



California's Nickel Prior Enhancement and Recent Reforms

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INTRODUCTION

Sentence enhancements are widely used in California and can greatly increase an individual's prison sentence, which in turn increases the size of the state's prison population at a given time as people are incarcerated for longer periods.¹ Proposition 8, passed by voters in 1982, provided the first major addition to sentence enhancements in California since the passage of the Determinate Sentencing Act of 1976 (Figure 1). This law created what is colloquially known as the "nickel prior." As originally written, if a person had previously been convicted of a serious felony offense, the enhancement added an additional five years onto any sentence for a new serious offense,² regardless of when the earlier conviction had occurred.³ This fact sheet highlights patterns in the use of nickel prior enhancements for people admitted to the California Department of Corrections and Rehabilitation (CDCR) before and after Senate Bill 1393 (SB 1393) took effect in 2019.⁴

As of August 2023, there are just under 14,000 people currently in prison who have a nickel prior as part of their sentence. Judges initially had discretion in dismissing nickel priors, but this discretion was eliminated by legislation enacted in 1986. Prosecutors retained the power to decide whether to charge nickel prior enhancements and if they chose to use the enhancement, it became mandatory for a judge to apply. However, prosecutors did not always charge eligible cases or would agree to dismiss the nickel prior as part of a plea bargain, resulting in eligible prison admissions that did not receive the enhancement. In 2019, SB 1393 reinstated judicial discretion to dismiss nickel priors "in furtherance of justice."

Since 2015, the nickel prior has been the second most common sentence enhancement (after the second strike enhancement) used in California for people admitted to prison. Over 11,600 admissions to prison had a nickel prior enhancement, which accounted for 11% of additional years added to base sentences, or over 58,000 years.⁵

FIGURE 1. Timeline of legislation impacting nickel prior enhancements

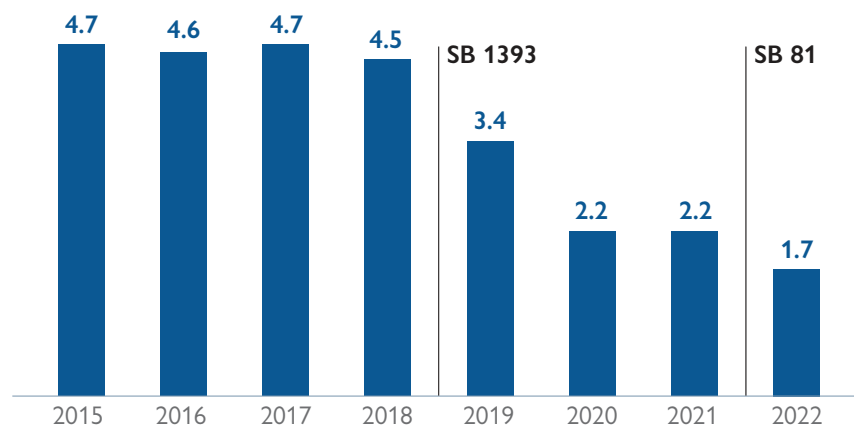


KEY FINDINGS

The overall share of sentences that include nickel prior enhancements has decreased since 2019. Figure 2 presents the share of prison admissions that received a nickel prior enhancement between 2015 and 2022. The share of admissions with a nickel prior decreased by more than half in the four years following the passage of SB 1393, from over 4.5% of all admissions to just below 2% by 2022.

Before the COVID-19 pandemic, there were around 35,000 admissions to prison per year, with an average of about 1,600 admissions with a nickel prior enhancement. In 2022, there were a little over 28,000 admissions to prison, and a little more than 450 of those had a nickel prior enhancement. The share of individuals eligible for a nickel prior enhancement each year is small: for example, in 2021, we estimate that 12% of total admissions were eligible for the enhancement,⁶ and only 2.2% received one.

FIGURE 2. Percent of admissions with a nickel prior enhancement



Note: Senate Bill 81 (SB 81), effective January 1, 2022, gave judges further guidance on when to exercise their discretion and dismiss enhancements. This bill created a presumption that a sentence enhancement should be dismissed if using a conviction older than five years, including the nickel prior.

After SB 1393, average sentence length for admissions with a nickel prior increased slightly to 16 years for determinate sentences and to 98 years for indeterminate sentences. Between 2015 and 2018 the average sentence length for someone with a determinate sentence who had at least one nickel prior was 15 years (Table 1). After SB 1393, between 2019 and 2022 this average sentence length increased slightly to 16 years. The average sentence length for indeterminate sentences was 85 years before SB 1393, and it increased to 98 years between 2019 and 2022.

