

# **The San Francisco Sentencing Commission**

## **City & County of San Francisco**

(Administrative Code 5.250 through 5.250-3)

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### **AGENDA**

June 19, 2019

10:00 a.m. – 12:00 p.m.

Hall of Justice

District Attorney Law Library

850 Bryant Street Room 322

San Francisco, CA 94103

***Note:** Each member of the public will be allotted no more than 3 minutes to speak on each item.*

1. Call to Order; Roll call.
2. Public Comment on Any Item Listed Below (discussion only).
3. Review and Adoption of Meeting Minutes from March 13, 2018 (discussion & possible action).
4. Staff Report on Sentencing Commission Activities (discussion & possible action).
5. Presentation on Safety and Justice Challenge Updates by Truls Neal, Justice System Partners (discussion only).
6. Presentation on Sentencing Enhancements and Incarceration: San Francisco, 2005-2017 by Joe Nudell, Stanford Computational Policy Lab and Robert Weisberg, Stanford Criminal Justice Center (discussion & possible action).
7. Members' Comments, Questions, Requests for Future Agenda Items (discussion & possible action).
8. Public Comment on Any Item Listed Above, as well as Items not Listed on the Agenda.
9. Adjournment.

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### **SUBMITTING WRITTEN PUBLIC COMMENT TO THE SAN FRANCISCO SENTENCING COMMISSION**

Persons who are unable to attend the public meeting may submit to the San Francisco Sentencing Commission, by the time the proceedings begin, written comments regarding the subject of the meeting. These comments will be made a part of the official public record, and brought to the attention of the Sentencing Commission. Written comments should be submitted to: Tara Anderson Grants & Policy Manager, San Francisco District Attorney's Office, 850 Bryant Street, Room 322, San Francisco, CA 941023, or via email: [tara.anderson@sfgov.org](mailto:tara.anderson@sfgov.org)

### **MEETING MATERIALS**

Copies of agendas, minutes, and explanatory documents are available through the Sentencing Commission website at <http://www.sfdistrictattorney.org> or by calling Tara Anderson at (415) 553-1203 during normal business hours. The material can be FAXed or mailed to you upon request.

### **ACCOMMODATIONS**

To obtain a disability-related modification or accommodation, including auxiliary aids or services, to participate in the meeting, please contact Tara Anderson at [tara.anderson@sfgov.org](mailto:tara.anderson@sfgov.org) or (415) 553-1203 at least two business days before the meeting.

### **TRANSLATION**

Interpreters for languages other than English are available on request. Sign language interpreters are also available on request. For either accommodation, please contact Tara Anderson at [tara.anderson@sfgov.org](mailto:tara.anderson@sfgov.org) or (415) 553-1203 at least two business days before the meeting.

### **CHEMICAL SENSITIVITIES**

To assist the City in its efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

### **KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code)**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Task Force, the San Francisco Public Library, and on the City's web site at: [www.sfgov.org/sunshine](http://www.sfgov.org/sunshine).

### **FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE:**

Administrator  
Sunshine Ordinance Task Force  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place,  
San Francisco, CA 94102-4683.  
Telephone: (415) 554-7724  
E-Mail: [soft@sfgov.org](mailto:soft@sfgov.org)

### **CELL PHONES**

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Co-Chairs may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

### **LOBBYIST ORDINANCE**

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by San Francisco Lobbyist Ordinance (SF Campaign and Governmental Conduct Code sections 2.100-2.160) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco CA 94102, telephone (415) 581-2300, FAX (415) 581-2317, and web site <http://www.sfgov.org/ethics/>

# The San Francisco Sentencing Commission

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### MEETING MINUTES

March 13, 2019

10:00 a.m. – 12:00 p.m.

Hall of Justice, 850 Bryant Street Room 322, San Francisco, CA 94103

Members in Attendance: George Gascón, District Attorney; Commander Teresa Ewins, San Francisco Police Department; Tara Agnese, Adult Probation Department; Diana Oliva-Aroche, Department of Public Health; Ali Riker, San Francisco Sheriff's Department; Allen Nance, Juvenile Probation Chief; Simin Shamji, Public Defender's Office; Lt Weiss, BART Police Department; Chief Karen Roye, Reentry Council Appointee; Eric Henderson, Reentry Council Appointee; Mark Culkins, Superior Court; and Paula Hernandez, Assistant Chief Juvenile Probation.

#### **1. Call to Order; Roll call.**

District Attorney Gascon welcomes everyone to the 27th Sentencing Commission Meeting and calls the meeting to order at 10:10am. Members introduced themselves. DA Gascon called for a moment of silence for Public Defender Jeff Adachi.

#### **2. Public Comment on Any Item Listed Below (discussion only).**

No Public Comments received.

#### **3. Review and Adoption of Meeting Minutes from December 12, 2018 (discussion & possible action).**

District Attorney Gascon asked commission members to review minutes from the previous commission meeting. Karen Roye made the motion to approve the minutes, Diana Oliva-Aroche seconded the motion. Minutes from December 12, 2018 approved unanimously.

#### **4. Staff Report on Sentencing Commission Activities (discussion & possible action).**

Mrs. Anderson provided updates on Sentencing Commission Membership transitions and the updated roster, proposed changes to meeting location for September and December, Safety and Justice Challenge Technical Assistance, and the Accept and Expend Ordinance for the Safety and Justice Challenge Grant. Lastly, Mrs. Anderson indicated that due to staffing constraints the Legislation Workgroup would be on hold until the 2020.

