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Your Responsibility When Using the Information Provided Below:

When putting this material together, we did our best to give you useful and accurate information because we know that people often have trouble getting legal information and we cannot give specific advice to everyone who asks for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in your facility's law library.

Penal Code § 1172.1 Recall and Resentencing
Recommended by California Department of Corrections and Rehabilitation (CDCR),
the County Sheriff, or the District Attorney, or Initiated by the Sentencing Court
(updated January 2025)

This letter is for people who want information about whether and how someone can be resentenced under Penal Code § 1172.1. You may only be considered for recall of your judgment and resentencing under § 1172.1 if:

- your case is recommended to the sentencing court by:
 - CDCR; or
 - Board of Parole Hearings (BPH (though BPH currently does not make recommendations)); or
 - the district attorney (DA) of the county in which you were sentenced (or the Attorney General (AG), if the AG's office prosecuted your case); or
 - the county corrections administrator (usually the sheriff) in the county in which you were sentenced, if you are serving a felony term in county jail;

OR

- the sentencing court chooses to consider you for resentencing “on its own motion.” Please review section III on pages 5-6 for important information about when and how you could consider sending a request for resentencing to the court yourself (or through an advocate or loved one).

Unfortunately, we cannot provide individual advice, advocacy, or representation regarding resentencing. However, this letter answers common questions about how to get started with the

process for § 1172.1 resentencing, reasons why cases can be resentenced, and what to expect if your case is considered for resentencing.

Background: *Penal Code § 1172.1* (formerly § 1170(d)(1) and § 1170.03) allows a court to recall (take back) a sentence and resentence someone to a shorter term *at any time*, even after their case is no longer on appeal. This law has changed a lot in the past few years. In addition, effective January 1, 2025, *Penal Code § 1171* requires courts to follow certain procedures when handling “postconviction proceedings” like those under § 1172.1, except when there is a conflict with a more specific rule in § 1172.1 or some other law. Most of the rights in § 1171 were already included in § 1172.1’s procedures for handling CDCR, DA, and Sheriff’s recommendations for recall and resentencing. It is unclear whether § 1171 gives people any more rights when a court considers resentencing on “own motion.” Note that § 1171 *does not provide any new legal grounds for resentencing*. There may be legal disputes about the laws, and we will try to update this letter if we get information about any important new developments.

The recall and resentencing process can be started by a recommendation from the California Department of Corrections (CDCR), the Board of Parole Hearings (BPH), the District Attorney’s (DA’s) office, the Attorney General’s (AG’s) Office (if you were originally prosecuted by the AG), or the local sheriff or correctional administrator (if you are serving a felony term in county jail). However, currently, BPH does not make any recall and resentencing recommendations. Sentencing courts also have independent authority to start recall and resentencing processes in some circumstances. The law allows resentencing even if a person pled no contest or guilty for a specific sentence or range of sentence, and regardless of whether the person is in or out of custody.

I. What Types of Cases Does CDCR Recommend for Resentencing? Can I Ask CDCR to Recommend Me?

CDCR has rules and processes for recommending § 1172.1 resentencing for people who are in CDCR custody. The CDCR rules are in Title 15 of the California Code of Regulations at §§ 3076-3076.2 and § 3076.5. There is also information about CDCR’s policies on the CDCR website at <https://www.cdcr.ca.gov/family-resources/recall-resentencing/>.

NOTE: For people who are sentenced to serve felony terms in county jail, the county sheriff’s offices have their own policies about what, if any, cases they recommend for resentencing. If you are sentenced to county jail, you should ask jail staff about the sheriff’s policy and whether your case might be referred for resentencing.

There are four types of situations in which CDCR will consider making a recommendation:

(1) Sentencing errors or discrepancies: CDCR can refer your case for resentencing if case records staff find that the sentencing court made a clear error when it sentenced you or that your sentence is unlawful due to new legislation or case law. CDCR case records unit staff review people’s sentencing documents and new laws to identify cases for these types of

referrals. If there is an error in your sentence, CDCR should refer your case to the court unless you already have a release date within the next six months.

