



She led. So can you.

March 2, 2022

Dear friend,

We write to you with exciting news today: **Senate Bill 483 - The Repeal Ineffective Sentencing Enhancements (RISE) Act of 2021 was signed by Governor Newsom and went into effect on January 1, 2022!**

Senate Bill 483 (Allen) builds off of past policy victories to apply the elimination of one-year and three-year sentence enhancements to people currently held in prisons and jails. SB 483 represents a meaningful step towards reducing the harm of overly long and unjust sentences

In 2017 and 2019, California ended the use of sentence enhancements that added three years of incarceration for each prior drug offense (SB 180 Mitchell) and one year for each prior prison or felony jail term (SB 136 Wiener). However, these reforms apply only to cases filed after these bills became law. **SB 483 now authorizes courts to apply the repeals of these sentence enhancements by retroactively reducing the sentences of everyone in prison and jail serving time for one of these enhancements.**

SB 483 continues to undo the decades of harm perpetrated by the sustaining ideology that excessive sentences deter crime. Sentencing enhancements have not made our communities safer. Instead, long prison and jail sentences are proven to be injurious to system-impacted folks and destabilizing to their families and communities. More generally, they put significant financial burdens on taxpayers and families statewide—each additional year in prison costs over \$112,600 per person. This bill allows a process for the courts to align sentences with the truth of data-driven and lived experiences that show reducing excessive sentences does not erode public safety.¹ Instead, families across California are allowed to be restored.

SB 483 now ensures that no one is serving time based on these enhancements that California has already deemed unfair and ineffective. We invite you to send a message to Governor Newsom thanking him for signing this bill and letting him know **what a difference a year makes** to: Governor's Office, 1313 10th Street, Suite 1173, Sacramento, CA 95814.

Sincerely, the EBC SB 483 Team!

Derick Morgan
Policy Associate

Elliot Hosman
Prison Advocacy Coordinator

¹ California Committee for the Revision of the Penal Code, 2020 Annual Report and Recommendations

Frequently Asked Questions

What is the RISE Act?

SB 483 authorizes courts to retroactively remove 1-year prison prior and 3-year drug prior enhancements from the sentences of people currently incarcerated in prisons and jails, including people who have “final sentences” and are out of appeals.

Who is eligible for resentencing under the RISE Act?

Anyone who has a 3-year drug prior enhancement or a 1-year prison prior enhancement, unless the 1-year enhancement was imposed for a prior conviction for a sexually violent offense.

How long will it take for the RISE Act to be implemented and for the time to be taken off of people’s sentences?

The bill requires the Secretary of the Department of Corrections and Rehabilitation and the county correctional administrator (typically the Sheriff) of each county to identify those persons in their custody who are serving a sentence that includes one of these enhancements and provide this information to the sentencing court, as specified.

By March 1, 2022	By July 1, 2022	By Oct. 1, 2022	By Dec. 31, 2023
CDCR & county correctional administrators identify for the court every person who has served their base term and only has enhancement time left to serve.	CDCR & county correctional administrators identify for the court everyone in custody with these 1-year and 3-year enhancements.	Courts recall and resentence every person who has served their base term already.	Courts recall and resentence everyone in custody with these 1-year and 3-year enhancements.

The bill requires this information to be provided by March 1, 2022, for those individuals who are currently serving time for the enhancement and by July 1, 2022, for all others. The bill requires the court, after verifying specified information, to recall the sentence and resentence the individual to remove any invalid sentence enhancements. The bill requires the court to grant this relief to those individuals who have served their base term and any other enhancements and are currently serving the enhancement described above by October 1, 2022, and all other individuals by December 31, 2023.

If you have already served your base term and are only serving enhancement time, it could be worth your while to file a petition for writ of habeas corpus in the superior court in the county of your conviction to request the judge calendar you for a SB 483 RISE Act resentencing hearing given the hardship of delay that you would experience if they were to wait to be resentenced by the October 2022 deadline. We can send you a [guide from the Prison Law Office on how to file petitions for writs of habeas corpus](#).

What do I need to do to be resentenced?

CDCR (or the County Sheriff if you are in county custody) is instructed by the RISE Act to create a list of everyone eligible for RISE Act resentencing in their custody by certain timelines. You will automatically be referred back to court for resentencing based on the timeline above.