TABLE 1. Average sentence length for admissions with at least one nickel prior

TIME PERIOD	SENTENCE TYPE	TOTAL NICKEL PRIOR ENHANCEMENTS	AVERAGE SENTENCE LENGTH (YEARS)	25TH PERCENTILE (YEARS)	50TH PERCENTILE (YEARS)	75TH PERCENTILE (YEARS)	90TH PERCENTILE (YEARS)
2015–2018	Determinate	5,691	15	9	12	18	25
	Indeterminate	837	85	38	57	90	161
2019–2022	Determinate	2,165	16	10	14	19	25
	Indeterminate	346	98	41	60	103	201

Note: The average sentence length for indeterminate sentences is based on the average of the minimum sentence. If someone had a 25-to-life sentence, we calculate that as a 25-year sentence. The average years for indeterminate sentences is most likely an underestimate as people usually do not get released from prison at their minimum sentence length. 1.06% of nickel-prior-enhanced admissions were condemned to death or life without parole sentences before SB 1393 and 1.88% after; these admissions are not included when calculating sentence length.

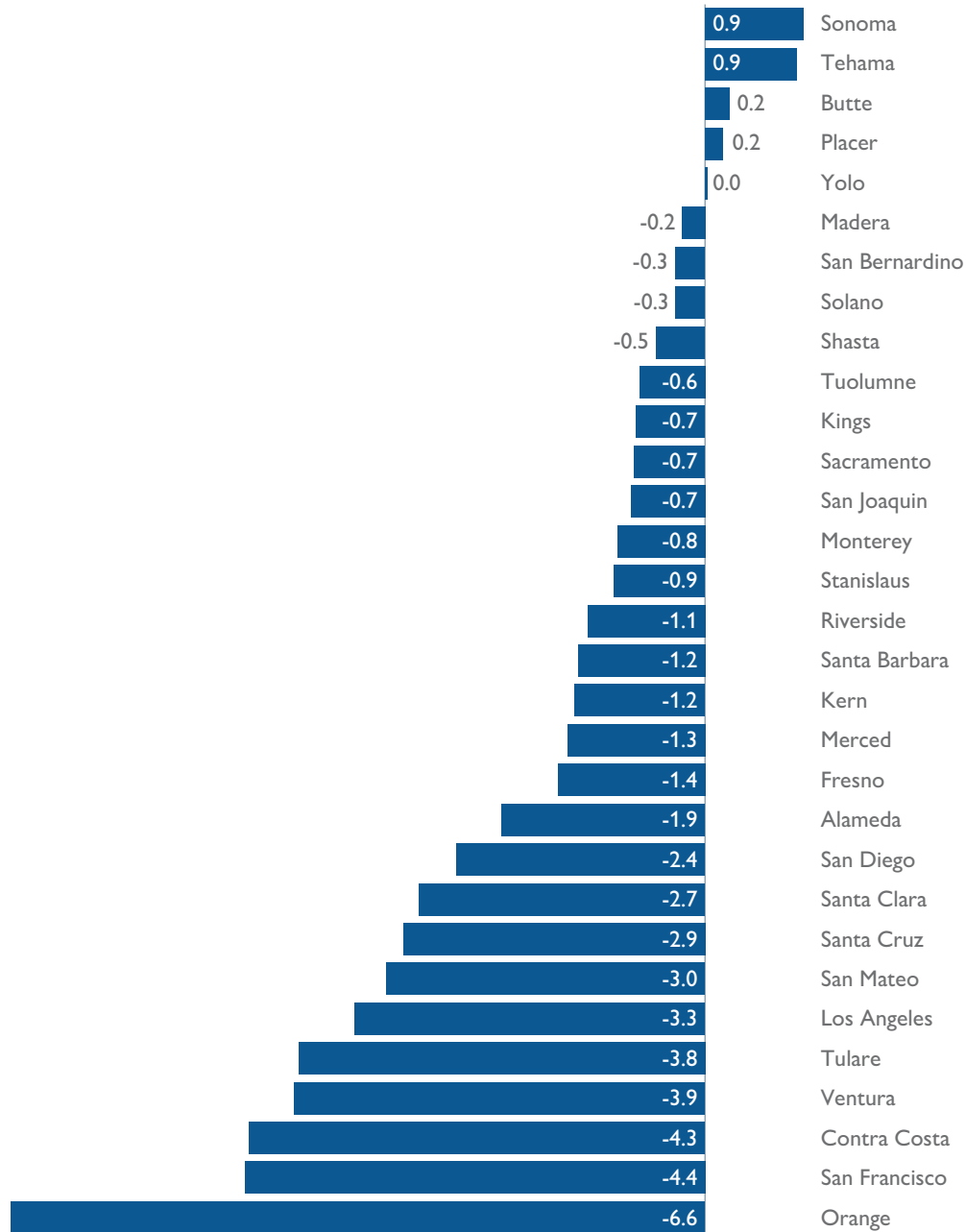
Robbery, first-degree burglary, and assault with a deadly weapon are the most common offenses with nickel prior enhancements for prison entries since 2015. These three offenses comprise about two-thirds of all offenses that receive a nickel prior enhancement, both before and after SB 1393. Over one-third of admissions with nickel priors are for either a robbery or first-degree burglary conviction, and about one-fifth are for assault with a deadly weapon (Table 2). The share of total admissions for these offenses that have a nickel prior enhancement declined after SB 1393. For example, between 2015 and 2018, 12% of all admissions for robbery convictions had the enhancement, while this decreased to only 7% of robbery convictions between 2019 and 2022.