(2) Changes in sentencing laws: CDCR can refer your case for resentencing if there are changes to the laws and you could get a lower sentence if you were sentenced under the new law, even though the new law doesn't automatically apply to you. Staff from CDCR case records and classification services review people's sentencing documents and new laws to identify cases for these types of referrals, and then review the person's prison file to prepare a case report. Even if there has been a change in the sentencing law that could be applied to you, you must meet five other requirements before CDCR will recommend resentencing. Those requirements are:

- you have served five continuous years in CDCR custody
- you have not been found guilty of a serious or violent rule violation (Division A-D) within the last year, and you do not have a current serious or violent rule violation charge
- you are not scheduled for release within the next 18 months
- you are not eligible for parole consideration within the next 18 months
- you have not already had a parole suitability hearing

If either case records staff or the CDCR Secretary decides not to proceed with a recommendation, then your case can be reevaluated again by CDCR staff after two years.

(3) Exceptional conduct: CDCR can refer your case for resentencing if you have had excellent behavior and participation in rehabilitation programs in prison for a long period of time. Even if you have exceptional conduct, you must meet eight other requirements before CDCR will recommend resentencing. Those requirements are:

- you are not required to register under Penal Code § 290 for a tier 2 or 3 sex offense (offenses that require a minimum of either 20 years or life-long registration)
- you have served at least 10 continuous years in CDCR custody
- you have not been found guilty of a serious or violent rule violation (Divisions A-D) within the last 5 years, and must not have a current serious or violent rule violation charge
- you are not already scheduled for release within the next 18 months
- you are not already eligible for any type of parole consideration within the next 18 months
- you have not already had any type of parole suitability hearing
- you are not already serving the lowest legal term for a single offense

In addition, we have heard that CDCR might make "exceptional conduct" resentencing recommendations for some people who have been found suitable for parole but whose

releases are being delayed by a court order (*CJLF v. CDCR*) that currently prohibits CDCR from applying its good conduct and programming credits regulations to advance minimum eligible parole dates (MEPDs). However, we don't know if or when such recommendations will be made or which people CDCR might refer for resentencing. Please write to us if you want more information about the *CDCR v. CJLF* case.

CDCR staff who know you well and are impressed by your behavior can ask the Warden to request an evaluation of your case for an exceptional conduct recommendation. If the Warden agrees, classification services staff will review your social history, criminal record, sentencing documents, and prison file. They will prepare a report and decide whether to refer your case to the CDCR Secretary. If case records staff or the CDCR Secretary decides not to proceed with a recommendation, your case can be reevaluated again after two years.

(4) Request from a law enforcement agency, prosecutorial agency, or judicial officer: CDCR can refer you for resentencing upon request by a police or sheriff's department, a prosecutor, or a court. This sometimes happens when someone has helped in the investigation of a crime, but it can happen in other situations as well.

The CDCR Secretary has the final say on which people to recommend for resentencing. The CDCR Secretary is supposed to make a decision within 10 business days after receiving a referral from classification or case records staff. You should get a notice if the classification or case records staff decide not to send your case to the CDCR Secretary or if the CDCR Secretary decides not to recommend your case to the court. If the CDCR Secretary decides not to recommend your case to the court, you cannot submit a grievance or appeal challenging the Secretary's decision.

If the CDCR Secretary refers your case to the court, the Secretary will send a letter stating that CDCR is recommending resentencing under § 1172.1. You should be provided with a copy of the letter and any report that is sent with the letter. The court will then hold proceedings as described in sections IV and V of this letter.

The CDCR Secretary will not consider a request for a recommendation made directly by you or your family, friends, or advocates. However, if you think you meet the requirements for a recommendation, you can ask a local staff member, such as your correctional counselor, to bring your case to the attention of the Warden. If you think there is a sentencing error or discrepancy or a change in the sentencing laws in your case, you can also ask the case records office to determine whether you are eligible for resentencing. If you think that CDCR staff are not following CDCR's rules about what cases they will refer to the CDCR Secretary, then you can file a 602-1 administrative grievance and, if necessary, a 602-2 administrative appeal.

II. What Types of Cases Do District Attorneys Recommend for Resentencing? Can I Ask the DA to Recommend Me?

Each county DA's office decides which types of cases it will or will not recommend for recall and resentencing, and has its own process for screening cases. Some DAs actively recommend certain types of cases for resentencing and other DAs might not recommend any cases at all. You cannot petition a court to force the DA to make a referral. If you want information or advice about whether you can get a DA recommendation, contact the public defender's office for the county where you were sentenced. Alternatively, you could try contacting the attorney who represented you at sentencing in your criminal appeal. Please note that we do not recommend submitting a § 1172.1 application for relief, or a c-file release, through a DA's or other attorney's web portal or website, as you may waive (give up) important rights by doing so.

