



BACK TO COURT

**A Resentencing Guide
for the Fair and Just
Sentencing Reform Act
(SB 1393) and PC § 1170(d)(1)**



**ELLA BAKER
CENTER for
HUMAN RIGHTS**

She led. So can you.

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Introduction

The Success of the Fair and Just Sentencing Reform Act in 2018

California has some of the most severe sentence enhancements in the nation. According to the Public Policy Institute of California (PPIC), California has more than 100 separate code sections that add years to a person's prison or jail sentence. As of 2016, one of the most commonly used sentence enhancements was the "nickel prior," a 5-year enhancement for serious prior felonies. Californians face close to 100,000 additional years of incarceration because of this 5-year sentence enhancement.

In 2018, Ella Baker Center staff, members, interns, and allies lobbied in Sacramento and across California, meeting with elected officials to discuss the importance of proposed bills impacting California's sentencing laws, including Senate Bill 1393.



SB 1393, authored by Senators Holly Mitchell (Los Angeles) and Ricardo Lara (Long Beach), and signed into law by Governor Brown, allows judges to strike (or not impose) a 5-year enhancement for a prior serious felony.

Also known as the Fair and Just Sentencing Reform Act, SB 1393 helps restore balance in the judicial process, address extreme sentences, and reduce racial disparities in the criminal justice system by allowing judges to decide what is best in the interest of justice. The passage of this bill builds on the growing momentum in California to enact criminal justice reforms that divest from ineffective mass incarceration policies and invest in community-based solutions like mental healthcare, education, and substance-use treatment.



There is more information about SB 1393 and the other policy and community organizing efforts of the Ella Baker Center for Human Rights on our website at www.ellabakercenter.org.



What is the purpose of this Toolkit?

This Toolkit is informational and does not provide legal advice specific to your case.

This Toolkit does not constitute legal advice and does not establish an attorney-client relationship. We suggest finding the sections that are most relevant to your case and determining whether the steps provided would be safe and worthwhile to take for yourself and your loved ones. We recommend that you consult any attorneys working on your case or your parole hearing before asking a District Attorney to refer you for resentencing.

We created this Toolkit for people with 5-year sentence enhancements for prior felonies and their loved ones. This Toolkit also provides general information on Recall and Resentencing (Penal Code § 1170(d)(1)).

This SB 1393 and PC § 1170(d)(1) Resentencing Toolkit is designed to be both a specific and a general resource. Specifically, this Toolkit provides information for people serving sentences who have 5-year enhancements for prior serious felony convictions. It is now possible to request resentencing on the basis of these enhancements because of the passage of SB 1393 (effective January 1, 2019). We also hope that this Toolkit's overview of PC § 1170(d)(1) Recall and Resentencing law and processes will be helpful for people seeking information about resentencing in other contexts. This Toolkit contains information that applies to people who are awaiting sentencing or already sentenced under California state laws. This includes people who are currently serving time in either state or county custody. There is information that applies both to people who are currently on appeal and also to people whose sentence is "final."

The information in this Toolkit is subject to change, and we hope you share your experiences with us so we can improve it over time.

The information in this Toolkit may not be a current, accurate, or complete description of this area of the law at the time you are reading it. We are basing the information in this Toolkit on the best of our understanding given conversations with CDCR, BPH, advocates and family members on the inside and outside, as well as people who have been recently resentenced and released.

We expect that the legal processes described in this Toolkit will continue to change as:

- CDCR holds Public Comment for updating Title 15 regulations for PC § 1170(d)(1)
- Governor Gavin Newsom's office shapes the direction of PC § 1170(d)(1) Resentencing
- Courts formalize their approach to these resentencing referrals and proceedings
- District Attorney's offices come on board and establish their own policies and criteria
- Sheriffs and the Board of Parole Hearings decide whether to make referrals
- Various amendments to laws and/or ballot propositions come into play

We encourage you to share this guide with your loved ones and your networks. We rely upon the insights and experience of people inside as well as their support networks on the outside to improve this Toolkit over time. This Toolkit will be updated as we learn more about how people are being resentenced and as new agency referrals and court processes take shape.

Your loved ones and support network can also reach out to info@ellabakercenter.org with questions or comments. Please send us your feedback on this Toolkit and your experiences with 5-year sentence enhancements and the PC § 1170(d)(1) resentencing process to:

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We would like to acknowledge

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Glossary of Key Terms

§ or §§ - a legal symbol meaning “section,” or when used twice “sections,” referring to the numbering of a specific law or regulation.

AB 1618 - a 2019 California Assembly bill (Jones-Sawyer) that would made “Harris Waivers” (see below) void as against public policy and unenforceable. The bill was signed into law on October 8, 2019 and goes into effect on January 1, 2020.

AB 1812 - a California Assembly bill sponsored by the Committee on Budget that amended PC § 1170(d)(1) to provide CDCR with funding to make resentencing referrals and to advise judges to consider evidence of rehabilitation and post-conviction factors. The law went into effect upon Governor Brown’s signature on June 27, 2018.

AB 2942 - a California Assembly bill sponsored by Assemblymember Ting that amended PC § 1170(d)(1) and authorized district attorneys to make referrals for recall and resentencing. Co-sponsors of AB 2942 included the Sentence Review Project (of the organization For The People) and the Santa Clara District Attorney’s Office. The law went into effect on January 1, 2019.

BPH - Board of Parole Hearings, a body of CDCR that decides people’s suitability for release and parole supervision.

CDCR - California’s prison agency, the California Department of Corrections and Rehabilitation.

Cohort - CDCR’s term for a group of people eligible for resentencing referrals (PC § 1170(d)(1)).

DA - the “District Attorney” or prosecutor in a county, either referring to individual staff members or the office as a whole.

CDC Form 22 and 602 (“602s”) - CDCR administrative appeals to address various grievances at the facility level all the way up to Sacramento. These appeals must be exhausted before an issue can be addressed in a civil lawsuit in court.

Final Sentence - when someone with a criminal conviction has “exhausted” all of their appeals at each court level, meaning they either obtained or were denied some measure of relief, OR the deadlines to file appeals have passed, their sentence becomes “final.”

(Writ of) Habeas Corpus - a civil petition filed by a person who is incarcerated against the facility’s warden (or another custodian) asking the court to determine whether their detention is lawful. There is typically no time limit on the filing of a writ of habeas corpus.

Harris Waiver - language in a plea bargain that generally forfeits a defendant’s right to resentencing and other benefits of future policy reforms, initiatives, appellate decisions, and changes in law. These waivers are rendered void by AB 1618.

Nickel Prior - a 5-year sentence enhancement (PC § 667.5) for each prior serious felony which is no longer mandatory, as of January 1, 2019, with the passage of SB 1393.

Penal Code - the official publication of California's laws regarding crimes, sentencing, and related matters; abbreviated as "PC," "P.C.," or "CPC" depending on the context.

PC § 1170(d)(1) Resentencing - a way to get back into court to be sentenced anew upon the referral of a court (within 120 days of sentencing) or a government agency (at any time by CDCR, BPH, the District Attorney, or the Sheriff). You may hear **California Penal Code section 1170(d)(1)** referred to by a variety of shorthands and legal terms, including:

- **"1170"** (note that § 1170 is a large section of the Penal Code dealing with a range of sentencing considerations),
- **"1170(d)"** (as it was originally enumerated in the Penal Code in the 1960s; note that there are now subsections (1) and (2), and 1170(d)(2) is a different process that only applies to people convicted under the age of 18),
- **"recall and resentencing"**, **"sentence recall"**, **"sentence review"**, and within CDCR internally: **"RRRP"** (the **Recall and Resentencing Referral Program**).

Post-Conviction Factors - events and accomplishments during incarceration that speak to preparedness for release and current risk to public safety. These can include evidence of rehabilitation and in-custody conduct, such as: laudatory chronos and certificates, disciplinary actions including RVRs and SHU terms, programming and leadership roles, volunteering, educational accomplishments including classes taken and degrees, housing assignment, work assignment and supervisor reports, age, amount of time already served in # of years and as a % of total sentence, medical condition and necessary accommodations, and other events and accomplishments.

Pro Se (or Pro Per) - representing oneself in a criminal or post-conviction proceeding without the assistance of an attorney.

RVR (or "115") - a "Rules Violation Report" or disciplinary write-up for a range of alleged in-custody conduct including not standing for count, failure to report for a ducat (prison pass that allows movement within prison), or refusing a drug test. An RVR results in an investigation, a hearing, and potential discipline. Serious RVRs are often cited by BPH to argue against someone's parole suitability or by CDCR to deny someone discretionary relief such as PC § 1170(d)(1) resentencing referrals.

SB 1393 - a California Senate bill sponsored by Senators Mitchell and Lara ending the mandatory requirement that judges add a 5-year sentence enhancement for each prior serious felony on a person's record. The law went into effect on January 1, 2019.

SB 136 - a California Senate bill sponsored by Senator Wiener ending the mandatory requirement that judges add a 1-year sentence enhancement for most prior felony prison or jail terms. The law goes into effect on January 1, 2020.

Title 15 Regulations - CDCR's administrative rules which outline the agency's policies and practices and which are subject to Public Comment periods prior to enactment.

FAQs

SB 1393 - The Fair and Just Sentencing Reform Act

What is SB 1393?

SB 1393 is a California Senate bill signed into law by Governor Brown on September 2018. Also known as the Fair and Just Sentencing Reform Act of 2018, the bill was co-authored by State Senators Holly Mitchell (Los Angeles) and Ricardo Lara (Long Beach). The law went into effect on January 1st, 2019.

SB 1393 ends the mandatory requirement that judges add a 5-year sentence enhancement for each prior serious felony on a person's record. This 5-year enhancement is also referred to as a "nickel prior." SB 1393 amends Penal Code sections 667 and 1385 making it optional for judges to give a 5-year enhancement for each prior serious felony (PC §§ 1192.7(c), 1192.8, and 667.5(c)) conviction.

Does SB 1393 apply to all sentence enhancements?

No. SB 1393 is specific to 5-year enhancements for prior serious felonies. However, in 2017, two laws were signed that affect gun enhancements and drug enhancements:

SB 620 (Bradford) ends the mandatory application of **gun (or firearm) enhancements under PC §§ 12022.5 and 12022.53.**

SB 180 (Mitchell) repeals the **three-year enhancement for prior drug-related felonies** (Health and Safety Code § 11370.2), with the exception of prior convictions involving a minor (§ 11380).

Ella Baker Center for Human Rights along with the team behind SB 1393 successfully passed **SB 136** (Wiener), a reintroduction of SB 1392 (Mitchell), legislation that eliminates the mandatory **1-year enhancement for prior felonies that resulted in a prison or jail term (PC § 667.5).** The bill was signed into law by Governor Newsom on October 8, 2019, and goes into effect on January 1, 2020. Ella Baker Center will be advocating with CDCR to create a new cohort for resentencing referrals for people with these 1-year enhancements.

The process for resentencing for other enhancements may be similar to what is described for SB 1393 in this document. As of October 2019, CDCR is actively considering people with SB 620 gun enhancements for resentencing referrals. We anticipate additional legislative reform on other sentence enhancements in the future which would likely require similar paths to relief as outlined in this Toolkit.

Is SB 1393 retroactive?

No, SB 1393 is not retroactive and did not create a right to resentencing for all people with 5-year sentence enhancements for prior serious felonies.

However, CDCR is currently in the process of reviewing all people in-custody with these 5-year enhancements for potential referrals for recall and resentencing via PC section 1170(d)(1).

Even though SB 1393 is not retroactive, this Toolkit will discuss various ways to prepare and self-advocate to get 5-year prior serious felony enhancements removed if they were already applied to your sentence. You can read about these options in **How Does SB 1393 Impact Me?** below.

What paperwork do I need to file with CDCR to be considered for a resentencing referral?

Technically, none. The Office of Legal Affairs for CDCR is working with the Office of Research to identify all individuals currently serving time in California with 5-year sentence enhancements for a prior serious felony. CDCR's Classifications Services Unit and Case Records will process the list of individuals eligible for Penal Code section 1170(d)(1) discretionary relief. Individual packets will then be drafted so that the CDCR Secretary can consider each candidate. We expect that a significant factor CDCR staff will consider will be involvement in rehabilitation programs, and negative factors will likely include disciplinary history, specifically any major rules violations or solitary confinement terms in the last five years, and whether someone has a parole eligibility or release date within 18 months. Anyone the CDCR Secretary recommends for resentencing should receive necessary paperwork, and CDCR will also notify the court, district attorney, and public defender in the county of conviction.

CDCR staff have told defense attorneys and advocacy organizations that it can be helpful for people to inform both Sacramento and the counselor assigned to them at their facility if they are eligible for resentencing on the basis of having one or more 5-year sentence enhancements. For more information about self-advocacy see **How Does SB 1393 Impact Me?** and **Overview of Penal Code § 1170(d)(1) Resentencing**.

What is the timeline for resentencing consideration by the CDCR Secretary?