Director Karen Roye provided the Reentry Council (RC) update. The RC met on January 24<sup>th</sup> at St Anthony's Foundation. Presentations included an Overview of Addiction Treatment and Treatment access points, presenters included Commander Lazar, SFPD and Angelica Almeida. Updates were provided on the Recovery Summit and Getting Out and Staying Out Guide. Most notable is that the guide is transitioning a web-based format. Lastly, the Anti Recidivism Coalition presented in preparing persons formerly serving life sentences for release. It was announced that the next meeting would take place on April 25<sup>th</sup> at St Anthony's.

No Report was provided by the Family Violence Council.

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### **5. Update from the Criminal Justice Racial Equity Workgroup (discussion & possible action).**

Mrs. Anderson provided a brief summary on the activities of the Criminal Justice Racial Equity Workgroup (CJREW). Three meetings were held since December 2018. The focus of these meetings is implementing the racial equity statement and the agenda for action. Discussions are focused on creating measurable and specific outcomes to set accountability standards. A portion of this work includes shared learning and taking examples from other departments in San Francisco. As an example, Mrs. Anderson shared the Arts Commission Racial Equity Statement. Lastly, Mrs. Anderson reminded members that the Safety and Justice Challenge grant includes budget allocations for implicit bias and procedural justice training.

### **6. Update on Use of Humanizing Language by Sentencing Commission Member Eric Henderson (discussion & possible action).**

Mr. Henderson proposed a non-binding resolution to use more human centered language in the criminal justice system. Mr. Henderson cited labeling theory and the concept of self-fulfilling prophecy, as reasons for the need to have a commitment to acknowledge that people are more than their worst mistake. The inspiration for the proposed resolution came from Mr. Henderson's involvement in an Executive Steering Committee for the Board of State and Community Corrections. The committee was discussing how the statute that created the funding mechanism used the term offender throughout. The agencies looking to apply for funds opposed the language arguing that when people have served their time and are returning to community referring to them as offenders is counter to reentry goals. A sample resolution was provided for members to review. The language in the resolution was adopted from a similar piece of legislation that passed in Pennsylvania. Mr. Henderson acknowledged that there may be circumstances where using the term might be unavoidable but emphasized that prioritizing human center language should be the standard. The sample resolution includes specific examples of terms that are considered people centered. Mr. Henderson requested feedback and support for the resolution.

Members discussed the need for an implementation plan, training and a requirement to sign on like the racial equity statement. Additional points covered included incorporating trauma informed language, a regional approach and the need to consider language changes in Titles 15 and 24.

Director Karen Roye made a motion to support the resolution on Use of Humanizing Language and instructed Sentencing Commission Director Tara Anderson to work with Mr. Henderson, the Reentry Council, and the Youth Commission on the resolution language and incorporating training objectives to ensure successful implement and compliance.

Ali Riker seconded the motion. No Public Comments received. All approved. Motion passed.

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### **7. Annual Review of San Francisco Sentencing Trends by Maria McKee, Principal Analyst, San Francisco District Attorney's Office (discussion & possible action).**

Maria McKee presented on Superior Court and District Attorney's Office data on incoming caseloads, filings, trial conviction rates by year and crime type. Slides were provided. At the conclusion of her presentation Ms. McKee responded to questions from members.

### **8. Presentation on 2018 Sentencing Legislation by Sentencing Commission Director, Tara Anderson (discussion & possible action).**

Mrs. Anderson reported on Sentencing related bills that were chaptered into law in 2018. In 2018, there were well over 2,000 bills that were introduced, 1,217 made it to the governor's desk and 1,016 were signed into law. Of those 12 included sentencing related outcomes from increasing penalties, enhancements, post-conviction relief and non-documented status. A handout was provided on the chaptered bills. Mrs. Anderson summarized each bill chaptered into law and opened the discussion for Sentencing Commission members.

### **9. Update on Safety and Justice Challenge Activities by Truls Neal, Justice System Partners (discussion & possible action).**

Mr. Neal provided an overview of the key activities completed by the Safety and Justice Challenge Workgroup which included the Stress Test, Behavioral Health Site Visit, and outcomes of the strategy workgroup meeting. Handouts were provided covering the five San Francisco Safety and Justice Challenge Strategies and the summary findings from the Stress Test. Members discussed edits to the Stress Test summary.

### **10. Presentation on Case Processing Resources by Tim Dibble, Vice President, Justice Management Institute (discussion & possible action).**

This item was taken out of order before agenda item 8. Tim Dibble presented on Justice Management Institute's role as a Safety and Justice Challenge Technical Assistance provider working on case processing slides were provided. Mr. Dibble responded to questions from members.

### **11. Members' Comments, Questions, Requests for Future Agenda Items (discussion & possible action).**

No comments.

### **12. Public Comment on Any Item Listed Above, as well as Items not Listed on the Agenda.**

No Public Comments received.

### **13. Adjournment.**

Ali Riker made a motion to adjourn the 27<sup>th</sup> meeting of the Sentencing Commission. No Public Comments received. Eric Henderson seconded the motion. All approved. Motion passed.

# The San Francisco Sentencing Commission

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### Sentencing Commission Staff Report

June 19, 2019

Prepared by Tara Anderson, Sentencing Commission Director

### 2019 Remaining Meeting Dates

#### Sentencing Commission Full Meetings

September 19, 2019

10 am- 12pm

350 Rhode Island Street, San Francisco, CA

December 4, 2019

10 am- 12pm

Location TBD

#### Criminal Justice Racial Equity Workgroup

July 16, 2019\*

3pm-4pm

September 17, 2019\*

3pm-4pm

November 19, 2019\*

3pm-4pm

All meetings are held in Hall of Justice, 850 Bryant Street, Rm 436.

