

# BACK TO COURT

A Resentencing Guide for Penal Code § 1172.1  
and New Sentence Enhancement Laws in California



**ELLA BAKER**  
**CENTER for**  
**HUMAN RIGHTS**  
She led. So can you.

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1.



# Introduction



# Introduction

## The Success of Recent Sentence Enhancement and Resentencing Reforms

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 through "enhancements."**

Historically, 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. Another common enhancement was the 1-year "prison prior," adding some 20,000 years of incarceration across California.

We listened to our incarcerated community and co-designed laws to fix these injustices. Working alongside allies committed to liberation, new sentence enhancements reforms have continued to improve the landscape of California sentencing law, including:

**SB 180 (Mitchell)\*** (2017 - eliminating certain drug enhancements), **SB 620 (Bradford)** (2017 - allowing judges to strike certain gun enhancements), **SB 1393 (Mitchell)\*** (2018 - allowing judges to strike 5-year prior felony enhancements), **SB 136 (Wiener)\*** (2019 - eliminating most 1-year prison prior enhancements), **SB 483 (Allen)\*** (2021 - SB 136 & SB 180 retroactivity), **AB 333 (Kamlager)** (2021 - narrowing the application of gang enhancements), **SB 567 (Bradford)** (2021 - creating a mid-term presumption for sentencing), **AB 518 (Wicks)** (2021 - longest term isn't the base), and **SB 81 (Skinner)** (2021 - requiring judges to consider certain mitigating factors when considering whether to strike enhancements). \* Ella Baker Center was a co-sponsor.



Sentencing enhancements have not made our communities safer. EBC's recent co-sponsored bills including SB 1393, SB 136, SB 180 and SB 483 continue to undo the decades of harm perpetrated by the myth that excessive sentences deter crime. Long prison and jail sentences are proven to be harmful 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. The passage of these bills builds on the growing momentum in California to enact criminal justice reforms that divest from ineffective incarceration policies and invest in community-based solutions like housing, healthcare, education, restorative justice, and reentry resources.

**Even though most sentence enhancement reforms have not been “retroactive”** – meaning they only apply to people being sentenced today and don't create a right to resentencing for people still serving time on old enhancements – **people have been using recent resentencing laws to get back into court and have their sentences modified with significant success.**

For the last few years, California's “recall and resentencing” law has enabled the California Department of Corrections and Rehabilitation (CDCR) and District Attorneys to refer people back to court to be resentenced and released. **The law enabling this form of resentencing is now chaptered as Penal Code section 1172.1.**

- **Before July 1, 2022, this law was chaptered as PC section 1170.03** – AB 200 went into effect on July 1st, 2022 moving PC 1170.03 along with a number of other major resentencing laws including Felony Murder and the RISE Act into a new chapter of the Penal Code.
- **Before January 1, 2022 this law was chaptered as PC section 1170(d)(1)** – AB 1540 (Ting) went into effect on January 1<sup>st</sup>, 2022, moving the recall and resentencing law into Penal Code section 1170.03 and significantly strengthening people's due process rights.





## Resentencing Statistics from 2018-2022

- **Since 2018**, the California Department of Corrections and Rehabilitation (CDCR) has referred 2,021 people back to court. Of those, 556 people were referred to have their 5-year prior felony enhancement removed, and 339 people were referred to have their gun enhancement removed thanks to the passage of SB 1393 and SB 620. Of those referred by CDCR, 621 people had their sentences reduced or were released (as of June 2, 2022).
- **Since 2019**, dozens of people have come home via Prosecutor-Initiated Resentencing across the state, and the Governor's 2021-22 Budget set aside \$18 million to develop the California County Resentencing Pilot Program in 9 County District Attorney Offices.
- **With SB 483 going into effect on Jan. 1, 2022**, ~20,000 years of enhancement time will be taken off of people's sentences who have 1-year prison prior or 3-year drug prior enhancements. This means that over 14,000 people will be scheduled for full resentencing hearings where other enhancements and additional time can be taken off as well.



## The Road Home

Since 2019 when we first published *“Back to Court: A Resentencing Guide to the Fair and Just Sentencing and Reform Act (SB 1393) and PC § 1170(d)(1),”* we have been deeply inspired by the thousands of letters we’ve received from people inside of California prisons and jails, and the countless emails and phone calls from loved ones on the outside. We have worked with our allies to distribute accurate information, to host in-person and virtual events, and to support people on the winding road home from a long sentence in California’s prison system. **We know that we keep us safe. #FreeThemAll #ResentencingNow**

People are coming home via resentencing because of the love, dedication, and sacrifice of people inside doing ground-breaking self-advocacy and their communities and families on the outside supporting them every step of the way and never giving up on them. It is our duty to bring the voices of our community members into the halls of power and to call on decision makers to act in the interest of justice. And our fight is far from over! Here are some of the people who have been successful in their self-advocacy and have recently been resentenced and come home.



**Adamu** was resentenced via a District Attorney referral in Alameda County and came home in October 2020. In resentencing, the judge removed a 5-year enhancement, adjusted the sentencing triads, and resentenced him to time served. While inside, Adamu spent the last few years of his incarceration with the intention of focusing on creating strong relationships with other incarcerated people, friends and family, volunteers, and artists and organizers. Those relationships would ultimately pave the path to his freedom, as he would obtain over 160 letters of support and energy from numerous people who would advocate for his freedom. Since his release, Adamu has been working as a filmmaker and recently finished a documentary about the COVID pandemic organizing at San Quentin and prisons across California titled: *What These Walls Won’t Hold*. Adamu is also a 2022 CCSRE Mellon Artist Fellow at Stanford University, and continues to use his platform to raise up those who are still incarcerated.

“I have personally experienced the transformative power of filmmaking as a tool to tell my own story and defy dominant narratives, including those harmful narratives about incarcerated people. I want to share this gift with people who may have also seen themselves represented in ways that were disempowering. I know about the impact of being able to shape one’s own narrative, and the effect that can have on not only an individual, but also the world.”



**Diego:** “I was sentenced to 15 years and 8 months as a second striker. ... I was committed to becoming a better man through God’s grace and mercy. I was blessed early on in my sentence with a wife who would enable me and build me up. Little did I know I was being prepared for an occasion that would result in my early release. PC 1170(d)(1) was the route to which I was resentenced which allowed the CDCR to recommend me for a resentencing. I was granted a striking of my 5 year prison prior enhancement after serving only 7 years of the 15 year sentence. Los Angeles is the county that I came through. I encourage people to commit to a change in pursuit of a possibility that you too can be resentenced. Since coming home I have achieved strong family relations, explored job opportunities, and maintained communication with fellow people who seek rehabilitation.”



**Valerie:** “I was resentenced in LA County 2019, and recommended by CDCR. The Judge struck 2 strikes and an enhancement and resentenced me from 56 years to life to 15 to life ... this allowed me to be taken to the Parole Board within 6 months. I was found suitable to be released and paroled Sept 4, 2020. I last worked at the Tayba Foundation; a re-entry organization that provides free services and resources to the formerly incarcerated. I currently work as a Peer Specialist at a recovery center. God and the Three Strikes Project were very instrumental in my release: God because He sent them to me and the Three Strikes Project for all the paperwork and long hours they went to court with me and helped me with board preparation. They also represented me at my hearing. I am so very grateful for all that they did for me.”



**Thanh** was resentenced via a District Attorney referral in Santa Clara County in May 2022. Thanh worked with the Ella Baker Center for years as a participant in the Policy Class in San Quentin; he was also the inaugural Inside Fellow and a mentor for EBC’s Inside/Outside Fellowship. Thanh is an avid filmmaker and worked for years with Forward This productions in San Quentin and is now taking this expertise and experience with him into his advocacy and storytelling work. Thanh will continue his advocacy with EBC as a Senior Fellow working on communications and policy campaigns. In this photo, Thanh is sitting on a fountain in Norway on a recent trip with the Uncuffed team: “It’s incredible that the work I did while in prison led me to being in Oslo, Norway within a month of my release, touring facilities and speaking with radio journalists from around the world about the issues facing people who are currently incarcerated and how to uplift their stories.”



**Kerry:** “I was sentenced to 17 years at 80%... I petitioned Alameda County DA’s office for a sentence reduction under PC 1170 (d). At first I was denied the benefit of this law by their office—via a denial letter. Yet Brendon Woods, the Chief Public Defender of Alameda County, advocated for me and got my case modified to strike the double up (prior serious felony strike) from the record and calculate the term at 11 years at 50% (keeping the nickel prior and 6 year high term: 5+6=11). With 5.5 years in, I was immediately released. I participated in a lot of programs, had my writing published, and never had any write ups. I also gathered around 20 support letters from volunteers and programs. Since being released, I have worked for a political campaign and as a salesperson. I am also the House Manager and on the Board of Directors for a nonprofit transitional home. In addition, I was just informed in June 2022 that my parole qualifies under DSL guidelines for early parole termination. So I should be getting off any day now.”



**Kenneth:** “Greetings, my name is Kenneth A. Washington, I was sentenced way back in 1994 under the unfair and biased Three Strikes Law. My controlling case was a nonviolent crime where no one was present. I was sentenced to 35 years to life including two 5-year enhancements. By the grace of God I was contacted by the Santa Clara District Attorney’s office and they informed me that my case was being reviewed for resentencing under PC 1170(d)(1). It took a few years for everything to fall into place before I was resentenced and released back to the free world in May 2022 - thank God. A few organizations supported me in a good way and I would like to thank the Santa Clara County Silicon Valley De-Bug project, For The People out of Oakland, and the Ella Baker Center who gave me the strength and the courage to keep fighting hard for my freedom. I would also like to give much respect and thanks to the Initiate Justice organization who I have been a part of for 6 years as an Inside Organizer. Now that I am free, I am working to be an outside organizer. I have already started putting in work giving back and am still fighting hard for all the brothers and sisters to get their freedom sooner rather than later. Being a legal beagle, I have also started putting work in for the cause, and have been doing interviews and recently started my own YouTube channel. Anyone who needs my assistance to get started with their paperwork and resentencing packets, I have no problem with helping you. You can also get support through EBC with this Toolkit. Thank you for reading my words, much respect.”





## What is the Purpose and Scope of this Toolkit?

**This Toolkit is informational and does not provide individualized legal advice.**

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 describing your situation to a District Attorney to request a referral for resentencing.

**We created this Toolkit for people and their loved ones to advocate for their freedom using recent laws reforming sentence enhancements and resentencing. This Toolkit provides general information on Resentencing via Penal Code section 1172.1, as well as Resentencing under SB 483.**

This Resentencing Toolkit is designed to be both a specific and a general resource. Specifically, this Toolkit provides information for people serving sentences with a range of sentence enhancements. It is now possible to request resentencing on the basis of these enhancements because of the passage of SB 1393, SB 620, AB 333, SB 124, SB 81, as well as to file for mandatory resentencing because of SB 180, SB 136, and SB 483. We hope that this Toolkit's general overview of PC section 1172.1 Recall and Resentencing will be helpful for people who are seeking a referral to get back to court. This Toolkit contains information that applies to people who are awaiting sentencing or already sentenced under California state laws, whether they are currently on appeal or have a "final" sentence. This includes people who are currently serving time in either California state or county custody, as well as people who are no longer incarcerated, including people on parole or probation.

**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 the California Department of Corrections and Rehabilitation (CDCR), the Board of Parole Hearings (BPH), the Attorney General's office, public defenders, district attorneys, the Governor's Office, advocates and family members, currently incarcerated people, as well as people who have been recently resentenced and released.

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

- Courts implement AB 1540 (effective Jan. 1, 2022) and the new procedures and legal requirements of recall and resentencing (moving the law into PC section 1170.03) and AB 200 (effective July 1, 2022) which moved the recall and resentencing law into its current chapter PC section 1172.1.
- CDCR updates and finalizes their Title 15 regulations for PC section 1172.1 Resentencing
- Governor Gavin Newsom's office shapes the direction of PC section 1172.1 Resentencing
- The Attorney General's office develops their eligibility criteria and review process for making referrals given their new authority as of January 1, 2022 (via AB 1540)
- District Attorneys' offices continue to establish policies and criteria for making referrals
- County Sheriffs and the Board of Parole Hearings decide whether to begin to make referrals
- The Penal Code Revision Committee and California State Legislators and community organizations work to propose and pass various amendments to sentencing laws and/or as various 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 reach out to [policy@ellabakercenter.org](mailto:policy@ellabakercenter.org) with questions or comments. We encourage you to send us your feedback on this Toolkit and your experiences with sentence enhancements and resentencing processes to:

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There is more information about policy and community organizing efforts of the Ella Baker Center for Human Rights on our website at [www.ellabakercenter.org](http://www.ellabakercenter.org).

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**Our family on the inside**, people who are currently incarcerated, people who have recently returned home, our family and loved ones on the outside who make up lifesaving support networks, and the advocates and community groups who work tirelessly to improve the lives of our loved ones while they are incarcerated and to help bring them home to us.

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# Glossary of Key Laws and Policies

**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.

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

**PC § 1172.1 Resentencing** - a way to get back into court to be sentenced anew by the court on its own motion (within 120 days of sentencing) or by a government agency via a recommendation letter at any time (authorized referring agencies are: CDCR, BPH, the District Attorney, the Attorney General, and the Sheriff). This law was amended by AB 200 (effective Jul. 1, 2022) and AB 1540 (effective Jan. 1, 2022), previously it was chaptered in Penal Code section **1170(d)(1)**, then PC section **1170.03**, and the law has been referred to by a variety of shorthands and legal terms, including: "**1170**," "**recall and resentencing**," "**sentence review**," and "**prosecutor-initiated resentencing**."

NOTE: Before AB 1540, there were subparagraphs PC 1170(d)(1) and (d)(2). PC section 1170(d)(2) is a different process that only applies to people sentenced to Life Without Parole (LWOP) under the age of 18) - as of Jan. 1, 2022 this process is now chaptered as PC section 1170(d)(1).

**PC § 1172.6 Resentencing** - the law authorizing the implementation of SB 1437 and SB 775, related to felony murder resentencing, formerly PC section 1170.95.

**PC § 1172.7 and PC 1172.75 Resentencing** - the laws authorizing the implementation of SB 483, formerly PC sections 1171 and 1171.1, for the removal of 1-year prison prior and 3-year drug prior enhancements.

**PC § 290** - the law mandating registration requirements for people on the California sex offense registry.

**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 finalization.

**AB 124** - a 2021 California Assembly bill authored by Senator Kamlager, the **Justice for Survivors Act** requires the court to consider intimate partner violence and other traumatic experiences as contributing factors in sentencing and resentencing decisions. If the trauma of those experiences affected the defendant's crime of conviction, it requires the court to sentence them to the lowest possible sentence. This defense does not apply to a violent felony for the sentencing component, but it does apply for resentencing. This law went into effect on January 1, 2022.

**AB 200** - a large 2022 California Assembly trailer bill that contained a number of technical fixes to the Penal Code. One relevant change was moving a number of resentencing laws into a new chapter. Recall and Resentencing is now PC section 1172.1 (formerly PC section 1170.03 after AB 1540, and

originally PC section 1170(d)(1)). Felony murder resentencing is now PC section 1172.6 (formerly PC section 1170.95, created by SB 1437 and expanded by SB 775). RISE Act resentencing is now PC sections 1172.7-1172.75 (formerly PC section 1171, created by SB 483 for the retroactive removal of 3-year drug prior enhancements (SB 180), and PC section 1171.1 for the retroactive removal of 1-year prison prior enhancements (SB 136). AB 200 went into effect on July 1, 2022.

**AB 333** - a 2021 California Assembly bill authored by Senator Kamlager, the **STEP Forward Act** limits gang enhancements by narrowing the scope of what is considered a “criminal gang” and what are defined as “criminal gang activities.” It does not automatically apply to currently incarcerated people with “final sentences,” but may be used to reduce your sentence if you get back to court for resentencing through another avenue. This law went into effect on January 1, 2022.

**AB 518** - a 2021 California Assembly bill authored by Assemblymember Wicks, the **Violations Punishable in Different Ways Act** ended the requirement that a person be punished under the law with the longest possible term of imprisonment possible. This law went into effect on January 1, 2022.

**AB 1540** - a 2021 California Assembly bill authored by Assemblymember Ting, the **Ensuring Due Process & Equity in CA Resentencing Laws Act** addressed implementation issues with the law formerly known as Penal Code section 1170(d)(1) by: ensuring that an incarcerated person receives notice of their resentencing referral; creating court deadlines and the right to counsel; providing a presumption in favor of resentencing for all law enforcement referrals; and clarifying that a judge can reduce a charge to a lesser-included or lesser-related offense. The bill also gave the Attorney General the power to recommend a person for resentencing when they prosecuted the case, and moved recall and resentencing into its own Penal Code section to clarify the law. The law went into effect Jan. 1, 2022.