TABLE 2. Top offense groups with nickel prior enhancements since 2015

OFFENSE	TOTAL ADMISSIONS		TOTAL ADMISSIONS WITH NICKEL PRIORS		SHARE OF NICKEL PRIORS WITH OFFENSE		PROPORTION OF TOTAL ADMISSIONS WITH NICKEL PRIORS	
	2015–2018	2019–2022	2015–2018	2019–2022	2015–2018	2019–2022	2015–2018	2019–2022
Robbery	14,056	9,810	1,731	641	26%	25%	12%	7%
Burglary 1st	10,192	5,831	1,285	407	19%	16%	13%	7%
Assault with a deadly weapon	18,148	14,478	1,186	463	18%	18%	7%	3%

In most counties, the share of admissions that included nickel priors decreased after the implementation of SB 1393. Figure 3 shows the share of admissions with nickel prior enhancements by county before and after the implementation of SB 1393. The largest county in California, Los Angeles, had a 3.3 percentage point decrease in the share of admissions with nickel prior enhancements. Other large counties had similar trends, notably, Orange County had a 6.6 percentage point decrease in the proportion of admissions with the enhancement. While most counties saw decreasing use of the nickel prior, Sonoma, Tehama, Butte, and Placer experienced small increases in the share of admissions with the enhancement. Additional county-level data is provided in the Appendix.

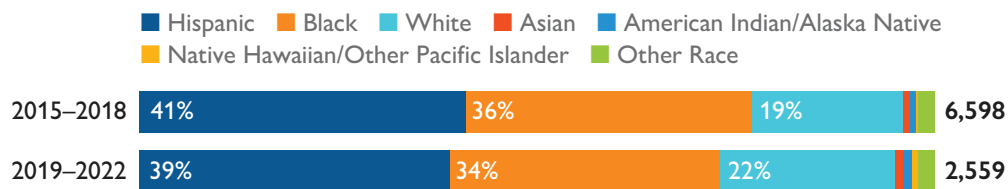
FIGURE 3. Percentage point change in the share of admissions with a nickel prior enhancement after SB 1393 was implemented



Note: 27 counties were omitted from this chart because the number of admissions with the nickel prior enhancement was below our sample size reporting threshold of 10.

The overall distribution of nickel priors by race and ethnicity is consistent before and after the implementation of SB 1393. Figure 4 shows the distribution of nickel prior enhancements by race and ethnicity before and after the implementation of SB 1393. Hispanic people make up the largest proportion of admissions to prison with a nickel prior enhancement, followed by Black, White, Other Race, Asian, American Indian/Alaska Native, and Native Hawaiian/Other Pacific Islander people respectively. After SB 1393, White people made up a slightly higher proportion of admissions with a nickel prior while the proportion of Hispanic people and Black people decreased slightly. Hispanic and White people make up a smaller proportion of nickel prior enhancements compared to their representation in general prison admissions, whereas Black people constitute a larger share of nickel prior enhancements than their representation in prison admissions.⁷

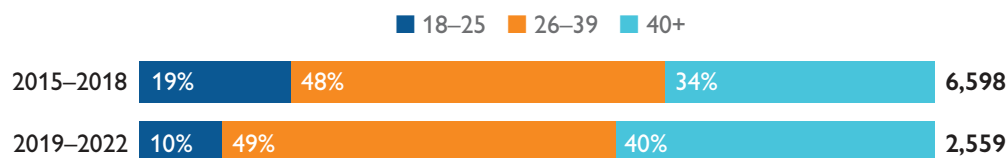
FIGURE 4. Distribution of nickel prior enhancements by race and ethnicity



Note: Racial categories are reported by CDCR and do not necessarily represent the self-identification of the people within the data.

