

The background of the slide is filled with several 'Thinking Face' emojis (🤔). One is prominently displayed in the center-right, while others are partially visible around it. The emojis are yellow with a white hand pointing to the chin. In the top-left corner, there is a solid orange horizontal bar.

Felony Sentencing

Judge Scott A. Steiner

Orange County Superior Court



What we're not going to talk about...

- Resentencing
- 1170.95
- Sex cases
- Gang cases (mostly)
- Financial cases & Kilo dope cases
- Life cases (charged count is life)
- Alternative sentencing
- What hasn't happened yet*

Questions to ask on every case:

- What's the max?
- What are the triads?
- What 654s, if anything?
- Does it wobble?
- Is it a strike? Serious (1192.7) or Violent (667.5(c))?
- Is it 1170h or SP?
- Is it underfiled/misfiled?
- What are the effects of enhancements (Convert to strike)? To max? To credits?
- What kinds of priors?
- What kinds of allegations? SB620?
- What are the effects of priors?
- If priors stricken – 1385(a) or (b)?
- Is there a no-probation allegation?
- Is D eligible/presumptively ineligible/statutorily ineligible for probation?
- Is D on probation/MS?
- What are his worst credits?
- What are his best credits?
- Are there registration requirements (SB384)?



What is a felony?

- PC 17(a) – “A crime that is punishable with death, by imprisonment in the state prison ... or by imprisonment in a county jail (per 1170.)”
- Determinate vs. Indeterminate
 - A fixed release date vs. an unfixed one
 - Desirability of determinate if able
- Triads
- Effect of 664(a) (on range, on class) 211/186.22(b) versus 664-211/186.22(b)



Triads

Penal Code

- 32 16-2-3*
- 69 16-2-3*
- 118 2-3-4
- 136.1(a) 16-2-3*
- 136.1(b) 16-2-3*
- 136.1(c) 2-3-4
- 166(c)(4) 16-2-3*
- 182 TPBUF (*)
- 186.22(a) 16-2-3*
- 186.22(d) 1-2-3*
- 203 2-4-8
- 207 3-5-8
- 212.5(a) 3-4-6
- 212.5(b) 3-4-6
- 212.5(c) 2-3-5
- 213(a)(1)(A) 3-6-9
- 213(b) 16-2-3
- 215 3-5-9
- 220(a)(1)/261 2-4-6
- 220(a)(2)/261 5-7-9
- 236.1(b) 8-14-20
- 243(d) 2-3-4*
- 243.4(a-d) 2-3-4*
- 245(a)(1)(2) 2-3-4*
- 245(a)(4) 2-3-4*
- 245(b) 3-6-9
- 245(d)(1) 4-6-8
- 245(d)(2) 5-7-9
- 246 3-5-7*(!)
- 246.3(a) 16-2-3*
- 266h(a) 3-4-6 (MSP*)
- 273.5(a) 2-3-4*
- 273.5(f)(1) 2-4-5*
- 422 16-2-3*
- 459/461(a) 2-4-6
- 459/461(b) 16-2-3*
- 487(a) 16-2-3-*
- 487(d)(2) 16-2-3
- 594 16-2-3*
- 25400 et seq – 16-2-3 (*)



H&S/VC

- 11350(a) 16-2-3
- 11351 2-3-4
- 11352 3-4-5
- 11353 3-6-9
- 11370.1 2-3-4
- 11375(b)(1) 16-2-3*
- 11377(a) 16-2-3*
- 11378 16-2-3
- 11379 2-3-4
- 11380 3-6-9
- 2800.2 16-2-3*
- 10851/496d 16-2-3*
- 666.5/10851/496d
2-3-4*
- 20001(b)(1) 16-2-3*
- 20001(b)(2) 2-3-4*
- 23152 16-2-3
- 23153 16-2-3/2-3-4



Computing the Maximum

- Count 1 11379 – 2-3-4
- Count 2 11378 – 16-2-3
- Count 3 530.5 – 16-2-3
- *The maximum is computed by adding the top* principal term, and 1/3 the midterm on any non-654 subsequent counts. In the above example, D's max is...*
- **Changes in the law... AB518 “654.(a) An act or omission that is punishable in different ways by different provisions of law may be punished under either of such provisions...”*

“Here’s this handoff...”

- Count 1: 459-460(a) (first degree residential burglary)
- Count 2: 459-460(a) (first degree residential burglary)
- Count 3: 594 (felony)
- A strike prior is alleged
- A 667(a) prior is alleged
- So... computing possible sentences should be a snap!