**AB 1618** - a 2019 California Assembly bill authored by Assemblymember Jones-Sawyer that made “Harris Waivers” (language in a plea bargain that forfeits a defendant’s right to resentencing and the benefits of future policy reforms) void as against public policy and unenforceable. This law went into effect on January 1, 2020.

**AB 1812** - a 2018 California Assembly bill authored by the Committee on Budget that amended the law formerly known as PC section 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 2018 California Assembly bill authored by Assemblymember Ting that amended the law formerly known as PC section 1170(d)(1) and authorized district attorneys to make referrals for recall and resentencing. Co-sponsors of AB 2942 included For The People’s Sentence Review Project and the Santa Clara District Attorney’s Office. The law went into effect on January 1, 2019.

**SB 81** – a 2021 California Senate bill authored by Senator Skinner, **Make the Crime Match the Time** provided guidance on when judges may apply sentence enhancements by clarifying the parameters a judge must follow to improve fairness in sentencing and help ensure that penalties more closely reflect the circumstances of the crime. SB 81 established a presumption that judges should not apply enhancements unless there is clear and convincing evidence that not using the enhancement would endanger the public. This law went into effect on January 1, 2022.

**SB 136** – a 2019 California Senate bill authored by Senator Wiener that repealed the 1-year sentence enhancement for most prior felony prison or jail terms, except for prior convictions of a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code. The law went into effect on January 1, 2020.

**SB 180** – a 2017 California Senate bill authored by Senator Mitchell that repealed 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). This law went into effect January 1, 2018.

**SB 483** – a 2021 California Senate bill authored by Senator Allen, the **Repeal Ineffective Sentence Enhancements (RISE) Act** authorized courts to retroactively remove 1-year prison prior and 3-year drug prior enhancements from the sentences of currently or formerly incarcerated people, including those with “final sentences”. People who have served their base term and are currently only serving these enhancements should be notified of this by March 1, 2022 and resentenced by October 1, 2022; all others with these enhancements must be notified by July 1, 2022 and resentenced by December 31, 2023. This law went into effect on January 1, 2022.

**SB 567** – a 2021 California Senate bill authored by Senator Bradford that created the presumption that a person will be sentenced to the mid-term absent mitigation or aggravation evidence. This law went into effect on January 1, 2022.

**SB 620** – a 2017 California Senate bill authored by Senator Bradford that ended the mandatory application of gun (or firearm) enhancements under PC sections 12022.5 and 12022.53, and allows the judge to strike or dismiss the enhancement at sentencing or resentencing. This law went into effect on January 1, 2018.

**SB 775** – a 2021 California Senate bill authored by Senator Becker that expanded Felony Murder resentencing established by SB 1437. This law allows people to petition for resentencing (or challenge on direct appeal) if they were convicted of aiding and abetting attempted murder under the natural and probable consequences doctrine, or in some cases, if they were charged with murder but convicted of manslaughter. This law went into effect on January 1, 2022.

**SB 1393** – a 2018 California Senate bill authored by Senators Mitchell and Lara, the **Fair and Just Sentencing Reform Act** that ended 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 1437** – a 2018 California Senate bill authored by Senator Skinner, this law created a mandatory resentencing process for some people who were charged with murder for an underlying felony under a natural and probable consequences theory of imputed malice. People are eligible for resentencing if they were not the actual killer and if they were not a major participant in the underlying felony acting with reckless indifference to human life. This law went into effect on January 1, 2019.

## Glossary of Key Terms and Abbreviations

**AG** – The Attorney General of California works within the California Department of Justice (DOJ) and enforces the laws of California and prosecutes cases.

**BPH** – Board of Parole Hearings, is a body within CDCR that decides people’s suitability for release on parole and parole supervision.

**CDCR** – the California Department of Corrections and Rehabilitation is California’s prison agency.

**Cohort** – CDCR’s term for groups of people eligible for resentencing referrals via PC section 1172.1 (formerly PC § 1170(d)(1) and PC § 1170.03) based on specific enhancements, case factors, or in-custody conduct.

**CDC Form 602 (“602s”)** – CDCR administrative appeals to address various grievances at the facility level and appeal up to Sacramento headquarters. In most cases, these appeals must be “exhausted” internally before an issue can be addressed in a lawsuit in court.

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

**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.”

**LWOP** – a sentence also known as Life Without Parole, or Life without the possibility of Parole, a person sentenced to LWOP in California is not eligible for parole hearings and is sentenced to life in prison. Pathways to release for people with LWOP include: clemency, felony murder resentencing, Penal Code section 1170(d)(1)(formerly (d)(2)) for people charged under the age of 18, and recall and resentencing.

**Nickel Prior** – a 5-year sentence enhancement (PC § 667.5) for each prior serious felony. SB 1393 made these enhancements no longer mandatory as of January 1, 2019.

**Penal Code Revision Committee** - created by Governor Newsom on January 1, 2020, this body reviews the California Penal Code and proposes recommendations in an annual report in order to simplify criminal laws, establish alternatives to incarceration, and improve parole and probation.

**Petition for 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. Reasons for filing a petition for a writ of habeas corpus can include new evidence, parole denial, illegal sentencing, and prison conditions.

**Pre-Conviction Factors** - events and experiences prior to incarceration that can mitigate the severity of punishment and sentencing, such as being the subject of neglect, abuse, sexual trauma, intimate partner violence, and being a survivor of sex trafficking, as well as being under the age of 26 years old at the time of the alleged offense.

**Post-Conviction Factors** - events and accomplishments during incarceration that speak to a person's preparedness for release and current risk to public safety, including evidence of rehabilitation, 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, medical condition and necessary accommodations, and changed circumstances including new sentencing laws.

**Pro Se (or Pro Per)** - refers to representing oneself in a criminal or post-conviction proceeding without the assistance of an attorney. Usage includes "filing a petition pro se" or being a "pro se defendant."

**RRRP** - the Recall and Resentencing Referral Program within CDCR which reviews cases for recommendations using Penal Code section 1172.1. The CDCR secretary is the final level of approval or denial for all resentencing recommendations.

**RVR (or "115")** - a "Rules Violation Report" or disciplinary write-up for alleged in-custody conduct ranging from administrative rules violations like not standing for count or failing to report for a ducat (prison pass that allows movement within prison), to serious rules violations like refusing a drug test or assaulting another person in-custody. An RVR results in an investigation, a hearing, and potential discipline, and in more serious cases the RVR can be used to file new criminal charges by the DA in the county where the prison is located. Serious RVRs are often cited by BPH to argue against someone's parole suitability or by CDCR to deny someone PC section 1172.1 resentencing referrals or good-time credits. There are also lower level write ups known as "128"s or "Counseling Chronos" that are placed into a person's file without a hearing.

**SHU (or "ASU" or "Ad Seg")** - solitary housing units, or administrative segregation units, are one-person cells used for punishment and/or protective custody. Typically people housed in SHU have fewer privileges than people housed in the general population.

A woman with dark hair, wearing a white N95 respirator mask and blue nitrile gloves, is leaning out of the open rear window of a light-colored car. She is wearing a red knit cardigan over a light blue shirt. The background is a blurred city street with a red traffic light visible. The entire image has a semi-transparent red overlay.

**2.**

# **Penal Code Section 1172.1 Resentencing FAQs**





# Penal Code Section 1172.1

## Resentencing FAQs

### Am I Eligible for Resentencing?

Penal Code section 1172.1 does not exclude anyone from a resentencing referral. **This law clearly states that anyone can be referred for resentencing**, including people who accepted plea bargains, people with LWOP sentences, people with the Death Penalty, and people who are no longer in custody.

Despite the clear inclusion of all people in the language of the law, because this type of resentencing is “discretionary” (or optional) for the law enforcement agencies who have the power to make referrals, specific eligibility criteria will depend upon which agency is making the resentencing referral. However, any blanket exclusions go against the legislature’s intent.

**CDCR** is currently excluding a number of people from a referral. CDCR excludes most people who have to register via Penal Code section 290, as well as people serving Life Without the possibility of Parole (LWOP) and Death sentences, and people who have already been to the Parole Board or who are going soon. CDCR also requires between 1-5 years without disciplinary write-ups and 5-10 years served in CDCR custody (not including time spent in county jail) depending on the referral “cohort” that CDCR is using for review. As of July 2022, CDCR’s criteria are still undergoing changes - we will continue to fight against any exclusions.

**District Attorneys’** offices are developing their own county-specific criteria on what cases they will consider eligible for resentencing review and referral.

The **Attorney General’s** office also has the power as of Jan. 1, 2022 to develop their own eligibility criteria and refer people whose cases they originally prosecuted.

At this time, the **Board of Parole Hearings** and **County Sheriffs** are not making resentencing referrals, we do not know what criteria they will use if they exercise their power to refer people back to court.

## Who can recommend me back to court for resentencing?

If your case was prosecuted by a county District Attorney, that DA office can refer you back to court for resentencing. If your case was prosecuted by the Attorney General's office, then the AG can refer you back to court for resentencing. If you are in a California prison, the Secretary of CDCR can also refer you back to court for resentencing. If you are in a county jail, that County Sheriff can refer you back to court for resentencing. We are still learning how people who are out of custody can request resentencing. If you are no longer incarcerated, you can try contacting the District Attorney in your county of conviction, your Parole Agent, or CDCR in Sacramento to request review for a resentencing referral.

## Should I hire an attorney?

While there are a number of attorneys advertising "resentencing petition" services online, it's good to use caution when considering hiring an attorney to assemble a resentencing packet. First, there's no such thing as a "PC 1172.1 petition" (or "AB 2942 petition") in this area of the law, unless you were sentenced in the last 120 days. In other words, **if you were sentenced more than 120 days ago, you can't have an attorney file a petition with the court for resentencing under PC 1172.1 - you have to be referred for resentencing by one of the entities described above.** Second, you can use the samples and advice in the guides below and assemble documents. You can also take the first step of writing to the DA office and simply asking if they have an Intake Form for Penal Code section 1172.1 Resentencing Review, particularly if you're concerned about what information to share or not to share. You can use the materials you may have already gathered for the parole board or a commutation application to assemble this packet. If the DA, AG, or CDCR decide to refer a case for resentencing, the judge will appoint an attorney at no cost to you or your family.

You do not need to pay an attorney to request review for resentencing. And 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. You can also reach out to the public defender's office to see if these strategies would interfere or work against other aspects of your case.

## What happens if I am recommended for resentencing?

A resentencing recommendation does not guarantee resentencing to a lesser sentence. AB 1540 created a presumption in favor of resentencing, and it also established notification requirements and a timeline for the court to calendar a resentencing referral for a hearing and to appoint counsel. The trial court judge still has discretion on how to act on a recommendation letter from CDCR. 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 **Penal Code § 1172.1 Resentencing**.

## How will my LWOP or Death Penalty sentence impact me at resentencing?

If you were convicted of an offense that occurred before June 6, 1990, a judge can strike the special circumstances and resentence you to a parole-eligible sentence. If you were convicted for an offense that occurred after June 6, 1990, then the judge must first vacate your conviction in order to regain the power to strike the special circumstances when resentencing you to a lesser-included offense such as second-degree murder. If you are being referred by the District Attorney for resentencing, the DA can request that the judge vacate the conviction to strike the special circumstances and resentence you.

On July 1, 2022, AB 200 went into effect and moved various resentencing laws (including SB 483, Felony Murder, and Recall and Resentencing) out of Penal Code chapters 1170 and 1171 and into a new chapter of the Penal Code, PC section 1172. This was done with the intent of making it undeniably clear that all of these resentencing laws apply to people with LWOP and Death Penalty sentences. In the digest, the legislature stated their intent:

*“(7) Existing law provides various authorities for the resentencing of persons convicted of crimes including persons convicted of crimes, or enhancements that have been subsequently repealed or reclassified. By virtue of the location in code where these provisions have been codified, the application of these provisions to certain individuals, including those sentenced to death or imprisonment for life, is prohibited or ambiguous. This bill would renumber these provisions and place them in a new article, **thereby making certain provisions that exclude certain persons from their use inapplicable to these renumbered provisions.**”*

## What did AB 1540 change in the recall and resentencing law?

AB 1540 (Ting - 2021) moved the recall and resentencing provisions that used to be in PC 1170(d)(1) into a brand new code section: 1170.03. AB 1540 strengthens individuals' procedural rights during recall and resentencing, clarifies what the court must do when it gets a resentencing referral, and limits judicial discretion to deny resentencing. Specifically, AB 1540:

- Ensures that all people referred by CDCR or another approved agency for 1170.03 recall and resentencing have a right to an attorney;
- Requires a judge to hold a status conference within 30 days of receiving a resentencing recommendation, where an attorney will be appointed;
- Allows the parties to stipulate to a new sentence without holding a hearing if all parties agree;
- Makes clear that a person referred for resentencing has a right to be notified about the referral;
- Clarifies that a judge can resentence someone to a lesser-included or lesser-related offense. For instance, manslaughter can be a lesser offense to murder;
- Clarifies that, in resentencing a person, a judge must apply all of the new laws aimed at reducing harsh sentencing that passed since the person was sentenced initially;
- Provides a right to a hearing; and,
- Creates a presumption that a person will be resentenced, overcome only if the court determines that the individual is an "unreasonable risk of danger to public safety," as defined in Penal Code section 1170.18(c). This means that resentencing can be denied only if the court finds that the person poses an unreasonable risk of committing a violent felony "super strike" if released. Super strikes include: homicide, solicitation to commit murder, violent sex crimes, sex crimes against children, assault with a machine gun on a peace officer or firefighter, possession of a weapon of mass destruction, or any serious or violent felony punishable in California by life imprisonment or death.
- Adds the Attorney General to the list of agencies that can refer people back to court in cases that they prosecuted.



## If I was referred by CDCR before AB 1540 went into effect on Jan. 1, 2022 or AB 200 went into effect on July 1, 2022, what will happen to my resentencing referral?

Many people who CDCR referred back to court for resentencing never received a hearing and/or the judge refused to take action on CDCR's recommendation. With the passage of AB 1540, there is now a strong presumption in favor of resentencing, and procedural rights such as a mandatory hearing, the right to counsel, notification, and a clear timeline. If you received a resentencing referral from CDCR but no action was taken, contact your Public Defender and/or the attorney who worked on your case and request that they assist you in getting reconsideration under the new statute Penal Code section 1172.1.

If your case was already pending in the courts when AB 200 went into effect on July 1, 2022, lawyers may be asked by judges to amend the references to various sections of the Penal Code in the briefing materials and change the number used in the docket for these further proceedings.

## Is there a limit to the number of times I can request resentencing?

District Attorneys may have various answers on the number of times a person can apply for resentencing review. CDCR currently limits the frequency that someone can be reviewed for a resentencing: for Exceptional Conduct referrals, people who are "deemed ineligible by Classification Services Unit or not acted upon by the Secretary may only be reconsidered by the Department after two years have passed..." (Title 15, § 3076.1(b)(4)), and for Sentence Enhancement cohort referrals "after one year has passed" (Title 15, § 3076.1(c)(4)).

## 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.

Your sentence is "final" after you have exhausted all of these appeals or after the deadlines have passed to do so. 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 or reach out to an appellate project in the **Contact List** in the Appendix of this Guide.

## Can I obtain a PC § 1172.1 resentencing referral if I am back in court already for a different law or proceeding?

If you are already back in court for other proceedings, such as SB 1437/SB 775 Felony Murder Resentencing under PC section 1172.6 (formerly PC section 1170.95), SB 483 RISE Act Resentencing under PC section 1172.7 or 1172.75 (formerly PC § 1171 or 1171.1), a Franklin hearing, or a petition for writ of habeas corpus, your attorney can advocate with the District Attorney or the Attorney General to make a PC section 1172.1 referral within those proceedings as a part of the negotiations taking place. There is more discretion and less of an onerous pleading process with PC section 1172.1 compared to other laws, and it could be advantageous to all parties. Consult the attorney working on your case to see if this is a good option.

## How does a pending commutation application affect my efforts to be referred for resentencing?

If you already submitted a commutation application to either Governor Brown or Governor Newsom, you can use the materials you gathered such as support letters, remorse letters, laudatory chronos, book reports, and parole plans, and use this to create a packet to then request resentencing from either the Warden at your facility, the District Attorney in your county of conviction, or the Attorney General if they prosecuted your case. Attorneys typically encourage people to pursue many paths to release simultaneously, and the particulars of your case and the current political climate can make it so that one actor may be more likely to move forward with your case than another, and that can shift over time.

If you haven't already applied for a commutation from the Governor, you can use the materials you gather for your resentencing request, and submit a copy to the Governor along with the commutation application form and other consent forms. We have information on how to request clemency resources in our **Resource List** at the end of this guide.