The timeline for receiving a resentencing referral for previously applied 5-year enhancements is currently unknown. SB 1393 went into effect on January 1, 2019. In June 2019, CDCR began writing referral letters to ask trial court judges to bring people back to court and use their new judicial discretion to consider removing 5-year sentence enhancements for prior serious felonies. According to CDCR, there are a large number of people who need to be reviewed.

What happens if someone is recommended for resentencing?

A resentencing recommendation does not guarantee a lesser sentence. The trial court judge has broad discretion on whether or how to act on a recommendation letter from CDCR. The judge will decide whether or not to set a hearing to examine the matter. CDCR should send the referral letter to the county's Public Defender office, if there is one, otherwise the court will appoint an attorney from a pro bono bar panel. At the resentencing hearing, the judge will decide whether or not to recall and resentence. If the judge decides to resentence, credit must be given for time served and no additional time can be added to the sentence. For more information on resentencing, see **Overview of Penal Code § 1170(d)(1) Resentencing**.

Are people who accepted a plea bargain eligible for resentencing of their 5-year enhancements?

Yes. The resentencing law that CDCR is using to refer people back to court is Penal Code section 1170(d)(1). This law clearly states that people who accepted plea bargains are eligible for resentencing. That being said, some courts are still denying relief on the basis of the original sentence being the result of a plea bargain.

How Does SB 1393 Impact Me?

If you have any 5-year enhancements on your current sentence for prior serious felonies, you may be able to use the Fair and Just Sentencing Reform Act to obtain resentencing. This section will walk through various paths of self-advocacy that you and your support network can pursue to remove 5-year enhancements.

You do not need to pay an attorney to request review for resentencing. If you are already working with an attorney on criminal proceedings, appeals, habeas petitions, or in preparation for the parole board, you can discuss these advocacy strategies with your lawyer or reach out to the public defender's office to see if any would interfere or work against other aspects of your case.

How to best use SB 1393 depends on where you are in the sentencing process. We will explain each of these stages in detail in the following pages. The different stages of sentencing include:

Pre-Sentence

People who are pretrial or awaiting sentencing, whether in custody or released out on bail or their own recognizance. Because of SB 1393, the judge in your case now has discretion (as of January 1, 2019) whether or not to apply 5-year enhancements for each of your prior serious felonies.

Sentence On Appeal

People whose cases are active on appeal (or the deadline for appealing their sentence hasn't yet passed). If you were sentenced prior to January 1, 2019 and you are still fighting your conviction or your sentence on appeal, you can address the issue of the 5-year enhancements on your sentence now that they are no longer mandatory after the passage of SB 1393.

Final Sentence

People serving time for a sentence that is "final" (no more appeals). If you have already been sentenced and your sentence is final, you can use SB 1393 as a qualifying "change in circumstances" to request a review from one of the agencies who are authorized by law to recommend you for the discretionary recall and resentencing process in Penal Code section 1170(d)(1).

Pre-Sentence: I have not yet been sentenced in a California criminal case. I am pretrial awaiting sentencing either in custody or released out on bail or my own recognizance.

Effective January 1, 2019, SB 1393 amended PC sections 667 and 1385 to make it optional for the judge to impose 5-year sentence enhancements for prior serious felony terms.

Option 1

The judge deciding your case now has discretion whether or not to apply 5-year enhancements for any prior serious felonies when sentencing you. Your attorney can argue that 5-year

enhancements should not be applied to your case under the “interests of justice” standard. The “interests of justice” standard is not clearly defined in the law, but judges tend to look at post-conviction factors, and should be referencing the factors laid out in PC section 1170(d)(1) such as behavior in-custody, record of rehabilitation, and reduced risk to public safety. Your attorney can point to various facts in terms of your case, your activities while incarcerated pretrial or in a previous term, aspects of your life experience, and your role in your family and support network to show why you shouldn’t be further punished by these discretionary enhancements.

Option 2

If you are considering taking a plea agreement, your attorney should fight to exclude any waivers of your right to resentencing from the terms of your plea agreement. This will be helpful down the road so that you can request resentencing on another basis. For more information on plea agreements and resentencing waivers, go to the **“If I took a plea agreement, will it impact my resentencing?”** sub-section of the **Overview of Penal Code § 1170(d)(1) Resentencing**.

Is My Sentence “Final”?

For state felony convictions in California, you typically have 60 days after your trial court judgment to file for an appeal with the California Court of Appeal; the Court of Appeal’s decision becomes “final” after 30 days, after which you have 10 days to file for an appeal with the California Supreme Court; after the California Supreme Court either renders its decision or refuses to take up the appeal, you have 90 days to file for review (to request a “writ of certiorari”) from the United States Supreme Court.

To determine if your sentence is “final” or if you have passed the deadlines for appealing your sentence or conviction, please speak to your attorney and/or request the **Retroactivity-Finality Cheat Sheet** by the First District Appellate Project in the **Resource List**.

Sentence on Appeal: My sentence isn’t final because I am still on appeal, or deadlines haven’t yet passed for me to file appeals.

If you were sentenced prior to January 1, 2019 and you are still fighting your conviction or your sentence on appeal, you can address the issue of any 5-year enhancements on your sentence now that they are no longer mandatory after the passage of SB 1393.

Option 1

If you are currently appealing your conviction, you should ask your attorney to argue that the appellate judge should remand (send) your case back to the trial court judge so that they can exercise their new discretion under SB 1393 to remove or strike any 5-year enhancements applied to your sentence. This will be based on the fact that the California Supreme Court applies the benefits of new laws to cases under appellate review per the doctrine of “Estrada Retroactivity” (see *In re Estrada* (1965) 63 Cal.2d 740). The principle of Estrada Retroactivity holds that recent policy reforms should be applied to your case if you are still on appeal and aspects of your sentence are now discretionary (optional) instead of mandatory.

Option 2

If you have exhausted your California appeals but the period to file for review with the United States Supreme Court is still running, you or your attorney can still file a writ of habeas corpus,

or your attorney can file a “motion to recall the remittitur,” to get your case back into state court. You or your attorney can argue that “Estrada Retroactivity” allows the judge to use new discretion to remove the 5-year enhancements from your sentence.

Final Sentence: I am serving time in State Prison for a sentence that is final, meaning I have no more appeals or I have passed the deadlines to file my state or federal appeals.

After you have “exhausted” all of your appeals, or passed the deadlines to file these appeals, your sentence becomes “final.” If you were already sentenced with at least one 5-year enhancement and your conviction is final, you may be able to take advantage of the recent passage of SB 1393 and the newly amended PC section 1170(d)(1) to be “resentenced” in the “interests of justice.” You can use SB 1393 as a qualifying “change in circumstances” to request a review from agencies who are authorized by law to recommend you for the discretionary recall of sentence and resentencing process.

In order to get back to court for resentencing, you will need either CDCR, BPH, or the District Attorney to send a letter to the court recommending you for resentencing. This recommendation letter will give the trial court back the authority and discretion to resentence you, which the court lost 120 days after your sentencing. The court will then decide whether or not to schedule a hearing. If a hearing is set, the judge may use their discretion to recall your sentence and set a resentencing hearing. At the resentencing hearing, the judge may use their discretion to remove any 5-year enhancements from your sentence.

For more in-depth information on all of the options below, refer to the Overview of Recall and Resentencing (PC § 1170(d)(1)) section.

Option 1

Ask CDCR to recommend you for resentencing. This can look like an informal or formal request (Form 602) informing your counselor that you are eligible for CDCR’s 5-year Prior Serious Felony Enhancement “cohort.” You can also send a letter to CDCR in Sacramento informing them of your eligibility. You can also advocate for yourself with facility staff who may be willing to initiate the request for you to be considered in CDCR’s internal evaluation process. CDCR referrals are ultimately decided by the Secretary in Sacramento.

Option 2

Ask the District Attorney’s office to recommend you for resentencing. This can look like: writing a letter to the DA informing them of your record of rehabilitation and requesting a referral for resentencing; working with the Public Defender or the attorney who argued your case at trial to ask the DA about a referral; and/or asking the Sentence Review Project, co-sponsor of AB 2942, who are assisting DA offices to create process and criteria for making PC section 1170(d)(1) referrals. Always exercise caution when approaching District Attorneys, as anything you say can be used against you in other proceedings or at parole hearings.

Option 3

You can request that the **Board of Parole Hearings** recommend you for resentencing. However the Board of Parole Hearings is currently deferring to CDCR to make resentencing referrals.

Option 4

In **other proceedings**, such as a SB 1437 Felony Murder Resentencing hearing, your attorney can advocate with CDCR staff and/or the District Attorney to make a PC section 1170(d)(1) referral.

Overview of Penal Code § 1170(d)(1) Resentencing

What is Recall of Sentence and Resentencing?

California Penal Code (“PC”) section 1170(d)(1) gives four law enforcement agencies the power to refer someone who is currently incarcerated in state or county custody back to the trial court for resentencing.

Who Can Initiate Resentencing per PC § 1170(d)(1)?

Within 120 days of original sentencing:

Trial Court Judge
has the discretion to initiate a Recall of Sentence and Resentencing proceeding.

People in custody
can request that the Trial Court Judge exercises this discretion via **letter** or **formal petition**.

After 120 days:

Trial Court Judge
no longer has the discretion to initiate a Recall of Sentence and Resentencing proceeding.

UNLESS:

a **referral** to give the judge back this discretion is submitted to the trial court from any of the following:*

- **CDCR Secretary**
- **District Attorney**
- **Board of Parole Hearings**
- **Sheriff**

*This referral can be submitted at any time after the original sentencing.

These four referral agencies are the **California Department of Corrections and Rehabilitation** (CDCR), the **Board of Parole Hearings** (BPH), the **District Attorney** (DA, of the county of conviction), and the **County Sheriff** (if someone is serving their sentence in county custody instead of state prison).

These four agencies can send a referral letter to a trial court to give the judge the authority to recall the sentence of someone who is currently incarcerated to be resentenced “anew.” This can happen at any time after the original sentencing.

The limits to the judge’s power to resentence are:

- the new sentence must be “lawful”
- credit must be given for time served
- the new sentence cannot be longer than the original sentence

The judge is encouraged by law to look at post-conviction factors, to consider the proportionality of sentencing, and to use their discretion in the “interests of justice.”

What does the Recall of Sentence and Resentencing law say?

“When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison or a county jail pursuant to subdivision (h) and has been committed to the custody of the secretary or the county correctional administrator, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings in the case of state prison inmates, the county correctional administrator in the case of county jail inmates, or the district attorney of the county in which the defendant was sentenced, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The court resentencing under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. The court resentencing under this paragraph may reduce a defendant’s term of imprisonment and modify the judgment, including a judgment entered after a plea agreement, if it is in the interest of justice. The court may consider postconviction factors, including, but not limited to, the inmate’s disciplinary record and record of rehabilitation while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the inmate’s risk for future violence, and evidence that reflects that circumstances have changed since the inmate’s original sentencing so that the inmate’s continued incarceration is no longer in the interest of justice. Credit shall be given for time served.”

California Penal Code section 1170(d)(1), as of Sept. 25, 2019.

How long has PC § 1170(d)(1) existed and why is there such a buzz right now?

Since the late-1960s, there has been some version of the resentencing referral powers given to courts and CDCR. In 2018, Governor Brown signed into law a series of amendments that:

- Significantly expanded the funding that CDCR received to make these referrals
- Gave trial courts guidance into what post-conviction factors may be relevant to the resentencing decision (AB 1812)
- Empowered District Attorneys to make these resentencing referrals (AB 2942)

Even though the recall and resentencing law has existed for decades, it's only since June 2018 that CDCR started writing these letters with any frequency. Many courts are seeing these PC section 1170(d)(1) resentencing referrals for the first time without a clear understanding of the law's procedure or what to do with a referral letter when it arrives.

Is PC § 1170(d)(1) Resentencing mandatory or discretionary?

Unfortunately, PC section 1170(d)(1) does not establish a legal right to resentencing. This form of discretionary resentencing can be compared to the Governor's clemency power to "commute" your sentence to time served. Both PC section 1170(d)(1) resentencing and commutations rely upon an executive's discretion to recommend someone for relief, at any time they choose.

When one of these four government agencies sends a referral letter to the trial court asking them to recall your sentence, that letter gives the judge the authority to resentence you. The trial court judge has broad discretion on how it will act upon an agency's recommendation to resentence you. The court could take months to schedule a hearing, the court could choose not to schedule a hearing, and the court could choose not to act upon a resentencing recommendation at the hearing if and when it is scheduled.

By law, CDCR, BPH, Sheriffs, and DAs are under no obligation to refer anyone. However, if someone is serving an "unlawful" sentence, there should be an appealable right to obtain a resentencing referral to get back into court. Because these PC section 1170(d)(1) referrals are new for many courts, some judges may believe they do not have to schedule resentencing hearings for the referral letters they are receiving. However, blanket denials of all resentencing referrals is an abuse of judicial discretion. And some of the "cohorts" that CDCR is using to recommend people for resentencing are based on case law which made some enhancements unlawful. That means that when a judge receives a PC section 1170(d)(1) resentencing referral letter for a "sentencing discrepancy" from CDCR or another agency, the judge should schedule a hearing to correct the unlawful sentence and resentence someone to a lawful (and shorter) sentence. SB 1393 made 5-year enhancements discretionary, so judges are not required to "correct" a sentence that has 5-year enhancements for prior serious felonies because these enhancements are not "unlawful," per se.

