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October 20, 2022

Dear friend,

We are writing to you with updates and advocacy information for **Senate Bill 483 - The Repeal Ineffective Sentencing Enhancements (RISE) Act of 2021, which was signed by Governor Newsom and went into effect on January 1, 2022.**

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

In 2017 and 2019, California ended the use of sentence enhancements that added three years of incarceration for each prior drug offense (SB 180 Mitchell) and one year for each prior prison or felony jail term (SB 136 Wiener). However, these reforms apply only to cases filed after these bills became law.

SB 483 now authorizes courts to apply the repeals of these 1-year prison prior and 3-year drug prior sentence enhancements by retroactively reducing the sentences of everyone in prison and jail serving time for one of these enhancements.

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

The SB 483 law demands that no one is serving time based on these enhancements that California has already deemed unfair and ineffective. However, there have been significant delays in the courts with these proceedings, and a number of County Sheriffs did not report to the courts the people who were eligible in jails in accordance with the timelines in the law. We are including in our attached Frequently Asked Questions some potential next steps to take if you are still awaiting relief.

Sincerely, the EBC SB 483 Team,

Derick Morgan
Policy Associate

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

Frequently Asked Questions

What is the RISE Act?

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

What is the law created by SB 483 for recall and resentencing?

On January 1, 2022, SB 483 created Penal Code sections 1171 and 1171.1 which creates a process and timeline for resentencing people with 1-year prison prior enhancements and 3-year drug prior enhancements. On July 1, 2022, AB 200 went into effect which moved this law into a new chapter of the Penal Code which now houses various resentencing laws. The statute enabling SB 483 is now chaptered as follows:

- PC § 1171 (created by SB 483) is now **PC § 1172.7, for the retroactive removal of 3-year drug prior enhancements** (SB 180) (as of July 1, 2022)
- PC § 1171.1 (created by SB 483) is now **PC § 1172.75, for the retroactive removal of 1-year prison prior enhancements** (SB 136) (as of July 1, 2022)

Who is eligible for resentencing under the RISE Act?

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

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

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

By March 1, 2022	By July 1, 2022	By Oct. 1, 2022	By Dec. 31, 2023
CDCR & 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.	CDCR & 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.	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.	Courts recall and resentence everyone else with these 1-year prison prior and 3-year drug prior enhancements.

The bill requires this information to be provided to the courts by March 1, 2022, for those

individuals who are currently serving time only for the qualifying enhancement(s) and by July 1, 2022, for all other people with these qualifying enhancements on their sentences. The bill requires the court, after verifying specified information, to recall the sentence and resentence the individual to remove any invalid sentence enhancements.

By October 1, 2022, the bill requires the court to grant this relief to those individuals who have already served their base term and any other enhancements and are now only serving the qualifying enhancement. By December 31, 2023, the bill requires the court to resentence everyone else who has one of these two qualifying enhancements on their sentence.

How many people are on the lists that have already been sent to the court?

CDCR sent a list to the courts in March 2022 with the names of 2,678 people immediately eligible for resentencing. On July 1, 2022, CDCR sent a second list of 7,534 people to the courts. In addition, each County Sheriff is required to send lists of people in county jail custody who are eligible for resentencing.

What do I need to do to be resentenced?

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

Will I automatically go back to court?

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

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

Does SB 483 require a full resentencing hearing?

Yes. The text of the statute mandates that at the resentencing after the invalid priors are vacated, “the court shall apply the sentencing rules of the Judicial Council and apply any other changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing.” (See *People v. Salgado* (2022) 82 Cal.App.5th 376, 381 saying that language triggers a full resentencing.) When the court resents you through the RISE Act, the court can consider recent laws that have made some previously mandatory sentencing enhancements discretionary. For example, the court can strike a 5-year prior enhancement (SB 1393, 2017) or gun enhancements (SB 620, 2017). When considering the new sentence, the statute allows judges to consider post-conviction factors like age, time served, disciplinary record, record of rehabilitation and evidence that reflects a diminished risk of future violence or that incarceration is no longer in the interest of justice. If the judge in your case does not agree that the statute mandates a full resentencing, consider filing a notice of appeal within 60 days for the resentencing hearing. Complete the appeal form, available online at <https://www.courts.ca.gov/documents/cr120.pdf>, and check the box in section 2(b) “Other”. Write in “appeal after a SB 483 resentencing”. If the judge removed your enhancements without holding a hearing because they didn’t fully understand your rights

under SB 483, you can file an appeal. If the mistaken ruling is brought to the court's attention quickly, the judge has jurisdiction to recall the sentence and resentencing within 120 days of the prior hearing (see Pen. Code, § 1172.1.).

Can the judge decide not to resentence me?

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

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 calendared 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.



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Please write to us with your experiences and concerns so that we can continue to forward issues with compliance to attorneys who are working to resolve these problems with the courts, CDCR, and the Sheriffs.

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

Having a 5-year prior won't trigger an automatic resentencing under the RISE Act. However, **If you or your loved one does not have a 1-year or 3-year prior that applies for resentencing under the RISE Act, they can still be resentenced to have sentence enhancements removed if they are referred to court through a separate process under Penal Code 1172.1** (formerly known as PC 1170.03 and PC 1170(d)(1)). This other form of resentencing must be initiated by either the District Attorney from their county of conviction or by CDCR. We can send you a full [Resentencing Guide](#) by Ella Baker Center about PC 1172.1 resentencing, and how to prepare a resentencing packet to request that either CDCR or a District Attorney make a referral.

Who are the co-sponsors supporting the RISE Act?

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