\*Denotes same week as the SJC workgroup meeting schedule.

#### Safety and Justice Challenge Workgroup

June 20, 2019

12pm- 1:30pm

Hall of Justice

850 Bryant Street, Rm 436

July 18, 2019

12pm- 1:30pm

Hall of Justice

850 Bryant Street, Rm 436

#### What to Expect at the June Meeting:

- Jail Population Trends Report
- Updates on Hiring
- Updates on TA and Training
- Implementation Plan Feedback
- Racial and Ethnic Disparity Reduction Plan Feedback

#### What to Expect at the July Meeting:

- Jail Population Trends Report
- Special Session devoted to Supportive Housing with guest presenters.

These meetings occur monthly. During the June 20<sup>th</sup> meeting members will discuss moving to the 4th Tuesday of the month. An updated meeting schedule will be distributed once finalized. Please review the attached Workgroup Roster. If there is an agency or person that has been left off please contact Tara Anderson and she will make the correction.

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### **Policy Research Associates Technical Assistance**

#### **Sequential Intercept Model Intercept 0/1 Exercise**

September 10-11, 2019

### **Institute for State and Local Government Site Visit**

September 18-19, 2019

### **National Safety and Justice Challenge Network Meeting Update**

On May 7-9th a delegation of 11 representatives of the City and County of San Francisco and Superior Court attended the SJC National Network meeting. Sessions included; California site meeting, Housing Across the Intercepts, Professional affiliation breakouts, Community Engagement, Defining Front-end Diversion, Using data to examine racial and ethnic disparities, and so much more. Justice System Partners (JSP) our assigned site coordinator facilitated action-oriented discussions and provided updates on MacArthur Foundation expectations. San Francisco participants shared key takeaways from sessions and identified potential solutions to local issues. These included but are not limited to challenges with probation holds, delays in transfer to Department of State Hospitals and the top 100 people in-custody with the greatest length of stay. These issue areas will be incorporated into the Implementation Plan due at the end of June.

### **Key Deliverables due to the MacArthur Foundation by June 30th**

- Racial and Ethnic Disparity Reduction Plan
- Finalized Strategy Implementation Plan

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### ***Safety and Justice Challenge Workgroup Roster of Members***

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Tara Anderson, Director of Policy  
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(415) 553-1203, or [tara.anderson@sfgov.org](mailto:tara.anderson@sfgov.org)

## Agenda Item 6

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# **Sentencing Enhancements and Incarceration in San Francisco: 2005–2017**



Stanford Computational Policy Lab  
Stanford Law School

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# Motivation

- Past work has focused largely on Three Strikes
- Less work on the broader effect of enhancements on incarceration, racial disparities, and public safety

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# Questions

- How **frequently** are enhancements sentenced? How have they affected **overall time served**?
- To what extent, if any, has this time been served **disproportionately by race**?
- What **impact** do these longer sentences have on crime?

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# Overview of sentencing data

- Data cover **San Francisco only**
- **2005 to 2017** (7,827 cases)
- **Principal felonies** with **non-stayed** sentences
- Time served for felonies in **prison** and **jail**

# **Impact on incarceration**

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**How common are enhancements?**

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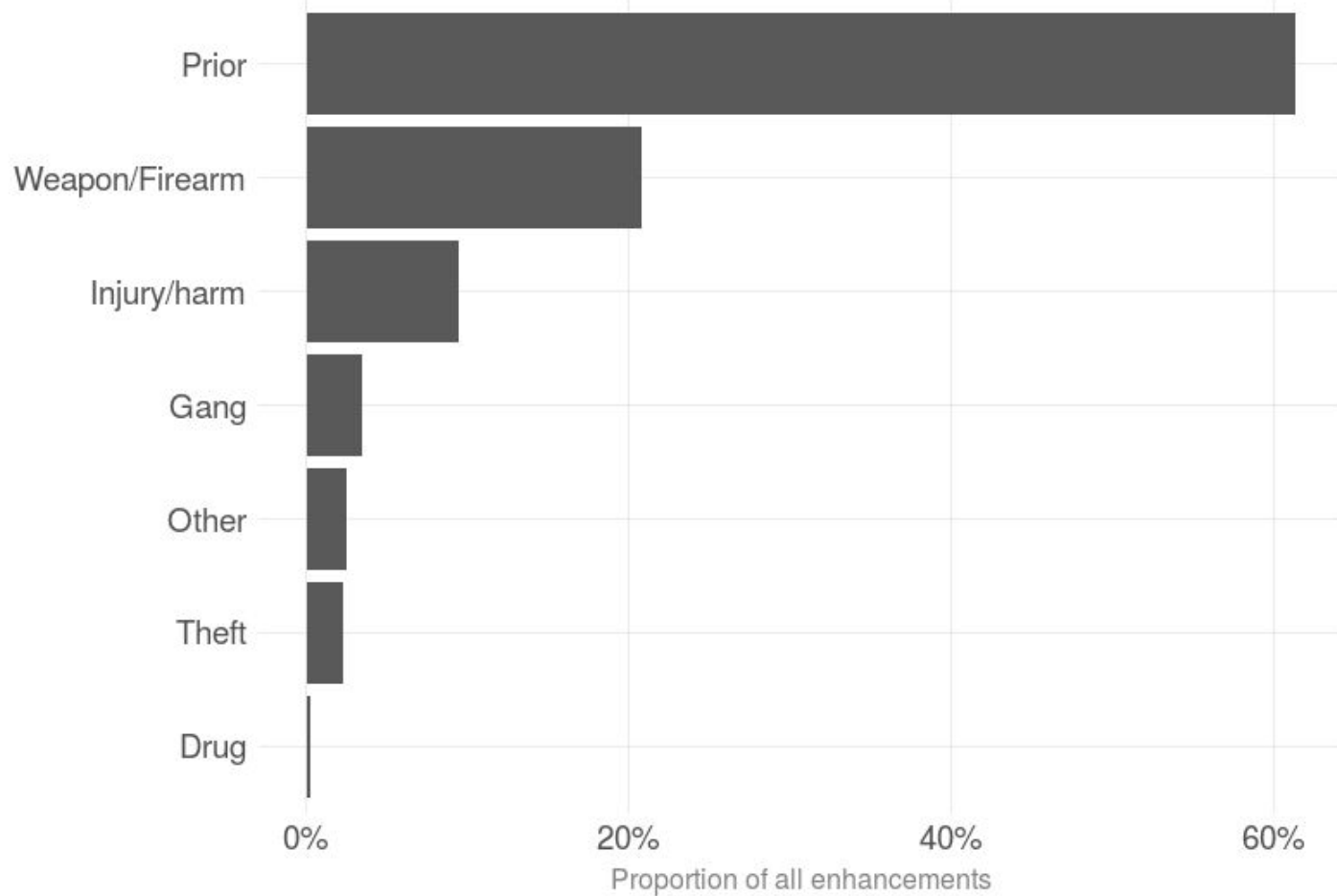


