

May 5, 2021

Memorandum 2021-06

Extreme Sentences & High-Profile Enhancements: Overview

At its May 2021 meeting, the Committee on Revision of the Penal Code will address extreme sentences and high-profile enhancements. This memorandum gives general background on these topics and collects possible recommendations for the Committee's consideration.

BACKGROUND

California has one of the highest proportions of prisoners serving life or virtual-life sentences in the country.¹ Nearly 40 percent of people in CDCR are condemned, or serving life sentences, with or without the possibility of parole.²

Many lengthy sentences are driven by the application of various sentence enhancements. There are 72,852 people in CDCR serving a prison sentence lengthened by an enhancement.³ Of these, 15,465 people are serving a prison sentence where the time added by the enhancements alone totals more than 15 years; 12,785 people, more than 20 years; 6,095 people, more than 30 years and 3,280 people, more than 50 years.⁴

Enhancements are additional terms of imprisonment that are separately added to the base term of a particular crime.⁵ At least 153 enhancements are scattered throughout California's laws, but they are not grouped by statute in any logical way.⁶ Enhancements may be based on prior criminal history (i.e., Three Strikes, "nickel" prior),⁷ circumstances of the charged crime (i.e., guns, great bodily

¹ The Sentencing Project, *Still Life: America's Increasing Use of Life and Long-Term Sentences*, 7, Table 1 (2017). The authors define a virtual-life sentence as a term that person is unlikely to survive if carried out in full - at least 50 years. *Id.* at 9.

² Data provided by CDCR Office of Research.

³ *Id.*

⁴ *Id.*

⁵ Some of the background information provided in this section is derived from *A Brief Guide to California Sentencing Enhancements*, Stanford Law School, Criminal Justice Center, 1-4 (September 2020).

⁶ *Id.*

⁷ *See, e.g.*, Penal Code 667(a) (people convicted of serious felonies who have previously been convicted of serious felonies receive an additional five years in custody).

injury),⁸ or the status of the victim (i.e., elderly, disabled, or under age 14).⁹ The most common enhancements for those serving sentences in CDCR include extended sentences for use of a firearm, strike priors, nickel priors, inflicting great bodily injury, and committing the offense for the benefit of a gang.¹⁰

Enhancements disproportionately impact people of color—82 percent of people in CDCR serving a prison sentence lengthened by an enhancement are people of color, and 76 percent are Black or Latinx.¹¹ Of those serving sentences lengthened by an enhancement, 32 percent were sentenced before turning 25 years old and 24 percent are now over 50 years old.¹²

Prosecutors have discretion on whether to charge enhancements,¹³ and once charged the jury must find the facts leading to enhancements true beyond a reasonable doubt.¹⁴ Once an enhancement is charged, the prosecutor does not have discretion to dismiss it on her own.¹⁵ Instead, she must file a “Romero motion” pursuant to *People v. Superior Court (Romero)*,¹⁶ to request that the court dismiss the enhancement.¹⁷ California courts have discretion to ignore (or “strike”) many enhancements on their own under Penal Code Section 1385.¹⁸

The number of enhancements that can be added to a substantive offense have few limits. For instance, a weapon enhancement and an injury enhancement may both be charged for a single crime with a single victim.¹⁹ In the same case, additional enhancements such as those based on prior criminal history or gang membership can also be added, so that a single crime with a single victim could

⁸ See, e.g., Penal Code § 667.61(a)-(b).

⁹ Penal Code § 667.9(a).

¹⁰ Data provided by CDCR Office of Research.

¹¹ *Id.*

¹² *Id.*

¹³ *People v. Roman*, 92 Cal. App. 4th 141, 145 (2001).

¹⁴ *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). The only exception to this requirement is the “fact of a prior conviction,” which a jury does not have to find true beyond a reasonable doubt. *Id.*

¹⁵ *Roman*, 92 Cal. App. 4th at 145.

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

¹⁷ *Id.*

¹⁸ Penal Code § 1385(a). See Recommendation No. 5 in the Committee on the Revision of the Penal Code’s [2020 Annual Report](#) for our recommendation to give more guidance to judges in determining whether to strike enhancements in Penal Code § 1385.

