

Overview of Felony Sentencing in California

L E G I S L A T I V E A N A L Y S T ' S O F F I C E

Presented to:
Assembly Budget Subcommittee No. 5 on Public Safety
Hon. Shirley N. Weber, Chair





What Types of Felony Sentences Are There?



Death and Life Without the Possibility of Parole Sentences

- Offenders convicted of certain severe crimes specified in statute can be sentenced to death or to life in prison without the possibility of parole.
- Offenders with these sentences are not released from prison unless they successfully appeal their sentence and/or conviction.



Indeterminate Sentences

- Under indeterminate sentencing, individuals are sentenced to prison for a term that includes a minimum but no specific maximum, such as “25-years-to-life.” Certain factors, such as the circumstances of the crime, can increase the length of the minimum term.
- After serving the minimum term, offenders appear before the state Board of Parole Hearings to be considered for release from prison.



Determinate Sentences

- Under determinate sentencing, individuals receive fixed terms and are released after serving these terms.
- Felons with a current or prior conviction for a violent, serious, or sex offense can be sentenced to state prison. Felons without such convictions can generally be sentenced to county jail and could be required to serve part of their sentence being supervised in the community by county probation (commonly referred to as “split sentencing”).



What Factors Affect Determinate Felony Sentence Lengths?



Term Lengths Determined By “Sentencing Triad”

- Under determinate sentencing, statute specifies low, medium, and high terms of incarceration—known as the “sentencing triad”—for each offense. For example, first-degree burglary is punishable by a term of two, four, or six years.
- In determining the length of the sentence, factors surrounding the crime (such as whether the offender was a minor participant in the crime) are considered.



Terms for Multiple Offenses

- Offenders charged with multiple offenses receive terms for each offense, which they can be required to serve consecutively or be allowed to serve concurrently. In determining whether terms must be served consecutively, various criteria are considered, such as whether the crimes were committed at different times or places.
- For consecutive terms, offenders generally serve an amount of time equal to one of the triad terms for the offense that would yield the longest term. In addition, they must serve one-third of the middle triad term for each other offense.
- If offenders are allowed to serve the terms concurrently, they will only serve an amount of time equal to the longest term.



Enhancements Specified in Statute Add to Sentence Length

- Conduct enhancements are imposed if certain circumstances occurred during the commission of the crime. For example, if an offender committed a serious felony for the benefit of a gang, the offender can receive a five-year enhancement.
- Status enhancements are imposed based on offenders’ criminal history. For example, an offender who is convicted of a serious felony and was previously convicted of a serious felony can receive an additional term of five years.



What Are Alternatives to Felony Sentences?



Felony Probation

- Unless prohibited by law, felony offenders may be placed on probation in lieu of serving a felony sentence, such as a prison term.
- As a part of felony probation, the offender may be required to spend up to five years on county probation. The offender may be required to spend up to one year in county jail. Offenders must agree to certain terms, such as performing community service or paying restitution to their victim. If they fail to follow the terms of probation, they may be required to serve a felony sentence.



Collaborative Courts

- Under certain circumstances, offenders may be referred to collaborative court programs, in which they must meet certain requirements, such as completing a rehabilitation program.
- If offenders meet these requirements, they will generally avoid a prison or jail term and will sometimes avoid having a conviction on their record. If not successful, the offender can be subject to a felony conviction and sentence.



How Are Felony Cases Resolved?

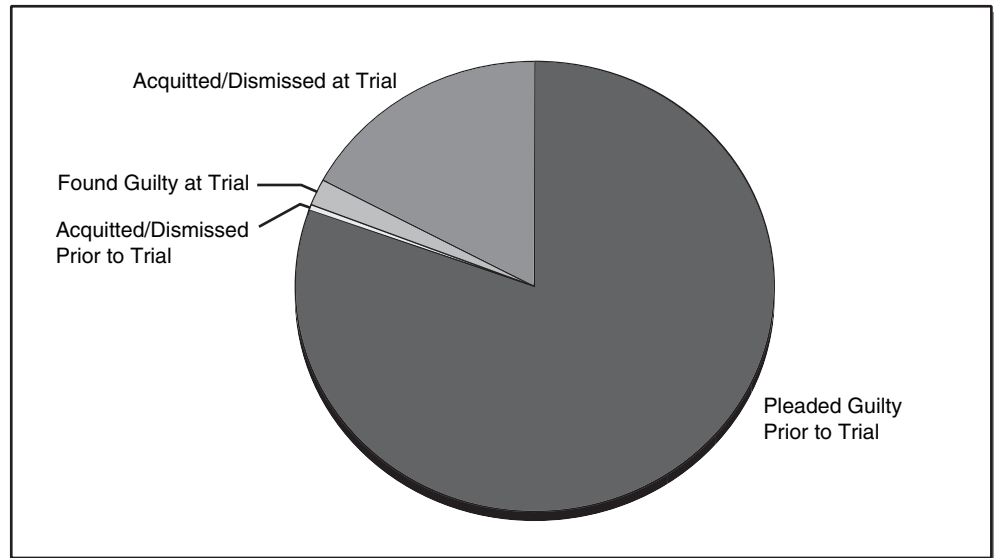
- Plea Bargaining.*** In a plea bargain, the prosecution and defense negotiate over the charges that the prosecutor will bring against the defendant and over the sentence that the prosecutor will seek. If the prosecution and defense agree to the charges and the sentence (or an alternative, such as felony probation), a judge must approve the plea bargain.

- Indicated Sentence.*** In cases where the prosecution and defense cannot agree on the sentence (or alternative), judges may inform the parties of what they would give the defendant. This is called an indicated sentence. Defendants can then plead guilty to the charges and they will receive the indicated sentence or alternative offered by the judge.

- Trial.*** The prosecution determines what charges are brought against the defendant. A jury typically determines whether the defendant is guilty of the charges brought by the prosecution. If the defendant is found guilty, the judge determines the sentence or alternative.



Most Felony Cases Are Resolved by Guilty Pleas



- ☑ In 2014-15, about 80 percent of all felony cases were resolved through the offender pleading guilty prior to trial. This includes both plea bargains and indicated sentences.
- ☑ Only about 2 percent of felony cases were resolved through a trial.