**One** in **eight** felony sentences  
include at least one enhancement.



# Frequency of enhancement statutes

From 2005 to 2017, San Francisco



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# Half of enhancements, 3 statutes

- 667.5(B) – Prior felony prison/jail term: **1 year sentence**
- 667(A) – Prior serious felony conviction: **5 year sentence**
- 667(D-E) – Three Strikes: **double base or life sentence**

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**What is a “typical” enhancement case?**

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# A typical enhancement case

The universe of cases with enhancements skews towards **violent crimes** (robbery, assault).

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# A typical enhancement case

“Robbery with a nickel prior.”

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# A typical enhancement case

“Robbery with a nickel prior.”

211 PC – 2nd degree robbery: **3 year sentence**

667(A) – Prop 8 Prior: **5 year sentence**

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**How much time is served  
for enhancements?**

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# How much time is served for enhancements?

Time sentenced  $\neq$  time served

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# Measuring enhancement time

## *Example*

**Person A:** cocaine possession with intent to sell

**Person B:** cocaine / intent to sell + **prior assault (3 strikes)**

---

# Measuring enhancement time

## *Example*

**Person A:** cocaine possession with intent to sell

Nominal sentence: **3 years**



**Person B:** cocaine / intent to sell + **prior assault (3 strikes)**

---

# Measuring enhancement time

## *Example*

**Person A:** cocaine possession with intent to sell

Nominal sentence: **3 years**

Credit adjustment: **0.5x**



**Person B:** cocaine / intent to sell + **prior assault (3 strikes)**

---

# Measuring enhancement time

## *Example*

**Person A:** cocaine possession with intent to sell

Nominal sentence: **3 years**



Credit adjustment: **0.5x**



**Person B:** cocaine / intent to sell + **prior assault (3 strikes)**

Nominal sentence: **3 years x 2**



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# Measuring enhancement time

## *Example*

**Person A:** cocaine possession with intent to sell

Nominal sentence: **3 years**

Credit adjustment: **0.5x**



**Person B:** cocaine / intent to sell + **prior assault (3 strikes)**

Nominal sentence: **3 years x 2**

Credit adjustment: **0.8x (3SL)**



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# Measuring enhancement time

## *Example*

Person A:  3 years *sentenced*

Person B:  6 years *sentenced*

= 2x time sentenced (3 yrs)

Person A:  1.5 years *served*

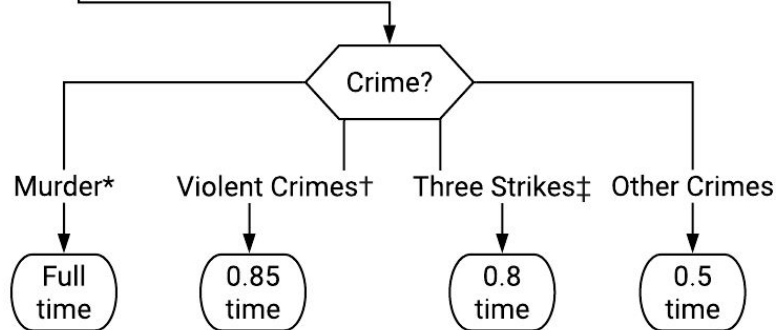
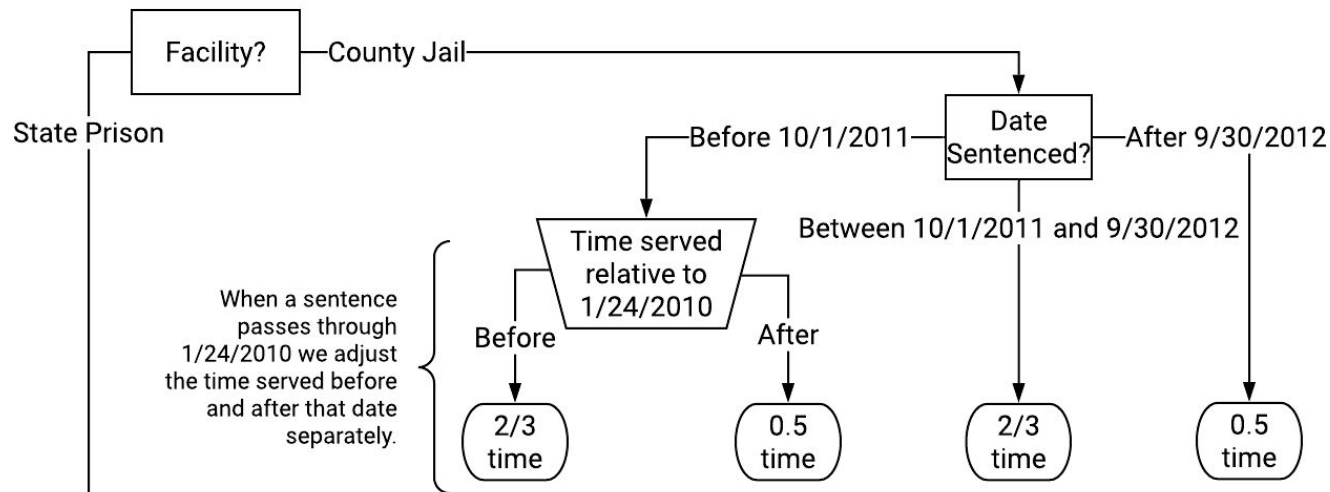
Person B:  4.8 years *served*