¹⁹ Cal. Penal Code § 1170.1(f); Cal. Penal Code § 1170.1(g). For specified sex offenses, enumerated in California Penal Code Section 667.6, the single crime/single victim rule does not apply.

have various enhancements. And when multiple crimes are charged, multiple enhancements may also be charged.²⁰

Because of such “stacking,” the use of sentence enhancements can result in extreme sentences. For example, if a person with a prior serious felony robs someone at gunpoint without injuring anyone, the base sentence term could be five years (aggravated term for first degree robbery), doubled to ten years (prior serious felony), plus five years (nickel prior), plus ten years (use of a gun), to total a twenty-five-year sentence in prison. Their sentence could further increase by 10 years if the robbery was committed for the benefit of a gang and by 25 years to life if the victim was injured (gun enhancement with great bodily injury) for a grand total of 50 years to life.²¹

Historical Trends

California’s rate of incarceration began to accelerate in the late 1970s and continued through the 2000s, due to the passage of a slew of “tough on crime” laws, such as the Determinate Sentencing Law (1976), a new death penalty/LWOP statute (1977), the Street Terrorism and Enforcement Act (1988), the Three Strikes law (1994), and the “10-20-Life” gun enhancement (1997).²²

The increased use of enhancements and LWOP have fueled increased incarceration rates in the state. California’s prison population more than tripled between 1985 to 2006,²³ and the average length of stay in California prisons correspondingly grew by 51% between 1990 and 2009.²⁴ This has resulted in prisons housing an increasingly aging population: currently, more than 40 percent of people in CDCR are aged 50 or older.²⁵ No great spike in crime preceded these

²⁰ *A Brief Guide to California Sentencing Enhancements*, Stanford Law School, Criminal Justice Center (September 2020) (citing *People v. Ahmed*, 53 Cal.4th 156, 164 (2011)).

²¹ The gun enhancement of 10 years would increase to 25 years to life if the victim suffers great bodily injury.

²² National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, Washington, D.C.: The National Academies Press, 34-37 (2014) (hereinafter *The Growth of Incarceration*); Time Served: The High Cost, Low Return of Longer Prison Terms, The Pew Center on the States (2012); CDCR Office of Research, Offender Data Points — Offender Demographics for The 24-Month Period Ending June 2019, Figure 1.2 (Oct. 2020).

²³ Legislative Analyst’s Office, *How Many Prison Inmates Are There in California?* (last updated January 2019).

²⁴ *Time Served: The High Cost, Low Return of Longer Prison Terms*, The Pew Center on the States (2012).

²⁵ Data provided by CDCR Office of Research.

new harsh laws; instead they were politically driven.²⁶ Nor did they have a great impact on public safety: in fact they “had no measurable impact on overall violent crime rates,”²⁷ and California’s recidivism rate was the second worst in the nation at the apex of these laws.²⁸

In the last decade, California has implemented reforms to roll back punishment in some areas of criminal law. Yet because most new laws focused on nonviolent crime, there has been less impact on those with the longest sentences.

Effects on Public Safety

Much empirical research on the public safety impacts of long sentences has focused on sentence enhancements.²⁹ After decades of studies of nationwide crime and incarceration data, there is broad consensus that long sentences have little or no public safety impact.

For example, research on the impact of gun enhancements has failed to detect clear evidence of a deterrent effect.³⁰ Studies of the deterrent impact of Three Strikes laws have concluded that they have some deterrent impact, but that the benefits of the increased sentences are small compared to the social and economic costs of incarceration.³¹ Studies analyzing whether long sentences affect crime rates by incapacitating offenders reveal some impact but also find diminishing returns on long sentences due to the “age-crime curve.”³²

Long prison sentences carry tremendous social and financial costs that may negatively impact public safety. Socially, lengthy sentences disrupt familial and

²⁶ Committee on Revision of the Penal Code, Meeting on Jan. 24, 2020, 0:26:45–0:29:30.

²⁷ Steven Raphael and Michael A. Stoll, *Why Are So Many Americans in Prison?*, 233 (May 2013).

²⁸ Committee on Revision of the Penal Code, Meeting on Jan. 24, 2020, 0:35:07–0:36:10; Steven Raphael and Michael A. Stoll, *Why Are So Many Americans in Prison?*, 233 (May 2013); State of Recidivism: The Revolving Door of America’s Prisons, The Pew Center on the States, 10-11 (2011).