The proportion of admissions for transitional aged youth (aged 18–25) with a nickel prior enhancement decreased after the implementation of SB 1393. Figure 5 shows the distribution of admissions with nickel prior enhancements by age at admission before and after the implementation of SB 1393. Between 2015 and 2018, 26–39 year olds made up the largest proportion of admissions with the enhancement, followed by people aged 40 or older, and transitional aged youth (ages 18–25) respectively. After SB 1393, transitional aged youth made up a smaller share of admissions with a nickel prior enhancement (decreasing from 19% to 10%), while people aged 40 or older made up a slightly larger share of admissions with a nickel prior.

FIGURE 5. Distribution of nickel prior enhancements by age



CONCLUSION

Since the implementation of SB 1393, which allowed judicial discretion in the application of the nickel prior enhancement, the rate of nickel prior enhancements has decreased among admissions, suggesting that judges are using the discretion that the legislature restored. The three offenses that most frequently received a nickel prior enhancement remained consistent before and after SB 1393, while the share of those offenses that were enhanced decreased by half. Transitional aged youth comprised a smaller share of those receiving the nickel prior after the policy change. While SB 1393 gave judges greater discretion in whether or not to apply nickel prior enhancements, this policy was not retroactive. As of August 2023, there are just under 11,500 people⁸ who were incarcerated before January 1, 2019 (prior to the policy change) who are still in prison and who have a sentence that includes a nickel prior enhancement. Depending on how it was implemented, many of these people would be eligible for resentencing if this policy was made retroactive. For example, a future bill could authorize courts to reconsider the sentences of eligible people which could result in the nickel prior being removed from the sentences of people currently incarcerated in prison.

ABOUT THIS RESEARCH

This 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.

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Endnotes

- 1 Prosecutors have sole authority to charge enhancements if they meet specific criteria. The person facing charges may ultimately be convicted of enhancements, but these can be dropped in plea deals or if the jury finds them not guilty. Judges lack the power to charge enhancements or any offenses. Their discretion comes at sentencing, where in certain instances, they can choose to dismiss an enhancement and not add the extra years to a sentence. For more information on enhancement types and their frequency in California's prisons, please refer to CPL's Report [Sentence Enhancements in California](#).
- 2 There is also an additional three-year enhancement for people convicted of a violent offense with a prior violent offense that was created by the Determinate Sentencing Law in 1977, however that enhancement is rarely used.
- 3 For a full list of serious and violent offenses see Cal. Penal Code §1192.7, §1192.8, and §667.5.
- 4 We removed felonies and enhancements that were stayed, vacated, or dismissed from our analyses
- 5 Bird, Mia, Omair Gill, Johanna Lacoé, Molly Pickard, Steve Raphael, and Alissa Skog (2022), "Sentence Enhancements in California," California Policy Lab <https://www.capolicylab.org/sentence-enhancements-in-california/>
- 6 We count an admission as eligible for a nickel prior if they ever had an admission to CDCR on a serious felony or if they had a conviction for a serious felony and sentence to county jail and/or probation between 2012–21. We restrict our eligibility estimates to 2021 due to challenges with the data identifying convictions with a sentence to county jail and/or probation in California after 2021.
- 7 Between 2015–22 Hispanic and White people make up 47% and 25% of the general prison population, respectively, while Black people make up 23% of the general prison population.
- 8 About 6,500 of these 11,500 have either an indeterminate, condemned, or life without parole sentence. Incarcerated before January 1, 2019 means people were received into a CDCR facility before that date.