> 3x time served (3.3 yrs)

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# Time served $\neq$ time sentenced

- **Credit eligibility** based mostly on **type of offense**
- For simplicity, assume everyone gets **all good-time credit**



\* *Base crimes* PC 187 or 190(A)

† *Base crimes* PC 192(A), 193(A), 203, 204, 205, 261(A)(2), 261(A)(6), 262(A)(1), 262(A)(4), 286(C), 286(D), 288a(C), 288a(D), 288(A), 288(B), 211, 212.5, 213, 214, 451(A), 451(A), 451(B), 289(A), 289(J), 18745, 18750, 18755, 207, 208, 209, 209.5, 220, 288.5, 215(A), 264.1, 11418(B), 11418(C); *Enhancements* PC 12022.3(A), 12022.5, 12022.53, 12022.55, 12022.7, 12022.8, 12022.9

‡ *Enhancements* PC 667(B)-(I) and/or 1170.12



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# Measuring enhancement time

*Enhancements add to time served in two ways.*

- **Directly**: term of incarceration
- **Indirectly**: limit credit-earning ability

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# Measuring enhancement time

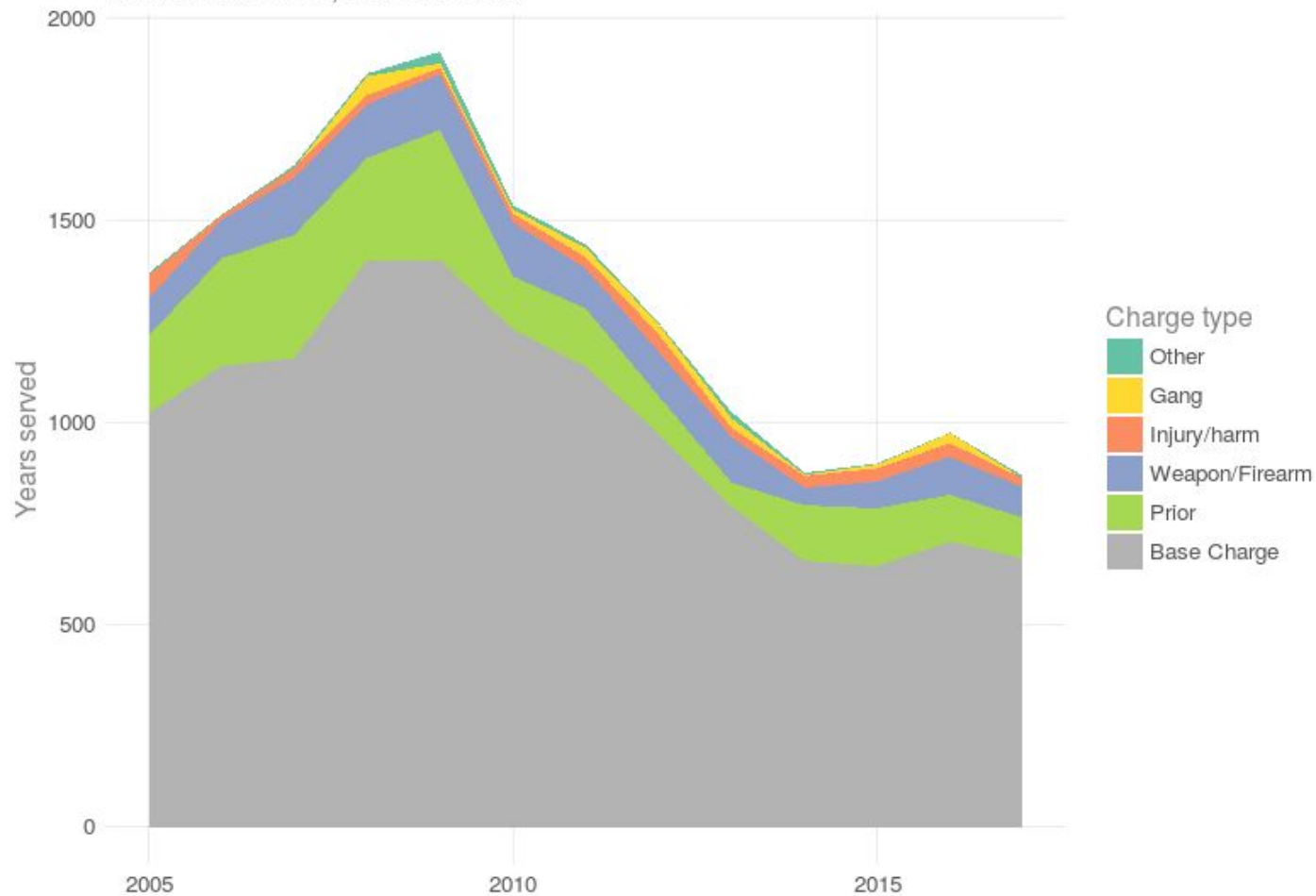
- Estimate **credit-adjusted** total time served
- **Filter** out enhancements, **re-applying** adjustments to  
estimate *time served due to base sentence alone*
- **Difference** is time attributable to enhancements