Is there a Petition for PC § 1170(d)(1) Resentencing?

Technically, no, a PC section 1170(d)(1) petition does not exist. PC section 1170(d)(1) creates the right for a trial court on its own motion to recall a sentence and resentence **within 120 days after sentencing**. Some attorneys and people filing their own requests succeed using formal "motions to reconsider" or less formal letters to ask judges to exercise this discretion to schedule a resentencing hearing.

In the **Resource List** you can request a “**Notice of Request To Recall Sentence (Penal Code § 1170(D))**”, which is an example of a template created by an incarcerated person who made such a request within 120 days of being sentenced. Please note that this is not an official form and is not the same as a “petition.” The California Judicial Council publishes court forms, and there is not an official form for PC section 1170(d)(1) resentencing requests.

The reasons that a trial court may be motivated to resentence someone who has just been sentenced could include:

- New information not known to the trial court at the time of sentencing,
- Failure to properly calculate credits resulting in a sentencing error, and
- Recent policy reforms or case law that render the sentence in whole or in part either unlawful or unnecessary (see SB 1393 which made 5-year enhancements unnecessary).

After 120 days of your sentencing hearing, the court cannot schedule a PC section 1170(d)(1) resentencing proceeding unless they receive a referral from CDCR, BPH, the Sheriff, or the DA. That means that without one of these agencies’ involvement, there is currently nothing that you or your attorney can file with the court or send to the judge after 120 days to initiate resentencing on your own. *NOTE: PC § 1170(d)(1) resentencing is not the same as § 1170.18 (Realignment) or § 1170.95 (Felony Murder) resentencing, where an individual or attorney can petition the court directly.*

Do I need a lawyer to request PC § 1170(d)(1) Resentencing?

No. You do not need a lawyer to request a resentencing referral. Because this is a newly utilized area of the law with an unclear process, some lawyers may be offering assistance with “filing petitions” for PC section 1170(d)(1) resentencing with District Attorneys or CDCR in exchange for legal fees. However, there is no way to legally “petition” to get resentenced. Even if you are within 120 days after your sentencing hearing, you can only informally “request” that the court exercise its discretion to recall your sentence and resentence you.

You can use the available free resources to self-advocate, gather documentation of rehabilitation, and follow model template letters and model administrative forms to request consideration from various authorities.

You and your support network can appeal to CDCR, the Sheriff, and the District Attorney without paying an attorney. You should exercise caution when approaching a District Attorney’s office to request a resentencing referral. Anything you say or communicate could be used against you later on by the DA in an attempt to show inconsistency or attack your readiness for parole in future hearings. Please carefully read the information in this Toolkit and consider reaching out to the Sentence Review Project to assist you with requests to DAs.

If you are already working with an attorney on appeals, habeas petitions, or preparation for the parole board, discuss PC section 1170(d)(1) resentencing with your lawyer or reach out to the public defender’s office to see if any self-advocacy strategies would interfere or work against other aspects of your case. It can be wise to pursue many different paths to release at one time, so there should be a way to use the information in this Toolkit for your case even if you are also pursuing other forms of resentencing or release.

If you are referred for resentencing and the trial court decides to set a hearing, the judge will appoint either the Public Defender or an attorney from a pro bono bar panel to represent you in court proceedings at no cost to you.

What are the eligibility criteria for PC § 1170(d)(1) Resentencing referrals?

According to the California law in PC section 1170(d)(1), **anyone can be referred for resentencing** except for people who have a death sentence. Each agency that is authorized to make these discretionary resentencing referrals will come up with their own policies and criteria for whom they decide will be “eligible.”

CDCR’s Eligibility Criteria for PC § 1170(d)(1) Resentencing Referrals

For example, CDCR has created the Recall and Resentencing Referral Program (“RRRP”) in 2018 to make these PC section 1170(d)(1) referrals. CDCR’s pilot program began in June 2018, with a set of temporary criteria. However, these temporary criteria are not always followed and are not consistently shared with correctional staff. As of October 2019, CDCR has not yet published new draft Title 15 administrative regulations regarding the criteria they plan to use for the RRRP moving forward.

The criteria CDCR used in the PC section 1170(d)(1) pilot tended to exclude people with:

- Life Without Parole (LWOP) sentences
- 290 (sex offense) registration requirements
- Parole Eligibility Date (PED) or Earliest Parole Release Date (ERPD) within 18 months
- Serious rule violation reports (RVR’s) in the past five years
- SHU (solitary) term within the last five years

and favor people with:

- Positive programming, or engaged involvement in programs
- Enrollment in Alcoholics Anonymous, Narcotics Anonymous, and/or Criminals & Gang Members Anonymous (as relevant to convictions and “risk factors”)
- Facilitation or leadership roles in classes or groups
- Educational, California Prison Industrial Authority (CALPIA), vocational, or work review training
- Employment preparation, evidenced by work placement chronos, certificates, and skills
- Laudatory (positive) chronos from program staff and correctional staff
- At least 10 years served and/or at least 50% of sentence served
- Enhancements or case features that fit into one of the 11 current “cohorts” that CDCR uses for its referrals.

There are older Title 15 regulations that outline some of CDCR’s process for PC section 1170(d)(1) referrals, but the current regulations do not outline any mandatory criteria. See Cal. Code of Regulations, Title 15, Chapter 1, sections 3076 et seq. **CDCR is expected to draft new regulations and engage in a Draft Rulemaking process with a Public Comment period by the end of 2019.**

We expect these new regulations to include more information about the process and the criteria being used for PC section 1170(d)(1) referrals, including which groups of people are being looked at for potential referrals, how referrals are being made, and how people can request a review.

DAs' Eligibility Criteria for PC § 1170(d)(1) Resentencing Referrals

AB 2942 (Ting - Criminal procedure: recall of sentencing) passed in 2018, adding District Attorneys to the agencies who can refer someone back to court for resentencing.

As of October 2019, District Attorney's offices have not formalized the criteria they plan to use for resentencing referrals. Each county may look to different factors and trends within their jurisdiction to develop eligibility criteria and policies.

Here's what For The People's Sentence Review Project, co-sponsor of AB 2942, has to say:

"Eligibility will depend on the policies established by each District Attorney office. The law allows prosecuting agencies to set their own criteria and determine the types of cases they will review. The Sentence Review Project is working with District Attorney offices to establish policies and procedures for reviewing and recommending cases.

There are no exclusions in AB 2942. A prosecuting agency can recommend a recall of sentence involving any type of offense, any type of sentence, and there are no requirements of time served. People serving a sentence outside of California are eligible, so long as they were prosecuted under California law and sentenced by a California court."

Who is currently being recommended for PC § 1170(d)(1) Resentencing?

Each agency that is empowered by PC section 1170(d)(1) to make referrals will come up with their own ideas and policies for who they want to recommend for resentencing. This could be based upon the people in leadership, their constituents and political leanings, the agency's missions and goals, and the public feedback and pressure the agency receives. Eligibility will also depend upon what trial court judges are doing with these recommendations, and what case and post-conviction factors become legally relevant in these resentencing hearings over time.

PC section 1170(d)(1) states that resentencing judges may consider such factors as:

- a person's reduced risk of future violence
- the "interests of justice"
- "changed circumstances," in both the person's life and in society more generally, showing "continued incarceration is no longer in the interest of justice"

Who is CDCR recommending for PC § 1170(d)(1) Resentencing?

As of September 2019, CDCR uses 11 "cohorts" (or groups of people with specific sentence enhancements or other criteria in common) to determine who to review and refer for resentencing.

These cohorts are subject to change, and CDCR officials in Sacramento have asked for people's help on the inside and outside to notify them of recent policy reforms and case law that could be developed into new cohorts. For example, SB 136 (Wiener) signed into law on October 8, 2019, eliminated the mandatory 1-year enhancement for prior felonies that resulted in a prison or jail term. SB 136 could be a new "cohort" of people with 1-year enhancements that CDCR uses for resentencing referrals. Unfortunately, the bill is not a full repeal of the enhancement, it was amended to maintain the enhancement for each prior conviction of a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code.

Here are the 11 current “cohorts” that CDCR employs to identify people for referrals:

Rewarding In-Custody Behavior Cohorts

- **Exceptional Conduct**

Someone with an in-custody history of rehabilitation.

Typical language in referral letter: “NAME has programmed exceptionally well during her/his incarceration and should be commended for her/his behavior and work ethic. NAME has taken full advantage of the opportunities provided to her/him in order to prepare for a successful transition back to society.”

Laudatory chronos and programming are especially helpful for this cohort, along with limited disciplinary actions on record.

- **Law Enforcement Referrals**

People who assist in other criminal cases by giving testimony.

These cases are different than people who have been referred by District Attorneys for resentencing. DAs previously made resentencing recommendations to CDCR before AB 2942 passed.

Retroactive Changes in the Law Cohorts

Despite its name, CDCR is using this “Retroactive Changes in Law” cohorts to recommend people via recent policy reforms and amendments to sentencing laws that are not technically “retroactive.”

- **Gun Enhancements** made discretionary by **Senate Bill 620 (Bradford)**, amending Penal Code sections 12022.5, 12022.53, 1385, effective date: January 1, 2018; not retroactive.

Judges now have the discretion to strike or dismiss an enhancement for the use of a firearm during the commission of a felony if doing so is in the “interests of justice.” CDCR is starting with cases where the firearm was not discharged.

- **5-Year Prior Serious Felony Enhancements** made discretionary by **Senate Bill 1393 (Mitchell)**, amending PC sections 667(a), 1385(b), effective date: January 1, 2019; not retroactive.

Judges now have the direction to dismiss 5-year enhancements for prior serious felonies resulting in prison terms if doing so is in the “interests of justice.”

Sentencing Discrepancy Cohorts

CDCR is using the “Sentencing Discrepancy” cohorts to recommend people whose sentences are now unlawful due to recent court decisions which invalidated certain combinations of enhancements or other sentencing methods.

- **Great Bodily Injury Enhancements** via *People v. Cook* (2015) 60 Cal. 4th 922

According to PC section 12022.7 (g), enhancements for “infliction of great bodily injury” (§ 12022.7(a-e)) cannot be applied to charges of murder, manslaughter, arson, or reckless burning. Also, enhancements from PC section 12022.7(a-d) cannot be applied to charges where “infliction of great bodily injury” is an element of the crime.

- **Great Bodily Injury Enhancements** via *People v. Gonzalez* (2009) 178 Cal. App. 4th 1325, 1332

The Court cannot impose multiple enhancements for “infliction of great bodily injury” if they come from the same offense. They can only impose the longer of the two enhancements. In this case, the Court can’t impose both a “great bodily injury” enhancement (§ 12022.7(a)) and a 10-year gang enhancement (§ 186.22(b)(1)(C)) because both come from inflicting great bodily injury on the same victim during a single offense.

- **Gun Enhancements** via *People v. Le* (2015) 61 Cal. 4th 416, 429

The Court cannot apply both a firearm enhancement (§ 12022.5(a)(1)) and a serious felony gang enhancement (§ 186.22(b)(1)(B)) when the offense is a serious felony if the sole reason the judge is applying the enhancement is because the offense involves firearm use.

- **Gun Enhancements** via *People v. Rodriguez* (2009) 47 Cal. App. 4th 501, 504-505, 509

The Court cannot impose both a firearm enhancement (§ 12022.5(a)) and a gang violent felony enhancement (§ 186.22(b)(1)(C)) if they both are based on the use of a firearm during a single offense. Only the greater of the two enhancements can be imposed (§ 1170.1(g)). This happened due to a set of “chain reaction”-like circumstances, in which one enhancement affected another enhancement, that the court has now banned. Previously, the firearm enhancement made the crime violent, which thus allowed the Court to also impose the gang enhancement for violent felonies. Because of this case, the Court cannot apply both of these enhancements.

- **Alternative Sentences for Gang-Motivated Witness Dissuasion** via *People v. Lopez* (2012) 208 Cal. App. 4th 1049

Seven years-to-life alternative sentences that result from attempts to dissuade witnesses (§ 136.1) that are motivated by gang activity (§ 186.22(b)(4)(G)) can only be applied if the defendant is convicted under felony dissuasion of a witness by use of explicit force or implicit threat of force (§ 136.1(c)(1)).

- **Child Pornography Possession Charges** via *People v. Manfredi* (2008) 169 Cal. App. 4th 622

For child pornography convictions (§ 311.11(a)), multiple child pornography materials at the same location can only be used to charge for a single possession for child pornography even if the materials are stored in separate physical media.

- **Consecutive In-Prison Felony Terms** via *People v. McCart* (1982) 32 Cal. 3rd 338

Penal Code section 1170.1(c) (formerly § 1170.1(b)) requires the calculation of a single term of imprisonment for all convictions of felonies committed in prison and sentenced consecutively. Subordinate terms for consecutive felony offenses consist of one-third of the middle base term.