If a DA does recommend you for recall and resentencing, the court can allow the DA to withdraw the recommendation before the court rules on it, if the DA's request for withdrawal is supported by a legitimate reason. (*People v. Vaesan* (2023) 94 Cal.App.5th 132.)

III. What Types of Cases Can a Court Resentence "On Its Own Motion?" Can I Ask a Court to Consider Resentencing Me?

Effective January 1, 2024, under changes made by Assembly Bill 600, § 1172.1 allows a sentencing court to resentence you on its own motion (without a recommendation by a DA or correctional agency) "if the applicable sentencing laws at the time of the original sentencing are subsequently changed by a new statutory authority or case law." Resentencing can be started by the judge who originally sentenced you or by another judge who gets assigned to your case. However, the law says that you are "not entitled to file a petition" seeking resentencing, and that if you send the court a request for resentencing, "the court is not required to respond." In other words, although you are not prohibited from requesting that the court resentence you on its own motion, it is a weaker request. You will have fewer rights than if CDCR, the DA (or AG), or the county correctional administrator (sheriff) recommends you (see sections IV, V, and VI of this letter for more information), and it is much less likely that your request will be successful.

If you cannot get a recommendation from CDCR, the DA, or the sheriff, you should contact the public defender's office for the county where you were sentenced. The public defender's office may be able to give you advice about how to make a strong resentencing request directly to the court or they may be able to prepare and submit a resentencing request for you. Alternatively, you could try asking for help from the attorney who represented you at sentencing, your criminal appeal attorney, or a private criminal defense attorney who works in the county where you were convicted.

If you cannot get an attorney to help you, then you could send your own request for resentencing to the court. If you send this type of request to the court, the first page should include your name, CDCR #, the superior court number for your case, and a statement that it is an "AB 600 request for resentencing per Penal Code section 1172.1." You should explain what law has changed and why resentencing you would be in the interest of justice and not pose a danger to public safety.

You should discuss why the factors described in section V of this letter support resentencing you. You also should send any documents that support your request, such as programming certificates, laudatory chronos, classification chronos or other documents showing that you are disciplinary-free, and letters of support. If you have been granted parole but your release is being delayed due to the *CJLF v CDCR* court order, you also should attach (1) your parole hearing transcript showing that you were found suitable for parole, plus any document showing that the parole grant was affirmed and/or has become final, (2) any documents that show how much your release date has been moved due to the *CJLF v. CDCR* court order and (3) any documents that show that you have continued to have good behavior and programming since the date on which you were found suitable for parole.

NOTE: In some cases, there may be ways *other* than § 1172.1 to get a court to resentence you, such as a resentencing motion based on some other change in the law, a direct appeal from your sentence, or a state court petition for writ of habeas corpus. Also, if your sentence was “unauthorized” when it was imposed (meaning that there was no way the court could have lawfully given you that sentence at the that time), the court may have authority to correct the sentence if notified of the error by CDCR or if you file a petition for writ of habeas corpus. (See *People v. Boyd* (2024) 103 Cal.App.5th 56 [habeas petition]; *People v. Codinha* (2023) 92 Cal.App.5th 976.) Whether you have a good case for resentencing and what type of legal action you can use will depend on factors such as the issue you want to raise, whether or not your case is still on direct appeal, how long ago you were convicted and sentenced. The law is complicated, so you should try to discuss your case with your sentencing attorney or criminal appeal attorney, or with the public defender’s office or another private criminal defense attorney.

IV. What Will Happen If the Court Considers My Case for Resentencing?

Recall and resentencing proceedings will usually be in front of the county superior court judge who originally sentenced you. However, if that judge is not available, another judge from that court may be assigned to your case.

When CDCR, a DA, or a sheriff recommends you for resentencing, the court must appoint an attorney to represent you and set a status conference within 30 days. The law does not say that a court must appoint an attorney if the court is considering resentencing you on its own motion (without a recommendation); however, it is likely that the court will appoint an attorney anyway.

Per Penal Code § 1171, your attorney or the DA can request records about you from CDCR such as a case summary, disciplinary records, programming records, chronos or other relevant documents. The law requires CDCR to provide copies of the records upon request and sets procedures for courts to review ant documents that CDCR has deemed to be confidential.