One in four years served is due to an enhancement sentence.

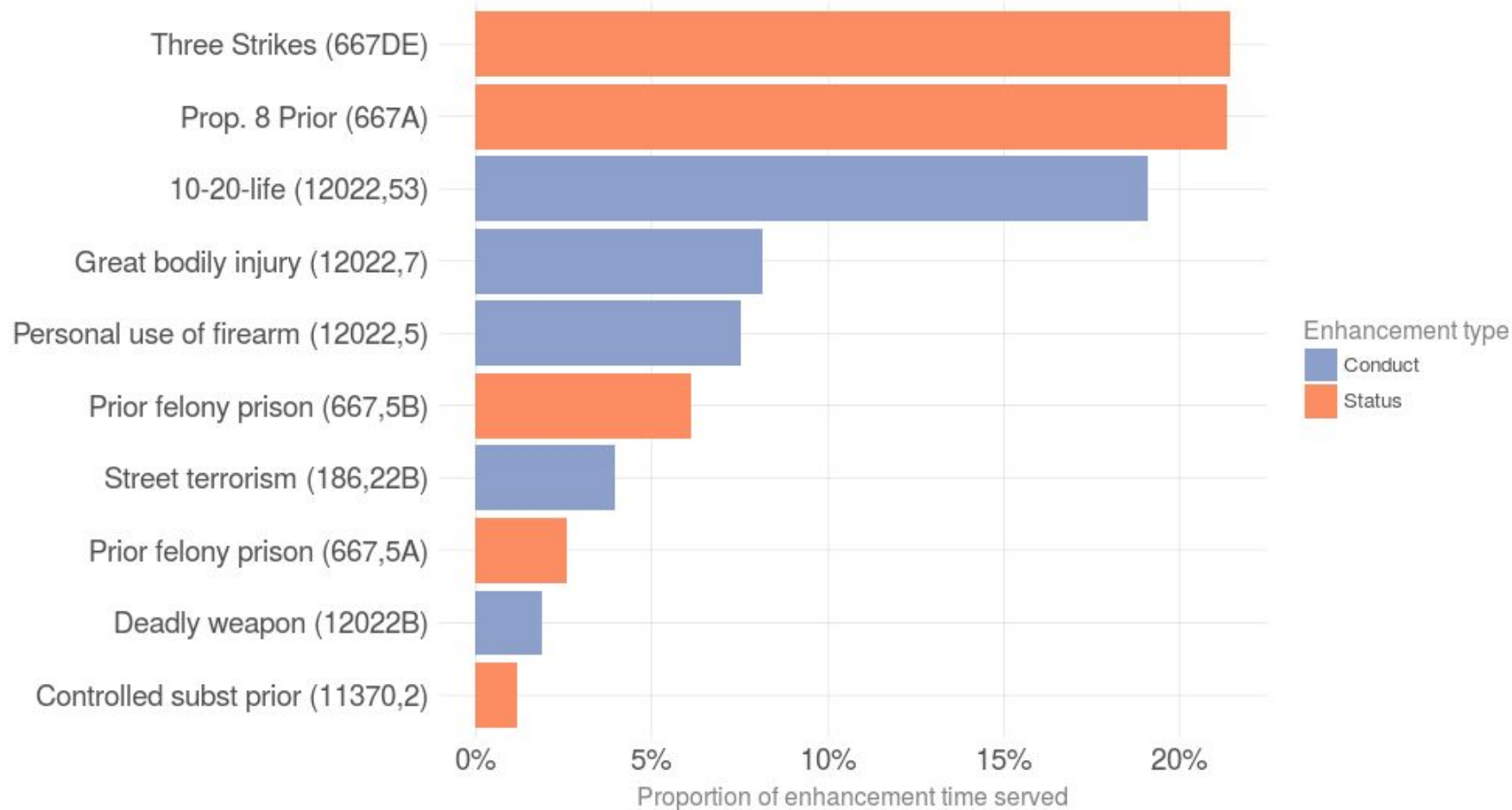
# Years served by enhancement type

From 2005 to 2017, San Francisco



# Proportion of enhancement time served by statute

From 2005 to 2017, San Francisco



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Among cases with enhancements:

**3.9 years for base**  
**4.5 years for enhancement**

In the 87% of felony cases in which there is no enhancement, people serve an average term of **1.3 years**.

