



# Judicial Council of California

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## Subject Details (With Text)

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3/11/2022	1	Judicial Council	approved	Pass

### Title

### Rules and Forms | Criminal Law: Felony Sentencing (Action Required)

#### Summary

The Criminal Law Advisory Committee recommends amendments to specified felony sentencing rules of the California Rules of Court to reflect several major legislative changes that were made to sentencing of felony offenses and enhancements, which went into effect January 1, 2022. The recommended amendments will reflect statutory changes (1) requiring aggravated factors to be stipulated to by the defendant or found true beyond a reasonable doubt when imposing the upper term of a felony offense or enhancement; (2) allowing courts to consider as an aggravating factor that a defendant has suffered one or more prior convictions, based on certified official records, but that this exception may not be used to select the upper term of an enhancement; (3) discontinuing commitments of juveniles to the Department of Corrections and Rehabilitation, Division of Juvenile Justice; (4) regarding mitigating circumstances requiring imposition of the lower term; (5) identifying specified mitigating circumstances for consideration in sentencing; (6) allowing an act or omission that is punishable in different ways by different laws to be punished under either of those provisions; and (7) amending dismissal of enhancements due to specified mitigating circumstances. The recommended amendments would also clarify that courts may consider aggravating factors in exercising discretion in imposing the middle term instead of a low term, denying probation, ordering consecutive sentences, or determining whether to exercise discretion pursuant to Penal Code section 1385(c) and make nonsubstantive technical amendments.

#### Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective March 14, 2022:

1. Repeal rules 4.300 and 4.453 of the California Rules of Court to reflect changes discontinuing commitments of juveniles to the Department of Corrections and Rehabilitation, Division of Juvenile Justice;
2. Amend rule 4.405 to:
  - clarify the definition of “base term,” and add definitions of “principal term,” “subordinate term,” and “offense;”
  - modify the definition of “aggravation” to apply to factors that justify the imposition of the upper prison term or factors that the court may consider in exercising discretion authorized by statute and under these rules including imposing the middle term instead of a low term, denying probation, ordering consecutive sentences, or determining whether to exercise discretion pursuant to section

- 1385(c); and
3. Amend rule 4.406 to :
    - amend the advisory committee comment to reflect changes regarding sentencing triads;
    - delete a provision requiring the court to state reasons for declining to commit an eligible juvenile found amenable to treatment to the Department of Corrections and Rehabilitation, Division of Juvenile Justice, to reflect the repeal of Welfare and Institutions Code section 707.2;
    - require a court to state reasons for selecting a term for either an offense or an enhancement; and
    - amend the advisory committee comment to rule 4.406 to reflect changes regarding sentencing triads;
  4. Amend the advisory committee comment to rule 4.408 to reflect changes regarding sentencing triads;
  5. Amend rule 4.411.5 to:
    - require the contents of a probation officer’s presentence investigation report to include: whether factors in aggravation were proven beyond a reasonable doubt or stipulated; specific factors in mitigation that may require imposition of a low term; and discussion of both aggravating and mitigating factors related to disposition;
    - to require the contents of a probation officer’s presentence investigation report to include any mitigating factors pursuant to Penal Code section 1385(c);
    - to delete references to chargeable probation services and attorney fees under Penal Code section 987.8, to reflect the repeal of these fees by Assembly Bill 1869 (Stats. 2020, ch. 92);
  6. Amend rule 4.414 to state that a court may consider factors in aggravation and mitigation, whether or not the factors have been stipulated to by the defendant or found true beyond a reasonable doubt, when determining a defendant’s suitability for probation;
  7. Amend rule 4.420 to
    - clarify in the title that it addresses offenses, and not enhancements;
    - reflect changes regarding sentencing triads, including under what circumstances the court may impose the upper term;
    - reflect changes regarding mandatory imposition of the low term under specified circumstances; and
    - amend the advisory committee comment to reflect changes regarding sentencing triads and to include a definition of “interests of justice;”
  8. Amend the advisory committee comment to rule 4.421 to reflect changes regarding sentencing triads and nonsubstantive technical amendments;
  9. Amend rule 4.423 to add mitigating factors specified in Penal Code section 1385(c);
  10. Amend rule 4.424 to reflect changes allowing the court to use its discretion regarding which act or omission to punish under Penal Code section 654;
  11. Amend rule 4.425 to clarify that a court may consider any circumstances in aggravation or mitigation, whether or not the factors have been stipulated to by the defendant or found true beyond a reasonable doubt, when considering whether to impose consecutive or concurrent sentences, with specified exceptions;
  12. Amend rule 4.427 to:
    - reflect changes to Penal Code section 1385(c) regarding dismissal of enhancements; and
    - amend the advisory committee comment to reflect changes to Penal Code sections 1170.1, regarding requirements to impose the upper term of an enhancement, and 1385(c), regarding dismissal of enhancements;
  13. Amend rule 4.428 to reflect changes regarding enhancements with triads and include a new section on dismissal of enhancements under Penal Code section 1385(c);
  14. Amend the advisory committee comment to rule 4.428 to include definitions of “furtherance of justice” and “great weight;”

15. Amend the advisory committee comment to rule 4.437 to state that the requirement that a statement in aggravation or mitigation include notice of intention to rely on new evidence may include either party's intention to provide evidence to prove or contest the existence of a factor in mitigation that would require imposition of the low term for the underlying offense or dismissal of an enhancement; and
16. Amend rule 4.447 to refer to Penal Code section 1385(c).