Ct.1 459/460a, Ct.2 459/460a, Ct. 3 594, 1 Strike, 1 667a

- Probation (SS, S667a)
- 2y (LT)
- 3y4m (LT+1/3MT Ct2)
- 2y8m (LT+1/3MT Ct3)
- 4y (MT/LT+1/3MT Cts2,3)
- 5y4m (MT+1/3 Ct2)
- 4y8m (MT+1/3MT Ct3)
- 6y (UT/MT+1/3MT Cts2,3)
- 7y4m (UT+1/3MT Ct2)
- 6y8m (UT+1/3MT Ct3)
- 8y (UT+1/3MT Cts2,3)
- 6y8m (LTx2+1/3MTx2 Ct2)
- 5y4m (LTx2+1/3MTx2 Ct3)
- 8y (LTx2+1/3MTx2 Cts2,3)
- 10y8m (MTx2+1/3MTx2 Ct2)
- 9y4m (MTx2+1/3MTx2 Ct3)
- 12y (MTx2+1/3MTx2 Cts2,3)
- 14y8m (UTx2+1/3MTx2 Ct2)
- 13y4m (UTx2+1/3MTx2 Ct3)
- 16y (UTx2+1/3MTx2 Cts2,3)
- 7y (LT+667a)
- 8y4m (LT+1/3MT Ct2+667a)
- 7y8m (LT+1/3MT Ct3+667a)
- 9y (MT/LT+1/3MT Cts2,3+667a)
- 10y4m (MT+1/3MT Ct2+667a)
- 9y8m (MT+1/3MT Ct3+667a)
- 11y (UT/MT+1/3MT Cts2,3+667a)
- 9y4m (UT+1/3MT Ct2+667a)
- 11y8m (UT+1/3MT Ct3+667a)
- 13y (UT+1/3MT Cts2,3+667a)
- 11y8m (LTx2+1/3MTx2 Ct2+667a)
- 10y4m (LTx2+1/3MTx2 Ct3+667a)
- 13y (LTx2+1/3MT Cts2,3x2+667a)
- 15y8m (MTx2+1/3MT Ct2x2+667a)
- 14y4 (MTx2+1/3MT Ct3x2+667a)
- 17y (MTx2+1/3MT Cts2,3x2+667a)
- 19y8m (UTx2+1/3MT Ct2x2+667a)
- 18y4m (UTx2+1/3MT Ct3x2+667a)
- 21y (UTx2+1/3MT Cts2,3x2+667a)
- (Green=SS,S667a) (Blue=SNS,S667a)
(Purple=SS,667a imposed) (Red=NS)



Penal Code Section 17(b)

- “When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail under the (1170h), or by (county jail), it is a misdemeanor for all purposes under the following circumstances:”
(b(1) – (b)(5))
- Some felony offenses are subject to reduction to misdemeanors.
- *Know them before you ask for an offer!*



Know all possible sentences & Computing the max...

- Example:
- Count 1 – 10851 (16-2-3)
- Count 2 – 496d (DBOL)
- Count 3 – 11379 (2-3-4)
- Max?
- Sentencing Options? (17b?)

Probation in Felony Cases

- Very few felonies are mandatory state prison.
- A court can grant probation (ISS) in the vast majority of felony crimes.
- Two Years* FP.
- Example: D pleads guilty to HS11378, is released with CTS of 90 days (45+45), and two years of formal probation. On the last day of his probation grant, he tests dirty. What is his worst case scenario?





ESS
Execution of Sentence
Suspended



1170(h)

- (2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.
- (3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a **prior or current** felony conviction for a **serious** felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a **violent** felony described in subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section **290**)...
- ***If D has a strike prior (even if stricken) or is 290, 1170 does not apply!***

Mandatory Supervision - Splits & No Tails

- If probation is not on the table, and D is charged with an 1170(h) felony, what are the options?
- D is charged with 10851. Counsel has asked for probation, and the court has said no. What are the possible sentences?
- A split. The court selects a term from the triad, and orders D to serve a portion of it in county jail and the balance (of the selected term) on MS
 - What happens if D violates MS on his last day of MS? (Vs. Probation)
- A no tail. The court selects a term from the triad, and orders D to serve it in county jail. Upon release, no supervision. OR...
- 17b!



State Prison

- Offenses not falling within 1170(h) (HINT: guns, sex, and strikes*) are punishable either in the county jail (if probation is granted) or in the state prison for the prescribed term.
- Example: D is charged with 29800 (FIP, non-wobbler, non-strike). Counsel asks for probation but the court says no. What are the possible sentences?
- 16-2-3. Upon release - Parole?/PRCS?



Strikes & 667(a)

- “Serious” strikes are defined in PC1192.7.
- “Violent” strikes are defined in PC667.5(c).
- 1192.8 strikes: 191.5/192/192.5/2800.3, 23104, 23153 when GBI or DW
- Effect of a single strike prior?
- Effect of multiple strike priors?
- Nature of current offense?
- The court can “strike” strikes per 1385(a) (☺) or 1385(b) (☹).
- 667(a) adds 5 years, and may only be alleged when new case is a S/V felony and prior S/V conviction separately plead and proved.



Enhancements & Allegations

- 186.22(b)(1) +2,3,4
- 186.22(b)+5 (1192.7)
- 186.22(b)+10 (667.5(c))
- 12022(a) +1
- 12022(b)(1) +1
- 12022(b)(2) +1,2,3
- 12022.1 +2*
- 12022.5 (non enumerated) +3,4,10
- 12022.53 (enumerated) +10,20,Life
- 12022.7(a) +3
- 12022.7(b) +5
- 12022.7(c) +5
- 12022.7(d) +4,5,6
- 12022.7(e) +3,4,5
- 667(d)(e) (x2, life, depending on?)
- 667(a) +5
- 667.5(c)(21)



Thank you!