²⁹ National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, Washington, D.C.: The National Academies Press, 132 (2014) (hereinafter *The Growth of Incarceration*).

³⁰ See, e.g., McDowall, et al., *A Comparative Study of the Preventative Effects of Mandatory Sentencing Laws for Gun Crimes*, *Journal of Crim. L. and Criminology*, Vol. 83, No. 2 (1992); See also, Raphael, et al., *Prison Sentence Enhancements: The Case of Project Exile*, Washington, D.C.: Brookings Institution Press (2003).

³¹ *The Growth of Incarceration*, *supra*, at 138.

³² *Id.* at 132. “The prevalence of offending tends to increase from late childhood, peak in the teenage years (from 15 to 19) and then decline in the early 20s. This bell-shaped age trend, called the age-crime curve, is universal in Western populations.” National Institute of Justice, *From Juvenile Delinquency to Young Adult Offending* (March 10, 2014).

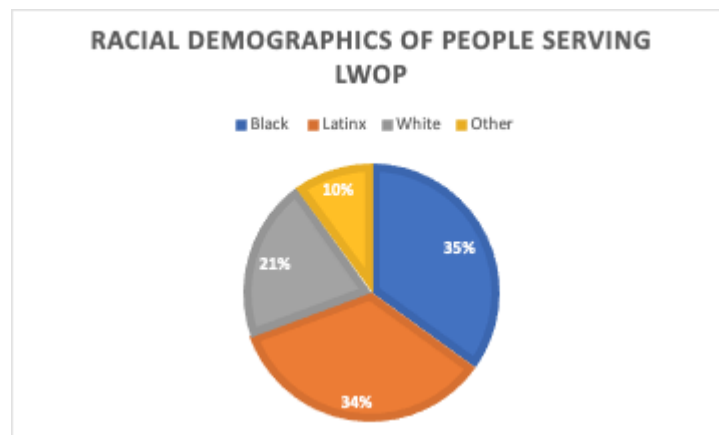
community connections and have adverse public health impacts.³³ Financially, long sentences have been shown to negatively impact future employment and earning potential of those released.³⁴ Additionally, providing healthcare services to an aging population of inmates is extremely expensive.³⁵ Indeed, the Governor’s 2020-21 budget allocated \$3.6 billion for prison health care services programs alone.³⁶

LWOP AND HIGH-PROFILE ENHANCEMENTS

Life without the possibility of parole and some of the high-profile enhancements discussed below result in long sentences in California.

Life Without the Possibility of Parole (LWOP)

Today, there are 5,234 people serving LWOP in California prisons.³⁷ Nearly 80% of people serving LWOP are people of color—nearly 70 percent are Black or Latinx.³⁸



The number of people sentenced to LWOP in California has risen over the years, despite a steady decline in the violent crime rate. Between 2003 and 2015,

³³ Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry*, 53, New York: Oxford University Press (2003).

³⁴ *Id.*; see also *The Growth of Incarceration, supra*, at 258-259.

³⁵ *The Growth of Incarceration, supra*, at 211-212.

³⁶ *Governor’s Budget Summary, 2020-21*, California Department of Finance, available at State of California website.

³⁷ Data provided by CDCR Office of Research.

³⁸ *Id.*

violent crime in California decreased by 26.4 percent.³⁹ Yet during that same period, the number of people sentenced to LWOP rose by 281.6 percent.⁴⁰

LWOP was originally introduced in California after United States and California Supreme Court decisions held that mandatory capital statutes violated the Eighth Amendment.⁴¹ While proponents of the death penalty offered the alternative of an LWOP sentence as a means to bring capital punishment back to the state, opponents of the death penalty have also historically supported LWOP as a more humane alternative to a death sentence.⁴² Today, every state in the US except Alaska allows LWOP sentences, but they are outlawed in Europe.⁴³

A mandatory sentence of LWOP or death is imposed when a person is convicted of first-degree murder and one of twenty-two enumerated special circumstances is found true.⁴⁴ Examples of codified special circumstances include lying in wait, committing a murder for financial gain, committing the murder while engaged in a specified felony such as robbery or burglary, and committing a murder for the benefit of a street gang.