Who are District Attorneys recommending for PC § 1170(d)(1) Resentencing?

The first case of a District Attorney using their new PC section 1170(d)(1) resentencing power came out of San Diego County in August 2019. There, prosecutors wrote a letter to the trial court recommending a 57-year old man who was sentenced in 2003 to 50-years-to-life under the Three Strikes Law for burglary and car theft. The San Diego DA cited the man's nonviolent criminal record and his work overcoming drug addiction in support of the resentencing referral. Kent Williams was released after serving 16 years.

There is a pilot program in Santa Clara County, out of a partnership between the Sentence Review Project and the Santa Clara District Attorney's office. This pilot is starting with a limited group of people who were charged with residential burglary and uses strict criteria that focus on nonviolence before and after incarceration. People will be contacted directly by these organizations if they are under review for a referral.

San Joaquin District Attorney's Office has set up a Post-Conviction Sentence Review Unit (see contact information below) and other counties are considering or in the process of setting up similar units to exercise their new resentencing referral powers.

What is the process for receiving a PC § 1170(d)(1) Resentencing referral?

At this time, of the four agencies that are authorized to make PC section 1170(d)(1) referrals, only CDCR has an established internal process.

CDCR Referrals

CDCR's 1170(d)(1) referral process is guided by Title 15 (CDCR's agency regulations). However, new draft regulations are expected by the end of 2019 to revise the process and criteria.

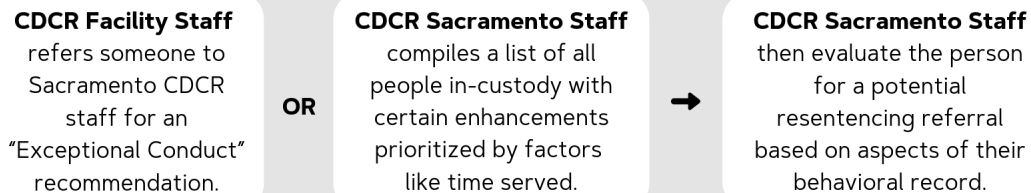
Per Title 15, CDCR completes its roughly 30-60 day review of a person and obtains the Secretary's approval prior to recommending someone for resentencing. CDCR then sends a referral letter to the trial court addressed to the original sentencing judge if they are still on the bench, or the presiding (head) judge if they are not. The letter is also sent to the District Attorney and Public Defender offices in that county. The incarcerated person should also receive a copy of the letter sent.

Some referrals start at the facility-level when correctional staff refer a person's name and CDC# via email to a contact in Sacramento (CDCR-DAI-1170-D-Recall-of-Sentence@cdcr.ca.gov). Some referrals start in Sacramento, but involve facility staff during the review process. People are often interviewed by staff and investigated by the Investigations Services Unit prior to a letter being drafted and sent to the CDCR Secretary for approval.

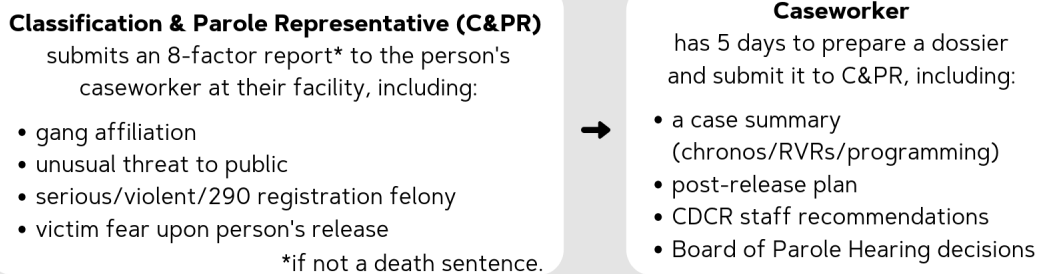
On the following page is a flowchart of CDCR's current process for PC section 1170(d)(1) referrals as outlined in Title 15. The flow chart does not include information found in CDCR memos and other communications regarding process, criteria, and self-advocacy channels that have been inconsistently applied since the pilot program began in June 2018.

Initiating a PC § 1170(d)(1) Resentencing Referral

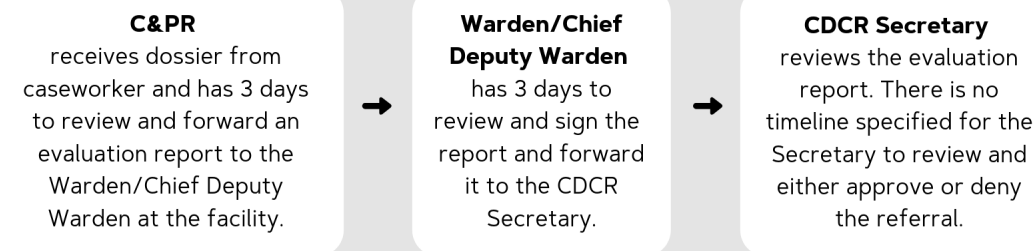
CDCR's Internal Process



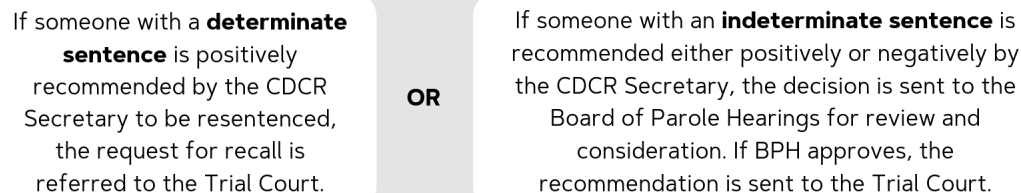
CDCR Evaluation Level 1



CDCR Evaluation Level 2



CDCR Evaluation Level 3



† The process above is based on Title 15 as of September 2019. CDCR is expected to publish new Draft Regulations soon that may change both the PC § 1170(d)(1) process and criteria.

Here's a sample list of documents that CDCR generally will send in with a recommendation letter to the trial court, regardless of which cohort the person is being referred within:

- Abstract of Judgment
- Minute Order (an order from a judge that is made orally/recorded in the minutes taken by the court reporter)
- Court Information-Charging Documents (or "Information/Complaint")
- Cumulative Case History
- Other documents that may also be sent to the court with a referral letter are:
 - Frequently Asked Questions (Information about PC § 1170(d)(1) Referral Program)
 - DAPO Pre-Release services
 - RAC Attendance Summary
 - Inmate Assignment history
 - Rules Violation Report(s)

How do I request a review for resentencing from one of the four agencies authorized to make these referrals?

Requesting Review from CDCR

CDCR's official policy per the Departmental Operations Manual (DOM) is that it does not accept referrals from incarcerated people, lawyers, or their families, so if you send a request you could get a routine response stating that. However, a number of people have been successful at alerting their counselors and CDCR staff in Sacramento that they are eligible under a specific "cohort" (a group of people with similar enhancements or case factors). CDCR staff in Sacramento is compiling lists of names and requesting assistance in identifying all potentially eligible people. Each person's experience may differ. Some facility and Sacramento staff will take self-referrals from people who are currently incarcerated, some will take referrals from attorneys and/or loved ones, and some will not.

Here are some ideas for how to approach CDCR to request review for a resentencing referral:

(1) Find a trusted staff person to refer you to the CDCR Secretary to be reviewed for a resentencing referral on the basis of your "exceptional conduct."

You can ask a program or correctional staff person to send a referral for you for the "exceptional conduct" resentencing cohort. Potential referrers include work supervisors, teachers, religious leaders, or block sergeants. The person referring you should use their CDCR email to send your name and CDC# to CDCR-DAI-1170-D-Recall-of-Sentence@cdcr.ca.gov. They can include a 1-2 page letter explaining why they are recommending you for resentencing and release.

The CDCR Recall and Resentence Recommendation Program (RRRP) only accepts and reviews exceptional conduct referrals from institutional staff via institutional email addresses. The CDCR RRRP does not accept self-referrals or referrals for exceptional conduct from family members of people in prison, their friends, or attorneys at this time.

Here are some tips for securing a staff referral from someone working at a CDCR facility:

- Participate in groups/programs where the staff and the program have a good reputation (or start your own program if one is not available).
- Provide the staff member with some documents that show your strength as a resentencing referral candidate. This can include laudatory chronos and program certificates, a list of your program and work history, your post-release plans, support letters, and even a template/example letter of what they could write about you.
- It may be helpful to involve your counselor in this process and inform them of the staff referring you, but it is not required.
- Ask multiple people in case someone does not want to recommend you.

See the following resource in the **Appendix**: “Template Letter - CDCR Staff Referral for PC § 1170(d)(1) Exceptional Conduct Resentencing”.

(2) Notify CDCR Staff in Sacramento that you are eligible for a resentencing cohort.

Some staff in the Office of Legal Affairs have requested assistance in compiling lists of all of the potentially eligible people for resentencing referrals. You or your support network can draft a letter to send to Sacramento to mention your eligibility for an existing cohort and to make a persuasive case why you are a good candidate for a referral back to court.

See the following resource in the **Appendix**: “Template Letter - Requesting PC § 1170(d)(1) Review from CDCR (Policy Reforms).” You can also request the “Template Letter - Requesting PC § 1170(d)(1) Review from CDCR (Case Law)” from the **Resource List**.

The Office of Legal Affairs has also requested assistance from lawyers and community organizations in planning new “cohorts” on the basis of recent case law, policy reforms, and other factors that could impact a large number of people.

(3) Submit a Form 602 Administrative Appeal to your counselor.

If it feels safe to do so, you can submit a Form 602 administrative appeal to your Counselor, notifying them that you are eligible for resentencing. Please be cautious if you fear retaliation or other staff misconduct or negative treatment.

Officially, 602 appeals are not being heard for “Exceptional Conduct” referrals, although we have heard of a few instances of people successfully using the 602 process to be deemed eligible for resentencing based on exceptional conduct.

How CDCR responds to your Form 602 Appeal may depend on your eligibility criteria:

For people appealing under the **Retroactive Changes in Law** (e.g. SB 1393) and the **In-Custody Behavior/Exceptional Conduct Cohort**, CDCR may deny your appeal because they do not have to consider and grant resentencing recommendation requests for these discretionary cohorts.

For people who received a sentence that is now unlawful (the **Sentencing Discrepancy Cohort**), resentencing should be mandatory, and there is a clear right to appeal for resentencing relief through the administrative appeals process (602 form).

If CDCR does any of the following in response to your Form 602, you can appeal:

- If CDCR says they have a policy of denying every request.
 - You can appeal and argue that a “blanket denial” is an “abuse of discretion”
- If CDCR delays and does not respond to your request.
- If you face discrimination or unlawful conduct while attempting your request.

Filing an appeal for any non-response or denial preserves the topic in the record in case you need to argue it again in court later.

For more information about filling out administrative appeals forms, you can refer to the Prison Law Office’s (PLO) Guide to Administrative Appeals, which should be made available in your prison law library. PLO’s contact information and the **Blank 602 Administrative Appeals Form** which should be made available at CDCR facilities is listed in the **Resource List**.

Requesting Review from the District Attorney in Your County of Conviction

Approaching the District Attorney’s office is something to do with caution because any statements you or your support network make in self-advocacy or communications could be used against you by the District Attorney’s office to try to establish inconsistencies. These alleged inconsistencies could be used to undermine your reliability and readiness for parole in future parole hearings or hurt your case in other ongoing proceedings (such as an SB 1437 (Felony Murder) resentencing petition).

You can use the advice in this Toolkit to think about what information to highlight and how to frame the case in order to minimize risks if you decide to reach out to the DA. If your criminal case is still on appeal and you are represented by an attorney, the California Rules of Professional Conduct prohibit the District Attorney from communicating directly with you.

Here is what For The People’s Sentence Review Project advises:

“It is not recommended that you or your support network write to your District Attorney about your case. In an effort to explain why you believe your case warrants review, you may accidentally make a statement that could be viewed as inconsistent with your readiness for release. Even if you feel confident in your statements, anything written to the District Attorney can be raised at future parole hearings and possibly used against you. The Sentence Review Project is developing a template that you can use. This template will be made available once offices begin accepting requests. If you do contact your District Attorney, you should **limit the information you provide to questions contained in the attached intake form** from the Sentence Review Project.”

Here is the limited scope of information that Sentence Review Project recommends providing to a District Attorney on their Intake Form:

- Name, Age, CDC#, Facility
- List of all convictions, including priors, and county(/ies) of conviction
- Age at the time of conviction and original sentence (list all enhancements)
- # of years already served
- Parole Status (parole eligibility date and/or upcoming hearing date)
- List of all programming (certificates, degrees, classes, groups, etc.) and leadership roles

- Letters of recommendation and support (chronos, job & housing offers, family, friends)
- List of any serious Rules Violation Reports in last 5 years
- # of children and/or grandchildren
- Description of your support network and re-entry plan (housing, employment, family, relationships, etc.)