For more in-depth information, see the following section on **Penal Code § 1172.1 Resentencing**.

A woman and a young girl are high-fiving each other outdoors. The woman is on the left, wearing a pink shirt, and the girl is on the right, wearing a light pink shirt. They are both smiling and looking at each other. The background is a clear blue sky with some light clouds. The image has a soft, warm tone.

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# **Sentence Enhancement FAQs: How Do New Laws Impact Me?**



# Sentence Enhancement FAQs: How Do New Laws Impact Me?

In this section, we will discuss the following buckets of recent laws:

- Non-Retroactive Enhancement Reforms: SB 1393, SB 620, AB 333
- Retroactive Enhancement Repeals: SB 483 RISE Act (SB 180, SB 136)
- Related Non-Retroactive Laws: SB 81, AB 518, SB 567, AB 124
- Related Retroactive Laws: SB 1437, SB 775

## Non-Retroactive Enhancement Reforms: SB 1393, SB 620, and AB 333

If you have any **5-year prior felony** enhancements, **gun** enhancements, or **gang** enhancements on your current sentence for prior serious felonies, you may be able to use recent sentencing reforms to obtain resentencing. Even though these laws are not retroactive, we will discuss various ways to self-advocate to get sentence enhancements removed if they were already applied to your sentence.

### What did these laws change?

**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.

**SB 620 (Bradford) ends the mandatory application of gun (or firearm) enhancements** under PC sections 12022.5 and 12022.53, and allows the judge to strike or dismiss the enhancement at sentencing or resentencing.



**AB 333 (Kamlager), the STEP Forward Act**, limits gang enhancements by narrowing the scope of what is considered a “criminal gang” and what are defined as “criminal gang activities.” It does not automatically apply to currently incarcerated people with “final sentences,” but may be used to reduce your sentence if you get back to court for resentencing through another avenue. With AB 333 in effect, the law ends prosecutors’ ability to claim people are gang members simply because they may come from the same community, be related, or know each other. The law also reduces the list of crimes that allow gang enhancements to be charged, prohibits the use of the current charge as proof of a “pattern” of criminal gang activity, requires direct evidence of current and active gang allegations, and separates gang allegations from the underlying charges at trial.

## **Are SB 1393, SB 620, or AB 333 retroactive?**

No, these laws are not retroactive and they do not create a mandatory right to resentencing for all people with 5-year prior felony sentence enhancements, gun enhancements, or gang enhancements on their sentences. However, depending on where you are currently at in the sentencing or appeals process, you may have the opportunity to use these laws to your advantage. And if your sentence is final, you may be able to use these laws to obtain a resentencing referral to get back to court.

## **What paperwork do I need to file with CDCR to be considered for a resentencing referral based on my sentence enhancements?**

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 prior felony and gun sentence enhancements. Once they make a list of everyone who is eligible, they will decide who to refer for resentencing, they are only recommending a portion of the group. CDCR’s Classifications Services Unit and Case Records will process the list of individuals eligible for Penal Code section 1172.1 discretionary relief. Select cases are sent on a rolling basis to the CDCR Secretary who then considers the candidates. 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 already had a parole hearing or has a parole eligibility or release date within 18 months. If the CDCR Secretary recommends someone for resentencing, the letter will be sent to the court in the county of conviction, the case will be scheduled for a status conference within 30 days, and the person being referred will receive notice of the letter, the hearing date, and the attorney appointed to them. The judge will have discretion on how to resentence, but there is a strong presumption in favor of resentencing.

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

The timeline for receiving a resentencing referral for previously applied 5-year and gun enhancements is currently unknown. SB 1393 went into effect on January 1, 2019. SB 620 went into effect on January 1, 2018. 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 prior felony and gun enhancements. According to CDCR, there are a large number of people who need to be reviewed.

## What can I do to advocate for resentencing in my case based on my sentence enhancements?

How to best use SB 1393, SB 620, and AB 333 and other sentencing reforms depends on where you are in the sentencing process.

- **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.**

SB 1393 made it optional for the judge in your case to impose 5-year sentence enhancements for any prior serious felonies when sentencing you.

SB 620 made it optional for the judge in your case to impose sentence enhancements for possession or use of a gun or firearm in the commission of the alleged offense.

Your attorney can now use SB 1393 and SB 620 to argue that these enhancements should not be applied to your case under the “interest of justice” standard. The “interest of justice” standard is not clearly defined in the law, but judges tend to look at pre- and post- conviction factors, and should be referencing the factors laid out in PC section 1172.1 such as behavior in-custody, record of rehabilitation, and reduced risk to public safety. Your attorney can point to various facts in 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.

AB 333 addresses the vague definitions and weak standards of proof that allowed District Attorneys to add gang enhancements onto the sentences of people who were not committing gang activity. At resentencing, your attorney can now use AB 333 to go back and challenge the gang enhancements previously added onto your sentence if they did not meet the standards of the current law.

- **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 already sentenced and you are still fighting your conviction or your sentence on appeal, you can address the issue of any enhancements on your sentence that are no longer mandatory after the passage of SB 1393 and SB 620, as well as the new gang enhancement allegation standards with the passage of AB 333.

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.

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 or SB 620 to remove or strike any 5-year or gun enhancements applied to your sentence, as well as to review whether the standards of AB 333 have been met for any gang enhancements on your sentence.

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 laws to remove 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, gun enhancement, or gang enhancement, and your conviction is final, you may be able to take advantage of the recent passage of SB 1393, SB 620, and AB 333 and the newly amended PC section 1172.1 to be “resentenced” in the “interest of justice.” You can use these three laws 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, the Attorney General (if they prosecuted your case), the County Sheriff (if you are in jail), or the District Attorney of the county of your conviction 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 judge will then set a resentencing hearing with the presumption in favor of removing these enhancements from your sentence.

# Retroactive Enhancement Repeals: SB 483, SB 180, and SB 136

If you have a **1-year prison prior** enhancement, or a **3-year drug prior** enhancement on your current sentence, you are likely eligible for mandatory resentencing as of Jan. 1, 2022.

In 2017 and 2019, California ended the use of most 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). Until recently, these reforms applied only to cases filed after these bills became law. However, **SB 483 (effective Jan. 1, 2022) 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.**

## Additional Details on SB 180, SB 136, and SB 483:

- **SB 180** (Mitchell) repeals the **three-year enhancement for prior drug-related felonies** (Health and Safety Code § 11370.2). This repeal went into effect on January 1, 2018. This law does not apply to prior convictions involving a minor (HSC § 11380).
- **SB 136** (Wiener), a reintroduction of SB 1392 (Mitchell), eliminates the mandatory **one-year enhancement for prior felonies that resulted in a prison or jail term (PC § 667.5)**. This repeal went into effect on January 1, 2020. This law does not apply to prior convictions of a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code.
- **Senate Bill 483** (Allen) is the Repeal Ineffective Sentencing Enhancements (RISE) Act of 2021 and it was signed by Governor Newsom and went into effect on January 1, 2022. **SB 483 authorizes courts to retroactively remove these 1-year prison prior and 3-year drug prior enhancements** from the sentences of currently or formerly incarcerated people, whether they are still on appeal or their sentence is “final.”

## How long will it take for SB 483 to be implemented and for the time to be taken off of people’s sentences?

The bill requires the Secretary of the California 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 in the table below.

People who have served their base term and are currently only serving these enhancements should have been notified of this by March 1, 2022 and must be resentenced by October 1, 2022; all other people with these enhancements must be notified by July 1, 2022 and resentenced by December 31, 2023.



<b>By March 1, 2022</b>	CDCR & county correctional administrators (Sheriffs) identify every person who has served their base term and only has 1-year or 3-year enhancement time left to serve, and send their information to the superior court in the county of conviction.
<b>By July 1, 2022</b>	CDCR & county correctional administrators (Sheriffs) identify everyone in custody with these 1-year and 3-year enhancements and send their information to the superior court in the county of conviction.
<b>By Oct 1, 2022</b>	Courts recall and resentence every person who has served their base term already and is only serving time on 1-year prison prior or 3-year drug prior enhancements, including people on probation or parole.
<b>By Dec 31, 2023</b>	Courts recall and resentence everyone else with these 1-year prison prior and 3-year drug prior enhancements.

## What do I need to do to be resentenced under SB 483?

SB 483 instructs CDCR (for people in prison custody) and the County Sheriff (for people in county jail custody) to create a list of everyone eligible for SB 483 resentencing in their custody by the timelines above. You are legally entitled to be automatically referred back to court for resentencing.

## What do I do if my name has not yet been sent to the courts by CDCR or the Sheriff?

The SB 483 Implementation Team is doing outreach to County Sheriffs throughout California to urge them to comply with the timelines specified in the Penal Code. We know that a number of counties have not yet sent the list of eligible people in jail custody to the courts. CDCR has sent lists of eligible people to courts already, with 2,095 people on the first March 2022 list and 7,534 people on the second July 2022 list. However, we believe some people who are eligible for resentencing have been left off of those CDCR lists. We are tracking the issue with attorneys across the state and will continue to apply pressure on the responsible parties.

Here are ways you can advocate for yourself to obtain resentencing if you have not already been notified of your eligibility or calendered by the court:

- You can reach out to the Public Defender's office in your county of conviction for support in ensuring that you are being included in the resentencing referral process.
- If you are in California prison, you can file a 602 grievance in your facility stating your eligible enhancements and requesting an update on whether they have sent your name to the courts yet.
- If you are in county jail, you can file a grievance in your facility stating your eligible enhancements and requesting an update on whether they have sent your name to the courts yet.

- If you have not yet been contacted or wish to expedite the process, you can file a petition for a writ of habeas corpus to request a resentencing hearing with the superior court in your county of conviction. However, many courts are claiming they do not have jurisdiction to calendar a resentencing hearing unless they receive your name directly from either CDCR or the County Sheriff.

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

## **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, SB 483 requires the court to appoint counsel for you free of charge.

## **Can the judge decide not to resentence me?**

Resentencing has to happen as these enhancements are no longer valid. However, judges do have discretion in how much they reduce the sentence. There is a presumption in favor of resentencing to a shorter sentence in SB 483. “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.”

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 SB 483 affect my other sentence enhancements?

This bill allows courts to consider other circumstances that may have changed since the original conviction. So if the court resentences you through SB 483, the court can also apply other changes to judicial discretion or the laws that allow for reducing sentences as part of this resentencing – for example, striking 5-year prior felony enhancement (SB 1393) or gun enhancements (SB 620). 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.

## How do I file a Petition for a Writ of Habeas Corpus directly with the Court?

<b>Step 1</b>	<p><b>Complete the MC-275 Form (in the Appendix).</b> For the <b>“Grounds of Relief” section (0.6 on pg. 2)</b>, include the language below citing what type of enhancement you have and what part of the SB 483 law is relevant to your case.</p> <ul style="list-style-type: none"><li>• <b>For 1-year prison priors:</b> “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 1172.75 (formerly PC § 1171.1), those enhancements are legally invalid.”</li><li>• <b>For 3-year drug priors:</b> “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 1172.7 (formerly PC § 1171), those enhancements are legally invalid.”</li></ul> <p><b>KEEP THE PETITION SIMPLE. Do not worry about providing extensive facts and information in 6a or 6b.</b></p>
<b>Step 2</b>	<p><b>Have someone <u>other than yourself</u> send a copy of the petition and a Proof of Service (blank form included) to the Following Parties:</b></p> <ol style="list-style-type: none"><li>1. <b>The Public Defender in your County of Conviction*</b>  *or Bar Panel attorney if there is no Public Defender office in the county.</li><li>2. <b>The District Attorney in your County of Conviction</b></li></ol> <p><b>NOTE: The person filling out the Proof of Service can NOT be the same person (or “party”) requesting relief.</b></p>

## Related Non-Retroactive Laws: SB 81, AB 518, SB 567, AB 124

If you have multiple enhancements, if you were sentenced to the “high-term” for your charges, if you experienced trauma as a result of human trafficking or intimate-partner violence prior to your sentencing, or if you were under the age of 26 years old at the time of the alleged offense, you may be able to use recent reforms to assist you in resentencing. The following laws do not create a path to get back to court unless you are currently pre-sentencing or still on appeal. If your sentence is final, you will need to use a separate law such as PC section 1172.1 to obtain a hearing so you can bring in these laws for your benefit.

**SB 81** is a 2021 California Senate bill authored by Senator Skinner. **Make the Crime Match the Time** provided guidance on when judges may apply sentence enhancements by clarifying the parameters a judge must follow to improve fairness in sentencing and help ensure that penalties more closely reflect the circumstances of the crime. SB 81 established a presumption that judges should not apply enhancements unless there is clear and convincing evidence that not using the enhancement would endanger the public.

**SB 567** is a 2021 California Senate bill authored by Senator Bradford that created the presumption that a person will be sentenced to the mid-term absent mitigation or aggravation evidence. Mitigation evidence includes the trauma circumstances put forth in AB 124, as well as whether a person was under the age of 26 years old at the time of the alleged offense.

**AB 124** is a 2021 California Assembly bill authored by Senator Kamlager. **The Justice for Survivors Act** requires the court to consider intimate partner violence, human trafficking, and other traumatic experiences as contributing factors in sentencing and resentencing decisions. If the trauma of those experiences substantially contributed to the defendant’s crime of conviction, the law now requires the court to sentence them to the lowest possible sentence. This bill originally created a self-referral path for resentencing, but this was removed from the bill before it became law. Only the resentencing component of this bill applies to people charged with “violent” felonies.

**AB 518** is a 2021 California Assembly bill authored by Assemblymember Wicks, the **Violations Punishable in Different Ways Act** will end the requirement that a person be punished under the law with the longest possible term of imprisonment.



## Related Retroactive Laws: SB 1437 and SB 775

If you were charged under the Felony-Murder rule due to an underlying felony, you may be able to obtain mandatory retroactive resentencing via SB 1437 which was recently expanded by SB 775. The courts are still resolving a number of legal questions, including whether these laws apply to “provocative acts.”

**SB 1437** is a 2018 California Senate bill authored by Senator Skinner, this law created a mandatory resentencing process for some people who were charged with murder for an underlying felony under a natural and probable consequences theory of imputed malice. People are eligible for resentencing if they were not the actual killer and if they were not a major participant in the underlying felony acting with reckless indifference to human life.

**SB 775** is a 2021 California Senate bill authored by Senator Becker that went into effect on Jan. 1, 2022 and expands Felony Murder resentencing established by SB 1437. This law allows people to petition for resentencing (or challenge on direct appeal) if they were convicted of aiding and abetting attempted murder under the natural and probable consequences doctrine, or in some cases, if they were charged with murder but convicted of manslaughter.

**AB 200** is a budget trailer bill that went into effect on July 1, 2022 and moved the resentencing provisions created by SB 1437 and SB 775 into a new chapter and section of the Penal Code, PC section 1172.6 (formerly known as PC section 1170.95).



4.

# Penal Code § 1172.1

## Resentencing



# Penal Code § 1172.1 Resentencing

## Who Can Initiate Recall and Resentencing?

California Penal Code (“PC”) section 1172.1 allows a judge within 120 days of original sentencing to recall a sentence and resentence someone on the court’s own motion. PC section 1172.1 also gives five law enforcement agencies the power to refer someone who was sentenced via California criminal laws back to the trial court for resentencing.

These five 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), the Attorney General (**AG**, if they prosecuted your case), and the **County Sheriff** (if someone is currently serving their sentence in county custody or on county probation). These five 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 resented “anew.” This can happen at any time after the original sentencing.

After 120 days of your sentencing hearing, the court cannot schedule a PC section 1172.1 resentencing proceeding unless they receive a referral from CDCR, BPH, the DA, the AG, or the Sheriff. 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 PC section 1172.1 resentencing on your own.