# **Racial disparities**

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The African-American community makes up **6%** of the residential population, and **58%** of felony convictions in San Francisco, but serves

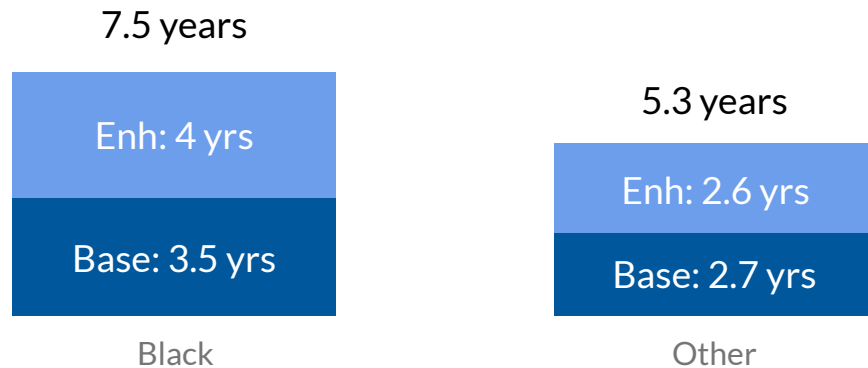
**70%**

of all enhancement time in San Francisco—  
700 years for African-Americans arrested between 2011–2017.



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Average enhancement sentence for individuals arrested since 2011\*:



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This disparity appears to be driven by differences in base charges,  
not differential application of enhancements

(Disparate *impact*, not necessarily disparate *treatment*)

**Impact on  
public safety**

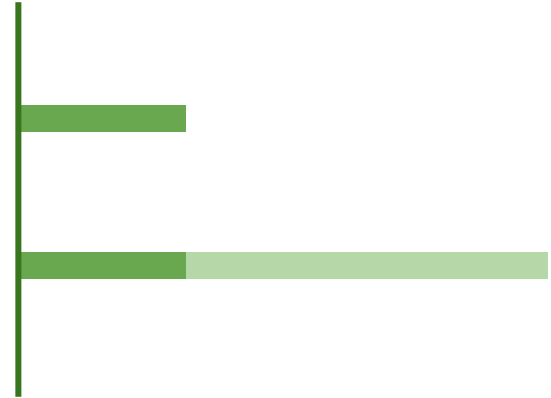
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# Impact on crime

*Recall our cocaine dealers ...*

Person A serves **1.5 years**

Person B (striker) serves **4.8 years**



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# Impact on crime

*Recall our cocaine dealers ...*

Person A serves **1.5 years**

Person B (striker) serves **4.8 years**



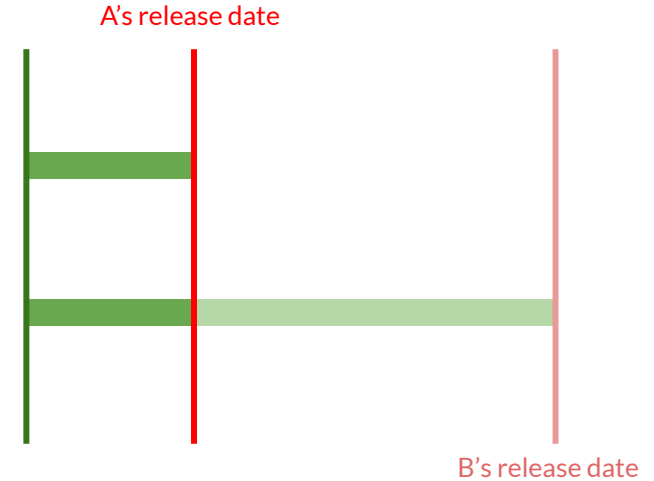
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# Impact on crime

*Recall our cocaine dealers ...*

Person A serves **1.5 years**

Person B (striker) serves **4.8 years**



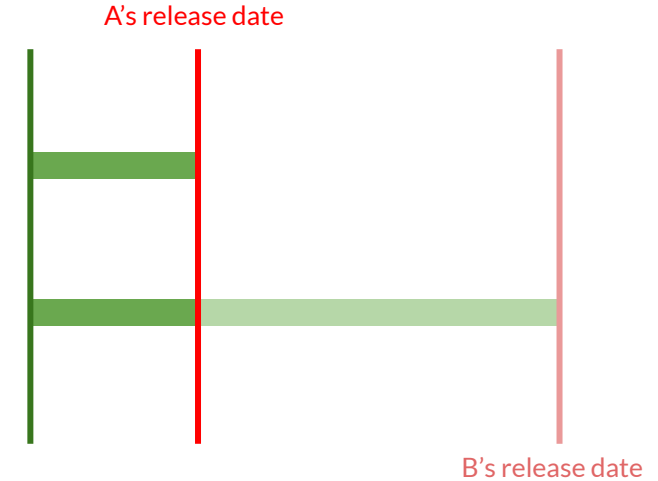
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# Impact on crime

*Recall our cocaine dealers ...*

Person A serves **1.5 years**

Person B (striker) serves **4.8 years**



*How much crime did A commit while B was incarcerated?*

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# Measuring incapacitation effect

- **Match case** with an enhancement (B) to one without (A)
- **Count felonies** committed by A during the time B served  
for enhancement