Here are some ideas for how to request resentencing from a District Attorney:

(1) You can contact the Public Defender's Office

You can write to your Public Defender's office if they represented you in your case to request assistance with obtaining a resentencing referral from the District Attorney. You can share with the Public Defender the type of PC section 1170(d)(1) resentencing you believe you are eligible for, and describe aspects of your sentence, your life, your time while incarcerated, and your role in your family and support network that could be helpful to make the case to the DA that you should receive a resentencing referral. If you were represented by a court-appointed attorney outside of the public defender's office, or a private attorney, you can also contact them about advising or assisting you with advocating with the District Attorney.

(2) You can directly contact the District Attorney's Office

You can directly contact the District Attorney of the county of your conviction. With the recent passage of AB 2942, District Attorney offices are still coming on board to use their new PC section 1170(d)(1) resentencing powers and may be receptive to strong arguments about why your case should be one of the first cases they consider for a referral in their county. Some counties may be setting up a review process through their conviction integrity units or a new resentencing referrals unit. Your support network can call or search online to see if the District Attorney has developed a process and criteria for PC § 1170(d)(1) resentencing, and if there is a specific webpage or mailing address for requesting review.

As of October 2019, we only know of one district attorney's office that has established an open process for people to request a review for resentencing referral. The San Joaquin County District Attorney is reviewing cases on a rolling basis. You can have someone from your support network print the AB 2942 intake form at <https://www.sjgov.org/da/pcru> or contact Conviction.Integrity@sjcda.org with questions. You can also write to San Joaquin County DA, ATTN: Post-Conviction Sentence Review Unit, 222 E Weber Ave # 202, PO Box 990, Stockton, CA 95202.

As mentioned above, the first person released under AB 2942 came out of San Diego County in August 2019. The DA referral was for a 57-year old man who was sentenced in 2003 to 50-years-to-life under the Three Strikes Law for burglary and car theft. At the request of the person's family, the clergy approached the DA with the Sentence Review Project to ask the DA to consider making a referral.

(3) You can request a review or assistance from Sentence Review Project (SRP)

For The People's The Sentence Review Project has said they will support some requests for District Attorneys to recommend a lesser sentence. As of September 2019, SRP is reviewing cases via mail and an online intake form. SRP is prioritizing people with excessive sentences who have already served 10 years in prison with in-custody records of rehabilitation and nonviolence. They are currently excluding most violent felonies, such as homicides and sex offenses. The Intake Form for the Sentence Review Project can be accessed and filled out by your family here: <https://www.sentencereview.org/for-people-currently-incarcerated>. Their mailing address is 1904 Franklin St, Suite 205, Oakland CA, 94612 and their email is info@sentencereview.org. In terms of response time, be advised they are a small organization receiving mail from across the state.

Requesting Review from the Board of Parole Hearings

The Board of Parole Hearings is also empowered to make these resentencing referrals, but as of mid-2019, BPH's position is that it defers to CDCR to select people for PC section 1170(d)(1) resentencing review. Title 15 outlines that the Board of Parole Hearings is involved in CDCR's PC section 1170(d)(1) referral process to the extent that BPH provides a final level of approval for people with indeterminate sentences (that is, sentences that require parole review, such as a 15-to-life sentence) whom CDCR would like to refer back to court.

Given the record number of parole hearings that BPH is holding for the Prop 57 and Youth Offender groups, BPH could choose to begin to exercise their independent power to recommend people for resentencing. However, we aren't aware of any referrals or attempts by BPH to use their PC section 1170(d)(1) authority as of October 2019.

Requesting Review from the County Correctional Administrator (likely the Sheriff's Office)

The Sheriff can also recommend people for PC section 1170(d)(1) resentencing who are serving their sentences in jails. Sheriffs may be motivated or encouraged to write these letters to reduce overcrowding in local jails in the aftermath of California's Realignment for Nonviolent Offenders (Proposition 47). Some people have been sending letters to the Sheriff in their county informing them of recent reforms (such as SB 180) to request a recommendation for resentencing.

As of October 2019, we don't know how various county Sheriffs are handling the resentencing referral process or what criteria they could be using. The Ella Baker Center for Human Rights has supported several dozens of individuals in this process by providing template letters, feedback, and support. We have either not heard back from Sheriffs' offices or received notices of denial from those offices. To the best of our knowledge, there has not been a systematic review of how or whether Sheriff offices are exercising their PC section 1170(d)(1) powers to refer people in county custody back to court for resentencing.

What will happen at the PC § 1170(d)(1) Recall of Sentence and Resentencing hearings?

Upon receiving a letter from CDCR or a District Attorney's office recommending someone for resentencing, the court will decide whether or not to schedule a hearing to decide the matter on the record. If the court decides to schedule a hearing, the court administrator will assign the case to a department, generally to the Presiding Judge if the original sentencing judge is no longer on the bench. A public defender or court-appointed attorney will be assigned to the case at no cost to you. A hearing will be set, typically with the matter titled something like "Further Proceedings" or "1170(D) PC PETN REVIEW," depending on the county.

We assume the court would follow the same procedure if they receive a letter from a Sheriff's Office or the Board of Parole Hearings. However, as of October 2019, we have not heard of any Sheriff or the BPH sending resentencing referrals to courts.

First Hearing: Recall of Sentence

At the first hearing, the judge will typically decide whether or not to "recall" your sentence. This is the first step in the PC section 1170(d)(1) resentencing process, as a sentence must first be recalled in order for the judge to sentence "anew." There have been a handful of cases where the "recall" and the "resentencing" take place in the same hearing, but this is rare. We have seen

in some counties that judges will “continue” or postpone hearings for weeks or months to have more time to understand the new law if they are not familiar with this area of resentencing. Since CDCR only began writing these resentencing referral letters in June 2018, many judges are still unaware of the process or their discretion under the law.

If the judge decides to recall the sentence, the court will then set a “resentencing” hearing and may ask both attorneys (the public defender/court-appointed attorney/private lawyer representing you, and the district attorney) to “brief” or put together arguments and research on certain issues for that next hearing. This could include various post-conviction factors in your case that the court will use in the “interests of justice” standard to decide whether and how to resentence you, such as:

- your “record of rehabilitation”
- your “risk to public safety upon release”
- your “post-release plans” including job and housing placement offers

Second Hearing: Resentencing

At the resentencing hearing, the court will sentence you “anew” which will involve a series of legal considerations, such as:

- “whether to impose one of the three authorized terms of imprisonment referred to in section 1170(b), or any enhancement and state on the record the reasons for imposing that term”
- whether to strike “any additional term of imprisonment provided for an enhancement charged and found”
- whether “the sentences will be consecutive or concurrent if the defendant has been convicted of multiple crimes”
- to “determine any issues raised by statutory prohibitions on the dual use of facts and statutory limitations on enhancements, as required in rules 4.420(c) and 4.447”
- to “pronounce the court’s judgment and sentence, stating the terms thereof and giving reasons for those matters for which reasons are required by law”

(See Santa Clara District Attorney’s Inquisitive Prosecutor’s Guide, No. 39, New Resentencing Provisions of PC § 1170(d)(1) (October 31, 2018), page 6, citing California Rules of Court, Rule 4.433(c); see also Penal Code §§ 1170(b) and 1170.1.)

In determining whether resentencing you is in the “interests of justice,” the court will look at post-conviction factors including but not limited to those outlined in PC section 1170(d)(1):

- “the inmate’s disciplinary record and record of rehabilitation while incarcerated”
- “evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the inmate’s risk for future violence”
- “evidence that reflects that circumstances have changed since the inmate’s original sentencing so that . . . continued incarceration is no longer in the interest of justice”

If the judge decides to resentence you, the judge must award credit for time served and cannot give you a new sentence that is longer than your original sentence. You may be asked to waive some of your credits so the court can place you on a period of post-release supervision with Parole or Probation, although some people have been released without a supervision period.

Will I be represented by an attorney for my Recall and Resentencing?

If you discover that you have been referred for resentencing, we recommend making contact with the court or the Public Defender in your county of conviction to make sure they are aware of your case and are preparing for your hearing. While a public defender may be assigned to your case, there is also the chance that they were not informed by CDCR or the courts about your resentencing referral, and they may not contact you prior to your first hearing. In a number of smaller counties in California, there is no Public Defender's office, and the court will appoint an attorney from a law firm contracted by the county to provide legal defense services or a pro bono bar panel. You can contact the court to figure out when your hearing is scheduled and who has been assigned to represent you.

Your attorney will likely file a **removal order** (also known as a **transport order**) with the trial court after a hearing is set to order CDCR to transport you to county custody. It is typical for there to be continuances, delays, and multiple resentencing hearings. You and your attorney should prepare for possible delays with processing you into county custody ahead of your hearing. For example, in Los Angeles County, you will need to arrive in county custody at least 4 days in advance of your hearing to clear all reception and medical screenings before you can be taken to court from the jail. It may be strategic for your attorney to prepare a removal order that takes into consideration any medical accommodations you will need while being transported to county for the hearing (for example, you have the right to travel with your prescriptions). If the jail cannot accommodate your medical needs or doesn't allow you to have your prescriptions or necessary accommodations, the removal order can request your return to CDCR custody after each hearing, arguing that your prolonged stay in county custody is detrimental to your health.

If I am resentenced, will I be released directly from the court?

These resentencing hearings are decided on a case-by-case basis. You should be prepared for a number of scenarios that may occur when you are resentenced.

- One possibility is that the judge issues an order resentencing you and ordering your release directly from court. This would involve your attorney being in contact with CDCR prior to the resentencing hearing to calculate your credits and to arrange post-release supervision services. The court will also have to immediately send to CDCR Case Records the court's resentencing minute order to allow CDCR to release you from their custody same-day.
- Another scenario is that the judge resentsences you to a new determinate sentence with time served and you are transferred back to CDCR custody for release and processing out through R&R (Receiving and Release).
- If you are resentenced to time served, the judge may decide to apply any time you already served in excess of the new sentence to your parole supervision period, and you may be released without any supervision or parole conditions. The judge can also condition your release on waiving some credits to allow for a period of parole supervision.
- Another scenario is that the judge resentsences you to a new indeterminate sentence with an immediate parole eligibility date and you are transferred back to CDCR custody to await a parole hearing.
- Another scenario is that the judge reduces your sentence by some amount of time that doesn't require immediate release, and you are returned to CDCR custody with your parole date and/or release date moved up.

Will I go Out to Court (“OTC”) for resentencing and be transferred back to County Jail?

It is typical that people are brought back to court for post-conviction hearings or “further proceedings” hearings like these. Given the potential drawbacks of going out to the court, it is your right to decide whether or not to waive your court appearance and to stay at the prison while your attorney argues your case in court.

There are various considerations for you to discuss with your support network and lawyer about whether or not you will appear in court for resentencing, which include:

- **Your appearance in court and testimony during your resentencing hearing(s) could make all the difference to a judge when they are deciding whether or not to resentence you.** Appearing in court gives you the opportunity to give testimony on your behalf, it gives the judge the opportunity to hear from you about who you are as a person, your journey, your rehabilitation efforts, and your preparedness for release. Putting a name to a face can make the resentencing decision all the more “real” for the court. It is also a chance for your friends and family to show the court that you have people standing beside you and a support network for your reentry.
- Resentencing is held in the original courtroom in which you were sentenced, and will likely be heard by the same judge who originally sentenced you if they are still on the bench. It can be emotionally difficult to go back to the trial courtroom in the county of your conviction, particularly if your last experience was original sentencing.
- You can request to have witnesses testify. The victim(s) or their family may also testify.
- Although some cases have been resolved in just one hearing, the recall and resentencing process usually takes at least two court dates, and there can be months of delays.
- You may be able to request that CDCR maintains custody of you and transports you to court for each hearing if you can make a sufficient showing that your health would be endangered by transfer to county custody. This is typically a showing of medical necessity, for example the medical unit, if one exists, at the jail is not equipped to accommodate your medical needs, putting you at risk of severe health consequences.
- You will likely be forced to ship out your personal property and lose your prison cell bunk. You will likely lose your spot in programs and your work assignment. If your recall is denied, or you are resentenced to a shorter sentence but not to time served, you may be sent back without the property you had before.
- You will spend time in county jail with unfamiliar people and will likely be housed in a dorm-like setting with no or limited access to programs and medical accommodations. You could also be housed in solitary depending upon your classification, the facility’s own policies, and the discretion of the correctional staff.
- You will temporarily lose your access to contact visits and “family visits” and you may have different phone call schedules and privileges. Phone calls are significantly more expensive in jails than in prison. At the same time, you may be geographically closer to family and friends while in county custody which could increase your face-to-face time via non-contact, and a number of jails have “video visits” that can be done remotely.

What can I do to prepare for Recall and Resentencing?