The following parameters shape the judge’s discretion to recall and resentence upon receiving a referral:

- The new sentence must be “lawful”
- Credit must be given for time served
- The new sentence cannot be longer than the original sentence, unless the referral is for an unauthorized sentence
- Pre-conviction and postconviction factors can be considered in the “interest of justice”

- There is a strong presumption favoring resentencing which may only be overcome if a court finds an unreasonable risk of danger to public safety (defined as the likelihood that a person would commit a “super strike” offense if they were released)

The following procedures apply in PC section 1172.1 recall and resentencing proceedings:

- Counsel must be appointed
- A status conference must be set within 30 days
- Resentencing can occur without a hearing if both parties stipulate to a new sentence
- Resentencing cannot be denied without a hearing
- Resentencing denials are appealable

## What does the new Recall of Sentence and Resentencing law say after the passage of AB 1540?

### **Penal Code section 1172.1.**

- (a) (1) When a defendant, upon conviction for a felony offense, has been committed to the custody of the Secretary of the Department of Corrections and Rehabilitation or to the custody of the county correctional administrator pursuant to subdivision (h) of Section 1170, the court may, within 120 days of the date of commitment on its own motion, at any time upon the recommendation of the secretary or the Board of Parole Hearings in the case of a defendant incarcerated in state prison, the county correctional administrator in the case of a defendant incarcerated in county jail, the district attorney of the county in which the defendant was sentenced, or the Attorney General if the Department of Justice originally prosecuted the case, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced, whether or not the defendant is still in custody, and provided the new sentence, if any, is no greater than the initial sentence.
- (2) The court, in recalling and resentencing under this subdivision, shall apply the sentencing rules of the Judicial Council and apply any changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing.
- (3) The resentencing court may, in the interest of justice and regardless of whether the original sentence was imposed after a trial or plea agreement, do the following:
- (A) Reduce a defendant’s term of imprisonment by modifying the sentence.
  - (B) Vacate the defendant’s conviction and impose judgment on any necessarily included

lesser offense or lesser related offense, whether or not that offense was charged in the original pleading, and then resentence the defendant to a reduced term of imprisonment, with the concurrence of both the defendant and the district attorney of the county in which the defendant was sentenced or the Attorney General if the Department of Justice originally prosecuted the case.

(4) In recalling and resentencing pursuant to this provision, the court may consider postconviction factors, including, but not limited to, the disciplinary record and record of rehabilitation of the defendant while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant's risk for future violence, and evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice. The court shall consider if the defendant has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence, if the defendant was a victim of intimate partner violence or human trafficking prior to or at the time of the commission of the offense, or if the defendant is a youth or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense, and whether those circumstances were a contributing factor in the commission of the offense.

(5) Credit shall be given for time served.

(6) The court shall state on the record the reasons for its decision to grant or deny recall and resentencing.

(7) Resentencing may be granted without a hearing upon stipulation by the parties.

(8) Resentencing shall not be denied, nor a stipulation rejected, without a hearing where the parties have an opportunity to address the basis for the intended denial or rejection. If a hearing is held, the defendant may appear remotely and the court may conduct the hearing through the use of remote technology, unless counsel requests their physical presence in court.

(b) If a resentencing request pursuant to subdivision (a) is from the Secretary of the Department of Corrections and Rehabilitation, the Board of Parole Hearings, a county correctional administrator, a district attorney, or the Attorney General, all of the following shall apply:

(1) The court shall provide notice to the defendant and set a status conference within 30 days after the date that the court received the request. The court's order setting the conference shall also appoint counsel to represent the defendant.

(2) There shall be a presumption favoring recall and resentencing of the defendant, which may only be overcome if a court finds the defendant is an unreasonable risk of danger to public safety, as defined in subdivision (c) of Section 1170.18.



## How long has PC § 1172.1 existed and why is there such a buzz right now?

Since the late-1960s, there has been some version of the current Recall and Resentencing referral powers given to courts and CDCR. The law was originally titled as Penal Code section 1170(d), then later as P.C. § 1170(d)(1). Starting Jan. 1, 2022 this law was retitled as PC section 1170.03 by AB 1540, and then again retitled as PC section 1172.1 on Jul. 1, 2022 by AB 200.

In 2018, Governor Brown signed into law a series of amendments (AB 1812 and AB 2942) 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
- Empowered District Attorneys to make these resentencing referrals

Even though the recall and resentencing law has existed for decades, CDCR only started sending referrals in June 2018. In the past few years, many courts saw these 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. Because of this, many referral letters were ignored, summarily denied, or ruled on in ways that did not reflect the law or the rights of the people being referred. A number of these cases are still being sorted out through appeals.

Because of the widespread confusion in courts around how to deal with these referrals, a group of advocates worked to amend the Recall and Resentencing Law and drafted AB 1540.

In 2022, this series of additional amendments went into effect thanks to the passage of AB 1540 in 2021. The bill created clear procedural rights for people being referred by law enforcement agencies, including the right to a speedy hearing, the right to counsel, the right to appeal, and a presumption in favor of resentencing. Additionally, the Attorney General was added as an agency that could make referrals in cases that the AG's office originally prosecuted.

In addition, a growing number of District Attorneys have been using the referral power they gained via AB 2942, which went into effect on Jan. 1, 2019. The California Governor's 2021-2022 Budget earmarked \$18 million over three years to create the California County Resentencing Pilot Program in 9 counties to establish policies and criteria for making referrals.

## Is PC § 1172.1 Resentencing mandatory or discretionary?

Unfortunately, PC section 1172.1 does not establish a legal right to resentencing for people who were sentenced in California. This form of discretionary resentencing can be compared to the California Governor's clemency power to "commute" your sentence to time served. Both PC section 1172.1 resentencing and commutations rely upon an executive's discretion to recommend someone for relief, at any time they choose, with wide discretion into how many referrals they'll make and why they'll make a referral.

When one of the five authorized government agencies sends a referral letter to the trial court asking a judge to recall your sentence, that letter gives the judge the authority to resentence you. The trial court judge has discretion on how they will act upon an agency's recommendation to resentence you.

By law, CDCR, BPH, Sheriffs, the AG, 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 using the administrative appeal process.

Because these PC section 1172.1 referrals are new for many courts, some judges believed they did not have to schedule resentencing hearings for the referral letters they were receiving under the previous Penal Code section 1170(d)(1). However, AB 1540 went into effect on January 1, 2022 and put in place clear timelines and procedural rights for these resentencing proceedings. There is now also a presumption in favor of resentencing and the burden is on the District Attorney to overcome this presumption.

## Is there a Petition for PC § 1172.1 Resentencing?

No, there is no such thing as a PC section 1172.1 petition, and there is no petition that you or your attorney can file directly with the court for this law – including a petition for a writ of habeas corpus based on Penal Code section 1172.1. You do not have "standing" in the court to initiate recall and resentencing without a referral from an authorized agency. There are efforts to create a pathway for self-referral for PC 1172.1 in the future, but currently this law requires a law-enforcement referral. Some DAs may file motions to formalize their resentencing referral with the court, but there is not a motion that you or your attorney can file yourself to be calendared for resentencing under PC section 1172.1.

The only exception to this is if you are within 120 days of your original sentencing. If this is the case, you can request that the court use its own authority under PC section 1172.1 to recall your recent sentence and bring you back to court for resentencing. There is not an official petition to request this from the court, but you can write a letter to the judge or file a motion. If the court denies your request, you can appeal. 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

Be wary of attorneys and legal workers who are charging for advertised services such as “filing a PC 1172.1 (or AB 2942) petition” or petitioning the courts or DA for a resentencing referral for you. In the last three years, many families have lost thousands and thousands of dollars paying lawyers and organizations whose websites are easy to find in an internet search but who rarely follow through with the services they promise and are advertising services that are not legally possible.

If you are in a position where you need to contact an attorney to understand how the law applies to your case, how to file an appeal on a denied referral, or other particulars outside of requesting review, you can contact the appellate projects listed in the **Contacts List** at the end of this guide and request information and attorney referrals.

NOTE: PC § 1172.1 resentencing is not the same as PC § 1170.18 (Realignment - Proposition 47), PC § 1172.7-1172.75 (formerly PC §§ 1171-1171.1)(RISE Act), or PC § 1172.6 (formerly PC § 1170.95)(Felony Murder) resentencing. **For Proposition 47, Felony Murder, and RISE Act Resentencing, an individual or attorney CAN petition the court directly without a resentencing referral from CDCR, the AG, or a DA.**

## Do I need a lawyer to request PC § 1172.1 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 1172.1 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 still within 120 days after your sentencing hearing, you can only informally “request” that the court exercise its own discretion to recall your sentence and resentence you.

Instead of hiring an attorney, you can use the available free resources to self-advocate, gather documentation of rehabilitation, and follow model template letters and use available intake forms to request consideration from various authorities.

You and your support network can appeal to 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 your local Participatory Defense Hub to assist you with DA requests.

If you are already working with an attorney on appeals, habeas petitions, or preparation for the parole board, discuss PC section 1172.1 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 is often 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 PC section 1172.1 resentencing, 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 § 1172.1 Resentencing referrals?

According to the California law in PC section 1172.1, **anyone can be referred for resentencing**. 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.” While CDCR currently excludes people serving LWOP and Death sentences from their resentencing referrals in their Title 15 Regulations, these exclusions are not based in the Penal Code, and a number of District Attorneys have expressed interest in using PC section 1172.1 to resentence people with LWOP and Death sentences to a parole-eligible sentence.

## CDCR’s Eligibility Criteria for PC § 1172.1 Resentencing Referrals

In 2018, CDCR created the Recall and Resentencing Referral Program (RRRP) to make PC section 1172.1 referrals (the law at the time was titled PC section 1170(d)(1)). CDCR’s pilot program began in June 2018 with a set of temporary criteria based off of the Proposition 57 Public Safety Screening Criteria (which have been repeatedly struck down by courts in the Prop. 57 context). As of December 2019, CDCR began to use the criteria set forth in their Title 15 emergency regulations for the RRRP. These regulations were amended in 2021 and are still under review as of July 2022. Two rounds of Public Comments have already occurred, with hundreds of people speaking out against the unfair exclusionary criteria. We expect a third round of Public Comment in Fall 2022. The criteria that CDCR currently uses are different for each PC section 1172.1 resentencing cohort.

### **CDCR excludes the following people from Exceptional Conduct resentencing (15 C.C.R § 3076.1):**

- People who have not demonstrated “sustained compliance with departmental regulations, rules, and requirements, as well as prolonged participation in rehabilitative programming”
- People who must register on the sex offense registry on Tier 2 or Tier 3 upon release
- People who have not yet served 10 years of their sentence in CDCR custody, not counting time spent in county jail
- People who have been found guilty of a serious or violent rules violation within the past five years, or have an open violation pending
- People with a determinate sentence who have a release date within 18 months
- People with a determinate sentence who are eligible for parole consideration within 18 months or who have already been considered for parole

- People with an indeterminate sentence (sentence up to life in prison) who are scheduled for a parole hearing within the next 18 months or who have already had a parole hearing
- People who were convicted of a single charge/offense and are serving the low term without any possible lesser-included offense or enhancements on their sentence

**CDCR excludes the following people from Change in Sentencing Law resentencing:**

- People who have not yet served 5 years of their sentence in CDCR custody, not including time spent in county jail
- People who have been found guilty of a serious or violent rules violation within the past one year, or who have an open violation pending
- People with a determinate sentence who have a release date within 18 months
- People with a determinate sentence who are eligible for parole consideration within 18 months or who have already been considered for parole
- People with an indeterminate sentence (sentence up to life in prison) who are scheduled for a parole hearing within the next 18 months or have already had a parole hearing

**CDCR excludes the following people from Sentencing Error resentencing:**

- People with determinate sentences who are scheduled for release within six months
- People whose sentences do not meet the standard of: "if their sentence, as reflected in the Abstract of Judgment, contradicts applicable sentencing laws at the time of their sentencing hearing or subsequent decisional history suggesting the substantial likelihood of a sentencing error."

**CDCR tends to favor people with the following factors for resentencing referrals:**

- Positive programming, or engaged involvement in self-help and education programs, with substantial credits earned (e.g. RAC, MCC, EMC)
- 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 assignments or training
- Employment preparation, evidenced by work placement chronos, certificates, and skills
- Positive Laudatory chronos from program staff and correctional staff



**CDCR is expected to hold a third Public Comment period in Fall 2022 to formalize the Title 15 regulations on Penal Code section 1172.1 and implement the changes to the law created by AB 200. We will be challenging these exclusions and criteria listed above and we invite you to join us during Public Comment.**

## District Attorneys' Eligibility Criteria for PC § 1172.1 Resentencing Referrals

AB 2942 passed in 2018, adding District Attorneys to the agencies who can refer someone back to court for resentencing via PC section 1172.1. Many District Attorney offices have not yet formalized their new authority or 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.

In the California Governor's 2021-2022 Budget, he earmarked \$18 million over three years to create the California County Resentencing Pilot Program in 9 counties: Los Angeles, Santa Clara, San Francisco, Riverside, Contra Costa, San Diego, Yolo, Merced, and Humboldt. The Pilot Program will require 9 District Attorney offices to create a formal resentencing policy and to refer people for resentencing in alignment with this policy. The Public Defenders in each of the 9 counties may weigh in on the DA's resentencing policy, and the funding will also support the involvement of a community based organization to support pre-release planning and reentry services.

Here's what For The People, co-sponsor of AB 2942 and the Pilot Program, has to say in their FAQ (<https://www.fortheppl.org/faq>):

*"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. ... 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."*

## **The Attorney General's Eligibility Criteria for PC § 1172.1 Resentencing Referrals**

AB 1540 passed in 2021, adding the Attorney General to the agencies who can refer someone back to court for resentencing, in cases where the AG originally prosecuted the case. The AG's office is currently working with CDCR to determine the universe of people who are potentially eligible for resentencing. This requires the AG staff to cross-reference the data that the AG has of everyone they have prosecuted with the data that CDCR has of everyone in custody, as CDCR's data does not include the prosecuting agency. The AG's office has not yet developed criteria or a process for people to request review for resentencing.

## **Who is currently being recommended for PC § 1172.1 Resentencing?**

Each agency that is empowered by PC section 1172.1 to make referrals will come up with their own 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.

# Who is CDCR recommending for PC § 1172.1 Resentencing?

As of July 2022, CDCR has used 12 “cohorts” (groups of people with specific sentence enhancements or other criteria in common) to determine who to review and refer for resentencing.

These cohorts have been 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.

Here are the 12 “cohorts” that CDCR has employed to identify people for referrals:

Medical Cohorts	
<b>COVID</b> (inactive cohort)  People referred: 112 People resentenced: 41 (as of June 2, 2022)	After months of advocacy by Ella Baker Center, the Stop San Quentin Outbreak Coalition, and other allies, in December 2020 CDCR began to make resentencing referrals for people using the designation “COVID” for people considered to be medically high-risk. As of June 2022, a total of 112 people were referred back to court for resentencing via this cohort. The last referral made in this cohort was sent to the court on March 17, 2021.
Rewarding In-Custody Behavior Cohorts	
<b>Exceptional Conduct</b>  People Referred: 202 People Resentenced: 98 (as of June 2, 2022)	Someone with an in-custody history of rehabilitation. The typical language in a referral letter includes: “As the Secretary of CDCR, I take my obligation to public safety very seriously and choose only to make exceptional conduct referrals when an inmate’s behavior, while incarcerated, demonstrates a sustained compliance with departmental rules and regulations, as well as prolonged participation in rehabilitative programming. These inmates have not only exhibited exceptional conduct through their ability to obey rules and regulations, but many have also demonstrated a commitment to their rehabilitation through voluntary participation in various self-help programs, vocational and educational programs, and have displayed a dedicated participation in programs such as Prison Industry Authority, Division of Rehabilitative Programs, and the Integrated Substance Use Disorder Treatment program, to name a few.” Laudatory chronos and programming are especially helpful for this cohort, along with limited disciplinary actions on record.
<b>Law Enforcement and Judicial Referrals</b>  People Referred: 3 People Resentenced: 2 (as of June 2, 2022)	People who assist in other criminal cases by giving testimony, or who are referred by judges who can no longer use their own power to recall a sentence. Before AB 2942 passed, DAs made resentencing recommendations to CDCR instead of directly to the trial court. Now, if a judicial officer writes to CDCR to refer someone for resentencing, CDCR will send the request to the DA first to see if the DA will use their independent resentencing referral power to send someone back to court. If the DA decides not to recommend the person for resentencing, CDCR will independently consider the judicial request using this cohort.

CDCR uses **Changes in Sentencing Law cohorts** to recommend people via recent sentencing laws that are not retroactive, in order to have these unjust sentence enhancements removed. Even though the laws are not retroactive, the judge regains their discretion to remove the enhancements retroactively when a sentence is recalled via PC section 1172.1.

Changes in Sentencing Law Cohorts	
<b>Gun Enhancements</b>  People referred: 339 People resentenced: 68 (as of June 2, 2022)	Gun Enhancements made discretionary by Senate Bill 620 (Bradford), amending Penal Code sections 12022.5, 12022.53, 1385. 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 "interest of justice." CDCR is starting with cases where the firearm was not discharged.
<b>5-Year Prior Serious Felony Enhancements</b>  People Referred: 556 People Resentenced: 91 (as of June 2, 2022)	5-Year Prior Serious Felony Enhancements made discretionary by Senate Bill 1393 (Mitchell), amending PC sections 667(a), 1385(b). Judges now have the direction to dismiss 5-year enhancements for prior serious felonies resulting in prison terms if doing so is in the "interest of justice."

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.