APPENDIX

TABLE A1. County breakdown of nickel prior use

COUNTY	TOTAL ADMISSIONS		ADMISSIONS WITH A NICKEL PRIOR		PERCENT ENHANCED		COUNTY	TOTAL ADMISSIONS		ADMISSIONS WITH A NICKEL PRIOR		PERCENT ENHANCED	
	2015–2018	2019–2022	2015–2018	2019–2022	2015–2018	2019–2022		2015–2018	2019–2022	2015–2018	2019–2022	2015–2018	2019–2022
Alameda	2,627	1,362	168	61	6.4%	4.5%	Placer	1,180	1,078	21	21	1.8%	2.0%
Alpine							Plumas	78	68				
Amador	203	192	11		5.4%		Riverside	10,766	8,476	450	260	4.2%	3.1%
Butte	1,370	1,155	17	17	1.2%	1.5%	Sacramento	6,699	4,847	211	120	3.2%	2.5%
Calaveras	155	124					San Benito	155	101				
Colusa	130	131					San Bernardino	12,230	9,882	215	146	1.8%	1.5%
Contra Costa	1,664	1,048	113	26	6.8%	2.5%	San Diego	9,680	7,294	734	382	7.6%	5.2%
Del Norte	223	215					San Francisco	533	322	48	15	9.0%	4.7%
El Dorado	523	489					San Joaquin	3,307	2,933	58	31	1.8%	1.1%
Fresno	6,033	4,474	185	75	3.1%	1.7%	San Luis Obispo	889	857	22		2.5%	
Glenn	147	116					San Mateo	1,465	1,044	82	27	5.6%	2.6%
Humboldt	604	568					Santa Barbara	1,386	1,197	49	28	3.5%	2.3%
Imperial	679	395					Santa Clara	3,784	1,928	226	63	6.0%	3.3%
Inyo	67	66					Santa Cruz	483	401	27	11	5.6%	2.7%
Kern	5,660	5,254	198	119	3.5%	2.3%	Shasta	1,476	1,283	39	28	2.6%	2.2%
Kings	1,510	1,328	28	16	1.9%	1.2%	Sierra	10					
Lake	549	430					Siskiyou	273	166	13		4.8%	
Lassen	189	158					Solano	1,277	765	22	11	1.7%	1.4%
Los Angeles	40,517	24,683	2,241	548	5.5%	2.2%	Sonoma	1,062	801	18	21	1.7%	2.6%
Madera	896	894	13	11	1.5%	1.2%	Stanislaus	2,556	2,303	63	37	2.5%	1.6%
Marin	283	144					Sutter	571	462	10		1.8%	
Mariposa	82	61					Tehama	599	452	12	13	2.0%	2.9%
Mendocino	579	499	10		1.7%		Trinity	88	88				
Merced	1,217	1,070	34	16	2.8%	1.5%	Tulare	2,154	1,623	173	68	8.0%	4.2%
Modoc	35	78					Tuolumne	368	300	17	12	4.6%	4.0%
Mono	23	24					Ventura	2,228	1,662	191	78	8.6%	4.7%
Monterey	1,823	1,531	27	10	1.5%	0.7%	Yolo	823	437	30	16	3.7%	3.7%
Napa	445	418					Yuba	648	746		10		1.3%
Nevada	131	146											
Orange	7,223	5,172	753	200	10.4%	3.9%							

Note: some fields were omitted from this table because the number of admissions with the nickel prior enhancement was below our sample size reporting threshold of 10.

TABLE A2. Average length of determinate sentences with and without nickel priors by county

COUNTY	WITHOUT A NICKEL PRIOR (YEARS)		WITH A NICKEL PRIOR (YEARS)		COUNTY	WITHOUT A NICKEL PRIOR (YEARS)		WITH A NICKEL PRIOR (YEARS)	
	2015–2018	2019–2022	2015–2018	2019–2022		2015–2018	2019–2022	2015–2018	2019–2022
Alameda	5	6	14	14	Placer	4	4	14	18
Alpine					Plumas				
Amador					Riverside	5	4	16	17
Butte	5	5	17	15	Sacramento	5	5	17	17
Calaveras					San Benito				
Colusa					San Bernardino	4	4	16	16
Contra Costa	6	7	15	14	San Diego	4	5	14	14
Del Norte					San Francisco	6	7	12	15
El Dorado					San Joaquin	4	4	17	16
Fresno	4	4	14	15	San Luis Obispo	4		15	
Glenn					San Mateo	4	4	14	13
Humboldt					Santa Barbara	5	5	17	17
Imperial					Santa Clara	6	6	15	16
Inyo					Santa Cruz	6		11	
Kern	4	4	16	19	Shasta	5	5	16	14
Kings	4	4	16	13	Sierra				
Lake					Siskiyou	7		18	
Lassen					Solano	4		14	
Los Angeles	4	4	15	16	Sonoma	5	7	13	20
Madera	5		18		Stanislaus	4	4	13	15
Marin					Sutter	4		17	
Mariposa					Tehama	5		19	
Mendocino					Trinity				
Merced	6		14		Tulare	6	6	15	15
Modoc					Tuolumne	7		18	
Mono					Ventura	5	4	13	13
Monterey	6		23		Yolo	5	6	22	18
Napa					Yuba				
Nevada									
Orange	4	4	11	12					

Note: some fields were omitted from this table because the number of admissions with the nickel prior enhancement was below our sample size reporting threshold of 10.