You and your support network can do a number of things to prepare for you to both receive a resentencing referral and to be resentenced. Fortunately, all the steps you can take to prepare for a PC section 1170(d)(1) referral will also strengthen your preparedness for other forms of post-conviction relief and release, including:

- Applying or Reapplying for a Commutation from Governor Gavin Newsom
- Preparing for SB 1437 Felony Murder Resentencing
- Preparing for Parole Hearings
- Preparing for Filing a Writ of Habeas Corpus

These steps in preparation for resentencing can include:

- **Keeping and verifying records of your programming, volunteering, certificates, correspondence courses, and other positive evidence of rehabilitation.**
 - It is challenging to store all of your documents given personal property limitations and safety concerns. However, it will be helpful to have the evidence of your rehabilitation ready for review with your attorney, for advocating with various staff and agencies who can refer you for resentencing, and as potential exhibits for the judge to review if you are scheduled for a resentencing hearing.
 - Try to have your central file (C-file, aka SOMS and ERMS) as up-to-date as possible.
 - This is especially important for demonstrating “exceptional conduct” and providing evidence in support of the “interests of justice” standard used for striking 5-year enhancements for prior serious felonies.
 - Check to see if you have documentation in your file that proves your participation in any trainings, workshops, classes, volunteering opportunities, and other events that can be used to show rehabilitation and/or good behavior.
 - You can request an “Olsen Review” once a year, where you can go through a digital copy of your C-File on a terminal and request certain pages printed out at a cost per page.
 - If you are missing documentation, request that your counselor adds in chronos from your programming and participation in rehabilitation activities. If you need to, you can file a Form 602 administrative appeal.
 - Also, keep an eye out for anything in your C-file that was placed there by mistake and should be in someone else’s file instead.
- **Continuing programming, participating in classes and events that respond to your convictions and risk factors, contributing to volunteer opportunities, and taking on leadership roles.**
- **Preparing to show the judge that you are ready for release.**
 - Prepare a Post-Release Plan or **Parole Plan**, listing your options for housing, jobs, transportation, and financial assistance in at least one California county.
 - Prepare a **Relapse Prevention Plan** for various past addictions or “criminal thinking” patterns, including drug and alcohol use, domestic violence, and gang activity. Your plan can identify your “target behaviors,” your triggers or warning signs, your coping skills,

and the support network you will turn to when you experience specific triggers to avoid relapsing.

- Prepare for a potential **Parole Hearing**. Prepare to talk about your insights into your past actions and the harm caused to either victim(s) or society. Prepare to discuss how you take accountability and don't minimize your past actions. Prepare to discuss your realistic plans for returning to society and not posing a risk to public safety.
- Gather letters of support from your family and network. The letters should contain specific language offering moral support, relapse prevention, financial assistance, job offers, housing placements, and other forms of support for getting you back on your feet upon release.
- **Preparing for your potential release from either court or CDCR custody.**
 - You and your support network can prepare for the various scenarios of when and where you will be released if you are resentenced to time served.
 - You can arrange with your support network to have transportation, a place to stay, and financial assistance available to you at the courthouse in case the judge orders CDCR and the county to immediately release you from custody at the Resentencing Hearing.

If the court decides not to schedule a hearing or the court decides at a hearing not to resentence me, can I appeal the decision?

There is a clear legal argument that judges should schedule a hearing upon receipt of a resentencing referral from law enforcement agencies who are tasked with determining someone's readiness for release.

There have been a number of cases referred via CDCR's pilot program where judges declined to act on a resentencing recommendation. To appeal these Recall and Resentencing denials, some lawyers have filed Motions to Reconsider. The standard of review to get a denial overturned is showing that the judge abused their discretion in either failing to schedule a recall hearing or declining to resentence the person that CDCR recommended. It may also be possible to file a Writ of Habeas Corpus challenging the judge's denial as a violation of your right to due process.

If I took a plea agreement, will it impact my resentencing?

The language of Penal Code section 1170(d)(1) clearly states that people who accepted plea bargains are eligible for resentencing relief:

"The court resentencing under this paragraph may reduce a defendant's term of imprisonment and modify the judgment, **including a judgment entered after a plea agreement**, if it is in the interest of justice."

However, we have seen a number of people referred back to court by CDCR and denied resentencing by judges solely because they took a plea agreement. The legal argument that is often cited by judges and district attorneys is that victims are entitled to the benefits of that bargain that was struck between the prosecutor and the person being sentenced and that this is part of the "interests of justice" analysis. However, the argument is very weak that judges lose their power to resentence under PC section 1170(d)(1) whenever the original sentence is the result of a plea agreement. There is a clear California Supreme Court case that speaks to this issue, **Harris v. Superior Court** (2016) 1 Cal.5th 984, which held that it is permissible and expected that new laws and reforms modify the terms of an existing plea agreement.

Harris Waivers

Some District Attorneys are adding a “Harris Waiver” in recent plea agreements. This waiver is in reference to a different “Harris” case decided three years earlier. In *Doe v. Harris* (2013) 57 Cal.4th 64, 74, the California Supreme Court held that “the terms of the plea agreement can be affected by changes in the law” and also mentioned it was not “impossible” for a plea agreement to include a condition that it would remain “fixed” regardless of future amendments to the law. *Id.* at 71. Here is an example of what these “Harris Waivers” look like:

“It is agreed that any direct or collateral consequences of this plea will remain fixed as of the date of the plea despite any future amendments to any relevant law, whether as a result of legislative change, judicial decision or otherwise. This agreement waives all future potential benefits of any legislative actions or judicial decisions or other changes in the law that may occur after the date of this plea, whether or not such future changes are specifically designed to provide pre- or post-conviction relief to any convicted defendants, and whether or not they are intended to be retroactive. This waiver expressly contemplates that the stipulated prison sentence of [# of years] shall remain fixed despite any future changes to legislation, judicial decisions, or otherwise.”

“Harris Waivers” attempt to waive resentencing rights that people should be legally entitled to. These waivers represent the danger of coercion (using force, threats, or undue pressure) in plea agreements, as many people are pressured into plea agreements by pretrial detention. These waivers also threaten the public interest if the intent of voters is being circumvented by legal fine print and evasive maneuvers.

AB 1618 (Jones-Sawyer) Plea bargaining: benefits of later enactments

New legislation has been signed into law by Governor Newsom on October 8, 2019, AB 1618 (Jones-Sawyer), that makes “Harris Waivers” void and unenforceable. The bill goes into effect on January 1, 2020. Here’s what AB 1618 says:

“This bill would make a provision of a plea bargain that requires a defendant to generally waive future benefits of legislative enactments, initiatives, appellate decisions, or other changes in the law that may retroactively apply after the date of the plea, void as against public policy.”

Penal Code section 1016.8 was added to read, in part:

“(a) . . . (1) The California Supreme Court held in *Doe v. Harris* (2013) 57 Cal.4th 64 that, as a general rule, plea agreements are deemed to incorporate the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy. That the parties enter into a plea agreement does not have the effect of insulating them from changes in the law that the Legislature has intended to apply to them. . . .

(4) A plea bargain that requires a defendant to generally waive unknown future benefits of legislative enactments, initiatives, appellate decisions, or other changes in the law that may occur after the date of the plea is not knowing and intelligent.

(b) A provision of a plea bargain that requires a defendant to generally waive future benefits of legislative enactments, initiatives, appellate decisions, or other changes in the law that may retroactively apply after the date of the plea is void as against public policy.”

Next Steps

You can share your experience with us.

We want to hear from you about what is working for you in terms of self-advocacy and requesting review for resentencing. If you have been referred for PC section 1170(d)(1) resentencing, you can share with us how your process has been going, request resources or information from us, and share what the outcome is at your hearings. We encourage you to send us your advice about aspects of this Toolkit that need changing or expanding.

You can pursue other post-conviction relief options while waiting to see if you will be recommended for Recall and Resentencing via PC § 1170(d)(1).

While you are advocating for yourself to be reviewed for a resentencing referral or awaiting a court date, you can work on other avenues to release. These can include:

- Apply for Commutation of Sentence from Governor Gavin Newsom
 - or “Re-Apply” with the new Reapplication Form if you already applied for a commutation from Governor Brown in the last 3 years and the Newsom administration will re-open your previous application.
- Prepare for a suitability hearing in front of the Board of Parole Hearings. Work with a parole attorney to pursue any options that may be available to you to appeal either a delay in scheduling or the terms of your most recent denial.
- File a Writ of Habeas Corpus based on court decisions that could be used to show your sentence or parole denials are unlawful or disproportionate.

You and your support network can get involved with the Ella Baker Center for Human Rights.

We work locally, statewide in California, and nationally to shift resources away from prisons and punishment and towards opportunities that make our communities safe, healthy, and strong. We believe that what you water grows. That’s why we mobilize everyday people to build power and prosperity in our communities. We win policies that reduce sentences, remove barriers, and restore opportunities. We advocate for legislation that abolishes abusive practices in prisons and jails, strengthens family connections, ends the economic burdens placed on people by mass incarceration, and reinvests in communities.

Please write to us to get on our mailing list and to stay informed of current campaigns and bills:

Ella Baker Center for Human Rights

1419 34th Ave., Suite 202

Oakland, CA 94601

www.ellabakercenter.org

info@ellabakercenter.org

Contacts List

CDCR Staff in Sacramento Working on PC § 1170(d)(1) Referrals

Eric Duesdieker, Staff Counsel, Office of Legal Affairs

California Department of Corrections and Rehabilitation
P. O. Box 942883, Sacramento, CA 94283
Eric.Duesdieker@cdcr.ca.gov

Role: contact for 1170(d)(1) Recall and Resentencing Referral Program (RRRP), head of the Retroactive Changes in Law (policy reforms) cohorts

Tara Rios, Correctional Case Records Administrator, Case Records Services

California Department of Corrections and Rehabilitation
P. O. Box 942883, Sacramento, CA 94283
Tara.Rios@cdcr.ca.gov

Role: contact for 1170(d)(1) RRRP, head of the Sentencing Discrepancies cohorts

Michael Masters, Captain, Classification Services Unit

California Department of Corrections and Rehabilitation
P. O. Box 942883, Sacramento, CA 94283
Mike.Masters@cdcr.ca.gov

Role: contact for 1170(d)(1) RRRP, head of the Exceptional Conduct cohort

Ralph Diaz, Secretary of Operations, Division of Adult Institutions

California Department of Corrections and Rehabilitation
P. O. Box 942883, Sacramento, CA 94283
Ralph.Diaz@cdcr.ca.gov

Role: final level of approval on all 1170(d)(1) RRRP letters before mailed to trial courts

Howard Moseley, Chief Deputy General, Office of the Secretary

California Department of Corrections and Rehabilitation
P.O.Box 942883, Sacramento, CA 94283
Howard.Moseley@cdcr.ca.gov

Board of Parole Hearings Contact Information

Board of Parole Hearings

Post Office Box 4036
Sacramento, CA 95812-4036
Phone: (916) 445-4072

Organization Assisting with “Exceptional Conduct” Resentencing

Stanford’s Three Strikes Project

Mills Legal Clinic at Stanford Law School
559 Nathan Abbott Way Stanford, California 94305-8610
Phone: (650) 736-7757 <https://law.stanford.edu/stanford-justice-advocacy-project/>

Michael Romano (mromano@stanford.edu); Susan Champion (schampion@law.stanford.edu); Milena Blake (milenab@stanford.edu)

Appellate Projects in California

First District Appellate Project - FDAP

475 14th Street, Suite 650, Oakland, CA 94612
(415) 495-3119 <http://www.fdap.org>

Serving First District Counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Solano, and Sonoma.

California Appellate Project Los Angeles - CAPLA

520 S. Grand Avenue, 4th Floor, Los Angeles, CA 90071
(213) 243-0300 <http://cap-la.org>

Serving Second District Counties: (Division 6) San Luis Obispo, Santa Barbara, and Ventura Counties; and (Divisions 1 - 5, 7 & 8) Los Angeles County.

Central California Appellate Program - CCAP

2150 River Plaza Dr., Suite 300, Sacramento, CA 95833
(916) 441-3792 <http://www.capcentral.org>

Serving Third District Counties: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yolo, and Yuba.

and Fifth District Counties: Fresno, Kern, Kings, Madera, Mariposa, Merced, Stanislaus, Tulare, and Tuolumne.

Appellate Defenders, Inc. - ADI

555 West Beech Street, Suite 300, San Diego, CA 92101
(619) 696-0282 <http://www.adi-sandiego.com>

Serving Fourth District Counties: (Division 1) San Diego and Imperial; (Division 2) Inyo, Riverside, San Bernardino; and (Division 3) Orange

Sixth District Appellate Program - SDAP

95 S. Market St., Suite 570, San Jose, CA 95113
(408) 241-6171 <http://www.sdap.org>

Serving Sixth District Counties: Monterey, San Benito, Santa Clara, and Santa Cruz.