Sentencing Discrepancy Cohorts	
<b>Great Bodily Injury Enhancements via People v. Cook</b>  People Referred: 9 People Resentenced: 5 (as of June 2, 2022)	Great Bodily Injury Enhancements via People v. Cook (2015) 60 Cal. 4th 922. The court ruled that, 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.
<b>Great Bodily Injury Enhancements via People v. Gonzalez</b>  People Referred: 326 People Resentenced: 106 (as of June 2, 2022)	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.

## Sentencing Discrepancy Cohorts

<p><b>Gun Enhancements via People v. Le</b></p> <p>People Referred: 119 People Resentenced: 55 (as of June 2, 2022)</p>	<p>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.</p>
<p><b>Gun Enhancements via People v. Rodriguez</b></p> <p>People Referred: 149 People Resentenced: 56 (as of June 2, 2022)</p>	<p>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.</p>
<p><b>Alternative Sentences for Gang-Motivated Witness Dissuasion via People v. Lopez</b></p> <p>People Referred: 10 People Resentenced: 4 (as of June 2, 2022)</p>	<p>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)).</p>
<p><b>Child Pornography Possession Charges via People v. Manfredi</b></p> <p>People Referred: 24 People Resentenced: 6 (as of June 2, 2022)</p>	<p>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.</p>
<p><b>Consecutive In-Prison Felony Terms via People v. McCart</b></p> <p>People Referred: 171 People Resentenced: 118 (as of June 2, 2022)</p>	<p>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.</p>



## Who are District Attorneys recommending for PC § 1172.1 Resentencing?

The first case of a District Attorney using their AB 2942 resentencing referral power came out of San Diego County in August 2019. There, prosecutors wrote a letter to the trial court recommending Kent Williams, a 57-year old man who was sentenced in 2003 to 50-years-to-life under the Three Strikes Law and had served 16 years. The San Diego DA cited Mr. Williams' nonviolent record and his work becoming a drug counselor in support of the resentencing referral.

The first prosecutor-initiated resentencing pilot program started in Santa Clara County, a partnership between For the People and the Santa Clara District Attorney's office. This pilot started with a limited group of people who were charged with residential burglary. People were contacted directly by these organizations if they were under review for a referral.

A number of DA offices have created units within their offices to make resentencing referrals, and some of these units have information and intake forms available online, including in: [Yolo](#), [San Francisco](#), [Kern](#), [San Joaquin](#), [Riverside](#), and [San Diego](#) counties.

Some of the most active county District Attorneys in this space have been Chesa Boudin in San Francisco, Jeff Rosen in Santa Clara, and Nancy O'Malley in Alameda.

The San Francisco District Attorney's Office has referred dozens of people back to court since early 2020, and has focused on people serving the longest sentences who have been incarcerated for many years. However, DA Boudin was recently recalled from his office by voters. In July 2022, Mayor London Breed appointed Brooke Jenkins to replace DA Boudin until the November 2022 election takes place.

The Alameda County District Attorney's Office began making resentencing referrals in October 2020, and is reviewing hundreds of people for potential referrals. DA Nancy O'Malley is retiring in 2022 and defense attorney Pamela Price is leading in the polls as the next DA after the June 2022 primary election narrowed the race. The election of the next Alameda County DA will take place in November 2022. Pamela Price is on record in support of making resentencing referrals to reduce enhancements and mass incarceration.

George Gascon was elected as the District Attorney in Los Angeles County, and on the day of his inauguration on December 7, 2020, he published a memo detailing the widespread reforms to sentencing and charging that he intends to implement. DA Gascon wishes to review 20,000-30,000 people's cases for potential PC 1172.1 resentencing to correct sentences with enhancements (specifically: Three Strikes Sentences, and gun, gang, 5-year prior, 1-year prior, great bodily injury (GBI), and drug enhancements) with a particular focus on people who are medically vulnerable to COVID-19, people over the age of 60, people who are criminalized survivors, people who have already served 15 years, and people 17 years old and younger at the time of the offense who were charged as adults. DA Gascon's office is prioritizing resentencing people who are already referred by CDCR and is using a tiered system of review and currently focused on resentencing the following individuals ([as of July 2022](#)):

## **1. Adults**

- b. Age 50 and older; AND
- c. Sentenced to 20 years or more; AND
- d. Served a minimum of 10 years in custody; AND
- e. Serving a sentence for a non-serious or nonviolent felony [ Serious and violent felonies are defined in Penal Code section 1192.7(c) and Penal Code section 667.5(c)]; AND
- f. Has not suffered a prior conviction for a “super strike,” as defined in Penal Code section 667(e)(2)(C)(IV); AND
- g. Does not have a current or past case that requires sex offense registration.

## **2. Minors Tried as Adults**

- a. Sentenced for a crime that was committed at age 14 or 15; AND
- b. Not serving time for a homicide offense; AND
- c. Has served a minimum of 10 years in custody; AND
- d. Does not have a current or past case that requires sex offense registration.

DA Gascon is currently facing a recall effort which could be on the ballot in late 2022 or early 2023.

# What is the process for receiving a PC § 1172.1 Resentencing referral?

At this time, of the five agencies that are authorized to make PC section 1172.1 referrals, CDCR has the most formally established internal process for reviewing cases for referral.

## CDCR Referrals

Per Title 15, CDCR completes its roughly 30-60 days of review of a person and sends the draft referral letter to the Secretary who then has 10 days to decide whether to approve or deny the recommendation for someone's resentencing. CDCR recently amended their regulations so that cumulative case summaries are only produced once the CDCR Secretary has given her initial approval to move forward in reviewing a candidate for a resentencing referral, as opposed to the previous process where a packet was created for every person being reviewed and that packet was then presented to the CDCR Secretary for review.

If the letter is approved, CDCR sends a referral letter to the trial court in the county of conviction and CDCR has 10 days to provide a copy to the person referred and place a copy in the person's central file. The letter is also sent to the District Attorney and Public Defender offices in that county. No later than 10 days after either a referral letter is sent to the court and/or a hearing is set, the Office of Victims and Survivors Rights and Services will inform all victims of the decision and the proceeding.

Some CDCR referrals start at the facility level when a prison warden refers 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, where lists are generated of all potentially eligible people based on certain sentence enhancements, or due to errors in their sentencing. Referrals that start in Sacramento may involve facility staff during the review process. People are often interviewed by staff and sometimes investigated by the Investigations Services Unit before the CDCR Secretary's approval or denial. CDCR's Penal Code section 1172.1 referral process is guided by CDCR's agency regulations in Title 15 (15 C.C.R. sections 3076, 3076.1-3076.5).

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)" produced by CDCR
- 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 five 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 will get a routine response stating that. Despite this official policy, early on some people were successful at alerting their counselors and CDCR staff in Sacramento that they were eligible under a specific "cohort" (a group of people with similar enhancements or case factors). CDCR staff in Sacramento are compiling lists of names of people eligible for specific cohorts and doing their own internal review.

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

### **1. Request that the Warden to refer you to the CDCR Secretary to be reviewed for a resentencing referral on the basis of your "exceptional conduct"**

You can ask the warden at your facility to send a recommendation for you for CDCR's "exceptional conduct" resentencing cohort. The warden 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.

While CDCR's Recall and Resentence Recommendation Program (RRRP) originally accepted recommendations from any CDCR staff via institutional (@cdcr.ca.gov) email addresses, the regulations were changed so that **only wardens can make exceptional conduct referrals**. The CDCR RRRP currently does not accept self-referrals or referrals for exceptional conduct from other institutional staff, program volunteers, family members of people in prison, their friends, or attorneys at this time. Here are some tips for securing a warden referral:

- a. Provide the warden's office 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.
- b. You could also consider providing a copy of your parole packet or commutation application to the warden's office if it feels safe to do so.
- c. You can ask your supporters or legislators to write to the warden's office on your behalf.
- d. Consider using the following resource in the **Appendix**: "Template Letter - CDCR Warden Referral for PC § 1172.1 Exceptional Conduct Resentencing".



## 2. Submit a Form 602 Administrative Appeal to your counselor

Officially, 602 appeals are not being heard for “Exceptional Conduct” or “Changes in Sentencing Laws” referrals. If you file an appeal for this, CDCR will likely deny your appeal because they are not required to consider, grant, or respond to requests for resentencing recommendations.

However, you can use the 602 process in a narrow set of circumstances to alert CDCR to your eligibility for resentencing on the basis of sentence enhancements that are now illegal. How CDCR responds to your Form 602 Appeal may depend on your eligibility criteria:

- a. For people who received a sentence enhancement for either a prison prior (1-year enhancement repealed by SB 136) or a drug prior (3-year enhancement repealed by SB 180), there is a clear right to resentencing via SB 483 (RISE Act) and CDCR should be including your name on a list to the courts in 2022. If you feel like you were left off of this list, you can file a 602 and file a petition for writ of habeas corpus directly with the trial court.
- b. For people who received a sentence that is now unlawful (see the **Sentencing Discrepancy Cohorts above**), resentencing should be mandatory, and there is a clear right to appeal for resentencing relief through the administrative appeals process (602 form). Note that CDCR’s Title 15 regulations state they will not refer someone for this cohort if they are within 6 months of their release date (15 C.C.R. 3076.1(c)).

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

- a. 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”
- b. If CDCR delays and does not respond to your request.
- c. If you face discrimination or unlawful conduct while attempting your request.

CDCR’s Title 15 regulations state that resentencing referral decisions are not subject to internal administrative review, so if you file a 602 based on the Secretary denying your referral it will more than likely be denied. (15 C.C.R. 3076.1(e)). However, this means that you do not need to “exhaust” the administrative appeals process before you bring this issue to court for review if you feel you are being unlawfully excluded from resentencing review or discriminated against in the referral process.

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** are listed in this Toolkit’s **Resource List**.

# Requesting Review from the District Attorney in Your County of Conviction

The process for review and referral varies county by county for District Attorney referrals. Currently, it is fairly typical for deputy district attorneys who have focused on felony trials and felony-murder resentencing to be the point people for reviewing potential cases for resentencing referrals in their county and making recommendations to the head District Attorney. Since AB 2942 went into effect January 1, 2019, District Attorney offices are still coming on board to use their PC section 1172.1 resentencing referral 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 if their office hasn't referred anyone yet.

Some counties may be setting up a review process through the California County Resentencing Pilot Program, through their conviction integrity units, or through a new sentence review unit. Your support network can call or search online to see if the District Attorney has developed a process and criteria for PC section 1172.1 resentencing, and if there is a specific webpage or mailing address or intake forms for requesting review.

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 are some ideas for how to request a resentencing referral from the District Attorney's office:

## **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 1172.1 resentencing you believe you are eligible for, and describe aspects of your sentence and enhancements, 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 DA.

## **2. You can directly contact the District Attorney's Office**

You can write to the DA office in your county of conviction to ask if there is a point person or a unit already set up, and to request intake forms and/or information on the county's process for review. We have included in the Appendix a list of District Attorney offices with their mailing information. Approaching the District Attorney's office is something to do with great 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 credibility and

alleged readiness for parole in future parole or resentencing hearings or hurt your case in other ongoing proceedings.

Here is a limited scope of information you can consider providing to the District Attorney:

- c. Name, Age, CDC#, Facility
- d. List of all convictions, including priors, and county(/ies) of conviction
- e. Age at the time of conviction and original sentence (list all enhancements)
- f. # of years already served
- g. Parole Status (parole eligibility date and/or upcoming hearing date)
- h. List of all programming (chronos, certificates, degrees, classes, groups, etc.) and leadership roles
- i. Letters of recommendation and support (job & housing offers, family, friends)
- j. List of any serious Rules Violation Reports in last 5 years
- k. # of children and/or grandchildren
- l. Description of your support network and re-entry plan (housing, employment, family, relationships, etc.)

### **3. You and your support network can join your local Participatory Defense hub and/or your local District Attorney Accountability group**

There are local community based organizations working across the state of California to support people who are incarcerated as well as their families in fighting for their freedom. There are also many local coalitions working to encourage their county District Attorney's office to adopt policies that address mass incarceration and meaningful community safety. Your support network can search online at <https://www.participatorydefense.org/hubs> to locate the closest network to you and your conviction county and plug in to learn more about the work they are doing and the support they offer. Your support network can also go on to Silicon Valley De-Bug's website <https://www.siliconvalleydebug.org/> to learn about the participatory defense model and other ways to advocate for your freedom.

## **Requesting Review from the Board of Parole Hearings (BPH)**

As of 2022 BPH's position is that it defers to CDCR to select people for PC section 1172.1 resentencing review. The Board of Parole Hearings used to be involved in CDCR's RRRP process by providing a final level of approval for people with indeterminate sentences that CDCR was reviewing for a potential resentencing referral, however their involvement was taken out of the Title regulations.

Currently we are not aware of any referrals or attempts by BPH to use their PC section 1172.1 authority. BPH's position is that they do not want to contradict or substitute the suitability findings of the BPH Commissioners at hearings by referring people in their purview for resentencing.

However, given the record number of parole hearings that BPH is holding for the Proposition 57 and Youth Offender Parole groups, BPH could choose in the future to begin to exercise their independent power to recommend people for resentencing.

In addition, AB 1540 clarified that recall and resentencing applies to people regardless of whether they are currently incarcerated, meaning that people on parole could try to request a referral from BPH to shorten their parole term or otherwise address the collateral consequences of their original sentence in court. BPH is currently focused on creating a more formalized process for parole discharge review which they believe to be less onerous than referring someone back to court and relying upon judicial discretion.

## **Requesting Review from the County Correctional Administrator (in most cases, the Sheriff's Office)**

Sheriffs can also recommend people for PC section 1172.1 resentencing who are serving their sentences in county jails. We don't know how various Sheriffs are engaging the resentencing referral process or what criteria they could consider using. The Ella Baker Center supported several dozens of individuals in this process by providing template letters, feedback, and support back in 2019. We either never 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 1172.1 powers to refer people in county custody back to court for resentencing. During the COVID-19 pandemic, we saw some jail population reduction orders in California counties (including Orange County and Riverside County at the end of 2020), and these reduction orders might be a sign that the Sheriffs in those counties could be willing to use their PC 1172.1 powers to refer people back to court.

## **Requesting Review from the Attorney General**

In 2021, the California Attorney General was added to the list of agencies who can refer someone back to court for resentencing, in cases where the AG's office originally prosecuted the case. The AG's office is currently working with CDCR to determine the universe of people who are potentially eligible for resentencing. The AG's office has not yet developed criteria or a process for requesting review for

resentencing. AG Rob Bonta recently set up a new Post-Conviction Justice Unit in Fall 2021 to “examine wrongful convictions and excessive sentences for possible intervention by his office”. This unit is still being developed and will aim to support District Attorney offices across the state with exercising their resentencing authority, promoting equity, and conducting post-conviction review of past cases, in the interest of justice.

## What will happen at the PC § 1172.1 Recall of Sentence and Resentencing hearings?

### Status Conference Hearing

When a sentencing court receives a letter from CDCR, a DA, or the AG’s office recommending you for resentencing, the court must set a status conference within 30 days of receipt of the referral letter. The court will appoint counsel and notify you of the hearing date and the attorney of record. A status conference hearing will be put on the criminal calendar, typically with the matter titled something like “Further Proceedings” or “1172.1 PC PETN REVIEW,” depending on the county. The case will be assigned to the original sentencing judge if they are reasonably available. You will not be transported out to the court for this first status conference hearing unless you decide otherwise with your attorney.

Resentencing can occur upon stipulation of all of the parties to a new sentence without a formal hearing. The parties can confer at the status conference hearing about whether they wish to consent to a new sentence without briefing the matter further. If the parties do not stipulate, the judge will set the matter for further hearings to determine whether to recall the original sentence and resentence you.

### Stipulation, or Recall and Resentencing Hearings

After a status conference hearing, the court will typically set a “recall and resentencing” hearing and will ask both your attorney and the district attorney to “brief” or put together arguments and research on certain issues related to the “interest of justice” standard by which the case will be decided.

The court will use this “interest of justice” standard to decide whether or not to recall your sentence and how to resentence, by evaluating both pre-conviction and post-conviction factors, including:

- whether you have experienced psychological, physical, or childhood trauma, including but not limited to: neglect, exploitation, sexual violence, human trafficking, and intimate partner violence, which substantially contributed to the commission of the offense for which you were sentenced
- whether you were under the age of 26 years old at the time of the alleged offense
- your disciplinary record and record of rehabilitation while incarcerated
- evidence that reflects whether age, time served, and diminished physical condition have reduced the risk for future violence



- evidence that reflects that circumstances have changed since the original sentencing, such as new sentencing laws and sentencing reforms
- your post-release plans including job and housing placement offers

The “interest of justice” standard is then weighed by the judge along with a presumption favoring recall and resentencing. This presumption may only be overcome if the court finds that you pose an “unreasonable risk of danger to public safety,” which is defined as the likelihood that you would commit a new violent “super strike” felony as defined by Penal Code section 667(e)(2)(C)(iv). The list of super strike felonies includes such offenses as assaulting a law enforcement officer with a machine gun, using weapons of mass destruction, homicide and aggravated sexual assault offenses, and any felony punishable by either Life Without Parole or the Death Penalty.