If the court is considering resentencing you, it must give you an opportunity to present arguments and information about why you should be resentenced. Your attorney will prepare briefs explaining why you should be resentenced, the DA will prepare briefs setting forth their position, and the court will hold a hearing so both sides can present witness testimony and/or oral arguments. However, if you and the DA agree that you should be resentenced, the court can grant resentencing

without holding a hearing. When the court makes its decision, it must state its reasons for denying or granting resentencing.

If the court decides to resentence you, it shall apply any new laws that reduce sentences or provide judicial discretion to impose lesser sentences. The court can either modify the sentence for your convictions or vacate one or more of your convictions and sentence you on lesser crimes. The exception is that if resentencing is on the court's own motion and your conviction was by a plea bargain, then the court cannot sentence you on a lesser crime unless both you and the DA agree to it. In deciding what sentence to impose, there is no presumption in favor of a lower sentence and the court is not obliged to take any particular action recommended by CDCR. (*People v. Braggs* (2022) 85 Cal.App.5th 809.) However, your new sentence cannot be longer than your original sentence, and all of the time you have already served in custody should be credited toward your new sentence.

V. If the Court Considers My Case for Resentencing, What Factors Will the Court Consider?

Penal Code § 1172.1 sets forth factors a court must consider when deciding whether or not to resentence you and in setting your new sentence. The court shall consider whether certain types of factors contributed to your crime, such as if you experienced psychological, physical, or childhood trauma; if you were a victim of intimate partner violence or human trafficking; or if you were a youth under age 26 at the time of your crime. The court also shall consider post-conviction factors, such as your disciplinary record, your rehabilitation efforts, whether your age, time served, and/or physical condition have reduced your risk for future violence, and other evidence that shows that keeping you in custody is no longer in the “interest of justice.” The court shall also consider any evidence that undermines the integrity of your original conviction or sentence, such as evidence that your constitutional rights were violated.

When CDCR, the DA, or a sheriff recommends resentencing, the sentencing court must recall your sentence and resentence you unless the court finds that you pose an “unreasonable risk” of committing a violent felony “super-strike” crime. It appears from the way § 1172.1 is written that the court does *not* have to apply this standard if it is considering resentencing you on the court's own motion (or on your request), without a CDCR, DA or sheriff's recommendation. This is one of the reasons why it is much better to get a recommendation if at all possible, rather than directly asking the court to resentence you.

VI. What Can I Do If the Court Denies Me Recall or Make an Error When Resentencing Me?

You have a right to appeal if the court improperly denies a CDCR, DA, or sheriff recommendation for recall and resentencing or if the court recalls your sentence and resentsences you, but makes an error in setting your new sentence. (Penal Code § 1172.1(d); § 1237(b); *People v. Loper* (2015) 60 Cal.4th 1155; *People v. Arias* (2020) 52 Cal.App.5th 213; see also *People v. E.M.* (2022)

85 Cal.App.5th 1075 [appeal not moot even if CDCR rescinds recall recommendation while appeal is pending].) The court should advise you of your right to appeal, and you should talk with your attorney about whether or not to appeal. To appeal, you or your attorney will need to file a notice of appeal in the sentencing court within 60 calendar days after the date on which the court made the decision you want to challenge. If you do appeal, the court of appeal will review the case to see whether there were any legal errors that affected the sentencing court's decision. If you cannot afford to hire an attorney, the court will appoint an attorney to represent you during the appeal.

Several court cases have held that you do not have a right to appeal if you request that the court resentence you on its "own motion" without a recommendation from CDCR, the DA, or the sheriff, and the court states that it is declining your request without holding any formal proceedings. However, courts have not addressed whether or not you have a right to appeal if a court accepts your request, considers recalling your sentence, and holds a hearing but then issues a ruling with reasons for denying recall and resentencing. (*People v. Hodge* (Dec. 27, 2024, modified Jan. 3, 2025) ___ Cal.App.5th ___, decision not yet final as of mid-Jan. 2025; see also *People v. Magana* (2021) 63 Cal.App.5th 1120 [no right to appeal from denial of person's request for full resentencing where CDCR informed court of unauthorized sentence but did not recommend § 1172.1 recall and resentencing].)

Prison Law Office has a free information letter about changes that have been made to the sentencing and enhancement laws in the past few years, and a free information letter about how to file a notice of direct appeal. You can request the information by writing to Prison Law Office, General Delivery, San Quentin, CA 94964. The information is also available on the Resources page of Prison Law Office's website at <https://prisonlaw.com>.