Resource List

Please write to the Ella Baker Center, 1419 34th Ave., Suite 202, Oakland, CA 94601, or info@ellabakercenter.org to request any of the following documents:

Relevant Laws and Regulations

- TEXT of [Title 15 Regulations regarding PC § 1170\(d\)\(1\) \(sections 3076 et seq.\)](#)
- TEXT of [SB 1393 \(amending PC §§ 667, 1385\)](#)
- TEXT of [PC § 1192.7\(c\)](#), [PC § 1192.8](#) & [PC § 667.5\(c\)](#) (defining prior serious felonies)

General Self-Advocacy Resources

- Ella Baker Center - List of Legal Resources in California
- First District Appellate Project - [Retroactivity-Finality Cheat Sheet](#), http://www.fdap.org/downloads/articles_and_outlines/Retroactivity-Finality-Cheat-Sheet-.pdf
- [Blank CDCR 602 Form](#) (+ Form 22, 602-Att, 602-group)
- Example: Notice of Request To Recall Sentence (Penal Code § 1170(D))

Templates and Information on PC § 1170(d)(1) Resentencing

- TEMPLATE LETTER: Requesting Review from CDCR in Sacramento (Case Law)
- Recall and Resentencing Referral Program Statistics - CDCR
- Sample of Resentencing Referral Letters Sent to Court (redacted) - CDCR
- [Inquisitive Prosecutor's Guide, No. 39, New Resentencing Provisions of PC § 1170\(d\)\(1\)](#) (October 31, 2018) - Santa Clara County District Attorney, <https://www.sccgov.org/sites/da/Documents/IPG%20Memos/2018-IPG39.pdf>

We also recommend these resources available from other organizations:

- **[Guide to Commutations](#)**
Contact: California Coalition for Women Prisoners, 4400 Market St., Oakland, CA 94608
<https://womenprisoners.org/> info@womenprisoners.org
Available online: <https://droplwop.com/commutations-application-guide/>
- **[Intake Form for DA Resentencing Referrals](#)**
Contact: Sentence Review Project, 1904 Franklin St, Suite 205, Oakland, CA 94612
info@sentencereview.org
Available online: <https://www.sentencereview.org/for-people-currently-incarcerated>
- **[Guide to Filing CDCR Administrative Appeals](#), [Guide to Writs of Habeas Corpus](#), [PC § 1170\(d\)\(1\)](#), and [The CA Prison and Parole Handbook](#)**
Contact: Prison Law Office, General Delivery, San Quentin, CA 94964
Available online: <https://prisonlaw.com/resources/>
- **[How to Write a Relapse Prevention Plan](#)**
Contact: UnCommon Law, 220 4th Street, Suite 103, Oakland, CA 94607
Available online: <https://www.uncommonlaw.org/resources-2>

Appendix

- Getting Involved with CDCR's Public Comment on new PC § 1170(d)(1) Draft Regulations (October 2019)
- List of Public Defender Office Contact Information by County
- TEMPLATE LETTER: Requesting Review from CDCR in Sacramento (Policy Reforms)
- TEMPLATE LETTER: CDCR Staff Referral for PC § 1170(d)(1) Exceptional Conduct Resentencing
- CDCR - FAQs: Recall and Resentencing Referral Program (June 2019)
- CDCR - Memo on 1170(d)(1) Resentencing Referrals (November 2018)

Public Comment for Resentencing Regulations

You and your support network can get involved and make your voices heard when CDCR publishes its new draft regulations for the Recall and Resentencing Referral Program and launches the Public Comment process.

PC section 1170(d)(1) represents an important safety net of relief for people who fall through the cracks of other reforms and paths to post-conviction relief.

CDCR is in the process of updating its Title 15 regulations (currently listed as California Code of Regulations, Title 15, sections 3076, 3076.1, and 3076.2) that inform the process and criteria they use for making PC section 1170(d)(1) resentencing referrals.

We anticipate that the new draft regulations will be put online (www.cdcr.ca.gov/regulations) by the end of 2019. Public Comment is a 45-day window when CDCR accepts and responds to feedback on its proposed rules. You and your support network can get involved by contributing to Public Comment once the Draft Regulations are published.

During Public Comment, you can submit feedback to CDCR's Regulations and Policy Management Branch by either email to: RPMB@cdcr.ca.gov or mail to:

CDCR RPMB
PO BOX 942883
Sacramento, CA 94283-001

CDCR's pilot program for resentencing referrals starting back in June 2018 temporarily used strict criteria that may be formalized in the new draft regulations.

Because of the broad discretion given to both CDCR and resentencing judges, there are a number of ways to guard against the release of someone who may be considered a risk to public safety. There is no need for blanket exclusions targeting politically vulnerable groups.

We are all more than our worst day, and it is important for both CDCR and the judge to have the opportunity to look at the person standing before them today. We will fight against more people being left behind by broad exclusions. We ask you to join us.

You can share your support for keeping the referral process open and not unjustly denying people a chance at resentencing based on various proposed exclusions or harsh criteria. If you have ideas for a new cohort that CDCR should use to review people for resentencing, you or your support network can share these proposals.

Template Exceptional Conduct Referral Letter from Facility Staff to CDCR in Sacramento

Date

Michael Masters, Captain, Classification Services Unit, CDCR

Sent via email to CDCR-DAI-1170-D-Recall-of-Sentence@cdcr.ca.gov,

Mike.Masters@cdcr.ca.gov

Re: Requesting Recall of Commitment for [NAME], CDCR # [] from [] per CPC § 1170(d)(1) and 15 CCR §§ 3076 et seq.

To the Office of the Secretary;

I write in my capacity as a _____. I have served in the position of ____ for ____ years. I write to ask you to initiate the recall of the sentence of _____. I ask for this on the basis of _____.

I have known _____ for _____ years. We first met in the capacity of _____. Since then we have interacted _____.

I have witnessed the following rehabilitative activities _____. They are a leader in _____.

The transformation I have seen in _____ is evidenced by _____. They approach their responsibilities of _____ with _____. The activity of _____ changed them and now they are _____. Other positive changes they have made include _____.

[If relevant. Their advanced age of ____ reduced the risk for future violence by _____. Their diminished physical condition due to the diagnosis of ____ reduced the risk for future violence by _____. The extensive time served of ____ years has reduced the risk for future violence by _____.]

I feel they would not pose a safety risk if releases, as shown by _____.

Sincerely,

Enclosures:

[chronos] [report card] [certificates]

CC

Ralph Diaz, Secretary of Operations, Division of Adult Institutions

California Department of Corrections and Rehabilitation

Sent via Email Ralph.Diaz@cdcr.ca.gov

Resentencing Letter Example

Date

Ralph Diaz
Secretary of Operations, Division of Adult Institutions
California Department of Corrections and Rehabilitation
P. O. Box 942883, Sacramento CA. 94283
Sent Via Certified Mail or email Ralph.Diaz@cdcr.ca.gov

Eric Duesdieker
Staff Counsel, Office of Legal Affairs
California Department of Corrections and Rehabilitation
P. O. Box 942883, Sacramento CA. 94283
Sent Via Certified Mail or email Eric.Duesdieker@cdcr.ca.gov

RE: Resentencing Request for **[NAME]**, CDCR #**[xxxxxx]** per California Penal Code § 1170(d)(1)

To the Office of the Secretary,

I am writing to request that you make a recommendation to the court to resentence me based on recent changes to California laws. Per the authority granted to the CDCR Secretary by the legislature in California Penal Code §1170(d)(1) and the administrative guidelines in California Code of Regulations Title 15, §§ 3076 et seq, the CDCR Secretary is vested with the power and discretion to recommend resentencing in extreme cases of exceptional in-custody behavior (§ 3076(a)(1)), new information (§ 3076(a)(2)), and, or, changed circumstances demonstrating a person's continued incarceration is not in the interest of justice (§ 3076(a)(3)). With the recent passage of AB 1812 on June 27, 2018 amending CPC § 1170(d)(1), the CDCR Secretary and trial court of commitment offense have expanding guidance and purview to submit a request for recall of commitment and resentence someone convicted of a disproportionate sentence who demonstrated exceptional in-custody behavior. § 1170(d)(1) now explicitly encourages the Secretary and courts to release people who demonstrating positive change post-conviction.

I believe I am eligible for resentencing based on changing circumstances (CPC § 1170(d)(1), 15 CCR § 3076(a)(3). Recent legislation creates new grounds to resentence me in the interest of justice.

Choose the Paragraph Below that Best Fits Your Circumstances

SB 620: Firearm Enhancement

On October 11th, 2017, Governor Brown signed SB 620 into law. SB 620, by Senator Steven Bradford (D-Los Angeles), provides judges the power to strike or dismiss firearm enhancements (PC §12022.5 and PC §12022.53) at sentencing or resentencing.

Mandatory gun enhancements were previously applied when a defendant used a gun during a felony crime. As of January 1st, 2018, courts now have the discretion to decide whether to impose gun enhancements.

SB 180: Drug Sentencing Enhancement

On October 11th, 2017, Governor Brown signed SB 180 into law. SB 180, by Senator Holly Mitchell (D-Los Angeles), repeals the three-year sentence enhancement for prior drug convictions (HSC §11370.2), with the exception of prior convictions involving a minor (HSC §11380). The enhancement was applied when a person is currently charged with possession for sale, sale, manufacturing, transportation, or similar drug offenses. As of January 1st, 2018 prosecutors cannot charge people with the enhancement.

SB 1393: Enhancement for Prior Serious Offense

On September 30, 2018, Governor Brown signed SB 1393 into law. SB 1393, by Senator Holly Mitchell (D-Los Angeles), provides judges the power to strike or dismiss enhancements for prior serious felony convictions (PC § 667 and PC §1385) at sentencing or resentencing. Mandatory five year enhancements were previously applied when a defendant had a prior serious convictions. As of January 1st, 2019, courts now have the discretion to decide whether to impose gun enhancements.

Explain your conviction and the number of years you received from the enhancement.

Given the recent changes in the law, I respectfully request that your office make a recommendation to the court to resentence me. Please contact me with any questions or requests for additional materials.

Respectfully,

Name

Prison ID #

Address

CC:

Chief Deputy General, Howard Moseley,
Office of the Secretary
P.O.Box 942883
Sacramento, CA 94283
howard.moseley@cdcr.ca.gov

Kathleen Allison
Director, Division of Adult Institutions
California Department of Corrections and Rehabilitation
P. O. Box 942883, Sacramento CA, 94283
Kathleen.Allison@cdcr.ca.gov.

The District Attorney in the county of your conviction?

Public Defenders in all California Counties

Note: Some counties do not have their own public defender offices. For those counties information is provided for superior courts or the law office contracted by the county to provide public defense services.

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| Alameda | Alameda County Public Defender 1401 Lakeside Drive, Suite 400, Oakland, CA 94612-4305 |
| Alpine | Superior Court of Alpine County 14777 CA-89, P.O. Box 518, Markleeville, CA 96120 |
| Amador | Contract Public Defender: Ciummo Law - Amador Office 201 Clinton Road, Suite 202, Jackson, CA 95642 Amador County Superior Court 500 Argonaut Lane, Jackson, California, 95642 |
| Butte | Butte County Superior Court - Criminal Department 1 Court Street, Oroville, CA 95965 |
| Calaveras | Contract Public Defender: Ciummo Law - Calaveras Office 265 West St. Charles Street, Ste. 4, San Andreas, CA 95249 Calaveras County Superior Court 400 Government Center Drive, San Andreas, CA 95249-9794 |
| Colusa | Colusa County Superior Court 532 Oak Street, Colusa, CA 95932 |
| Contra Costa | Contra Costa County Public Defender - Main Branch 800 Ferry Street, Martinez, CA 94553 |
| Del Norte | Del Norte County Superior Court 450 H Street, Room 209, Crescent City, CA 95531 |
| El Dorado | El Dorado County Public Defender 3976 Durock Rd, Suite 104, Shingle Springs, CA 95682 |
| Fresno | Fresno County Public Defender 220 Tulare Street, Suite 300, Fresno, California 93721 |
| Glenn | Glenn County Superior Court 526 W Sycamore St # B, Willows, CA 95988 |
| Humboldt | Humboldt County Public Defender 1001 Fourth Street, Eureka, CA 95501 |
| Imperial | Imperial County Public Defender 895 Broadway, El Centro, California 92243 |

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| Inyo | <p>Contract Public Defender: Law Office of Kristine L. Eisler 308 W Line St Ste 5, Bishop, CA 93514</p> <p>Inyo County Superior Courts - Criminal Division 168 North Edwards, Independence, CA 93526</p> |
| Kern | <p>Kern County Public Defender 1315 Truxtun Avenue, Bakersfield, CA 93301</p> |
| Kings | <p>Kings County Superior Court 1640 Kings County Dr, Hanford, CA 93230</p> <p>Public Defense Coordinator Marianne Gilbert 4125 W Noble Ave #199, Visalia, CA 93277</p> |
| Lake | <p>Lake County Superior Court 255 N. Forbes Street, 4th Floor, Lakeport, CA 95453</p> |
| Lassen | <p>Lassen County Public Defender 2950 Riverside Dr. Suite 103, 96130 Susanville, CA</p> |
| Los Angeles | <p>Los Angeles County Public Defender - Main Branch 210 West Temple Street, 19-513 CSF, Los Angeles, CA 90012</p> |
| Madera | <p>Contract: Ciummo Law - Madera Public Defender Office 221 North I Street, Madera, California 93637</p> <p>Madera County Superior Court 200 South "G" Street, Madera, CA 93637</p> |
| Marin | <p>Marin County Public Defender 3501 Civic Center Drive, Suite 139, San Rafael, CA 94903</p> |
| Mariposa | <p>Mariposa Superior Court - Main Courthouse 5088 Bullion Street, P.O. Box 28, Mariposa, California 95338</p> |
| Mendocino | <p>Mendocino County Public Defender 175 S. School Street, Ukiah, CA 95482</p> |
| Merced | <p>Merced County Public Defender 2150 M Street, Merced, CA 95340</p> |
| Modoc | <p>Modoc County Superior Court 205 S East St, Alturas, CA 96101</p> |
| Mono | <p>Mono County Superior Court 100 Thompsons Way, P.O. Box 1037, Mammoth Lakes, CA 93546</p> |
| Monterey | <p>Monterey County Public Defender 168 West Alisal, 2nd Floor, Salinas, CA 93901</p> |