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# Propensity score matching

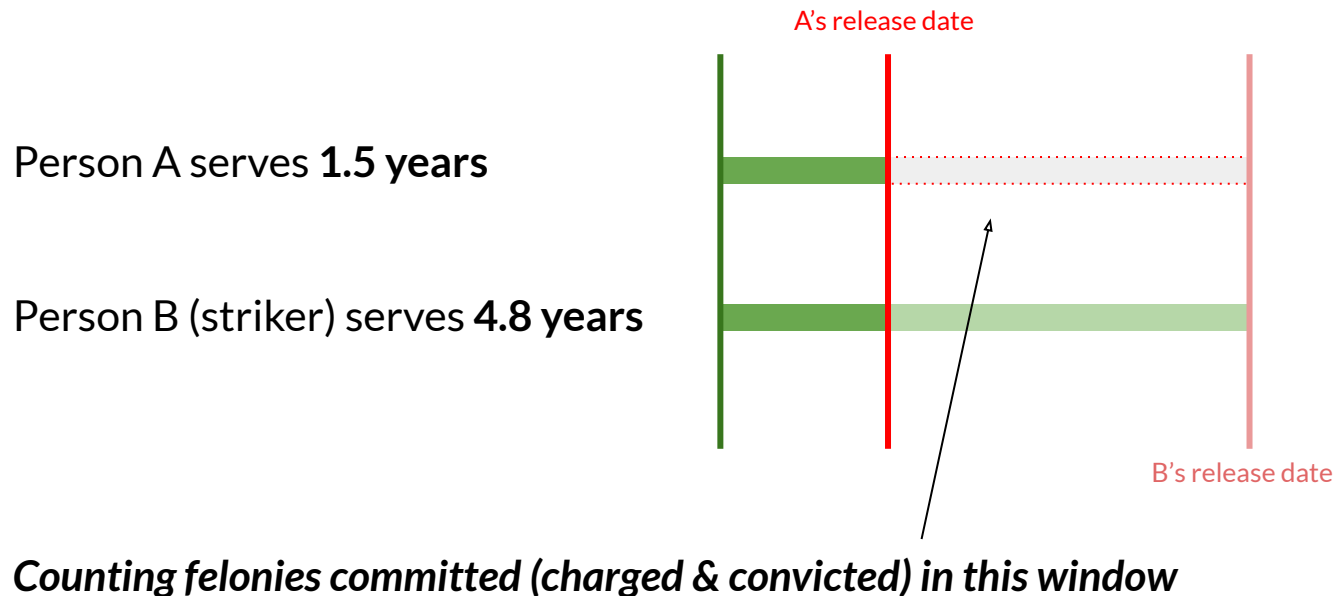
- “Apples to apples”
- Match on base crime type, sex, age, priors, arrest date

Assumption:

*The group of people we will consider who served enhancement time is **comparable** to the group who didn't.*

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# Measuring incapacitation effect



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For every **2 years served** of  
enhancement sentences,  
**1 felony** prevented

Majority burglary, theft, drugs

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For every **9 years served** of  
enhancement sentences,  
**1 violent felony** prevented

Over half robbery; close to 90% robbery + burglary + gang

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# Limitations to this approach

- B might actually be **riskier** than A  
[ underestimate public safety benefit of enhancements ]
- Longer stays might be **criminogenic**  
[ overestimate public safety benefit of enhancements ]
- We cannot examine general **deterrence** of statutes
- Only looking at **offenses in San Francisco**
- Convictions likely **underestimate crime**

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Jail: **\$63,000** / person / year

Prison: **\$81,000** / person / year

[https://lao.ca.gov/PolicyAreas/CJ/6\\_cj\\_inmatecost](https://lao.ca.gov/PolicyAreas/CJ/6_cj_inmatecost)

<https://www.sfdph.org/dph/files/jrp/39-SFControllerJailPopulationBenchmarkingReport2013.pdf>

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Jail: **\$63,000** / person / year

2 years: **\$126,000**

9 years: **\$567,000**

Prison: **\$81,000** / person / year

2 years: **\$162,000**

9 years: **\$729,000**

[https://lao.ca.gov/PolicyAreas/CJ/6\\_cj\\_inmatecost](https://lao.ca.gov/PolicyAreas/CJ/6_cj_inmatecost)

<https://www.sfdph.org/dph/files/jrp/39-SFControllerJailPopulationBenchmarkingReport2013.pdf>

# Summary



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# Key findings

- **One** in **four** years served due to enhancements
- **Half of time** served from enhancements for **priors**

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# Key findings

- **One** in **four** years served due to enhancements
- **Half of time** served from enhancements for **priors**
- **One** in **eight** cases had one or more enhancement term
- In cases with enhancements, enhancements more than **double the base term**

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# Key findings

- **Black** individuals served **70%** of enhancement time, while accounting for **58%** of San Francisco's felony convictions, and **6%** of the city's population
- **1 felony** (charged & convicted) prevented for **2 years** of enhancement time served; **1 violent felony** prevented for every **9 years** served

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# Implications

One can substantially reduce incarceration by focusing charging decisions on **just 3 enhancement statutes**.

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One can substantially reduce incarceration by focusing charging decisions on **just 3 enhancement statutes**.

- Three Strikes
- Prop 8 Prior
- 10-20-life

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# Limitations

- It's hard to predict the effect of reducing enhancements on the behavior of prosecutors and defendants:
  - Prosecutors might instead use other base charges to increase sentences [ dampening effect of policy changes ]
  - Defendants may gain bargaining power without threat of enhancements [ magnifying effect of policy changes ]

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# Limitations

- It's hard to predict the effect of reducing enhancements on the behavior of prosecutors and defendants:
    - Prosecutors might instead use other base charges to increase sentences [ dampening effect of policy changes ]
    - Defendants may gain bargaining power without threat of enhancements [ magnifying effect of policy changes ]
  - SB 1393 — judges can dismiss 667(A) — may help gauge effect of policy changes on behavior.
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# Beyond San Francisco?

- San Francisco is probably not representative
- Ranked lowest in Three Strikes sentencing (20x lower than top)
- Suspect other enhancements may be similar



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