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

- whether to modify the judgment by reducing the term of imprisonment
- whether to vacate the original conviction and resentence to a lesser-included offense
- whether to adjust the sentencing triads and resentence to a low- or mid-term instead of the high-term for each charge
- whether to strike any sentence enhancements including double-up sentencing and Three Strikes sentencing enhancements
- whether the components of your sentence will be served consecutively or concurrently
- applying other changes in law that reduce sentences or provide for judicial discretion to eliminate disparity of sentences, such as laws that are not retroactive but can be applied retroactively once a sentence is recalled, including but not limited to: **SB 1393** (5-year enhancements are no longer mandatory), **SB 81** (how to deal with multiple enhancements), **AB 518** (no longer using the longest term as the base), **SB 567** (presumption of the mid-term absent mitigation or aggravation), **SB 620** (gun enhancements are no longer mandatory), **AB 333** (heightened gang enhancement pleading requirements), and **AB 124** (mitigation for survivors of intimate partner and sexual violence).

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 post-release 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 Public Defender in your county of conviction, and/or your attorney of record, to make sure they are aware of your case and are preparing for your hearing. While an attorney may be assigned to your case prior to the status conference, it is possible that they will not get into contact with you prior to your first hearing. In the 27 counties in California where there is no Public Defender's office, the court will appoint an attorney from a pro bono bar panel or from a law firm contracted by the county to provide legal defense services. You can contact the court to figure out when your hearing is scheduled and who has been assigned to represent you.

People are given the option to be transported from CDCR to county custody prior to a resentencing hearing, however sometimes the judge will order someone's appearance in court for a resentencing hearing. You can work with your attorney to inform the judge whether or not you are waiving your appearance in court. Your attorney can file a removal order with the trial court after a hearing is set to order CDCR to transport you to county custody in a manner that takes into consideration any medical accommodations you will need while being transported (for example, you have the right to travel with your prescriptions, and you may need a wheelchair-accessible van). If the jail cannot accommodate your medical needs and 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. Due to the overcrowded conditions in county jails and the health concerns of the COVID-19 pandemic, you may be quarantined upon arrival in county jail for up to two weeks prior to being transported to the court for a hearing.

## 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, but you have a choice as to whether to waive your appearance. 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. You can also consider stipulating to a new sentence without a hearing if the District Attorney and/or the Attorney General is amenable. In many counties, you will be given the option to appear virtually via videoconference or teleconference.

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:

- **During COVID-19, transfers between facilities can be detrimental to both your individual health and can pose a serious risk of outbreak to other incarcerated people and staff.** County jails slowed or stopped transfers from or to CDCR during the pandemic, and there may still be delays

due to quarantines in your county of conviction. You should consider the risks to your health and a potentially prolonged stay in county custody when deciding whether to waive your appearance. In some counties, the court may have the technology to allow you to appear via video for your hearing while you remain in CDCR custody.

- **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 face to a name 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), survivor(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 prolonged 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 housing assignment. You will likely lose your spot in programs and your work assignment. If your recall is denied, or if 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 could be housed in a facility 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 could temporarily lose your access to contact visits and overnight family visits, and you may have different phone call schedules and privileges, and phone calls are more expensive in county jail than in CDCR prisons. 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 visits through the glass with your loved ones and supporters.

## If I am resentenced, when will I be released?

These resentencing hearings are decided on a case-by-case basis, and much depends on how extensively the judge decides to use their discretion, as well as speed at which both the court and CDCR staff process all of the paperwork that is required to release you.

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 amended Abstract of Judgment to allow CDCR to release you from their custody same-day. This is a more rare scenario.
- 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 have 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 which will be scheduled in the next 6-8 months.
- 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.

If you are resentenced to time served, the court will amend your Abstract of Judgment and either mail, email, or fax a copy to CDCR. CDCR requests that the court clerk mail it to the Legal Processing Unit (LPU) at your facility for processing. If the court faxes or emails the amended Abstract of Judgment instead of mailing it, CDCR claims (as of July 2022) that they will need to call the court to verify the documentation - and this could cause delays in your release.

Once CDCR receives your amended Abstract of Judgment, staff will calculate your credits based off of the new sentence (this cannot be done by the courts) and update your release date. Once CDCR has received your amended Abstract of Judgment from the court, CDCR has 5 days to release you according to CDCR's Department Operations Manual sections 74060.4 and 81010.4, and CDCR's Title 15 regulations, 15 CCR section 3371.1(e)(2).

Despite these timelines, we have unfortunately seen a number of people held for months after their resentencing due to delays with both the courts and CDCR processing paperwork.

**Here are some ways to advocate for yourself to ensure your timely release after resentencing:**

- Your attorney can ask the resentencing judge to order that the amended Abstract of Judgment be mailed and faxed same-day to CDCR
- Your attorney or supporters can call and/or email the Litigation Coordinator at your facility to ensure that the amended Abstract of Judgment has been received and is being processed

## 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 receive a resentencing referral and to be resentenced. Fortunately, all the steps you can take to prepare for a PC section 1172.1 referral will also strengthen your preparedness for other forms of post-conviction relief and release, including:

- Applying or Reapplying for a Commutation from the Governor of California
- Preparing for SB 483 (RISE Act) or SB 1437/SB 775 (Felony Murder) Resentencing
- Preparing for Parole Hearings
- Preparing for Filing a Petition for 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," or SOMS and ERMS) as up-to-date as possible.
    - 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 and certificates from your programming and participation in rehabilitation activities. If you need to, you can file a Form 602 administrative appeal.
  - 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 program work that responds to your case and risk factors.**
    - During the COVID-19 pandemic, programs have been paused or shut down, no volunteers were coming in, and only limited assignments continued via mail for a few programs. You can supplement the lack of programming available since 2020 by doing some work on your own to show that you are gaining insight into your causative factors and working to rehabilitate yourself despite the modified program. Here are some activities you can pursue on your own while programs resume:
      - Read books relevant to your causative factors and history and write a 1-2 page **Book Report** for each book you complete that demonstrates the insight you gained.
      - Complete **Correspondence Courses** that you or your support network can order online or by mail that supplement the programming you’ve done or can no longer access during COVID-19, and that fill in gaps of programs that CDCR doesn’t offer at your facility that are relevant to your causative or case factors and your history of trauma.
  - **Filing mitigation evidence either with the courts or in your central file.**
    - You may be eligible to file a motion for a “Franklin Hearing” (People v. Franklin (2016) 63 Cal.4th 261) using the form for a petition for a writ of habeas corpus and be put on calendar to submit mitigation evidence based on the factors of youthfulness. While Franklin Hearings cannot be used to release you or resentence you, the court will appoint you an attorney and an investigator to develop reports about your childhood experiences and factors that may have led to your state of mind at the time of your alleged offenses. This positive evidence can be useful not just for future resentencing hearings, but also for parole hearings and commutation applications.
      - **Who’s eligible for a Franklin Hearing?**
        - If you were under the age of 26 at the time of the alleged offense, sentenced to a “lengthy sentence,” eligible for Youth Offender Parole, and sentenced before the Franklin decision in 2016, you can request a “Franklin Hearing.”



- **Who's eligible for Youth Offender Parole?**

- People who are serving a determinate term for a crime committed before they turned 26; or
- Serving an indeterminate term for a crime committed before they turned 26; or
- Serving a life without parole (LWOP) term for a crime committed before they turned 18.
- The following people are excluded from Youth Offender Parole:
  - If you have a "three strikes" or "two strikes" sentence due to one or more prior serious or violent felonies;
  - If you committed a new crime after you turned age 26 and:
    - You were sentenced to "life in prison," or
    - "Malice aforethought" was an element of your new crime, this includes crimes such as first- and second-degree murder; attempted murder; conspiracy to commit murder; solicitation to commit murder; and assault with a deadly weapon or assault likely to produce great bodily injury committed while serving a life term, committed with malice aforethought.
- You can work with a psychologist or social worker outside of CDCR to document your history of trauma, either in your childhood and youth, your military service, your intimate relationships, or other settings in which you experienced exploitation, abuse, neglect, or otherwise developed post-traumatic stress disorder (PTSD) that was present at the time that you committed your alleged offenses.
- You can submit this documentation to your counselor to put into your central file, as well as mail copies to the Board of Parole Hearings if you are scheduled for a parole hearing in the future, or to the Governor's office to be included with your commutation application.

- **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, self-help groups, counseling, 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, survival crimes, and gang

activity. Your plan can identify your “target behaviors,” your triggers or warning signs, your coping skills, and the support network that you will turn to when you experience specific triggers to avoid relapsing.

- Prepare a **Letter of Remorse** to the victim(s) and/or survivor(s) of your case and their families and communities. The letter should focus solely on taking accountability and expressing your remorse. Do not discuss the work you’ve done on yourself or how you’re a better person now. This letter isn’t about you - it’s about the harm caused and how nothing you can do can change the fact that the harm occurred.
- Prepare a **Statement of Insight / Accountability** that discusses your past crime or crimes, the events that led you to decide to act in harmful ways, and how you take full responsibility for the harm that you caused.
- Prepare for a potential **Parole Hearing**. Prepare to talk about your insights into your past actions and the harm caused to the victim(s), survivor(s), your community, and 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 support 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 I took a plea agreement, will it impact my resentencing?

The language of Penal Code section 1172.1 (as well as the previous law, PC section 1170(d)(1)) clearly states that people who accepted plea bargains are eligible for resentencing relief: “The resentencing court may, in the interest of justice and **regardless of whether the original sentence was imposed after trial or plea agreement**, do the following...”

However, a number of people referred back to court by CDCR were denied resentencing by judges since 2018, 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 “interest of justice” analysis. However, the argument is invalid that judges lose their power to resentence under PC section 1172.1 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 for new laws to modify the terms of a plea agreement.

## What if the court never took action or denied my referral?

Even before the enactment of AB 1540 on Jan. 1, 2022 which created clear procedural rights with regards to resentencing, there was a clear legal argument that judges should schedule a hearing upon receipt of a resentencing referral and follow the recommendation of law enforcement agencies who are tasked with determining someone’s readiness for release. Yet for years, many courts simply ignored letters that they received from CDCR recommending people for resentencing, and even when hearings were held, many judges declined to act on a resentencing recommendation and in hundreds of cases didn’t even list the reason why they were denying the recall and resentencing referral.

CDCR is still deciding whether to resend the hundreds of resentencing recommendation letters where this was the case so that the letters can be reheard under the new statute PC section 1172.1 and be subject to the new procedural requirements and presumption in favor of resentencing.

If you received a CDCR referral prior to Jan. 1, 2022 and were either denied or never scheduled for a hearing, you can contact your attorney and/or the Public Defender in your county and request that they file a motion in the court to reconsider the referral in light of the passage of AB 1540. It may also be possible to file a Petition for a Writ of Habeas Corpus challenging the judge’s denial as a violation of your right to due process.

## If the court denies my resentencing, can I appeal the decision?

Yes, if you are denied resentencing you can and should appeal the decision. The California appellate courts and Supreme Court have been reviewing many of these denied resentencing cases and overturning denials and remanding cases back to the trial courts for resentencing. Consult the attorney working on your case to discuss your options.

5.

A photograph of a political rally. In the center, a man in a dark suit and glasses is speaking into a microphone. To his left, a man in a white t-shirt and sunglasses holds a large orange sign that reads "YES ON SB 136". To the right, a woman in a red shirt is also speaking into a microphone. In the background, several other people are visible, some holding similar orange signs. The scene is outdoors with trees and a building in the background. The entire image has a semi-transparent red overlay.

# Next Steps





## 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 1172.1 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 guide that need changing or expanding.

### You can pursue other post-conviction relief options while waiting to see if you will be recommended for Resentencing via PC § 1172.1.

While you are advocating for yourself to be reviewed for a resentencing referral or awaiting a court date, you can work on other pathways 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 Petition for a Writ of Habeas Corpus based on court decisions that could be used to show your sentence or parole denials are unlawful or disproportionate, and that your continued incarceration generally and/or during the COVID-19 pandemic is cruel and unusual punishment.

## 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](http://www.ellabakercenter.org) [policy@ellabakercenter.org](mailto:policy@ellabakercenter.org)



6.

# Contacts List

# Contacts List

## Attorney General of California

### **Attn: Post-Conviction Review Unit**

P.O. Box 944255  
Sacramento, CA 94244-2550

## Board of Parole Hearings

PO Box 4036  
Sacramento, CA 95812

## California Department of Corrections and Rehabilitation

### **Attn: Secretary Kathleen Allison**

P. O. Box 942883  
Sacramento, CA 94283  
[Kathleen.Allison@cdcr.ca.gov](mailto:Kathleen.Allison@cdcr.ca.gov)

## District Attorney Sentence Review Units

There are currently active PC 1172.1 Resentencing Units in the following counties:

### **Alameda County District Attorney**

1225 Fallon Street, Room 900  
Oakland, CA 94612

### **Kern County District Attorney**

1215 Truxtun Avenue  
Bakersfield, CA 93301  
Intake forms online:  
<https://www.kerncounty.com/home/showpublisheddocument/6382/637556585393330000>

### **San Joaquin County District Attorney**

ATTN: Post-Conviction Sentence Review Unit  
222 E Weber Ave # 202, PO Box 990  
Stockton, CA 95202.  
Intake forms online: <https://www.sjgov.org/departments/da/units/special-operations/pcru>

# The 9 Pilot Counties in the California County Resentencing Pilot Program:

## **Contra Costa District Attorney**

900 Ward Street  
Martinez, CA 94553

## **Los Angeles County District Attorney**

211 W. Temple Street, Suite 1200  
Los Angeles, CA 90012  
Information available at:  
<https://da.lacounty.gov/policies/resentencing>

## **Riverside County District Attorney**

3960 Orange Street  
Riverside, CA 92501  
Intake forms online: <https://rivcoda.org/resources/conviction-review-committee>

## **Humboldt County District Attorney**

825 5th Street  
Eureka, CA 95501

## **Merced County District Attorney**

550 West Main Street  
Merced, CA 95340

## **Santa Clara County District Attorney**

70 West Hedding Street, West Wing  
San Jose, CA 95110

## **San Francisco County District Attorney**

880 Bryant Street, Third Floor  
San Francisco, CA 94103  
Intake forms online: <https://www.sfdistrictattorney.org/policy/conviction-review/>

## **San Diego County District Attorney**

330 W. Broadway, Suite 1300  
San Diego CA 92101  
Intake forms online:  
<https://www.sdcda.org/office/ConvictionReview/>

## **Yolo County District Attorney**

301 Second Street  
Woodland, CA 95695  
Intake forms online:  
<https://yoloda.org/the-das-office/conviction-sentence-review-unit/>

*Please refer to the **List of District Attorney Office Contact Information by County** in the **Appendix** for all counties mailing addresses. The above is not an exclusive list of offices that are reviewing cases for PC 1172.1 referrals, and more District Attorney offices are coming on board on a rolling basis.*

# Organizations Assisting with Resentencing

## **Stanford's Three Strikes Clinic**

Mills Legal Clinic at Stanford Law School

559 Nathan Abbott Way

Stanford, California 94305-8610

Phone: (650) 736-7757

Staff: Michael Romano [mromano@stanford.edu](mailto:mromano@stanford.edu); Susan Champion [schampion@law.stanford.edu](mailto:schampion@law.stanford.edu);

Milena Blake [mlenab@stanford.edu](mailto:mlenab@stanford.edu)

## **For The People**

<https://www.fortheppl.org/>

## **Silicon Valley De-Bug & Participatory Defense Hubs**

701 Lenzen Ave

San Jose, CA 95126

Phone: (408) 971-4965

[info@siliconvalleydebug.org](mailto:info@siliconvalleydebug.org)

National directory of Participatory Defense hubs: <https://www.participatorydefense.org/hubs>

## **ACLU of Northern California**

ATTN: Intake

39 Drumm Street

San Francisco, CA 94111

Legal assistance telephone: (415) 621-2488

[www.aclunc.org](http://www.aclunc.org)

## **Office of the State Public Defender**

1111 Broadway, 10<sup>th</sup> Floor

Oakland, CA 94607

(510) 267-3300

# 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 serving **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.





**7.**

# Resource List



# Resource List

Please write to the Ella Baker Center, 1419 34th Ave., Suite 202, Oakland, CA 94601, or email [policy@ellabakercenter.org](mailto:policy@ellabakercenter.org) to request any of the following documents:

## Relevant Laws and Regulations

- TEXT of Title 15 Regulations regarding PC § 1172.1 (sections 3076 et seq.)
- TEXT of SB 1393 (amending PC §§ 667, 1385) or SB 620 (amending PC §§ 12022.5, 12022.53)
- TEXT of PC § 1192.7(c), PC § 1192.8 & 667.5(c) (defining prior serious felonies)
- Recall and Resentencing Referral Program Statistics - CDCR
- Sample of Resentencing Referral Letters Sent to Court (redacted) - CDCR

## General Self-Advocacy Resources

- Ella Baker Center - List of Legal Resources in California
- Blank 602 CDC Form (602-Att, -HC) (revised in 2020)
- Forms for the Governor: Commutation Application or Re-Application, Notice of Intent to Apply for Clemency (to send to DA), CDC 7385 Release of Medical Information

## We also recommend these resources available from allied organizations:

- Guide to Commutations

Contact: California Coalition for Women Prisoners, 4400 Market St., Oakland, CA 94608  
<https://womenprisoners.org/>, [info@womenprisoners.org](mailto:info@womenprisoners.org)

Available online: <https://droplwop.com/commutations-application-guide>

- Resentencing & Reentry Support Documents (How-To Guide)

Available online: <https://www.fortheppl.org/community>

- Guide to Filing CDCR Administrative Appeals; Guide to Writs of Habeas Corpus; and The California 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; How to Write a Remorse Letter; How to Write a Support Letter; and Book Report Guide + Suggested Book List

Contact: UnCommon Law, 220 4th Street, Suite 103, Oakland, CA 94607

Available online: <https://www.uncommonlaw.org/resources>



8.