Will I automatically go back to court?

The resentencing from this bill is required but a new hearing is not. If you, the judge and district attorney all agree to not have a hearing, the resentencing will happen without you going back to court (or appearing in court remotely, as this bill allows). If, instead, you, the judge, or the district attorney want to have a hearing, then a resentencing hearing will be conducted. The hearing may be conducted remotely through the use of remote technology, but only if you agree.

Will I be appointed an attorney? Yes, the RISE Act requires the court to appoint counsel.

Can the judge decide not to resentence me?

Resentencing has to happen as the enhancement terms will no longer be valid. However judges do have discretion in how much they reduce the sentences. There is a presumption in favor of resentencing to a shorter sentence in the RISE Act. "Resentencing pursuant to this section shall result in a lesser sentence than the one originally imposed as a result of the elimination of the repealed enhancement, unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety. Resentencing pursuant to this section shall not result in a longer sentence than the one originally imposed."

More on the RISE Act Resentencing Process

The bill identifies specific considerations for the court in resentencing, such as requiring that the resentencing result in a lesser sentence, unless the court finds *clear and convincing evidence* that a lesser sentence would endanger public safety. This bill also clarifies that if judges adjust an original sentence term outside of the enhancements, they may not impose a term higher than the middle term in a sentencing triad, unless the high term was originally imposed or there are aggravating factors, the facts of which have been found true in court and were shared with you.

Does the RISE Act affect people with 5-year prior enhancements?

Having a 5-year prior won't trigger an automatic resentencing under the RISE Act, HOWEVER: This bill allows courts to consider other circumstances that may have changed since the original conviction. So if you have a 1-year enhancement for a prison prior and/or a 3-year enhancement for a drug prior and the court resentsences you through the RISE Act, the court can also apply other changes to judicial discretion or the law that allow for reducing sentences as part of this resentencing. For example, striking the 5-year prior enhancement (SB 1393, 2017) or gun enhancements (SB 620, 2017). Judges may also consider post-conviction factors like age, time served, disciplinary record, record of rehabilitation and evidence that reflects a diminished risk of future violence or that incarceration is no longer in the interest of justice.

If your loved one does not have a 1-year or 3-year prior that applies for resentencing under the RISE Act, they can still be resentenced to have sentence enhancements removed if they are referred to court through a separate process under Penal Code 1170.03 (formerly known as PC 1170(d)(1)) which must be initiated by either the District Attorney from their county of conviction or by CDCR. [See here for a Resentencing Guide](#) by Ella Baker Center about PC 1170(d)(1)

resentencing, and [here for a helpful Checklist \(bit.ly/ResentencingNowChecklist\)](https://bit.ly/ResentencingNowChecklist) to how to prepare a resentencing packet to request that either CDCR or a District Attorney make a referral. Because of recent legislation AB 1540, our Resentencing Guide is now outdated and we are in the process of updating it! For the most current description of PC 1170.03 resentencing, [check out this document prepared by the Prison Law Office](#) which has an overview of the changes made by AB 1540 which went into effect on Jan. 1, 2022.

Who are the co-sponsors supporting the RISE Act?

Californians United for a Responsible Budget (CURB), CHIRLA (Coalition for Humane Immigrant Rights LA), Drug Policy Alliance California, Ella Baker Center for Human Rights.

How do I file a Petition for Habeas Corpus directly with the Court to try to schedule my resentencing sooner than the deadline of October 2022?

STEP 1: Complete the MC-275 Form ([blank form included](#)). For the “Grounds of Relief” section (Q.6 on pg. 2), include the language below citing what type of enhancement you have and what part of the SB 483 law is relevant to your case.

For 1-year prison priors:

“My sentence was enhanced by 1-year prison prior enhancement pursuant to Penal Code section 667.5(b). Due to the passage of Senate Bill 483 (effective Jan. 1, 2022) and Penal Code section 1171.1, those enhancements are legally invalid.”

For 3-year drug priors:

“My sentence was enhanced by 3-year drug prior enhancements pursuant to Health and Safety Code section 11370.2. Due to the passage of Senate Bill 483 (effective Jan. 1, 2022) and Penal Code section 1171, those enhancements are legally invalid.”