The Penal Code allows juveniles who are tried as adults to be sentenced to LWOP if they were 16 years of age or older when the crime was committed.⁴⁵ Due to recent changes in the law, those who committed an offense before turning 18 years old become eligible for youth offender parole after 25 years of incarceration.⁴⁶ 145 people serving LWOP were sentenced when they were 18 years old or younger.⁴⁷ Of those serving LWOP, 10 percent were sentenced before turning 21 years old,⁴⁸ and 44 percent were sentenced when they were 25 years old or younger.⁴⁹

³⁹ The Sentencing Project, *Still Life: America's Increasing Use of Life and Long-Term Sentences*, 21 (2017).

⁴⁰ *Id.*

⁴¹ Vannier, *Normalizing Extreme Imprisonment: The Case of Life Without Parole in California (1972-2012)*, *Theoretical Criminology*, 9-10 (2019); *Woodson v. North Carolina*, 428 U.S. 280 (1976); *Rockwell v. Superior Court*, 18 Cal.3d 420 (1977);

⁴² *Id.*; See also, ACLU of Northern California, *The Truth About Life Without Parole: Condemned to Die in Prison*, (Sept. 25, 2013).

⁴³ Kleinfeld, *Two Cultures of Punishment*, 68 *Stan. L.Rev.* 933, 951-952 (2016).

⁴⁴ Penal Code § 190.2(a).

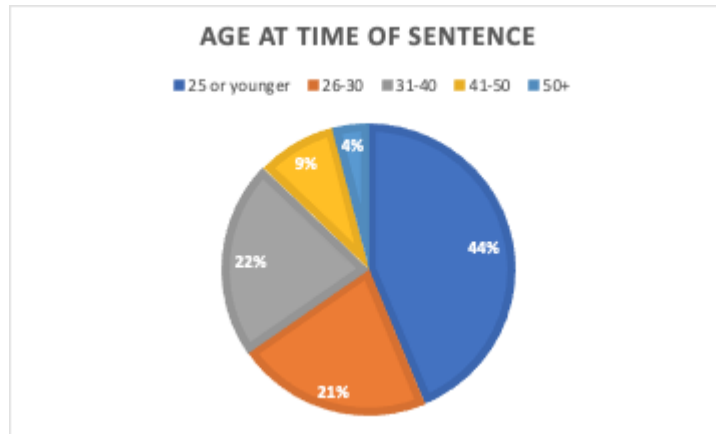
⁴⁵ Penal Code § 190.5(b).

⁴⁶ Penal Code § 3051(b)(4). They can also petition for resentencing after 15 years of incarceration. Penal Code § 1170(d)(2).

⁴⁷ Data provided by CDCR Office of Research.

⁴⁸ *Id.*

⁴⁹ *Id.*



A total of 36 percent of people serving LWOP sentences in California are currently over 50 years old.⁵⁰ However, people sentenced to LWOP are not eligible for Elderly Parole or compassionate release.⁵¹ Their only opportunity for release is a commutation of their sentence by the Governor.⁵²

Yet the majority of people serving an LWOP sentence are classified as low risk according to the California Static Risk Assessment.⁵³ Indeed, 4,586 of the 5,234 or 88 percent of people serving LWOP have been assessed the lowest risk score on the scale.⁵⁴

Pending legislation would give judges discretion to dismiss a special circumstance finding or admission, so that sentences of LWOP are not mandatory for anyone,⁵⁵ or at minimum for accomplices in felony murder who neither killed nor intended to kill.⁵⁶ In addition, one bill currently before the legislature includes a retroactive presumption to dismiss special circumstances for people who committed their offenses under age 25 and have served 15 years in prison,⁵⁷ while in another a presumption to dismiss would apply to everyone who has served 20 years.⁵⁸

⁵⁰ *Id.*

⁵¹ Penal Code § 3055(g); Penal Code § 1170(e)(12).

⁵² Penal Code § 4800; Cal. Constitution, Article V, § 8.

⁵³ According to CDCR, the CSRA uses past criminal history and characteristics to predict a person's risk to reoffend.

⁵⁴ Data provided by CDCR Office of Research.