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| Napa | Napa County Public Defender 1127 First Street, Suite B, Napa, CA 94559 |
| Nevada | Nevada County Public Defender 109 North Pine Street, Nevada City, CA 95959 |
| Orange | Orange County Public Defender 14 Civic Center Plaza, Santa Ana, CA 92701 |
| Placer | Contract Public Defender: Koukol & Associates 3785 Placer Corporate Drive, Suite 550, Rocklin, CA 95765 Placer County Superior Court - Criminal Division 10820 Justice Center Drive, Roseville CA 95678 |
| Plumas | Plumas County Superior Court 520 Main St. #104, Quincy, CA 95971 |
| Riverside | Riverside County Public Defender 4075 Main St. Suite 100, Riverside, CA 92501 |
| Sacramento | Sacramento County Public Defender - Criminal Division 700 H Street, Suite 0270, Sacramento, CA 95814 |
| San Benito | San Benito Superior Court 50 Fourth Street, Hollister, CA 95023 |
| San Bernardino | San Bernardino County Public Defender - Administration 172 West 3rd Street, 2nd Floor, San Bernardino, CA 92415-0008 |
| San Diego | San Diego County Public Defender - Administrative Office 450 B Street, Suite 1100, San Diego, California 92101 |
| San Francisco | San Francisco Public Defender's Office 555 7th Street, San Francisco, CA 94103 |
| San Joaquin | San Joaquin County Public Defender 102 South San Joaquin Street, Stockton, CA 95202 |
| San Luis Obispo | Contract Public Defender: San Luis Obispo Defenders 991 Osos Street, Suite A, San Luis Obispo, CA 93401 San Luis Obispo Superior Court - Criminal Division 1050 Monterey Street, Room 220, San Luis Obispo, CA, 93408 |
| San Mateo | San Mateo County Bar Association Private Defender Program 333 Bradford St #200, Redwood City, CA 94063 |
| Santa Barbara | Santa Barbara County Public Defender - Court House Office 1100 Anacapa Street, Santa Barbara, CA 93101 |
| Santa Clara | Santa Clara County Public Defender - Main Office 120 W. Mission St. San Jose, CA 95110 |

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| Santa Cruz | Santa Cruz Superior Court - Criminal Division 701 Ocean Street, Santa Cruz, CA 95060 Contract Public Defender: Biggam, Christensen and Minsloff 2103 North Pacific Avenue, Santa Cruz, CA 95060 |
| Shasta | Shasta County Public Defender 1815 Yuba St., Redding, CA 96001 |
| Sierra | Sierra County Superior Court - Criminal Division 100 Courthouse Square, Downieville, CA 95936 |
| Siskiyou | Siskiyou County Public Defender 322 1/2 West Center Street, Yreka, CA 96097 |
| Solano | Solano County Public Defender - Main Office 675 Texas Street, Suite 3500, Fairfield, CA 94533 |
| Sonoma | Sonoma County Public Defender 600 Administration Drive, 1st Floor Room 111, Santa Rosa, CA 95403 |
| Stanislaus | Stanislaus County Public Defender 1021 I Street, #201, P.O. Box 3428, Modesto, CA 95353 |
| Sutter | Sutter County Public Defender 604 B Street Suite 1, Yuba City, CA 95991 |
| Tehama | Tehama County Superior Court - Criminal Division 1740 Walnut Street, Red Bluff, CA 96080 |
| Trinity | Trinity County Superior Court - Main Courthouse 11 Court Street, Weaverville, CA 96093 |
| Tulare | Tulare County Public Defender Visalia Courthouse RM G35, 221 South Mooney Blvd, Visalia, CA 93291 |
| Tuolumne | Tuolumne County Superior Court 99 N. Washington St., Sonora, CA 95370 |
| Ventura | Ventura County Public Defender Hall of Justice, 800 S. Victoria Avenue, Room # 207, Ventura, CA 93009 |
| Yolo | Yolo County Public Defender 814 North Street, Woodland, California 95695 |
| Yuba | Yuba County Superior Court 215 Fifth Street, Suite 200, Marysville, CA 95901 |



For Informational Purposes

June 11, 2019

Penal Code 1170(d) Recall of Commitment Referrals Frequently Asked Questions

The court received a Penal Code 1170(d)(1) resentencing recommendation for a sentence resulting from a plea. What is the basis for a court's authority to recall that sentence?

The language in 1170(d)(1) was amended effective June 27, 2018, to extend a court's power to resentence under that section to judgments entered pursuant to a plea agreement, if in the interest of justice.

The court received an 1170(d)(1) resentencing recommendation based upon a change in statute that went into effect after the inmate was sentenced. What is the basis for a court's authority to sentence an inmate in line with a subsequent change in the law?

The *Estrada* rule holds that legislative changes that decrease criminal penalties are to be retroactively applied to those cases not yet final on appeal (In re *Estrada* (1965) 63 Cal.2d 740). When a court accepts jurisdiction over an inmate's sentence pursuant to an 1170(d)(1) resentencing recommendation, that case is again in the sentencing phase. Because the case is no longer final on appeal, it is therefore subject to all subsequently enacted retroactive changes in law.

Is there an obligation to notify victims?


Yes, victims are entitled to reasonable notice of any public hearings, and to be heard at said hearings upon request (Cal. Const., art. I, § 28, subd. (b), pars. (7) and (8)).

Does California Department of Corrections and Rehabilitation (CDCR) contact victims?

Yes, those victims who are registered in the CDCR system will receive notification of the 1170(d) referral to the courts. The notification will include the type of 1170(d)(1) referral as well as provide the contact information of the court that will be reviewing the referral. Victims will also be encouraged to contact the CDCR Office of Victim and Survivor Rights and Services for further questions or concerns.

Are there any limitations on what changes a court makes during resentencing pursuant to 1170(d)(1)?

Aside from the statutory prohibition on sentencing an inmate to a longer term than that of the initial sentence, a court may resentence an inmate in any way that they could



legally do if they were sentencing the inmate for the first time, including staying the punishment for a count or enhancement, or striking a count or enhancement in its entirety.

The court received an 1170(d)(1) resentencing recommendation for an inmate who has been incarcerated for a significant amount of time, such that resentencing the inmate might lead to immediate release. Are there any issues that might arise from such a resentencing?

Pursuant to *People v. Kemper* (1980) 112 Cal. App. 3d 434, (re)sentencing that results in an inmate being overdue for release will result in custody credits in excess of the inmate's maximum term of confinement being applied to shorten the post-incarceration supervisory term (for example, parole).

The court is contemplating resentencing an inmate in such a way that it might lead to both immediate release and excess custody credits applying to (or completely exhausting) the inmate's post-incarceration supervisory term. Is there a way to address this issue?

If a court wishes to maintain the statutory term of post-incarceration supervision, the court may request the inmate waive enough credits to comply with the statute.

If a court indicates in the Abstract of Judgement (AOJ) that custody credits have been waived by an inmate to allow for a statutory post-incarceration supervisory term, CDCR will calculate the appropriate number of post-sentence credits that will need to be waived to allow for the statutory supervisory term after the inmate's release.

What are the benefits of post-incarceration supervision?

With a parole term remaining, CDCR's Division of Adult Parole Operations (DAPO) would maintain the authority to impose appropriate supervision conditions, enable the inmate to receive pre-release assessment and planning, and obtain assistance identifying barriers, case-specific resources, and community-based programs that may apply to the inmate's circumstances. For details please see the attached DAPO Pre and Post-Release Services Chart.

What are the benefits of releasing an inmate back to prison prior to release?

DAPO provides some pre-release services to inmates scheduled to be released to either Post Release Community Supervision or parole. Which services are available depends upon the length of the remaining prison term after resentencing. For details please see the attached DAPO Pre and Post-Release Services Chart.

Contact information:

For questions about CDCR's transition services please contact CDCR's Division of Adult Parole Operations via email at:



DAPORRRP@cdcr.ca.gov

For questions related to referrals for exceptional conduct or retroactive change in statute (e.g., gun enhancements pursuant to PC 12022.53), including any questions about Cumulative Case Summaries, please contact CDCR's Classification Services Unit via email at:

CDCR-DAI-1170-D-Recall-of-Sentence@cdcr.ca.gov

For questions related to sentencing discrepancy referrals, or questions related to credits, please contact CDCR's Case Records Services via email at:

CDCRDAICRS1170dRRRP@CDCR.CA.GOV

For questions about victim services, please contact CDCR's Office of Victim and Survivor Rights and Services:

(877) 256-6877 or via email at victimservices@cdcr.ca.gov

Memorandum

Date: **November 5, 2018**

To: Associate Directors, Division of Adult Institutions
Wardens
Classification and Parole Representatives
Correctional Counselors II
Correctional Counselors I
Correctional Case Records Managers

Subject: **PENAL CODE SECTION 1170(d)(1) RECALL OF COMMITMENT PROCESSES**

The purpose of this memorandum is to provide information regarding the identification and referral of inmates for recall of sentence and resentencing, as outlined in the California Code of Regulations (CCR), Title 15, Section 3076 Recall of Commitment Recommendation Circumstances. Pursuant to Penal Code (PC) Section 1170(d)(1), the Agency Secretary of the California Department of Corrections and Rehabilitation (CDCR) or designee may, at any time, recommend that the sentencing court recall an inmate's sentence and commitment previously imposed and resentence an inmate, provided the new sentence is no greater than the initial sentence.

There are currently three categories reviewable for referral to the court for possible recall of sentence: Exceptional Conduct, Sentencing Discrepancy, and Retroactive Changes in Law. The following provides a summary of each category:

Exceptional Conduct

An inmate who demonstrates exceptional behavior during incarceration, that indicates the inmate has been rehabilitated and would be an asset to the community, may be referred to the court for resentencing due to exceptional conduct. Any institution staff or volunteer may provide an inmate's name and CDCR number to the Classification Services Unit (CSU) for consideration for referral to the court. The CSU will review the case and, if appropriate, will make a recommendation to the Agency Secretary to request a recall of commitment from the court. All referrals should be directed to CDCR-DAI-1170-D-Recall-of-Sentence@cdcr.ca.gov. A referral may also be made via law enforcement agencies or other outside entities, such as a district attorney's office.

The CSU shall review the inmate's behavior during incarceration, including, but not limited to:

- Evidence of participation in self-help groups, vocational, and educational programs.
- Positive programming, including no serious rules violations or security housing unit terms in the past five years.
- Evidence of laudatory chronos and letters of support.
- Recommendations from staff and volunteers.

Associate Directors, Division of Adult Institutions
Wardens
Classification and Parole Representatives
Correctional Counselors II
Correctional Counselors I
Correctional Case Records Managers
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Per the Department Operations Manual, Section 62020.7, requests for consideration of Recall of Sentence and Commitment from private citizens, attorneys or family members shall not be initiated by departmental staff. In these instances, the requesting party should be directed to request such consideration to the sentencing court.

Sentencing Discrepancy

Based on statutory or case law authority, these are identified by new or old case law information brought forward via an inmate appeal, information submitted through the Legal Processing Unit, or information provided via the Office of Legal Affairs (OLA).

Retroactive Change in Law

Based on new legislation or case law with retroactive application.

Additional Information

All cases referred to the court through this PC Section 1170(d)(1) process will have an Alert, "**1170(d)**," scanned into the Electronic Records Management System. These cases are closely tracked by headquarters' staff and require staff to notify Case Records any time court documents are received for any of these inmates, to include out-to-court removal orders.

Please inform all persons concerned of the contents of this memorandum, which shall be maintained and utilized pending regulatory changes to CCR, Title 15, Sections 3076.1 and 3076.2.

If you have any questions, please contact the following staff: Questions regarding exceptional conduct, please contact Mike Masters, Captain, CSU, at (916) 324-3598. For questions regarding sentencing discrepancies, please contact Tara Rios, Correctional Case Records Administrator, Case Records Services, at (916) 323-1154. For questions regarding retroactive changes in law, please contact Eric Duesdieker, Staff Counsel, OLA, at (916) 323-2924.



JEFF MACOMBER
Director (A)
Division of Adult Institutions

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|-------------------|-------------------|--------------|-----------------|
| cc: Connie Gipson | Jennifer Barretto | Heidi Dixon | Tara Rios |
| Sandra Alfaro | Brian Moak | Mike Masters | Eric Duesdieker |