170(b)(1) that "the court shall order the middle of the three possible terms of imprisonment, unless there are circumstances in aggravation or mitigation of the crime." In 2007, the United States Supreme Court concluded that this structure violated the right to have a jury determine facts that could be used to increase a sentence. See *Cunningham v. California*, 549 U.S. 270 (2007). In response, the Legislature gave judges discretion to pick any of the three triad values as the appropriate sentence, with no preference for the middle term. See SB 40 (2007 Romero). Beginning in 2022, the high term is only available if "circumstances in aggravation" have been admitted by the defendant or proven beyond a reasonable doubt to a judge or jury. Penal Code § 1170(b)(2); SB 567 (2021 Bradford).
- 14 The original four triads were: 16, 24, or 36 months; 24, 36, or 48 months; 36, 48, or 60 months; and 60, 72 or 84 months. Sheldon L. Messinger & Phillip E. Johnson, *California's Determinate Sentencing Statute: History and Issues, Determinate Sentencing: Reform or Regression*, 30 (March 1978).
- 15 See David Brewer, Gerald E. Beckett, and Norman Holt, *Determinate Sentencing in California: The First Year's Experience*, *Journal of Research in Crime and Delinquency* 18:2, 205 (1981); California Center for Judicial Education and Research (CJER) *Felony Sentencing Handbook* (2022), *Enhancement Provisions*.
- 16 AB 709 (Presley 1978). See also Albert J. Lipson and Mark A. Peterson, *California Justice Under Determinate Sentencing: A Review and Agenda for Research*, Rand, June 1980, 5.
- 17 Little Hoover Commission, *Solving California's Corrections Crisis: Time is Running Out*, January 2007, 68 (Appendix F, Report by Stanford Criminal Justice Center). The researchers considered changes to triads, enhancements, and judicial discretion.
- 18 This table is based on Paula A. Johnson, Senate Bill 42, 17 Santa Clara L. Rev. 133, Appendix B (1977) and SB 709 (Presley 1978), which set new triads effective January 1979.
- 19 Penal Code § 190(a). This sentence was set by Proposition 7 in 1978, which was approved by voters on November 7, 1978, which was after the bill that set the 1979 triads, SB 709 (Presley 1978), was passed but before it went into effect.
- 20 Penal Code § 193(a).
- 21 Penal Code § 213(a)(2).
- 22 Penal Code § 461(a).
- 23 Penal Code § 245(a)(1).
- 24 CDCR, [Offender Data Points](#) (month-end September 2023)
- 25 See Penal Code §§ 667(e)(1) & 1170.12(c)(1). The Three Strikes law was passed by both the Legislature and voter initiative (Proposition 184) in 1994. Though some of the harsher elements of the Three Strikes law were removed by Proposition 36 in 2012, the provision of the law allowing a doubled sentence for anyone previously convicted of a serious or violent felony offense was unchanged.