# Appendix

**Template Exceptional Conduct Referral Letter from Prison Warden to CDCR Headquarters**

[Date]

Classification Services Unit, CDCR

Sent via email to [CDCR-DAI-1170-D-Recall-of-Sentence@cdcr.ca.gov](mailto:CDCR-DAI-1170-D-Recall-of-Sentence@cdcr.ca.gov)

**Re: Requesting Recall of Commitment for [NAME], CDCR # [ ] from [ ] per PC § 1172.1 and 15 CCR §§ 3076 et seq.**

To the Office of the Secretary;

I write in my capacity as the Warden of \_\_\_\_\_. I have served in the position of \_\_\_\_ for \_\_\_\_ years. I write to ask you to initiate the review process for recommendation a sentence recall 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 \_\_\_\_\_.

\_\_\_\_\_ is a leader in \_\_\_\_\_.

The transformation I have seen in \_\_\_\_\_ is evidenced by \_\_\_\_\_. He/She approaches his/her responsibilities of \_\_\_\_\_ with \_\_\_\_\_. The activity of \_\_\_\_\_ changed them and now they are \_\_\_\_\_. Other positive changes that \_\_\_\_\_ has made include \_\_\_\_\_.

[If relevant. His/Her advanced age of \_\_\_\_ reduced the risk for future violence by \_\_\_\_\_. His/Her 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 that \_\_\_\_\_ would not pose a safety risk if released, as shown by \_\_\_\_\_.

Sincerely,

Enclosures:

*E.g. [chronos] [report card] [certificates]*

CC Kathleen Allison, Secretary of Operations, Division of Adult Institutions, CDCR

[Kathleen.Allison@cdcr.ca.gov](mailto:Kathleen.Allison@cdcr.ca.gov)

## Public Defenders & District Attorneys 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.

<b>Alameda</b>	Alameda County Public Defender 1401 Lakeside Drive, Suite 400 Oakland, CA 94612-4305	Alameda County District Attorney 1225 Fallon Street, Room 900 Oakland, CA 94612
<b>Alpine</b>	Superior Court of Alpine County 14777 CA-89, P.O. Box 518 Markleeville, CA 96120	Alpine County District Attorney P.O. Box 248 Markleeville, CA 96210
<b>Amador</b>	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	Amador County District Attorney 708 Court Street #202 Jackson, CA 95642
<b>Butte</b>	Butte County Superior Court - Criminal Department 1 Court Street Oroville, CA 95965	Butte County District Attorney Admin. Bldg, 25 County Center Drive Oroville, CA 95965
<b>Calaveras</b>	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	Calaveras County District Attorney 891 Mountain Ranch Road San Andreas, CA 95249
<b>Colusa</b>	Colusa County Superior Court 532 Oak Street Colusa, CA 95932	Colusa County District Attorney 346 5th Street, Suite 101 Colusa, CA 95932
<b>Contra Costa</b>	Contra Costa County Public Defender - Main Branch 800 Ferry Street Martinez, CA 94553	Contra Costa County District Attorney 900 Ward Street Martinez, CA 94553
<b>Del Norte</b>	Del Norte County Superior Court 450 H Street, Room 209 Crescent City, CA 95531	Del Norte County District Attorney 450 H Street, Room 171 Crescent City, CA 95531
<b>El Dorado</b>	El Dorado County Public Defender 3976 Durock Rd, Suite 104	El Dorado County District Attorney 778 Pacific Street

	Shingle Springs, CA 95682	Placerville, CA 95667
<b>Fresno</b>	Fresno County Public Defender 220 Tulare Street, Suite 300 Fresno, California 93721	Fresno County District Attorney 2220 Tulare Street, Suite 1000 Fresno, CA 93721
<b>Glenn</b>	Glenn County Superior Court 526 W Sycamore St # B Willows, CA 95988	Glenn County District Attorney P.O. Box 430, Willows, CA 95988
<b>Humboldt</b>	Humboldt County Public Defender 1001 Fourth Street Eureka, CA 95501	Humboldt County District Attorney 825 5th Street Eureka, CA 95501
<b>Imperial</b>	Imperial County Public Defender 895 Broadway El Centro, California 92243	Imperial County District Attorney 940 West Main Street, Suite 102 El Centro, CA 92243
<b>Inyo</b>	Contract Public Defender 148 North Main Street, # 201 Bishop, California, 93514  Inyo County Superior Courts - Criminal Division 168 North Edwards Independence, CA 93526	Inyo County District Attorney 168 North Edwards Independence, CA 93526
<b>Kern</b>	Kern County Public Defender 1315 Truxtun Avenue Bakersfield, CA 93301	Kern County District Attorney 1215 Truxtun Avenue Bakersfield, CA 93301
<b>Kings</b>	Kings County Superior Court 1640 Kings County Dr. Hanford, CA 93230  Public Defense Coordinator Marianne Gilbert 4125 W Noble Ave #199 Visalia, CA 93277	Kings County District Attorney 1400 West Lacey Blvd Hanford, CA 93230
<b>Lake</b>	Lake County Superior Court 255 N. Forbes Street, 4th Floor Lakeport, CA 95453	Lake County District Attorney 225 N. Forbes Street Lakeport, CA 95453
<b>Lassen</b>	Lassen County Public Defender 2950 Riverside Dr. Suite 103 Susanville, CA 96130	Lassen County District Attorney 2950 Riverside Dr, Suite 102 Susanville, CA 96130
<b>Los Angeles</b>	Los Angeles County Public Defender - Main Branch 210 West Temple Street, 19-513 CSF Los Angeles, CA 90012	Los Angeles County District Attorney 211 W. Temple Street, Suite 1200 Los Angeles, CA 90012



<b>Madera</b>	<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>	Madera County District Attorney 209 West Yosemite Avenue Madera, CA 93637
<b>Marin</b>	Marin County Public Defender 3501 Civic Center Drive, Suite 139 San Rafael, CA 94903	Marin County District Attorney 3501 Civic Center Drive, Room 130 San Rafael, CA 94903
<b>Mariposa</b>	Mariposa Superior Court - Main Courthouse 5088 Bullion Street, P.O. Box 28, Mariposa, California 95338	Mariposa County District Attorney P.O. Box 730 Mariposa, CA 95338
<b>Mendocino</b>	Mendocino County Public Defender 175 S. School Street Ukiah, CA 95482	Mendocino County District Attorney P.O. Box 1000 Ukiah, CA 95482
<b>Merced</b>	Merced County Public Defender 2150 M Street Merced, CA 95340	Merced County District Attorney 550 West Main Street Merced, CA 95340
<b>Modoc</b>	Modoc County Superior Court 205 S East St. Alturas, CA 96101	Modoc County District Attorney 204 S. Court Street, Room 202 Alturas, CA 96101
<b>Mono</b>	Mono County Superior Court 100 Thompsons Way, P.O. Box 1037 Mammoth Lakes, CA 93546	Mono County District Attorney P.O. Box 2053 Mammoth Lakes, CA 93546
<b>Monterey</b>	Monterey County Public Defender 168 West Alisal, 2 <sup>nd</sup> Floor Salinas, CA 93901	Monterey County District Attorney P.O. Box 1131 Salinas, CA 93902
<b>Napa</b>	Napa County Public Defender 1127 First Street, Suite B Napa, CA 94559	Napa County District Attorney P.O. Box 720 Napa, CA 94559
<b>Nevada</b>	Nevada County Public Defender 109 North Pine Street Nevada City, CA 95959	Nevada County District Attorney 201 Commercial Street Nevada City, CA 95959
<b>Orange</b>	Orange County Public Defender 14 Civic Center Plaza Santa Ana, CA 92701	Orange County District Attorney 401 Civic Center Drive West Santa Ana, CA 92701

<b>Placer</b>	<p>Contract Public Defender: Koukol &amp; Associates 3785 Placer Corporate Drive, Suite 550, Rocklin, CA 95765</p> <p>Placer County Superior Court - Criminal Division 10820 Justice Center Drive, Roseville CA 95678</p>	Placer County District Attorney 10810 Justice Center Drive Roseville, CA 95678
<b>Plumas</b>	Plumas County Superior Court 520 Main St. #104 Quincy, CA 95971	Plumas County District Attorney 520 Main Street, Room 404 Quincy, CA 95971
<b>Riverside</b>	Riverside County Public Defender 4075 Main St. Suite 100 Riverside, CA 92501	Riverside County District Attorney 3960 Orange Street Riverside, CA 92501
<b>Sacramento</b>	Sacramento County Public Defender - Criminal Division 700 H Street, Suite 0270 Sacramento, CA 95814	Sacramento County District Attorney 901 G Street Sacramento, CA 95814
<b>San Benito</b>	San Benito Superior Court 50 Fourth Street Hollister, CA 95023	San Benito County District Attorney 419 4th Street Hollister, CA 95023
<b>San Bernardino</b>	San Bernardino County Public Defender - Administration 172 West 3rd Street, 2nd Floor San Bernardino, CA 92415-0008	San Bernardino County District Attorney 303 W. Third Street San Bernardino, CA 92415
<b>San Diego</b>	San Diego County Public Defender - Administrative Office 450 B Street, Suite 1100 San Diego, California 92101	San Diego County District Attorney 330 W. Broadway, Suite 1300 San Diego CA 92101
<b>San Francisco</b>	San Francisco Public Defender's Office 555 7th Street San Francisco, CA 94103	San Francisco County District Attorney 880 Bryant Street, Third Floor San Francisco, CA 94103
<b>San Joaquin</b>	San Joaquin County Public Defender 102 South San Joaquin Street Stockton, CA 95202	San Joaquin County District Attorney P.O. Box 990 Stockton, CA 95202
<b>San Luis Obispo</b>	<p>Contract Public Defender: San Luis Obispo Defenders 991 Osos Street, Suite A San Luis Obispo, CA 93401</p> <p>San Luis Obispo Superior Court - Criminal Division</p>	San Luis Obispo County District Attorney 1035 Palm Street, 4th Floor San Luis Obispo, CA 93408

	1050 Monterey Street, Room 220 San Luis Obispo, CA, 93408	
<b>San Mateo</b>	San Mateo County Bar Association Private Defender Program 333 Bradford St #200 Redwood City, CA 94063	San Mateo County District Attorney 400 County Center, Third Floor Redwood City, CA 94063
<b>Santa Barbara</b>	Santa Barbara County Public Defender - Court House Office 1100 Anacapa Street Santa Barbara, CA 93101	Santa Barbara County District Attorney 1112 Santa Barbara Street Santa Barbara, CA 93101
<b>Santa Clara</b>	Santa Clara County Public Defender - Main Office 120 W. Mission St. San Jose, CA 95110	Santa Clara County District Attorney 70 West Hedding Street, West Wing San Jose, CA 95110
<b>Santa Cruz</b>	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	Santa Cruz County District Attorney 701 Ocean Street, Room 200 Santa Cruz, CA 95060
<b>Shasta</b>	Shasta County Public Defender 1815 Yuba St. Redding, CA 96001	Shasta County District Attorney 1355 West Street Redding, CA 96001
<b>Sierra</b>	Sierra County Superior Court - Criminal Division 100 Courthouse Square Downieville, CA 95936	Sierra County District Attorney 100 Courthouse Square Downieville, CA 95936
<b>Siskiyou</b>	Siskiyou County Public Defender 322 1/2 West Center Street Yreka, CA 96097	Siskiyou County District Attorney 311 Fourth Street, Room 204 Yreka, CA 96097
<b>Solano</b>	Solano County Public Defender - Main Office 675 Texas Street, Suite 3500 Fairfield, CA 94533	Solano County District Attorney 675 Texas Street, Suite 4500 Fairfield, CA 94533
<b>Sonoma</b>	Sonoma County Public Defender 600 Administration Drive, 1st Floor Room 111 Santa Rosa, CA 95403	Sonoma County District Attorney 600 Administration Drive, Room 212J Santa Rosa CA 95403
<b>Stanislaus</b>	Stanislaus County Public Defender 1021 I Street, #201, P.O. Box 3428 Modesto, CA 95353	Stanislaus County District Attorney 832 12th Street, Suite 300

		Modesto, CA 95353
<b>Sutter</b>	Sutter County Public Defender 604 B Street Suite 1 Yuba City, CA 95991	Sutter County District Attorney 446 Second Street, Suite 102 Yuba City, CA 95991
<b>Tehama</b>	Tehama County Superior Court - Criminal Division 1740 Walnut Street Red Bluff, CA 96080	Tehama County District Attorney P.O. Box 519 Red Bluff, CA 96080
<b>Trinity</b>	Trinity County Superior Court - Main Courthouse 11 Court Street Weaverville, CA 96093	Trinity County District Attorney P.O. Box 310 Weaverville, CA 96093
<b>Tulare</b>	Tulare County Public Defender Visalia Courthouse RM G35 221 South Mooney Blvd Visalia, CA 93291	Tulare County District Attorney 221 South Mooney Blvd, Suite 224 Visalia, CA 93291
<b>Tuolumne</b>	Tuolumne County Superior Court 99 N. Washington St. Sonora, CA 95370	Tuolumne County District Attorney 423 North Washington Street Sonora, CA 95370
<b>Ventura</b>	Ventura County Public Defender Hall of Justice 800 S. Victoria Avenue, Room # 207 Ventura, CA 93009	Ventura County District Attorney 800 South Victoria Avenue Ventura, CA 93009
<b>Yolo</b>	Yolo County Public Defender 814 North Street Woodland, CA 95695	Yolo County District Attorney 301 Second Street Woodland, CA 95695
<b>Yuba</b>	Yuba County Superior Court 215 Fifth Street, Suite 200 Marysville, CA 95901	Yuba County District Attorney 215 Fifth Street, Suite 152 Marysville, CA 95901

# Resentencing Now! Checklist for Preparing Resentencing Packets

*The Share this Resentencing Checklist: [bit.ly/ResentencingNowChecklist](https://bit.ly/ResentencingNowChecklist)  
[\*Resentencia Ahora: Lista de verificación para preparar paquetes de resentencia en español\*](#)*

A law in California allows law enforcement agencies to voluntarily recommend that someone in their custody be sent back to court and receive a shorter sentence. Currently CDCR Secretary Kathleen Allison (the head of the California prison system) and District Attorney (DA)'s offices use this Penal Code section 1172.1 power to refer people for resentencing.\*

There is not currently a self-referral right in this resentencing law, so people who want to be resentenced under this law must request a referral from either CDCR or the District Attorney in their county of conviction. CDCR has developed their own unfair criteria for these referrals, which were subject to a Public Comment process in 2021 and another Public Comment period that ended June 8, 2022. Each county DA will come up with their own process and criteria, if they decide to make these referrals at all. You can approach CDCR or you or a community member can approach a DA with a packet of supporting documents that demonstrates reasons why you are a strong candidate.

Everything you prepare for a resentencing packet to request a referral from CDCR or a DA will also be useful for [applying to the Governor for a commutation](#), [preparing for a parole hearing](#), or for other forms of resentencing such as [Felony Murder resentencing](#) or [RISE Act \(SB 483\) Resentencing](#). If you have already applied for a commutation you can mail in copies of any new supporting documents that you prepare to be included as additional “exhibits” to your pending application.