⁵⁵ SB 481 (Durazo); AB 1224 (Levine). Because they would amend Proposition 115, the passage of these bills requires a two-thirds vote of the Legislature.

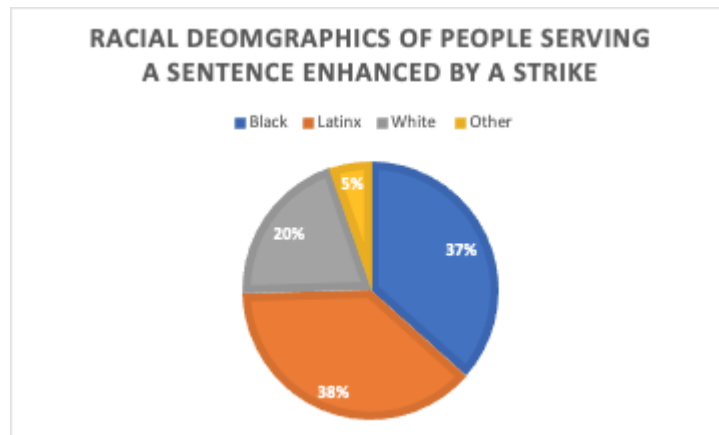
⁵⁶ SB 300 (Cortese).

⁵⁷ SB 481 (Durazo).

⁵⁸ AB 1224 (Levine).

Three Strikes

There are currently 33,271 people serving a sentence enhanced by a second or third strike in California, totaling over a third of the prison population. 75% of them are Black or Latinx.⁵⁹ This prison population is aging: the average age of those serving time for third strikes is 55 years old and 70 percent of third strikers are 50 years old or older.⁶⁰



Passage of the Three Strikes law by ballot measure in 1994 dramatically increased punishment for recidivists in California.⁶¹ Currently under this law, prison sentences are doubled (“second strike”) for people who commit *any* new felony after having previously been convicted of a serious or violent felony.⁶² For those who commit a third serious or violent felony after having been convicted of two serious or violent felonies, they face a mandatory minimum sentence of 25 years to life (“third strike”).⁶³

Proposition 36, passed in 2012, amended the Three Strikes law so that people who commit third felonies that are neither serious nor violent⁶⁴ after convictions for two serious or violent felonies are no longer subject to a sentence

⁵⁹ Data provided by CDCR Office of Research.

⁶⁰ *Id.*

⁶¹ Proposition 184 (1994).

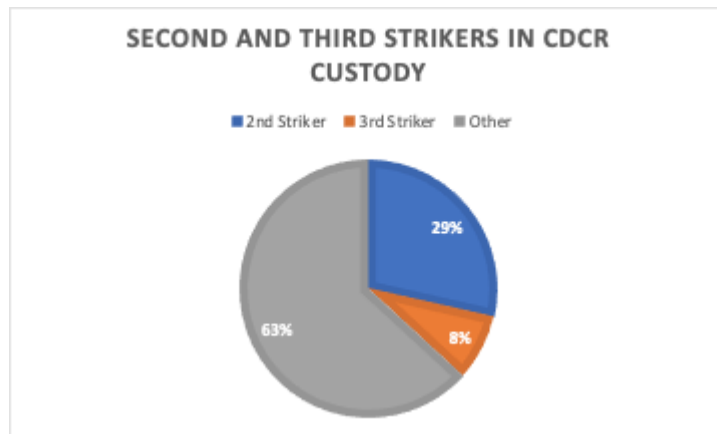
⁶² Penal Code § 667(e)(1). The doubling of the sentence applies only to the imprisonment imposed for substantive offenses, not any sentencing enhancements.

⁶³ Penal Code § 667(e)(2).

⁶⁴ Proposition 36 amended the Three Strikes law to exclude non-serious and non-violent felonies, except those involves firearms, sex offenses, or drug offenses, from counting as Strike Three.

of 25 years to life.⁶⁵ Instead, the base term of their current offense is doubled.⁶⁶ Pending legislation would further amend the Three Strikes law by prohibiting prior juvenile convictions from being considered as prior serious or violent felonies.⁶⁷

As of March 2021, 25,763 people serving prison sentences in CDCR were serving sentences for a “second strike,” and 7,508 people were serving “third strike” sentences.



Of those serving time for second strikes, 19,372 or 75 percent of the were Black (8,710 people) or Latinx (10,662 people), and 749 were women. Of those serving time for third strikes, 5,426 or 72 percent were Black (3,458 people) or Latinx (1,968), and 48 were women.

Since 2013, pursuant to Proposition 36, over 2,500 people sentenced to life under the Three Strikes law for nonviolent crimes have been released from prison by courts, after individual determinations that they no longer posed an unreasonable risk to public safety.⁶⁸

Gun Enhancements

There are 32,537 people in CDCR custody serving sentences that include at least one gun enhancement, making gun enhancements the second most common

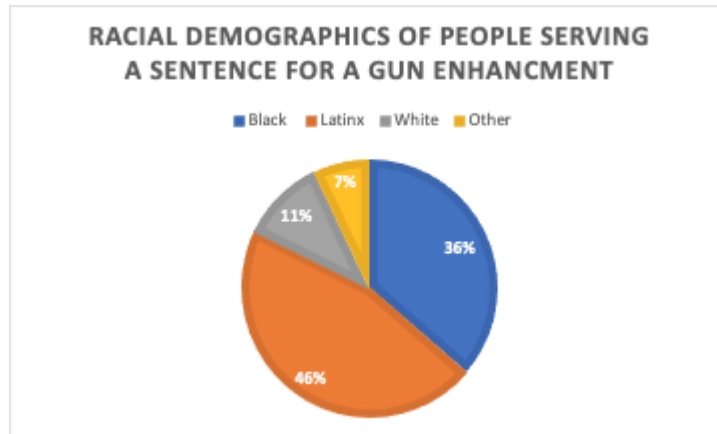
⁶⁵ Penal Code § 667(e)(2).

⁶⁶ Penal Code § 667(e)(1).

⁶⁷ AB 1127 (Santiago & Quirk). Because this law would amend Proposition 184, it requires a two-thirds vote by the Legislature to become law.

⁶⁸ Data provided by CDCR Office of Research.

enhancement after “strikes.”⁶⁹ The overwhelming majority (89 percent) of these individuals are people of color.⁷⁰



The Penal Code includes a number of gun enhancements. For example, being “armed” with a gun when committing a crime—that is, having a gun “available for use”—usually adds one year to a sentence.⁷¹ The most common gun enhancement is currently “using” a gun during a felony offense, such as by “displaying a firearm in a menacing manner.”⁷² This enhancement can add three, four, or ten years.⁷³ Discharging a gun can add 20 years.⁷⁴ And if great bodily injury or death occurs, 25 years to life may be added.⁷⁵

There is typically no requirement that a person charged with a gun enhancement be armed themselves; if they know their co-defendant is armed that is sufficient.⁷⁶ California courts have allowed gun enhancements when the person being sentenced was not actually carrying a gun during the crime,⁷⁷ when the alleged gun was never recovered, and when the gun was not loaded or operable.⁷⁸

If gun use is already an element of the offense, the gun enhancement does not apply⁷⁹ except for assaults committed with a gun—in which case the same use

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Penal Code § 12022(a)(1).

⁷² *People v Wardell*, 162 Cal. App. 4th 1484, 1494 (2008).

⁷³ Penal Code § 12022.5(a).

⁷⁴ Penal Code § 12022.53.

⁷⁵ Penal Code § 12022.53(b)–(d).

⁷⁶ Penal Code § 12022(a)(1).

⁷⁷ *See, e.g., People v Bradford*, 38 Cal.4th 1733 (1995).

⁷⁸ CALCRIM 3146; *People v Nelums*, 31 Cal. 3d 355, 360 (1982); Penal Code § 12022.53(b).

⁷⁹ Penal Code § 12022.5(a).

of a gun is counted twice: first as an element of the offense,⁸⁰ and second, as an enhancement to increase imprisonment by up to ten years.⁸¹

When a gun is used in certain violent felony offenses, the “10-20-life” gun enhancement applies.⁸² This enhancement has added the most time (of all gun enhancements) to people’s sentences.⁸³ This enhancement is only levied on people who personally use the gun,⁸⁴ except when a gang enhancement is also charged, and then the “10-20-life” enhancement applies to anyone involved in the offense even when they did not personally use the gun.⁸⁵

Passage of SB 620 in 2017 altered the “10-20-life” enhancement by allowing courts to dismiss this previously mandatory enhancement at sentencing in the interest of justice.⁸⁶ Pending legislation would reduce the “10-20-life” enhancement to 1, 2, and 3 years respectively.⁸⁷ The bill would allow those currently incarcerated to petition for resentencing in accordance with changes to this law.⁸⁸

Hate Crimes

The Penal Code defines a hate crime as a criminal act committed against a person due to their perceived disability, gender, nationality, race or ethnicity, religion, or sexual orientation.⁸⁹ Hate crimes can be punished as substantive offenses, be considered as aggravating factors in the imposition of a sentence, or lengthen a sentence as an enhancement.⁹⁰ When prosecuted as a sentence enhancement, a hate crime can add up to three years of state prison to a sentence.⁹¹

⁸⁰ Penal Code § 245(a)(2).

⁸¹ Penal Code § 12022.5(d).

⁸² 10 years are added for any use of a gun; 20 years are added for discharge of a gun, and 25 years to life is added if great bodily injury or death occurs. (Penal Code § 12022.53(b)–(d).)

⁸³ Data provided by CDCR Office of Research.

⁸⁴ Penal Code § 12022.53(b)–(d).

⁸⁵ Penal Code § 12022.53(e).

⁸⁶ Senate Bill No. 620 (2017).

⁸⁷ Assembly Bill No. 1509 (Lee) (2021). The bill would similarly reduce from 5, 6, or 10 years to 1, 2, and 3 years the enhancement for discharging a firearm from a motor vehicle in the commission of a felony and inflicting great bodily injury or death. (*Id.*)

⁸⁸ Assembly Bill No. 1509 (2021).

⁸⁹ Penal Code § 422.55.

⁹⁰ Penal Code §§ 422.6 (substantive offense), 422.76 (aggravating factor), and 422.75 (enhancement).

⁹¹ Penal Code § 422.75.

Additionally, a person can be sentenced to death or LWOP for a murder if it is motivated by a victim’s race, color, religion, nationality, or country of origin.⁹²

There are 158 people serving a sentence in state prison that was enhanced by a hate crime.⁹³ Of this group, 63 percent are people of color.⁹⁴ Despite the relatively few people serving a prison sentence enhanced by a hate crime, recent acts of violence against members of the Asian and Pacific Islander community have led lawmakers to revisit the Penal Code’s provisions on hate crimes. Some bills aim to expand the definition of a hate crime,⁹⁵ while at least one would provide funds to community organizations for the implementation and operation of restorative justice programs.⁹⁶ Other bills address how law enforcement is trained on, responds to, and documents hate crimes.⁹⁷

AREAS FOR FURTHER EXPLORATION

In the Committee’s 2020 Annual Report, the Committee recommended establishing guidelines and presumptions that would lead judges to dismiss sentence enhancements in certain circumstances. However, the Committee’s recommendations on sentence enhancements were limited by the Committee’s self-imposed restriction of only making recommendations requiring a majority vote in the legislature. Now that the Committee is no longer working under that restriction, staff suggests exploring the following larger-scale ideas:

- 1) *Limit Enhancements to Twice the Base Term.* In previous years, the Penal Code limited how much a sentence could be increased by enhancements: no more than double what was imposed for the main offense.⁹⁸ This restriction became riddled with exceptions and was eventually repealed.⁹⁹ It could be restored, though if passed only with a majority vote in the Legislature, many of the most significant sentencing enhancements—including nickel

⁹² Penal Code § 190.2(a)(16).

⁹³ Data provided by CDCR Office of Research.

⁹⁴ *Id.*

⁹⁵ AB 28 (Chau); AB 600 (Arambula).

⁹⁶ AB 886 (Chiu).

⁹⁷ *See, e.g.*, AB 57 (Gabriel, Chiu); AB 557 (Muratsuchi, Chiu); AB 1336 (Nguyen); SB 764 (Umberg, Stern, Min).

⁹⁸ *People v. Magill*, 41 Cal. 3d 777, 779 (1986) (describing former Penal Code § 1170.1(g)). The limit did not apply to violent felony offenses. *Id.*

⁹⁹ SB 721 (Lockyer) Ch. 750, Stats. 1997.

priors and Three Strikes—might be excluded because of the mandatory nature of those enhancements.¹⁰⁰

- 2) *Expand Proposition 57 to include all prisoners.* Under Proposition 57’s early parole rules, people serving prison sentences for non-violent felony offenses are eligible for release once they have completed their main prison term — which does not include any time added by enhancements.¹⁰¹ When an offense is classified as violent, it may preclude early release under Proposition 57.¹⁰² The Committee could consider expanding Proposition 57 eligibility to include all prisoners, regardless of the classification of the underlying felony.

- 3) *Require Prosecutors to choose only one enhancement.* When he testified in September 2020, Santa Clara County District Attorney Jeff Rosen suggested that the Committee explore requiring prosecutors to pick only one enhancement to charge, even if multiple enhancements are available.¹⁰³ While this revision would limit the stacking of enhancements discussed above, several enhancements, such as the “10-20-life” gun enhancement and Three Strikes, could still result in extreme sentences due to the extensive lengths of time these enhancements can add to prison sentences.

- 4) *Establish an upper limit on maximum sentences - unless in unusual circumstances.* Sentences exceeding 20 years are rare in democratic nations, and in 2013, LWOP was constitutionally banned throughout nearly all of Europe.¹⁰⁴ Prison-reform advocates in the United States are now promoting a 20-year maximum sentence be adopted both federally and by state legislatures.¹⁰⁵

¹⁰⁰ SB 1279 (Bradford) unsuccessfully tried to enact a similar limitation in 2018.

¹⁰¹ 15 CCR § 3490(f) & (d) (defining “nonviolent parole eligibility date” to exclude any time imposed by sentencing enhancements). See also Cal. Const., art. I, § 32(1)(A) (same).

¹⁰² Cal. Const., art. I, § 32(1); 15 CCR § 3490(c) (“‘Violent felony’ is a crime or enhancement as defined in subdivision (c) of Section 667.5 of the Penal Code.”).

¹⁰³ Committee on Revision of the Penal Code, Meeting on Sept. 17, 2020, 1:08:08–1:08:45.

DA Rosen also suggested that the Committee explore limiting enhancements to no more than double the base term. (*Id.* at 1:07:42–1:08:08.)

¹⁰⁴ Kleinfeld, *Two Cultures of Punishment*, 68 Stan. L.Rev. 933, 951-952 (2016).

¹⁰⁵ The Sentencing Project, *No End in Sight: America’s Continued Reliance on Life Imprisonment*, 6 (2021).

Under this proposal, after serving a 20-year sentence, a person would only be subject to additional confinement if a court deemed them a continued public safety risk.

- 5) *Automatic second look for all after 15 years imprisonment.* This proposal — which builds on the Committee’s Recommendation No. 10 in its 2020 Annual Report—would broaden California Penal Code Section 1170(d), which currently allows only law enforcement officials to request that a person be resentenced.¹⁰⁶ The Model Penal Code recommends that people be granted a “second look” after serving 15 years.¹⁰⁷ The federal First Step Act of 2018 similarly allows anyone in federal prison to request a sentence reduction at any time via motion, and more than 2,000 of these requests have been granted.¹⁰⁸

- 6) *Five year “washout” provision for enhancements based on criminal history.* Under this proposal, California would incorporate a cut-off date, or “washout” provision, of five years, after which criminal history would no longer count for purposes of increasing the length of sentences for new convictions. While California does not have such a provision, 12 of 20 other jurisdictions examined by Committee staff had “washout” provisions ranging between five to 15 years.¹⁰⁹

Respectfully submitted,

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Staff Counsel

¹⁰⁶ Penal Code § 1170(d).

¹⁰⁷ Model Penal Code: Sentencing § 305.6.

¹⁰⁸ Federal Bureau of Prisons, *First Step Act*, available at Federal Bureau of Prisons website.

¹⁰⁹ The states examined in addition to the federal system were Alabama, Arizona, Arkansas, Colorado, Delaware, District of Columbia, Florida, Illinois, Kansas, Maryland, Massachusetts, Michigan, Minnesota, North Carolina, Oregon, Pennsylvania, Tennessee, Utah, and Washington.