KEEP THE PETITION SIMPLE. Do not worry about providing extensive facts and information in 6a or 6b.

STEP 2: Have someone other than yourself send a copy of the petition and a Proof of Service ([blank form included](#)) to the Following Parties:

- 1. The Public Defender in your County of Conviction***
*or Bar Panel attorney if there is no Public Defender office in the county.
- 2. The District Attorney in your County of Conviction**

The person filling out the Proof of Service can NOT be the same person (or “party”) requesting relief.



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NOTE: Everyone is eligible for relief on the basis of their illegal enhancements, regardless of whether their base term is already served. You can still file for immediate resentencing even if you have not yet served your base term, particularly if you want to argue that various factors weigh in favor of expediting your resentencing, such as being high-risk medically, so that the court can consider striking other enhancements and weighing other post-conviction factors in order to resentence you to time served.

Name: _____

Address: _____

CDC or ID Number: _____

(Court)

PETITION FOR WRIT OF HABEAS CORPUS

_____ Petitioner vs. _____ Respondent	No. _____ <i>(To be supplied by the Clerk of the Court)</i>
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INSTRUCTIONS—READ CAREFULLY

- **If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.**
- **If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.**

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal in paper form and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal electronically and you are an attorney, follow the requirements of the local rules of court for electronically filed documents. If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

- A conviction
- Parole
- A sentence
- Credits
- Jail or prison conditions
- Prison discipline
- Other (specify): _____

1. Your name: _____

2. Where are you incarcerated? _____

3. Why are you in custody? Criminal conviction Civil commitment

Answer items a through i to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

b. Penal or other code sections: _____

c. Name and location of sentencing or committing court:

d. Case number: _____

e. Date convicted or committed: _____

f. Date sentenced: _____

g. Length of sentence: _____

h. When do you expect to be released? _____

i. Were you represented by counsel in the trial court? Yes No *If yes, state the attorney's name and address:*

4. What was the LAST plea you entered? (Check one):

Not guilty Guilty Nolo contendere Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

Jury Judge without a jury Submitted on transcript Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." *(If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)*

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, *who* did exactly *what* to violate your rights at what time (*when*) or place (*where*). *(If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

b. Supporting cases, rules, or other authority *(optional)*:

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

8. Did you appeal from the conviction, sentence, or commitment? Yes No If yes, give the following information:
- a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"): _____
 - b. Result: _____ c. Date of decision: _____
 - d. Case number or citation of opinion, if known: _____
 - e. Issues raised: (1) _____
(2) _____
(3) _____
 - f. Were you represented by counsel on appeal? Yes No If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? Yes No If yes, give the following information:
- a. Result: _____ b. Date of decision: _____
 - c. Case number or citation of opinion, if known: _____
 - d. Issues raised: (1) _____
(2) _____
(3) _____

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

11. Administrative review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500.) Explain what administrative review you sought or explain why you did not seek such review:

- b. Did you seek the highest level of administrative review available? Yes No
Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? Yes If yes, continue with number 13. No If no, skip to number 15.

13 a. (1) Name of court: _____

(2) Nature of proceeding (for example, "habeas corpus petition"): _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (attach order or explain why unavailable): _____

(5) Date of decision: _____

b. (1) Name of court: _____

(2) Nature of proceeding: _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (attach order or explain why unavailable): _____

(5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

16. Are you presently represented by counsel? Yes No If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? Yes No If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: _____

(SIGNATURE OF PETITIONER)

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form

Save this form

Clear this form

Case Name:

Case Number: [if any]

PROOF OF SERVICE

I, _____, hereby declare as follows:

1. I am over the age of 18 years. I am a resident of _____ county, California. My address is:

_____.

2. On the date listed below, I caused the following document, enclosed herewith, to be served by placing a true copy thereof enclosed in a sealed envelope and placing for collection and mailing following the ordinary business practices of [your CDCR facility] _____ under CCR Title 15. Correspondence is placed for collection and mailing; it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

3. The envelope was mailed to the following address [of each respondent or attach a list]:

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on [date] _____, at [location] _____, California.

Name

Signature