This Checklist will walk you through a range of potential documents you can prepare to include in a resentencing packet for when you or your support network approach CDCR or a DA to request PC 1172.1 Resentencing.

**ALERT: AB 200 (Budget Trailer Bill)** went into effect on July 1, 2022 and moved several major resentencing laws into a new chapter of the Penal Code, as follows:

- **PC § 1170.03** (created by AB 1540, originally PC § 1170(d)(1)) **will now be PC § 1172.1**
- **PC § 1170.95** (created by SB 1437 and expanded by SB 775) **will now be PC § 1172.6**, for Felony Murder Resentencing
- **PC § 1171** (created by SB 483 - RISE Act) **will now be PC § 1172.7**, for the retroactive removal of 3-year drug prior enhancements (SB 180)
- **PC § 1171.1** (created by SB 483 - RISE Act) **will now be PC § 1172.75**, for the retroactive removal of 1-year prison prior enhancements (SB 136)
- The bill clearly states that none of these laws exclude people serving LWOP or Death Penalty from recall and resentencing.

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## What should a Resentencing Packet include?

*For templates and more advice for each of the suggested items listed below, check out the Resources links on the last page of this checklist. Depending on your situation, some of these documents may not be relevant.*

- **Case Documents:** particularly the Abstract of Judgment
- **Parole Plans:** a 2-3 page outline of your support network including: housing and job offers, family support in the county, AA/NA meetings in the area, public benefits you qualify for (e.g. MediCal, SSI/SSDI, etc.), faith communities (churches, mosques, synagogues, etc.), etc.
- **Relapse Prevention Plan:** a 1-3 page outline of your triggers and your coping skills, and the support network you'll turn to when feeling triggered.
- **Letter of Remorse:**
  - to Victim, Victim's Family, and/or Society at large as relevant
  - These 1-page letters should be **solely focused on expressing remorse** about the harm caused. This is **not** the letter to discuss your insight, how you've changed, or your record of rehabilitation.
- **Letter of Insight / Statement of Accountability:** This letter should discuss your **insight** into your causative factors and triggers, your accountability for the harm caused, and your insight and change after recent write-ups or disciplinary actions.
- **Resume:** List your job assignments, educational achievements, certifications, awards, degrees, and employable skills both before and during your incarceration.
- **Support Letters (Character Witness letters, and Parole Support offers)**
  - From Wardens, Associate Wardens, and Correctional Officers
  - Letters from Program Staff, Chaplains, and Volunteers
  - From Potential Employers (Job Offer letters)
  - From Transitional Housing (Housing Offer letters)
  - From Victim or Victim's Family
    - If they've reached out to you, laws prohibit us from reaching out to the victim directly.
  - From Currently and Formerly Incarcerated Peers
  - From Family and Friends
  - From Spiritual Leaders, Community Leaders, and Politicians
  - From community-based organizations with reentry support offers (support groups, transportation, employment search support, etc.)
  - From NA/AA sponsors, support group leaders, etc.
- **Chronos and Certificates:** Organized by most recent and relevant programming to causative factors.
- **Book Reports**



## Resentencing Now! Checklist for Preparing Resentencing Packets

- Potential book report topics are: substance abuse, anger management, domestic violence, and what the Board of Parole Hearings refers to as “criminal thinking” and “causative factors”.
- Book reports are most useful when they address topics that are related to someone's crime of commitment or conviction, or issues that have come up during incarceration regarding disciplinary records. Book reports should focus on what someone learned about themselves from reading a book, not about the book itself.

## Requesting Review from the District Attorney in the County of Conviction

Here is the limited scope of information that For the People's 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 # of years already served
- Original sentence and list of all sentence enhancements
- 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
- Description of your support network and re-entry plan (housing, employment, family, relationships, etc.)

### Here's what you can include in a 1-page Cover Letter addressed to the District Attorney (DA):

- Subject Line: **“RE: Request for Resentencing for NAME (CDC#) under PC 1172.1”**
- This letter can come from you, your lawyer, or community members who support you.
- Cover letters should highlight, synthesize, and clarify relevant info for the reader to help them in their decision-making. Rather than taking on an argumentative or demanding tone, this letter is effective if you avoid discussing the injustices that occurred during your trial or with your plea deal (i.e. avoid discussing your innocence, wrongful conviction, or the DA mishandling your case).
- (1) **Introduction** asking for review for resentencing based on your record of rehabilitation, your age, medical conditions, the amount of time you've served, and your preparedness for release.
- (2) **List your convictions** including priors, your current sentence and enhancements, and your parole eligibility date, if you have one.
- (3) **Discuss your remorse** and accountability for the harm caused.
- (4) **Briefly discuss your record of rehabilitation** and the insight you developed through programs (whether you were able to attend programs or developed your own program).
- (5) **Discuss your parole plans**, housing options, support network, and readiness for release.
- (6) **Request** that the District Attorney review your case for resentencing.

# Resentencing Now! Checklist for Preparing Resentencing Packets

Here are some ideas for **how** to request resentencing from a District Attorney (DA):

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

You can write to the Public Defender's office if they represented you to request assistance with approaching the DA. You can share your case #, your sentence and enhancements, and describe aspects of your life, your rehabilitation, and your support network for them to use to make the case to the DA that you should receive a resentencing referral. If you were represented by a bar panel or private attorney, you can also contact them about advising or assisting you. Here's a directory of contacts for California Public Defenders: <https://drive.google.com/file/d/1zcpax41fEU1VKxelVEyoCburGrzO7w00/view>

## (2) You can directly contact the District Attorney (DA)'s Office (with caution)

AB 2942 went into effect in 2019, and DA offices are still coming on board to use their new PC section 1172.1 resentencing powers. The DA in your county may be receptive to arguments about why your case should be one of the first cases they refer. Some counties may be setting up a review process through their conviction integrity units or a new sentence review unit. **You can start by writing a simple letter** requesting intake forms, or your support network can call or search online to see if the DA has developed criteria and if there is a specific webpage or mailing address or intake forms for requesting review ([Yolo](#), [SF](#), [Kern](#), [San Joaquin](#), [Riverside](#), [San Diego](#), [Los Angeles FAQ](#)). **You can also prepare a resentencing packet and a cover letter** using the advice above and send this to the DA. Anything you say or send to the DA can be used against you, so use caution when approaching the office. Here's a directory of contacts for California District Attorneys:

<https://drive.google.com/file/d/1i764wOG14zBwUoSK3ucoviSJS5IBFEqy/view>

## (3) You can request assistance from For the People's Sentence Review Project (SRP)

For The People's Sentence Review Project (SRP) will support some resentencing requests to District Attorneys to recommend a lesser sentence. They are reviewing cases via mail and in partnership with 10 county DAs. SRP is prioritizing people who have served 10+ years and were convicted of non-violent felonies. Their contact information is 1904 Franklin St, Suite 205, Oakland CA, 94612; 916-562-3212; [info@forthepppl.org](mailto:info@forthepppl.org); [www.forthepppl.org/new-index](http://www.forthepppl.org/new-index).

## Requesting Review from CDCR

CDCR staff in Sacramento is compiling lists of names of everyone with certain enhancements. CDCR's official policy per the Departmental Operations Manual (DOM) is that it does not accept referrals from incarcerated people, lawyers, or their families. However, a number of people have alerted their counselors and CDCR staff in Sacramento that they are eligible under a specific "cohort" (a group of people with similar enhancements or health status). 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) Ask the Warden to refer you to the CDCR Secretary to be reviewed for a resentencing referral on the basis of your "exceptional conduct."**

## Resentencing Now! Checklist for Preparing Resentencing Packets

You can ask the Warden of your facility to send a referral for you for the “exceptional conduct” resentencing cohort. 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](mailto:CDCR-DAI-1170-D-Recall-of-Sentence@cdcr.ca.gov). They should 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 wardens via institutional (@cdcr.ca.gov) email addresses. The CDCR RRRP email does not accept self-referrals or referrals for exceptional conduct from other institutional staff, volunteers, family members of people in prison, their friends, or attorneys at this time. Here are some tips for securing a warden referral: Provide the warden’s office with some documents that show your strength as a resentencing referral candidate. This can include laudatory chronos and certificates, a list of your program and work history, post-release plans, support letters, and an example letter of what they could write about you. You could also provide a copy of your parole packet or commutation application.

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

Officially, 602 appeals are not being heard for “Exceptional Conduct” or “Changes in Sentencing Laws” referrals. If you file an appeal for this, CDCR will more than likely deny your appeal because they do not have to consider and grant resentencing recommendation requests for these discretionary cohorts. However, you can use the 602 process in a narrow set of circumstances to alert CDCR to your eligibility for resentencing on the basis of sentence enhancements that are now illegal. How CDCR responds to your Form 602 Appeal may depend on your eligibility criteria:

- a. For people who received a sentence enhancement for either a prison prior (1-year enhancement repealed by SB 136) or a drug prior (3-year enhancement repealed by SB 180), there is a clear right to resentencing via SB 483 (RISE Act) and CDCR should be including your name on a list to the courts in 2022. If you feel like you were left off of this list, you can file a 602 as well as file a petition for writ of habeas corpus directly with the trial court.
- b. For people who received a sentence that is now unlawful (see the **Sentencing Discrepancy Cohorts above**), resentencing should be mandatory, and there is a clear right to appeal for resentencing relief through the administrative appeals process (602 form). Note that CDCR’s Title 15 regulations state they will not refer someone for this cohort if they are within 6 months of their release date (15 C.C.R. 3076.1(c)).

## CDCR’s Current Eligibility Criteria for Resentencing Referrals

The criteria CDCR uses are different for each recall and resentencing cohort.

### CDCR uses the following criteria for **Exceptional Conduct cohort resentencing referrals**:

- People who have demonstrated “sustained compliance with departmental regulations, rules, and requirements, as well as prolonged participation in rehabilitative programming”
- Are not required to register on Tiers 2 or 3 of the sex offense registry upon release (P.C. 290)
- Have served 10 years of their sentence in CDCR custody
- Have not been found guilty of a serious or violent rules violation within the past five years, and do not have an open violation pending
- Do not have a determinate sentence with a release date within 18 months; are not eligible for parole consideration within 18 months; and/or have not already been considered for parole
- Do not have an indeterminate sentence with a parole hearing within the next 18 months, and/or have not already had a parole hearing

# Resentencing Now! Checklist for Preparing Resentencing Packets

CDCR uses the following criteria for **Change in Sentencing Law cohort resentencing referrals**:

- People who have served 5 years of their sentence in CDCR custody
- Have not been found guilty of a serious or violent rules violation within the past one year, and do not have an open violation pending
- Do not have a determinate sentence with a release date within 18 months; are not eligible for parole consideration within 18 months; and/or have not already been considered for parole
- Do not have an indeterminate sentence with a parole hearing within the next 18 months, and/or have not already had a parole hearing

CDCR uses the following criteria for **Sentencing Error cohort resentencing referrals**:

- People who do not have a determinate sentence with a release date within six months.
- Sentences meet the standard of: “if their sentence, as reflected in the Abstract of Judgment, contradicts applicable sentencing laws at the time of their sentencing hearing or subsequent decisional history suggesting the substantial likelihood of a sentencing error.”

**Generally.** CDCR tends to favor people with the following factors for resentencing referrals:

- Laudatory (positive) chronos from program staff and correctional staff
- Positive programming and leadership in programs like Alcoholics Anonymous, Narcotics Anonymous, and/or Criminals & Gang Members Anonymous as relevant to conviction and causative factors
- Educational, California Prison Industrial Authority (CALPIA), vocational, or work review training
- Employment preparation, evidenced by work placement chronos, certificates, and job skills

## Frequently Asked Questions About Resentencing Referrals

- **Should I hire an attorney?** While there are a number of attorneys advertising “resentencing petition” services online, it’s good to use caution when considering hiring an attorney to assemble a resentencing packet. First, there’s no such thing as a “PC 1172.1 petition” in this area of the law, unless you were sentenced in the last 120 days. Second, you can use the samples and advice in the guides below, and work with your loved one to assemble documents. You can also take the first step of writing the DA office a simple note asking if they have an Intake Form for Penal Code section 1172.1 Resentencing Review if you’re concerned about what information to share or not to share. You can use the materials your loved one may have already gathered for the parole board or a commutation application to assemble this packet. If the DA or CDCR decide to refer a case for resentencing, the judge will appoint an attorney at no cost to your family.
- **I already applied for a commutation but I never heard back, what should I do?** You can send a follow-up letter to the Governor’s office and include recently updated parole plans, new support letters, chronos and certificates, and ask that they be added to your pending application as “new exhibits”. Include a cover letter that stresses that you have housing immediately available to you and how you may be vulnerable to COVID. You can also use your commutation packet to present to the DA or CDCR along with a cover letter (see advice above on drafting these cover letters).
- **I have an upcoming parole hearing, or I was recently denied, how will this impact requesting resentencing?** CDCR currently excludes any who has already had a parole hearing or who goes to board in the next 18 months from a recall and resentencing referral. You should

## Resentencing Now! Checklist for Preparing Resentencing Packets

be cautious in approaching a DA as their office likely recently opposed your parole or is preparing to do so at an upcoming hearing. This will depend a lot on the county your case was charged in.

- **I reached out to the District Attorney's office in the last two years and they said they weren't interested in resentencing or they never responded, what should I do?** DA offices are still figuring out the criteria they will be using for reviewing cases for resentencing, and may still be setting up a review unit and policy for intake and procedure. It's still possible that the DA office could make a referral in your case.
- **I was already referred by CDCR but the judge never scheduled a hearing OR the judge denied my resentencing, what should I do?** You can reach out to the California Appellate Project in your region to ask about appealing the denial. If your case is in LA, George Gascon will be working with CDCR to take a second look at everyone previously referred under Jackie Lacey.
- **I have heard about the new District Attorney Los Angeles George Gascon and his policies on resentencing, will this impact my loved one if their case is in another county?** While DA Gascon can only resentence LA county cases, we are hopeful that more DAs will come on board and exercise their discretion to review and refer cases for resentencing using PC 1172.1.
- **My loved one has a LWOP or Death sentence, are they eligible for resentencing?** Yes people with LWOP and Death Penalty cases are eligible, Penal Code section 1172.1 does not exclude anyone from potential referrals. CDCR is currently excluding people with LWOP and Death sentences in their regulations, but these criteria will once again be subject to Public Comment in Fall 2022 and we will continue to fight the exclusions.

## Resources and Guides for Requesting Resentencing

- [Video of Resentencing Now! Event on January 31, 2021](#)
- **Ella Baker Center's Back to Court Resentencing Guide:** <http://ellabakercenter.org/resentencing-guide>
- **Connect with your local Participatory Defense Hub:** <https://www.participatorydefense.org/hubs>
- **Link to For the People's Sentence Review Project's Resentencing & Reentry Supporting Documents Guide:** <https://www.fortheppl.org/community>. This Guide contains a number of helpful samples and templates for each of the documents to include in your resentencing packet.
- **Link to CCWP's Commutations Guide:** <https://droplwop.com/commutations-application-guide/>
- **Link to UnCommon Law's Resource Page:** <https://www.uncommonlaw.org/resources>
  - **How to Write a Support Letter, How to Write a Letter of Remorse, How to Write a Relapse Prevention Plan, Book Report Guide & Suggested Reading List, and more!**
- [Memo: LWOP & Death Penalty Sentences Are Eligible for PC 1170\(d\)\(1\) Resentencing](#)

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**You can contact these offices** to request information and review for a resentencing referral for your loved one.

- **Kathleen Allison**, Secretary of Operations, Division of Adult Institutions
  - Mail: California Department of Corrections and Rehabilitation, P. O. Box 942883, Sacramento, CA 94283
  - [Kathleen.Allison@cdcr.ca.gov](mailto:Kathleen.Allison@cdcr.ca.gov), (916) 324-7308
  - Role: final level of review for all recall and resentencing referral letters before mailed to trial court judges.
- **Governor Newsom's Office**, (916) 445-2841
  - Public Comment form: [govapps.gov.ca.gov/gov40mail/](https://govapps.gov.ca.gov/gov40mail/)
  - Clemency Office: [commutations@gov.ca.gov](mailto:commutations@gov.ca.gov)
  - Role: interested in fast-tracking resentencing referrals from CDCR; grants commutations, medical reprieves, and compassionate release via PC 1170(e).
- **District Attorneys Offices**: Contact Information for District Attorneys in All California Counties: <https://drive.google.com/file/d/1i764wOG14zBwUoSK3ucovLSJS5IBFEqy/view>
- **Public Defender Offices**: Contact Information for Public Defenders in All California Counties: <https://drive.google.com/file/d/1zcpax41fEU1VKxelVEyoCburGrzO7w00/view>

This Resentencing Packet Checklist was put together for the Resentencing Now! Event on 1/31/2021, a collaboration by the following organizations:

